

**IN THE MATTER OF A PETITION FOR DECLARATORY JUDGMENT
REGARDING THE VALIDITY OF MUNICIPAL ORDINANCE NO. 3659 OF
THE CITY OF MANILA. PHYSICAL THERAPY ORGANIZATION OF THE
PHILIPPIN...***G.R. No. 10448. August 30, 1957*

Ponente: MONTEMAYOR, J.

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The petitioner-appellant, an association of registered massagists and licensed operators of massage clinics in the City of Manila and other parts of the country, filed an action in the Court of First Instance of Manila for declaratory judgment regarding the validity of Municipal Ordinance No. 3659, promulgated by the Municipal Board and approved by the City Mayor. To stop the City from enforcing said ordinance, the petitioner secured an injunction upon filing of a bond in the sum of P1,000.00. A hearing was held, but the parties without introducing any evidence submitted the case for decision on the pleadings, although they submitted written memoranda. Thereafter, the trial court dismissed the petition and later dissolved the writ of injunction previously issued.

The petitioner appealed said order of dismissal directly to this Court. In support of its appeal, petitioner-appellant contends among other things that the trial court erred in holding that the Ordinance in question has not restricted the practice of massotherapy in massage clinics to hygienic and aesthetic massage, that the Ordinance is valid as it does not regulate the practice of massage, that the Municipal Board of Manila has the power to enact the Ordinance in question by virtue of Section 18, Subsection (kk), Republic Act 409, and that the permit fee of P100.00 is moderate and not unreasonable. Inasmuch as the appellant assails and discusses certain provisions regarding the ordinance in question, and it is necessary to pass upon the same, for purposes of ready reference, we are reproducing said ordinance in toto.

ORDINANCE NO. 3659

AN ORDINANCE REGULATING THE OPERATION OF MASSAGE CLINICS IN THE CITY OF MANILA" AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF. .

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. Definition,—For the purpose of this Ordinance the following words and phrases shall be taken in the sense herein below indicated:

(a) Massage clinic shall include any place or establishment used in the practice of hygienic and aesthetic massage;

(b) Hygienic and aesthetic massage shall include any system of manipulation or treatment of the superficial parts of the human body for hygienic and aesthetic purposes by rubbing, stroking, kneading, or tapping with the hand or an instrument;

(c) Massagist shall include any person who shall have passed the required examination and shall have been issued a massagist certificate by the Committee of Examiners for Massagist, or by the Director of Health or his authorized representative;

(d) Attendant or helper shall include any person employed by a duly qualified massagist in any massage clinic to assist the latter in the practice of hygienic and aesthetic massage;

(e) Operator shall include the owner, manager, administrator, or any person who operates or is responsible for the operation of a massage clinic.

SEC. 2. Permit Fees.—No person shall engage in the operation of a massage clinic or in the occupation of attendant or helper therein without first having obtained a permit therefor from the Mayor, For every permit granted under the provisions of this Ordinance, there shall be paid to the City Treasurer the following annual fees:

(a) Operator of a massage P100.00

(b) Attendant or helper 5.00

Said permit, which shall be renewed every year, may be revoked 'by the Mayor at any time for violation of this Ordinance.

SEC. 3. Building requirement.— (a) In each massage clinic, there shall be separate rooms for the male and female customers. Rooms where massage operations are performed shall be provided with sliding¹ curtains only instead of swinging doors. The clinic shall be properly ventilated, well lighted and maintained under sanitary conditions at all times while the establishment is open for business and shall be provided with the necessary toilet and washing facilities.

(b) In every clinic there shall be no private rooms or separated compartment except those assigned for toilet, lavatories, dressing room, office or kitchen.

(c) Every massage clinic shall be provided with only one entrance and it shall have no direct or indirect communication whatsoever with any dwelling place, .house or building.

SEC. 4. Regulations for the operation of massage clinics.— (a) It shall be unlawful for any operator, massagist, attendant or helper to use, or allow the use of, a massage clinic as a place of assignation or permit the commission therein of any indecent or immoral act. Massage clinics shall be used only for hygienic and aesthetic massage.

(b) Massage clinics shall open at eight o'clock a.m. and shall close at eleven o'clock p.m.

(c) While engaged in the actual performance of their duties, massagists, attendants and helpers in a massage clinic shall be as properly and sufficiently clad as to avoid suspicion of intent to commit an indecent or immoral act;

(d) Attendants or helpers may render service to any individual customer only for hygienic and aesthetic purposes under the order, direction, supervision, control and responsibility of a qualified massagist.

SEC. 5. Qualifications—No person who has previously been convicted by final judgment of competent court of any violation of the provisions of paragraphs 3 and 5 of Art, 202 .and Arts. 335, 336, 340 and 342 of the Revised Penal Code, or Sees. 819 of the City of Manila, or who is suffering from any venereal or communicable disease shall engage in the occupation of massagist, attendant or helper in any massage clinic. Applicants, for Mayor's permit shall attach to their application a police clearance and health certificate duly issued by the City Health Officers as well as a massagist certificate duly issued by the Committee or Examiners for Massagists or by the Director of Health or his authorized. representatives, in case of massagist.

SEC. 6. Duty of operator of massage clinic.—No operator of massage clinic shall allow such clinic to operate without a duly, qualified massagist nor allow any man or woman to act as massagist, attendant or helper therein without the Mayor's permit provided for in the preceding sections. He shall submit whenever required by the Mayor or his authorized representative the persons acting as massagists, attendants or helpers in his clinic. He shall place the massage clinic open to inspection at all times by the police, health officers, and other law enforcement agencies of the government, shall be held liable for anything which may happen within the premises of the massage clinic.

SEC. 7. Penalty.—Any person violating any of the provisions of this Ordinance shall upon conviction, be punished by a fine of not less than fifty pesos nor more than two hundred pesos or by imprisonment for not less than sis days nor more than six months, or both such fine and imprisonment, at the discretion of the court.

SEC. 8. Repealing Clause.—All ordinances or parts of ordinances, which are inconsistent herewith, are hereby repealed.

SEC. 9. Effectivity.—This Ordinance shall take effect upon its approval.

Enacted, August 27, 1954.

Approved, September 7, 1954,

The main contention of the appellant in its appeal and the principal ground of its petition for declaratory judgment is that the City of Manila is without authority to regulate the operation of massagists and the operation. of massage clinics within its jurisdiction; that whereas under the Old City Charter, particularly, Section 2444 (e) of the Revised Administrative Code, the Municipal Board was expressly granted the power to regulate and fix the license fee for the occupation of massagists, under the New Charter of Manila, Republic Act 409, said power has been withdrawn or omitted and that now the Director of Health, pursuant to authority conferred by Section 938 of the Revised Administrative Code and Executive Order No. 317, series of 1941, as amended by Executive Order No. 392, series, 1951, is the one who exercises supervision over the practice of massage and over massage clinics in the Philippines; that the Director of Health has issued Administrative Order No. 10, dated May 5, 1953, prescribing "rules and regulations governing the examination for admission to the practice of massage, and the operation of massage clinics, offices, or establishments in the Philippines", which order was approved by the Secretary of Health and duly published in the Official Gazette; that Section 1 (a) of Ordinance No. 3659 has restricted the practice of massage to only hygienic and aesthetic massage prohibits or does not allow qualified massagists to practise therapeutic massage in their massage clinics. Appellant also contends that the license fee of P100.00 for operator in Section 2 of the Ordinance is unreasonable, nay, unconscionable.

If we can ascertain the intention of the Manila Municipal Board in promulgating the Ordinance in question, much of the objection of appellant to its legality may be solved. It would appear to us that the purpose of the Ordinance is not to regulate the practice of massage, much less to restrict the practice of licensed and qualified massagists of therapeutic massage in the Philippines. The end sought to be attained in the Ordinance is to prevent the commission of immorality and the practice of prostitution in an establishment masquerading as a massage clinic where the operators thereof offer to massage or manipulate superficial parts of the bodies of customers for hygienic and aesthetic purposes. This intention can readily be understood by the building requirements in Section 3 of the Ordinance, requiring that there be separate rooms for male and female customers; that instead of said rooms being separated by permanent partitions and swinging doors, there should only be sliding curtains between them; that there should be "no private rooms or separated compartments, except those assigned for toilet, lavatories, dressing room, office or kitchen"; that every massage clinic should be provided with only one entrance and shall have no direct or indirect communication whatsoever with any dwelling place, house or building-; and that no operator, massagist, attendant or helper will be allowed "to use or allow the use of a massage clinic as a

place of assignation or permit the commission therein of any immoral or indecent act", and in fixing the operating hours of such clinic between 8:00 a.m. and 11:00 p.m. This intention of the Ordinance was correctly ascertained by Judge Hermogenes Concepcion, presiding in the trial court, in his order of dismissal where he said: "What the Ordinance tries to avoid is that the massage clinic run by an operator who may not be a masseur or massagista may be used as cover for the running or maintaining a house of prostitution."

Ordinance No. 3659, particularly, Sections 1 to 4, should be considered as limited to massage clinics used in the practice of hygienic and aesthetic massage. We do not believe that the Municipal Board of the City of Manila and the Mayor wanted or intended to regulate the practice of massage in general or restrict the same to hygienic and aesthetic only.

As to the authority of the City Board to enact the Ordinance in question, the City Fiscal, in representation of the appellees, calls our attention to Section 18 of the New Charter of the City of Manila, Republic Act No. 409, which, gives legislative powers to the Municipal Board to enact all ordinances it may deem necessary and proper for the promotion of the morality, peace, good order, comfort, convenience and general welfare of the City and its inhabitants. This is generally referred to as the General Welfare Clause, a delegation in statutory form of the police power, under which municipal corporations are authorized to enact ordinances to provide for the health and safety, and promote the morality, peace and general welfare of its inhabitants. We agree with the City Fiscal.

As regards the permit fee of P100.00, it will be seen that said fee is made payable not by the masseur or massagist, but by the operator of a massage clinic who may not be a massagist himself. Compared to permit fees required in other operations, P100.00 may appear to be too large and rather unreasonable. However, much discretion is given to municipal corporations in determining the amount of said fee without considering it as a tax for revenue purposes:

"The amount of the fee or charge is properly considered in determining whether it is a tax or an exercise of the police power. The amount may be so large as to itself show that the purpose was to raise revenue and not to regulate, but in regard to this matter there is a marked distinction between license fees imposed upon useful and beneficial occupations which the sovereign wishes to regulate but not restrict, and those which are inimical and dangerous to public health, moral or safety. In the latter case the fee may be very large without necessarily being a tax.", (Cooley on Taxation, Vol. IV, pp. 3516-17; underlining supplied.)

Evidently, the Manila Municipal Board considered the practice of hygienic and aesthetic massage not as a useful and beneficial occupation which "will promote and is conducive to public morals, and consequently, imposed the said permit fee for its regulation.

In conclusion, we find and hold that the Ordinance in question as we interpret it and as intended by the appellees is valid. We deem it unnecessary to discuss and pass upon the other points raised in the appeal, the order appealed from is hereby affirmed. No costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L. Endencia and Felix, JJ., concur.

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