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## MUNICIPAL CORPORATIONS-VALIDITY OF JUKE BOX LICENSING ORDINANCE AS EXERCISE OF POLICE POWER

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MUNICIPAL CORPORATIONS—VALIDITY OF JUKE BOX LICENSING ORDINANCE AS EXERCISE OF POLICE POWER—Plaintiff owned and operated coin-operated phonographs, commonly known as juke boxes, in the City of New Kensington, Pennsylvania. The city enacted an ordinance making the possession of coin-operated phonographs or music boxes within the city without a license illegal. An annual license fee of \$25.00 per machine was imposed and violators were subjected to fine and imprisonment, each day of illegal operation constituting a separate offense. Plaintiff sought to enjoin enforcement of the ordinance, alleging that it would cause him irreparable injury and that it was unconstitutional because beyond the legislative power of the city council. An injunction was granted by the lower court. On appeal, *held*, reversed. *Adams v. City of New Kensington*, (Pa. 1947) 55 A. (2d) 392.

While many persons may disagree, juke boxes are undoubtedly classified as amusements and there is no question but that amusements are subject to regulation under the police power.<sup>1</sup> The theory of regulation of amusements seems to be best expressed by the maxim *salus populi suprema est lex*.<sup>2</sup> Generally when regulatory measures are imposed to further the general welfare the courts will defer to the legislative body as to the necessity of the regulations.<sup>3</sup> Statutes<sup>4</sup> and ordinances<sup>5</sup> regulating the use of juke boxes have been held to

<sup>12</sup> Apparently on the belief that jurors relying on flimsy excuses will be less likely to present them in open court, and that the trial judge in determining excuses will be less susceptible to outside influences if his determination is open to public censure. See Report of Committee on Trial by Jury of the American Bar Association Section on Judicial Administration, 63 A.B.A. Rep. 559 (1938) for other methods used in attempts to get a better quality of jurors.

<sup>1</sup> See, in general, 3 McQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., rev., § 935 et seq. (1943). "Theatres and other places of public amusement exist wholly under the authority and protection of state laws . . . therefore, State regulations . . . might be established as suitable regulations of police." 2 COOLEY, TORTS, 3d ed., 613 (1906). Tiedeman seemed to doubt that the police power extended as far as Judge Cooley contended, TIEDEMAN, LIMITATIONS OF POLICE POWER 232 (1886).

<sup>2</sup> "The will of the people is the first law." 13 COKE 139, BACON, MAX. REG. 12. It is virtually impossible to define the exact limits of the general welfare power. As Justice Harlan stated in *Chicago, B. & Q. R. Co. v. Illinois ex rel. Grimwood*, 200 U.S. 561 at 592, 26 S.Ct. 341 (1906), the validity of any given regulation "must depend upon the circumstances of each case. . . ."

<sup>3</sup> 3 McQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., rev., § 942 (1943).

<sup>4</sup> *McCarroll v. Williams*, 195 Ark. 715, 114 S.W. (2d) 18 (1938); *Dornacker v. Strutz*, 71 N.D. 449, 1 N.W. (2d) 614 (1942); *Fox v. Galloway*, 174 Ore. 339, 148 P. (2d) 922 (1944); *Northwest Amusement Co. v. Galloway*, 174 Ore. 362, 148 P. (2d) 931 (1944); *Carolina Music Co. v. Query*, 192 S.C. 308, 6 S.E. (2d) 473 (1939); *Sheppard v. Giebel*, (Texas Civ. App. 1937) 110 S.W. (2d) 166 (1937).

<sup>5</sup> *Miller v. City of Memphis*, 181 Tenn. 15, 178 S.W. (2d) 382 (1944).

be valid exercises of the police power and efforts to prohibit use of juke boxes where liquor is sold have been successful.<sup>6</sup> The Constitution of Pennsylvania provides that the legislature may give cities powers of self government;<sup>7</sup> and the act under which New Kensington is organized confers broad general welfare powers on the city, but no power to raise revenue by licensing amusements is granted.<sup>8</sup> It is clear, in a case such as this, that a city cannot, in the guise of exercising the police power, pass an ordinance which is, in fact, a revenue measure.<sup>9</sup> The police power does give a municipality the right to require a license<sup>10</sup> but the fee charged must not exceed the reasonably expected costs of inspection and supervision.<sup>11</sup> In the principal case plaintiff did not attempt to show that the ordinance was a revenue measure and, had he done so, the burden would have been on him to show that the fee was excessive.<sup>12</sup> The ordinance provides that each application for a license shall be referred to the Chief of Police for inspection and approval but no standard for approval or disapproval is set out.<sup>13</sup> Once a license has been obtained the only limitation on the use of the machine is that it shall not constitute a public nuisance. But surely such use would have been prohibited even though this ordinance had not been passed. Actually, then, the ordinance provides no new regulation of juke boxes and in a similar case the Supreme Court of Illinois said recently, "Where an ordinance contains no regulatory features it is a revenue measure."<sup>14</sup> Viewed in this light, it seems surprising indeed that the ordinance was not considered to be a revenue measure and therefore void, even though plaintiff made no such allegation.

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<sup>6</sup> *City of DeRidder v. Mangano*, 186 La. 129, 171 S. 826 (1936); *Zinn v. City of Steelville*, 351 Mo. 413, 173 S.W. (2d) 398 (1943).

<sup>7</sup> Pa. Stat. Ann. (Purdon, 1930) Art. 15, § 1.

<sup>8</sup> *Third Class City Law*, Pa. Laws (1931) p. 932.

<sup>9</sup> 3 *McQUILLIN, MUNICIPAL CORPORATIONS*, 2d ed., rev., § 1089 (1943); *Kittanning Borough v. American Natural Gas Co.*, 239 Pa. 210, 86 A. 717 (1913); *Rock v. Philadelphia*, 328 Pa. 382, 196 A. 59 (1938).

<sup>10</sup> 3 *McQUILLIN, MUNICIPAL CORPORATIONS*, 2d ed., § 1091 (1943); *American Baseball Club v. Philadelphia*, 312 Pa. 311, 167 A. 891 (1933).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Kittanning Borough v. American Natural Gas Co.*, 239 Pa. 210, 86 A. 717 (1913); *Rock v. Philadelphia*, 127 Pa. Super. 143, 191 A. 669 (1937), affirmed without opinion 328 Pa. 382, 196 A. 59 (1938); *William Laubach & Sons v. Easton*, 347 Pa. 542, 32 A. (2d) 881 (1943).

<sup>13</sup> Principal case at 397.

<sup>14</sup> *Lamere v. City of Chicago*, 391 Ill. 552 at 564, 63 N.E. (2d) 863 (1945), wherein an ordinance of the city providing a license fee of \$50 per juke box was held invalid as an exercise of the police power.