

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PASCUAL PACIS ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 10363. September 29, 1915

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10363/>

CARSON, J.:

An appeal from a judgment of the Court of First Instance, Fourth Judicial District, convicting the appellants of a violation of a gambling ordinance of the city of Baguio, rendered on appeal from the court of the justice of the peace of that city.

The right of the appellants to maintain this appeal turns upon our ruling as to the question raised by them as to the validity of the ordinance of the violation of which they were convicted. (U. S. vs. Tamparong, p. 321, ante.)

Counsel for appellants contend that the municipal council of the city of Baguio is not clothed with power to enact an ordinance defining, prohibiting and penalizing gambling by its charter (Act No. 1963), from which, as counsel properly contend, all lawful powers exercised by the council must be derived.

The trial judge was of opinion that the power to enact the ordinance in question was secured to the city council of Baguio under subsection (e) of section 32 of the Baguio Incorporation Act (No. 1963), which provides that "all laws or parts of laws of the Philippine Islands which, prior to the passage of this Act, were applicable to the territory comprising the city of Baguio and which are not inconsistent with the provisions of this Act shall remain in full force and effect." The trial judge was of opinion that since the provisions of section 29 of Act No. 1397 (The Township Government Act) confer in express terms authority upon township councils organized under that Act in the Province of Benguet to "prohibit gambling, opium smoking, or the sale of opium for smoking," the power with which township councils under that Act are thus expressly clothed should be held to be conferred upon the municipal council of the city of Baguio.

We are of opinion, however, that since the express powers conferred in section 29 of The Township Government Act (No. 1397) are conferred only upon townships organized under the provisions of that Act, those powers cannot properly be held to have been conferred upon the municipal council of the city of Baguio, which was incorporated under the provisions of the Baguio Incorporation Act, and not under the provisions of The Township Government Act (No. 1397). It is true, as indicated in the opinion of the trial judge, that the provisions of Act No. 1397 are "parts of laws of the Philippine Islands which," prior to the passage of the Baguio Incorporation Act, were applicable to the "territory comprising the city of Baguio," but it will be observed that they are applicable thereto only in the event of the organization in that territory of a township under and by virtue of The Township Government Act (No. 1397). We think, however, that the validity of the ordinance under discussion and the power of the city council of Baguio to enact it must be sustained under the provisions of subsection (gg) of section 8 of the Baguio Incorporation Act (No. 1963), as amended by section 2 of Act No. 2106, in which the title of the subsection is changed to subsection (II) of section 8 of Act No. 1963. The provisions of that section are as follows (section 8, subsection (II), Act No. 1963, as amended) :

"The city council shall have power by ordinance or resolution—

" (ll) To make such further ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this charter and such as shall seem necessary, and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the city and the inhabitants thereof, and for the protection of property therein; and enforce obedience thereto with such lawful fines or penalties as the city council may prescribe under the provisions of subsection (kk) of this section."

General grants of police powers of this character in municipal charters are frequently referred to as "the general welfare provisions" of the municipal charter in which they are found, and the provisions of the above-cited subsection of the charter of the city of Baguio will hereinafter be referred to as the general welfare provisions of that charter. It will be seen that very extensive police powers are conferred upon the municipal council of the city of Baguio, and there can be but little ground for discussion as to the power of the city council to adopt appropriate and reasonable ordinances defining, prohibiting and penalizing gambling, under the authority of the above-cited general welfare provisions of the Baguio Incorporation Act, unless it appears that the ordinance as enacted is repugnant to or inconsistent with some general law of the Philippine Islands.

The principal contention of counsel for the appellants is that the Philippine Legislature having enacted a statute (Act No. 1757) defining, prohibiting and penalizing gambling, the exercise of power by the city council of Baguio to define, prohibit and penalize gambling should be held to be repugnant to or inconsistent with the prior exercise of like power by the Philippine Legislature.

In the case of *United States vs. Joson* (26 Phil. Rep., 1), we ruled under the authority of many cases cited from the reports of the courts of last resort in the United States, that under an express authority "to provide against the evils of gambling, gambling houses, and disorderly houses of whatever sort * * *. An ordinance adopted in strict accordance with said charter provisions is valid, even though there is a state law existing upon the same subject, regulating the same question." In that case we cited with approval *McQuillin* to the effect that "the general doctrine is supported by the weight of judicial authority that an act may be made a penal offense under the statutes of the state, and further penalties may be imposed for its commission or omission by municipal ordinance." We also quoted with approval *Cooley* and *Dillon* as follows:

" 'Indeed, an act may be a penal offense under the laws of the State, and further penalties, under proper legislative authority, be imposed for its commission by municipal by-laws (ordinances) and the enforcement of the one would not preclude the enforcement of the other.' (*Cooley's Constitutional Limitations*, 6th ed., p. 239.)

"Judge *Cooley* adds that 'such is the clear weight of authority, though the decisions are not uniform.'"

"Judge *Cooley* quotes from the opinion in the case of *Rogers vs. Jones* (1 Wend., N. Y., 238, 261), where it is said: 'But it is said that the by-law (ordinance) of a town or corporation is void, if the legislature have regulated the subject by law. If the legislature have passed a law regulating certain things in a city, I apprehend the corporations are not thereby restricted from making further regulations. Cases of this kind have occurred and never been questioned on that ground; * * *. The legislature have imposed a penalty of \$1 for servile labor on Sunday.

The corporation of the city of New York have passed a by-law imposing the penalty of \$5 for the same offense. As to storing gunpowder in New York, the legislature and the corporation (of the city of New York) have each imposed the same penalty. Suits to recover the penalties have been sustained under the corporation law. It is believed that the ground has never been taken that there was a conflict with the State law.'

"Judge *Dillon*, in his work on municipal corporations (5th ed.), which has long been recognized as a standard, after a lengthy discussion and citation of authorities, fully recognizing the conflict which exists, quotes

approvingly from Judge Cooley the following: 'Although the decisions are not uniform, the clear weight of authority is that the same act may constitute an offense both against the State and the municipal corporation and both may punish it without violating any constitutional principle.'

The question here presented, however, is distinguished from that considered in the former case by the fact that the Baguio Incorporation Act (No. 1963), unlike the general statutes for the organization of municipalities throughout the Islands, contains no express grant of power to enact ordinances prohibiting and penalizing gambling; and that the city council of Baguio enacted the ordinance in question not under an express grant of authority to define, prohibit, and penalize gambling but under and by virtue of the general police powers conferred upon the city by the above-cited "general welfare provisions."

This question is not without difficulty as will readily be seen from the far from uniform rulings announced in the large array of cases treating of this subject to be found in the reports, many of which are cited in the footnotes, paragraph 895, volume 3, McQuillin on Municipal Corporations, and paragraphs 631, 632, 633, volume 2, Dillon on Municipal Corporations, fifth edition.

We think, however, that the fair and logical conclusion which should be drawn from the decided cases, as well as from the general principles which should control in such cases, is well stated by Dillon, as follows:

"* * * There are many acts of such a nature that they may, if the legislature has so provided, be an offense against the state at large, and also against the special and local government of the municipality. Accordingly, where an act is prohibited both by statute and by ordinance, it may constitute two offenses, one against the State and the other against the city or town, and where such is the case a conviction of one may not be pleaded as constituting former jeopardy when the offender is prosecuted for the other, and where such is the case the weight of authority also seems to hold that power to enact ordinances with reference thereto may be included in the general powers conferred on cities and towns by statute." (Dillon on Municipal Corporations, vol. II, 5th ed., par. 633.)

In our former opinion, *United States vs. Joson* (supra), we said that, under the general doctrine, "an act may be made a penal offense under the statutes of the state, and further penalties may be imposed for its commission or omission by municipal ordinance." Under that decision we held that the express grant of power to a municipality to enact ordinances, prohibiting and penalizing a particular act sufficiently disclosed the legislative intent that notwithstanding the fact that the commission of the act may have been made a penal offense against the state at large, it may, by municipal ordinance, be lawfully denounced and penalized as an offense against the special and local government of the municipality.

Upon like reasoning, we are of opinion that where the commission or omission of a particular act is, in its nature, such that its commission or omission within the territorial limits of a certain municipality constitutes a separate offense against the municipality, or in any case wherein it appears that the commission or omission of an act penalized under the general laws of the state within the territorial limits of a particular municipality, aggravates the character of the offense and necessitates or justifies the adoption of additional repressive measures for its suppression by the municipality, such municipality may adopt ordinances prescribing additional penalties for the commission or omission of such act under and by virtue of the general police powers conferred upon it by the "general welfare clause" of its charter. Of course, the subject matter of the ordinance must, in such cases, fall within the purview of the general police powers conferred upon the municipality under the "general welfare clause" of its charter; but if it does, the mere fact that the commission or omission of the prohibited act has already been penalized by general statute is not sufficient to negative the legislative intent to empower the municipality to enact ordinances with reference thereto under the general police powers set forth in the "general welfare clause" of the municipal charter. Thus it was said in *Wood vs. City of Brooklyn* (14 Barb., 425, 426):

"There are the very best of reasons why cities should be authorized to impose penalties in addition to those inflicted by the laws of the State. Particular acts may be far more injurious, while the temptation to commit them may be much greater in a crowded city than in the State generally. They consequently require more severe measures for prevention. State laws are, of course, for the general good, and cannot always answer the peculiar wants of particular localities. "

Thus drunkenness, disorderly conduct, smoking of opium and the keeping of opium dens, gambling, and the keeping of gambling dens and the like, are offenses the commission of which within the limits of a thickly settled urban community may well carry with it consequences peculiarly subversive of the good order and general welfare of such a community which would be wholly, or in large part, absent if committed in a sparsely settled community. It would seem, therefore, that special repressive measures by the municipal authorities under a general grant of police powers are justified and oftentimes necessary in dealing with those offenses.

We are aware that the rulings of the courts of last resort in the United States are not altogether consistent in this regard, but, as pointed out by McQuillin, in par. 889, vol. III: "It is certain that the recent judicial decisions incline to give a more extensive scope to the police power than the earlier cases. The general welfare idea is expanding rapidly. In its application to urban life it is wide and varied. This generation has witnessed a decided change in the views of the courts relating to the construction and practical operation of police ordinances. Greater power is conceded to be vested in the public authorities. Their judgment and discretion is more respected. The public welfare in its broadest sense has been adopted as the basis of construction. This position is sound, and is certain to aid materially the development of better urban conditions."

And to like effect in paragraph 876, volume II: "The decisions on this subject are numerous and conflicting. Perhaps on no single topic of municipal corporation law have there been so many discordant utterances even by the same courts and the same individual judges. But the best considered cases, especially the more recent ones, have properly extended the sphere of activity of the municipal corporation in dealing with police offenses. The necessity of thus enlarging municipal jurisdiction is obvious to the careful student of the conditions and needs of the crowded modern urban centers of population. The earlier conceptions of our courts on this subject are less definite and satisfactory."

We conclude that an ordinance enacted under a general grant of police powers, prohibiting and penalizing the commission of one of these offenses as an offense against the peace and good order of the municipality, is not necessarily inconsistent with, or repugnant to a general statute prohibiting and penalizing the commission of the act as an offense against the state.

The appellants in this case were convicted of a violation of an ordinance of the city of Baguio prohibiting and penalizing gambling enacted under and by virtue of the powers conferred by the above-cited subsection (II) of section 8 of the Baguio Incorporation Act. The powers thus conferred in general terms on the municipal council of the city of Baguio are manifestly wide enough in scope to include the enactment of an ordinance prohibiting and penalizing gambling, unless such ordinance appears to be repugnant to or inconsistent with some general statute.

The general purpose and object of the ordinance, looking as it does to the suppression of gambling in the city of Baguio, is manifestly in harmony with the provisions of the general statute prohibiting and penalizing gambling; and from what has already been said we think it must be held that there is nothing inherently repugnant in the enactment of an ordinance prohibiting and penalizing gambling as an offense against the peace and good order of the city of Baguio, notwithstanding the fact that under the general statute, gambling has been declared to be a penal offense against the peace and good order of the state.

Appellants having failed to establish their contentions as to the invalidity of the ordinance, their appeal must be

dismissed with the costs of this instance against them, under the rule laid down in the case of *United States vs. Tamparong* (supra). So ordered.

Arellano, C. J., Torres, Johnson, Trent, and Araullo, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.