

## Mensior David v. Fanapanges Municipality

State Court, Appellate Division (Truk)  
Fritz C.J., Marar and Petewon A.J.J.  
21 June 1988

*Municipalities—unchartered and unincorporated—curfew ordinance—ultra vires.*

The appellant was convicted of violating the appellee's curfew ordinance and sentenced to six months' imprisonment and \$100 fine. Having served his prison sentence, he now challenged the authority of the municipality to enforce payment of the fine. Fanapanges was not incorporated and had no municipal charter.

10 **HELD:**

By the Constitution, court decisions shall be consistent with the social and geographical configuration of Micronesia. The varying rate of development in the islands of Truk State has meant that many municipalities do not possess a charter but all may enact a curfew ordinance provided it is not in conflict with state laws.

**Legislation referred to in judgment:**

F. S. M. Constitution, article XI

**Counsel:**

*J. Japorse* for the appellant

*J. H. Rayphand* for the appellees

20 **FRITZ C.J.**

**Judgment:**

**I. Background**

The issues before this Court derive from F.S.M. Supreme Court, Trial Division (Truk), Case No. 1987-1026. The plaintiff, Mensior David, was convicted in municipal court on 31 March 1987, of violating the Fanapanges Island, Truk State, curfew ordinance and was sentenced to serve six months in jail and to pay a \$100 fine.

The plaintiff served his six-month jail term and upon jail release was ordered to pay the \$100 fine or risk further incarceration if the fine was not paid.

30 On 14 December 1987 the Trial Division of the F.S.M. Supreme Court in Truk issued an order temporarily restraining the defendants from enacting the sentence imposed upon the plaintiff and prohibited the Fanapanges Municipal Judge from taking any further action against the plaintiff in regard to the enforcement of the curfew ordinance.

The F.S.M. Supreme Court Trial Division (Truk) permanently restrained defendants, on 29 December 1987, pending final resolution of the matter. Additionally that order contained a stipulation by both parties to the deletion from the complaint of all references to the Truk State Charter.

40 The Trial Division of the F.S.M. Supreme Court in Truk determined that the issue of the Fanapanges Municipality's authority was a legal question "more properly settled by the courts of Truk State than by this Court". The F.S.M. Supreme Court Trial Court Division ordered certification of that issue to the Appellate Division of the Truk State Court in the interest of "promoting good federal and state relations, and in the provision permitting certification of issues from the states to the Supreme Court. (under authority of) F.S.M. Constitution article XI, section 8".

The issue properly before this Court by the F.S.M. Supreme Court certification order and by the consent of both parties is:

Whether Fanapanges Municipality, unchartered and unincorporated, has authority to enact the curfew ordinance?

50 The plaintiff presents the argument that because Fanapanges was not incorporated and had no municipal charter of existence at the time it enacted the curfew ordinance, that Fanapanges did not have authority to enact the curfew ordinance.

The defendants argue that the laws in effect in Truk, both at the time of the enactment of the curfew law in 1961 and at the present time, do not require that a municipality be chartered or incorporated in order to adopt ordinances. The defendant additionally asserts that the laws permit a municipality to be chartered or incorporated, and recognizes the existence of unchartered or unincorporated municipalities, and that Fanapanges had and still has authority to enact the curfew ordinance.

## 60 II. Court's Decision

The appellate division of the Truk State Court holds that the unchartered and unincorporated entity known as Fanapanges Municipality has authority to enact the curfew ordinance.

## III. Reasoning

The socioeconomic and political maturity of all islands in Truk State have not uniformly progressed at the same rate of development. This varying rate of development has resulted in only some of the islands in the state attaining the status of chartered municipality. Other islands with smaller populations and little or no commercial or economic development have not yet obtained the level of self-government and do not possess a charter.

70 The lack of a charter, however, should not prohibit a populated island from enacting a curfew ordinance as long as such an ordinance does not conflict with Truk State laws.

In arriving at this decision, this Court has taken cognizance of our constitutional mandate that, "Court decisions shall be consistent with this Constitution, Micronesia customs and traditions and the *social and geographical configuration of Micronesia*" (F.S.M. Constitution, article XI, section 11; emphasis added).

As this Court has not been called upon to consider corollary issues inherent in the application of an enacted ordinance, any such infirmities which may be present are therefore not addressed by this tribunal.

80 So ordered the 21st day of June, 1988.