

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CLEMENTE UDARBE, DEFENDANT AND APPELLANT.

G.R. No. 9945. November 12, 1914

Ponente: ARAULLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-9945/>

ARAULLO, J.:

This case was instituted against the defendant by virtue of an information filed in the Court of First Instance of Ilocos Sur, under date of March 25, 1914, of the following purport:

"The undersigned fiscal of the Province of Ilocos Sur charges Clemente Udarbe with violation of section 28 of the Municipal Code, committed as follows:

"Said Clemente Udarbe, the defendant above named, being municipal president in the municipality of Magsingal, of the Province of Ilocos Sur, P. I., did in January, 1913, and prior and subsequent thereto, become interested and take direct part willfully, unlawfully, and criminally in the fishery business of the municipality of which he was president, having at said time and place leased various fishponds. In violation of law."

After trial, judgment was rendered by said Court of First Instance, under date of April 4 of the same year, sentencing the defendant, as guilty of the violation of said section 28 of the Municipal Code, to six months' imprisonment and payment of the costs. Said defendant has appealed therefrom, alleging as his defense in this instance that the court erred in making various findings of fact in the judgment and in declaring that such facts constituted a clear violation of the section cited and in imposing upon the defendant the penalty set forth.

"No municipal officer," says said section 28 [as amended by section 1 of Act No. 663], "shall be directly or indirectly interested in any contract work, or cockpits, or any other permitted games and amusements, or business of the municipality, or in the purchase of any real estate or any other property belonging to the corporation," and further states that violation of said provision shall be punished by imprisonment for not less than six months nor more than two years.

It is plainly proven: (1) That the defendant was appointed municipal president of the municipality of Magsingal on October 28, 1912, on which date he entered upon the duties of his office, and while on duty as said president, the municipal council on December 9 of the same year, 1912, and under his presidency, approved and passed Regulation No. 7, for the leasing of fishponds in the said municipality, article 10 whereof provided that the lease holders of various sections of said fishponds, among which was section 102, should continue in their leases so long as they paid the rental fixed for each of the respective sections, without prejudice to granting them to others who might desire to bid for them, in case such leaseholders should waive their preferential right (Exhibit 1 of the defense); (2) that on the 16th of the said month of December, when the auction or bidding for the different sections of said fishponds was held in the town hall of said municipality, it was recorded in Minute No. 54, series of 1912, entered for that purpose (folio 13, back of 13 and folio 14 of the Minute Book, Exhibit A of the prosecution), that the accused, who participated therein and moreover presided over the auction, took part in the bidding for the said section No. 102 of the fishpond of Pagsanaan, and that that section was adjudicated to him as the highest bidder for the sum of two pesos a year; (3) that said defendant paid the municipal treasurer of

Magsingal on January 10 of the following year, 1913, the sum of T2 as the price of the lease for the said section No. 102 up to the close of that year; (4) that said defendant, who held the office of president of the said municipality from October 28, 1912, as has already been stated, and who still held it on March 30, 1914, when this case was tried, continued in the lease of the said section No. 102 of said fishpond, which was awarded to him on December 16, 1912, until the same month of December of said year 1913, that is, for a period of one year.

Defendant attempted to exculpate himself by saying that when he was appointed municipal president of Magsingal in October, 1912, and began to discharge the duties of said office, he already held in lease the said section 102 of the fishpond of Pagsanaan, belonging to that municipality, and that he did not take part in the bidding held in the month of December of the same year for securing said lease, but that he continued in the enjoyment of this right by virtue of a resolution of the municipal council, which has been mentioned above, whereby it was provided that those who, like himself, held fishponds of the municipality on lease should continue in the same, provided they offered the rental fixed at the bidding that would take place. But what the defendant says in his defense is not sufficiently proven, for it does not appear in the Minute Book presented at the trial, nor from any fact submitted thereat, that before he became municipal president of Magsingal he held the lease of section 102, already set forth. On the contrary, it appears, as, has been stated above, in Minute No. 54, series of 1912, of the auction or bidding held on December 16 of the same year that the defendant was then awarded the lease of the said section 102 for the sum of P2 a year as the highest bidder. His allegations in that connection cannot, therefore, favor him in any way, or constitute ground of defense to relieve him of the responsibility he has incurred, for whether or not he held the lease of the said property of the municipality of Magsingal before entering upon the duties of his office as president of that municipality, the concrete and definite fact proven at the trial is that while he was municipal president of Magsingal he was interested in business of said municipality by leasing on December 16, 1912, a piece of property belonging thereto and continued in the lease he had held of that same property before assuming said office, which in this case amounts to the same thing, for such action is definitely prohibited by section 28 of the Municipal Code. The defendant's conduct is so much the more censurable, if it be accepted as true that before becoming municipal president of Magsingal he already held the said property of that municipality in lease and merely continued in the enjoyment of said right after entering upon the duties of the office and for a year longer, that is, all of the year 1913, in so far as it appears by the Minute of December 9, 1912, that the municipal council, on that date and under his presidency, passed the resolution regarding the preference to be given to the then leaseholders of various sections of said fishpond, among which was No. 102, over any other bidders at the auction to be held, as it was held on the 16th of the same month, provided that they paid in the rental fixed therefor, for the defendant took advantage of said preference in the bidding when it was he who, as president of the municipality, in connection with the other members of the council, had adopted that resolution. This very fact ought to have obligated him for reasons not only of legality but of delicacy and morality not to continue in the lease and not to become interested again in that business of the municipality, and yet he did become interested therein until the end of December of the following year, 1913, thus openly violating the law, which has attempted by means of the precept contained in said section 28 of the Municipal Code to prevent the interests of the municipality or the town intrusted to the administration of the municipal officers from suffering detriment by coming into conflict with the interests of such administrators, which would doubtless occur if said officers should lease property of their respective municipalities, as they are the very persons whose duty it is to set or fix the price of the lease, the time of its payment, and the conditions of the corresponding contract. The defendant himself must have so understood it, although tardily, as is demonstrated by the fact that he excused himself on grounds of delicacy, for the reason that he was one of the then leaseholders of the fishponds of the municipality, that is, section No. 102, from taking part in Resolution No. 202, adopted at the session of December 15, 1913, Exhibit 2 of the defense, with reference to the concession to those who then held leases of various sections of the fishponds, among which was included the said No. 102, of the right to transfer the enjoyment of

the lease, a right that the defendant made use of five days later, that is, on the 20th of the same month of December, by transferring the lease he had to section No. 19, as appears in, Resolution No. 206 (back of folio 85 of the Minute Book, Exhibit A), to one Miguel Udarbe, really a nephew of his. This section must be the same as No. 102, for in addition to being in the Pagsanaan Lake, it does not appear that the defendant held any other section of that lake in lease, and thus he has given to understand by his defense in first instance, presenting as Exhibit 4 thereof the said resolution.

Nevertheless, to maintain that the fact alleged in the complaint does not constitute a crime or a violation of section 28 of the Municipal Code, the defense has in its brief cited two opinions rendered by the Attorney-General in connection with said section, one of May 5, 1909 (Opinions of the Attorney-General, vol. 5, p. 70), and another on the 22d of the same month of 1902 (*ibid.*, vol. 1, p. 204).

The first was in reply to the question whether said section, as amended by Act No. 663, should be construed in the sense that it prohibited municipal officers from attending the cock-fights or public billiard rooms, to participate in said games and not to perform there their official duties. The Attorney-General said no, for the reason that, while the purpose of the law was to secure the faithfulness of said officers in the performance of their official duties, it could not interfere in matters connected with the strictly private rights of those same officers, whose responsibility in the case of a charge of gambling, he added, would be a question of fact to be determined in each particular instance, since the status of a municipal councilor under the law is the same as that of any other private party.

The second opinion of the Attorney-General cited by the defense refers to a query submitted to him with reference to whether the municipal officers, by election or by appointment, could enter into contracts with the municipal council regarding the lease of realty belonging to them for the use of their municipality, without infringing section 28 of the Municipal Code.

In reply to that query the Attorney-General very correctly stated that the purpose of such legal provision was to prevent fraud; that to permit the municipal officers to become directly or indirectly interested in the contracts or commercial transactions of the municipality could easily, in view of their influence, operate to the effect that such contracts or business should be awarded to them under conditions less advantageous for the municipality by preventing competition on the part of others, and besides, after the contracts had been awarded to them, they might not fulfill the conditions therein stipulated, in this way prejudicing the municipality's interests. He added that the leasing of realty to the municipality could not be regarded as embraced in the contracts and business mentioned in sections 39 and 40 of the Municipal Code, such as construction of buildings, installation and maintenance of lights, etc., for the reason that in such contracts of lease that fraud which the law seeks to prevent could not take place. And finally, noting that article 397 of the Penal Code punishes as guilty of fraud the public officer who becomes directly or indirectly interested in any kind of contract or operation in which he has to intervene because of his office, he concluded by saying that in order to be included in this legal provision it was merely necessary that the officer intervene in the contract or transaction by reason of his office, and therefore, as the leasing of any property by the municipality for its own use must be the subject of a resolution of the municipal council, all the officers who take part in the deliberations of said council, to wit, the president, vice president, and the councilors, are prohibited from leasing their property to the municipality.

If the citation of the first opinion of the Attorney-General, made by the defense, is absolutely inapplicable to the instance dealt with in this case, the second is also, but in the opposite sense to that claimed by the defense itself, for the same reason exists why a municipal officer cannot lease property of his own to the municipality as. why he cannot lease property from the municipality.

Article 397 of the Penal Code punishes the same thing as is penalized by subsection (b) of section 28 of the

Municipal Code, to wit, the action, of a public official in the former and of a municipal officer in the latter, of becoming interested in any kind of contract or operation in which he must intervene by reason of his office. In performing such an action, as Viada says in his commentaries on the Penal Code, the officer does nothing more than violate a prohibition; hence no fraud exists therein, but there does exist the possibility that he may perpetrate fraud, or at least that he may subordinate the state's interest to his own. In connection with the municipality, this is certainly the reason why said section 28 of the Municipal Code prohibits municipal officers from taking part directly or indirectly in contracts, cockpits, or other permitted games and amusements or in business of the municipality.

The defendant became interested and took direct part in the leasing of property of the municipality of Magsingal, wherein he had to intervene by reason of his office as president of said municipality, and he has therefore openly violated the provisions of said section of the Municipal Code.

The lower court did not, therefore, incur any error in holding in the judgment appealed from that the guilt of the defendant had been proven and in imposing upon him the corresponding penalty, in accordance with the provision in said section.

Wherefore, we affirm the judgment appealed from, with the costs against the appellant.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.