State of Koror v. Blanco, 4 ROP Intrm. 208 (1994)

STATE OF KOROR,
Appellant,

v.

DIEGO BLANCO, ALEX ANDRADA, CHRISTOPHER DUNARAN, ISAGANI BARRIOS, BENJAMIN ABULAG, FELIX ABULAG, S.S. ENTERPRISE CORPORATION
Appellees.

CRIMINAL APPEAL NO. 5-93
Criminal Case Nos. 108-93, 109-93, 110-93, 111-93, 112-93, 113-93, 114-93

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: May 25, 1994

Counsel for Appellant: Stephen Robbins

Counsel for Appellees: J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice

PER CURIAM:

The question presented in this appeal is whether a state government may prosecute alleged violations of its criminal laws. Koror State appeals the trial court's dismissal of its criminal complaints charging seven defendants with violating various fishing and boating regulations contained in Koror Public Laws Nos. K3-42-90 and K2-33-89. The trial court held that Koror State had no power to prosecute criminal actions because such power has not been expressly delegated to state governments by either the Palau Constitution or the national government. We reverse.

⊥209 I.

The starting point for analyzing Koror State's claim to prosecutorial powers is Article XI, § 2 of the Palau Constitution, which reads,

> All governmental powers not expressly delegated by this Constitution to the states nor denied to the national government are powers of the national government. The national government may delegate powers by law to the state governments.

The limiting language of Article XI, section 2 significantly narrows the relevant inquiry in the present case to whether either the Palau Constitution or the national government has expressly delegated to the states the power to prosecute their own criminal laws. Koror State argues that, since Article I, section 2 of the constitution gives states "exclusive ownership" of all resources within their territorial waters, the states have thereby been expressly delegated the power to enact and enforce laws to regulate the use of such resources. However, ownership of property and the power to enact and enforce laws regulating use of the property are separate and distinct legal concepts. In the face of the clear language of Article XI, section 2, the contention that the authority to prosecute criminal cases accompanied the Article I, section 2 grant of ownership of resources is unsupportable.[1]

⊥210 Finding no express delegation to the states of the power to prosecute criminal laws in Article I, section 2, or Article XII, section 6 of the Palau Constitution, we now examine whether the national government has made such an express delegation. Koror State contends that the OEK made such an express delegation when it reaffirmed 4 TTC § 51. That statute authorized municipalities, subject to certain limitations, to enact legislation affecting the "peace, safety, and public welfare of their own inhabitants." The same statute also made municipalities "primarily responsible" for "all necessary law enforcement not otherwise provided for." Although 4 TTC § 51 was not incorporated into the Palau National Code, the trial court assumed, due to the language of the enacting legislation for the Code, that there was no intention to repeal it. See RPPL 2-3(10) ("The authority of the states of the Republic of Palau with regard to those provisions of the Trust Territory Code within the jurisdiction of the states is unaffected and hereby reaffirmed."). Because states did not exist under the Trust Territory Code, the trial court reasoned that the purpose of RPPL 2-3(10) was to authorize as state powers those powers previously authorized to municipalities under the Trust Territory Code. None of the parties quarrels with the trial court on this point. The express delegation of what is commonly termed "police power" in 4 TTC § 51 clearly enables Koror State to pass ordinances concerning fishing and boating in its waters, subject to any limitations imposed by the constitution or the OEK.

⊥211 The closer question is whether the latter provision allows states to prosecute criminal cases arising from alleged violations of their laws. The trial court concluded that the term "law enforcement"--as it is used in 4 TTC § 51(1)(e)--is meant to "describe the work of police officers rather than prosecutors." In so holding, the trial court noted that it appeared that, in the handful of municipal ordinance prosecutions reported before the adoption of the constitution, it was the Trust Territory district attorney who undertook the prosecution. See e.g., *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958). Perceiving that practice as a practical construction of section 51(1)(e) by those affected by it, the trial court held the prosecution of enforcement proceedings was not part of "law enforcement".

While we certainly agree in general with the principle that the practical construction given to a statute can assist in ascertaining its meaning, there is no indication that the practice of

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[1] Koror State argues that Article XII, section 6 of the Palau Constitution supports its contention. That provision merely outlines the manner in which revenue is to be shared among the national and state governments and is of no help to Koror State. It contains no express delegation to the states of the power to enact laws or conduct criminal prosecutions.

having municipal ordinances prosecuted by the district attorney was due to a perception that the municipalities were not authorized to prosecute violations of their own ordinances if they chose to or if the district attorney was unwilling to undertake the prosecution. Because the district attorney was apparently willing to prosecute municipal criminal matters, the municipalities were never called upon to perform this function on their own. Therefore, instead of assuming that municipalities believed they had no power to prosecute, it is equally fair to assume that they believed they did have the power but chose, for pragmatic reasons, ⊥212 to let someone else do it, as long as they were willing. Now, for the first time insofar as the record here reflects, the national government, through the attorney general, has stated that it will not prosecute violations of any state's criminal laws. Finding no help in the rule of statutory construction applied by the trial court, we must look elsewhere for the meaning of "law enforcement".

As there is no precedent in Palau to guide us, we turn to case law and statutory definitions from other jurisdictions to help us determine the meaning of "law enforcement." American authority commonly includes the power to prosecute within the definition of "law enforcement." See e.g., *Malizia v. United States Dept. of Justice*, 519 F. Supp. 338, 347 (S.D.N.Y. 1981) (Under Freedom of Information Act, "'law enforcement' includes the detection and punishment of law violation."); see also 46 U.S.C.A. § 3781 (defining "law enforcement" for purposes of the "Law Enforcement Assistance Act" to include "prosecutorial . . . services."). Similarly, Black's Law Dictionary defines "enforcement" as "the act of putting something such as a law into effect". We are persuaded by this authority, and hold that "law enforcement" as that term is used in 4 TTC § 51(1)(e) includes the power to prosecute violations of state law.

II.

Today we hold that states have been delegated the power to enact and prosecute criminal laws. But by so holding we do not mean to imply that this power is plenary or without limits. Certainly there are constitutional limits, both expressed and ⊥213 implied, which need not be enumerated here. Further, it is clear that the national government may place limitations on the power it has delegated. The national government has, in fact, placed limits on the penalties state laws can exact. The penultimate provision of 4 TTC § 51, the same statute which contains the delegation to the states, provides that "No municipal ordinance shall provide for any penalty greater than a one hundred dollar fine, or ninety days imprisonment, or both." See 4 TTC § 51(2).

The two statutes enacted by the Koror legislature at issue here run aground of these limits. The first, K2-33-89, which establishes boat registration, licensing, and inspection requirements, imposes a $200 fine, mandates the forfeiture of the defendant's boat, and requires anyone convicted of violating its provisions to serve at least ten but not more than thirty days in jail and to pay a fine of at least $30 but not more than $50. Every offense after the first conviction carries an incarceration period of thirty to ninety days and a fine of between $50 and $100. See K2-33-89. While the incarceration and fine provisions fall within the limits established by 4 TTC § 51(2), the $200 penalty and the boat forfeiture provisions are in excess of such limits. So, too, are the portions of K3-42-90 (establishing fishing licenses) which provide for a $500 penalty for the first violation and $1000 for every subsequent violation, for boat and

equipment forfeiture, and for the payment of Koror State's legal fees. We leave it to the trial court to determine whether these excessive ⊥214 penalties make the statutes void in toto, or whether the statutes can be enforced up to the penalty limits in 4 TTC § 51(2).

III.

We close by addressing the arguments raised by Blanco on appeal. Blanco argues that 2 PNC § 105, which provides in part that the Ministry of Justice shall be responsible for enforcing all laws and for providing legal services to the country's "political subdivisions," prohibits state governments from prosecuting violations of their criminal laws. But nothing in 2 PNC § 105 so states. Section 105 does not say that the national government is to be solely responsible for the prosecution of local laws, nor does it implicitly or explicitly repeal 4 TTC § 51(1)(e), which delegates this power to the states. Section 105 appears in the chapter of title 2 describing the functions of the various ministries within the executive branch. It is better viewed, then, as a provision allocating the task of law enforcement to the Ministry of Justice as amongst the various ministries, rather than a pre-emption statute prohibiting states from prosecuting their criminal laws.

Blanco also argues that 12 TTC § 201, which provided that all criminal prosecutions were to be conducted in the name of the Trust Territory of the Pacific Islands, and its successor, 18 PNC § 501, which provides that all criminal prosecutions shall be conducted in the name of the Republic of Palau, prohibits states from prosecuting criminal laws. We disagree. If the OEK had intended this section to limit the power to prosecute criminal laws ⊥215 to the national government then it would have said so. We hold that 18 PNC § 501 is nothing more than a captioning provision and therefore has no relevance to or impact on the question of whether states can prosecute their criminal laws.

Finally, Blanco argues that Koror State cannot enforce its laws because it is not "sovereign." In response, we can do no better than to quote the trial court:

> [T]he question of whether Koror can be given the label 'sovereign' is irrelevant: whether or not Koror has the attributes commonly considered to be indicative of a sovereign political entity is ultimately secondary to the principal issue whether the Palau Constitution [or an ensuing legislative enactment] gives Koror and other states the power in question here.

For purposes of satisfying the Constitution's reserved powers clause, we need only determine whether the states have been delegated the power to prosecute their criminal laws. Having decided this "principal issue" in Koror State's favor, we need not address the question of whether Koror State is "sovereign."

This case is REMANDED to the trial court for proceedings not inconsistent with this opinion.