

44 Phil. 792

[ G.R. No. 19861. April 04, 1923 ]

**ROSARIO J. DE LIÑAN AND JUAN PIMENTEL, PLAINTIFFS AND APPELLANTS, VS.  
THE MUNICIPAL COUNCIL AND THE MUNICIPAL TREASURER OF DAET,  
CAMARINES NORTE, DEFENDANTS AND APPELLEES.**

## **D E C I S I O N**

### **ARAULLO, C.J.:**

On April 1, 1921, there was promulgated and put in effect Ordinance No. 94 of the municipal council of Daet, Province of Camarines Norte, which imposed a tax upon cinematograph theaters, and required every association, corporation, or individual, owning a cinematograph theater or theaters to secure a permit from the municipal president before giving any exhibition for profit, and to pay for each permit or license P3 for each change, P1 for each second night, and P4 for each review, or cinematographic exhibitions of more than one programme. The plaintiffs, each of whom owned a cinematograph theater situated in the business center of the said municipality of Daet, paid, under protest, to the municipal treasurer the taxes imposed by the aforesaid ordinance. They now bring this action, alleging that the said ordinance is illegal and that the municipal council of Daet was not authorized by any law to impose those taxes, and praying for a judgment, ordering the defendants to return the taxes paid by them, with the costs of this suit.

The provincial fiscal, on behalf of the municipal council and the municipal treasurer of the aforesaid municipality, answered the complaint, alleging that the said municipal council was authorized by the Administrative Code to impose the aforesaid tax and pass the above-mentioned ordinance, the plaintiff himself, Diego Liñan, as member of the municipal council, having been one of those who voted the same.

The trial court rendered judgment, dismissing the complaint, with costs

against the plaintiffs, from which judgment they have appealed to this court.

It is indisputable that a municipal council has authority to impose taxes upon persons engaged in business or exercising privileges in the municipality by requiring them to procure license at rates fixed by ordinance of the council. It is so provided in section 2307 of the Administrative Code, the same section specifying the business or privilege to be subject to such taxes, among which are those mentioned in subsection (j), namely, "theaters, museums and concert halls."

It is true that cinematograph is not mentioned or specified in the aforesaid subsection, but it is also true that when the above cited section, 2307, of the Administrative Code authorized the municipal councils to tax persons engaged in business or exercising privileges in their municipalities, among whom are those who give theatrical performances in any particular building, collecting a certain sum of money as admission fee, it was not intended to exclude, but on the contrary, to include those who give cinematographic exhibitions, that is, cinematographic exhibitions in a particular building, collecting a certain amount of money as admission fee, for the giving of theatrical, operatic, dramatic, or comic performances, such as the exhibition of cinematographic pictures, when some profit or gain is obtained by charging a fee for admission to the premises where said exhibitions are given. There is no reason whatsoever, if account is had of the purpose of the tax law, why the word "theaters" used in said section 2307 of the Administrative Code to designate one of the kinds of business that the municipal councils are authorized to tax, should be so construed as to exclude cinematographs, or theaters where cinematographic exhibitions are had; on the contrary, the proper interpretation should be that the law intended to include cinematographs in the word "theaters," for it is undeniable that both theatrical and cinematographic exhibitions are public exhibitions, and when some profit or gain is obtained by the person engaged in such business by collecting an admission fee from the public, before whom the exhibitions are given, there exists the purpose of the law imposing said tax.

It is not necessary for the solution of the question raised in this appeal to invoke section 1465 of the Administrative Code which gives the definition of the

words and phrases used in the preceding section, 1464, for the application of the provisions of said section, for it refers to internal revenue tax on business and the owners of theaters, museums, cinematographs, or concert halls, and on the building used for giving operatic, dramatic, or any other kind of performances, where an admission fee is charged. However, in the present case, the tax imposed by the municipal council of Daet by virtue of Ordinance No. 94 of the said council, was not a tax upon the owner of the theater, that is, of the building where the exhibitions are given, but on the person or association engaged in the business of giving cinematographic exhibitions, as clearly stated in the said ordinance, fixing the amount to be paid by the person, association, or corporation owning a cinematograph engaged in such business for each kind of cinematographic exhibitions. So that the owner of a cinematograph or a building used for cinematographic exhibitions is, under that ordinance, bound to pay the tax imposed not as owner or proprietor of the cinematograph, but as person engaged in the giving of cinematographic exhibitions in the premises or building of the cinematograph for admission to which a certain sum is charged, which is not against the spirit prevailing in the tax law, nor against the true meaning of section 2307 of the Administrative Code by virtue of which the municipal council of Daet passed Ordinance No. 94 in question.

For all of the foregoing, the judgment appealed from is affirmed, with the costs of both instances against the appellants. So ordered.

*Street,*

*Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.*