

AMBROS, INC., Plaintiff

v.

MUNICIPALITY OF TINIAN and ANTONIO S. BORJA,

also known as ANTONIO BORJA,

Defendants

Civil Action No. 81

Trial Division of the High Court

Mariana Islands District

June 2, 1965

Action to recover debt owed plaintiff as result of sale of quantities of beer by plaintiff to defendant Mayor acting for defendant Municipality. Municipality denied liability on ground Mayor had no authority to enter into such contract, and plaintiff contends Municipality cannot retain benefits of good faith dealings and deny liability. The Trial Division of the High Court, Chief Justice E. P. Furber, held that purchases were within power of Municipality and Mayor's actions were sufficiently binding on Municipality to make it liable for value of goods in question.

1. Statutes-Construction

It is not for courts to question or pass of wisdom of legislative intent, but to allow it full effect within legal limits.

2. Municipalities-Charter

Rule of strict construction of municipal charters followed in United States cannot be applied to that of Tinian where intent of legislature is to control activity of municipality through District Administrator rather than through detailed limitation of municipal powers.

3. Municipalities-Powers

State may itself, or through its municipalities, constitutionally engage in large number of business activities commonly carried on by private enterprise, levy tax to support activity, and compete with private interests engaged in like activity.

4. Municipalities-Powers

Power of state to buy and sell intoxicating liquors within its borders and to authorize municipalities to do so comes within police power.

5. Municipalities-Powers

Power of state to buy and sell intoxicating liquors within its borders and to authorize municipalities to do so is proper method to accomplish governmental purposes and perform governmental function so far as constitutional limitations are concerned, even though for tax purposes such activity may be considered to be private business.

6. Municipalities-Powers

Purchase of beer for resale is within power of municipality and not in defiance of any express policy of Trust Territory law.

7. Municipalities-Powers

Municipality may become obligated on implied contract to pay reasonable value of benefits accepted by it as to which it has general power to contract, even though contract under which benefits obtained may have been irregularly made or unenforceable itself.

FURBER, *Chief Justice*

OPINION

This action was submitted on briefs on the basis of the following agreed facts : –

1. The defendant Borja in 1961 while Mayor of and claiming to act on behalf of the defendant Municipality of Tinian, ordered and received from the plaintiff beer to the value of \$544.50.

2. The defendant municipality has made the following payments on account of said beer and no more:

Dec. 3, 1962	\$30.00
Feb. 28, 1963	24.00
Apr. 26, 1963	25.00
Total	<hr/> \$79.00

Thus there remains an unpaid balance of principal of \$465.50.

The defendant Municipality of Tinian claims that it is not bound by the purchase of the beer in question by its then mayor because he had no authority to enter into such a contract, while the plaintiff contends that the municipality is estopped from denying liability on a purely technical ground and that it is not fair to allow the municipality to retain the benefits of good faith dealings and deny liability. The defendant Borja claims that he was act-

ing at all times in question as Mayor of and in behalf of the Municipality of Tinian, that when he became Mayor in July 1958 the municipality owed the plaintiff \$1,163.70 and had already adopted the practice of importing beer and selling it to businessmen, that he discussed the matter with the Congress of Tinian, and with their approval continued the practice in the hope of making money to pay off the debts of the municipality. He therefore denies any personal liability.

The defendant municipality's claim that the contract in question was unauthorized is based on two contentions:-

First, that the officers of a municipality have only such powers as are specifically granted them; and

Second, that the contract in question is not within the scope of the powers expressly granted by the municipal charter, or necessarily incident thereto or indispensable to the proper exercise of the powers granted.

As to the first point, it is very clear that facts agreed upon do not include any formal authorization by the Congress of Tinian, nor do these facts include any statement as to any budgetary provisions for meeting such contract. On the other hand, the specific claims of the defendant Borja have not been controverted.

As to the second point, the defendant municipality relies upon a rule of strict construction which is often applied to grants of powers to municipalities in the United States, and upon a limitation on municipal powers sometimes held to be imposed by a constitutional due process clause similar to that in Section 4 of the Trust Territory Code. In the present instance, however, the grant of powers in the Charter of the Municipality of Tinian is extremely broad without any such enumeration of specific powers as is common in the United States. The essential part of Section I, paragraph 7, of the charter provides as follows:-

"The Congress of Tinian shall have the authority to enact all legislation, within the limits of their authority as designated by this charter and by the Administering Authority, affecting the interest and welfare of the people of Tinian. * * * *"

The principal limitation on this power appears to be in the final sentence of paragraph 8 of the same section. This paragraph deals with the manner in which bills shall be approved, including the veto power of the mayor, and then concludes as follows : —

"To become effective, all legislation shall, in addition, require the approval of the District Administrator."

[1, 2] The court considers that the foregoing shows a legislative intent to control the activity of the municipality through the supervision by the District Administrator rather than through any detailed limitation of powers. It is not for the courts to question or pass on the wisdom of legislative intent. It is our duty to allow it full effect within legal limits. It is therefore felt that precedents in the United States as to the application of the rule of strict construction of municipal charters cannot be fairly applied to that of Tinian, or to any similar charters that have been granted in the Trust Territory.

Although there are many statements by courts in the United States that municipalities may not engage in business of a private nature, there has been wide difference of opinion among the courts as to what constitutes engaging in business of a private nature, as distinguished from promoting a public purpose. 37 Am. Jur., Municipal Corporations, §§ 132 and 133. 14 A.L.R. 1157. 115 A.L.R. 1459.

[3] The Supreme Court of the United States has consistently held that a state may itself, or through its municipalities, constitutionally engage in a large number of business activities which are commonly carried on by private enterprise, levy a tax to support such an activity, and compete with private interests engaged in a like activity.

Jones v. City of Portland, 245 U.S. 217, 38 S.Ct.112 (1917).
Green v. Frazier, 253 U.S. 233, 40 S.Ct. 499 (1920).
Puget Sound Power & Light Co. v. City of Seattle, 291 U.S. 619,54 S.Ct. 542 (1934).

[4, 5] The power of a state to buy and sell intoxicating liquors within its borders and to authorize its municipalities to do so, is one that has been specifically long recognized as coming within the police power, and to be considered a proper method to accomplish governmental purposes and perform a governmental function so far as constitutional limitations are concerned, even though for tax purposes such activity may be considered to constitute conducting a private business. 30 Am. Jur., Intoxicating Liquors, §§ 204, 205, and 206, n. 5 & 6. *Vance v. W. A. Vandercook Co.*, 170 U.S. 438, 18 S.Ct. 674 (1898). *South Carolina v. United States*, 199 U.S. 437, 26 S.Ct. 110, (1905). *Ohio v. Helvering*, 292 U.S. 360, 54 S.Ct. 725 (1934).

The defendant municipality has argued that it could not properly become responsible for the debts of a few independent businessmen dealing in liquor, but the court cannot find that any question of such responsibility is involved here. This is a claim for beer allegedly sold outright to the municipality, which was, so far as the plaintiff is concerned, at liberty to dispose of it as it thought best, and might quite conceivably have required payment in cash from those who purchased the beer from the municipality.

[6] The court therefore holds that the purchase in question was one within the power of the municipality and not in defiance of any express policy of Trust Territory law.

[7] Assuming, in the absence of any proof on the matter, that the former mayor did proceed in an irregular way without any formal authorization from the Congress of Tinian to make this purchase, the court believes that

the well settled rule in many jurisdictions should apply in the Trust Territory to the effect that a municipality may become obligated on implied contract to pay the reasonable value of benefits accepted by it as to which it has the general power to contract, even though the contract under which they were obtained may have been irregularly made or unenforceable itself. 38 Am. Jur., Municipal Corporations, §§ 515, 516.

The court therefore holds that the defendant Borja's actions in this matter, in conjunction with the other facts shown, were sufficiently binding on the Municipality of Tinian to make it liable for the value of the beer in question.

JUDGMENT

It is ordered, adjudged, and decreed as follows : –

1. The defendant Antonio S. Borja, also known as Antonio Borja, owes the plaintiff Ambros, Inc., nothing.
2. The plaintiff Ambros, Inc., is granted judgment against the defendant Municipality of Tinian in the sum of Four Hundred Sixty-Five Dollars and Fifty Cents (\$465.50) principal, plus interest from February 20, 1962, at six percent (6%) per annum amounting to Ninety-One Dollars and Seventy Cents (\$91.70), and One Dollar (\$1.00) costs, making a total of Five Hundred Fifty-Eight Dollars and Twenty Cents (\$558.20).