

Republic of the Philippines
REGIONAL TRIAL COURT OF BATAAN
Third Judicial Region
Branch 2
Balanga City, Bataan

PHILIPPINE TOBACCO
INSTITUTE, INC.,

Petitioner,

Special Civil Action No. 10805

- versus -

THE CITY OF BALANGA CITY,
CITY MAYOR OF BALANGA,
CITY COUNCIL OF BALANGA,
Respondents.

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DECISION

This is a Special Civil Action for Declaratory Relief under Rule 63 of the Rules of Court filed by petitioner Philippine Tobacco Institute, Inc. (“PTI”), challenging the validity of Ordinance No. 16, series of 2016, otherwise known as the Tobacco Free Generation End Game Strategy Ordinance of Balanga City, Bataan (the “Assailed Ordinance”).

The Assailed Ordinance prohibits, among others, the sale of any tobacco product, Electronic Nicotine Delivery System and other similar products¹ to any member of the so-called “Tobacco-Free Generation” (“TFG”).² Section 4 of the Assailed Ordinance defines a member of the TFG as a person born on or after January 1, 2000 in the City of Balanga and also outside the City of Balanga provided he or she has resided in Balanga City for at least six (6) months prior to breaching the Assailed Ordinance. Penalties for violation of the Assailed Ordinance are provided for in Section 5 thereof consisting of fines from P1,500.00 to P5,000.00, with subsidiary penalty of imprisonment, and/or imprisonment up to six (6) months. If a minor violates the Assailed Ordinance, the parents, or those exercising parental authority, shall be held liable.

¹ For brevity, the decision will collectively refer to these products as “tobacco products.”

² Section 3.

PTI alleges that the Assailed Ordinance is: 1) contrary to Republic Act No. 9211, the Tobacco Regulation Act, ("R.A. 9211") and Executive Order No. 290 (the "Family Code"); and 2) an invalid exercise of police power as it violates the equal protection clause of the Constitution and because the means employed are unduly oppressive.

Respondents, the City of Balanga, Mayor of Balanga City and City Council of Balanga, counter that the Assailed Ordinance is presumed valid for being issued pursuant to the General Welfare Clause and its enactment is within the powers of the City Council of Balanga under the Local Government Code of 1991 ("LGC"). Respondents also insist that the Assailed Ordinance complied with the procedural and substantive requirements of the law and the imposition of subsidiary liability does not violate Article 219 of the Family Code.

The Office of the Solicitor General ("OSG") has taken the side of PTI in maintaining that the Assailed Ordinance is invalid for not being in compliance with the procedural and substantive requirements of the law. The OSG also argues that the imposition of criminal liability violates substantive due process and amends the provisions of Republic Act No. 9344, or the Juvenile Justice and Welfare Act, ("R.A. 9344").

After carefully weighing the arguments advanced by the parties, the Court finds that there is sufficient legal basis to grant the petition.

Respondents represent that the Assailed Ordinance is a valid exercise of legislative and police powers enacted to establish a learning and healthful environment in Balanga City pursuant to Section 458 (a) in relation to Section 16 of the LGC.³

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order, safety, and general welfare of the people. As an inherent attribute of sovereignty, police power primarily rests with the State but, in furtherance of the State's policy to foster genuine and meaningful local autonomy, the national legislature delegated the exercise of police power to local government units as agents of the State.⁴ This delegation is found in Section 16 of the LGC,⁵ known as the General Welfare Clause, which provides:

³ Respondents' Memorandum, paragraphs 44 to 66.

⁴ *City of Batangas v. Philippine Shell Petroleum Corp.*, G.R. No. 195003, June 7, 2017.

⁵ *MMDA v. Be-Air Village Association, Inc.*, G.R. No. 135962, March 27, 2000.

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“Sec. 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.”

The General Welfare Clause embodies the legislative grant that enables the local government unit to effectively accomplish and carry out the declared objects of its creation, and to promote and maintain local autonomy.⁶ A local government unit is considered to have properly exercised its police powers only if it satisfies the following requisites, to wit: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive. The first requirement refers to the Equal Protection Clause of the Constitution; the second, to the Due Process Clause of the Constitution.⁷ PTI asserts that the Assailed Ordinance fails on both requirements.

On the Equal Protection challenge, PTI claims that the Assailed Ordinance draws an invalid distinction between adults born before January 1, 2000 and those born thereafter. Furthermore, PTI points out that the Assailed Ordinance does not apply to all members of the same class since it applies only to those born in the City of Balanga or are residents thereof for at least six (6) months.⁸ The OSG similarly argues the same.⁹

In *City of Manila v. Laguio, Jr.*,¹⁰ the Supreme Court explained that:

⁶ *Rural Bank of Makati, Inc. v. Municipality of Makati*, G.R. No. 150763, July 2, 2004.

⁷ *Parayno v. Jovellanos*, G.R. No. 148408, July 14, 2006.

⁸ PTI's Position Paper, paragraphs 44 and 46.

⁹ OSG's Position Paper, paragraphs 74 to 75.

¹⁰ G.R. No. 118127, April 12, 2005.

“Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.”

Respondents have taken a great deal of effort to explain the public health hazards of tobacco.¹¹ As narrated by respondents, there are more than 7,000 chemicals in cigarette smoke, 250 of which are toxic. Smoking causes heart diseases, cancers, stroke and chronic obstructive pulmonary disease, among others. Smoking also increases the risk for cataracts and age-related muscular degeneration, contributes to gum disease and tooth loss and weakens the immune system. Tobacco kills at least 87,600 Filipinos every year and affects teenage smokers and adults alike. In describing the dangers of smoking, respondents have unwittingly shown that its ordinance violates the Equal Protection Clause.

As aforesaid, equal protection does not require the universal application of the laws to all persons or things without distinction and permits classification. Such classification, however, to be valid must pass four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.¹²

If tobacco indiscriminately affects people of all ages, the Court is in a quandary as to why the Assailed Ordinance would discriminate between those born before and after January 1, 2000. The distinction is apparently superficial and does not rest on substantial differences. A person born prior to January 1, 2000 is just as likely to be affected by tobacco smoke as a person born after. By explaining that tobacco kills even those persons born before January 1, 2000, respondents have only shown that the Assailed Ordinance suffers from an invalid classification violative of the equal protection clause.

As for the second requisite, as held in *Hon. Fernando v. St. Scholastica's College*,¹³ for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the

¹¹ Respondents' Memorandum, paragraphs 78 to 85.

¹² *Bartolome v. SSS*, G.R. No. 192531, November 12, 2014.

¹³ G.R. No. 161107. March 12, 2013.

following substantive requirements: (1) it must not contravene the Constitution or any statute; (2) it must be fair, not oppressive; (3) it must not be partial or discriminatory; (4) it must not prohibit but may regulate trade; (5) it must be general and consistent with public policy; and (6) it must not be unreasonable.

PTI and the OSG both argue that the Assailed Ordinance is invalid for imposing a total ban on the sale and distribution of tobacco products to the TFG.¹⁴ Respondents answer this by arguing that there is no absolute prohibition but merely regulation.¹⁵

Though the Assailed Regulation will allow PTI to sell tobacco products to persons falling outside the definition of the TFG, it cannot be denied that said market will shrink little by little owing to the fact that the prohibition is based on a specific cut-off date, i.e., January 1, 2000. This is confirmed by respondents when they said that the Assailed Ordinance was intended “eventually to eliminate smoking and prevent exposure of the community to the harmful effects of tobacco smoke.”¹⁶

Thus, it is evident that respondents are not merely regulating the sale of tobacco but are prohibiting it, albeit gradually. While at first, when the Assailed Ordinance took effect, the prohibition was limited to minors, it now covers those who have reached the age of majority. As time goes on, even senior citizens will be included and, eventually, the TFG will cover all living beings born in the City of Balanga or residing therein for more than six (6) months. In fact, it is incorrect for respondents to claim that “the restriction is specific to a generation of young people.”¹⁷ The TFG will cover not only one “specific generation of young people,” but all subsequent generations to come both young and old. Ultimately, an absolute ban will be in effect on the selling of tobacco products to all persons born in the City of Balanga or are residents thereof for at least six (6) months. The effect is similar to a provision affording companies merely a grace period to sell their products with the end result of an absolute prohibition.

The fact of the matter is tobacco, despite numerous studies showing its negative effects, is not absolutely prohibited or banned from being sold to consumers except when minors are involved under R.A. 9211. Hence, under certain restrictions, PTI is engaged in a legitimate business and has the right to sell it, and any ordinance prohibiting PTI from selling to any person

¹⁴ PTI's Position Paper, paragraph 83; OSG's Position Paper, paragraph 31.

¹⁵ Respondents' Memorandum, paragraphs 132 to 136.

¹⁶ Respondents' Memorandum, paragraph 135.

¹⁷ Respondents' Memorandum, paragraph 133.

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regardless of age is an unreasonable and oppressive interference of business. It will result in an unwarranted and unlawful curtailment of property and personal rights and, thus, cannot, under the guise of exercising police power, be upheld as valid.

Respondents are not wrong when they said that an ordinance enjoys the presumption of validity.¹⁸ However, the power to legislate under the General Welfare Clause is not meant to be an invincible authority. Although the Local Government Code vests the municipal corporations with sufficient power to govern themselves and manage their affairs and activities, they definitely have no right to enact ordinances dissonant with the State's laws and policy.¹⁹ In this regard, the following provision of R.A. 9211 is relevant to this discussion.

Section 9 of R.A. 9211 provides:

“SECTION 9. Minimum Age Sales. — Under this Act, it shall be unlawful:

- a. For any retailer of tobacco products to sell or distribute tobacco products to any minor;
- b. For any person to purchase cigarettes or tobacco products from a minor;
- c. For a minor to sell or buy cigarettes or any tobacco product; and
- d. For a minor to smoke cigarettes or any other tobacco products.”

Clearly, the selling of tobacco products is duly authorized by the national government through an Act of Congress so long as it does not involve minors. On the other hand, as explained, the Assailed Ordinance absolutely prohibits the sale of tobacco products to any member of the TFG even if that person is not a minor. Again, although there is evidence to show the health hazards of smoking, the national government permitted its sale to non-minors and respondents herein, a local government unit, cannot issue an ordinance that would seek to prohibit what the national government permits. Stated otherwise, what the national legislature expressly allows by law, a city council may not disallow by ordinance.²⁰

As elucidated in *Magtajas v. Pryce Properties Corp.*,²¹ cited by PTI and

¹⁸ Respondents' Memorandum, paragraph 40.

¹⁹ *Mosqueda v. Philippine Banana Growers and Exporters Association, Inc.*, G.R. No. 189185, August 16, 2016.

²⁰ *Lina, Jr. v. Pano*, G.R. No. 129093, August 30, 2001.

²¹ G.R. No. 111097, July 20, 1994.

Respondents also cited the case of *Samahan ng mga Progresibong Kabataan v. Bautista*²⁵ in claiming its right to extend criminal liability to the parents of the minors but the Court finds that respondent may have misread the case. The ordinance held to be valid, which is the Quezon City Ordinance, is different from the Assailed Ordinance in that the former made the parents/guardians directly liable for their own act or omission whereas the latter made them liable for the minors' violation. This is clear from the wording of Section 8 of the Quezon City Ordinance that "[t]he penalty for **the Parent/Guardian who violates** this ordinance shall be."²⁶ Here, the Assailed Ordinance made the parents/guardians vicariously liable, to wit: "the parents or those persons exercising parental authority over **the minor who has violated** any provision of this Ordinance shall be held liable."²⁷

The Court finds PTI's position that the Assailed Ordinance amends or increases the subsidiary civil liability of the parent/guardian under Article 219 of the Family Code also untenable. As pointed out by the OSG, Article 219 of the Family Code is not applicable since it concerns damages caused by the minor. Damages is the pecuniary compensation or indemnity to a person who has suffered loss, detriment, or injury.²⁸ In contrast, the Assailed Ordinance deals with fines and/or imprisonment, which are the penalties.

Moreover, it is incorrect for PTI to characterize the liability imposed upon the parents and guardians by the Assailed Ordinance as subsidiary. To say that one's liability is subsidiary means that it merely becomes secondary and only arises if the one primarily liable fails to sufficiently satisfy the obligation.²⁹ Rather, the principle of parental liability being imposed is a species of what is frequently designated as vicarious liability, or the doctrine of "imputed negligence" under Anglo-American tort law, where a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has a certain relationship and for whom he is responsible.³⁰

Neither does the Court agree with the OSG that the Assailed Provision amends the provisions of R.A. 9344. To recall, R.A. 9344, particularly Section 6 thereof, provides that a child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability and a child above fifteen (15) years but below eighteen (18) years of

²⁵ G.R. No. 225442, August 8, 2017.

²⁶ <http://quezoncitycouncil.ph/ordinance/SP/sp-2301.%20s-2014-1.pdf>; Emphasis supplied.

²⁷ Emphasis supplied.

²⁸ *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004; Separate Opinion of J. Tinga.

²⁹ *Guy v. Gacott*, G.R. No. 206147, January 13, 2016.

³⁰ *Tamargo v. Court of Appeals*, G.R. No. 85044, June 3, 1992.

age shall likewise be exempt from criminal liability, unless he/she has acted with discernment. The Court does not find that the Assailed Ordinance has made any amendments to said provisions. Clearly spelled out in Section 5 of the Assailed Ordinance is the sentence: "In all cases, a minor violating this ordinance is exempt from liability."

Nevertheless, the Court finds that Section 5 of the Assailed Ordinance should be invalidated owing to its violation of substantive due process of those exercising parental authority. As argued by the OSG, it is fundamental that criminal responsibility is personal and that in the absence of conspiracy, one cannot be held criminally liable for the act or default of another.³¹ This reiterates the dictum that criminal liability is personal, not vicarious. To do so results in the denial of substantive due process.

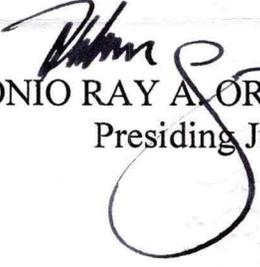
Section 5 of the Assailed Ordinance, even though it exempts minors from liability, stated "in lieu thereof, the parents or those persons exercising parental authority over the minor who has violated any provision of this Ordinance shall be held liable." Considering that Section 5 of the Assailed Ordinance attaches criminal liability to a person from the criminal act or negligence of another, said section must be struck down for also being violative of substantive due process.

In sum, while the Court recognizes the efforts of respondents in their campaign against tobacco abuse and its "consequential deleterious, injurious and harmful effects to the constituencies of the City of Balanga" and deems it as indeed a noble objective, the same must be in accordance with our national laws and conducted in a manner which does not trample upon well-established constitutional rights. To rule otherwise is to make a local government unit rise above its source of authority or sovereign within the state.

WHEREFORE, premises considered, the Court hereby declares Ordinance No. 16. Series of 2016, issued by the local government of the Balanga City, NULL and VOID for being *ultra vires* and unconstitutional.

SO ORDERED.

In chambers, 21 May 2019.


ANTONIO RAY A. ORTIGUERA
Presiding Judge

³¹ Vizconde v. IAC, G.R. No. 74231, April 10, 1987.

Copy furnished:

Philippine Tobacco Institute

City of Balanga

Office of the Solicitor General

Romulo Mabanta Buenaventura Sayoc and
Delos Angeles

City Legal Office

