

House of Delegates v. ROP 16 ROP 13 (2008)
HOUSE OF DELEGATES,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 07-053
Civil Action No. 07-199

Supreme Court, Appellate Division
Republic of Palau

Decided: November 10, 2008¹

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Counsel for Appellant: Rachel A. Dimitruk, Megan Walsh

Counsel for Appellee: Jeffrey Beattie, Nelson J. Werner

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

FOSTER, Justice:

The House of Delegates (“HOD”) appeals the trial court’s decision granting summary judgment to the Republic of Palau (“ROP”). The trial court reached its decision after finding that House Resolution 7-17-29S violated Article IX, Section 8 of the Constitution of the Republic of Palau. Because we hold that the resolution does not increase the delegates’ “compensation,” we reverse the trial court’s grant of summary judgment.

BACKGROUND

The underlying facts of this case are undisputed. In early November 2006, Delegate Antonio Bells, on behalf of the HOD, traveled to the Philippines to attend the Sixth Annual Pacific Region Investment Conference. While in the Philippines, Delegate Bells began experiencing chest pain. Dr. Emais Roberts, another conference attendee, feared that Delegate Bells might be having a heart attack and made arrangements for Delegate Bells to be taken to the emergency room at Asian Hospital and Medical Center. Delegate Bells was hospitalized for six days as he underwent tests and received treatment. On November 17, 2006, Delegate Bells was

¹ Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

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discharged from the hospital. He returned to Palau the next day.

Upon his return, Delegate Bells requested that the HOD reimburse him for thirty percent of his medical costs and provide him with additional per diem to account for the time he spent in the hospital. The Speaker of the HOD, Augustine Mesebeluu, authorized reimbursement in the amount of \$3,792.44 for the medical costs and \$1,800 per diem. This was done despite a provision in the HOD's Travel Policy and Procedures that excluded "health care costs" from the list of reimbursable expenses.

On June 12, 2007, the HOD adopted House Resolution 7-17-29S. This resolution amended Section 407 of the Travel Policy and Procedures to include as an allowable expense "emergency medical care and expenses incurred p.15 in connection therewith" for delegates traveling abroad on official business. The resolution also provided that "non emergency health expenses" were not reimbursable expenses. In addition, the resolution ratified the payment of thirty percent of Delegate Bells medical expenses.

On July 3, 2007, the ROP filed a complaint for declaratory judgment against the HOD. In its complaint, the ROP asserted that House Resolution 7-17-29S violates the Article IX, Section 8 the Constitution of the Republic of Palau because it "provides for an increase in compensation for members of the Olbiil Era Kelulau during the term of enactment." Both the ROP and the HOD moved for summary judgment.

The trial court granted the ROP's motion for summary judgment and denied the HOD's motion. After citing Article IX, Section 8 of the Constitution, as amended, the trial court looked to *Palau Chamber of Commerce v. Ucherbelau*, 5 ROP Intrm. 300 (Tr. Div. 1995), which defined compensation as "salary and expenses." The trial court rejected the HOD's attempt to distinguish *Ucherbelau* on the facts and found that "[r]egardless of how [the HOD] now characterizes the reimbursement of medical expenses, the effect is an increase in income and compensation." Decision and Orders on Cross-Motions for Summ. J. 8, Oct. 25, 2007. Similarly, the trial court determined that "[p]roviding emergency medical expenses constitutes an increase in the compensation of the members of the House of Delegates during the term of enactment." *Id.* As a consequence, the trial court held that "House Resolution 7-17-29S violates Article IX, Section 8 of the Constitution, as amended by the Fifth Amendment, and is therefore null and void." *Id.*

STANDARD OF REVIEW

We review grants of summary judgment *de novo*. *Becheserrak v. Eritem Lineage*, 14 ROP 80, 81 (2007). The court considers "whether the trial court correctly found that there was no genuine issue of material fact and whether, drawing all inferences in the light most favorable to the nonmovant, the moving party was entitled to judgment. *Id.* To affirm a grant of summary judgment, the Court must reach the same conclusions of law as the trial court, and no deference to the trial court is appropriate. *Senate v. Nakamura*, 8 ROP Intrm. 190, 192 (2000).

DISCUSSION

A. Applicable Law

As originally enacted, Article IX, Section 8 of the Constitution stated:

The compensation of the members of the Olbiil Era Kelulau shall be determined by law. No increase in compensation shall apply to the members of the Olbiil Era Kelulau during the term of enactment, nor may an increase in compensation be enacted in the period between the date of a regular general election and the date a new Olbiil Era Kelulau takes office.

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Palau Const. art. IX, § 8. Other than stating that compensation “shall be determined by law,” the Constitution did not define the term “compensation.”

In 1995, the Trial Division addressed the meaning of the term compensation in Article IX, Section 8 in *Palau Chamber of Commerce v. Ucherbelau*, 5 ROP Intrm. 300 (Tr. Div. 1995) (Ngiraklsong, C.J.). There, the plaintiffs challenged the constitutionality of RPPL 4-10(4)(7), which amended 3 PNC § 202 to increase the official expense allowance from \$1,000 per month to \$2,000 per month. *Id.* at 300. The *Ucherbelau* plaintiffs argued that RPPL 4-410(4)(7) was unconstitutional because it increased the compensation of the members of the OEK during the term of its enactment. *Id.* at 301. The defendants, on the other hand, asserted that the law did not violate Article IX, Section 8 because “official expenses” are not compensation. *Id.*

The trial court in *Ucherbelau* agreed with the plaintiffs. The court found that the term “compensation” in Article IX, Section 8 was ambiguous and fairly susceptible to more than one reasonable interpretation. *Id.* at 302. Having so found, the trial court turned to extrinsic evidence, namely Constitutional Convention committee reports, to determine the framers’ intent regarding compensation. *Id.* at 302-03. Committee Report No. 22 states that compensation consists of “salary and expenses.” Accordingly, the *Ucherbelau* court found that “the framers intended Article IX, Section 8 to prohibit the passage of any law increasing the salary or expenses of OEK members during the term of its enactment.” *Id.* at 303. The court further found that “[s]ince RPPL 4-10(4)(7) increases the expense allowance of OEK members during the term of its enactment, it follows that the provision violated Article IX, Section 8 and is therefore null and void.” *Id.* The court also noted that RPPL 4-10(4)(7) provided OEK members with a lump sum, no-limitation expense allowance that could be used for personal, as well as official, expenses. *Id.* at 304.

Almost ten years after the Trial Division’s *Ucherbelau* decision, the Fifth Amendment to the Constitution went into effect. The Fifth Amendment amends Article IX, Section 8 to read:

The compensation of the members of the Olbiil Era Kelulau shall be *a uniform fee for each day the member attends an official session of the Olbiil Era Kelulau*. The amount of the fee shall be determined by law. No increase in compensation shall apply to the members of the Olbiil Era Kelulau during the term of enactment, nor may an increase in compensation be enacted in the period between the date of a regular general election and the date a new Olbiil Era Kelulau takes

office.

Palau Const. amend. V (emphasis added). The difference between the “old” and “new” versions of Article IX, Section 8 is stark. Prior to the amendment, “compensation” “shall be determined by law.” After the amendment, “compensation” is “a uniform fee for each day the member attends p.17 an official session of the Olbiil Era Kelulau.”

B. Analysis

The HOD’s argument on appeal is relatively simple: Article IX, Section 8 prohibits the OEK from increasing the compensation of its members during the term of enactment. Article IX, Section 8 defines compensation as a uniform fee for each day the member attends an official session. House Resolution 7-17-29S does not change the uniform fee paid to delegates for each day they attend an official session. Rather, it allows delegates to seek reimbursement for emergency medical expenses incurred while traveling on official business. Because the resolution does not increase the uniform fee, the HOD asserts, it does not increase compensation and Article IX, Section 8 is not implicated. *See* Appellant’s Brief 7-10.²

The HOD argues that the trial court erred in relying on the *Ucherbelau* decision. According to the HOD, *Ucherbelau* is irrelevant because it was decided before the Fifth Amendment clarified the definition of compensation. The HOD contends that Article IX, Section 8 unambiguously defines compensation as a uniform fee, and that as a result, there is no reason for the Court to look to secondary sources. *Id.* at 11-13.

The ROP makes numerous arguments in support of the trial court’s holding. The essence of the ROP’s position is that the purpose of the Fifth Amendment was to make certain that members of the OEK show up for work; it was not designed to change *Ucherbelau*’s holding that “compensation” means salary and expenses. Appellee’s Resp. 9-13. The ROP argues that the HOD’s reading of Article IX, Section 8 is absurd because it would allow the OEK to “add to, enlarge, or supplement any other form of official or personal expense, reimbursement, or any other cost, no matter how remote or dubious without running afoul of the prohibition against increasing compensation delineated in the Constitution.” *Id.* at 8. The ROP also cites several canons of construction that it argues support reading Article IX, Section 8, as unchanged by the Fifth Amendment. *Id.* at 9-10.

We find the HOD’s arguments persuasive. It is true that “[t]he guiding principle of constitutional construction is that the intent of the framers must be given effect.” *Ngerul v. ROP*, 8 ROP Intrm. 295, 296 (2001). The first place courts look to determine intent, however, is the plain language of the constitutional provision at issue. *Id.* When constitutional language is clear

² Although the HOD’s primary argument on appeal is based on the Fifth Amendment, this argument was raised only briefly in the HOD’s motion for summary judgment. *See* Defendant’s Memorandum in Opposition to Plaintiff’s July 31, 2007 Motion for Summary Judgment and in Support of Defendants’ Counter Motion for Summary Judgment 18-19. At the trial court level, the HOD focused on Article IX, Section 12 of the Constitution, separation of powers, and distinguishing *Ucherbelau* on the facts. *Id.* at 11-16, 20.

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and unambiguous, courts must apply its plain meaning. *Tellames v. Congressional Reapportionment Comm'n*, 8 ROP Intrm. 142, 143 (2000); *see also Seventh Koror State Legislature v. Borja*, 12 ROP 206, 207 (Tr. Div. 2005) (“In the ordinary course of constitutional interpretation, the Court begins with p.18 the constitutional language and, only if that language is ambiguous, does it then turn to constitutional history and other secondary evidence.”).

Article IX, Section 8 is unambiguous. Compensation is a uniform fee for each day a member attends an official session of the OEK. House Resolution 7-17-29S does not change the uniform fee; it increases allowable travel expenses. These expenses cannot be considered part of the uniform fee. Not only are official travel expenses not a fee, but they are not awarded based on each day a delegate attends an official session. Accordingly, official travel expenses are not compensation and can be increased without running afoul of Article IX, Section 8.

Ucherbelau does not help the ROP. That case not only involved facts far different from those present here, but it also was decided before the adoption of the Fifth Amendment. The Fifth Amendment replaced the *Ucherbelau* definition of compensation. Prior to the adoption of the Fifth Amendment it was possible to argue, and hold, that the term compensation in Article IX, Section 8 is ambiguous. Now it is not.

Nor do the canons of construction cited by the ROP advance its cause. The ROP argues that a constitutional provision must be construed practically rather than technically, and it must be interpreted in a way that will lead to wise policy rather than mischief or absurdity. Appellee’s Resp. 9. There is a difference, however, between interpreting provisions and rewriting them. The ROP also argues that “if a constitutional amendment contains no express repeal or modification of existing provisions, the old and the new provisions should stand and operate together if by doing so the intent of the lawmaking power as duly expressed in the later provision is not contravened.” *Id.* at 10. This may be a valid rule, but in this case, the Fifth Amendment specifically replaced the old Article IX, Section 8 with a new one. The “old” and “new” provisions cannot operate together because the latter supplants the former.

In sum, we hold that Article IX, Section 8 unambiguously defines “compensation” and that this definition does not include official travel expenses. We therefore hold that because House Resolution 17-7-29S at most increases official travel expenses during the term of its enactment, it does not violate Article IX, Section 8 of the Constitution.

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The parties spend a great deal of time discussing Article IX, Section 12 of the Constitution and whether reimbursing HOD members for emergency medical expenses serves a public purpose. We need not address these arguments at this time because the trial court has not had an opportunity to do so. The trial court granted summary judgment to the ROP, and denied the HOD's motion for summary judgment, because it found that House Resolution 17-7-29S was unconstitutional. The trial court did not hold that the HOD could not enact its own rules and procedures under Article IX, Section 12. The trial court did not hold that the HOD would have to pass an appropriations bill to change its travel expense policy. And the trial court did not address the parties' public purpose arguments. If the ROP wishes to press these issues, it may do so before the trial court.

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CONCLUSION

For the foregoing reasons, we **REVERSE** the trial court's grant of summary judgment to the ROP.