

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
ROGELIO FELISARTA, DEFENDANT AND APPELLANT.***G. R. No. L-15346. June 29, 1962*

Ponente: MAKALINTAL, J.

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For driving a rig without a driver's license on the streets of the city of Cebu Rogelio Felisarta was apprehended by a police officer and subsequently charged in the Municipal Court with violation of City Ordinance No. 65, Section 42, series of 1948. Convicted of the charge and sentenced to pay a fine of P5.00, with subsidiary imprisonment in case of insolvency, Felisarta appealed to the Court of First Instance of Cebu, which sustained the judgment of conviction and increased the fine to P15.00. The case is now before us on the legal question, raised by appellant, concerning the validity of the provision of the ordinance found violated.

Section 49 requires a rig driver to pay a driver's license fee of P1.00 for one year; Section 42 prohibits any person from "operating" a rig without such license; and section 50 imposes a fine of not less than five pesos nor more than thirty pesos, or a penalty of imprisonment for not less than five days nor more than thirty days, for violation of the requirement.

Appellant's position is: (1) that the charter of the City of Cebu, Commonwealth Act No. 58, particularly section 17 thereof which defines the general powers and duties of the Municipal Board, or sub-section (1) which enumerates the trades, businesses, occupations and establishments subject to regulation and licensing, does not mention the occupation of rig driver among them; and (2) that the validity of the license fee in question can not be sustained under the general welfare clause, section 2238 of the Revised Administrative Code.

Appellant's first proposition may be conceded: rig drivers are not included in the enumeration of occupations subject to licensing in section 17 of Commonwealth Act No. 58, except possibly by rather remote inference from the term "public vehicles" in subsection (1). However, aside from the general grant of police power to municipal corporations in section 2238 of the Administrative Code the charter of the City of Cebu also authorizes its municipal board:

"To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this Act; and to fix penalties for the violation of ordinances, which shall not exceed a two-hundred peso fine or six months imprisonment, or both such fine and imprisonment, for a single offense. (Sec. 17, sub-section (se)).

Ordinance No. 65, entitled "An Ordinance Regulating Traffic Operation of Rigs, Registration of Rig and Rig Drivers License, Licensing of Push Cart Owners and The Carrying of Lights," contains detailed provisions concerning the use of city streets by such conveyances, the movement and parking thereof, rights of way, loading limitations, traffic signals and registration and collection of license fees. The occupation of rig drivers is

undoubtedly within the power of the City of Cebu to regulate, involving as it does not only the use of municipal property but also such matters of public interest as sanitation and safety, good order, comfort, convenience and general welfare of the city and its inhabitants. This premise established, the pertinent question is whether or not in the exercise of such power of regulation license fees may be validly imposed. Three classes of municipal licenses are generally recognized: first, licenses for the regulation of useful occupations and enterprises; second, licenses for the regulation or restriction of non-useful occupations and enterprises; third, licenses for revenue only. The first two classes are based on the police power of the municipality, which carries with it the right to fix license fees. The amount of license fees for the first class is only that which may be sufficient to cover the expense of issuing the license and the cost of necessary inspection or police surveillance of the business. The license fees for the second class may be much higher, as in the case of licenses for the sale of liquor. The fee for the third class is not a license fee, strictly speaking. It rests upon the taxing power and must be expressly granted by charter or statute. *Cu Unjieng vs. Patstone*, 42 Phil. 818; *Pacific Commercial Co. vs. Romualdez*, 49 Phil. 917.

In the present case it is obvious that the license fee of P1.00 per year imposed upon every rig driver is not intended to raise revenue but only to defray the necessary expenses of registration and police regulation. Appellant's reliance on the decision of this Court in *Santos Lumber Co. et al. vs. City of Cebu et al.* 104 Phil. 877; 55 Off. Gaz. (33) 6665, is misplaced, because the power exercised by the city and held invalid therein is the power of taxation, which is exclusively an attribute of the sovereign state unless conferred by statute upon its political subdivisions.

The fine imposed by the court a quo upon appellant is in accordance with section 50 (a), in connection with section 42, of Ordinance No. 65 of the City of Cebu.

The judgment is affirmed, with costs.

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

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