REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

- versus -

UNILEVER PHILIPPINES, INC.,
Respondent.

C.T.A. AC NO. 47

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

SEP 10 2008 3:30pm

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DECISION

CASANOVA, *J.*:

Nature of the Case

This is a Petition for Review of the Decision dated November 3, 2006, and Order dated July 12, 2007 of the Regional Trial Court of Manila, Branch 21.

Statement of the Facts

The facts, as culled from the records, follow:

Petitioner is the Treasurer of the City of Manila, Ms. Liberty M. Toledo, with office address at the Ground Floor, Manila City Hall, Taft Avenue, Manila.[1]

[1] Paragraph 2, Page 2, Petition for Review; Page 2, CTA Records

While respondent, Unilever Philippines, Inc., is a domestic corporation duly registered and existing by virtue of the laws of the Philippines, with principal address at 1351 United Nations Avenue, Manila.[2]

Respondent, on October 17, 2003, filed a Petition for Refund[3] before the Regional Trial Court of Manila, Branch 21, docketed as Civil Case No. 03-108165.[4] Petitioner filed her Answer[5] on December 3, 2003.[6]

Respondent filed its Memorandum[7] on March 9, 2004. Petitioner's Memorandum[8] was filed on March 11, 2004.[9]

On November 3, 2006, the Regional Trial Court of Manila rendered as follows:[10]

> "**WHEREFORE,** premises considered, the petitions are hereby **GRANTED.** The application to petitioner of Sec. 21 of the Tax Ordinance No. 7988 as amended by Tax Ordinance No. 8011 is hereby declared **VOID.** Respondent is hereby ordered to **REFUND/CREDIT** petitioner the taxes paid under Sec. 21 of the said ordinance. With cost against respondents.
>
> **SO ORDERED.**"

Petitioner then filed a Motion for Reconsideration[11] on November 27, 2006.[12] The Regional Trial Court, on July 12, 2007, resolved as follows:[13]

> "**Accordingly,** the Motion for Reconsideration is hereby **DENIED.**
>
> **SO ORDERED.**"

Hence, petitioner filed an appeal, by way of Petition for Review, on October 25, 2007.

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[2] Paragraph 3, Ibid; Ibid
[3] Annex A, Pages 25-33, CTA Records
[4] Paragraph 4, Page 2, Petition for Review; Page 2, CTA Records
[5] Annex B, Pages 34-44, CTA Records
[6] Paragraph 5, Page 2, Petition for Review; Page 2, CTA Records
[7] Annex D, Pages 45-59, CTA Records
[8] Annex E, Pages 60-70, CTA Records
[9] Paragraph 8, Page 3, Petition for Review; Page 3, CTA Records
[10] Annex F, Pages 72-78, CTA Records
[11] Annex G, Pages 82-91, CTA Records
[12] Paragraph 10, Page 3, Petition for Review; Page 3, CTA Records
[13] Pages 80-81, CTA Records

In a Resolution dated November 14, 2007, this Court ordered respondent to file a Comment, not a Motion to Dismiss, within ten (10) days from receipt thereof.[14]

Respondent then, on December 21, 2007, filed its Manifestation with Motion (re: Opposition to Petition for Review)[15], with attached Opposition (re: Petition for Review dated October 25, 2007)[16].

The Court, in a Resolution dated January 4, 2008, admitted respondent's Opposition, and ordered the parties to submit their respective Memoranda within fifteen (15) days from receipt thereof.[17]

This case was submitted for decision, in a Resolution dated February 27, 2008, taking into consideration the Memorandum filed by petitioner on January 25, 2008,[18] and the Memorandum posted by respondent on February 8, 2008[19] but received on February 19, 2008.[20]

Hence, this decision.

The Parties' Arguments

Petitioner advances the following issues:[21]

I. Whether or not the Honorable Regional Trial Court gravely erred in holding that there is double taxation in the imposition of Section 21 of the Manila Revenue Code, as amended;

II. Whether or not the Honorable Regional Trial Court gravely erred in holding that Section 21 is expressly prohibited by Section 133 of the Local Government Code; and

III. Whether or not the Honorable Regional Trial Court gravely erred in holding that Sections 195 and 187 of the Local Government Code do not apply in the instant case.

[14] Page 94, CTA Records
[15] Pages 102-104, CTA Records
[16] Pages 105-140, CTA Records
[17] Pages 144-146, CTA Records
[18] Pages 147-163, CTA Records
[19] Pages 168-204, CTA Records
[20] Page 287, CTA Records
[21] Paragraph 11, Page 4, Petition for Review; Page 4, CTA Records

While respondent opposes on the following grounds:[22]

I. The imposition of both Sections 14 and 21 on respondent [Unilever] constitutes direct duplicate taxation;

II. The Honorable Court of Tax Appeals has already ruled with finality that the imposition of the Section 21 tax on respondent [Unilever] constitutes double taxation, in view of the taxes paid under Section 14. Hence, such ruling is now the "law of the case";

III. Petitioner City Treasurer herself admitted that respondent [Unilever] is entitled to a refund of the Section 21 taxes it has paid;

IV. The Petition for Refund was filed under Section 196 of the Local Government Code, and not under Section 195; hence, the latter is not applicable;

V. Respondent [Unilever] is not questioning the validity or constitutionality of Section 21; hence, Section 187 is not applicable;

VI. Respondent [Unilever] is not guilty of forum-shopping as each Petition for Refund it had filed seeks a refund of a different payment made; and

VII. Contrary to petitioner's bare assertion, and consistent with the ruling of the Trial Court, Atty. Danilo Cruz was authorized to file the Petition for Refund; respondent [Unilever] has capacity to sue and be sued, and this was stated in the Petition for Refund. In fact, petitioner City Treasurer admitted the existence of such capacity.

The Court's Ruling

This Court will resolve the issues in *seriatim*.

Authority of the Local Government Unit

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad of activities of local government units for the delivery of

[22] Paragraphs I-VII, Pages 2-3, Opposition (re: Petition for Review dated October 25, 2007); Pages 106-107, CTA Records

basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people.[23]

Under the regime of the 1935 Constitution, no delegation of tax powers was provided, and the local government units instead derived their tax powers under a limited statutory authority.[24]

During the 1973 Constitution, the revenue making power was delegated to local governments by Article XI.

At present, under the 1987 Constitution, a general delegation of that power has been given to local government units. Thus, Article X provides:

> "**SECTION 3.** The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions, and duties of local officials, and all other matters relating to the organization and operation of the local units.
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> x x x x x x x x x
>
> **SECTION 5.** Each local government unit shall have the power to create its sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such fees, taxes, and charges shall accrue exclusively to the local governments."

These guidelines and limitations as provided by Congress are contained in the Local Government Code of 1991 (LGC), which provides for comprehensive instances when and how local government units may impose taxes.[25]

Among the limitations contained in the LGC on local government units is specified in Section 143 (h) thereof, which reads as follows:

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[23] Reyes vs. Court of Appeals, 320 SCRA 486
[24] Manila Electric Company vs. Province of Laguna, G.R. No. 131359, May 5, 1999
[25] Yamane vs. BA Lepanto Condominium Corporation, G.R. No. 154993, October 25, 2005

"**SECTION 143.** *Tax on Business-* The municipality may impose taxes on the following businesses:

xxx

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, that on any business subject to the excise, value-added or percentage tax under the National Internet Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein."

Paragraph (h) explicitly provides that the taxes therein may no longer be imposed on businesses subjected to tax under paragraphs (a) to (g) of the same section, which reads as follows:

"**SECTION 143.** *Tax on Business.* - The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule: With gross sales or receipts for the Amount of Tax preceding calendar year in the amount of:

xxx xxx xxx

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule: With gross sales or receipts for the Amount of Tax preceding calendar year in the amount of:

xxx xxx xxx

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement.

(d) On retailers, with gross sales or receipts Rate of tax for the preceding calendar year of:

xxx xxx xxx

Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P50,000.00) or less, in the case of cities, and Thirty thousand pesos (P30,000.00) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually."

Section 143 of the Code specifically enumerates several types of business on which municipalities and cities may impose taxes. Moreover, the local *sanggunian* is also authorized to impose taxes *"on any other businesses not otherwise specified"*, which the *sanggunian* concerned may deem proper to tax.

This clearly indicates the intention of the framers of LGC to include in subsection (h) those businesses or persons not covered in subsections (a) to (g).

Sections 14 and 21 of the Manila Revenue Code

The City of Manila through Tax Ordinance No. 7988, as amended by Ordinance No. 8011, otherwise known as the Revised Revenue Code of the City of Manila, imposes and collects taxes on people, transactions, and businesses found within its jurisdiction.

Included therein are Sections 14 and 21 of the Manila Revenue Code (MRC) which states:

> "**SECTION 14.** *Tax on Manufacturers, Assemblers and Other Processors* — There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule xxx"
>
> xxx xxx xxx
>
> "**SECTION 21.** *Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC.* — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code. xxx"

Section 14 imposes a percentage tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines, or manufacturers of any article of commerce of whatever kind or with the gross sales or receipts for the preceding calendar year in accordance with the schedule provided therein.

While Section 21, on the other hand, entitled "Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes under the NIRC", provides for the imposition of a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts on the business and articles of commerce subject to excise, value added or percentage taxes under the National Internal Revenue Code (NIRC).

Upon perusals thereof, Sections 14 and 21 of Ordinance No. 7988 has a semblance with Section 143(a) and (h), respectively, of the LGC. To illustrate:

LGC	Ordinance No. 7988
"Section. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses: (a) **On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:**	Section 14. "Tax on Manufacturers, Assemblers, and Other Processors - There is hereby imposed a graduated tax **on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:**
Section 143. Tax on Business – The municipality may impose taxes on the following businesses: xxx (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, **That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended,** the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year. The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein. *(Emphasis supplied)*	Section 21. Tax on Businesses Subject to Excise, Value-Added or Percentage Taxes Under the NIRC. – **On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereafter referred to as NIRC, as amended,** a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed: (A) On persons who sell goods and services in the course of trade or business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of said code. *(Emphasis supplied)*

Clearly, the provisions in the LGC and the MRC are the same.

In the present case, while respondent is being taxed as a manufacturer of goods in Section 14 of the Ordinance, it is also being taxed under Section 21 (a) on its business of selling manufactured goods.

Both Sections 14 and 21 of the MRC are business taxes based on respondent's sales as a manufacturer. Thus, subjecting respondent to both provisions is an apparent violation of Section 143 (h) of the LGC.

It is tantamount to double taxation. The Supreme Court defines double taxation as:

> "Taxing the same property twice when it should be taxed only once; that is, "x x x taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character." [26]

Moreover, in the Pepsi-Cola case, the Supreme Court likewise said:

> "Double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality."[27]

The Court consistently held that the imposition of Sections 14 and 21 of the MRC, as amended, constitutes double taxation.[28] There was taxation twice, for the same activity (*i.e.*, manufacturing), by the same public authority within the same taxing jurisdiction (City of Manila), for the same purpose (*i.e.*, to generate revenue for the City of Manila), for the

[26] Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003.
[27] Pepsi-Cola Bottling Co. of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, No. L-31156, February 27, 1976, 69 SCRA 466-467.
[28] Unilever Philippines, Inc. vs. The Treasurer of Manila, CTA AC No. 25, June 18, 2007; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Philippines, Inc. , CTA A.C. No. 21, May 10, 2007; Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation) vs. The Treasurer of the City of Manila, CTA AC No. 17, September 11, 2006; Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila, CTA AC No. 15, July 21, 2006

same taxable period. It is obnoxious when the taxpayer is taxed twice, when it should be but once.[29]

Even if we disregard the limitation set by Section 133 of the LGC, petitioner may not impose the taxes under Sections 14 and 21. In **Coca Cola Bottlers Philippines, Inc. vs. City of Manila, et. al.,**[30] the Highest Tribunal declared null and void Tax Ordinance 7988, as amended by Tax Ordinance No. 8011 of the City of Manila, for failure to comply with the publication requirements of ordinances as prescribed by the LGC, to wit:

> "**SECTION 188.** *Publication of Tax Ordinances and Revenue Measures.* – Within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation; Provided, however, that in provinces, cities, and municipalities where there are no newspapers or local circulations the same may be posted in at least two (2) conspicuous and publicly accessible places."

The subjects are the same. The Coca Cola case is a *stare decisis* in the case at bench. Thus, defined as:

> "*Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[31]"
>
> "Under the doctrine of *stare decisis*, once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised. *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[32]"

[29] San Miguel Brewery, Inc. vs. City of Cebu, 43 SCRA 275, February 26, 1972
[30] G.R. No. 156252, June 27, 2006
[31] Grand Placement and General Services Corporaton vs. Court of Appeals, et. al., G.R. NO. 142358, January 31, 2006
[32] Ayala Corporation vs. Rosa-Diana Realty and Development Corporation, G.R. No. 134284, December 1, 2000

A municipal tax ordinance empowers a local government unit to impose taxes. However, Ordinance No. 7988, as amended by Ordinance 8011 is null and void. An invalid ordinance does not, in legal contemplation, exist.

Sections 187 and 195 of the Local Government Code

Petitioner avers that the cause of action was already barred for failure to observe Section 187 of the LGC, which reads as follows:

> "**SECTION 187.** *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That the public hearings shall be conducted for the purpose prior to the enactment thereof: Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein: Provided, finally, That within thirty (30) days after the receipt of the decision or the lapse of the sixty day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction."

Petitioner asserts that for respondent's failure to appeal the Revenue Measure within thirty (30) days from its enactment, it is barred from seeking judicial intervention, since Section 187 is a condition *sine qua non* before resort to the court may be had. Moreover, respondent is estopped to file a claim for refund for its failure to appeal the assessment, in utter disregard of Section 195 of the LGC, which reads as follows:

> "**SECTION 195.** *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall

have thirty (30) days from the receipt of the denial of the protest or from the lapse of sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

We are not persuaded.

The foregoing provisions of the LGC cover the protest of assessment, and the procedure for approval and effectivity of tax ordinances and revenue measures.

The present case involves a claim for refund under the MRC.

A refund is not the same case as that of a disputed assessment which is referred to in Section 195 of the LGC.

Respondent did not raise any issue regarding incorrect assessment. There was no notice of assessment issued by petitioner requiring respondent to pay its taxes. There was no assessment to protest.

Moreover, respondent did not question the legality of Sections 14 and 21. It only questions the enforcement thereof, as it already paid business taxes under Section 14 of the MRC, as well as, Section 21 of the same code. Section 187 has no application in the instant case.

Epilogue

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad of activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people.[33]

However, such authority is not absolute.

The power of local government units to impose taxes within its territorial jurisdiction derives from the Constitution itself, which recognizes the power of these units "to create its

[33] Reyes vs. Court of Appeals, 320 SCRA 486

own sources of revenue and to levy taxes, fees, and charges is subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy."[34]

Petitioner is merely deriving its authority to tax respondent from an invalid ordinance, such is a violation of the constitutional principle of uniformity and equal protection in taxation.

WHEREFORE, with the foregoing disquisitions, the Petition for Review is hereby **DENIED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

[34] Section 5, Article X, Constitution