

**KOROR STATE GOVERNMENT,
Plaintiff,**

v.

**REPUBLIC OF PALAU and JOHN C.
GIBBONS,
Defendants.**

CIVIL ACTION NO. 12-116

**REPUBLIC OF PALAU
Plaintiff,**

v.

**KOROR STATE GOVERNMENT, by
and through its Governor, YOSITKA
ADACHI, and KOROR STATE
LEGISLATURE, by and through its
elected representatives
Defendants**

Civil Action No. 12-117

Supreme Court, Trial Division
Republic of Palau

Decided: July 17, 2013

[1] Statutes: State Taxation

It is clear on the text of the 40 PNC § 2012 that if a state law fails to provide a detailed description of the purpose of the fee and the date of termination, the state law does not automatically, like sections (a) and (b), become null and void. Deficient compliance with this paragraph does not warrant automatic nullification of a state statute. It is reasonable to read Paragraph (c) as saying that a state shall be given an opportunity to correct

the deficiencies under Paragraph (c), and, when a state complies, the state law then becomes effective.

[2] Statutes: State Taxation

Under 40 PNC § 2103(b), the Minister of Justice and the Attorney General are to decide whether the Statute imposing this fee violates Section 2102(a), (b), or (c).

[3] Statutory Interpretation: Preamble

The findings or preamble of a statute may be used to clarify ambiguities, but they do not create rights in the statute or limit those provided in the statute.

[4] Statutes: State Taxation

The Republic cannot read the goals stated in the preamble of 40 PNC § 2101 into Paragraph (c) of 40 PNC § 2102 and require a state tax to avoid discouraging investment, hindering economic development, or interfering with commerce among states.

[5] Statutes: State Taxation.

Although government corruption is a cancer that must be eradicated, the alleged misappropriations are not a subject of this section of 40 PNC §§ 2102, 2103.

Counsel for Koror State Government and
Koror State Legislature: James Hollman
Counsel for Republic of Palau: Sara Bloom

The Honorable ARTHUR NGIRAKLSONG,,
Chief Justice:

This case is about whether and when Koror State Government may enact a tax. The dispute began with KSPL No. K9-248-2011 (Statute), a law passed by Koror State Legislature on December 20, 2011, that raised the fees for Rock Island Use Permits and Jellyfish Lake Permits to \$50.00 and \$100.00, from \$25.00 and \$35.00, respectively. The Statute was to enter effect on June 1, 2012. Shortly after the Statute was passed, the Republic of Palau initiated a dialogue with Koror State Governor Yositaka Adachi, in which the Republic requested additional information regarding the legality of the Statute. The Republic contended that, pursuant to 40 § 2103(b), the Statute was not effective until the Attorney General and the Minister of Justice determined that it comported with the requirements of 40 PNC § 2102(c). The Republic also argued that the law required Koror State to prove that the Statute was “justified,” and that Koror State had failed to do so, despite the budgetary information Koror State supplied to the Republic allegedly demonstrating the need for additional fee revenue. By letter dated May 22, 2012, the Minister of Justice informed Governor Adachi that, “[u]nless there is a justification for the increase in fees . . . I hereby regret to inform you that the increases [in] fees are not justified. Therefore, it would be a violation of the [sic] 40 PNC 2102 to implement this increase in fees starting June 1, 2012.”

On May 30, 2012, the Republic sued Koror State to enjoin the enforcement of the Statute. The Court denied the Republic’s request for a temporary restraining order on May 31, but it held in abeyance the Republic’s motion for a preliminary injunction pending further consideration. The next day, June 1, 2012, Koror State implemented the Statute

and raised the fees. On June 11, 2012, the Court denied the Republic’s preliminary injunction motion, but, in the interim, the parties filed new lawsuits against each other in which both parties sought declaratory judgments regarding the Statute’s legality. The lawsuits were consolidated in the instant case. The Republic has moved for judgment under Civil Procedure Rule 57, while Koror State Government has moved for summary judgment under Rule 56.

STANDARD OF REVIEW

Summary judgment is proper when the pleadings, affidavits, and other papers show no genuine issue of material fact, and that moving party is entitled to judgment as a matter of law. *Ulechong v. Palau Pub. Utils. Corp.*, 13 ROP 116, 119 (2006) (citing ROP R. Civ. P. 56(c)). “When considering a motion for summary judgment, the court must consider all evidence and inferences in the light most favorable to the nonmoving party.” *Id.* (citing *ROP v. Reklai*, 11 ROP 18, 21 (2003)).

ANALYSIS

The critical mixed legal and factual issue centers on 40 PNC § 2202(c). It provides:

No enactment of a state government which would impose a tax, charge, or fee shall be effective unless such enactment shall contain a detailed description of the activity, purchase, or other purposes to be accomplished with the revenue to be

generated thereby, and a specific date of termination of such tax, charge, or fee reflecting the anticipated achievement of the objective of the enactment.

40 PNC § 2102(c). The specific issue before the Court is whether the Statute has provided “a detailed description of the activity, purchase, or other purposes to be accomplished with the revenue to be generated thereby.” Section 2102(c)'s requirement for “a specific date of termination of such tax” is not at issue because KSPL K8-207-09, which the Statute merely modified, provides for a sunset date of August 31, 2019.

Paragraphs (a) and (b) of Section 2102 are helpful to clarify any ambiguities in the language of Paragraph (c). Paragraph (a) states that when the national government enacts a law that imposes a fee on a subject where a state government already has an existing fee on the same subject, the national law shall “nullify” the state law. Paragraph (b) states that a state law is “null and void and of no effect” if it imposes a fee on a subject where the national government already has a fee on the same subject.

Contrast the words in Paragraphs (a) and (b) with (c), the dispositive paragraph. Paragraph (c) does not state that if a state law imposing a fee fails to “contain a detailed description of the activity, purchase, or other purposes” of the fee and “a specific date of termination of such [fee]” then the state law shall be “null and void and of no effect.” Paragraph (c) says it shall not be “effective.”

[1] It is clear on the text of the statute that if a state law fails to provide a detailed description of the purpose of the fee and the date of termination, the state law does not automatically, like sections (a) and (b), become null and void. Deficient compliance with this paragraph does not warrant automatic nullification of a state statute. It is reasonable to read Paragraph (c) as saying that a state shall be given an opportunity to correct the deficiencies under Paragraph (c), and, when a state complies, the state law then becomes effective.

[2] In this case, there is no national fee on the rock islands and Jellyfish Lake. Koror State has enacted a law imposing fees on those subjects. Under 40 PNC § 2103(b), the Minister of Justice and the Attorney General are to decide whether the Statute imposing this fee violates Section 2102(a), (b), or (c). Since Paragraphs (a) and (b) are not implicated, it is Paragraph (c) the Court examines. And since the termination date of the fee has been provided for in the earlier Koror State law, the only remaining issue is whether Koror State has provided a detailed description of the fee required by Paragraph (c).

[3, 4] The Republic argues that this fee is excessive, that it discourages investment and economic development, and that it interferes with the free flow of commerce among the states. Protection of investment, economic development, and the free flow of commerce among the states are mentioned in 40 PNC § 2101, the findings or preamble of the statute. The findings or preamble of a statute may be used to clarify ambiguities, but they do not create rights in the statute or limit those provided in the statute. 1A Norman J. Singer

& J.D. Shambie Singer, *Statutes and Statutory Construction* § 20:3 (7th ed. 2009) (“The function of the preamble is to supply reasons and explanations and not to confer power or determine rights. Hence, it cannot enlarge the scope or effect of a statute.”); *Yazoo & Mississippi Valley R.R. Co. v. Thomas*, 132 U.S. 174, 188 (1889) (“[T]he preamble is not part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous . . .”).¹ In other words, the Republic cannot read the goals stated in the preamble into Paragraph (c) and require a state tax to avoid discouraging investment, hindering economic development, or interfering with commerce among states. Doing so would obviously enlarge the rights of the Republic, and therefore it cannot be done.

For the same reason, the Republic cannot imply-as it attempts to do-that it has a right to determine an appropriate amount of the fee if it deems the fee to be either excessive or not “justified.” These words are not found in Section 2102(c). The paragraph does not give the Minister of Justice or Attorney General the right to decide the amount of the fee. It is clear from the text of the statute. See *Ngarameketii v. Koror State Pub. Lands Auth.*, 16 ROP 229, 230-31 (2009) (holding that where the plain meaning of a statute is unambiguous, the court should enforce the statute as written, and it need not review additional evidence regarding public policy).

[5] The Republic also argues that there is evidence of misappropriation of the permit fee revenue. Although government corruption is

a cancer that must be eradicated, the alleged misappropriations are not a subject of this section of the law. The parties’ rights are specifically provided for in Sections 2102(c) and 2103(b). It is these sections of the law that are controlling. All that is required of Koror State Government is to submit a detailed description of the purposes for the revenue. Has Koror State done that? If so, then Koror State has complied with Section 2102(c), and the Statute and the fee have become valid law.

Koror State has indeed provided the Republic with a detailed description of the purposes for the fee increase. The Statute itself explains that “[t]he increasing number of visitors to the rock islands is placing a strain on Koror State resources,” such that a fee increase is required “to generate revenues that may be used to monitor and preserve its marine resources and improve rock island tourist facilities.” KSPL K9-248-20 I 1. The Statute also cites the need “to adequately clean and maintain tourist activity areas and to further improve and develop other areas of the rock islands.”

Moreover, Governor Adachi provided the Republic a substantial measure of additional information in his communications with the Minister of Justice after the Statute was enacted. For example, in his letter dated December 30, 2011, the Governor explained:

Koror State Government uses the fees collected for many purposes. These include the construction in the rock islands of summer houses, barbecue facilities, picnic tables and benches,

¹ Where the law of Palau is silent, the common law of the United States applies. 1 PNC § 303.

construction of ‘bio-toilet’ facilities to help reduce pollution, and for clean-up crews to rake leaves, clean restroom facilities, and to maintain all rock island tourist facilities.

Another letter from Governor Adachi, this one dated May 10, 2012, enclosed a spreadsheet detailing total revenue collected from the Rock Island Use Fee from 2009 to 2011, along with total expenditures incurred to service the rock islands. It also details the manner in which the expenses are incurred, delineating costs for personnel, sanitation and dog control, supplies, travel costs and other expenditures. Because the Court need not and will not second guess the policy decisions of Koror State Government, the Court's only duty is to determine whether Koror State has complied with the law and supplied the requisite description of the fee. *See Uehara v. ROP*, 17 ROP 167, 172-73 (2010) (holding that “if a statute is not susceptible of more than one construction, courts should not be concerned with the consequences resulting from its plain meaning”). On the strength of the evidence presented, the Court concludes that Koror State has complied with it, and that Koror State is entitled to summary judgment in these cases.

CONCLUSION

Koror State Government has provided the Republic with the statutorily-required “detailed description of the . . . purposes to be accomplished” with the fee. The Court holds that KSPL K9-248-20 11 conforms to the requirements of 40 PNC § 2102(c), and that it has the full force and effect of valid

law. Accordingly, Koror State Government's Motion for Summary Judgment is hereby **GRANTED**. Judgment is hereby **ENTERED** in favor of Koror State Government, Koror State Legislature and Koror State Governor Yositaka Adachi, and against the Republic of Palau and its Minister of Justice, John C. Gibbons.