The Power of the Municipal Board of the City of Manila to Enact Ordinance No. 2958 Under Section 2444 (m) of the Revised Administrative Code

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Ordinance No. 2958 of the City of Manila, enacted April 25, 1946, has, from its inception, been met with a torrent of opposition from those likely to be affected by its enforcement. The issue is still alive today between the city authorities and the parties concerned.

The Ordinance entitled, "AN ORDINANCE IMPOSING A FEE ON THE PRICE OF EVERY ADMISSION TICKET SOLD BY CINEMATOGRAPHS, THEATERS, VAUDEVILLE COMPANIES, THEATRICAL SHOWS, BOXING EXHIBITIONS, AND *RACE TRACKS;* AND PROVIDING FOR OTHER PURPOSES" has, in Section 1, provided for a graduated scale of tax varying from ₱.05 to ₱.50 depending upon the price of the admission ticket. It is claimed by the authorities of the City of Manila that this Ordinance was passed under express charter grant of power contained in Section 2444 (m) of the Revised Administrative Code, as amended. No concealment is attempted and admission is readily made that the Ordinance was passed in the exercise of the taxing power supposedly granted the City of Manila.

a. *Powers of a Municipal Corporation.*

It may be accepted, as a final proposition, that the powers of a municipal corporation as is the City of Manila, are necessarily limited in character. As instrumentalities of the general government, purely legislative creations, they can exercise only such powers as have been expressly granted them, such as are necessarily implied or incidental from those granted, (U.S. v. Ten Yu, 24 Phil. 1; U.S. v. Joson, 26 Phil. 1) as well as those which are indispensable to the declared objects and purposes of the corporation. (19 RCL pp. 768-770).

Again, the power to tax, in relation to municipal corporations, if it were to be exercised at all, should be clearly and expressly delegated in the charter or general statutes affecting the municipalities, or be a necessary incident to the carrying out of granted powers. This is a corollary of the broader proposition that the taxing or licensing power does not inhere

in a municipal corporation. (Hercules Lumber Co. vs. Municipality of Zamboanga, 55 Phil. 653; Fowle v. Alexandria, 3 Pet. (US) 398; State v. Smith, 67 Conn 541; 38 Am Jur p. 17). It was in virtue of these legal principles that Section 2444 (m) of the Revised Administrative Code was enacted, providing that—

> Sec. 2444.—Except as otherwise provided by law, and subject to the conditions and limitation thereof, the Municipal Board shall have the following legislative powers:
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> (m) To tax, fix the license fee and regulate the business of hotels, restaurants, refreshment places, cafes, lodging houses, boarding houses, livery garages, public warehouses, pawnshops, theaters, cinematographs; and further to fix the location of, and to tax, fix the license fee for, and regulate the business, of livery stables, boarding stables, embalmers, public billard tables, public pool tables, bowling alleys, dance halls, public dancing halls, cabarets circus and other similar parades, public vehicles, race tracks, horse races, junk dealers, theatrical performances, public exhibitions, circus and other performances and places of amusements,, match factories, blacksmith shops, foundries, steam boilers, lumber yards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerin and other establishments likely to endanger the public safety or give rise to conflagration or explosions, and, subject to the provisions of ordinances issued by the (Philippine Health Service) Bureau of Health in accordance with law, tanneries, renderies, tallow chandleries, bone factories, and soap factories."

The National Assembly of the Philippines, by Commonwealth Act No. 466, approved August 7, 1940, enacted a National Internal Revenue Code, providing for a similar imposition, but covering more subjects than have been embraced by the Ordinance. (See Section 260; and as amended by Republic Act No. 39, Section 8). The said Code calls the tax sought to be imposed by the National Internal Revenue Code "AMUSEMENT TAXES."

An examination of the Ordinance in question does not show the name of the tax sought to be imposed. This matter is of paramount importance in the determination of tax cases, not so much in putting legal significance upon the matter of a name, but in helping discover the nature of a tax, where the name sufficiently indicates it. (51 Am Jur p. 58) Ordinance No. 2958 simply calls the tax —"A FEE ON THE PRICE OF EVERY ADMISSION TICKET." As an imposition, however, in every respect, save in schedule and other details, identical with that one imposed by Commonwealth Act No. 466, Section 260, *supra*, the one provided for by the Ordinance is clearly an amusement tax. This specific kind of tax is, by the Code, a distinct class among those enumerated by it. It is, for instance, distinct and apart from privilege taxes on business (section 18, Commonwealth Act No. 466) which as will later be discussed is the

specific tax authorized by its Charter to the City of Manila

b. *Name given to a tax by the Legislature. Effect given by the Courts.*

Cases have arisen in the United States concerning the interpretation of Federal and State constitutions concerning the nature of a particular tax, whether it be an excise, poll, property or income tax. This question is peculiar to the American Federal system. In deciding whether a particular tax is of a particular kind, although conceding that the legislative designation is not controlling upon the courts, judicial tribunals have held that the designation given by the legislative body is entitled to much (Flint v. Stone Tracy Co., 220, U.S. 107) or at least some (Ingels v. Riley, 5 Cal. (2d) 154; SS White Dental Mfg. Co. v. Com. 212 Mass 35; George E. Breece Lumber Co. v. Mirabal, 34 NM. 634, affirmed in George E. Breece Lumber Co. v. Asplund, 283 US 788; Redfield v. Fisher, 135 Or 180; Aberdeen Sav. & L. Asso. v. Chase, 157 Wash 351) weight.

This judicial respect for the legislative body should find higher regard in this jurisdiction where Congress or the former National Assembly was laboring under no similar constitutional inhibition, the legislative body being free to define and designate taxes imposed by it, the only specific constitutional requirement being that taxation be uniform. (Section 22, subsection (1), Article VI, Constitution of the Philippines). Hence, the designation given by the National Assembly to the tax imposed under the Internal Revenue Code as amusement taxes (Chapter IV Title VIII) should control the determination of the nature of a similar imposition under the Ordinance in question. And whatever might be the name given by the City to that tax should be controlled, in determining its particular nature, by a similar tax imposed by general law. The whole matrix of the law of municipal corporation is controlled, when examined more fully, by the enactments or intention of the legislature; this is because municipal corporations are but its creations.

It might be argued, however, that the City of Manila might adopt a classification different from that adopted by the legislature and hence, that the City might give to its tax ordinance a different name or nature than that adopted by general law.

Decisions in the United States take the position that where a State has made a classification for purposes of taxation, a municipality is without power to make a different classification, or to subdivide the classification defined by the state, in providing for a similar municipal tax. (Kansas City v. J. I. Case Threshing Mach. Co. 337 Mo. 913, 87 SW (2d) 195, citing RCL; See 38 Am Jur p. 24). "The effect of allowing municipalities to enact ordinances classifying and defining occupations for purposes of municipal taxation different from the classification made by state laws on the subject would be oppressive, and would have the effect of allowing the auxiliary government, established for the more

efficient administration of justice, without any inherent power to make laws or adopt regulations of government, to make laws and adopt regulations in conflict with those of the State, its creator. This conflict would destroy the uniformity of the operation of the tax laws of the municipality as compared with those of the state in respect to the persons upon whom they are operative.

"The rule seems established that a municipality has power to classify for purposes of taxation, including license taxes and occupation taxes, where no classification for such purposes has been made by the State." (38 Am Jur Sec. 345, pp. 34-35).

From all the foregoing consideration, it is clear that the tax sought to be imposed by the City of Manila is an amusement tax as controlled by a similar tax imposed by the Internal Revenue Code. Under these set of circumstances, the question arises whether the ordinance in question falls within the charter powers of the City of Manila, specifically, under Section 2444 (m) of the Revised Administrative Code. More squarely stated: May the City of Manila levy an AMUSEMENT TAX under the aforecited provision?

c. *Power of the City of Manila.*

The City of Manila is limited to taxing, fixing the license fee, and regulating the business of "...theaters, cinematographs"; and further to fixing the location of, taxing, fixing the license fee for, and regulating the business of "circus and other similar parades, public vehicles, race tracks, horse races, junk dealers, theatrical performances, public exhibitions, circus and other performances and places of amusements.. " (Section 2444 (m) Revised Administrative Code). That the City of Manila may tax the business of the organizations enumerated above is, beyond question, a granted power.

The law clearly contemplates the imposition of a tax on business. This, we repeat, the City of Manila may impose upon express and unmistakable delegated authority. In construing tax ordinances of municipal corporations, resort should necessarily be made to the intention of the creating or delegating legislative power. This is necessarily implicit in the first and fundamental principles stated in the beginning of this discussion—municipal corporations being legal personalities exercising the powers of taxation by pure delegation.

We entertain no doubt that this specific taxing power (tax on business) is the only authority intended by the Legislature for the City of Manila. The National Internal Revenue Code provides—

> "Sec. 179. *Legality of business as affected by payment of tax.*—The payment of a business or occupation tax shall *not exempt any person from any tax, penalty, or punishment provided by law or ordinance in places where such business or occupation is prohibited or regulated by municipal law, nor shall the payment of any such tax be held to prohibit any municipality from placing a tax upon the same business or occupation, for lo-*

cal purposes, where the imposition of such tax is authorized by law."

We find in particularly sec. 179, *supra*, a ratification or an implied reference to section 2444 (m) of the Charter of the City of Manila and an express recognition that this power to levy a tax on business is or might have been already exercised by municipal corporations. An express reference, however, may be found in section 196, paragraph 1, of the same Code in providing that—

> "Sec. 196. *Reduction of tax on race tracks.* — The provincial board of any province or the city council of any chartered city may in any year reduce the per diem tax on race tracks for the ensuing calendar year or years to any amount not less than twenty pesos; *but no such reduction shall be made for the City of Manila or for any place situated within a radius of ten kilometers from the boundary of the City of Manila*"

It will be noted that race tracks are one of those enumerated by section 2444 (m), *supra* as being within the power of the City of Manila to tax.

On how this specific taxing power may be exercised, section 193 of the Code, as relate to race tracks, at least, provides: "(r) Owners of race tracks, for each day on which races are run on any track, three hundred pesos." Other instances of the exercise of this power are found in the same provision.

It is clear from the above provisions of law that the taxing power granted the City of Manila was expected or more precisely, perhaps, *intended* by the legislature to be exercised in the manner it was so exercised by the delegating authority.

A cursory examination, however, reveals that the Ordinance in question is not in the exercise of the power to levy a tax on business as above shown. It is properly a tax on amusements. That this attempted exercise of power is denied to the City of Manila is again shown by the Code itself. We have shown affirmative recognition on how its particular charter power should be exercised. We are now quoting what we might call a negative statement of policy, indicating succinctly that it was not the intention of the legislative body to empower the City of Manila to levy an amusement tax. The second paragraph of section 260, Internal Revenue Code provides: "In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue *before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs, and the distributors of the cinematographic films.*" The division of the gross receipts after deduction and payment of the amusement tax was clearly intended to be final and to be free from any further interference by any inferior taxing powers. It is noteworthy that since the Ordinance here in question was passed and approved, the Congress of the Philippines enacted Republic Act No. 39, to take effect on October 1, 1946, amending (section 8) Section 260 of the National Internal Revenue Code.

The second paragraph of the Code as quoted herein was re-enacted in full without change. Republic Act No. 39, it will be observed, was passed after Ordinance No. 2958 here in question had already been in force. This fact conclusively shows the legislative intention referred to here.

Further, amusement taxes are not, by the classification adopted by the Code, *a tax on business*. It is a tax placed under a classification of itself. And the Charter of the City of Manila may be minutely scanned in vain for authority to levy such an amusement tax. It is, however, this particular exercise of power that the City of Manila has chosen, under a mistaken assumption of authority to do so.

In view of the foregoing considerations, showing clear legislative intention, the conclusion is inevitable that Ordinance No. 2958 was enacted beyond the charter powers of the City of Manila. It might, however, be argued upon strained construction that levying the questioned imposition was within the charter powers of the City. For this purpose, we are discussing in the following heading cardinal rules in guidance of judicial construction of tax ordinances.

d. *Guiding Principles in Construing Municipal Exercise of Taxation.*

The conclusion reached in the preceding subdivision finds support in numerous decisions both of the Supreme Court of the Philippines and those of American Federal and State Courts. The rule is well established that a grant of power to tax from the legislature to a municipal corporation is to be strictly construed (McCarthy v. Tucson, 26 Ariz 311; Jacksonville v. Sedwith, 26 Fla 163; South Holland v. Steni, 373 Ill 472; Terre Haute v. Kersey, 159 Ind 300; Palmer v. State, 88 Tenn 5[illegible]3; White Oak Coal Co. v. Manchester, 109 Va 749; Chain Belt Co. v. Milwaukee, 151, Wis 188; State ex rel. Sampson v. Sheridan, 25 Wyo 347). If there is any fair and reasonable doubt as to the extent of power so delegated, the doubt must be resolved against the municipality claiming the right to exercise it, and the power held not to exist. (Barnard v. Chicago, 316 Ill 519; Re Unger, 22 Okla 755; Ex parte Garza, 28 Tex App. 381; Chain Belt Co. v. Milwaukee, 151 Wis 188; Sedalia ex rel. Ferguson v. Shell Petroleum Corp. 106 ALR 1327; Hewin v. Atlanta, 121 Ga 723; 19 RCL pp. 768-770). This principle is adopted here when the Supreme Court stated that municipal councils can exercise the power of taxation only to the extent specified by law; and this power cannot be extended by strained implications. (Hercules Lumber Co. v. Municipality of Zamboanga, 55 Phil. 653, 655).

Under these principles, it was held that a charter authority of a municipal corporation to impose a tax annually upon such subjects as may be assessed with state taxes, or upon all subjects taxable by the State, does not empower it to levy an inheritance tax on the estates of its residents. (Wytheville v. Johnson, 108 Va 589, 6[illegible] SE 328)

Again, the power of a municipal corporation to tax mere incidents of business is not conferred by a charter which authorizes it to tax a business. (Hewin v. Atlanta, 121 Ga 723, 49 SE 765). In this particular case, under review, admission tickets are mere incidents of the business sought to be taxed; and taxation of the same is classed by the Code as amusement tax.

The principles above-stated are necessary corollaries of the legal fact of municipal corporations being mere creatures of the general government and as such, they possess no inherent powers of sovereignty. But more closely considered, the limitations imposed upon their taxing authority, in so far as identical with those upon the general power of taxation as a sovereign prerogative, spring from the very nature and breadth of the taxing power. In so far as the amount of a tax, unless limited by the charter or the constitution, is left to the discretion of the municipal corporation (38 Am Jur 14), to that extent the legislature has invested it with what Chief Justice Marshall (McCulloch v. Maryland, 4 Wheaton 316, cited in Sarasola v. Trinidad, 40 Phil. 252. 262) termed the power to destroy. This principle was invoked to sustain the proposition that the power of taxation is unlimited (Evans v. Gore, 253 US 245; Citizens Sav & L. Asso. v. Topeka, 20 Wall 655). In view of this cardinal principle, "the power to destroy, which may be the consequence of taxation, is a reason why the right to tax should be confined only to subjects which are lawfully embraced therein, even though it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope." (15 Am Jur p. 80). Observing this principle, our Supreme Court (Froelich & Kuttner v Collector of Customs, 18 Phil. 461) as well as American courts, Federal and State, have adhered to the universal proposition that in case of doubt tax laws are to be interpreted most strongly against the government (Gould v. Gould, 245 US 151; Dunbar v. Commissioner of Internal Revenue (CCA 7th) 119 F (2d) 367; Rodenbough v. United States (CCA 3d) 25 F (2d) 13; Bankers' Trust Co. v. Bowers (CCA 2d) 295 F 89; Rudolph v. Potomac Electric Power Co. 58 App DC 54; Rudolph v. Know, 52 App DC 33; Majestic Household Utilities Corp. v. Stratton, 353 Ill 86; Com ex rel. Martin v. Stone, 279 Ky 243; East Livermore v. Livermore Falls Trust & Bkg. Co. 103 Me 418; Hamilton Mfg. Co. v. Lowel, 274 Mass 477) and in favor of the citizen or taxpayer. (Hassett v. Welch, 303 U.S. 303; White v. Aronson, 302 U.S. 16; McFeely v. Commissioner of Internal Revenue, 296 U.S. 102; Froelich & Kuttner v. Collector of Customs, *supra*).

In view of these considerations, we submit that both under clear statutory provisions, indicating legislative intention, and judicial precedents, the City of Manila exceeded its powers in enacting Ordinance No. 2958 in question. The power to tax is a separate, independent pow

er, and exists in municipal corporation only to the extent to which it is clearly conferred by their charters or other statutes, and its existence cannot be inferred or deduced from other powers conferred. (Jackson v. Newman, 59 Miss 385). Municipal corporations can levy no taxes except such as are authorized by their charters. (Winston v. Beeson, 135 NC 271; See 38 Am Jur p. 73).

Lawyer and the Law

YOU may, Gentlemen, if you please, be a vast Accession to the Felicity of your Country... Perhaps you may discover many yet wanting in Law: mischiefs in the Execution and Application of Laws, which ought to be better provided against; Mischiefs annoying of Mankind, against which no laws are yet provided. The Reformation of the Law, and more Law for the Reformation of the World is what is mightily called for. Reverend Cotton Mather, quoted in *Fragments of American Legal History*, 19 Tennessee Law Review, No. 5, Dec. 1946, p. 538.