

## **EASTERN THEATRICAL CO., INC., ET AL., PLAINTIFFS AND APPELLANTS VS. VICTOR ALFONSO, AS CITY TREASURER OF MANILA, THE MUNICIPAL BOARD OF THE CITY OF MANILA, AND JUAN NOLASCO, AS ...**

*G.R. No. L-1104. May 31, 1949*

Ponente: PERFECTO, J.

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### **PERFECTO, J.:**

Twelve corporations engaged in motion picture business have initiated these proceedings through a complaint dated May 5, 1946, to impugn the validity of Ordinance No. 2958 of the City of Manila, which was enacted by the Municipal Board of said city on April 25, 1946, approved by the Mayor on April 27, 1946, and took effect on May 1, 1946, said ordinance reading as follows:

"AN ORDINANCE IMPOSING A FEE ON THE PRICE OF EVERY ADMISSION TICKET SOLD BY CINEMATOGRAPHS THEATERS, VAUDEVILLE COMPANIES, THEATRICAL SHOWS AND BOXING EXHIBITIONS; AND PROVIDING FOR OTHER PURPOSES.

"SEC. 1. In addition to the fees paid by cinematographs, theaters, vaudeville companies, theatrical shows and boxing exhibitions, as provided for in sections 633 and 778 of Ordinance No. 1600, known as the Revised Ordinance of the City of Manila, as amended, there shall be collected from the places of amusement, which are specifically mentioned above, the following fees on the price of every admission ticket sold by such enterprises;

"a. For every ticket sold the price of which is from P0.25 to P0.99 P0.05

"b. For every ticket sold the price of which is from P1 to P1.99 0.10

"c. For every ticket sold the price of which is from P2 to P2.99 0.15

"d. For every ticket sold the price of which is from P3 to P4.99 0.20

"e. For every ticket sold the price of which is from P5 to P5.99 0.25

"f. For every ticket sold the price of which is from P10 to P14.99 0.35

"g. For every ticket sold the price of which is from P15 or more 0.50

"SEC. 2. It shall be the duty of every proprietor, lessee, promoter, or operator of such cinematographs, theaters, vaudeville companies, theatrical shows and boxing exhibition to provide himself with tickets which shall be serially numbered, indicating therein the name of amusement place and the fee charged for admission. Before such tickets are sold, the same shall be presented to the Office of the City Treasurer, for registration. Tickets once issued and presented at the gate of entrance shall be cut by the gatekeeper into halves, the first half to be returned to the customer and the other half to be retained by the gatekeeper.

"It shall also be the duty of said proprietor, lessee, promoter or operator to deliver to the Office of the City

Treasurer the fees corresponding to the number of tickets sold by him within two days after the performance or exhibition has taken place.

"SEC. 3. The fees herein prescribed shall not be paid where the admission fees or charges are collected for and in behalf of any charitable, educational or religious institution or association.

"All places of amusement which are operated by U. S. Army and Navy with funds belonging to the V. S. Government are hereby exempted from fees herein imposed.

"SEC. 4. Any person violating any of the provisions of this Ordinance shall, upon conviction thereof, be punished by a fine of not more than P200 or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court. If the violation is committed by the club, firm or corporation, the manager, the managing director or person charged with the management of the business of such club, firm or corporation, shall be criminally responsible therefor.

"SEC. 5. This Ordinance shall take effect on May 1, 1946."

Plaintiffs, operators of theaters in Manila and distributors of local or imported films, allege that they are interested in the provisions of sections 1, 2 and 4 of said ordinance, which they impugn as null and void upon the following grounds: (a) For violating the Constitution, more particularly the provisions regarding the uniformity and equality of taxation and the equal protection of the laws; (b) because the Municipal Board of Manila exceeded and over-stepped the powers granted it by the Charter of the City of Manila; (c) because it contravenes, violates, and is inconsistent with, existing national legislation, more particularly revenue and tax laws; and, (d) because it is unfair, unjust, arbitrary, capricious, unreasonable, oppressive, and is contrary to and violates our basic and recognized principles of taxation and licensing laws.

Defendants allege as affirmative defenses the following: (a) That the ordinance was passed by the Municipal Board of Manila by virtue of its express legislative powers to tax, fix the license fee and regulate the business of theaters, cinematographs and further to fix the location of, and to tax, fix the license fee for, and regulate the business, of theatrical performances, public exhibitions, circus and other performances and places of amusements; (b) that the graduated tax required by said ordinance being applied to all cinematographs, theaters, vaudeville companies, theatrical shows and boxing exhibitions similarly situated and as a class without distinction or exception, the same does not violate the constitutional prohibition against uniformity and equality of taxation; (c) that the graduated tax on admission tickets to theaters and other places of amusement imposed by the National Internal Revenue Code (Commonwealth Act No. 466) is collected by and for the purposes of the National Government, whereas, Ordinance No. 2958 imposes and requires the collection of a similar tax by and for the purposes of the Government of the City of Manila, and there is no case of double taxation; (d) that said ordinance having been enacted under the express power of the Municipal Board to tax for revenue, as distinguished from its power to license for purely police purposes, the fact that the amounts collected thereunder are higher than what are needed for police regulation and supervision does not render said ordinance unfair, unjust, capricious, unreasonable and oppressive; (e) that, considering the nature of the business of the plaintiffs and the enormous volume of business they handle, the graduated tax fixed by the ordinance is not unreasonable.

Defendants allege also that since May 1, 1946, when the ordinance in question took effect, plaintiffs have been charging the theater-going public increased prices for admissions to the cinematographs owned and operated by them at graduated rates equal and corresponding to the graduated tax imposed by said ordinance, and as a result, while refusing to pay said tax but at the same time collecting an amount equal to said tax, plaintiffs have taken undue advantage of said ordinance to realize more profits.

On September 5, 1946, Judge Emilio Pefia of the Court of First Instance of Manila rendered a decision upholding the validity of Ordinance No. 2958.

Plaintiffs-appellants assign in their brief three errors committed by the trial court. We will consider them separately. Appellants contend that the lower court erred in holding that under section 2444 (m) of the Revised Administrative Code the Municipal Board of the City of Manila had the power to enact Ordinance No. 2958. Section 2444 (m) of the Revised Administrative Code reads as follows:

"To tax, fix the license fee and regulate the business of hotels, restaurants, refreshment places, cafes, lodging houses, boarding houses, livery garages, public warehouses, pawnshops, theaters, cinematographs; and further to fix the location of, and to tax, fix the license fee for, and regulate the business, of livery stables, boarding stables, embalmers, public billiard tables, public pool tables, bowling alleys, dance halls, public dancing halls, cabarets, circus and other similar parades, public vehicles, race tracks, horse races junk dealers, theatrical performances, public exhibitions, circus and other performances and places of amusements, match factories, blacksmith shops, foundries, steam boilers, lumber yards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline benzine, turpentine, hemp, cotton, nitroglycerin, petroleum or any of the products thereof and of all other highly combustible or explosive materials and other establishments likely to endanger the public safety or give rise to conflagrations or explosions, and subject to the provisions of ordinances issued by the (Philippine Health Service) Bureau of Health in accordance with law, tanneries, renderies, tallow chanderies, bone factories, and soap factories."

Appellants' line of argument runs as follows: By virtue of the specific power granted in the above quoted provision of the Revised Administrative Code, Ordinance No. 2958 was enacted.

On August 7, 1940, the National Assembly enacted Commonwealth Act No. 466, known as the National Internal Revenue Code, sections 18, 260 and 261 of which read as follows;

"SEC. 18. Sources of revenue.—The following taxes, fees, and charges are deemed to be national internal-revenue taxes:

"(a) Income tax;

"(b) Estate, inheritance and gift taxes;

"(c) Specific taxes on certain articles;

"(d) Privilege taxes on business or occupation;

"(e) Documentary stamp taxes;

"(f) Mining taxes;

"(g) Miscellaneous taxes, fees and charges, namely, taxes on banks, and insurance companies, franchise taxes, taxes on amusements, charges on forest products, fees for sealing weights and measures, firearms license fees, radio registration fees, tobacco inspection fees, and water rentals."

"SEC. 260. Amusement taxes.—There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement the following taxes:

"(a) When the amount paid for admission exceeds twenty-nine centavos, two centavos on each admission;

"(b) When the amount paid for admission exceeds twenty-nine but does not exceed thirty-nine centavos, three centavos on each admission;

"(c) When the amount paid for admission exceeds thirty-nine centavos but does not exceed forty-nine centavos, four centavos on each admission;

"(d) When the amount paid for admission exceeds forty-nine centavos but does not exceed fifty-nine centavos, five centavos on each admission;

"(e) When the amount paid for admission exceeds fifty-nine centavos but does not exceed sixty-nine centavos, six centavos on each admission.

"(f) When the amount paid for admission exceeds sixty-nine centavos but does not exceed seventy-nine centavos, seven centavos on each admission.

"(g) When the amount paid for admission exceeds seventy-nine centavos but does not exceed eighty-nine centavos, eight centavos on each admission;

"(h) When the amount paid for admission exceeds eighty-nine centavos but does not exceed ninety-nine centavos, nine centavos on each admission;

"(i) When the amount paid for admission exceeds ninety-nine centavos, ten centavos on each admission.

"In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

"In the case of cockpits, race tracks, and cabarets, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, That in the case of race tracks, this tax is in addition to the privilege tax prescribed in section 193. For the purpose of the amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place, excluding or the receipts derived by him from the sale of liquors, beverages, or other articles subject to specific tax, or from any business subject to tax under this Code." (This section was amended by section 8, Republic Act No. 39, effective October 1, 1946. We are quoting the original provision to show the status of the law when the Ordinance was passed.)

"SEC. 261. Exemption.—The tax herein imposed shall not be paid where the admission fee or charges are collected by or for and in behalf of any religious, charitable, scientific, or educational institution or association, and where no part of the net proceeds of such admission fees or charges inures to the benefit of any private stockholder or individual."

Ordinance No. 2958 does not specify the kind of the tax sought to be imposed but the seven schedules and other details of said ordinance are, in every respect, identical with the amusement tax provided by section 260 of Commonwealth Act No. 466.

But, plaintiffs argue, that section 2444 (m) of the Revised Administrative Code confers upon the City of Manila the power to impose a tax on business but not on amusement and, consequently, Ordinance No. 2958 was enacted beyond the charter powers of the City of Manila.

The whole argument of plaintiffs hinges, therefore, on the assumption that the power granted to the City of Manila by section 2444 (m) of the Revised Administrative Code is limited to the authority to impose a tax on business, with exclusion of the power to impose a tax on amusement; but, the assumption is based on an arbitrary labeling of the kind of tax authorized by said section 2444 (m). The distinction made by plaintiffs as to the power to tax on business and the power to tax on amusement has no ground under the provisions of section 2444 (m) of the Revised Administrative Code. The tax therein authorized cannot be defined as tax on business and cannot be restricted within a smaller scope than what is authorized by the words used, to the extent of excluding what plaintiffs describe as tax on amusement.

The very fact that section 2444 (m) of the Revised Administrative Code includes theaters, cinematographs, public

billiard tables, public pool tables, bowling alleys, dance halls, public dancing halls, cabarets, circuses and other similar places, race tracks, horse races, theatrical performances, public exhibition, circus and other performances and places of amusements, will show conclusively that the power to tax amusement is expressly included within the power granted by section 2444 (m) of the Revised Administrative Code.

Plaintiffs-appellants contend that the lower court erred in not holding that section 2444 (m) of the Revised Administrative Code was repealed or the power therein contained was withdrawn by the National Assembly by the enactment of Commonwealth Act No. 466 known as the National Internal Revenue Code.

In support of this contention, plaintiffs aver that the Charter of the City of Manila, containing section 2444 (m) of the Revised Administrative Code, was enacted on December 8, 1929. On April 25, 1940, the National Assembly enacted Commonwealth Act No. 466, including provisions on amusement tax, covering the whole field on taxation and provided for more than what the ordinance in question has provided. As a result, there are two taxing powers seeking to occupy exactly the same field of legislation, and so the apparent conflict must be resolved with the conclusion that, with the enactment of Commonwealth Act No. 466, as later amended by Republic Act No. 39, section 2444 (m) of the Revised Administrative Code has been impliedly repealed and the power therein delegated to the City of Manila withdrawn.

We see absolutely no force in plaintiffs' contention. The conflict pointed out by them is imaginary. Both provisions of law may stand together and be enforced at the same time without any incompatibility among themselves.

Finally, plaintiffs contend that the trial court erred in not holding that Ordinance No. 2958 violated the principle of equality and uniformity of taxation enjoined by the Constitution (sec. 22, sub-sec. 1, Art. VI, Constitution of the Philippines).

To support this contention, appellants point out to the fact that the ordinance in question does not tax "many more kinds of amusements" than those therein specified, such as "race tracks, cockpits, cabarets, concert halls, circuses, and other places of amusement." The argument has absolutely no merit. The fact that some places of amusement are not taxed while others, such as cinematographs theaters, vaudeville companies, theatrical shows, and boxing exhibitions and other kinds of amusements or places of amusement are taxed, is no argument at all against the equality and uniformity of the tax imposition. Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation; and the appellants cannot point out what places of amusement taxed by the ordinance do not constitute a class by themselves and which can be confused with those not included in the ordinance.

The judgment of the trial court is affirmed with costs against appellants.

Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

**PERFECTO, J.:**

We certify that the Chief Justice voted to affirm the appealed judgment.

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