

EMILIANO ORTIZ, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 33885. March 03, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

Seven of the thirteen members present, including the president, of the municipal council of Tabaco, Albay, voted in favor of Ordinance No. 25, concerning cockpits, and six members voted against the ordinance, with three members absent. Is the ordinance valid? One judge of first instance of the province held that it was valid, while another judge of first instance of the province held an ordinance enacted under similar circumstances invalid.

Section 2224 of the Administrative Code reads as follows:

"SEC. 2224. Journal of Proceedings—Majorities necessary for transaction of business.—The council shall keep a journal of its own proceedings. The ayes and noes shall be taken upon the passage of all ordinances, upon all propositions to create any liability against the municipality, and upon any other proposition, upon the request of any member, and they shall be entered upon the journal. The affirmative vote of a majority of all the members of the municipal council shall be necessary to the passage of any ordinance or of any proposition creating indebtedness; but other measures, except as otherwise specially provided, shall prevail upon the majority vote of the members present at any meeting duly called and held."

The law is clear. It needs only application, not interpretation. While the Spanish text may be ambiguous, the English text which governs is not. The law is entirely consistent in context. The ayes and noes are taken upon (1) the passage of all ordinances,. (2.) all propositions to create any liability against the municipality, and (3) any other proposition, upon the request of any member. The same, idea is carried into the succeeding sentence. For the passage of (1) any ordinance or (2) any proposition creating indebtedness, the affirmative vote of a majority of all the members of the municipal council shall be necessary. Other measures prevail upon the majority vote of the members present. "Creating indebtedness" refers to "proposition" and not to "ordinance." The contention that only ordinances creating indebtedness require the approval of a majority of all the members of the municipal council, is devoid of merit.

Corroborative authority is really superfluous. Nevertheless we would invite attention to the case of McLean w. City of East St. Louis ([1906], 222 111., 510). Section 13 of the Act for the incorporation of cities and villages in the State of Illinois provided; "The yeas and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the city, or for the expenditure or appropriation of its money, and in all other cases at the request of any member, which shall be entered on the journal of its proceedings; and the concurrence of a majority of all the members elected in the city council shall be necessary to the passage of any such ordinance or proposition: Provided, it shall require two-thirds of all the aldermen elect to sell any city or school property." Commenting on this provision of law, the Supreme Court of Illinois, through Justice Cartwright, observed:

"Some of the counsel for appellee argue that section 13 relates only to ordinances and propositions creating a liability against a city or providing for the expenditure or appropriation of its money, and that all other ordinances may be passed by a majority of a quorum. They say that it is not unusual for courts, in the construction of statutes, to substitute one word for another where the plain meaning of the statute will justify it, and that by eliminating some words and substituting others this section will express what they think was the intention of the legislature. It is the rule that where the intention of the legislature is ascertained with reasonable certainty and it appears that words have been used inconsistent with such intention, a word erroneously used for another may be eliminated and the proper word substituted. Where the context affords the means of correcting a mistake in the use of language, the correction may be made for the purpose of giving effect to the intention plainly manifested in the act as a whole. But we do not agree with the theory that the legislature, in this instance, intended to limit the requirement of a majority vote to ordinances creating a liability or appropriating money. In our opinion, to make the changes suggested would be merely juggling with the words of the statute to give it a different meaning from that which was intended. The law requires that the yeas and nays shall be taken upon the passage of all ordinances, and the concurrence of a majority of the legislative body is necessary to their passage. We recognized that construction of the statute in *Hibbard & Co. vs. City of Chicago*, 173 Ill., 91. If a proposition not in the form of an ordinance creates any liability or provides for the expenditure or appropriation of money, the requirement is the same, while as to other propositions, whether the yeas and nays are entered upon the journal or not, the majority of a quorum is sufficient."

The basic idea of the legislative body to make impossible the approval of ordinances or of propositions creating indebtedness by minority votes of municipal councils, at meetings hastily called is wise. Legislative intention should be effectuated.

Section 2224 of the Administrative Code, requiring in mandatory language the affirmative vote of a majority of all the members of the municipal council for the passage of any ordinance, whether or not an ordinance creating indebtedness, an ordinance passed by less than that majority is invalid. Ordinance No. 25 of Tabaco, Albay, is void.

Agreeable to the foregoing, the judgment appealed from will be reversed and in the court of origin another judgment will issue in favor of the plaintiff and against the defendants for the sum of P400, with the costs of both instances against the municipality of Tabaco, Albay.

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

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