

NGIRTURONG LAWRENCE OTAOR, SALVADOR EMILIANO  
and FELICIANO UDUI, Defendants-Appellants

v.

TIMARONG ADALBERT, Plaintiff-Appellee

Civil Appeal No. 356

Appellate Division of the High Court

Palau District

January 25, 1984

Appeal from trial court judgment ordering defendant to pay to plaintiff monies received from legislative operating fund. The Appellate Division of the High Court, Munson, Chief Justice, held that trial court did not violate doctrine of separation of powers by construing statute which authorized chairman of legislative body to administer certain funds for specified purposes, and that such legislative funds were erroneously paid to chief who was prohibited from attending legislative meetings by conflict of interest, and funds should properly have been paid to acting chief appointed by chief to perform his legislative functions, and therefore trial court judgment was affirmed.

**1. Courts—Separation of Powers**

Trial court did not exceed its scope of judicial authority and violate the doctrine of separation of powers by setting aside an administrative decision of the executive branch, as to the appropriate recipients of legislative operating funds, even though the statute designated chairman of legislative body as the one who administered the designated funds and insured that it was being spent only for purposes specified by statute, since the final power to construe the statute rested with the judicial branch.

**2. Statutes—Construction—Legislative Intent**

Monies appropriated by statute to be used to defray the actual costs and expenses of the members of the House of Chiefs of the Palau Legislature in the discharge of official duties were erroneously paid to a chief, where the chief was prohibited, due to conflict of interest, from attending legislative meetings and had appointed another to attend the legislative sessions and perform the duties of a member.

*Counsel for Appellant:*

JOHNSON TORIBIONG, ESQ.

*Counsel for Appellee:*

DAVID SHADEL, ESQ., MLSC,  
Palau

Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and HEFNER<sup>1</sup>, *Associate Justice*

MUNSON, *Chief Justice*

#### STATEMENT OF THE CASE

This is an appeal from a judgment for appellee Timarong Adalbert in the amount of \$4,500.00, plus interest, rendered on September 16, 1981, by the trial division of the Trust Territory High Court. The complaint named several defendants, but judgment in the above amount was entered for appellee, and appellant Udui was ordered to pay this amount to appellee. Appellant is the only one of the named defendants to appeal.

The issue presented upon appeal is whether the trial court acted within the scope of its authority, and not in violation of the doctrine of separation of powers, in construing Palau Public Laws 7-1-4 and 7-3-37 contrary to the construction given them by the Presiding Officer of the House of Chiefs.

#### FACTS

Until February, 1980, appellant Feliciano Udui had served for many years as a member of the House of Chiefs of the Palau Legislature by virtue of his title as the paramount chief of Ngiwal Municipality, Palau. Mr. Udui was also employed by the Trust Territory government as Chief of the Labor Division of the Palau government. In January of 1980 Udui was forced to discontinue attending meetings of the House of Chiefs by Department of Interior Secretarial Order No. 3027, which prohibited a member of the Palau Legislature from holding other public employment. Udui remains the Chief of the Labor Division of the Palau government.

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<sup>1</sup>Chief Judge, Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Justice by Secretary of Interior.

As a result of the prohibition of the Secretarial Order, Udui appointed appellee Timarong Adalbert to attend the meetings of the House of Chiefs as his Acting Chief Uoruyos. From that time on, Adalbert attended the official legislative sessions of the House of Chiefs and performed the duties of a member. Udui did not attend these sessions, and was in fact prohibited from doing so since he continued to be employed by the Trust Territory government.

In January and again in June of 1980, by Palau Public Laws Nos. 7-1-4 and 7-3-37, the Palau Legislature appropriated for the operation of the House of Chiefs, among other sums, \$48,000.00 for "Official Expenses."

On February 12, 1980, the Chairman of the House of Chiefs issued a memorandum to the Palau District Finance Officer to the effect that payment of compensation and official expenses would continue to be made to the actual chiefs, including Udui, while daily allowances for meetings attended would be made to the acting chiefs, including Adalbert. Udui accepted these payments—nine \$500.00 checks issued over a period of nine months.

In connection with his receipt of these funds, Udui signed authorizations certifying that he would be responsible to insure that the amount would be used only to defray expenses relating to or resulting from the discharge of his official duties as a member of the Palau Legislature.

On August 29, 1980, Adalbert filed a complaint seeking to recover the compensation and official expenses paid to Udui. The complaint named as defendants Ngirturong Lawrence Otaor (Chairman of the House of Chiefs), Jonathan Maui (Financial Officer of the Palau District), Salvador Emiliano (Clerk of the House of Chiefs), and Udui. After trial, a judgment was given on September 16, 1981, in favor of appellee and appellant was ordered to pay to appellee the sum of \$4,500.00.

ANALYSIS

Appellant contends that the trial court acted beyond the scope of its judicial authority in violation of the doctrine of separation of powers by construing Palau Public Laws Nos. 7-1-4 and 7-3-37 contrary to the construction given them by the Presiding Officer of the House of Chiefs.

Appellant correctly notes that the doctrine requires that each of the three branches of government has exclusive cognizance of the functions within its own sphere and that none of them may invade the sphere of the other. The function of the executive is to carry laws into effect; the function of the legislature is to make, alter and repeal laws; and the function of the judiciary is to interpret laws.

In this case, the applicable public laws relating to the administration and expenditure of public funds by the House of Chiefs delegated the administration and control of the expenditure of operational funds to the Presiding Chairman of the House of Chiefs. Palau Public Law No. 7-1-4 provides, in Section 2:

The sum allocated above shall be administered and expended by the Presiding Chairman . . . of the House of Chiefs for the purpose herein specified, . . .

and in Section 4:

The Chairman of the House of Chiefs shall be responsible for insuring that these funds are used only for the purpose specified in Section 1 of this Act. . . .

Section 1 of Palau Public Law 7-1-4 provides that the funds are appropriated "for the operation of the House of Chiefs of the Palau Legislature." The language of Public Law 7-3-37 is similar and of the same effect as that of Public Law 7-1-4.

Appellant argues that the trial court erred in overruling the decision of the Presiding Chairman as to appropriate recipients of some of the funds involved, a matter purely

administrative and internal to the legislative branch of the government. In support of this argument, appellant cites 2 Am. Jur. 2d Administrative Law § 241, which states:

The formal or informal interpretation or practical construction of an ambiguous or uncertain statute or law by the executive department or other agency charged with its administration or enforcement is entitled to consideration and the highest respect from the courts, and must be accorded appropriate weight in determining the meaning of the law, especially when the construction or interpretation is long continued and uniform or is contemporaneous with the workings of the statute, or when the enactment of the statute was suggested by such agency.

Thus, appellant argues, the trial court exceeded its scope of judicial authority by setting aside an administrative decision of the legislative branch which represented a quite reasonable interpretation and execution of the public laws in question. Appellant seems to base this argument on the fact that, under the statutes, the Chairman is the administrator of the funds and thus has the last word in interpreting Palau Public Laws 7-1-4 and 7-3-37. But, while the statutes designate the Chairman as the one who administers the money and insures that it is being spent only for the purposes specified in the statutes, they do not authorize him to interpret the authorizing provisions of the law.

[1] That is the historic and traditional function of the judiciary, and the trial court properly exercised this right.

Appellant also argues that the construction of an ambiguous statute by an agency charged with its administration is entitled to deference from the courts. While this argument is correct, it does not change the fact that the final power to construe the statute rests with the courts, *Bodinson Mfg. Co. v. California Employment Commission*, 17 Cal. 2d 321, 109 P.2d 935, 939 (1941), and there is no showing of error on the part of the trial court in its actual interpretation of the statute.

In his Notice of Appeal, appellant raised the issue of whether the trial court correctly ruled that Adalbert was entitled to the money. This issue was not, however, briefed by appellant and we can find no merit to the argument. Moreover, appellee, in his brief, provided us with persuasive arguments for upholding the trial court's determination.

The trial court found:

It is clear that the monies appropriated by Public Law Nos. 7-1-4 and 7-3-37 were intended to be used to defray the actual costs and expenses of the members of the House of Chiefs of the Palau Legislature in the discharge of their official duties. They did not appropriate funds to be used by the traditional chiefs unconditionally.

[2] It was Adalbert who was acting in an official capacity in the House of Chiefs, it was Adalbert who incurred the actual costs in doing so, and it was Adalbert to whom the money should have been paid.

For these reasons, the judgment of the trial court awarding \$4,500.00 to appellee, and ordering appellant to pay such amount to appellee, is confirmed.

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ATIDRIK MAIE, Defendant-Appellant  
v.  
JILLO BULELE, Plaintiff-Appellee  
Civil Appeal No. 370  
Appellate Division of the High Court  
Marshall Islands District  
January 25, 1984

Appeal from trial court judgment declaring plaintiff to be the holder of *alab* rights to three *watos*. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that pre-trial motion to amend answer was properly denied, deposition of witness who lived several hundred miles away was properly admitted at trial, and trial court correctly found that *kallimur* was