

**ACEBEDO OPTICAL COMPANY, INC., PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, HON. MAMINDIARA MANGOTARA,
IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, 12TH JUDICIAL
REGION, BR...**

G.R. No. 100152. March 31, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a petition for review under Rule 45 of the Rules of Court seeking to nullify the dismissal by the Court of Appeals of the original petition for certiorari, prohibition and mandamus filed by the herein petitioner against the City Mayor and City Legal Officer of Iligan and the Samahang Optometrist sa Pilipinas - Iligan Chapter (SOPI, for brevity).

The antecedent facts leading to the filing of the instant petition are as follows:

Petitioner applied with the Office of the City Mayor of Iligan for a business permit. After consideration of petitioner's application and the opposition interposed thereto by local optometrists, respondent City Mayor issued Business Permit No. 5342 subject to the following conditions:

1. Since it is a corporation, Acebedo cannot put up an optical clinic but only a commercial store;
2. Acebedo cannot examine and/or prescribe reading and similar optical glasses for patients, because these are functions of optical clinics;
3. Acebedo cannot sell reading and similar eyeglasses without a prescription having first been made by an independent optometrist (not its employee) or independent optical clinic. Acebedo can only sell directly to the public, without need of a prescription, Ray-Ban and similar eyeglasses;
4. Acebedo cannot advertise optical lenses and eyeglasses, but can advertise Ray-Ban and similar glasses and frames;
5. Acebedo is allowed to grind lenses but only upon the prescription of an independent optometrist.[1]

On December 5, 1988, private respondent Samahan ng Optometrist Sa Pilipinas (SOPI), Iligan Chapter, through its Acting President, Dr. Frances B. Apostol, lodged a complaint against the petitioner before the Office of the City Mayor, alleging that Acebedo had violated the conditions set forth in its business permit and requesting the cancellation and/or revocation of such permit.

Acting on such complaint, then City Mayor Camilo P. Cabili designated City Legal Officer Leo T. Cahanap to conduct an investigation on the matter. On July 12, 1989, respondent City Legal Officer submitted a report to the City Mayor finding the herein petitioner guilty of violating all the conditions of its business permit and recommending the disqualification of petitioner from operating its business in Iligan City. The report further advised that no new permit shall be granted to petitioner for the year 1989 and should only be given time to wind

up its affairs.

On July 19, 1989, the City Mayor sent petitioner a Notice of Resolution and Cancellation of Business Permit effective as of said date and giving petitioner three (3) months to wind up its affairs.

On October 17, 1989, petitioner brought a petition for certiorari, prohibition and mandamus with prayer for restraining order/preliminary injunction against the respondents, City Mayor, City Legal Officer and Samahan ng Optometrists sa Pilipinas-Iligan City Chapter (SOPI), docketed as Civil Case No. 1497 before the Regional Trial Court of Iligan City, Branch I. Petitioner alleged that (1) it was denied due process because it was not given an opportunity to present its evidence during the investigation conducted by the City Legal Officer; (2) it was denied equal protection of the laws as the limitations imposed on its business permit were not imposed on similar businesses in Iligan City; (3) the City Mayor had no authority to impose the special conditions on its business permit; and (4) the City Legal Officer had no authority to conduct the investigation as the matter falls within the exclusive jurisdiction of the Professional Regulation Commission and the Board of Optometry.

Respondent SOPI interposed a Motion to Dismiss the Petition on the ground of non-exhaustion of administrative remedies but on November 24, 1989, Presiding Judge Mamindiara P. Mangotara deferred resolution of such Motion to Dismiss until after trial of the case on the merits. However, the prayer for a writ of preliminary injunction was granted. Thereafter, respondent SOPI filed its answer.

On May 30, 1990, the trial court dismissed the petition for failure to exhaust administrative remedies, and dissolved the writ of preliminary injunction it earlier issued. Petitioner's motion for reconsideration met the same fate. It was denied by an Order dated June 28, 1990.

On October 3, 1990, instead of taking an appeal, petitioner filed a petition for certiorari, prohibition and mandamus with the Court of Appeals seeking to set aside the questioned Order of Dismissal, branding the same as tainted with grave abuse of discretion on the part of the trial court.

On January 24, 1991, the Ninth Division[2] of the Court of Appeals dismissed the petition for lack of merit. Petitioner's motion reconsideration was also denied in the Resolution dated May 15, 1991.

Undaunted, petitioner has come before this court via the present petition, theorizing that:

A.

THE RESPONDENT COURT, WHILE CORRECTLY HOLDING THAT THE RESPONDENT CITY MAYOR ACTED BEYOND HIS AUTHORITY IN IMPOSING THE SPECIAL CONDITIONS IN THE PERMIT AS THEY HAD NO BASIS IN ANY LAW OR ORDINANCE, ERRED IN HOLDING THAT THE SAID SPECIAL CONDITIONS NEVERTHELESS BECAME BINDING ON PETITIONER UPON ITS ACCEPTANCE THEREOF AS A PRIVATE AGREEMENT OR CONTRACT.

B.

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT BETWEEN PETITIONER AND THE CITY OF ILIGAN WAS ENTERED INTO BY THE LATTER IN THE PERFORMANCE OF ITS PROPRIETARY FUNCTIONS.

The petition is impressed with merit.

Although petitioner agrees with the finding of the Court of Appeals that respondent City Mayor acted beyond the scope of his authority in imposing the assailed conditions in subject business permit, it has excepted to the ruling of the Court of Appeals that the said conditions nonetheless became binding on petitioner, once accepted, as a private agreement or contract. Petitioner maintains that the said special conditions are null and void for being ultra

vires and cannot be given effect; and therefore, the principle of estoppel cannot apply against it.

On the other hand, the public respondents, City Mayor and City Legal Officer, private respondent SOPI and the Office of the Solicitor General contend that as a valid exercise of police power, respondent City Mayor has the authority to impose, as he did, special conditions in the grant of business permits.

Police power as an inherent attribute of sovereignty is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people.[3] The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation.[4] This delegation of police power is embodied in the general welfare clause of the Local Government Code which provides:

SEC. 16. General Welfare. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community. Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power.[5]

The authority of city mayors to issue or grant licenses and business permits is beyond cavil. It is provided for by law.

SECTION 171, paragraph 2 (n) of Batas Pambansa Bilang 337 otherwise known as the Local Government Code of 1983, reads:

SEC. 171. The City Mayor shall:

x x x

n) Grant or refuse to grant, pursuant to law, city licenses or permits, and revoke the same for violation of law or ordinance or the conditions upon which they are granted.

However, the power to grant or issue licenses or business permits must always be exercised in accordance with law, with utmost observance of the rights of all concerned to due process and equal protection of the law.

Succinct and in point is the ruling of this Court, that:

"x x x While a business may be regulated, such regulation must, however, be within the bounds of reason, i. e., the regulatory ordinance must be reasonable, and its provision cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation. A lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power. xxx

xxx xxx xxx

xxx The exercise of police power by the local government is valid unless it contravenes the fundamental law of the land or an act of the legislature, or unless it is against public policy or is unreasonable, oppressive, partial,

discriminating or in derogation of a common right."[6]

In the case under consideration, the business permit granted by respondent City Mayor to petitioner was burdened with several conditions. Petitioner agrees with the holding by the Court of Appeals that respondent City Mayor acted beyond his authority in imposing such special conditions in its permit as the same have no basis in the law or ordinance. Public respondents and private respondent SOPI, on the other hand, are one in saying that the imposition of said special conditions on petitioner's business permit is well within the authority of the City Mayor as a valid exercise of police power.

As aptly discussed by the Solicitor General in his Comment, the power to issue licenses and permits necessarily includes the corollary power to revoke, withdraw or cancel the same. And the power to revoke or cancel, likewise includes the power to restrict through the imposition of certain conditions. In the case of *Austin-Hardware, Inc. vs. Court of Appeals*,[7] it was held that the power to license carries with it the authority to provide reasonable terms and conditions under which the licensed business shall be conducted. As the Solicitor General puts it:

"If the City Mayor is empowered to grant or refuse to grant a license, which is a broader power, it stands to reason that he can also exercise a lesser power that is reasonably incidental to his express power, i. e. to restrict a license through the imposition of certain conditions, especially so that there is no positive prohibition to the exercise of such prerogative by the City Mayor, nor is there any particular official or body vested with such authority"[8]

However, the present inquiry does not stop there, as the Solicitor General believes. The power or authority of the City Mayor to impose conditions or restrictions in the business permit is indisputable. What petitioner assails are the conditions imposed in its particular case which, it complains, amount to a confiscation of the business in which petitioner is engaged.

Distinction must be made between the grant of a license or permit to do business and the issuance of a license to engage in the practice of a particular profession. The first is usually granted by the local authorities and the second is issued by the Board or Commission tasked to regulate the particular profession. A business permit authorizes the person, natural or otherwise, to engage in business or some form of commercial activity. A professional license, on the other hand, is the grant of authority to a natural person to engage in the practice or exercise of his or her profession.

In the case at bar, what is sought by petitioner from respondent City Mayor is a permit to engage in the business of running an optical shop. It does not purport to seek a license to engage in the practice of optometry as a corporate body or entity, although it does have in its employ, persons who are duly licensed to practice optometry by the Board of Examiners in Optometry.

The case of *Samahan ng Optometrists sa Pilipinas vs. Acebedo International Corporation*, G.R. No. 117097,[9] promulgated by this Court on March 21, 1997, is in point. The factual antecedents of that case are similar to those of the case under consideration and the issue ultimately resolved therein is exactly the same issue posed for resolution by this Court en banc.

In the said case, the Acebedo International Corporation filed with the Office of the Municipal Mayor an application for a business permit for the operation of a branch of Acebedo Optical in Candon, Ilocos Sur. The application was opposed by the Samahan ng Optometrists sa Pilipinas-Ilocos Sur Chapter, theorizing that Acebedo is a juridical entity not qualified to practice optometry. A committee was created by the Office of the Mayor to study private respondent's application. Upon recommendation of the said committee, Acebedo's application for a business permit was denied. Acebedo filed a petition with the Regional Trial Court but the same was dismissed. On appeal, however, the Court of Appeals reversed the trial court's disposition, prompting the

Samahan ng Optometrists to elevate the matter to this Court.

The First Division of this Court, then composed of Honorable Justice Teodoro Padilla, Josue Bellosillo, Jose Vitug and Santiago Kapunan, with Honorable Justice Regino Hermosisima, Jr. as ponente, denied the petition and ruled in favor of respondent Acebedo International Corporation, holding that "the fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself." [10] The Court further elucidated that in both the old and new Optometry Law, R.A. No. 1998, superseded by R.A. No. 8050, it is significant to note that there is no prohibition against the hiring by corporations of optometrists. The Court concluded thus:

"All told, there is no law that prohibits the hiring by corporations of optometrists or considers the hiring by corporations of optometrists as a practice by the corporation itself of the profession of optometry."

In the present case, the objective of the imposition of subject conditions on petitioner's business permit could be attained by requiring the optometrists in petitioner's employ to produce a valid certificate of registration as optometrist, from the Board of Examiners in Optometry. A business permit is issued primarily to regulate the conduct of business and the City Mayor cannot, through the issuance of such permit, regulate the practice of a profession, like that of optometry. Such a function is within the exclusive domain of the administrative agency specifically empowered by law to supervise the profession, in this case the Professional Regulations Commission and the Board of Examiners in Optometry.

It is significant to note that during the deliberations of the bicameral conference committee of the Senate and the House of Representatives on R.A. 8050 (Senate Bill No. 1998 and House Bill No. 14100), the committee failed to reach a consensus as to the prohibition on indirect practice of optometry by corporations. The proponent of the bill, former Senator Freddie Webb, admitted thus:

"Senator Webb: xxx xxx xxx

The focus of contention remains to be the proposal of prohibiting the indirect practice of optometry by corporations. We took a second look and even a third look at the issue in the bicameral conference, but a compromise remained elusive." [11]

Former Senator Leticia Ramos-Shahani likewise voted her reservation in casting her vote:

"Senator Shahani: Mr. President

The optometry bills have evoked controversial views from the members of the panel. While we realize the need to uplift the standards of optometry as a profession, the consensus of both Houses was to avoid touching sensitive issues which properly belong to judicial determination. Thus, the bicameral conference committee decided to leave the issue of indirect practice of optometry and the use of trade names open to the wisdom of the Courts which are vested with the prerogative of interpreting the laws." [12]

From the foregoing, it is thus evident that Congress has not adopted a unanimous position on the matter of prohibition of indirect practice of optometry by corporations, specifically on the hiring and employment of licensed optometrists by optical corporations. It is clear that Congress left the resolution of such issue for judicial determination, and it is therefore proper for this Court to resolve the issue.

Even in the United States, jurisprudence varies and there is a conflict of opinions among the federal courts as to the right of a corporation or individual not himself licensed, to hire and employ licensed optometrists. [13]

Courts have distinguished between optometry as a learned profession in the category of law and medicine, and

optometry as a mechanical art. And, insofar as the courts regard optometry as merely a mechanical art, they have tended to find nothing objectionable in the making and selling of eyeglasses, spectacles and lenses by corporations so long as the patient is actually examined and prescribed for by a qualified practitioner.[14]

The primary purpose of the statute regulating the practice of optometry is to insure that optometrical services are to be rendered by competent and licensed persons in order to protect the health and physical welfare of the people from the dangers engendered by unlicensed practice. Such purpose may be fully accomplished although the person rendering the service is employed by a corporation.[15]

Furthermore, it was ruled that the employment of a qualified optometrist by a corporation is not against public policy.[16] Unless prohibited by statutes, a corporation has all the contractual rights that an individual has[17] and it does not become the practice of medicine or optometry because of the presence of a physician or optometrist.[18] The manufacturing, selling, trading and bartering of eyeglasses and spectacles as articles of merchandise do not constitute the practice of optometry. [19]

In the case of *Dvorine vs. Castelberg Jewelry Corporation*,[20] defendant corporation conducted as part of its business, a department for the sale of eyeglasses and the furnishing of optometrical services to its clients. It employed a registered optometrist who was compensated at a regular salary and commission and who was furnished instruments and appliances needed for the work, as well as an office. In holding that the corporation was not engaged in the practice of optometry, the court ruled that there is no public policy forbidding the commercialization of optometry, as in law and medicine, and recognized the general practice of making it a commercial business by advertising and selling eyeglasses.

To accomplish the objective of the regulation, a state may provide by statute that corporations cannot sell eyeglasses, spectacles, and lenses unless a duly licensed physician or a duly qualified optometrist is in charge of, and in personal attendance at the place where such articles are sold.[21] In such a case, the patient's primary and essential safeguard lies in the optometrist's control of the "treatment" by means of prescription and preliminary and final examination.[22]

In analogy, it is noteworthy that private hospitals are maintained by corporations incorporated for the purpose of furnishing medical and surgical treatment. In the course of providing such treatments, these corporations employ physicians, surgeons and medical practitioners, in the same way that in the course of manufacturing and selling eyeglasses, eye frames and optical lenses, optical shops hire licensed optometrists to examine, prescribe and dispense ophthalmic lenses. No one has ever charged that these corporations are engaged in the practice of medicine. There is indeed no valid basis for treating corporations engaged in the business of running optical shops differently.

It also bears stressing, as petitioner has pointed out, that the public and private respondents did not appeal from the ruling of the Court of Appeals. Consequently, the holding by the Court of Appeals that the act of respondent City Mayor in imposing the questioned special conditions on petitioner's business permit is *ultra vires* cannot be put into issue here by the respondents. It is well-settled that:

"A party who has not appealed from the decision may not obtain any affirmative relief from the appellate court other than what he had obtain from the lower court, if any, whose decision is brought up on appeal.[23]

xxx an appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he cannot seek modification or reversal of the judgment or affirmative relief unless he has also appealed." [24]

Thus, respondents' submission that the imposition of subject special conditions on petitioner's business permit is

not ultra vires cannot prevail over the finding and ruling by the Court of Appeals from which they (respondents) did not appeal.

Anent the second assigned error, petitioner maintains that its business permit issued by the City Mayor is not a contract entered into by Iligan City in the exercise of its proprietary functions, such that although petitioner agreed to such conditions, it cannot be held in estoppel since ultra vires acts cannot be given effect.

Respondents, on the other hand, agree with the ruling of the Court of Appeals that the business permit in question is in the nature of a contract between Iligan City and the herein petitioner, the terms and conditions of which are binding upon agreement, and that petitioner is estopped from questioning the same. Moreover, in the Resolution denying petitioner's motion for reconsideration, the Court of Appeals held that the contract between the petitioner and the City of Iligan was entered into by the latter in the performance of its proprietary functions.

This Court holds otherwise. It had occasion to rule that a license or permit is not in the nature of a contract but a special privilege.

"xxx a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in the constitutional sense, as to which the constitutional proscription against impairment of the obligation of contracts may extend. A license is rather in the nature of a special privilege, of a permission or authority to do what is within its terms. It is not in any way vested, permanent or absolute." [25]

It is therefore decisively clear that estoppel cannot apply in this case. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is ultra vires or beyond the ambit of authority of respondent City Mayor. Ultra vires acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or ultra vires.

The Court of Appeals erred in adjudging subject business permit as having been issued by respondent City Mayor in the performance of proprietary functions of Iligan City. As hereinabove elaborated upon, the issuance of business licenses and permits by a municipality or city is essentially regulatory in nature. The authority, which devolved upon local government units to issue or grant such licenses or permits, is essentially in the exercise of the police power of the State within the contemplation of the general welfare clause of the Local Government Code.

WHEREFORE, the petition is GRANTED; the Decision of the Court of Appeals in CA-GR SP No. 22995 REVERSED; and the respondent City Mayor is hereby ordered to reissue petitioner's business permit in accordance with law and with this disposition. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Puno, Mendoza, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur. Kapunan, J., see concurring opinion. Vitug, J., please see dissent. Davide, Jr., C.J., Melo, Panganiban, and Pardo, JJ., joined Mr. Justice Vitug in his dissent.

[1] Annex A to Memorandum of Respondent City Mayor and City Legal Officer of Iligan, Rollo, p. 231-232.

[2] Associate Justice Luis Javellana, ponente; Associate Justice Alfredo Marigomen and Associate Justice Artemon Luna, members.

[3] Binay vs. Domingo, 201 SCRA 508.

[4] Tatel vs. Municipality of Virac, 207 SCRA 157.

[5] Procter and Gamble Phils. vs. The Municipality of Jagna, 94 SCRA 894.

[6] Balacuit vs. CFI of Agusan del Norte, 163 SCRA 182.

[7] 69 SCRA 564.

[8] Comment by the Solicitor General, p. 8; Rollo, p. 78.

[9] 270 SCRA 298.

[10] Ibid, p. 306.

[11] Saturday, June 3, 1995, "Approval of the Conference Committee Report on S. No. 1998 and H. No. 14100, Record of the Senate, p. 847.

[12] Ibid.

[13] 128 ALR 586.

[14] House of \$8.50 Eyeglasses, Inc. vs. State Board of Optometry, 288 Ala 349, 261 So 2d 27; State ex rel. Board of Optometry vs. Sears Roebuck and Co., 102 Ariz 175, 427 Pd 126.

[15] Silver v. Lansburgh and Brother, 72 App DC 77, 11 F2d 518, 128 ALR 582; 61 Am Jur 2d 289.

[16] Georgia State Examiners v. Friedman's Jewelers (183 Ga 669, 189 SE 238).

[17] State ex rel McKittrick vs. Gate City Optical Co., 339 Mo 427, 97 SW 2d 89).

[18] Dickson vs. Flynn, 246 App Div 341, 286 NYS 225.

[19] State ex rel. Brother vs. Beck Jewelry Enterprises, Inc., 220 Ind. 276, 41 NE 2d 622, 141 ALR 876) (61 Am Jur 187); Kindy Opticians, Inc. vs. State Board of Examiners in Optometry, 1939, 291 Mich 152, 289 NW 112, 113; New Jersey State Bd. of Optometrists vs. S.S. Kresge Co., 113 NJL 287, 174 A 353).

[20] Dvorine vs. Castelberg Jewelry Corp., 170 Md. 661, 185 A 562.

[21] Roschen vs. Ward, 279 US 337, 73 L Ed 722, 49 S Ct 336.

[22] Small and Maine Board of Registration and examination in Optometry, 293 A 2d 786.

[23] Policarpio vs. CA, 269 SCRA 344; Pison-Arceo Agricultural and Development Corporation vs. NLRC, 279 SCRA 312; Quintanilla vs. CA, 279 SCRA 397.

[24] La Campana Food Products, Inc. vs. Philippine Commercial and Industrial Bank, 142 SCRA 394, 398.

[25] Gonzalo Sy Trading vs. Central Bank, 70 SCRA 570.

SEPARATE CONCURRING OPINION

KAPUNAN, J.:

I concur with the opinion of Mr. Justice Purisima. In addition, I would like to state the following: The issues that present themselves in the case at bar are the following: First, can a corporation which is not a natural person, engage in the practice of optometry? Second, can a corporation, by employing optometrists as an incident to and in the ordinary course of its business of selling optical wares, supplies, substances and instruments, be said to be indirectly practicing optometry? Third, are the commercial restrictions in the business license a proper exercise of police power under the specific circumstances of this case?

I

The rule is that the corporate practice of any profession, including optometry, must never be sanctioned. The public policy behind such rulings is universal, and is based on the notion that the ethics of any profession is based upon individual responsibility, personal accountability and independence, which are all lost where one verily acts as a mere agent, or alter ego, of unlicensed persons or corporations.

II

The second question provides no easy answer and actually depends on the facts and circumstance surrounding a particular case. What is well-settled, however, is that in the absence of a statute specifically prohibiting a corporation from hiring duly licensed optometrists, the employment by such corporation of said professionals is not tantamount to practice of optometry by the corporation itself. Thus, in *Samahan ng Optometrists sa Pilipinas, et al. vs. Acebedo International Corporation*,^[1] we held that:

x x x The fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself. Private respondent is a corporation created and organized for the purpose of conducting the business of selling optical lenses or eyeglasses, among others. The clientele of private respondent understandably, would largely be composed of persons with defective vision and thus need the proper lenses to correct the same and enable them to gain normal vision. The determination of the proper lenses to sell to private respondent's clientele entails the employment of optometrists who have been precisely trained for that purpose. Private respondent's business is not the determination itself of the proper lenses needed by persons with defective vision. Private respondent's business, rather, is the buying and importing of eyeglasses and lenses and other similar or allied instruments from suppliers thereof and selling the same to consumers.

For petitioners argument to hold water, there need be clear showing that R.A. No. 1998 prohibits a corporation from hiring optometrists, for only then would it be undeniably evident that the intention of the legislature is to preclude the formation of the so-called optometry corporations because such is tantamount to the practice of the profession of optometry which is legally exercisable only by natural persons and professional partnerships. We have carefully reviewed R.A. No. 1998 however, and we find nothing therein that supports petitioner's insistent claims.

It is interesting to note that during the Senate deliberations on the enactment of R.A. 8050, a widely-debated and highly controversial provision directly prohibiting the indirect practice of optometry, was eventually deleted from the original bill and was, therefore, not included in the final version of the law.^[2] That original provision states:

Prohibition against the Indirect Practice of Optometry--No person, natural or juridical, other than an optometrist in good standing or a partnership composed solely of optometrists, shall hire, employ, join with or otherwise use the services of an optometrist for the purpose of practicing optometry: Provided however, That this prohibition shall not apply to the government of the Philippines or any of its agencies or instrumentalities and to persons who are exempted under the immediate preceding section.

By deleting the aforequoted controversial provision and by deliberately failing to provide one directly addressing the matter of whether or not duly-licensed optometrists may practice their profession as employees of corporations, it is evident that it was the legislative intent to leave to the judiciary the resolution of whatever issues that may arise in the application of the law. Senator Shahani explained:

The optometry bills have evoked controversial views from the Members of the panel. While we realize the need to uplift the standards of optometry as a profession, the consensus of both Houses was to avoid touching sensitive issues which properly belong to judicial determination. Thus, the bicameral conference committee decided to leave the issue of indirect practice of optometry and the use of trade names open to the wisdom of the Courts which are vested with the prerogative of interpreting the laws.[3]

While the hiring by corporations of optometrists does not necessarily translate into the corporate practice of profession, which is, without question, prohibited and against public policy, factual relationships between the corporation and the employee-optometrist have been inquired into by some courts in the United States to determine whether or not there is an unauthorized corporate practice of the profession, that is, whether or not it is the corporation, and not its licensed employees, which is unduly engaged in the practice of optometry.

In many cases, the measure of control is particularly determinative.[4]. Where it appears that the optical company has the power of regulation or control of the professional activities of the licensed optometrists, including corporation's power to dismiss, and including any influence over the mode and manner of eye examinations and resulting professional judgments, the reciprocal arrangement is held to constitute the unlicensed practice of optometry.[5] In another case, advertisement of the corporation is a factor. Where a statute provides that a person licensed to practice optometry is forbidden to advertise, practice, or attempt to practice "under a name other than his own,"[6] advertisement of the corporation is held to lead the public to believe that it (the corporation) is practicing optometry. This provision, according to the court, is certainly antagonistic to the view that a corporation might practice optometry through a licensed optometrist.

The manner of compensation has also been held to be an important factor in determining whether or not a corporation is unlawfully engaged in the practice of optometry. Where the corporation exercises in any manner, control over the payment of fees to be charged by the optometrist,[7] where an optometrist receives a monthly salary from the corporation purporting to be a percentage of payments made by certain customers,[8] and where the prescription does not carry the name of the licensed optometrist, but rather that of the corporate defendant, such has been held as sufficient indications that there is unlawful corporate practice of the profession.[9] In this case, the imposition of conditions by the respondent mayor in the business permit was premature, there being no factual basis for him to conclude whether or not there was a danger that corporate practice of optometry was to take place should the business permit to operate an optical shop be granted to the petitioner. The conditions on the business permit were imposed even before petitioner began operating its optical shop in Iligan city, the alleged breach of which was the basis for the permit's cancellation and the institution of this case in court. It was not within respondent mayor's functions to determine the proper scope and application of the Optometry Law by imposing the conditions in the business permit. III In this connection, I do not fully share with the view that the exercise of the optometrists' specialization is no different from the practice of other regulated professions which can be done individually or in association with duly-licensed colleagues only. Section 3 of R.A. 8050 defines optometry as:

The science and art of examining the human eye, analyzing the ocular function, prescribing and dispensing ophthalmic lenses, prisms, contact lenses and their accessories and solutions, low vision aids, and similar appliances and devices, conducting ocular exercises, vision training, orthoptics, installing prosthetics, using authorized diagnostic pharmaceutical agents (DPA), and other preventive or corrective measures or procedures for

the aid, correction, rehabilitation or relief of the human eye, or to attain maximum vision and comfort.

The words "ophthalmologist", "optometrist" and "optician", though closely related, should be distinguished. An ophthalmologist is a duly licensed physician who specializes in the care of eyes. Optometrists merely examine the eyes for refractive error, recognize (but does not treat) diseases of the eye, and fill prescriptions for eyeglasses.[10]. Optometrists also adapt frames and lenses to overcome errors of refraction and restores, as nearly as possible with these mechanical appliances, normal human vision. The optician is engaged in the business of furnishing lenses to customers on the prescriptions of licensed optometrists or qualified physicians, putting the lenses into frames selected by the customer, and fitting the frames to the face.[11] Optometry is distinguished from other professions by the nature of relationships created between the optometrist and the client. It has been held that the traditional relationship between physician and patient does not exist in the practice of optometry, since such practice involves no relationship of trust and confidence as exists between a physician and a patient, or as between an attorney and client. The argument is that, considering the nature and scope of the optometrist's functions, no such trust relationship exists and, consequently, there is no public policy to be subserved by prohibiting optometrists to practice their profession as employees of corporations. In the case of *Silver v. Lansburgh*, a U.S. Court held:

xxx Both in the case of the physician and the lawyer, the person seeking his services must break down the barriers of reserve which otherwise serve to protect him and deliberately reveal to his professional adviser secrets of physical or mental disability or secrets of business of the most intimate nature. These necessary disclosures create the personal relationship which cannot exist between patient or client and a profit-seeking corporation. The universal recognition of this immediate, unbroken, and confidential association between doctor and lawyer and those who engage their services early created and still justifies the rule that their allegiance must be wholeheartedly to the patient or the client, not to another. Nothing of this nature applies to the practice of optometry."[12]

Optometrists must also exercise the amount of care, skill and diligence which is exercised generally in the community by other practitioners in the same field, and as is mandated by the rules regulating their profession, wherever and however they practice their profession. Optometry has also been distinguished from other professions in that the selling of services in the former, is intertwined with the selling of goods. It has been held that "the optometrist and optician are also engaged in the sale of a product, corrective lenses, and accordingly the activities of an optometrist lie between those associated with the practice of a profession and those characteristic of a merchandising concern."[13] Anent the question of whether optometrists may practice their profession as employees of corporations, many courts in the United States have based their decisions on the distinctions and differences in the required degree of learning and training required. Generally, such decisions depend on whether the courts classify optometry as a mere "mechanical art" or as a "learned profession" such as law or medicine. Where courts consider optometry as a mere mechanical art, optometrists are not prevented from being employed in corporations, the courts holding that where the statute itself does not specifically control, the reasons for preventing the practice of law and medicine to corporations do not apply to optometry. In the case of *Silver v. Lansburgh & Co.*, the court found:

x x x Optometry is a mechanical art which requires skill and a knowledge of the use of certain mechanical instruments and appliances designed to measure and record the errors and deviations from the normal found in the human eye, but is not a learned profession comparable to law, medicine, and theology and that, though certain standards of education are prescribed by the statute and by rules of the board created under it, optometry is not a part of medicine.[14]

The U.S. Court of Appeals for the District of Columbia to which the aforementioned case was appealed, did

concede that in their view, optometry is a profession, as the term is colloquially used, nonetheless, the court also said that there is no reason why a corporation cannot employ licensed optometrist. Thus:

x x x but that fact is not enough to bring the rule into effect. There is no more reason to prohibit a corporation, organized for the purpose, from employing licensed optometrists, than there is to prohibit similar employment of accountants, architects or engineers. We know of no instance in which the right in any of these cases has ever been challenged, though universally all are deemed professions.[15]

IV The assailed conditions imposed in the subject business permit are ultra vires because they are unreasonable. Police power is often characterized as the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs.[16] It is the inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society.[17] In the area of local governments, the police power of a municipality exists solely by virtue of legislative or constitutional grant.[18] In view, however, of the constitutional grant of local autonomy, the argument on presumption of reasonableness in the exercise of the police power by local government may be persuasive. But this awesome character of police power is not without limits because the determination of what is proper exercise of such power is subject to the supervision of the courts.[19] This is specially true in this case where police power is used to justify restriction on the right to engage in a legitimate employment or business, which right receives protection and recognition as a portion of the individual freedoms secured by the due process clause of the Constitution. A justification for a licensing requirement and other forms of restrictions generally requires a showing that the measures at least tend to promote public health, morals, safety or welfare. Whenever a business is affected with public interest it may be subject to regulation to protect the public against danger and injustice. However, the scope of regulations of trades and occupation is determined by the principle that an exercise of the police power must confer public benefit commensurate with the burden imposed upon private rights and property, and the means adapted must be suitable to the end in view, impartial in operation, and not unduly oppressive upon individuals.[20] The burden imposed must not interfere with rights of private property and freedom of contract beyond the necessity of the situation.[21] The test, thus, is the classic reasonableness and propriety of the measures or means in the promotion of the ends sought to be accomplished. Under the rubric of general welfare, what is the specific public policy involved in the exercise of police power in this case? Or in constitutional language, what is the end sought to be achieved? The City Mayor in its comment to the petition cites the "safety and well-being of the people of Iligan - especially the poor and naive among them." [22] The Solicitor General, on the other hand, cites protection of "public morals, health, safety or welfare" [23] and "to promote the prosperity and general welfare of the local government unit and its inhabitants." [24] With the lack of discussion in the pleadings on how these general concerns will be served by the specific means adapted, we can only speculate. In terms of promoting safety, public health or welfare, it may be argued that allowing corporations to employ licensed optometrists may compromise professional accountability. Because corporations are generally seen as more concerned, at bottom, with profits, the motivation to sell might prevail over professional ethics. Again, this is mere speculation. Just being "big" is not a sin. Under the general scheme of the equal protection clause of our Constitution, "bigness" should not be a disadvantage in terms of benefits conferred and liabilities imposed. Jurisprudence in the United States is replete with cases on the issue of validity of governmental regulations relating to optometry.[25] In a case upholding the validity of a statute prohibiting a corporation from practicing optometry, directly or indirectly, and from employing registered optometrist to examine the eyes of its customers, a US court cited the public policy that one who practices a profession is apt to have less regard for professional ethics and to be less amenable to regulation for their enforcement when he has no contractual obligations to the client.[26] There are generally four types of commercial restrictions in the practice of optometry.[27] These are:

1) Employment Restrictions which usually provide that it is unprofessional conduct or an illegal practice for an

optometrist to accept employment from unlicensed person or non-professional Corporations;[28] 2) Restrictions on Location prohibit optometrist to work in an office not devoted exclusively to the practice of optometry or in which materials are displayed pertaining to a commercial undertaking not related to the practice of optometry; 3) Branch Office Restrictions usually set a maximum number of branch Offices an optometrist may operate or require the optometrist to be on personal attendance a certain proportion of time the office is open to the public; 4) Trade Name Restrictions declare illegal or unethical for an optometrist to practice under a name other than his or her name or under a false or assumed name. This last type of restriction has a distinct discriminatory impact on non-professional corporations.[29]

The public policy cited to justify these different types of restrictions is generally consumer protection by elimination of low-quality services.[30] Lay-employed optometrists,[31] may employ various cost-cutting techniques like brief and inadequate eye examinations, in order to increase profits. Those who practice under a trade name lack personal accountability and the motivation to maintain a personal reputation for high-quality service. The management of non-professional optical firms may, likewise, interfere with the "doctor-patient" relationship and professional judgments concerning patient welfare. Thus, the argument is offered that commercial practice restrictions are necessary to prevent lay-employed optometrist from increasing their market share by selling services at lower prices and substituting low for high quality case without consumer recognition of the change in quality.[32] Closer to home, the Senate proceedings discussing Senate Bill No. 1998, the precursor of RA 8050, is enlightening as to the rationale behind the original proposal to specifically prohibit employment by corporations of optometrists.[33] The exchange between Senator Webb, Chairman of the Committee on Health and Demography, and Senator Macapagal is instructive:

Senator Macapagal: Mr. President, what I will ask comes from the concern of corporations that hire optometrists. What they would like to know from the Gentleman is what is the rationale behind prohibiting corporations from engaging the services of optometrists. Senator Webb: Mr. President, a corporation is not the same as an individual human being for one thing. A corporation cannot be a doctor or a lawyer. Only a human being may be permitted to practice medicine or law.

x x x

The optometrist for one thing has a peculiar relationship with a patient and this is primarily based not on profit, though people will say that one enters a profession primarily to make money. But under their Code of Ethics, it is clearly stated that one goes there as a doctor primarily to cure people. A corporation, Mr. President, is a different entity. Primarily it is there to make money. In fact, if a corporation were to hire an optometrist then he is divided between his loyalty to the corporation and his love and affection for his patient because a corporation may have a specific product that it wants to push. And as such, an optometrist is told to push a particular product for whatever it is worth. "Kailangang itulak natin ito sapagkat ito ang ating produkto." Sa optometrist po ay hindi ganoon sapagkat wala kayong makikitang abogado o duktor na nag-a-advertise na ang ginagamit ay trade name or corporate name. In fact, in advertisement, though not very clear kung pinapayagan itoy, ay hindi kayo puwedeng gumamit ng korporasyon kundi iyong mga pangalan. At iyan po ang ipinagbabawal. Hindi po ipinagbabawal ang pagpapatuloy ng negosyo ng mga optometrist. Ang ipinagbabawal lamang ay iyong korporasyon dahil alam naman nating pag mayroong sakunang nangyari ay napakahirap idimanda ang korporasyon. Hindi katulad ng isang tao na personal and pagdadala ng serbisyo kaya mas madaling matunton ang kaniyang pagkakamali hindi kapareho ng isang korporasyon. Senator Macapagal: Subalit kung ihahambing po natin sa isang hospital, mayroong duktor iyong hospital at nagkaroon ng sakuna, nadi-demanda rin naman iyong hospital. Hindi po ba pareho na rin iyon kung idi-demanda iyong korporasyon na mayroong optometrist na nagtatrabaho doon? Senator Webb: Tama po iyan ngunit ang hospital ay regulated by the Department of Health. Ang korporasyon po ay hindi

man lamang regulated by Professional Regulation Commission hindi kapareho ng mga optometrist, they are regulated. Wala pong nag-reregulate sa korporasyon. Kung mayroon kayong optical shop ngayon, wala pong nagre-regulate diyan kaya ang maaaring mabigyan ng kasalanan ay iyong optometrist na nagtatrabaho sa kanila. Ngunit sila po ay libre sa kasong pagkakamali. Nabanggit din ng isang korporasyon na napakarami nilang trabahador na madi-displace. Iyan po ay aking sasagutin mamaya.[34]

After intense interpellation by Senator Gonzales, Senator Webb conceded that the proposal was also meant to "equalize the playing field" between a corporation and one personally practicing optometry.[35]

While the above-mentioned objectives are legitimate, the means employed may be unduly oppressive upon individuals. For example, one distinct feature of the regulation involved is that on its face, it purports to regulate business and commerce. In its application and effect, however, the business license practically prohibits individuals from seeking legitimate employment from corporations. The nullity of the regulation, therefore, arises from its operation. That the exercise of police powers is subject to judicial review is without question. Police powers being the most pervasive and most demanding of the three inherent powers of the State, its exercise is not unbridled and must in all cases meet the tests of legitimacy, both in the ends it seeks to achieve as well as in the means employed to achieve them. Applying such tests to the present case therefore, it is clear that the respondent mayor acted in excess of his legitimate authority. The purported ends sought to be achieved go no deeper than a recital of the General Welfare clause: i.e., "the safety and well-being of the people", "safeguarding the general public, especially the poor...", without establishing how those goals could be reasonably achieved by imposing such conditions in the permit. Furthermore, the means employed effectively deprive optometrists of basic property right: that is, the right to seek legitimate employment of their choice, which cannot be arbitrarily infringed upon by regulations that are contrary to law. The primary purpose of the Optometry Law is to ensure that the service would be rendered by competent and licensed persons and thereby protect the public from inexpertness. Despite the public respondent's assertions that the conditions in the business permit were made for the purpose of "safeguarding the general public and especially the poor who are easily gulled by misleading advertisements," hence, falling within the ambit of police powers granted to local officials under the Local Government Code, this Court sees no cogent reason why such purpose cannot be attained even if the persons rendering the service are employed by a corporation. Optometrists, like any other professionals are, nonetheless, bound by the same standards of professional conduct, care, skill and diligence, whether they practice as independent optometrists or as employees of unlicensed persons or corporations.

[1] 270 SCRA 298, 306 (1997).

[2] Record of the Senate, p. 351, Wed. Feb. 1, 1995, as read by Senator Gonzales.

[3] Record of the Senate, Sat. June 3, 1995, p. 847 (Emphasis ours.)

[4] State ex. Rel. Fatzer v. Zale Jewelry Co., (1956) 179 Kan 628, 298 P2d 283.

[5] State ex. Rel. Beck v. Goldman Jewelry Co., 142 Kan 881, 51 P2d 995, 102 ALR 334.

[6] Eisendith v. Buhl Optical Co. (1934)--W. Va.--, 178 S.E.695.

[7] Rowe v. Burt's Inc. (1939, app) 17 Ohio Ops 1, 30 Oio L Abs 203, 31 NE2d 725.

[8] Eddy v. Board of Optometry (1935)-- W. Va.--, 182 S.E. 870.

[9] Kendall v. Beiling (1943) 295 Ky 782, 175 SW2d 489.

- [10] *Williamson v. Lee Optical of Oklahoma* (1955) 348 US 483, 99 L ed 563, 75 S Ct 461, reh den 349 US 925, 99 L ed 1256, 75 S Ct 657.
- [11] *State v. Rones* (1953), 223 La 839, 67 So 2d 99.
- [12] *Silver v. Lansburgh & Bro.* (1940) (--App DC--, 111 F(2d) 518).
- [13] *Barbee v. Rogers* (Tex) 425 SW2d 342.
- [14] *Supra* note 12 at 583.
- [15] *Id.*, at 585.
- [16] *Ermita-Malate Hotel and Motel Operators Association, Inc., v. Mayor of Manila*, 20 SCRA 849 (1967).
- [17] *Ibid.*, *Rubi v. Provincial Board*, 39 Phil. 660 (1918).
- [18] Rep. Act No. 7160 (1991), Sec. 16. General Welfare. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.
- [19] *US v. Toribio*, 15 Phil. 85, 98 (1910).
- [20] *Direct Plumbing Supply Co. v. Dayton*, 138 Ohio St 540, 38 NE2d 70 (1941).
- [21] *Akron v. McElligott*, 166 Iowa 297, 147 NW 773 (1914).
- [22] *Rollo*, p. 55.
- [23] *Id.*, at 77.
- [24] *Id.*, at 78.
- [25] See for example E.W.H., Annotation, Constitutionality of Statutes and Validity of Regulations Relating to Optometry, 98 A.L.R. 905 (1935); L.S. Tellier, Annotation, Validity of Governmental Regulation of Optometry, 22 A.L.R. 2d 939 (1952).
- [26] *Neil v. Gimbel Bros.* 330 Pa 213, 199A 179 (1938).
- [27] *Deborah Hass-Wilson, The Effect of Commercial Practice Restrictions. The Case of Optometry*, 29 J.L. & Econ. 165 (1986)
- [28] *Ibid.* In the US, Professional Corporations differ from non-professional corporations in that Professional Corporation law requires each stockholder of a professional to be a licensed member of the profession for which the corporation is organized to practice.
- [29] *Id.*, at 170-172.
- [30] *Id.*, at 183. However, the study found that commercial practice restrictions increase the price of ophthalmic goods and services without statistically significant effect on quality. In plain language, these commercial

restrictions are not protecting the consumers.

[31] Ibid. Optometrist employed by drug and department stores and other non-professional firms.

[32] Id., at 169

[33] Supra, note 2 and 3.

[34] Record of Senate, Volume IV, p. 56 (January 31, 1995), pp. 273-274.4

[35] Id., at 58, (February 1, 1995), p. 352.

DISSENTING OPINION

VITUG, J.:

The instant case on appeal by certiorari under Rule 45 of the Revised Rules of Court assails the decision, dated 24 January 1991, and the resolution, dated 15 May 1991, of respondent Court of Appeals in CA-G.R. SP NO. 22995, entitled "Acebedo Optical Company, Inc., petitioner, vs. Hon. Mamindiara P. Mangotara in his capacity as Presiding Judge of the Regional Trial Court, 12th Judicial Region, Branch 1, Iligan City, Samahan ng Optometrists sa Pilipinas-Iligan City Chapter, Leo T. Cahanap, City Legal Officer of Iligan, and Hon. Camilo P. Cabili, City Mayor of Iligan, respondents," affirming that of the trial court. The issue focuses on whether or not petitioner corporation is, in fact, engaged in an unauthorized practice of optometry. The trial court and the appellate court have both held in the affirmative. The relevant antecedents.—

On 26 November 1988, the Office of the City Mayor of Iligan issued Business Permit No. 5342 to petitioner, upon its application therefor, for the operation of a branch office-store of Acebedo Optical Clinic in the city. The permit was subject to various conditions, among them being that Acebedo was not to put up an optical clinic but only a commercial store and that Acebedo could not examine and/or prescribe reading and similar optical glasses for patients nor to advertise or sell reading and similar eyeglasses without a prescription having first been made by an independent optometrist or an independent optical clinic. Nevertheless, Acebedo was authorized to advertise or sell directly to the public, without need of a prescription, Ray-Ban and similar eyeglasses. It could also grind lenses but only upon the prescription of an independent optometrist. For the alleged breach of the conditions specified in the business permit granted to Acebedo, private respondent Samahan ng Optometrists sa Pilipinas ("SOPI"), Iligan Chapter, filed a complaint with the Office of the City Mayor. SOPI sought the revocation and/or cancellation of Acebedo's business permit. Acting on the complaint, the Office of the City Mayor directed its City Legal Officer, Leo T. Cahanap, to look into the matter. On 12 July 1989, the latter submitted his report which confirmed that Acebedo had indeed violated the conditions of its business permit. Acting on the recommendation of the City Legal Officer, the city government, on 19 July 1989, sent petitioner a "Notice of Resolution and Cancellation of Business Permit" effective "immediately" and gave it a period of three months within which to wind up its affairs. The action of the city government prompted petitioner to bring up, on 17 October 1989, a petition for certiorari, prohibition and mandamus, with a prayer for restraining order/preliminary injunction, before the Regional Trial Court, Branch 1, of Iligan City, against respondents Mayor Camilo Cabili, Leo Cahanap, and SOPI. The petition substantially averred that petitioner was denied due process because it was not given an opportunity to present its evidence during the investigation; that it was denied equal protection because the conditions imposed on it were not being imposed on other business enterprises in Iligan City; that respondent mayor had no authority to impose special conditions; that respondent City Legal Officer had no jurisdiction to conduct the investigation since the matter was within the exclusive jurisdiction of the Professional Regulation

Commission and the Board of Optometry; and that respondents City Mayor and City Legal Officer had acted with grave abuse of discretion in cancelling petitioner's permit. Respondent SOPI interposed a motion to dismiss the petition, alleging that Acebedo had failed to exhaust its administrative remedies. Presiding Judge Mamindiara P. Mangotara deferred the resolution of the motion but granted the prayer of petitioner for a writ of preliminary injunction. On 30 May 1990, however, the Regional Trial Court ultimately dismissed the petition for the failure of petitioner to exhaust administrative remedies and thus dissolved the writ of preliminary injunction it had previously issued. Petitioner's motion for reconsideration was likewise denied in an order, dated 28 June 1990, of the trial court. In the petition for certiorari, prohibition, and mandamus filed with the Court of Appeals, petitioner sought to set aside the assailed order of dismissal, aforementioned, ascribing grave abuse of discretion on the part of the trial court. The appellate court, on 24 January 1991, dismissed the petition for lack of merit. It also rejected, in its Resolution of 15 May 1991, a motion for the reconsideration of the dismissal. In its petition for review on certiorari before this Court, Acebedo would have it that—

"A.

"THE RESPONDENT COURT, WHILE CORRECTLY HOLDING THAT THE RESPONDENT CITY MAYOR ACTED BEYOND HIS AUTHORITY IN IMPOSING THE SPECIAL CONDITIONS IN THE PERMIT AS THEY HAD NO BASIS IN ANY LAW OR ORDINANCE, ERRED IN HOLDING THAT THE SAID SPECIAL CONDITIONS NEVERTHELESS BECAME BINDING ON PETITIONER UPON ITS ACCEPTANCE THEREOF AS A PRIVATE AGREEMENT OR CONTRACT.

"B.

"THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT BETWEEN PETITIONER AND THE CITY OF ILIGAN WAS ENTERED INTO BY THE LATTER IN THE PERFORMANCE OF ITS PROPRIETARY FUNCTIONS."

Petitioner, in fine, does not now dispute its having violated the conditions stated in the business permit[1], issued by the City Mayor but would instead assail the authority of the mayor to impose the aforesaid conditions. The courts below, in my humble view, should be sustained. The questioned conditionalities imposed on the business permit of Acebedo are activities that cannot be performed by a corporation without such engagement being translated into an unauthorized practice of optometry. The exercise of this profession is no different from the practice of other regulated professions which can only be undertaken by individuals duly licensed therefor. Republic Act No. 8050, otherwise known as the Revised Optometry Law, like Republic Act No. 1998,[2] the old Optometry Law, specifically prohibits any person from practicing or attempting to practice optometry without such person having been first admitted to the practice of that profession and granted a valid certificate of registration signed by the Commissioner of the Professional Regulation Commission and by all members of the Board of Optometry. [3] Section 5 of the Republic Act no. 8050 reads:

"SEC. 5. Prohibition Against the Unauthorized Practice of Optometry. - No person shall practice optometry as defined in Section 3 of this Act nor perform any of the acts constituting the practice of optometry as set forth in Section 4 hereof, without having been first admitted to the practice of this profession under the provisions of this Act and its implementing rules and regulations: Provided, That this prohibition shall not apply to regularly licensed and duly registered physicians who have received post-graduate training in the diagnosis and treatment of eye diseases: Provided, however, That the examination of the human eye by duly registered physicians in connection with the physical examination of patients shall not be considered as practice of optometry: Provided, further, That public health workers trained and involved in the government's blindness prevention program may conduct only visual acuity test and visual screening."

Under Section 4 of that law, any of the following acts would constitute the practice of optometry; to wit:

a)

The examination of the human eye through the employment of subjective and objective procedures, including the use of specific topical diagnostic pharmaceutical agents or drugs and instruments, tools, equipment, implements, visual aids, apparatuses, machines, ocular exercises, and related devices, for the purpose of determining the condition and acuity of human vision to correct and improve the same in accordance with subsections (b), (c) and (d) hereof.

b)

The prescription and dispensing of ophthalmic lenses, prisms, contact lenses and their accessories and solutions, frames and their accessories, and supplies for the purpose of correcting and treating defects, deficiencies and abnormalities of vision;

c)

The conduct of ocular exercises and vision training, the provision of orthoptics and other devices and procedures to aid and correct abnormalities of human vision, and the installation of prosthetic devices;

d)

The counseling of patients with regard to vision and eye care and hygiene;

e)

The establishment of offices, clinics, and similar places where optometric services are offered; and

f)

The collection of professional fees for the performance of any of the acts mentioned in paragraphs (a), (b), (c) and (d) of this section.

The case at bar is notably different from that of "Samahan ng Optometrists Sa Pilipinas, Ilocos Sur-Abra Chapter vs. Acebedo International Corporation"[4] where the only issue submitted is whether or not Acebedo can hire licensed optometrists without impinging on the Optometry Law (R.A. No. 1998). In ruling that Acebedo can have duly licensed optometrists in its employ, the Court held:

"Petitioners' contentions are, however, untenable. The fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself. Private respondent is a corporation created and organized for the purpose of conducting the business of selling optical lenses or eyeglasses, among others. The clientele of private respondent understandably, would largely be composed of persons with defective vision and thus need the proper lenses to correct the same and enable them to gain normal vision. The determination of the proper lenses to sell to private respondent's clientele entails the employment of optometrists who have been precisely trained for that purpose. Private respondent's business is not the determination itself of the proper lenses needed by persons with defective vision. Private respondent's business, rather, is the buying and importing of eyeglasses and lenses, and other similar or allied instruments from suppliers thereof and selling the same to consumers."[5]

In much the same vein, there would be no legal impediment for a lawyer, a physician, an accountant or any other person duly licensed to engage in the practice of a regulated profession to be hired or employed by a corporation but, by such employment, the corporation may not itself then carry on and exercise the regulated activity. Petitioner argues that respondent City Mayor has acted beyond his authority in imposing the conditions expressed in Acebedo's permit. The contention is bereft of merit. The City Mayor has merely restated what the Optometry

Law mandates. Under Section 171, paragraph 2(n), of the then Local Government Code,[6] the City Mayor, being the Chief Executive of the Local Government, has had the authority to "grant or refuse to grant, pursuant to law, city licenses or permits, and revoke the same for violation of law or ordinance or the conditions upon which they are granted." Its equivalent provision in the local Government Code of 1991 is now found in Section 445, paragraph 3(iv), which empowers city mayors to "issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits (are) issued, pursuant to law or ordinance." Municipal corporations are agencies of the State for the promotion and maintenance of local self-governance and are endowed with police power in order to effectively accomplish the declared objects of their creation.[7] An attribute of sovereignty, police power has been defined to be the power to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people.⁸ A license or permit is not a contract between the sovereign and the grantee; rather, it is a special privilege, a permission or authority to do what would be within its terms; it is neither vested nor permanent that can at no time be withdrawn or taken back by the grantor. The Solicitor General has posited correctly in disagreeing with the appellate court which has mistaken the conditions imposed by respondent City Mayor as being binding on both the city government and petitioner upon the thesis that the permit issued by him partakes the nature of a private agreement or contract. For a permit to be impressed with a contractual character, it must be clearly demonstrated that the very administrative agency, which is the source of the permit, can place that burden on itself as such.[9] Accordingly, I vote to deny the petition.

[1] Rollo p.27

[2] Section 2, R.A. No. 1998, An Act to Regulate the Practice of Optometry in the Philippines.

[3] Sec. 5, relation to Sec. 3(e), Republic Act No. 8050.

[4] 270 SCRA 298

[5] At p. 306.

[6] B.P. Blg. 337.

[7] *Tatel vs. Municipality of Virac*, 207 SCRA 157.

[8] *Primicias v. Fugoso*, 80 PHIL 71.

[9] See *Gonzalo Sy Trading vs. Central Bank*, 70 SCRA 570.

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