

94 DEC 15 R4: 25

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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ISLAND AMUSEMENT CORPORATION,)	Civil Action No. 94-166
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)	
Plaintiff,)	
)	
v.)	DECISION AND ORDER
)	
WESTERN INVESTORS, INC.,)	
)	
Defendant,)	
_____)	
MUNICIPALITY OF SAIPAN,)	
)	
Party-in-Intervention))	
_____)	

This matter came before t Court on t 3, 1934 on Defendant Western Investors, Inc.'s (WII) motion for summary judgment and the cross-motions of Plaintiff Island Amusement Corp. (IAC) and Party-in-Intervention Municipality of Saipan (Mayor) for partial summary judgment. The Court has had the opportunity to hear oral argument and review legal memoranda from all parties concerned, and now renders its decision.

FOR PUBLICATION

1 business licenses enunciated in Title 1, Section 2453 (d) of the
2 Commonwealth Code.

3 On May 27, 1994, the Court denied IAC's motion for
4 preliminary injunction recognizing that both parties had apparent
5 authority to operate bingo parlors in the C.N.M.I. Likewise, on
6 July 6, 1994, the Court denied WII's motion to dismiss noting that
7 much of the dispute concerned substantive legal questions that
8 could be better addressed in a motion for summary judgment. On
9 July 19, 1994, WII filed its motion for summary judgment
10 contending that no genuine issue of material fact exists because
11 the Ordinance upon which IAC bases its claim has been effectively
12 repealed. On the same day, the Court allowed the Mayor to enter
13 the litigation in order to seek declaratory relief as a party
14 plaintiff. On July 27, 1994, IAC and Saipan filed their
15 respective cross-motions for partial summary judgment and for a
16 declaration that the Ordinance remains in full force and effect in
17 the Commonwealth.

18 19 **II. ISSUE**

20 Whether Title 6, Chapter 4, Sections 31-37 of the Saipan
21 Municipal Code is still in full force and effect in the
22 Commonwealth of the Northern Mariana Islands.

23 24 **III. ANALYSIS**

25 **A. Summary Judgment Standard**

26 Summary judgment is entered against a party if, viewing the
27 facts in the light most favorable to the non-moving party, the
28 Court finds as a matter of law that the moving party is entitled

1 to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I.
2 172, 176 (1990). Once the moving party meets its initial burden
3 of showing entitlement to judgment as a matter of law, the burden
4 shifts to the non-moving party to show a genuine dispute of
5 material fact. *Id.* at 176.

6
7 **B. Article XXI**

8 Although WII does not dispute that the Ordinance authorizes
9 the Mayor to distribute a sole bingo license for the Island of
10 Saipan annually, WII contends that the Article XXI gambling
11 prohibition contained in the 1985 amendments to the Commonwealth
12 Constitution effectively eradicated the Ordinance. Article XXI
13 provides: "Gambling is prohibited in the Northern Mariana Islands
14 except as provided by **Commonwealth law** or established through
15 initiative in the Commonwealth or in any senatorial district."
16 Commonwealth Constitution, Art. XXI, § 1 (1985) (emphasis added).

17 WII claims that the Article XXI gambling prohibition
18 eradicates preexisting Trust Territory municipal ordinances
19 relating to gambling because the provision only exempts gambling
20 laws created by the Commonwealth Legislature. In support of its
21 position, WII asserts that the term "Commonwealth law" contained
22 in the Article XXI exception clause does not include Trust
23 Territory municipal ordinances. Accordingly, WII concludes that
24 the Mayor no longer has the authority to issue licenses because
25 the 1959 Ordinance conferring that power did not survive the
26 general prohibition of Article XXI. On the contrary, IAC and
27 Saipan share the view that the term "Commonwealth law" in Article
28 XXI includes municipal ordinances created during the tenure of the

1 Trust Territory of the Pacific Islands, and that the Ordinance at
2 issue safely falls within the exception clause of Article XXI.

3 In support of its argument, WII cites the rule of statutory
4 construction that legislation made prior to the adoption of a
5 constitutional amendment is repealed by implication when there is
6 a conflict between the constitutional amendment and the
7 preexisting statute. 1A SUTHERLAND STATUTORY CONSTRUCTION § 23.20 at 395
8 (5th ed. 1994). However, upon reviewing the plain language of
9 Article XXI and the history of its adoption at the 1985
10 Constitutional Convention, the Court is convinced that the general
11 gambling prohibition articulated in Article XXI does not conflict
12 with the preexisting Ordinance establishing the Mayor's authority
13 to issue a bingo license on an annual basis.

14
15 **C. "Commonwealth Law" Includes Saipan Municipal Code**

16 WII contends that the term "Commonwealth law" contained in
17 the exception clause of Article XXI does not include the Saipan
18 Municipal Code. WII's contention is based on the definition of
19 the term "Commonwealth" in Section 9 of the Schedule on
20 Transitional Matters (Schedule) and 1 CMC § 102 as "the government
21 established under the Constitution." WII argues that the
22 Ordinance cannot be considered "Commonwealth law" because "[an
23 ordinance established under the Trust Territory] is not the same
24 as Commonwealth law." See Memorandum in Support of Defendant's
25 Motion for Summary Judgment at 3 (July 19, 1994). WII's argument
26 fails to consider portions of the Covenant and an attachment to
27 the Constitution itself which incorporate Trust Territory laws
28

1 including municipal ordinances within the framework of
2 Commonwealth law.

3 According to section 505 of the *Covenant to Establish a*
4 *Commonwealth of the Northern Mariana Islands in Political Union*
5 *with the United States of America (Covenant)*:

6 [t]he laws . . . of the Mariana Islands District['s]
7 local municipalities . . . [in existence on January 9,
8 1978 that are] not inconsistent with this Covenant or
9 with those provisions of the Constitution, treaties or
10 laws of the United States applicable to the Northern
11 Mariana Islands will remain in force and effect until
12 and unless altered by the Government of the Northern
13 Mariana Islands.

14 This provision assured the citizens of the Commonwealth that a
15 full functioning body of law would be in existence at the advent
16 of the local government established under the Constitution. *See*
17 *ANALYSIS OF THE COVENANT* § 505 at 61 (Marianas Political Status Comm.
18 Feb. 15, 1975). Section 2 of the *Schedule* mirrors the Covenant's
19 incorporation of local laws: "Continuity of Laws. Laws in force
20 in the Northern Mariana Islands on [January 8, 1978] that are
21 consistent with the Constitution and the Covenant shall continue
22 in force until they expire or are amended or repealed." *Schedule*
23 at § 2 (Dec. 5, 1976). Section 2 of the *Schedule* confirmed that
24 municipal ordinances enacted by municipal councils on Saipan,
25 Tinian and Rota would continue to be in effect under the new
26 Constitution if they were in force on the day preceding the
27 effective day of the Constitution (Jan. 9, 1978). *ANALYSIS OF THE*
28 *CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS* 194
(Dec. 6, 1976).

The clear statements in Section 505 of the *Covenant* and
section 2 of the *Schedule*, and the analysis accompanying them,
demonstrate that the Ordinance at issue became a part of the full

1 functioning body of law in the Commonwealth on January 9, 1978.
2 Accordingly, the Court finds that the term "Commonwealth law" in
3 Article XXI includes all Trust Territory local gambling ordinances
4 that were in effect on January 9, 1978 and that have not since
5 expired, or been amended or repealed.

6 Save for its narrow reading of the term "Commonwealth law"¹ in
7 Article XXI, WII has not offered any evidence that the Ordinance
8 authorizing the Mayor to issue bingo licenses has been disturbed
9 in any way by subsequent legislative action. To the contrary,
10 Title 1, Section 5107(f)(3) appears to bolster this authority.^{1/}

11 Further, the Court's decision follows the intent of Article
12 XXI's framers. Moments before the passage of Committee
13 Recommendation 42 (Article XXI) at the Second Constitutional
14 Convention, Delegate Villagomez summed up the intent of Article
15 XXI with the following statement:

16 For the record and so the court will know what I mean
17 when I submitted this motion which has been passed; No.
18 1, this amendment prohibits any type of gambling in the
19 C.N.M.I. No. 2, this amendment grants to the
20 Legislature the authority to permit any kind of gambling
21 that they see fit. No. 3, this amendment permits each
22 of the three senatorial districts to enact for their own
23 district to permit any kind of gambling that they see
24 fit for their particular district. No. 4, **this
25 amendment does not repeal or prohibit or make null and
26 void any existing gambling that is permissible by
27 existing law**, so that if batu, cockfighting, raffle,
poker machines are currently existing because they are
permitted by law, they shall continue unless that law is
changed by the Legislature.

25 ^{1/} Title 1, Section 5107(f)(3) provides:

26 A Mayor shall also have the power and duty to [b]e
27 responsible for Commonwealth programs and activities
pertaining to [l]ocal registration and licensing
formerly exercised by the chartered municipalities of
Saipan, Rota, and Tinian.

1 CMC § 5107(f)(3).

1 SECOND CONSTITUTIONAL CONVENTION JOURNAL 547 (July 18, 1985)(emphasis
2 added). Accordingly, Title 6, Sections 31-37 are still in full
3 force and effect in the Commonwealth.

4
5 **D. WII's Bingo License Void When Issued**

6 The Court is aware that WII received a license to operate a
7 bingo parlor from the Department of Commerce and Labor. According
8 to WII, the Department garnered its authority to issue licenses
9 from Title 1, Division 2 of the Commonwealth Code which provides:

10 The Department of Commerce and Labor shall have the
11 following powers and duties: [. . .] (d) To license
12 and regulate businesses engaged in the construction
13 trade and to license businesses which are not otherwise
14 licensed or regulated by any other department, agency or
15 instrumentality of the Commonwealth."

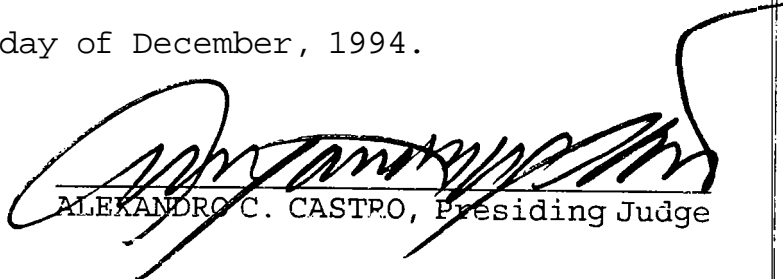
16 1 CMC § 2453(d). The regulation and licensing of the bingo
17 industry has been left to the control of the local municipalities
18 and their leaders. See e.g. 6 SMC § 31-37, 1 CMC § 5107(f)(3), 1
19 CMC § 1402(a)(10). Consequently, the Department had no authority
20 to issue WII a bingo license because such activities are licensed
21 by the Commonwealth Government agencies known as the offices of
22 the mayors. See 1 CMC § 5101. the Court hereby **DENIES** WII's motion
23 for summary judgment, and **GRANTS** IAC's and Saipan's respective
24 cross-motions for partial summary judgment. Further, the Court
25 hereby issues a dual declaration that: (1) Title 6, Chapter 4,
26 Sections 31-37 of the Saipan Municipal Code is in full force and
27 effect in the Commonwealth, and (2) the bingo license WII relied
28 upon for its bingo operations was void when issued.

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IV. CONCLUSION

For the foregoing reasons, the Court hereby **DENIES** WII's motion for summary judgment, and **GRANTS** IAC's and Saipan's respective cross-motions for partial summary judgment. Further, the Court hereby issues a dual declaration that: (1) Title 6, Chapter 4, Sections 31-37 of the Saipan Municipal Code is in full force and effect in the Commonwealth, and (2) the bingo license WII relied upon for its bingo operations was void when issued.

So ORDERED this 15 day of December, 1994.



ALEXANDRO C. CASTRO, Presiding Judge