

**RODRIGUEZ AND RODRIGUEZ, PLAINTIFF AND APPELLANT, VS.
SOTERO BALUYOT, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-9298. August 11, 1955*

Ponente: REYES, A., J.

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As owner and licensed operator of a "bowling alley and recreational establishment" on N. Domingo St. in San Juan, Rizal, located at a distance of 10.97 lineal meters from the Pinaglabanan Park Monument and 173.38 lineal meters from a public school building, plaintiff partnership was in January, 1950, required by the mayor of said municipality, acting upon orders from the Secretary of the Interior, to close the said establishment for being within the prohibited zone established by Executive Order No. 327 issued on the authority of Commonwealth Act No. 601. Contesting the validity of both the Executive Order and the Commonwealth Act, plaintiff petitioned the Court of First Instance of Rizal for a writ of injunction to stop enforcement of the mayor's order and, upon the petition being denied, brought the case here on appeal.

Commonwealth Act No. 601 prohibited the licensing of certain places of amusement except in accordance with rules and regulations to be promulgated by the President of the Philippines. On the authority of this Act, the President promulgated Executive Order No. 327, Series of 1941, prohibiting the maintenance or operation of bowling alleys within a radius of 200 lineal meters from certain public places, among them, public parks and institutions of learning. But on May 21, 1954, Republic Act No. 979 was approved, placing in the hands of municipal councils the power of regulating bowling alleys and billiard pools within their respective territorial jurisdictions, but providing that they were not to be established within a radius of 500 lineal meters "from any public building, schools, hospitals and churches." As the exercise of the regulatory power granted to the President by Commonwealth Act No. 601 is inconsistent with the exercise of that same power by the municipal councils, as authorized by Republic Act No. 979, the former enactment (along with the executive orders issued thereunder) must be deemed repealed by section 2 of the later Act, which provides that "any law, executive order or parts thereof inconsistent with the provisions of this Act are hereby repealed."

On May 17, 1955, Republic Act No. 1224 was approved amending Republic Act No. 979, section 1 of which now reads:

"Section 1. The municipality or city board or council of each chartered city and the municipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billard pools, and other similar places of amusement within its territorial jurisdiction: Provided, however, That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of two hundred lineal meters in the case of night clubs, cabarets, pavilions, or other similar places, and fifty lineal meters in the case of dancing schools, bars, saloons, billiard pools, bowling alleys, or other similar places, except cockpits, the distance of which shall be left to the discretion of the municipal or city board or council, from any public building, schools, hospitals and churches: Provided, further, That no municipal or city ordinance fixing distances at which such places of amusement may be established or operated

shall apply to those already licensed and operating at the time of the enactment of such municipal or city ordinance, nor will the subject opening of any public building or other premises from which distances shall be measured prejudice any place of amusement already then licensed and operating, but any such place of amusement established within fifty lineal meters from any school, hospital or church shall be so constructed that the noise coming therefrom shall not disturb those in the school, hospital or church, and, if such noise causes such disturbance then such place of amusement shall not operate during school hours when near a school, or at night when near a hospital, or when there are religious services when near A church; Provided, furthermore, That no minor shall be admitted to any bar, saloon, cabaret or night club employing hostesses: And provided, finally, (That this Act shall not apply to establishments operating by virtue of Commonwealth Act Numbered Four hundred eighty-five nor to any establishment already In operation when Republic Act Numbered Nine hundred seventy-nine took effect."

It will be noted that this latest amendment to the law on bowling alleys and other amusement places prescribes a new norm for ordinances "fixing distances at which such places of amusement may be established or operated," but at the same time provides that such ordinances are not to apply to amusement places operating at the time of their enactment. Indeed, the law also says that "it is not to apply to any establishment already in operation when Republic Act No. 979 took effect." As plaintiff's establishment was already in operation when the said Republic Act took effect on May 21, 1954, the same is not subject to the new norm prescribed in the latest amendment to the law or to any ordinance approved thereunder.

In view of the foregoing, the decision appealed from is revoked and judgment shall be entered granting the writ of injunction prayed for. Without costs.

Bengzon, Acting C.J., Padilla, Montemayor, Jugo, Bantista Angelo, Labrador, Concepcion and Reyes, J.B.L., JJ., concur.

Judgment revoked.

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