

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
FELIPE C. CARREON, DEFENDANT AND APPELLEE.***G.R. No. 45240. May 31, 1938*

Ponente: IMPERIAL, J.

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Defendant was charged in the justice of the peace court of the municipality of Santa Maria, Province of Ilocos Sur, with the violation of municipal ordinance No. 6, series of 1935, of said municipality by practicing therein as a notary public without having paid the license required by the aforementioned ordinance. He appealed from the judgment of the justice of the peace court finding him guilty of said violation. In the Court of First Instance of Ilocos Sur the provincial fiscal filed an information charging the defendant with the same violation of the ordinance, as follows:

"That on or about and during the time comprised between January 1, 1936, and March 25, of the same year, in the municipality of Santa Maria, Province of Ilocos Sur, Philippines, the said accused, Felipe C. Carreon, willfully, illegally, and criminally practiced as a notary public, without having previously paid to the municipal treasury of said municipality the license prescribed by municipal ordinance No. 6 of said municipality of Santa Maria. Contrary to law, particularly to the ordinance above cited."

Defendant demurred to the information on the ground that it did not allege facts constituting an offense. After hearing the court sustained the demurrer and directed the fiscal to amend the information within the prescribed period. The fiscal refused to amend it, and the court, on being informed of the fact, by another order dismissed the case for the reason that the fiscal had refused to amend the information. The fiscal appealed, and in this instance the Solicitor-General urges the reversal of the two orders appealed from on the following grounds: That they violate the Constitution in that the facts and the law on which they are based are not stated therein, and that said orders are erroneous because they implicitly declare the nullity of the ordinance.

The pertinent portion of the challenged ordinance reads as follows:

"Section 6. All persons engaged in the business as notaries public except those who are attorneys-at-law at the same time, procuradores judiciales and butchers shall pay to the office of the municipal treasurer as municipal license tax of five and no/100 (P5.00) pesos per annum, the same to be paid quarterly.

* * * * *

"Section 8. Any person or persons who shall violate any of the provisions of this ordinance, shall, upon conviction, be punished by:

* * * * *

"(f) For the violation of section 6 herein: a fine of not less than five and no/100 (P5.00) pesos, nor more than ten and no/100 (P10.00) pesos, or imprisonment of not less than ten (10) days, nor more than twenty (20) days, or both fine and imprisonment."

The authority invoked to sustain the validity of the ordinance in question is sought from section 1 of Act No. 3422, as amended by section 1 of Act No. 3790, the pertinent portion of which provides:

"Section 1. A municipal council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality, by requiring them to secure licenses at rates fixed by the municipal council, and to collect fees and charges for services rendered by the municipality, and shall otherwise have power to levy for public local purposes and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes and taxes on specified articles: Provided, That it shall be beyond the power of the municipal council to impose the following taxes, charges, and fees:"

It will be noted that section 1 of Act No. 3422, as amended, limits the authority of a municipality to impose municipal license taxes to persons engaged in any occupation or business, or exercising privileges in the municipality. The notary public is a public officer (section 232, Revised Administrative Code; *Antillon vs. Barcelon*, 37 Phil., 148; *Nolan vs. Labatut*, 117 La., 431, 445; 41 S., 713; *Schmidt vs. Drouet*, 42 Ann., 1064, 1066, 1067; 3 S., 396; *Gharst vs. St. Louis Transit Co.*, 115 Mo. A., 403, 408; 91 S. W., 453; 46 C. J., p. 501), appointed in the provinces by judges of first instance and in Manila by the Supreme Court (section 232, Revised Administrative Code), 'who does not engage in any occupation or business or exercise any privilege within the meaning of section 1 of Act No. 3422, as amended. His powers and duties are defined by section 241 of the Revised Administrative Code and are of a public nature. The defendant, as notary public, is not included in the cases specified by the aforementioned section of Act No. 3422 and, for this reason, is not subject to pay the municipal license tax imposed by section 6 of municipal ordinance No. 6 of Santa Maria. The authority to impose municipal license taxes on industries, occupations and professions can not be deemed to include the power to impose a municipal tax on notaries public (*City of New Orleans vs. E. A. Bienvenu*, 23 La., 710; *Cooley on Taxation*, vol. 4, sec. 1708, p. 3422). We, therefore, hold that the portion of said ordinance imposing a municipal license tax on notaries public is null and void and that the defendant can not be held guilty of a violation of the ordinance for having refused to pay the aforesaid license tax.

Having arrived at the conclusion that the information against the defendant is insufficient and fatally defective because the facts alleged therein do not constitute a violation of law, it is idle to consider the first error assigned by the appellant impugning the constitutionality or validity of the orders appealed from. Granting that said assignment of error were well taken, the defendant could not, at all events, be prosecuted for said violation because, as has been said, the said ordinance is void in so far as it requires that notaries public pay a municipal license tax.

In view of the foregoing, the appeal is dismissed without special pronouncement as to costs in this instance. So ordered.

Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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