

**MORCOIN CO., LTD., AND SUTER, INC., PLAINTIFFS AND APPELLEES,
VS. THE CITY OF MANILA, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-15351. January 28, 1961*

Ponente: GUTIERREZ DAVID, J.

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Direct appeal from a decision of the Court of First Instance of Manila, Branch IV, declaring Ordinance No. 3628 of the City of Manila null and void.

Morcoin Co., Ltd., and Suter, Inc., are owners and operators of automatic phonograph machines, more popularly known as juke boxes, in the City of Manila. As such owners and operators, they paid an annual permit fee of P5 for each machine, and a similar amount when ever a juke box is transferred to a different location. In compliance with Sections 773 and 774 of Ordinance No. 3347, they also paid an additional sum of P50 per annum as license fee for the installation and use of each juke box machine.

On February 2, 1954, the Mayor of the City of Manila, in order to curb the use of pinball machines which "have conduced to promote idleness among an increasing number of city residents", recommended to the Municipal Board the further amendment of Sections 773 and 774 of Ordinance No. 1600 by restricting the operation or maintenance of said machines within a specified radius from certain designated places and "by making the rate of license fees more prohibitive." Emphasizing that "pinball machines contribute to moral delinquency", the City Mayor, on February 19, 1954, sent a "1st TRACER " to the Municipal Board urging the prompt enactment of the proposed amendment to said sections 773 and 774. Five days thereafter, the Board's Committee on Laws, sharing the same views of the City Mayor about the "deleterious effects" which pinball machines produce, recommended, on second indorsement, the approval of the proposed amendment. Acting upon that recommendation, the Municipal Board of the City of Manila, on March 19, 1954, enacted Ordinance No. 3628, containing the proposed amendment, which was approved by the City Mayor on the following day. Sections 773 and 774 of Ordinance No. 1600 as amended by Ordinance No. 3628 read as follows:

"SEC. 773. Licenses.—No person, entity or corporation shall install or cause to be installed for the use of the public for compensation any mechanical contrivance or automatic apparatus which functions through the introduction of money not otherwise prohibited by the law of weights and measures and not a gambling device, for purposes of amusement or of confronting the weight of persons or things, or printing letters or numbers, or displaying features inside the apparatus or reproducing recorded music, including other kinds of machines or apparatus without having first obtained a license therefor from the City Treasurer. Such license must be posted on the apparatus concerned, Provided, that the operation or maintenance of pinball machines, not otherwise falling under the category of a gambling device, shall not be allowed within a radius of two hundred (200) meters from any church, hospital, institution of learning, public market, plaza, and government buildings.

"SEC. 774. Fees.—There shall be paid for every license granted for the installation and use of an apparatus provided in this chapter, an annual fee of P300.00 which is payable in advance: Provided, that person-coin operated weighing or scale, machines shall pay only an annual fee of P12.00 payable in advance."

The validity of the above ordinance was contested by a group of owners and operators of pinball machines who call themselves "Recreation and Amusement Association of the Philippines" before the Court of First Instance of Manila, but that court dismissed the action, it being of the opinion that the said ordinance was valid.

On September 24, 1957, Morcoin Co., Ltd. and Suter, Inc., the owners and operators, as already stated, of juke box machines in the City of Manila, brought an action in the Court of First Instance of Manila, its Mayor, Treasurer and Chief of Police, assailing the validity of Ordinance No. 3628 on the ground that the license fee of P300 imposed by the said ordinance upon juke box machines is exorbitant, excessive, confiscatory and substantially disproportionate to the reasonable expenses of issuing the license for and regulating the said machines. The defendants, thru the City Fiscal, filed their answer denying the material allegations of the complaint and interposed a counterclaim for plaintiff's failure to pay their outstanding obligations arising under Ordinance No. 3628. By way of special defenses, defendants alleged that the complaint states no cause of action, because the validity of Ordinance No. 3628 has already been upheld in the case of Recreation and Amusement Association of the Philippines vs. City of Manila, et al. (100 Phil., 950), and that the operation of automatic phonograph machines is a non-useful business upon which a large license fee may be imposed.

After trial, the lower court rendered judgment declaring Ordinance No. 3628 null and void and enjoining the enforcement of the same in connection with plaintiffs' business. Hence this appeal.

The appeal is without merit.

There can be no question that Sections 773 and 774 of Ordinance No. 1600, as amended by Ordinance No. 3628, was enacted pursuant to section 18 [1] of the Revised Charter of the City of Manila (Republic Act No. 409 as amended), which provides that the Municipal Board has the legislative power "to regulate and fix the license fees for * * * slot machines * * *". The power to regulate and impose license fee for the operations of slot machines—which include juke box machines, pinball machines and other coin-operated contrivances—should not, however, be construed as including the power to impose license taxes for revenue purposes. Indeed, a cursory reading of the legislative powers of the Municipal Board enumerated in section 18 of the City's Revised Charter shows that the power to tax is given where it was intended to be exercised and is not given where it was not so designed. As the authority was withheld, it must logically result that the power granted under the above-quoted provision of the City's Charter is purely regulatory for police purposes. (*Pacific Commercial Co. vs. Romualdez and Alfonso*, 49 Phil., 917; *Hercules Lumber vs. Municipality of Zamboanga*, 55 Phil., 653.) Such being the case, the amount of license fees that may be imposed upon juke box machines and other coin-operated contrivances cannot be prohibitive, extortionate, confiscatory or in an unlawful restraint of trade, but should be approximately commensurate with and sufficient to cover all the necessary or probable expenses of issuing the license and of such inspection, regulation and supervision as may be lawful. (*Cu Unjieng vs. Pat-stone*, 42 Phil., 818; *City of Iloilo vs. Villanueva*, 105 Phil., 337; 33 Am. Jur. 367; 53 C.J.S. 517; See also the cases cited therein.) Any ordinance which imposes a license fee which is substantially in excess of the reasonable expense of issuing the license and regulating the occupation to which it pertains, is invalid. (25 Am. Law and Proc. 611; 28 Id. 749, 570.)

In the present case, we are inclined to agree with the trial court that the amount of P300 imposed by Ordinance No. 3628 as license fee for the installation and use of juke box machines is unreasonable and far exceeds the expenses of issuing the license and of regulating their operation. It will be observed that the ordinance in question does not even provide for inspection and supervision of each machine installed. And the Committees on Laws and Finance of the Municipal Board of the City of Manila themselves—which conducted a public hearing in connection with the petition filed during the pendency of this case by some juke box operators—found that juke box operators would not make any profit by paying the license fee of P300, and that the said amount of P300 is "prohibitory and

suppressive".[1] This finding is supported by the record, for it was shown that two of plaintiffs' juke box machines, after deducting depreciation and operating expenses, but before the payment of permit and license fees, had an annual income of only about P211. In view of these circumstances, it is obvious that the amount of P300 charged as license fee is excessive and cannot be justified. In this connection, it should be stated that although the presumption is always in favor of the validity or reasonableness of the ordinance, such presumption must nevertheless be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself or is established by proper evidence.

It is argued that the business of operating juke box machines is a non-useful occupation and consequently the amount of license fee that may be imposed thereon may be very large without necessarily being considered unreasonable. We do not think it is correct to say that the operation of juke box machines is a non-useful occupation. The Committees on Laws and Finance of the Municipal Board of Manila themselves, in their joint report submitted to the Board, after public hearing, stated that the operation of juke boxes is a "legitimate, harmless and of some cultural value". It is gratuitous and unfair to brand juke boxes as not contributing to the economic or moral wealth of the individual or of the nation, simply because the said contrivance may be found in nightclubs and bars where dancing is indulged in.

Defendants cite the case of Recreation and Amusement Association of the Philippines vs. City of Manila, et al. (100 Phil., 950), where this Court upheld the dismissal of the complaint contesting the validity of Ordinance 3628. The main issue in that case, however, was the legal capacity of the plaintiff to sue, which was not registered in accordance with law. Besides, the said case involved the restriction of the use of pinball machines, which admittedly produce deleterious effects among city residents. Such machines have in fact been declared by this Court to be gambling devices which may be suppressed by ordinance. (Uy Ha vs. City of Manila, 108 Phil., 400; 58 Off. Gaz., [37] 5997.)

Defendants likewise cite the case of the Universal Picture Corporation vs. Romualdez (52 Phil. 576), wherein an ordinance of the City of Manila imposing the license fee of P1,800 for first-class cinematographs was held reasonable. The case cited is not in point. The ordinance there in question provided for police and fire protection as well as the inspection and supervision of wires in electrical installations, and the license fees fixed were charged only with a view of covering the expenses therefor.

In view of the foregoing, the decision appealed from declaring Ordinance No. 3628 of the City of Manila invalid is hereby affirmed, with costs against appellants.

Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

[1] IN VIEW of this finding, the matter was referred to the City Treasurer for comment and recommendation as to what would be reasonable and commensurate with the necessary expenses of licensing and supervision. On the basis of the ocular inspection conducted by the deputies of the City Treasurer, the latter official recommended that the amount of P100 per annum would be reasonable for juke boxes in nightclubs and other places where dancing is allowed and P75 for juke boxes in restaurants or places where food and drinks are served. Agreeing¹ with the City Treasurer, the Committee on Ways and Means of the Municipal Board of the City of Manila recommended the approval of a proposed ordinance imposing a license fee of P100 on juke box machines. The proposed ordinance was enacted by the Municipal Board on September 11, 1959, but it was never approved by the City Mayor.

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