

**TRUST TERRITORY OF THE PACIFIC ISLANDS**

v.

**BENIDO and PILMON LOHN**

**Criminal Case No. 10-A**

**Trial Division of the High Court**

**Ponape District**

**June 5, 1953**

Accused were charged with having violated provisions of municipal regulations of Net Municipality relating to election of *Nanmarki*, Net Municipal Regulation No. 2-52. Defendants judicially admitted that they performed acts set forth in charges but asserted that regulations were unreasonable exercise of police power, deprived them of due process of law, and violated local custom. The Trial Division of the High Court, Associate Justice J. R. Nichols, held regulations valid as reasonable exercise of police power to maintain public order where only solution under local custom would be warfare.

**1. Statutes—Presumption of Validity**

Although courts have duty to declare enactment invalid which is clearly repugnant to fundamental law of area, courts are bound to approach such questions with greatest possible caution.

**2. Statutes—Presumption of Validity**

There is presumption in favor of validity of legislative enactment, which presumption extends to municipal ordinances.

**3. Police Power—Generally**

If legislative enactment represents proper and reasonable exercise of police power it is not subject to restraint by provisions in fundamental law designed for general protection of individual life, liberty and property. (T.T.C., Sec. 4)

**4. Police Power—Generally**

Guarantees of life, liberty and property do not operate as limitation upon police power of state to pass and enforce such laws as will inure to health, morals and general welfare of people. (T.T.C., Sec. 4)

**5. Police Power—Elections**

Municipal regulations which provide for election of traditional chief in order to prevent warfare between opposing factions are essential to preservation of good order and promotion of domestic tranquility and represent reasonable exercise of police power.

**6. Police Power—Municipal Ordinances**

Where municipal regulations are reasonable exercise of police power, those accused of violating regulations are not deprived of due process of law. (Interim Regulation No. 4-48, Ch. 5, Sec. 3 (IV))

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### 7. Courts—"Quo Warranto"

Although there is no express provision for use of writ of *quo warranto* in Trust Territory, use of writ is available under prevailing law.

### 8. Ponape Custom—"Nanmarki"

Under Ponape custom, there is no way of settling dispute over who shall be traditional chief other than by war.

### 9. Trust Territory—Administering Authority—Obligations

Administering authority has responsibility for maintenance of law and order within Trust Territory. (Trusteeship Agreement, Art. 5, Sec. 3)

### 10. Custom—Applicability

When local custom fails to provide acceptable solution for problem involving all residents of governmental subdivision, it is right of one or more of three branches of government to advance solution.

### 11. Police Power—Elections

Municipal regulation is invalid as unreasonable exercise of police power insofar as it purports to disqualify accused from holding titles which may be legally conferred in future.

### 12. Statutes—Construction—Separability

Where invalid portion of municipal regulation is separable from valid portion, latter is upheld as valid.

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NICHOLS, *Associate Justice*

### FINDINGS OF FACT

1. The accused, Benido, judicially admitted that he had performed the specific acts set forth in each of the four charges placed against him in the complaint. The accused, Pilmon Lohn, judicially admitted that he had performed the specific acts set forth in each of the two charges placed against him in the complaint. Their affirmative defense is that Net Municipal Regulation No. 1-52 and Net Municipal Regulation No. 2-52 are invalid in that (1) they constitute an unreasonable exercise of the police power, (2) they deprive the accused of liberty and property without due process of law, (3) they curtail the court's right to determine whether or not a person (Benido) rightfully holds a governmental position, and (4) they are in vio-

lation of native custom. The accused, Pilmon Lohn, further contends the acts set forth in the first charge placed against him do not violate Net Municipal Regulation No. 1-52.

2. The position of Magistrate was confirmed by law in May 1948 (Interim Regulation No. 4-48, Section 6(8)). On Ponape Island, it has been the policy of the Civil Administrators and, later the District Administrators to appoint these officials. When these positions were first established, the *nanmarki* of each district was designated as magistrate. More recently, however, persons other than the *nanmarki* have been appointed as magistrate, usually upon recommendation of the *nanmarki*. Responsibilities of magistrates include the supervision of the secretary and treasurer, the promulgation of laws and regulations, the maintenance of liaison between the Government of the Trust Territory and the residents of the municipality, the submission of proposed municipal regulations for the consideration of the District Administrators, and the solemnization of marriages. Alone, he has no authority whatever to enact legislation.

3. Two lines of titles are found in each *wehy* (that is municipality) in Ponape. The six highest titles in the "A" line are as follows: *nanmarki*, *wasai*, *tauk*, *nohs*, *nanawa*, *nanpei*. The six highest titles in the "B" line are as follows: *nanken*, *nalaim*, *nansau ririn*, *nanapas*, *nanmataun itet*, *sowael lapalap*. In theory, when a title becomes vacant, all men of lower title move up one place. However, in practice, if the office of *nanmarki* becomes vacant, the first two or three title holders in the B-line and sometimes also A-2 meet and choose a successor. Conditions taken into consideration in making promotions, in addition to seniority of title, are clan superiority, industry and obedience to the *nanmarki* and *nanken*, and the title held by the father of the person under consideration.

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4. Both by custom and in accordance with certain provisions included in Land Title Documents issued by the German Government, the *nanmarki* is entitled to a fixed number of annual honor feasts. By custom he is also entitled to the first fruits of the land and he is authorized to confer and remove titles. All persons upon whom he confers titles are required to hold feasts in payment therefor. Some *wehy* set aside a canoe, a house, and certain lands for the exclusive use of the holder of this title. In Wehy Net, however, no land has been set aside for his use. The people of his *wehy* owe him certain courtesies, such as the lowering of their sails as they pass his house.

5. Governmental duties of the *nanmarki* include official participation in the Ponape Congress, suggesting to the District Administrator prospective appointees for the office of magistrate, assisting the magistrate in the promulgation of laws and regulations and such controls over property rights and inheritance as are granted him under the provisions of the German Land Title Documents.

6. Sadorlino was *Nanmarki* of Wehy Net until the time of his death about 1945. Shortly before his death, and after consultation with Joseph Iriarte, the *nalaim*, he ordered that the title of *wasai* be taken away from defendant Benido as punishment for neglecting him, Sadorlino, during the war years and he ordered that Max Iriarte be elevated from *tauk* to *wasai*. Since the person then holding the title of *nanken* was ill at the time, the above changes in title met the customary requirements. Upon Sadorlino's death, Max Iriarte succeeded him as the rightful *Nanmarki* of Net and, for a time, was so recognized by all the residents of the *wehy*.

7. A recognition of Max Iriarte as *nanmarki* by one group of people and the recognition of Benido as *nanmarki* by another group of people, brought about a feeling of extreme bitterness between the two groups, causing some

people to postpone or cancel planned marriages and others to seek divorces. A continuation of this situation would be extremely detrimental to the welfare of the residents of Wehy Net and embarrassing to the local government.

8. The supporters of Max Iriarte and those of Benido are not confined to particular geographical areas. In some areas, however, a majority of the residents supported Max Iriarte and in others the majority of the residents supported Benido.

9. The only way this matter could be settled, according to Ponapean custom, would be for the supporters of Max Iriarte and the supporters of Benido to engage in war.

10. Municipal Regulation No. 1 and Municipal Regulation No. 2 were enacted in the prescribed manner. Subsequent to the adoption and promulgation of these regulations, it was determined by an election, held in a regular manner, pursuant to the provisions of Municipal Regulation No. 1, that Max Iriarte was the choice of the majority of the people to hold the title of *nanmarki*. Although only one of Benido's supporters voted, it was clearly shown by the evidence that a majority of all persons eligible to vote were in favor of Max Iriarte.

#### CONCLUSIONS OF LAW

[1, 2] 1. Although it is the duty of the courts to declare any enactment invalid which is clearly repugnant to the fundamental law of the area, the courts are bound to approach such questions with the greatest possible caution. The basic rule is that there is a presumption in favor of the validity of a legislative enactment. In the United States, this presumption extends to enactments of all law-making bodies, including those of municipalities. In the Trust Territory of the Pacific Islands, this Court

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holds that the presumption in favor of the validity of legislation extends to municipal regulations.

[3-5] 2. It is generally held that, if a given legislative enactment represents a proper and reasonable exercise of police power, it is not subject to restraint by provisions in the fundamental law designed for the general protection of individual life, liberty, and property. These guarantees do not operate as a limitation upon the police power of the state to pass and enforce such laws as will inure to the health, morals, and general welfare of the people. Since the enactment of Municipal Regulation No. 1 and Municipal Regulation No. 2, or some similar legislation, was essential to the preservation of good order and the promotion of domestic tranquillity, it is held that they represent a reasonable exercise of the police power.

[6] 3. Interim Regulation No. 4-48, Chapter 5, Section 3(IV) provides in part that "no person shall be deprived of life, liberty, or property without due process of law". In this case, however, even if the accused, Benido and Pilmon Lohn, have been deprived of liberty or property, their fundamental rights have not been violated because it was held in paragraph 2 of the conclusions of law herein that the Municipal Regulations in question represent a reasonable exercise of the police power.

[7] 4. In no part of the fundamental law of the Trust Territory and in none of the Interim Regulations is there any express provision for the use of the writ of *quo warranto* (or an action in the nature thereof) by which determination of a claim, which a party asserts to the use or exercise of an office, is authorized. Under the prevailing law, in the absence of constitutional and statutory provisions, the writ of *quo warranto* (or an action in the nature thereof) is available for use in the Trust Territory. Municipal Regulation No. 1 and Municipal Regulation

No. 2 in no way abridge this right and objection to their validity on that basis is groundless.

[8-10] 5. Under Ponapean custom, there was no way of settling the dispute which provoked the enactment of the regulations in question, other than war. By the provisions of Article 5, Section 3, of the Trusteeship Agreement, the administering authority has accepted responsibility for "the maintenance of law and order within the Trust Territory". When local custom fails to provide an acceptable solution for any given problem involving all residents of a governmental subdivision, it is the right, perhaps even the duty, of one or more of the three branches of government, depending upon the nature of the problem to advance a solution. Custom having failed to offer an acceptable solution to the problem confronting the legislators of Net Municipality, the objection to the validity of the regulations in question on the basis that they are in violation of local custom is without merit.

6. This Court does not consider the writing of "a letter to the Secretary of Net, Enerico Mallarme, stating that the election for *Nanmarki* of Net on March 31 and April 1, 1952, was null and void" constitutes claiming "for them their titles in an argumentative fashion" within the meaning of Municipal Regulation No. 1-52, Section 4.

[11, 12] 7. While the Court feels that the provisions of Municipal Regulation No. 1-52, Section 2, are invalid as an unreasonable exercise of police power, insofar as they purport to disqualify the accused for holding titles which may legally be conferred in the future, it considers that this defect relates to a separable part of the regulation and does not invalidate the provisions of Municipal Regulation No. 1-52, Section 4, and Municipal Regulation No. 2-52, Section 1, which the accused are charged with having violated.