

Palau Chamber of Commerce v. Ucherbelau, 5 ROP Intrm. 300 (Tr. Div. 1995)
PALAU CHAMBER OF COMMERCE and POLYCARP BASILIUS,
Plaintiffs,

v.

ANDRES UCHERBELAU, director of the National Treasury,
the REPUBLIC OF PALAU, and the SENATE and
HOUSE OF DELEGATES OF THE FOURTH OLBIL ERA KELULAU,
Defendants.

CIVIL ACTION NO. 42-94

Supreme Court, Trial Division
Republic of Palau

Decision

Decided: April 3, 1995

ARTHUR NGIRAKLSONG, Chief Justice:

Before the Court are plaintiffs' motion for partial summary judgment and defendants' cross-motion for summary judgment. At issue is the constitutionality of RPPL 4-10(4)(7), which increases the "official expense allowance" of each member of the Olbiil Era Kelulau ("OEK") from \$1,000 to \$2,000.¹ Plaintiffs argue that RPPL **L301** 4-10(4)(7) violates Article IX, Section

¹ RPPL 4-10(4)(7), part of the general appropriations bill for fiscal year 1994, amended 3 PNC § 202 to read:

There shall be made available, commencing as of January 1, 1994, to each member of the Olbiil Era Kelulau an official expense of \$2,000 per month each to assist in defraying the expenses related to or resulting from the discharge of the member's duties. Members shall report expenditures to the Presiding Officers of the Olbiil Era Kelulau.

3 PNC § 202 formerly provided:

There shall be made available to each member of the Olbiil Era Kelulau an official expense of \$2,000 per month each to assist in defraying the expenses related to or resulting from the discharge of his official duties. The official expense allowance as provided herein may be used for: the hiring of staff, office supplies and equipment, administrative, technical and stenographic assistance, and other such expenses as are considered necessary and proper in the furtherance of the official business of the Olbiil Era Kelulau. Records concerning the spending of the allowance shall be made on forms acceptable to the Presiding Officer of each house and may be subject to audit examination by the Public Auditor and be made available for inspection by the general public. The official

Palau Chamber of Commerce v. Ucherbelau, 5 ROP Intrm. 300 (Tr. Div. 1995)

8 of the Constitution by increasing the compensation of the members of the OEK during the term of its enactment. *See* Palau Const. Art. IX, § 8 (“The compensation of the members of the Olbiil Era Kelulau shall be determined by law. No increase in compensation shall apply to members of the Olbiil Era Kelulau during the term of enactment. . . .”). Defendants argue that RPPL 4-10(4) (7) does not violate Article IX, Section 8 because “official expenses” are not “compensation.” For the reasons set forth below, plaintiffs’ motion for partial summary judgment is GRANTED, and defendants’ motion for cross-summary judgment is DENIED.

In determining the constitutionality of a statute, certain fundamental principles relating to separation of powers and constitutional interpretation must be observed. First, the Court is the ultimate interpreter of the Constitution. *Gibbons v. Etpison*, 4 ROP Intrm. 1, 5 (1993); *Becheserrak v. Koror State*, 3 ROP Intrm. 53, 55 (1991); *Salii v. House of Delegates*, 1 ROP Intrm. 708, 713 (1989); *Remeliik v. The Senate*, 1 ROP Intrm. 1, 5 (Tr. Div. 1981). It is the Court’s responsibility to “say what the law is,” *Becheserrak, supra*; *Gibbons v. Salii*, 1 ROP Intrm. 333, 336 (1986), *The Senate v. Remeliik*, 1 ROP Intrm. 90, 91 (Tr. Div. 1302 1983), and to decide whether the action of another branch of government exceeds whatever authority has been committed to it by the Constitution. *Salii, supra*. It is the “province and duty” of the Court to determine whether the “powers of any branch of the government, [including] those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void.” *Salii v. House of Delegates*, 3 ROP Intrm. 351, 357 (Tr. Div. 1989). For a court to do less than this “is to avoid its constitutional responsibility.” *Id.* at 359.

It is true, as defendants contend, that the legislature is presumed to intend to pass a valid act, and that a statute should be construed to sustain its constitutionality whenever possible. *Yalap v. ROP*, 3 ROP Intrm. 61, 66 (1992); *Alik v. Amalei*, 1 ROP Intrm. 513A, 513D (1988). But it is also true that if a statute clearly violates the Constitution, the Court “must give effect to the language of the Constitution without regard to the consequences.” *Yalap, supra*.

The guiding principle of constitutional construction is that the intent of the framers must be given effect. *Remeliik v. The Senate*, 1 ROP Intrm. at 5. Where the meaning of a constitutional provision is ambiguous or susceptible to different interpretations, the Court may resort to “preceding facts, surrounding circumstances and other forms of extrinsic evidence” to determine the framers’ intent. *Id.*; *Gibbons v. Salii*, 1 ROP Intrm. at 339. Recognizing this principle, Palauan courts have often turned to the records and committee reports of the Constitutional Convention to divine the meaning of constitutional language. *See, e.g., Gibbons v. Etpison*, 4 ROP Intrm. at 6; *Koror State v. ROP*, 3 ROP Intrm. 314, 319-20 (1993); *Gibbons v. Salii*, 1 ROP Intrm. at 339-44; *Elbelau v. Election Commission*, 3 ROP Intrm. 426, 428-29 (Tr. Div. 1993); *Gibbons v. Etpison*, 3 ROP Intrm. 385A, 385H-I (Tr. Div. 1992); *Remeliik v. The Senate*, 1 ROP Intrm. at 5-10.

The constitutional language in dispute in the present case is the term “compensation” found in Article IX, Section 8. Defendants assert that since the term “compensation” is unambiguous the Court may not resort to extrinsic evidence to divine its meaning. The Court, however, finds that the term “compensation” is ambiguous and fairly susceptible to more than

expense allowance herein provided shall be payable on a monthly basis.

Palau Chamber of Commerce v. Ucherbelau, 5 ROP Intrm. 300 (Tr. Div. 1995) one reasonable interpretation. See 15A C.J.S. *Compensation*, p. 101 (1994) (“The term ‘compensation’ is a generic term which has certain chameleon-like characteristics.”). The Court therefore turns to extrinsic evidence, that is, to **L303** Constitutional Convention committee reports, to determine the framers’ intent.

Committee Report No. 22, the final word of the framers on the meaning of Article IX, Section 8, resolves any ambiguity about the meaning of “compensation” by clearly stating that “[c]ompensation consists of salary and expenses.” Palau Const. Conv. Standing Comm. Rep. No. 22, at 15 (Mar. 2, 1979). Report 22 thus makes clear 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. Since 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.

Defendants argue that when the framers said “[c]ompensation consists of salary and expenses,” they really only meant “salary and personal expenses,” which defendants repeatedly say includes such expenses as per diem and stipends. Defendants’ Memorandum in Support of Cross-Motion for Summary Judgment, p. 6. Defendants assert that the framers could not have intended to bar increases in “official expenses,” i.e. those expenses “necessitated by the responsibilities of public office,” because “official expenses did not exist at the time Report No. 22 was drafted.” *Id.* When Report No. 22 was drafted the expense allowance law in effect provided that each legislator was to receive “an allowance for expenses at a rate of thirty-five dollars (\$35.00) a day to be paid with his last day of attendance at a session.” Public Law No. 6-6-18. Defendants liken this provision to “personal expenses” since it “provided no limitations whatsoever on how this expense allowance was to be spent.” Defendants contend that the first law providing for “official expenses” was not enacted until six months after the framers drafted Report No. 22. That law, Public Law 6-3-38, passed in August, 1979, defined “official expenses” as those which “may be used for but not limited to the hiring of personnel, staff, office supplies and equipment, administrative, technical and stenographic assistance. . . .” From this statutory chronology, defendants argue that when the framers included “expenses” in “compensation” they could have only contemplated the “personal expenses” then applicable, and not the “official expenses” provided for in RPPL 4-10(4)(7).

The Court need not address the merits of the somewhat dubious premise of defendants’ argument -- that in saying “compensation consists of salary and expenses” the framers could only have meant **L304** the types of expenses that existed at the time Report No. 22 was drafted -- for even if this premise were accepted, RPPL 4-10(4)(7) would still fall. The expense allocation provided for in RPPL 4-10(4)(7) -- “\$2,000 per month each to assist in defraying the expenses related to or resulting from the discharge of the member’s official duties” -- is far more akin to the lump-sum, “no limitation” allocation existing at the time Report No. 22 was drafted than it is to the narrowly defined list of “official expenses” contained in the expense allowance law enacted after Report No. 22 was drafted. Indeed, in amending 3 PNC § 202, RPPL 4-10(4)(7) deleted the very language that defendants claim distinguishes “official” from “personal” expenses (i.e., the sentence detailing what types of expenses the allowance may be used for) and replaced it with a broad grant of authority enabling OEK members to use the allowance for

Palau Chamber of Commerce v. Ucherbelau, 5 ROP Intrm. 300 (Tr. Div. 1995) expenses that, by defendants' own definition, are "personal." To summarize, even if the only expenses the framers had in mind when the said "compensation consists of salary and expenses" were the types of expenses in existence at the time Report No. 22 was drafted, then RPPL 4-10(4)(7) would still violate Article IX, Section 8 on its face, since its lump-sum allocation is similar to the expense allowances in place at the time Report No. 22 was drafted.

For the reasons stated herein, the Court GRANTS plaintiffs motion for summary judgment. The Court finds beyond a reasonable doubt that RPPL 4-10(4)(7) is unconstitutional on its face, and hereby enjoins the national treasury from issuing any checks for official expenses to OEK members in excess of \$1,000.00 per month. Plaintiffs have moved for attorney's fees, arguing that defendants showed bad faith in not resolving this matter sooner. Because plaintiffs have failed to prove this claim, their motion for award of attorney's fees is DENIED.