

KENTIY, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 55
Trial Division of the High Court
Palau District
July 30, 1954

Defendant was convicted in Palau District Court under Palau District Order No. 2-50, and on appeal claims that order was invalid at time of trial. The Trial Division of the High Court, Associate Justice James R. Nichols, held that order was valid at time of trial as subsequent promulgations relating to authority to issue district orders were not retroactive and did not repeal existing district orders.

Affirmed.

1. Statutes—Approval

Requirement that district orders must be approved by High Commissioner prior to promulgation as law was not retroactive. (HICOM-TERPACIS ADMIN dispatch 240255Z, May, 1950)

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2. Trust Territory—Applicable Law

Promulgation of Trust Territory Code does not repeal existing district orders whether such orders were issued prior to requirement of High Commissioner's approval or subsequent thereto.

3. Trust Territory—Applicable Law

Trust Territory law which repeals regulations, orders and directives of United States Military Government does not repeal existing district orders. (T.T.C., Sec. 26)

4. Trust Territory—Applicable Law

Trust Territory law which provides that Territory laws include district orders promulgated by District Administrators with approval of High Commissioner does not effect repeal of district orders issued by Civil Administrators either with approval of High Commissioner after that was required or without his approval prior to time such requirement was made. (T.T.C., Sec. 20)

5. Trust Territory—Applicable Law

Administrative Procedures Manual does not modify executive orders nor itself constitute new law affecting general public. (T.T.C., Sec. 28)

<i>Assessor:</i>	JOSEPH TELLEI
<i>Interpreter:</i>	FRANCISCO K. MOREI
<i>Reporter:</i>	ZELLA L. MOORE
<i>Counsel for Appellant:</i>	ROMAN TMETUHL
<i>Counsel for Appellee:</i>	SGT. ULENGCHONG

NICHOLS, *Associate Justice*

The appellant at the beginning of the hearing advanced the following ground for appeal:

1. That Palau District Order No. 2-50, under Section II of which the accused was prosecuted, was invalid in that said District Order had never been approved by the High Commissioner.

It was agreed that Palau District Order No. 2-50 was signed by Cdr. A. D. Curtis, USN, on February 11, 1950, and was thereafter promulgated in accordance with the then existing regulations.

The appellant argues that Palau District Order No. 2-50 was invalid at the time of the trial of the accused in that:

1. It was never promulgated by a District Administrator of the Trust Territory with the approval of the High Commissioner as required by Section 20(d) of the Trust Territory Code.

2. It is inconsistent with the provisions of Section 26 of the Trust Territory Code.

3. It is expressly invalidated by the last sentence of the second paragraph in the section numbered 3 entitled "District Orders" which appears on Page I.4 of the Administrative Procedures Manual.

The appellee argues that Palau District Order No. 2-50 was valid at the time of the trial of the accused.

[1] District Orders were provided for by Deputy High Commissioner's letter serial 202 of 11 February 1948, which imposed no requirement for their prior approval by any one above the Civil Administrators. The requirement that Sub-Area Ordinances (issued by Governors) and District Orders must be approved by the High Commissioner prior to promulgation as law, was first imposed by HICOMTER-PACIS ADMIN dispatch 240255Z May 1950. Since Palau District Order No. 2-50 went into effect during February 1950, the approval of the High Commissioner was not then required and no retroactive action requiring the approval of the High Commissioner was taken between May 24, 1950 and July 1, 1951.

On July 1, 1951, Elbert D. Thomas, High Commissioner of the Trust Territory of the Pacific Islands, issued Proclamation No. 2, to the people of the Trust Territory of the Pacific Islands, in which it was specifically stated that "all proclamations, Interim Regulations, ordinances, and orders issued under the administration by the Department of the Navy shall remain in full force and effect, except as otherwise provided herein and as it may be necessary for me in the exercise of my powers and duties

to change them." It also changed the title "Civil Administrator" to "District Administrator". No provision in conflict with Palau District Order No. 2-50 appears in Proclamation No. 2, and the High Commissioner did not change Palau District Order No. 2-50 between July 1, 1951 and December 22, 1952, on which date the Trust Territory Code became effective.

[2, 3] Executive Order No. 32 of December 22, 1952, which promulgated the Trust Territory Code, expressly excluded from the repeal provisions of the order "existing District Orders" without differentiating between orders issued prior to the requirement for approval by the High Commissioner and those issued subsequent thereto. Likewise, Section 26 of the Trust Territory Code expressly repeals "all proclamations, regulations, orders and directives of the United States Military Government, all Civil Administration Orders (*except existing District Orders*), and all Interim Regulations, amendments and supplements thereto, which are not contained in these Regulations."

[4] While Section 20 of the Trust Territory Code, in listing the laws applicable in the Trust Territory, mentions, among others, "District Orders promulgated by the District Administrators of the Trust Territory with the approval of the High Commissioner", it is held that these words would not effect the repeal of District Orders issued by Civil Administrators, either with the approval of the High Commissioner after that was required, or without his approval prior to the time the requirement was made.

[5] From Staff Memorandum No. 68 (also designated as Field Memorandum No. 82) of March 2, 1953, it is clear that the Administrative Procedures Manual was intended to supersede a large number of Staff, Field and Administrative memoranda. Since it is specifically stated in Sec-

tion 28 of the Trust Territory Code that "New laws and regulations or amendments to these Regulations may be promulgated by the High Commissioner by Executive Order", it is held that the Administrative Procedures Manual was not intended to modify the Executive Orders or to itself constitute new law affecting the general public.

JUDGMENT

At the time of the trial of Palau District Criminal Case No. 114 by the District Court for the Palau District, Palau District Order No. 2-50 was in full force and effect. The finding of guilty and the sentence appealed from are therefore affirmed.