

**THE UNIVERSAL PICTURE CORPORATION, VICENTE G. ALBERTO
AND APOLONIA ZAPANTA, PETITIONERS AND APPELLANTS, VS.
MIGUEL ROMUALDEZ AND VICTOR ALFONSO, AS MAYOR AND
TREASURER, RESPECTI...**

G.R. No. 29350. December 29, 1928

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On February 11, 1927, the Municipal Board of the City of Manila enacted Ordinance No. 1569, which has been embodied in Chapter 84 of the Revised Ordinances No. 1600 as sections 778, 779 and 780. The text of said ordinance is as follows:

"[Ordinance No. 1569]

"AN ORDINANCE AMENDING SECTION SEVEN HUNDRED TWO OF ORDINANCE NUMBERED TWO HUNDRED EIGHTY-FIVE, KNOWN AS 'THE REVISED ORDINANCES OF THE CITY OF MANILA,' AS AMENDED BY ORDINANCES NUMBERED FIVE HUNDRED FIVE, SEVEN HUNDRED TWENTY-FIVE, AND EIGHT HUNDRED SEVENTYFOUR, BY INCREASING THE FEES OF CINEMATOGRAPHS AND THEATERS AND IMPOSING SEPARATE FEES ON VAUDEVILLES, AND FOR OTHER PURPOSES.

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

"SECTION 1. Section seven hundred two of Ordinance Numbered Two hundred eighty-five, as amended by Ordinances Numbered Five hundred five, Seven hundred twentyfive, and Eight hundred seventy-four, is hereby amended so as to read as follows:

"SEC. 702. Permits, fees.—The city treasurer is empowered to collect for the permit or permits granted in accordance with this Ordinance, the following annual fees:

" 'For first-class cinematographs P1,800.00

" 'For second-class cinematographs P1,200.00

" 'For third-class cinematographs P90.00

" 'For each vaudeville company, with or without connection with any cinematographs show shall pay a license in advance in the sum of P40.00

" 'For each theatrical show or series of theatrical performances known as operas, per show 20.00

" 'For each theatrical show or series of theatrical performances known as zarzuela or dramas in general, per show 10.00

" 'For each theatrical show or series of theatrical performances known as zarzuelas or native dramas, per show

2.00

"SEC. 2. Definition.—It shall be deemed first-class cinematographs those projection halls open to the public and are used for the exhibition or projection of films, which are situated in any of the following streets of the City of Manila: Rosario, Escolta, Plaza Santa Cruz, Ronquillo, Avenida Rizal between Carriedo and Azcarraga, Plaza Goiti, and Echague, and which ordinarily exhibit films for the first time; second-class cinematographs those which, not being situated in the streets aforementioned, exhibit films for the first time or of first exhibition and those which, being situated in said streets, exhibit regularly films for the second time after the exhibit for the first time or first exhibition or which have the exclusive privilege for exhibiting films of second hand; and third-class cinematographs those which are not included among the first and secondclass cinematographs.

"SEC. 3. Maintenance of order.—It shall be the duty of the police department, the city electrician, and the fire department of the City of Manila to detail one employee at least from their respective offices to regulate traffic, preserve the order in and about the premises of all cinematographs as well as to make daily inspections of the wiring and apparatus used by every cinematograph licensed under the provisions of this Ordinance, so as to give ample protection to life and property of the public in case of fire or other calamity.

"SEC. 4. This Ordinance shall take effect on its approval.

"Approved, February 11, 1927."

On April 9, 1927, that is, fifty-eight days after the enactment of said municipal ordinance, the plaintiffs filed a suit praying for a writ of preliminary injunction to restrain and enjoin the defendants and each of them, their agents, delegates and successors from enforcing said Ordinance No. 1569 of the City of Manila during the pendency of the case, that after the hearing", each one of the defendants, their agents, delegates and successors be forever enjoined from enforcing said Ordinance No. 1569, and that they be sentenced to pay the costs.

The defendants, through the city fiscal, answered the complaint, admitting the allegations contained in paragraphs 1 and 2 thereof, and denying each and every one of the allegations contained in the remaining paragraphs of said complaint, and by way of special defense alleged that Ordinance No. 1569 of the City of Manila, approved on February 11, 1927, was enacted by the Municipal Board of Manila in accordance with the powers conferred upon it by the Manila Charter, for the purpose of giving each of the plaintiffs and every owner of first-class cinematographs, the necessary, complete and adequate fire and police protection, which redounds, not only to the benefit of the plaintiffs herein, but also to the benefit of the patrons of the cinematographs and of the public at large, and for this reason the ordinance is reasonable and, therefore legal, valid and constitutional; that the amount of P1,800 per annum fixed by section 1 of said Ordinance No. 1569 as an annual license fee for first-class cinematographs is in fact very much less than the annual expenses incurred by the City of Manila to render police, fire and administrative services to each such first-class cinematograph, in accordance with section 3 of said Ordinance.

After the trial of the case the lower court declared said Ordinance No. 1569 of the City of Manila, now sections 778, 779 and 780 of the Revised Ordinances No. 1600 valid and legal, dismissed the petition with costs against the petitioners, and set aside the writ of preliminary injunction issued against the defendants. The plaintiffs appealed from the court's judgment in due time and form and in their brief assigned the following alleged errors:

"(1) The trial court erred in finding that Ordinance No. 1569 of the City of Manila imposes duties or rules of conduct to be observed by cinematographs entailing expense to the city in procuring their observance;

"(2) The trial court erred in finding that Ordinance No. 1569 of the City of Manila does not discriminate between persons engaged in business of the same class;

"(3) The trial court erred in finding that Ordinance No. 1569 of the City of Manila does not establish license charges that are excessive and unreasonable;

"(4) The trial court erred in finding that the City of Manila by enacting Ordinance No. 1569 was exercising its power to regulate and license cinematographs and not attempting to exercise a power of taxation under the guise of a power to regulate and license; and

"(5) The trial court erred in finding that Ordinance No. 1569 of the City of Manila is not null and void as an attempted exercise of a taxing power with respect to cinematographs."

The appellants argue in their first assignment of error that Ordinance No. 1569 does not impose any additional duties or rules of conduct on cinematographs to correspond to the increase in the license fee, and also that the police have never been called upon to maintain order or to quell disturbances in the cinematographs operated by the plaintiffs; and that as fires have not occurred in cinematographs with any greater frequency than in any other business houses, the police, fire and electrical supervision and inspection are unreasonable and manifestly unnecessary. Supposing this to be true, nevertheless, it does not show that the supervision exercised by the city through the said departments thereof is unnecessary. The city fulfills the duties imposed upon it by section 3 of said ordinance for the very purpose of duly protecting the life and property of the public in case of fire or other calamity.

In the case of *Cuunjieng vs. Patstone* (42 Phil., 818), this court held that in the absence of a legal provision authorizing the imposition of a license fee or revenue tax, the license fee for the regulation of occupations or useful enterprises may be only an amount sufficient to cover the expense of issuing the license and the necessary expense of police inspection and supervision, taking into account not only the expense of direct regulation but also the incidental consequences. The maintenance of order in and about the cines and the inspection and supervision of the wires in their electrical installations, as provided for in section 3 of the ordinance, will occasion substantial expenses to the city, according to the testimony of Treasurer Alfonso, which in our opinion shows that the fees fixed are charged only with a view of covering that expense.

That the police and fire departments, and the city electrician, as intimated in the appellants' brief, have not especially assigned any of their employees to the cinematographs within the city, as provided for in section 3 of the ordinance, does not affect the question, since it is very clear that non-compliance (if any), with the provisions of said ordinance by the employees of the city does not make the ordinance void.

The appellants also allege that the City of Manila has no authority to classify cinematographs and therefore the classification established in section 1 of Ordinance No. 1569 is void; and, moreover, even if the city were authorized to classify cinematographs, the classification established in section 1 of said ordinance based, as it is, on a supposed difference in the cost of issuing the licenses and enforcing compliance with rules and regulations established by law when, as a matter of fact, there is no such difference, is null and void as unreasonable, arbitrary, and constituting in fact a discrimination between business enterprises of the same class. As to the first proposition, suffice it to recall that the Manila Charter grants the municipal board thereof (sec. 2444, paragraph [1], Administrative Code, as amended) the power to regulate and fix the amount of license fees for the following: "Hawkers * * * theaters, theatrical performances, cinematographs, public exhibitions, circusses," and all other performances and places of amusement. As to the allegation of unreasonableness and discrimination between enterprises of the same class, it should be observed that the basis for the classification of cinematographs established in the ordinance in question is their location and the kind of films exhibited therein. In the case of *Metropolitan L. Ins. Co. vs. Paris* (138 Ky., 801), it was said: "Where the classification of trades, occupations, and professions for the purpose of imposing a different license fee upon each class is based upon a genuine distinction, the courts shall not declare the classification void; the test being not the wisdom, but the good faith, of

the classification."

The case of *United States vs. Sumulong* (30 Phil., 381), involves the constitutionality of an ordinance passed by the municipal council of Los Baños in accordance with the authority conferred upon it to impose a license for fishing. The ordinance in question classified and graduated the license fees for fishing as follows:

"For each fishery in public waters comprised within the jurisdiction of the municipality of Los Baños, to wit:

"For each drag-net, quarterly in advance P20.00

"For each pante, quitang, and panilay, quarterly in advance 50

"For each fish corral, quarterly in advance 2.00"

The court said: "The whole purpose of the ordinance was to classify and graduate the license fees for fishing privileges according to the kind of apparatus used. No tax is imposed upon the several kinds of apparatus; they are referred to in the ordinance merely as a means of classification." After citing numerous authorities holding that, for license purposes, "peddlers may be classified as foot peddlers, peddlers with a one-horse cart or wagon, and peddlers with a two-horse cart or wagon; vehicles, with reference to their character and the use to which they are put, and the number of horses used therewith; keepers of livery stables, according to the number of carriages kept for hire; hotels, according to the number of rooms devoted to the accommodation of the public," the court held:

"Under a general power to impose and collect license fees and occupation taxes, a municipality in this jurisdiction has the right to classify and graduate such fees according to the estimated value of the privilege conferred, provided such classification is reasonable and does not contravene the provisions of its municipal charter."

Counsel for appellants dwells on the difference between the amount of license fees imposed upon the first-class cinematographs and those upon the second and third-class cinematographs. But, as this court said in the case of *United States vs. Sumulong*, *supra*, "It is nothing to one person, belonging to a certain class, that someone else, belonging to another class, pays more or less than he does, since all belonging to his class must pay the same." Furthermore, as the plaintiffs allege in the third paragraph of their complaint, "your petitioners have, and each of them has, at all times complied with all lawful rules and regulations and ordinances imposed, established, and enacted by the City of Manila," In fact, said plaintiffs in paragraph 8 of their complaint allege having paid the license fee for the period ending November 30, 1927, which goes to show that the ordinances amended by Ordinance No. 1569 in question were perfectly valid and constitutional. But simply because said Ordinance No. 1569 increases the amount of license fee, the plaintiffs argue that this ordinance is Invalid and unconstitutional. But in *State vs. Thompson* (25 S. O., 148; 125 N. W., 567), it was held that: "An amendment of a license act merely changing the amount of license to be paid by the different classes does not affect the constitutionality of the law."

The appellants allege furthermore that the license fee fixed by the municipal ordinance in question is excessive and unreasonable, and that in enacting said ordinance the City of Manila attempted to exercise a power of taxation under the guise of a power to regulate and license. We cannot agree to this proposition. In a city like Manila with more than three hundred thousand inhabitants and where the population is extremely fond of such shows, we do not think that P1,800 a year, which is the license fee for first-class cinematographs, is proportionately excessive, and an abuse of the power to fix the fees for licenses granted to cinematographic enterprises, and we do not feel justified in holding that the municipal board has unduly exercised its functions in this matter.

In the case of *Higgins vs. Lacroix* (119 Minn., 145; 41 L. R. A. [N. S.], 737), it was held that a license fee of \$200 per annum for a permanent moving-picture show in a village of 1,000 inhabitants is not so excessive as to clearly

manifest either a purpose to tax or prohibit under the guise of a license.

In the case of *Tait vs. Campbell* (18 How., 646), the court held that a fee of \$5 a day is chargeable as license for the exhibition of moving pictures, and that such amount is not so excessive as to render the statute invalid.

Justice Mitchell, in upholding a theatre license fee of \$125 for six months in *Duluth vs. Marsh* (71 Minn., 248; 73 N. W., 962), uses this language: "In respect to theatrical exhibitions and amusements of similar character, a larger discretion on part of municipalities is recognized than in the case of ordinary trades and occupations,' both because they are liable to degenerate into nuisances, and also because they require more police surveillance and police service." "Moving-picture shows are of comparatively recent origin but of rapid growth, springing up everywhere in the large cities, and invading even villages and towns of modest size. While, as generally conducted, some educational value may be conceded to exist in these shows, it is nevertheless true that the chief aim is to furnish the sort of entertainment that will draw the most dimes. To furnish people with innocent and cheap amusement is laudable, but experience teaches that, where amusements are furnished for pecuniary profit, the tendency is to furnish that which will attract the greatest number, rather than that which instructs or elevates. "To say the least, opinions are quite at variance as to the merits of moving-picture shows as an influence for good or evil in a community. .It must therefore be classed among those pursuits which are liable to degenerate and menace the good order and morals of the people, and may therefore not only be licensed and regulated, but also prevented by a village council. ("Rev. Laws, 1905, par. 727, subd. 12.) Common observation reveals the fact that crowds attend these picture shows afternoons and evenings every day in the week. In or about the entrance of the show place in the small village is undoubtedly the rendezvous of the young and thoughtless, as well as the vicious. Police surveillance is likely to become a necessity because of this. In the light of all the facts connected with moving-picture shows the possibilities therein to degenerate and require policing, we are of opinion that, under the principles announced in the decisions above-cited, the license fee fixed by the village council of Deer River is not so unreasonably high as to manifestly show an abuse of power or any unlawful purpose or result." (*Higgins vs. Lacroix*, supra.)

In virtue of the foregoing, we are of the opinion, and so hold, that the judgment appealed from should be, as it is hereby, affirmed, with costs against the appellants. So ordered.

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

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