

**PACIFIC COMMERCIAL COMPANY, PETITIONER AND APPELLEE, VS.
MIGUEL ROMUALDEZ AND VICTOR ALFONSO, MAYOR AND
TREASURER, RESPECTIVELY, OF THE CITY OF MANILA,
RESPONDENTS AND APPELLANTS.**

G.R. No. 26124. February 14, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

The appeal in this case, in its final analysis, presents the question if the Municipal Board of the City of Manila was empowered to enact Ordinance No. 1264, the so-called Meat Ordinance. This ordinance reads:

"[ORDINANCE NO. 1264]

"AN ORDINANCE AMENDING A PART OF SECTION THREE OF ORDINANCE NUMBERED ELEVEN HUNDRED AND SEVENTY-FOUR, TREATING OF COLD STORES.

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

"SECTION 1. Section six hundred fifty-three of Ordinance Numbered Two hundred eighty-five, as amended by Ordinances Numbered Eight hundred forty-six, Eight hundred seventy-six, One thousand forty-eight, and One thousand one hundred seventy-four, is hereby further amended so as to change the manner of collecting the permit fee from cold stores, as follows:

" 'For every kilo of frozen meat as beef, pork, lamb, mutton, deer, etc., except winged animals admitted for the first time to be kept or prepared for sale in the cold store, there shall be charged and paid to the city treasurer by the owner of the cold store a permit fee of two centavos; and in the case of winged animals as birds, chickens, turkeys, etc., and of meat, poultry, fish, game, butter, cheese, lard, vegetables, and other provisions, one centavo per kilo: Provided, however, That this provision does not apply to meat and other provisions from which the city slaughterhouses fee has already been charged: And provided, further. That the owners of the meat and other provisions deposited at the Government ice plant are the ones to pay the permit fee herein charged.'

"SEC. 2. Owners of cold stores and owners of meat and other provisions deposited at the Government ice plant are hereby required to make a daily report to the city treasurer of the amount of meat and other provisions deposited for the first time daily at their stores, or at the Government ice plant, as the case may be. Upon receipt of this report, the city treasurer shall immediately notify the city physician of the existence of the meat and other provisions deposited in the cold stores or at the Government ice plant. The city physician shall thereafter make frequent inspections of the meat and other provisions so deposited to determine the fitness or unfitness of such meat and other provisions for human consumption.

"SEC. 3. The permit fees provided for in section one of this Ordinance shall accrue and become payable in the office of the city treasurer, daily, after the meat and other provisions reported as having been deposited in

accordance with the preceding sections shall have been duly inspected by the city physician.

"SEC. 4. The city treasurer of Manila is hereby authorized and empowered to prescribe the necessary regulations for the collection of the aforementioned fee.

"SEC. 5. This Ordinance shall take effect upon its approval.

"Approved, March 27, 1925."

The case was submitted to the trial court for decision principally on stipulated facts. Omitting the formal parts of the admitted facts, we discover this to be the situation: The petitioner, the Pacific Commercial Company, for a number of years prior to the passage of the ordinance under consideration, has been engaged in the importation of frozen provisions such as beef, mutton, pork, poultry, and game, and other foodstuffs. As an incident to such importation, it has always been necessary for the petitioner to store these provisions in cold stores prior to their sale for private consumption. Petitioner also maintains a retail establishment known as the "International Cold Stores" wherein a refrigerator is in operation for preserving such frozen provisions as are required for its daily transactions, but not for storing frozen provisions for the public. All the importations have been conducted in accordance with the appropriate rules and regulations promulgated by the Philippine Health Service and the Bureau of Agriculture for the purpose of protecting public health and safety.

It appears that on February 18, 1925, the city treasurer made a report to the Mayor, which, in part, reads as follows:

"Upon a personal investigation by the undersigned, it has been found out that a big quantity of frozen meat enters the City of Manila yearly without paying the fee that is charged to cattle slaughtered at the public slaughterhouse; thus resulting in unequal competition against the local meat. * * *

"According to the figures obtained by the undersigned from the Insular Collector of Customs, a copy of which is herewith attached, as much as 3,974,190 kilos of frozen meat has been imported into the City of Manila during the year 1924 and more or less similar amounts have been imported in previous years as shown on the report.

"Because of the fact that the City of Manila is losing a big amount of revenue which will amount to about P120,000 a year (at P0.03 a kilo) for not charging any fee for this frozen meat coming from foreign countries, and because of the fact that same is being sold locally to the prejudice of meat of cattle slaughtered locally, I have the honor to propose, for the best interest of all concerned, especially the City of Manila, an amendment to a part of sec. 3 of Ordinance 1174, amending the original sec. 653 of the Revised Ordinances of the City of Manila, charging a permit fee of P0.03 per kilo on frozen meat stored instead of charging a permit fee for every establishment of cold storage. It is believed that the provisions of the proposed ordinance are fully covered by sec. 8 (l) of Act No. 2774, amending sec. 2444 of the Administrative Code." (Exhibit G.)

A proposed ordinance was submitted to the city fiscal who rendered an opinion concerning the same. As a part of his opinion, the city fiscal submitted a new draft of an ordinance which was published in the Official Gazette on March 3, 1925. A hearing was had on this proposed ordinance which the petitioner and other interested parties attended. Then without any particular recommendation from the health authorities, the ordinance was revamped to include an inspection of the meat and provisions by the city physician. In this form it was passed by the Municipal Board, and approved by the Mayor, thus becoming Ordinance No. 1264. This ordinance was published for the first and only time in the Official Gazette on April 4, 1925.

On April 2, 1925, the city treasurer made a formal demand upon the petitioner to pay the fees provided in Ordinance No. 1264 on all provisions stored by the petitioner in the Government Ice Plant and the International Cold Stores for the period commencing March 27, 1925, the date when the ordinance took effect. Upon receipt of

this written notice, the petitioner instituted the appropriate action in the Court of First Instance of Manila to obtain an injunction and a pronouncement on the validity of Ordinance No. 1264.

In addition, it should be stated that the stipulation discloses that there were imported into the Philippine Islands and stored for the first time in the Government Ice Plant and in other private stores a total of 2,699,368 kilos of beef, mutton, pork, poultry, and game in 1923, 3,894,560 kilos of the same in 1924, and 1,634,256 kilos of the same for the first six months in 1925. The figures regarding the importations of butter, fresh fish, apples, lemons, oranges, other fresh fruits, potatoes, onions, and other fresh vegetables are also found in the record. The petitioner has been paying the Government Ice Plant for storing frozen provisions the following charges: On class one—P0.0011 per kilo per day; on class two—P0.14 per day; and on class three—P0.12 per cubic meter or 1,000 kilos more or less, per day. It is further admitted that on the date when Ordinance No. 1264 was enacted there were three private cold stores duly licensed to engage in business in the City of Manila, besides the Insular Cold Storage Plant owned and operated by the Government. Lastly, it is shown that in the city appropriation ordinance for 1925 the total made available for the section of sanitation was P435,630.

On the pleadings and facts, a well reasoned decision was handed down by Judge of First Instance Imperial which declared Ordinance No. 1264 null and void and which made permanent the preliminary injunction previously issued, without special pronouncement as to costs. The three bases of the decision were that Ordinance No. 1264 was invalid, first, because of lack of adequate publication; second, because the Municipal Board exceeded its powers in enacting the ordinance; and, third, because the permit fees provided by the ordinance were in the nature of taxes on imports. These three findings are challenged in the assignment of errors presented by the City of Manila on appeal.

In open court, the parties have united in urging adjudication of the appeal on the merits. The first assignment of error relating to insufficient publication can thus be passed over without comment, for obviously even if we should hold with appellee on this point, the Municipal Board could still reenact and republish the ordinance, which would bring the situation right back where it was before. Again, if assignment of error No. 2 dealing with the powers of the Municipal Board be decided adversely to appellant, any ruling on assignment of error No. 3 dealing with import taxes will be superfluous. So, as announced in the opening sentence of the decision, and as just explained, the appeal in its narrowest compass relates to the validity of Ordinance No. 1264, and the determination of the validity of the ordinance depends on whether or not the Municipal Board kept within or passed beyond its legal field.

The Philippine Legislature in the Manila Charter, found as Chapter 60 of the Administrative Code, grants to the Municipal Board of the City of Manila, among others, the following legislative power: "(l) To regulate and fix the amount of the license fees for the following: * * * the keeping, preparation, and sale of meat, poultry, fish, game, butter, cheese, lard, vegetables, bread, and other provisions." (Sec. 2444 [l].) Appellants contend that this provision confers upon the city authorities power to exact fees for revenue purposes. Appellee argues that the city merely possesses regulatory police power which does not include the power to tax.

The Charter in its entirety must be searched to ascertain and effectuate legislative intent. Subsection (l) of section 2444 of the Charter as above indicated makes use of the words "To regulate and fix the amount of the license fees for the following." The next succeeding subsection (m) begins "To tax, fix the license fee for, regulate the business, and fix the location of * * *." The next succeeding subsection (n) authorizes the Municipal Board "To tax motor and other vehicles, * * *." The next succeeding subsection (o) provides for the inspection of steam engines and boilers "and for a reasonable fee for such inspection, and to regulate and fix the fees for the licenses of the engineers engaged in operating the same." Subsection (q) is to the effect that the city has authority "To prohibit, or regulate and fix the license fees for, the keeping of dogs, * * * and to tax and regulate the keeping or

training of fighting cocks." The analysis could be continued. The point is: Does this studied difference in phraseology mean anything? We think it does.

The primary distinction in municipal corporation law is between the power to license and the power to tax. The first is a police measure. The second is a revenue measure. As disclosed by the authorities cited by the appellants, the terms "license" and "regulate" in a municipal charter may authorize licenses for the purpose of raising revenue if there be nothing antagonistic in the rest of the charter. Otherwise not.

A comparison of the provisions of the Manila Charter, relating to the legislative powers of the Municipal Board contained in the same section, makes it perfectly apparent that the power to tax was given where it was intended to be exercised and that it was not given where it was not intended to be exercised. If it had been desired for the Charter to extend to the Municipal Board the authority to tax, the word "tax" would have been included in paragraph (l) and other paragraphs of section 2444 of the Administrative Code. As the authority was withheld, it cannot be presumed. This being so, it must logically result that the power granted to the city under subsection (l) was purely regulatory for police purposes. Such power could not be used for the purpose of raising revenue, save, as revenue, is incidental to regulation.

An examination of Ordinance No. 1264 in the light of the surrounding circumstances, leaves no room for discussion that its primary purpose was not regulation but the raising of revenue. It was originally recommended by the city treasurer, "because * * * the City of Manila is losing a big amount of revenue." It was not recommended by the health authorities as a sanitary measure. The city's counterclaim alleges that the amount of the fees which the City of Manila would have derived from the operation of the ordinance during the year 1925 was P130,864.88. This respectable sum is to be taken from three private cold stores. It constitutes nearly one-third of the entire annual appropriation of the City of Manila for expenses of sanitation.

The city fiscal might possibly, if driven to it, concede the legal deductions which have been set forth. But he claims to see a fine distinction between municipal authority to "license and regulate" and municipal authority to "regulate and fix the amount of license fees." We might also comprehend the meticulous refinement under certain conditions. The conditions we have in mind would be, as in the authorities relied upon by counsel, where it was shown to be the purpose of the legislature to carry with a grant of discretion as to the amount of fees to be imposed, a grant of the taxing power. Where, on the contrary, the legislature uses the word "tax" in certain subsections of a section of the charter and fails to use the word in other subsections of the same section of the charter, as here, no intendment relative to a delegation of the taxing power can be invoked. Counsel's argument and authorities are excellent, but his premises are wrong, and the law is against him.

The authorities in support of the foregoing statements are numerous. As they were not cited heretofore, they will here be mentioned merely as cumulative precedents. We rely on *Cuunjieng vs. Patstone* ([1922], 42 Phil., 818), which in principle is on all fours with the present case; on *Kwong Sing vs. City of Manila* ([1920], 41 Phil, 103), which construes the word "regulate" as found in the Manila charter; on the well considered decision of the Supreme Court of Iowa in *City of Ottunwa vs. Sekind* ([1895], 29 L. R. A., 734), where a license fee of \$250 per month exacted from transient merchants by an ordinance enacted under the power to "regulate and license" was held excessive and invalid, amounting to an unauthorized exercise of the taxing power; on *Provo City vs. Provo Meat & Packing Co.* ([1917], 165 Pacific, 477), where the state law conferring upon cities the power to raise revenue by levying and collecting a license fee or tax, and to license, tax, and regulate the business of merchants, it was held that a graduated tax on the sale of fresh meats was reasonable and valid; on *Ex parte Frank* ([1878], 52 Cal., 606), previously mentioned; on *City of St. Louis vs. Boatmen's Ins. & Trust Company* ([1870], 47 Mo., 150), where it was the ruling that a right to license does not imply the right to charge a license fee therefor with a view to revenue, unless such seems to be the manifest purpose of the grant; and on 1 *Cooley Taxation*, 4th ed., pp.

283 et seq.; 4 Cooley Taxation, 4th ed., chaps. 28, 29; III McQuillin Municipal Corporations, pp. 2202 et seq.; VII McQuillin Municipal Corporations, Supplement, pp. 7160 et seq.; II Dillon Municipal Corporations, 5th ed., pp. 994 et seq.; and 19 R. C. L., pp. 951 et seq.

The whole case, comes down to this: The City of Manila has the power to regulate and fix the amount of license fees for cold stores. The City of Manila has not the power to tax and regulate and fix the amount of license fees for cold stores. Ordinance No. 1264 as a tax measure is therefore not within the legislative grant to the City of Manila. Ordinance No. 1264 as a police measure is unreasonable and unconscionable. Hence the ordinance must be held to be invalid.

Judgment affirmed without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, and Villa-Real, JJ., concur.

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