

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT, MANILA
ELECTRIC COMPANY, PETITIONER, VS. THE PUBLIC SERVICE
COMMISSION, RE...**

G.R. No. L-26762. August 29, 1975

Ponente: MAKALINTAL, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/63cb7c4372c1/>

MAKALINTAL, C.J.:

In its decision dated August 31, 1970, this Court affirmed with modification the position of the Public Service Commission (now the Specialized Regulatory Boards or "SRB") on the interpretation and application of Section 40, paragraph (e), of the Public Service Act (146), as amended by Section 5 of Republic Act 3792. The said section as amended reads as follows:

"Section forty of the same Act, as amended by Commonwealth Act numbered Four Hundred Fifty-Four, is hereby further amended to read as follows:

`Section 40. The Commission is authorized and ordered to charge and collect from any public service or applicant, as the case may be, the following fees as reimbursement of its expenses in the authorization, supervision and/or regulation of public services.'

(e) For annual reimbursement of the expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested, or of the property and equipment, whichever is higher."

As construed by the Public Service Commission, the foregoing provision lays down as basis for computing the amount of supervision and/or regulation fees payable by a public utility organized as a stock corporation either the capital stock or the property and equipment, whichever is higher; and if the public utility is an entity without shares of stock, the basis for computation is either the capital invested or the property and equipment, whichever is higher. The modification introduced by this Court in its decision of August 31, 1970 is that the property and equipment shall be net of depreciation. In other words, as thus decided, the alternative basis added by the amendatory Act (3792), namely, the property and equipment, is made applicable to all public utilities, whether they have or have not issued shares of stock.

Before this Court for resolution is the second motion for reconsideration and supplemental second motion for reconsideration filed by the petitioners Philippine, Long Distance Telephone Company and Manila Electric Company. They contend that the amendment introduced by Section 5 of Republic Act 3792 did not change the basis for computing the supervision and/or regulation fees due from stock corporations; that such basis is still only the capital stock subscribed or paid and not such capital stock or the property and equipment, whichever is higher; that the amendment altered the basis only with respect to public utilities not organized as stock corporations, as to which it is now the capital invested or the property and equipment, whichever is higher.

In the decision which is now sought to be reconsidered this Court relied heavily on the theory that Section 5 of Republic Act 3792 is a tax measure intended to raise revenue and therefore the amounts collected as supervision and/or regulation fees thereunder need have no reasonable relation to the cost of such supervision and/or regulation.

Reference was made in the briefs for the petitioners to the "confiscatory and unreasonable" character of the fees, if considered as taxes and computed on the basis of "the property and equipment." Inasmuch as the case was tried before the Public Service Commission "on the theory that such fees were purely regulatory in character, so that the parties have no adequate opportunity to submit evidence on their being confiscatory and unreasonable," this Court, by resolution of August 30, 1971; remanded the case to the Public Service Commission for reception of evidence on such alleged confiscatory and unreasonable character of the fees prescribed by Section 40(e) of the Public Service Act as amended, if interpreted so as to make the alternative basis of computation (property and equipment) applicable to public utilities organized as stock corporations.

In October 1972 the Public Service Commission was abolished and its powers and functions were transferred to another entity called the Specialized Regulatory Boards (SRB). The petitioners and the SRB thereafter entered into a Stipulation of Facts, which they submitted to this Court on January 16, 1975. Subsequently they filed their respective memoranda. In its memorandum the SRB repudiates the previous position of the Public Service Commission and in effect makes common cause with the petitioners, stating that Section 5 of Republic Act 3792 was not intended as a tax measure and that "it is not only material in this incident to rule on said issue but likewise in the public interest that the Honorable Court in passing upon this issue, make a categorical pronouncement that the same is a simple regulatory legislation."

It is important to recall at this juncture, in view of the submission of the SRB on this point, that previous decisions of this Court construing the provision of Section 40 of the Public Service Act before its amendment by R.A. 3792 held that the fees being collected thereunder were not in the nature of taxes but were fees for purposes of the regulatory functions of the Public Service Commission. *Manila Electric Co. vs. Public Service Commission*, 4 SCRA 1200; *Manila Electric Co. vs. Auditor General, et al.*, 40 O.G. No. 13, p. 2629. In this latter case this Court said:

"x x x x x x x x x x"

"Debe notarse que el articulo citado se refiere a 'derechos', los derechos que la Comision de Servicios Publicos esta autorizada a cobrar para resarcirse de los gastos en que ella o' sus agentes incurren por el trabajo que supone el ejercicio por la misma de su poder de supervision y reglamentacion de las operaciones y actividades que en el referido articulo se enumeran; y debe notarse tambien que hace uso de dicho vocable 'derechos', por lo menos tres veces, indudablemente, con el fin de que no pueda haber dudas de que permite y quiere que la Comision cobre por supervision y reglamentacion no impuestos, sino derechos. . . ."

We are of the opinion that neither the amendment introduced by Section 5 of Republic Act 3792 to Section 40(e) of the Public Service Act nor the automatic appropriation clause added to the last paragraph thereof altered the nature of the fees in question as held by this Court in those decisions.

The stipulation of the parties bring out a number of significant facts. At the rate of P0.20 for every P100.00 or fraction thereof of the gross value of the respective properties and equipment in service of the petitioners, the SRB has computed the fees which they would have paid every year from 1964 to 1974, inclusive, as follows:

YEAR

PROPERTY EQUIPMENT IN SERVICE

BILL

1964

P107,176,764.00

214,353.60

1965

172,345,729.00

344,691.60

1966

240,809,709.00

418,619.60

P

1967

268,357,379.00

536,714.80

L

1968

427,254,070.00

854,508.20

D

1969

523,076,219.00

1,046,152.60

T

1970

624,204,203.00

1,248,408.60

1971

1,100,768,321.00

2,201,536.80

1972

1,220,149,965.00

2,440,300.00

1973

1,451,945,532.00

2,903,891.20

1974

1,506,101,070.00

3,012,202.20

P15,284,379.20

1964

363,762,931.00

727,526.00

M

1965

413,462,327.00

826,924.80

E

1966

632,619,666.00

1,265,239.40

R

1967

709,020,839.00

1,418,041.80

A

1968

818,130,654.00

1,636,261.40

L

1969

990,687,198.00

1,981,374.40

C

1970

1,336,644,914.00

2,673,290.00

O

1971

2,119,221,085.00

4,238,442.20

1972

2,348,189,689.00

4,696,379.40

1973

2,840.609,818.00

5,681,219.80

1974

2,945,650,790.00

5,891,301.60

P31,036,000.80

/BLOCKQUOTE>

Actually, however, the fees were collected not on the basis of the gross value of their properties and equipment in service but on the respective outstanding capital stock; and the amounts of the collections were as follows:

YEAR

OUTSTANDING CAPITAL STOCK

AMOUNT PAID

O.R. NO.

DATE

1964

P21,717,300.00

43,434.60

F-7956614

Sept. 23 '64

1965

21,192,110.00

42,384.40

F-3875980

Sept. 29 '65

1966

32,477,730.00

64,955.46

G-3713477

Sept. 28 '66

1967

55,213,000.00

110,426.00

H-1509656

Sept. 23 '67

P

1968

55,414,120.00

110,823.24

H-9569483

Sept. 27 '68

L

1969

46,957,860.00

93,915.72

I-5273602

Sept. 24 '69

D

1970

54,554,310.00

109,108.80

2888344 K

Sept. 28 '70

T

1971

54,309,340.00

108,618.68

9175075

Sept. 28 '71

1972

54,629,570.00

109,259.14

6993568 M

Sept. 29 '72

1973

55,556,330.00

111,112.66

2368444

Sept. 25 '73

1974

110,242,750.00

220,485.50

8874583

Sept. 25 '74

P1,124,529.20

YEAR

OUTSTANDING CAPITAL STOCK

AMOUNT PAID

O.R. NO.

DATE

1964

75,150,000.00

150,300.00

7956880

Sept. 30 '64

1965

77,771,000.00

155,542.00

7427760

Sept. 30 '65

1966

77,771,000.00

155,542.00

3714333

Sept. 30 '66

M

1967

78,861,880.00

157,723.76

2515473

Sept. 29 '67

E

1968

79,410,260.00

158,820.60

9570258

Sept. 30 '68

R

1969

80,897,960.00

161,796.00

6048254

Oct. 21 '69

A

1970

85,616,630.00

171,233.40

2888663-K

Sept. 30 '70

L

1971

87,282,050.00

174,564.20

9176488-L

Sept. 29 '71

C

1972

91,845,020.00

183,690.20

6988431

Sept. 15 '72

O

1973

341,749,070.00

683,498.20

2369885-O

Sept. 26 '73

1974

341,796,130.00

683,592.20

9294134-P

Sept. 30 '74

P2,836,302.58

The stipulation of the parties also projects the amounts of the fees which would have been collected on the basis of the value of the properties and equipment in service minus depreciation. The Philippine Long Distance Telephone Company would have paid during the years 1964-1974, inclusive, the total amount of P9,832,145.65; and the Meralco the total amount of P21,223,640.60.

There are altogether 14,637 public utility operators and/or companies in the Philippines under different categories, as follows:

a. land transportation

—

13,924

b. telephone service

—

74

c. electric service

—

493

d. shipping, ferryboat & waterboat service

—

99

e. radio-communications

—

25

f. waterworks & canal service

—

22

14,637

The total collections in the form of supervision and/or regulation fees from these public utilities from 1964-1974, inclusive, amounted to P26,964,845.37. It will be noted that of this total, almost 4 million pesos, or approximately 15%, came from just the two petitioners herein, out of the more than 14,000 public utilities in the entire Philippines. This proportion is undoubtedly more than the proportionate supervision and/or regulation services the two petitioners have been receiving.

Another significant fact which is pointed out in the stipulation is that out of all the collections under Section 40 of the Public Service Act, the Public Service Commission, now the SRB, had accumulated as of June 30, 1974 a total savings of P28,007,408.09, which amount may be disbursed by the SRB for the purposes enumerated in said section, specifically "additional needed personnel services, maintenance and operating expenses, acquisition of urgently needed vehicles, furniture and equipment, maintenance of an adequate reference library, acquisition of a lot and building for the [Board] and other expenses necessary for efficient administration and effective supervision and regulation of public services."

Upon considerations of fairness and equity, We find the common plea of both the petitioners and the respondent SRB fully justified. But the respondent has called our attention to an even more compelling, because practical, consideration in this case, which is, that to interpret the supervision and/or regulation fees in question as taxes under the theory that the intention is to raise revenue would entail self-defeating consequences which, in the ultimate analysis, would be contrary to public interest.

The franchise of each of these two petitioners contains the so-called "in lieu of" provision. In the case of the Meralco the franchise tax paid by it "shall be in lieu of all taxes and assessments of whatsoever nature and by

whatsoever authority upon the privileges, earnings, income, franchises, x x x of the grantee, from which taxes and assessments the grantee is hereby expressly exempted." (Par. 9, Part II of Act 484 as adopted in R.A. Nos. 150 and 4159) In the case of the PLDT, it pays a percentage tax on all gross receipts . . . transacted under its franchise, and "the said percentage shall be in lieu of all taxes on this franchise or earnings thereof." (Act No. 3436, as amended by C.A. 407 and R.A. 6146).

In an opinion dated August 8, 1974, the Department of Justice ruled that a provision in a legislative franchise which ordains that the franchise tax prescribed therein should be "in lieu of all taxes" is equivalent to a "complete foreclosure against the imposition of any other tax or decree of the tax therein vested by any of the state's taxing authorities." The ruling was reiterated in another opinion of the same office rendered on October 14, 1974 and in a similar opinion of the Secretary of Finance dated March 19, 1975. These opinions are not in question here and are binding upon the respondent SRB, which is an agency under the Executive Department. To insist therefore that Section 40(e) of the Public Service Act as amended is not only for the purpose of regulation and/or supervision but is a tax measure would preclude the collection of the fees thereunder.

Respondent SRB adverts to a number of cogent circumstances in support of its position. We quote from its memorandum:

"x x x x x x x x x x

"Indeed, Respondent is unable to comprehend the law in question as a tax measure, for the following reasons:

First, the law in question, Section 40(e) of the Public Service Act, as amended by Republic Act No. 3792 is found in Chapter VI of the said law under the heading of 'FEES'.

Second, a — 'tax' is imposed under the taxing power of government principally for the purpose of raising revenues. (*Tabacos de Filipinas vs. City of Manila*, G.R. No. L-1669, June 29, 1963, 8 SCRA 367). The law in question, however, merely authorizes and requires the collection of 'fees' as reimbursement of its (SRB's) expenses in the AUTHORIZATION, SUPERVISION AND/OR REGULATION of public services. (Sec. 40(e), opening paragraph). By its own express provision, therefore, the aforesaid law can be construed as no more than a regulatory measure related to the supervision and regulation of public utilities that are subject to the jurisdiction of the SRB, and not as a legislative instrument mainly for the purpose of raising revenues.

Third, the last paragraph of Section 40(e) provides that:

'Aside from the appropriations for the Commission under the Annual General Appropriations Act, any unexpended balance of the fees collected by the Commission under this section shall be constituted receipts automatically appropriated each year, and together with any surplus in the standardizing meter laboratory revolving fund under Commonwealth Act numbered Three Hundred Forty Nine, shall be disbursed by the Public Service Commissioner in accordance with special budget to be approved by the Department of Justice, the Budget Commission and the Office of the President of the Philippines for additional needed personal services, maintenance and operating expenses, acquisition of urgently needed vehicles, furniture and equipment, maintenance of an adequate reference library, acquisition of a lot and building for the Commission, and other expenses necessary for efficient administration and effective supervision and regulation of public services.' (Italics supplied).

It is, therefore, clear from the aforequoted paragraph that the funding of the projects enumerated therein is merely a secondary objective of the law in question to attain the primary purpose of regulation and supervision of all utilities falling under respondent's jurisdiction. The language of the aforequoted paragraph is plain that the regulatory fees required to be collected are not primarily intended to fund said projects but that only the 'unexpended balance of the fees collected by the Commission under this Section' if any, shall be utilized for said

projects. In other words, it is not the collection themselves that Congress had addressed to the funding of the said projects but only 'the unexpended balance thereof' when any such excess is realized.

Fourth, this Honorable Court itself in the case of *Meralco vs. PSC*, 4 SCRA 1,200, held that Section 40 of the Public Service Act is not a tax measure but a simple regulatory provision for the collection of fees. This judicial finding could not have been affected or in any manner modified by the enactment of R.A. 3792 since the said Act as stated in its own Explanatory Note, was simply intended to double the then applicable rate of collectible supervision fees from the public services in the Philippines. Respondent reproduces hereunder the said explanatory note in full, as follows:

'3. Increase in the supervisory and regulation fees and other fees collectible by the Commission and making them receipts automatically appropriated.

The Supreme Court has taken judicial notice that legal fees fixed before the war can no longer finance the administration of justice. This was expressed in its resolution doubling the legal fees from 1960. The fees collected by the Commission serve a similar purpose as fees collectible, under the Rules of Court. Therefore, we propose a similar increase in the fees provided in the Public Act (fixed in 1936) to insure better service and make the Commission a self-supporting Agency.

We also propose that adequate funds be appropriated so that the Commission can take care of its needs and achieve its purposes. It is prudent to have a ready reserve of funds rather than wait for an appropriation, because delays can be costly. These funds shall be used for the appointment of needed personnel, acquisition and maintenance of a reference library and of a lot and permanent building, and for other necessary expenses. The use of these funds shall be regulated by special budgets to be approved by the Department of Justice, the Budget Commission, and the Office of the President.' (*Italics supplied*).

The intention of Congress in the passage of R.A. 3792, therefore, was not to invest upon the fees in question the character or attributes of a 'tax', but rather and simply to double or revise upwards the then existing rate of the said fees.

Fifth, Republic Act No. 3792 originated from the Committee on Transportation of the House of Representatives of the then Philippine Congress (Par. XV, Stipulation of Facts). If it was the legislature's intent or purpose to enact the same as a tax measure, rules obliged that the origin and sponsorship thereof should be by the House's Committee On Ways and Means."

Other significant facts that respondent SRB brings to our attention are:

"First: Up to last year, respondent has been collecting the questioned supervision fees from corporate utilities like the petitioners herein on the basis of their subscribed capital stock (Stipulation of Facts, Par. II). For this it accumulated a total savings of P28,007,408.09 as of June 30, 1974 which is available for the projects listed in the last paragraph of the subject statute. (*Idem.*, par. XIII). It is clear therefore, that even on the basis of such subscribed capital stock, the purposes for which R.A. 3792 was enacted would still be amply served.

Second: Respondent, has noted that our interpretation of the law in question so as to collect supervision fees on the basis of 'property and equipment in service, net of depreciation,' has self-defeating consequences which in the ultimate analysis is not conducive to public interest and welfare. Rather than encourage the improvement and expansion of their existing facilities, public utilities either defer or delay such projects because of anxiety over a marked increase in assessable supervision fees that such an expansion or increase of equipment would entail.

Third: An assessment of the fees in question on the basis of 'property and equipment in service, net of depreciation,' will mean a liability therefor of at least P2,058,378.41 and P3,976,510.80 for PLDT and MERALCO, respectively, for the year 1974 alone. (Par. III). In all candor, these amounts are rather difficult to

reconcile with respondent's contention that the said collections are merely in the nature of regulatory fees."

It is quite clear, for the reasons above stated, that the supervision and/or regulation fees imposed by Section 40(e) of the Public Service Act, as amended by R.A. 3792, are not taxes but are exactly what the provision says, and therefore the nature and amount of such fees must be reasonably related to the cost of such supervision and/or regulation. It is equally clear that to base the computation of the fees on the value of the properties and equipment of the petitioners, with or without depreciation, would be to ignore altogether the requirement of such reasonable relation.

The intention of Congress in enacting the law in question is explicitly stated in the provision itself, namely: "For annual reimbursement of expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, x x x," (*Italics supplied*). As pointed out by respondent SRB (*supra*) the explanatory note of House Bill 4613, which became R.A. 3792, states that the purpose of the amendment to Section 40 was merely to double the fees collected by the Public Service Commission in the same way that the Supreme Court doubled the fees collectible under the Rules of Court.[*] The stipulation of facts submitted by the parties shows that if the collection is based on the value of the property and equipment in service minus depreciation it would not only double the amounts collected prior to the amendment but make them almost 10 times more insofar as the two petitioners are concerned. Such a result could not have been in the mind of the lawmaking body, considering especially the explanatory note which accompanied the bill when it was filed.

Moreover, it would be violative of the principle that there must be a reasonable relation between the amounts collected as regulatory and/or supervision fees and the cost of such regulation and/or supervision.

It may be noted that the term "property and equipment" carries no qualification. It does not specify whether it means the original cost of acquisition, the original cost minus depreciation (although in the decision sought to be reconsidered this interpretation was adopted), the market value, or the cost of construction and/or acquisition minus the amount of loan obligations incurred for that purpose and still outstanding. In the resolution of this Court of May 8, 1975 the parties were required to submit their views on whether this last alternative would be justifiable under Section 40(e) of the Public Service Act.

Both parties have rejected this basis of computation on the grounds that it is not warranted by the language of the provision in question; that it would pose considerable administrative and accounting problems and generate disputes and disagreements in the manner of collection; and that it would not furnish a stable basis at all because the amount of unpaid financing (a great part of it from foreign sources) for the construction and/or acquisition of property and equipment varies from time to time, depending not only on the periodic payments made by the petitioners but also on fluctuating values of foreign currencies vis-a-vis the Philippine peso.

Premises considered, this Court hereby reconsiders its decision of August 31, 1970; declares that the assessments under Section 40(e) of the Public Service Act, as amended by Republic Act No. 3792, are not taxes but regulation and supervision fees imposed pursuant to the exercise of police power; and rules that the basis for the computation thereof insofar as petitioners are concerned is and remains "the capital stock subscribed or paid" and not, alternatively, the property and equipment.

Fernando, Teehankee, Esguerra, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Castro and Barredo, JJ., concur in a separate opinions.

Makasiar, J., votes to maintain the decision of August 31, 1970 for the reasons therein stated.

Antonio, J., on official trip abroad.[*]

[*] Prior to the amendment the rate was "ten centavos for each one hundred pesos or fraction thereof, of the capital stock, etc." The amendment increased the rate to twenty centavos.

[*] I hereby certify that Justice Felix Q. Antonio concurs in the foregoing resolution, as shown by his written authorization attached to the record. - Makalintal, C.J.

CONCURRING OPINION

CASTRO, J., :

The resolution penned by Chief Justice Makalintal compels by concurrence. I fully agree (1) that the fees imposed by section 40(e) of the Public Service Act, as amended by Republic Act 3792, are supervision and/or regulation fees, and not taxes; (2) that they are exactly what the provision says they are; (3) that therefore the nature and amount of such fees must be "reasonably related to the cost of such supervision and/or regulation; and (4) that to base the computation of the fees on the value of the properties and equipment of the petitioners, with or without depreciation, would be to ignore altogether the requirement of such reasonable relation.

I wish to add my views on the matter of legal hermeneutics, which to me is likewise a vital determinant of the issue at bar.

Section 40(e) of the Public Service Act, as amended by Republic Act 3792, reads as follows:

"(e) For annual reimbursement of the expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested, or of the property and equipment, whichever is higher."

The basic issue is whether the added phrase, "or of the property and equipment, whichever is higher," was intended as an alternative only to the immediately antecedent phrase, "of the capital invested," or also to the previous one, namely, "of the capital stock subscribed or paid."

The relevant and pertinent Congressional records do not at all provide any indication of the meaning intended by the lawmaking body.

The task may, however, be simplified by supplying the words which obviously were deliberately omitted and merely indicated by means of a comma between the phrase, "or if no shares have been issued," and the clause, "of the capital invested, or of the property and equipment, whichever is higher." The omitted words thus supplied, the provision would read as follows:

"(e) For annual reimbursement of expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, twenty centavos for each one hundred pesos or fraction thereof, of the capital invested, or of the property and equipment, whichever is higher."

Viewed from this perspective, the meaning of the provision, as intended by the lawmaking body, becomes unmistakable, which is, to make the alternative basis of computation (property and equipment) applicable exclusively to the case or situation to which it obviously relates, namely, "if no shares have been issued."

The rule that a qualifying or relative word or clause, such as "which," "said" and "such," is to be construed as applying to the words, phrase or clause next preceding, or, as is frequently stated, to the next preceding

antecedent, and not as extending to or including others more remote, unless a contrary intention appears (Crawford, Sec. 193, p. 331), may be applied in the present case. This rule is known as the doctrine of last antecedent, which is both a rule of grammar and a rule of law (Wood vs. Baldwin, 10 N.Y.S. 195).

In fine, the basis for the computation of the fees collectible from stock corporations for supervision and/or regulation is "twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid." If no shares have been issued, as in the case of non-stock corporations, the basis for the computation of the fees collectible for supervision and/or regulation is "twenty centavos for each one hundred pesos or fraction thereof, ... of the capital invested, or of the property and equipment, whichever is higher."

CONCURRING OPINION

BARREDO, J.:

I find it difficult to sanction the contention that the clause "or of the property or equipment, whichever is higher" in the last part of the amended paragraph (e) of Section 40 of CA 146 applies to non-stock corporations but does not apply to stock corporations. The reason for the distinction escapes me. If the value of the property or equipment of a non-stock corporation can be used as alternate base for the computation of the fee it should pay, I cannot see why the same alternative may not be applied to stock corporations. I do not believe there is really such impossibility to determine the amount of capital invested in a non-stock corporation as to warrant the inference that the legislature intended to provide another base insofar as such corporations are concerned, for the simple reason that throughout the years prior to Republic Act 3792, the capital invested in non-stock corporations had always been the basis of the fee paid by them under the original text of Section 40(e) of Commonwealth Act 146 as amended by Commonwealth Act 454, and it does not appear that in any of those years, the Public Service Commission was unable to collect the stipulated fee because the capital invested could not be determined.

But I concur in the view that the provision in question is not and could not have been intended to be a tax measure. The legislature that approved it did not mean it to be so, as proven incontestably by the fact that the amendatory bill which later became Republic Act 3792 originated from the Committee on Transportation and not from the Committee on Ways and Means of the House of Representatives as would have been the case pursuant to the rules of the House. Moreover, the explanatory note itself of the said bill states categorically that its purpose is only to double the amount of the fee which used to be paid previously, which fee was unquestionably for supervision and regulation, and not for revenue.^[1] The reason behind the increase is to keep it abreast of the increase of the corresponding fees in the courts and other administrative agencies performing more or less similar functions as the Public Service Commission. What is more, the amendment in question expressly states that the fee to be collected is for "reimbursement of the expenses incurred by the Commission in the supervision" of public services not only in paragraph (e) itself but in the main provision preceding the enumeration of all the collectible fees. Of course, with the increased fees, it was anticipated that somehow there might be some excess of collections over and above what might be needed for the expenses of regulation, inspection and supervision contemplated, and so, in order that such excess may legally be utilized for other purposes, the amendment had to provide for authority to that end, hence the automatic appropriation clause at the end of the section. In other words, contrary to the holding in Our decision of August 31, 1970, whatever revenue aspect there is in the amendment could not have been its motivation, since it relates only to "any unexpended balance of the fees collected", which is naturally uncertain and speculative as to how much the surplus or savings would be.

Another circumstance, not less persuasive, that convinces me that taxation was not in the mind of the legislature is that most if not all public service operators of consequence or from whom the biggest amounts could be

collected are holders of legislative franchises. Such are the cases of Meralco and the PLDT, who alone, according to the stipulation of facts before Us, have been paying at least 15% of the total fees collected from all public services coming under the provision in dispute. As stated in the main opinion of the Chief Justices under their respective legislative franchises, these corporations are required to pay a fixed percentage tax in lieu of all other taxes of whatever nature. I cannot believe that the legislature intended to repeal or amend such special provision thru the amendments here in dispute. Nor could it have done so, considering that a specific provision in a legislative franchise to the effect that a tax equivalent to a certain percentage of the gross earnings of the grantee shall be in lieu of all taxes of any kind or nature and that said grantee shall be exempt from the payment of such other taxes cannot be repealed or amended by a general law containing an apparently repugnant provision, unless the intent to repeal is expressed in unmistakable terms in the subsequent legislation. (*Visayan Electric Co., S.A. vs. David*, 92 Phil. 969.) The reason for such ruling is given in the cited case of *Manila Railroad Co. vs. Rafferty*, 40 Phil. 224 which held thus:

"It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. (*Steamboat Company vs. Collector*, 18 Wall. [U.S.], 478; *Case County vs. Gillett*, 100 U.S., 585; *Minnesota vs. Hitchcock*, 185 U.S., 373, 396.).

Where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. (*State vs. Stoll*, 17 Wall, [U.S.], 425.).

Said Act No. 1510 is a charter granted to the plaintiff company by the Government of the Philippine Islands. It is in the nature of a private contract. It is not a law constituting a part of the machinery of the general government. It was adopted after careful consideration of the private rights of the plaintiff in relation with the resultant benefits to the State. It stands upon a different footing from the general law. When a charter is granted, it constitutes a certain property right. Charters or special laws, such as Act No. 1510, stand upon a different footing from general laws. Once granted, a charter becomes a private contract and cannot be altered nor amended except by consent of all concerned, unless that right is expressly reserved. (*Dartmouth College vs. Woodward*, 4 Wheat., 578.) The reason for the rule is clear. The Legislature, in passing a special charter, have their attention directed to the special facts and circumstances which the Act or charter is intended to meet. The Legislature consider and make provision for all the circumstances of the particular case. The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act. (*Lewis vs. Cook County*, 74 Ill. App., 151; *Philippine Railway Co. vs. Nolting*, 34 Phil., 401.)"

I do not believe that Justice Laurel's postulation in *Pangasinan Transportation Co. vs. The Public Service Commission*, 70 Phil. 221, to the effect that the Constitution does not permit the granting of irrevocable or unamendable franchises, to which I adhere, covers the situation on hand, since the point here is that the repeal must be expressed not merely implied.

Indeed, before the amendment of the last paragraph of Section 40 of Commonwealth Act 146, holders of legislative franchises containing special fixed tax clauses were exempt from even the regulation and inspection fees provided in said section. Under the amendment, that exemption was removed, but recognizing precisely the character and nature of the fees prescribed by the amended section as mainly for reimbursement of expenses, and I am referring to all the fees prescribed in Section 40 and not only to those in paragraph (e), the amendment provides that the excess is automatically appropriated to supplement the budgetary and other appropriations for

the maintenance and operation of the Public Service Commission. In other words, the purpose of the automatic appropriation is not to legalize and conceptualize such excess as tax but rather to provide legal authority for the utilization thereof to augment the budgetary appropriations for the Commission. Accordingly, the construction of the amendments must be restrictive rather than expansive.

Factually, it is clearly demonstrated, as may be seen in the main opinion, that to uphold the view that the frame of reference or basis of computation of the fees should be the value of the property and equipment of the operators covered by the provision will surely amount to the imposition of excessive and confiscatory fees or taxes. In this connection, Our decision of August 31, 1970 did take note of the point that the fees under discussion, if collected on the basis of property or equipment, would be "confiscatory and violative of substantive due process" but declined to rule on the matter because petitioners "have not submitted . . . evidentiary data to substantiate this point" and "that the amounts to be collected are large do not, per se alone, suffice to establish their confiscatory character." (34 SCRA pp. 615-616.) And it was precisely to give the parties an opportunity to present evidence on such score that in Our resolution exactly a year after, that is, of August 31, 1971, We returned the case to the Public Service Commission for further proceedings. Now that there is not only evidence of the petitioners but a stipulation of facts of the parties showing that the huge amount to be collected would be exceedingly out of proportion to the returns that could be expected by petitioners, even if the minus -depreciation formula adopted in Our decision of 1970 were to be followed, We cannot close Our eyes anymore to the obvious unfairness and inequity of accepting the alternate base indicated in the provision. Indeed, it is undeniable that the application of such base would be self-defeating in the end, since it would be hardly possible for the operators to expand or improve their facilities, not to say to survive. Besides, it would also be self-defeating in the sense that to consider the amendment as a tax measure would subject the provision to the exemptions in the franchises of the petitioners I have already referred to above.

It is my considered opinion that regardless of the basis of computation, whether it be shares of stock subscribed or sold, the capital invested of a non-stock corporation, or the property or equipment of the public services concerned, the application of the amendment may not be done in a manner that will render it unreasonable and confiscatory.[2] Even conceding for a moment that the power to tax includes the power to destroy, I am not persuaded that the government is deliberately applying such absolutist principle in this instance. I believe that the doubling of the amount of the fee satisfies already the legislative intent permissible within law and equity. As a matter of fact, without using the alternate base in dispute, according to the stipulation of facts, the accumulated surplus of the fees collected by the Commission, now the Specialized Regulatory Board, as of June 30, 1974 has been already P28,007,408.09. Certainly, by all standards, such amount is more than what could be expected of any secondary source of funds. And since the respondent Specialized Regulatory Board itself which is charged with the duty, in the first instance, of determining the bases of the fees and of collecting the same, has already devised its own practical way of implementing the amendment by using the outstanding shares of stock of petitioners as basis, I feel it is but fitting and proper that its construction be sanctioned, the same being the nearest approach there is to the clear legislative intent. Indeed, I visualize complications and difficulties, if things were to be done otherwise. For instance, if the amendment were to be considered as a tax measure as to the excess over the amounts needed for regulatory purposes, then an involved computation would have to be made in order to separate such excess and determine the respective shares of the petitioners therein that should be exempt from its operation pursuant to the corresponding provisions of their respective franchises. And should this be mathematically possible to determine, then the other question will arise as to whether or not, the exemption would not result in unequal protection of the laws insofar as the operators holding franchises or certificates to operate other than legislative are concerned.

Premises considered, my vote is to approve the bases of computation of the fees in question agreed to by the

respondent Specialized Regulatory Board and to reconsider our previous decision accordingly. It is understood that with respect to the non-stock corporations and entities other than stock corporations, the amount of capital invested should be the basis of the fees to be collected from them. Otherwise stated, my considered opinion is that construing the amendments in question together with all the other related provisions of Commonwealth Act 146, as previously amended, in the light of the applicable principles in taxation, the alternate base of property or equipment mentioned in the amendment of paragraph (e) of Section 40 cannot legally be operative.

[1] Manila Electric Co. vs. Public Service Commission, 4 SCRA 1200; Manila Electric Co. vs. Auditor General, 73 Phil. 128.

[2] In the absence of Philippine authorities on the matter, I would refer to the following quotations in the printed motion for reconsideration of petitioner dated November 13, 1970

"Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government when it comes to be carefully scrutinized, will prove, instead of a tax, to be an unlawful confiscation of property, unwarranted by any principle of constitutional government." (Cooley, Constitutional Limitations, Chap, XIV, p. 695; italics supplied.)

But there are still other cases where it is so entirely possible for the legislature so clearly to exceed the bounds of due authority that we cannot doubt the right of the courts to interfere and check what can only be looked upon as ruthless extortion, provided the nature of the case is such that judicial process can afford relief. An unlimited power to make any and everything lawful which the legislature might see fit to call taxation, would be, when plainly stated, an unlimited power to plunder the citizen." (Tyson vs. School Directors. 51 Pa. v. Vernon, 27 Iowa, 28; italics supplied.)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.