

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GUILLERMO I. VENTURA, DEFENDANT AND APPELLANT.

G. R. No. 16946. July 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of First Instance of Manila, dated February 8, 1960, finding Guillermo I. Ventura, as owner of the Ventura Drugless Clinic, guilty of violation of Municipal Ordinance No. 3000 and sentencing him to pay a fine of P200.00 with subsidiary imprisonment in case of nonpayment thereof, for operating said clinic without previously securing a mayor's permit as required by the ordinance, the accused appealed to this Court. It is herein claimed, among others, that the operation of his clinic without such mayor's permit does not violate Ordinance No. 3000 or Ordinance No. 3659, as held by the lower court.

Ordinance No. 3000, under which appellant was charged and convicted, insofar as pertinent to this case, reads:

"SECTION 1. Permits necessary.—It shall be unlawful for any person or entity to conduct or engage in any of the businesses, trades or occupations enumerated in Section 3 of this Ordinance or other businesses, trades or occupations for which a permit is required for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the businesses specified in said Section 3 hereof, without first having obtained a permit therefor from the Mayor and the necessary license from the City Treasurer.

* * * * *

"Sec. 3. Fees.—There shall be paid to the City Treasurer for every permit issued by the Mayor for the business, trades or occupations herein below enumerated, as in this Ordinance provided, an annual fee in accordance with the following schedule:

* * * * *

"79. All other business, trades or occupations not mentioned in this Ordinance, except those upon which the city is not empowered to license or to tax . . . 5.00"

Admittedly, at the time the complaint was filed on May 27, 1959, appellant was operating a clinic registered under the trade name "Ventura Drugless Clinic", located at No. 744 Quezon Boulevard, without first securing a mayor's permit, sanitary health permit and municipal license therefor. It is appellant's contention that since a clinic engaged in the treatment of general diseases by drugless method or physiotherapy is not one of those enumerated in Section 3 of Ordinance No. 3000 for which a prior mayor's permit is required for its operation, no such permit is necessary in regard to his aforesaid clinic.

It may be pointed out, however, that Section 3 of Ordinance No. 3000, after enumerating the businesses, trades and occupations subject to the provisions thereof (among which are restaurants, cafes, refreshment parlors, clubs, theaters, beauty parlors, barber shops, etc.), also named "all other business, trades, or occupations not mentioned

in this ordinance, except those upon which the City is not empowered to license or to tax" (no. 79). In other words, the coverage of the ordinance is not limited to those specifically mentioned therein, but also extends to all other businesses, trades or occupations upon which the City is empowered to license or impose tax.

It is clear from Section 1 of the ordinance involved herein that the object of the permit-requirement thereunder is for proper supervision by the municipal authorities of the aforementioned businesses, trades or occupations and to insure enforcement and observance in said establishments or undertakings of existing laws and regulations on sanitation, security and welfare of the public. It cannot be denied that a clinic allegedly devoted to the cure or healing of general diseases by drugless method involves direct contact or dealing with the public on matters concerning the health, security and welfare of the people. Considering the purpose of which Ordinance No. 3000 was enacted, the operation of such clinic falls within the contemplation of "other occupations" not mentioned in Section 3 thereof, which are also made subject to the supervisory power of the city government. Indeed it would be illogical to construe that appellant's clinic, which is engaged in the treatment of human afflictions and involves as much contact with the public as those occupations specifically mentioned in Section 3 of the ordinance, is to be free from supervision, regulation and surveillance by the city government.

Appellant's contention that the trial court erred in denying his motion for new trial is without merit. In the first place, for a new trial to be granted on the ground of newly-discovered evidence, it must not only appear that such evidence could not, even with reasonable diligence, have been discovered and presented during the trial, but also that if presented, it would probably alter the result of the case.[1] Appellant was intending to present the ruling of the Commissioner of Internal Revenue dated March 9, 1960 (BIR Ruling No. 104, S-1960) finding him subject to the payment of the occupation tax as a "masseur" under Section 182 (B) (2) of the Tax Code, and the receipt evidencing payment of such occupation tax. Such evidence does not satisfy the requirements of the Rules. As a general rule, the evidence must already be in existence at the time of the trial, although it could not, by reasonable diligence, have been procured[2], except in an extraordinary case where the application of such rule would result in utter failure of justice[3] The evidence appellant would present not only were inexistent at the time of the trial but as hereinafter discussed, will not alter or change the result of the decision rendered in the case.

Secondly, while it is true that pursuant to Ordinance No. 3398, approved on July 25, 1950, invoked by appellant, a person subject to the payment of an occupation tax under the National Internal Revenue Code does not have to secure the mayor's permit required by Ordinance No. 3000 to engage in his profession or occupation, the aforesaid ordinance was repealed by Ordinance No. 3646 on July 6, 1954. (Exh. 4) When appellant paid the occupation tax under Section 182 (B) (2) of the Tax Code on March 23, 1960, therefore, the exemption granted thereunder was already withdrawn or cancelled.

Thirdly, his payment of the occupation tax under said Section 182 (B) (2) as a "masseur", which in effect was an admission that his clinic is a massage clinic, does not authorize him to operate the same without securing a mayor's permit therefor, because under Ordinance No. 3659 regulating the operation of massage clinics in the City of Manila, such a permit is necessary.

Wherefore, finding no error in the decision of the lower court appealed from, the same is hereby affirmed, costs against the appellant. So ordered.

Bengzon, C. J., Padilla, Labrador, Concepcion, Dizon, Regala, and Makalintal, JJ., concur.

[1]Sec. 1 (b), Rule 127, Rules of Court

[2]Cassidy vs. Johnson, 84 N.E. 835; 41 Ind. A. 696; Geiman-Hertthel Furniture Co. vs. Geiman, 161 F. 2d 517;

160 Kan. 368.

[3]66 C.J.S. p. 294.

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