

## EN BANC

[ G.R. No. 190779, March 26, 2010 ]

**ATTY. REYNANTE B. ORCEO, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This is a petition for *certiorari*<sup>[1]</sup> questioning the validity of Resolution No. 8714 insofar as it provides that the term "firearm" includes airsoft guns and their replicas/imitations, which results in their coverage by the gun ban during the election period this year.

Resolution No. 8714 is entitled *Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections*. The Resolution was promulgated by the Commission on Elections (COMELEC) on December 16, 2009, and took effect on December 25, 2009.

Resolution No. 8714 contains the implementing rules and regulations of Sec. 32 (Who May Bear Firearms) and Section 33 (Security Personnel and Bodyguards) of Republic Act (R.A.) No. 7166, entitled *An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes*.

Section 1 of Resolution No. 8714 prohibits an unauthorized person from bearing, carrying or transporting firearms or other deadly weapons in public places, including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same, during the election period.

Under Section 2 (b) of Resolution No. 8714, the term "firearm" includes "airgun, airsoft guns, and their replica/imitation in whatever form that can cause an ordinary person to believe that they are real." Hence, airsoft guns and their replicas/imitations are included in the gun ban during the election period from January 10, 2010 to June 9, 2010.

Petitioner claims that he is a real party-in-interest, because he has been playing airsoft since the year 2000. The continuing implementation of Resolution No. 8714 will put him in danger of sustaining direct injury or make him liable for an election offense<sup>[2]</sup> if caught in possession of an airsoft gun and its replica/imitation in going to and from the game site and playing the sport during the election period.

Petitioner contends that the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in including "airsoft guns and their replicas/imitations"

in the definition of "firearm" in Resolution No. 8714, since there is nothing in R.A. No. 7166 that mentions "airsoft guns and their replicas/imitations." He asserts that the intendment of R.A. No. 7166 is that the term "firearm" refers to real firearm in its common and ordinary usage. In support of this assertion, he cites the Senate deliberation on the bill,<sup>[3]</sup> which later became R.A. No. 7166, where it was clarified that an unauthorized person caught carrying a firearm during the election period is guilty of an election offense under Section 261 (q) of the Omnibus Election Code.

Further, petitioner alleges that there is no law that covers airsoft guns. By including airsoft guns in the definition of "firearm," Resolution No. 8714, in effect, criminalizes the sport, since the possession of an airsoft gun or its replica/imitation is now an election offense, although there is still no law that governs the use thereof.

Petitioner prays that the Court render a decision as follows: (1) Annulling Resolution No. 8714 insofar as it includes airsoft guns and their replicas/imitations within the meaning of "firearm," and declaring the Resolution as invalid; (2) ordering the COMELEC to desist from further implementing Resolution No. 8714 insofar as airsoft guns and their replicas/imitations are concerned; (3) ordering the COMELEC to amend Resolution No. 8714 by removing airsoft guns and their replicas/imitations within the meaning of "firearm"; and (4) ordering the COMELEC to issue a Resolution directing the Armed Forces of the Philippines, Philippine National Police and other law enforcement agencies deputized by the COMELEC to desist from further enforcing Resolution No. 8714 insofar as airsoft guns and their replicas/imitations are concerned.

The main issue is whether or not the COMELEC gravely abused its discretion in including airsoft guns and their replicas/imitations in the term "firearm" in Section 2 (b) of R.A. No. 8714.

The Court finds that the COMELEC did not commit grave abuse of discretion in this case.

R.A. No. 7166 (*An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes*)<sup>[4]</sup> provides:

SEC. 32. *Who May Bear Firearms.* – During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided, That*, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number, which shall remain visible at all times; and (b) in the actual performance of his election duty

in the specific area designated by the Commission.

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SEC. 35. *Rules and Regulations.* -- The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

Pursuant to Section 35 of R.A. No. 7166, the COMELEC promulgated Resolution No. 8714, which contains the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. The pertinent portion of the Resolution states:

NOW, THEREFORE, pursuant to the powers vested in it by the Constitution of the Republic of the Philippines, the Omnibus Election Code (B.P. Blg. 881), Republic Acts Nos. 6646, 7166, 8189, 8436, 9189, 9369 and other elections laws, the Commission RESOLVED, as it hereby RESOLVES, to promulgate the following rules and regulations to implement Sections 32 and 33 of Republic Act No. 7166 in connection with the conduct of the May 10, 2010 national and local elections:

SECTION 1. *General Guiding Principles.* - **During the election period: (a) no person shall bear, carry or transport firearms or other deadly weapons in public places, including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same;** and (b) no candidate for public office, including incumbent public officers seeking election to any public office, shall employ, avail himself of or engage the services of security personnel or bodyguards, whether or not such bodyguards are regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) or other law enforcement agency of the Government.

The transport of firearms of those who are engaged in the manufacture, importation, exportation, purchase, sale of firearms, explosives and their spare parts or those involving the transportation of firearms, explosives and their spare parts, may, with prior notice to the Commission, be authorized by the Director General of the PNP provided that the firearms, explosives and their spare parts are immediately transported to the Firearms and Explosives Division, CSG, PNP.

SEC. 2. *Definition of Terms.* - As used in this Resolution:

(a) *Election Period* refers to the election period prescribed in Comelec Resolution No. 8646 dated 14 July 2009 which is from 10 January 2010 to 09 June 2010;

(b) **Firearm** shall refer to the "firearm" as defined in existing laws, rules and regulations. The term also **includes airgun, airsoft guns, and their replica/imitation in whatever form that can cause an ordinary person to believe that they are real;**

(c) *Deadly weapon* includes bladed instrument, handgrenades or other explosives, except pyrotechnics.

x x x x

SEC. 4. *Who May Bear Firearms.* – Only the following persons who are in the regular plantilla of the PNP or AFP or other law enforcement agencies are authorized to bear, carry or transport firearms or other deadly weapons during the election period:

(a) Regular member or officer of the PNP, the AFP and other law enforcement agencies of the Government, provided that when in the possession of firearm, he is: (1) in the regular plantilla of the said agencies and is receiving regular compensation for the services rendered in said agencies; and (2) in the agency-prescribed uniform showing clearly and legibly his name, rank and serial number or, in case rank and serial number are inapplicable, his agency-issued identification card showing clearly his name and position, which identification card shall remain visible at all times; (3) duly licensed to possess firearm and to carry the same outside of residence by means of a valid mission order or letter order; and (4) in the actual performance of official law enforcement duty, or in going to or returning from his residence/barracks or official station.

x x x x

(b) Member of privately owned or operated security, investigative, protective or intelligence agencies duly authorized by the PNP, provided that when in the possession of firearm, he is: (1) in the agency-prescribed uniform with his agency-issued identification card prominently displayed and visible at all times, showing clearly his name and position; and (2) in the actual performance of duty at his specified place/area of duty.

x x x x

SEC. 8. *Enforcement.* - Any person who, not wearing the authorized uniform mentioned herein, bears, carries or transports firearm or other deadly weapon, shall be presumed unauthorized to carry firearms and subject to arrest.<sup>[5]</sup>

Petitioner contends that under R.A. No. 7166, the term "firearm" connotes real firearm. Moreover, R.A. No. 7166 does not mention airsoft guns and their replicas/imitations. Hence, its implementing rules and regulations contained in Resolution No. 8714 should not include airsoft guns and their replicas/imitations in the definition of the term "firearm."

The Court is not persuaded.

*Holy Spirit Homeowners Association, Inc. v. Defensor*<sup>[6]</sup> held:

Where a rule or regulation has a provision not expressly stated or contained in the statute being implemented, that provision does not necessarily contradict the statute. A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. **All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law.**<sup>[7]</sup>

Evidently, the COMELEC had the authority to promulgate Resolution No. 8714 pursuant to Section 35 of R.A. No. 7166. It was granted the power to issue the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. Under this broad power, the COMELEC was mandated to provide the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," among others. These details are left to the discretion of the COMELEC, which is a constitutional body that possesses special knowledge and expertise on election matters, with the objective of ensuring the holding of free, orderly, honest, peaceful and credible elections.

In its Comment,<sup>[8]</sup> the COMELEC, represented by the Office of the Solicitor General, states that the COMELEC's intent in the inclusion of airsoft guns in the term "firearm" and their resultant coverage by the election gun ban is to avoid the possible use of recreational guns in sowing fear, intimidation or terror during the election period. An ordinary citizen may not be able to distinguish between a real gun and an airsoft gun. It is fear subverting the will of a voter, whether brought about by the use of a real gun or a recreational gun, which is sought to be averted. Ultimately, the objective is to ensure the holding of free, orderly, honest, peaceful and credible elections this year.

Contrary to petitioner's allegation, there is a regulation that governs the possession and carriage of airsoft rifles/pistols, namely, Philippine National Police (PNP) Circular No. 11 dated December 4, 2007, entitled *Revised Rules and Regulations Governing the Manufacture, Importation, Exportation, Sale, Possession, Carrying of Airsoft Rifles/Pistols and Operation of Airsoft Game Sites and Airsoft Teams*. The Circular defines an airsoft gun as follows:

Airsoft Rifle/Pistol x x x includes "battery operated, spring and gas type powered rifles/pistols which discharge plastic or rubber pellets only as bullets or ammunition. This differs from replica as the latter does not fire plastic or rubber pellet.

PNP Circular No. 11 classifies the airsoft rifle/pistol as a special type of air gun, which is restricted in its use only to sporting activities, such as war game simulation.<sup>[9]</sup> Any person who desires to possess an airsoft rifle/pistol needs a license from the PNP, and he shall file his application in accordance with PNP Standard Operating Procedure No. 13, which prescribes the procedure to be followed in the licensing of