

**BATANGAS TRANSPORTATION CO., PETITIONER AND APPELLANT,
VS. CAYETANO ORLANES, RESPONDENT AND APPELLEE.***G.R. No. 28865. December 19, 1928*

Ponente: STATEMENT In his application for a permit, the appellee Orlanes alleges that he is the holder of a certificate of public convenience issued by the Public Service Commission in case No. 7306, to operate an autobus line from Taal to Lucena, passing through Batangas, Bolbok and Bantilan, in the Province of Batangas, and Candelaria and Sariaya, in the Province of Tayabas, without any fixed schedule; that by reason of the requirements of public convenience, he has applied for a fixed schedule from Bantilan to Lucena and return; that in case No. 7306, he cannot accept passengers or cargo from Taal to any point before Bolbok, and vice versa; that the public convenience requires that he be converted into what is known as a regular operator on a fixed schedule between Taal and Bantilan and intermediate points, and for that purpose, he has submitted to the Commission a proposed schedule for a license to make trips between those and intermediate points. He then alleges that by reason of increase of traffic, the public convenience also requires that he be permitted to accept passengers and cargo at points between Taal and Bantilan, and he asked for authority to establish that schedule, and to accept passengers at all points between Taal and Bantilan. To this petition the Batangas Transportation Company appeared and filed an application for a permit, in which it alleged that it is operating a regular service of auto trucks between the principal municipalities of the Province of Batangas and some of those of the Province of Tayabas; that since 1918, it has been operating a regular service between Taal and Rosario, and that in 1920, its service was extended to the municipality of San Juan de Bolbok, with a certificate of public convenience issued by the Public Service Commission; that in the year 1925 Orlanes obtained from the Commission a certificate of public convenience to operate an irregular service of auto trucks between Taal, Province of Batangas, and Lucena, Province of Tayabas, passing through the municipalities of Bauan, Batangas, Ibaan, Rosario, and San Juan de Bolbok, with the express limitation that he could not accept passengers from intermediate points between Taal and Bolbok, except those which were going to points beyond San Juan de Bolbok or to the Province of Tayabas; that he inaugurated this irregular service in March, 1926, but maintained it on that part of the line between Taal and Bantilan only for about three months, when he abandoned that portion of it in the month of June and did not renew it until five days before the hearing of case No. 10301, which was set for November 24, 1926, in which hearing the Batangas Transportation Company asked for additional hours for its line between Batangas and Bantilan; that in June, 1926, Orlanes sought to obtain a license as a regular operator on that portion of the line between Bantilan and Lucena without having asked for a permit for that portion of the line between Bantilan and Taal; that from June, 1926, Orlanes and the Batangas Transportation Company were jointly operating a regular service between Bantilan and Lucena, with trips every half an hour, and Orlanes not having asked for a regular service between Bantilan and Taal, the Batangas Transportation Company remedied this lack of service under the authority of the Commission, and increased its trips between Bantilan and Tayabas to make due and timely connections in Bantilan on a half-hour service between Bantilan and Batangas with connections there for Taal and all other points in the Province of Batangas. It is then alleged that the service maintained by the company is sufficient to satisfy the convenience of the public, and that the public convenience does not require the granting of the permit for the service which Orlanes petitions, and that to do so would result in ruinous competition and to the grave prejudice of the company and without any benefit to the public, and it prayed that the petition of Orlanes to operate a regular service be denied. After the evidence was taken upon such issues, the Public Service Commission granted the petition of Orlanes, as prayed for, and the company then filed a motion for a rehearing, which was denied, and the case is now before this court, in which the appellant assigns the following errors: "The Commission erred in ordering that a certificate of public convenience be issued in favor of Cayetano Orlanes to operate the proposed service without finding and declaring that the public interests will be promoted in a proper and suitable manner by the operation of such service, or when the evidence does not show that the public interests will be so

promoted."That the Commission erred in denying the motion for a rehearing." JOHNS, J.: The questions presented involve a legal construction of the powers and duties of the Public Service Commission, and the purpose and intent for which it was created, and the legal rights and privileges of a public utility operating under a prior license. It must be conceded that an autobus line is a public utility, and that in all things and respects, it is what is legally known as a common carrier, and that it is an important factor in the business conditions of the Islands, which is daily branching out and growing very fast. Before such a business can be operated, it must apply for, and obtain, a license or permit from the Public Service Commission, and comply with certain defined terms and conditions, and when the license is once granted, the operator must conform to, and comply with, all reasonable rules and regulations of the Public Service Commission. The object and purpose of such a commission, among other things, is to look out for, and protect, the interests of the public, and, in the instant case, to provide it with safe and suitable means of travel over the highways in question, in like manner that a railroad would be operated under like terms and conditions. To all intents and purposes, the operation of an autobus line is very similar to that of a railroad, and a license for its operation should be granted or refused on like terms and conditions. For many and different reasons, it has never been the policy of a public service commission to grant a license for the operation of a new line of railroad which parallels and covers the same field and territory of another old established line, for the simple reason that it would result in ruinous competition between the two lines, and would not be of any benefit or convenience to the public. The Public Service Commission has ample power and authority to make any and all reasonable rules and regulations for the operation of any public utility and to enforce compliance with them, and for failure of such utility to comply with, or conform to, such reasonable rules and regulations, the Commission has power to revoke the license for its operation. It also has ample power to specify and define what is a reasonable compensation for the services rendered to the traveling public. That is to say, the Public Service Commission, as such, has the power to specify and define the terms and conditions upon which the public utility shall be operated, and to make reasonable rules and regulations for its operation and the compensation which the utility shall receive for its services to the public, and for any failure to comply with such rules and regulations or the violation of any of the terms and conditions for which the license was granted, the Commission has ample power to enforce the provisions of the license or even to revoke it, for any failure or neglect to comply with any of its terms and provisions. Hence, and for such reasons, the fact that the Commission has previously granted a license to any person to operate a bus line over a given highway and refuses to grant a similar license to another person over the same highway, does not in the least create a monopoly in the person of the licensee, for the simple reason that at all times the Public Service Commission has the power to say what is a reasonable compensation to the utility, and to make reasonable rules and regulations for the convenience of the traveling public and to enforce them. In the instant case Orlanes seeks to have a certificate of public convenience to operate a line of auto trucks with fixed times of departure between Taal and Bantilan, in the municipality of Bolbok, Province of Batangas, with the right to receive passengers and freight from intermediate points. The evidence is conclusive that at the time of his application, Orlanes was what is known as an irregular operator between Bantilan and Taal, and that the Batangas Transportation Company was what is known as a regular operator between Batangas and Rosario. Orlanes now seeks to have his irregular operation changed into a regular one, with fixed hours of departure and arrival between Bantilan and Taal, and to set aside and nullify the prohibition against him in his certificate of public convenience, in substance and to the effect that he shall not have or receive any passengers or freight at any of the points served by the Batangas Transportation Company for which that company holds a prior license from the Commission. His petition to become such a regular operator over such conflicting routes is largely based upon the fact that, to comply with the growing demands of the public, the Batangas Transportation Company, in case No. 10301, applied to the Commission for a permit to increase the number of trip hours at and between the same places from Batangas to Rosario, and for an order that all irregular operators be prohibited from operating their respective licenses, unless they should observe the interval of two hours before, or one hour after, the regular hours of the Batangas Transportation Company. In his petition Orlanes sought to be relieved from his prohibition to become a regular operator, and for a license to become a regular operator with a permission to make three round trips daily between Bantilan and Taal, the granting of which would make him a regular operator between those points and bring him in direct conflict and competition over the same points with the Batangas Transportation Company under its prior license, and in legal effect that was the order which the Commission made, of

which the Batangas Transportation Company now complains. The appellant squarely plants its case on the proposition: "Is a certificate of public convenience going to be issued to a second operator to operate a public utility in a field where, and in competition with, a first operator who is already operating a sufficient, adequate and satisfactory service?" There is no claim or pretense that the Batangas Transportation Company has violated any of the terms and conditions of its license. Neither does the Public Service Commission find as a fact that the granting of a license to Orlanes as a regular operator between the points in question is required or necessary for the convenience of the traveling public, or that there is any complaint or criticism by the public of the services rendered by the Batangas Transportation Company over the route in question. The law creating the Public Service Commission of the Philippine Islands is known as Act No. 3108, as amended by Act No. 3316, and under it the supervision and control of public utilities is very broad and comprehensive. Section 15 of Act No. 3108 provides that the Commission shall have power, after hearing, upon notice, by order in writing to require every public utility: (a) To comply with the laws of the Philippine Islands; (b) To furnish safe, adequate, and proper service as regards the manner of furnishing the same as well as the maintenance of the necessary material and equipment, etc.; (c) To establish, construct, maintain, and operate any reasonable extension of its existing facilities, where such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same; (d) To keep a uniform system of books, records and accounts; (e) To make specific answers with regard to any point on which the Commission requires information, and to furnish annual reports of finances and operations; (f) To carry, whenever the Commission may require, a proper and adequate depreciation account; (g) To notify the Commission of all accidents; (h) That when any public utility proposes to increase or reduce any existing individual rates, it shall give the Commission written notice thirty days prior to the proposed change; and (i) "No public utility as herein defined shall operate in the Philippine Islands without having first secured from the Commission a certificate, which shall be known as Certificate of Public Convenience, to the effect that the operation of said public utility and the authorization to do business will promote the public interests in a proper and suitable manner." Section 16 specifically prohibits any discrimination in the handling of freight charges. In construing a similar law of the State of Kansas, the United States Supreme Court, in an opinion written by Chief Justice Taft, in *Wichita Railroad and Light Co. vs. Public Utilities Commission of Kansas* (260 U. S., 48; 67 Law. ed., 124), said: "The proceeding we are considering is governed by section 13. That is the general section of the act comprehensively describing the duty of the Commission, vesting it with power to fix and order substituted new rates for existing rates. The power is expressly made to depend on the condition that, after full hearing and investigation, the Commission shall find existing rates to be unjust, unreasonable, unjustly discriminatory, or unduly preferential. We conclude that a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon which the order is founded, and that, for lack of such a finding, the order in this case was void. "This conclusion accords with the construction put upon similar statutes in other states. (*State Public Utilities Commission ex rel. Springfield vs. Springfield Gas and E. Co.*, 291 111., 209; P. U. R., 1920C, 640; 125 N. E. 891; *State Public Utilities Co. vs. Baltimore and O. S. W. R. Co.*, 281 111., 405; P. U. R., 1918B, 655; 118 N. E., 81.) Moreover, it accords with general principles of constitutional government. The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities, and also in the creation of administrative boards to apply to the myriad details of rate schedules the regulatory police power of the state. The latter qualification is made necessary in order that the legislative power may be effectively exercised. In creating such an administrative agency, the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith, to give validity to its action. When, therefore, such an administrative agency is required, as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective. "It is pressed on us that the lack of an express finding may be supplied by implication and by reference to the averments of the petition invoking the action of the Commission. We cannot agree to this point. It is doubtful whether the facts averred in the petition were sufficient to justify a finding that the contract rates were unreasonably low; but we do not find it necessary to answer this question. We rest our decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statutes of the state." That is to say, in

legal effect,'that the power of the Commission to issue a certificate of public convenience depends on the condition precedent that, after a full hearing and investigation, the Commission shall have found as a fact that the operation of the proposed public service and its authority to do business must be based upon the finding that it is for the convenience of the public. In the Philippine Islands the certificate of public convenience is as follows: "CERTIFICATE OF PUBLIC CONVENIENCE "To whom it may concern: "THIS IS TO CERTIFY, That in pursuance of the power and authority conferred upon it by subsection (i) of section 15 of Act No. 3108 of the Philippine Legislature, "THE PUBLIC SERVICE COMMISSION OF THE PHILIPPINE ISLANDS, after having duly considered the application of for a certificate of public convenience the operation of in connection with the evidence submitted in support thereof, has rendered its decision on, 192...., in case No., declaring that the operation by the applicant of the business above described will promote the public interests in a proper and suitable manner, and granting to this effect the corresponding authority, subject to the conditions prescribed in said decision. "Given at Manila, Philippine Islands, this day of, 192.... "PUBLIC SERVICE COMMISSION OF THE PHILIPPINE ISLANDS "By "Commissioner "Attested: "Secretary" That is to say, that the certificate of public convenience granted to Orlanes in the instant case expressly recites that it "will promote the public interests in a proper and suitable manner." Yet no such finding of fact was made by the Commission. In the instant case, the evidence is conclusive that the Batangas Transportation Company operated its line five years before Orlanes ever turned a wheel, yet the legal effect of the decision of the Public Service Commission is to give an irregular operator, who was the last in the field, a preferential right over a regular operator, who was the first in the field. That is not the law, and there is no legal principle upon which it can be sustained. So long as the first licensee keeps and performs the terms and conditions of its license and complies with the reasonable rules and regulations of the Commission and meets the reasonable demands of the public, it should have more or less of a vested and preferential right over a person who seeks to acquire another and a later license over the same route. Otherwise, the first licensee would not have any protection on his investment, and would be subject to ruinous competition and thus defeat the very purpose and intent for which the Public Service Commission was created. It does not appear that the public has ever made any complaint against the Batangas Transportation Company, yet on its own volition and to meet the increase of its business, it has applied to the Public Service Commission for authority to increase the number of daily trips to nineteen, thus showing a spirit that ought to be commended. Such is the rule laid down in the case of *Re B. F. Davis Motor Lines*, cited by the Public Service Commission of Indiana (P. U. R., 1927-B, page 729), in which it was held: "A motor vehicle operator having received a certificate with a voluntary stipulation not to make stops (that is, not to carry passengers) on a part of a route served by other carriers, and having contracted with such carriers not to make the stops, will not subsequently be authorized to make such stops where the other carriers are able to carry all passengers who present themselves for transportation within the restricted district." And in *Re Mount Baker Development Co.*, the Public Service Commission of Washington (P. U. R., 1925D, 705), held: "A certificate authorizing through motor carrier service should not authorize local service between points served by the holders of a certificate, without first giving the certificate holders an opportunity to render additional service desired." In the *National Coal Company* case (47 Phil., 356), this court said: "When there is no monopoly.—There is no such thing as a monopoly where a property is operated as a public utility under the rules and regulations of the Public Utility Commission and the terms and provisions of the Public Utility Act." Section 775 of *Pond on Public Utilities*, which is recognized as a standard authority, states the rule thus: "The policy of regulation, upon which our present public utility commission plan is based and which tends to do away with competition among public utilities as they are natural monopolies, is at once the reason and the justification for the holding of our courts that the regulation of an existing system of transportation, which is properly serving a given field, or may be required to do so, is to be preferred to competition among several independent systems. While requiring a proper service from a single system for a city or territory in consideration for protecting it as a monopoly for all the service required and in conserving its resources, no economic waste results and service may be furnished at the minimum cost. The prime object and real purpose of commission control is to secure adequate sustained service for the public at the least possible cost, and to protect and conserve investments already made for this purpose. Experience has

demonstrated beyond any question that competition among natural monopolies is wasteful economically and results finally in insufficient and unsatisfactory service and extravagant rates." The rule has been laid down, without dissent in numerous decisions, that where an operator is rendering good, sufficient and adequate service to the public, that the convenience does not require and pie public interests will not be promoted in a proper and suitable manner by giving another operator a certificate of public convenience to operate a competing line over the same route. In *Re Haydis* (Cal.), P. U. R., 1920A, 923: "A certificate of convenience and necessity for the operation of an auto truck line in occupied territory will not be granted, where there is no complaint as to existing rates and the present company is rendering adequate service." In *Re Chester Auto Bus Line* (Pa.), P. U. R., 1923E, 384: "A Commission should not approve an additional charter and grant an additional certificate to a second bus company to operate in territory covered by a certificate granted to another bus company as a subsidiary of a railway company for operation in conjunction with the trolley system where one bus service would be ample for all requirements." In *Re Branham* (Ariz.), P. U. R., 1924C, 500: "A showing must be clear and affirmative that an existing utility is unable or has refused to maintain adequate and satisfactory service, before a certificate of convenience and necessity will be granted for the operation of an additional service." In *Re Lambert* (N. H.), P. U. R., 1923D, 572: "Authority to operate a jitney bus should be refused when permission has been given to other parties to operate and, from the evidence, they are equipped adequately to accommodate the public in this respect, no complaints having been received in regard to service rendered." In *Re White* (Md.), P. U. R., 1924E, 316: "A motor vehicle operator who has built up a business between specified points after years of effort should not be deprived of the fruits of his labor and of the capital he has invested in his operation by a larger concern desiring to operate between the same points." In *Re Kocin* (Mont.), P. U. R. 1924C, 214: "A certificate authorizing the operation of passenger motor service should be denied where the record shows that the admission of another operator into the territory served by present licensees is not necessary and would render their licenses oppressive and confiscated because of further division and depletion of revenues and would defeat the purpose of the statute and disorganize the public service." In *Re Nevada California Stage Co.*, P. U. R., 1924A, 460: "The Nevada Commission denied an application for a certificate of convenience and necessity for the operation of an automobile passenger service in view of the fact that the service within the territory proposed to be served appeared to be adequate and it was the policy of the Commission to protect the established line in the enjoyment of business which it had built up, and in view of the further fact that it was very uncertain whether the applicant could secure sufficient business to enable him to operate profitably." In *Re Idaho Light & P. Co.* (Idaho), P. U. R., 1915A, 2: "Unless it is shown that the utility desiring to enter a competitive field can give such service as will be a positive advantage to the public, a certificate of convenience will be denied by the Idaho Commission, provided that the existing utility is furnishing adequate service at reasonable rates at the time of the threatened competition." In *Scott vs. Latham* (N. Y. 2d Dist), P. U. R., 1921C, 714: "Competition between bus lines should be prohibited the same as competition between common carriers." In *Re Portland Taxicab Co.* (Me.), P. U. R., 1923E, 772: "Certificates permitting the operation of motor vehicles for carrying passengers for hire over regular routes between points served by steam and electric railways should not be granted when the existing service is reasonable, safe, and adequate as required by statute." In *Re Murphy* (Minnesota), P. U. R., 1927C, 807: "Authority to operate an auto transportation service over a route which is served by another auto transportation company should be denied if no necessity is shown for additional service." In *Re Hall*, editorial notes, P. U. R., 1927E: "A certificate of convenience and necessity for the operation of a motor carrier service has been denied by the Colorado Commission where the only ground adduced for the certificate was that competition thereby afforded to an existing utility would benefit the public by lowering rates. The Commission, said: 'Up to the present time the Commission has never issued a certificate authorizing a duplication of motor vehicle operation over a given route unless it appeared that the service already rendered was not adequate, that there was no ruinous competition or that the second applicant could, while operating on a sound businesslike basis, afford transportation at cheaper rates than those already in effect. There has been no complaint to date as to the rates now being charged on the routes over which the applicant desires to serve. Moreover, the Commission stands ready, at any time the unreasonableness of the rates of any carrier are questioned, to determine their reasonableness and to order them reduced if they are shown to be unreasonable.' In this case the Commission also expressed its disapproval of the practice of an applicant securing a certificate for the sole purpose of transferring it to another." In *Re Sumner* (Utah), P. U. R., 1927D, 734: "The operation

of an automobile stage line will not be authorized over a route adequately served by a railroad and other bus line, although the proposed service would be an added convenience to the territory." In *Bartonville Bus Line vs. Eagle Motor Coach Line* (111. Sup. Court), 157 N. E., 175; P. U. R., 1927E, 333: "The policy of the state is to compel an established public utility occupying a given field to provide adequate service and at the same time protect it from ruinous competition, and to allow it an opportunity to provide additional service when required instead of permitting such service by a newly established competitor." Upon the question of "Reasons and Rule for Regulation," in section 775, Pond says: "The policy of regulation, upon which our present public utility commission plan is based and which tends to do away with competition among public utilities as they are natural monopolies, is at once the reason and the justification for the holding of our courts that the regulation of an existing system of transportation, which is properly serving a given field or may be required to do so, is to be preferred to competition among several independent systems. While requiring a proper service from a single system for a city or territory in consideration for protecting it as a monopoly for all the service required and in conserving its resources, no economic waste results and service may be furnished at the minimum cost. The prime object and real purpose of commission control is to secure adequate sustained service for the public at the least possible cost, and to protect and conserve investments already made for this purpose. Experience has demonstrated beyond any question that competition among natural monopolies is wasteful economically and results finally in insufficient and unsatisfactory service and extravagant rates. Neither the number of the individuals demanding other service nor the question of the fares constitutes the entire question, but rather what the proper agency should be to furnish the best service to the public generally and continuously at the least cost. Anything which tends to cripple seriously or destroy an established system of transportation that is necessary to a community is not a convenience and necessity for the public and its introduction would be a handicap rather than a help ultimately in such a field." That is the legal construction which should be placed on paragraph (e) of section 14, and paragraphs (b) and (c) of section 15 of the Public Service Law. We are clearly of the opinion that the order of the Commission granting the petition of Orlanes in question, for the reasons therein stated, is null and void, and that it is in direct conflict with the underlying and fundamental principles for which the Commission was created. The question presented is very important and far-reaching and one, of first impression in this court, and for such reasons we have given this case the careful consideration which its importance deserves. The Government having taken over the control and supervision of all public utilities, so long as an operator under a prior license complies with the terms and conditions of his license and reasonable rules and regulations for its operation and meets the reasonable demands of the public, it is the duty of the Commission to protect rather than to destroy his investment by the granting of a subsequent license to another for the same thing over the same route of travel. The granting of such a license does not serve its convenience or promote the interests of the public. The decision of the Public Service Commission, granting to Orlanes the license in question, is revoked and set aside, and the case is remanded to the Commission for such other and further proceedings as are not inconsistent with this opinion. Neither party to recover costs on this appeal. So ordered. Johnson, Street, Malcolm, and Ostrand, JJ., concur. DISSENTING ROMUALDEZ, J., WITH WHOM CONCURS VILLA-REAL, J.

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STATEMENT

In his application for a permit, the appellee Orlanes alleges that he is the holder of a certificate of public convenience issued by the Public Service Commission in case No. 7306, to operate an autobus line from Taal to Lucena, passing through Batangas, Bolbok and Bantilan, in the Province of Batangas, and Candelaria and Sariaya, in the Province of Tayabas, without any fixed schedule; that by reason of the requirements of public convenience, he has applied for a fixed schedule from Bantilan to Lucena and return; that in case No. 7306, he cannot accept passengers or cargo from Taal to any point before Bolbok, and vice versa; that the public convenience requires that he be converted into what is known as a regular operator on a fixed schedule between Taal and Bantilan and intermediate points, and for that purpose, he has submitted to the Commission a proposed schedule for a license to

make trips between those and intermediate points. He then alleges that by reason of increase of traffic, the public convenience also requires that he be permitted to accept passengers and cargo at points between Taal and Bantilan, and he asked for authority to establish that schedule, and to accept passengers at all points between Taal and Bantilan.

To this petition the Batangas Transportation Company appeared and filed an application for a permit, in which it alleged that it is operating a regular service of auto trucks between the principal municipalities of the Province of Batangas and some of those of the Province of Tayabas; that since 1918, it has been operating a regular service between Taal and Rosario, and that in 1920, its service was extended to the municipality of San Juan de Bolbok, with a certificate of public convenience issued by the Public Service Commission; that in the year 1925 Orlanes obtained from the Commission a certificate of public convenience to operate an irregular service of auto trucks between Taal, Province of Batangas, and Lucena, Province of Tayabas, passing through the municipalities of Bauan, Batangas, Ibaan, Rosario, and San Juan de Bolbok, with the express limitation that he could not accept passengers from intermediate points between Taal and Bolbok, except those which were going to points beyond San Juan de Bolbok or to the Province of Tayabas; that he inaugurated this irregular service in March, 1926, but maintained it on that part of the line between Taal and Bantilan only for about three months, when he abandoned that portion of it in the month of June and did not renew it until five days before the hearing of case No. 10301, which was set for November 24, 1926, in which hearing the Batangas Transportation Company asked for additional hours for its line between Batangas and Bantilan; that in June, 1926, Orlanes sought to obtain a license as a regular operator on that portion of the line between Bantilan and Lucena without having asked for a permit for that portion of the line between Bantilan and Taal; that from June, 1926, Orlanes and the Batangas Transportation Company were jointly operating a regular service between Bantilan and Lucena, with trips every half an hour, and Orlanes not having asked for a regular service between Bantilan and Taal, the Batangas Transportation Company remedied this lack of service under the authority of the Commission, and increased its trips between Bantilan and Tayabas to make due and timely connections in Bantilan on a half-hour service between Bantilan and Batangas with connections there for Taal and all other points in the Province of Batangas. It is then alleged that the service maintained by the company is sufficient to satisfy the convenience of the public, and that the public convenience does not require the granting of the permit for the service which Orlanes petitions, and that to do so would result in ruinous competition and to the grave prejudice of the company and without any benefit to the public, and it prayed that the petition of Orlanes to operate a regular service be denied.

After the evidence was taken upon such issues, the Public Service Commission granted the petition of Orlanes, as prayed for, and the company then filed a motion for a rehearing, which was denied, and the case is now before this court, in which the appellant assigns the following errors:

"The Commission erred in ordering that a certificate of public convenience be issued in favor of Cayetano Orlanes to operate the proposed service without finding and declaring that the public interests will be promoted in a proper and suitable manner by the operation of such service, or when the evidence does not show that the public interests will be so promoted.

"That the Commission erred in denying the motion for a rehearing."

JOHNS, J.:

The questions presented involve a legal construction of the powers and duties of the Public Service Commission, and the purpose and intent for which it was created, and the legal rights and privileges of a public utility operating under a prior license.

It must be conceded that an autobus line is a public utility, and that in all things and respects, it is what is legally

known as a common carrier, and that it is an important factor in the business conditions of the Islands, which is daily branching out and growing very fast.

Before such a business can be operated, it must apply for, and obtain, a license or permit from the Public Service Commission, and comply with certain defined terms and conditions, and when the license is once granted, the operator must conform to, and comply with, all reasonable rules and regulations of the Public Service Commission. The object and purpose of such a commission, among other things, is to look out for, and protect, the interests of the public, and, in the instant case, to provide it with safe and suitable means of travel over the highways in question, in like manner that a railroad would be operated under like terms and conditions. To all intents and purposes, the operation of an autobus line is very similar to that of a railroad, and a license for its operation should be granted or refused on like terms and conditions. For many and different reasons, it has never been the policy of a public service commission to grant a license for the operation of a new line of railroad which parallels and covers the same field and territory of another old established line, for the simple reason that it would result in ruinous competition between the two lines, and would not be of any benefit or convenience to the public.

The Public Service Commission has ample power and authority to make any and all reasonable rules and regulations for the operation of any public utility and to enforce compliance with them, and for failure of such utility to comply with, or conform to, such reasonable rules and regulations, the Commission has power to revoke the license for its operation. It also has ample power to specify and define what is a reasonable compensation for the services rendered to the traveling public.

That is to say, the Public Service Commission, as such, has the power to specify and define the terms and conditions upon which the public utility shall be operated, and to make reasonable rules and regulations for its operation and the compensation which the utility shall receive for its services to the public, and for any failure to comply with such rules and regulations or the violation of any of the terms and conditions for which the license was granted, the Commission has ample power to enforce the provisions of the license or even to revoke it, for any failure or neglect to comply with any of its terms and provisions.

Hence, and for such reasons, the fact that the Commission has previously granted a license to any person to operate a bus line over a given highway and refuses to grant a similar license to another person over the same highway, does not in the least create a monopoly in the person of the licensee, for the simple reason that at all times the Public Service Commission has the power to say what is a reasonable compensation to the utility, and to make reasonable rules and regulations for the convenience of the traveling public and to enforce them.

In the instant case Orlanes seeks to have a certificate of public convenience to operate a line of auto trucks with fixed times of departure between Taal and Bantilan, in the municipality of Bolbok, Province of Batangas, with the right to receive passengers and freight from intermediate points. The evidence is conclusive that at the time of his application, Orlanes was what is known as an irregular operator between Bantilan and Taal, and that the Batangas Transportation Company was what is known as a regular operator between Batangas and Rosario. Orlanes now seeks to have his irregular operation changed into a regular one, with fixed hours of departure and arrival between Bantilan and Taal, and to set aside and nullify the prohibition against him in his certificate of public convenience, in substance and to the effect that he shall not have or receive any passengers or freight at any of the points served by the Batangas Transportation Company for which that company holds a prior license from the Commission. His petition to become such a regular operator over such conflicting routes is largely based upon the fact that, to comply with the growing demands of the public, the Batangas Transportation Company, in case No. 10301, applied to the Commission for a permit to increase the number of trip hours at and between the same places from Batangas to Rosario, and for an order that all irregular operators be prohibited from operating their respective licenses, unless they should observe the interval of two hours before, or one hour after, the regular hours of the

Batangas Transportation Company.

In his petition Orlanes sought to be relieved from his prohibition to become a regular operator, and for a license to become a regular operator with a permission to make three round trips daily between Bantilan and Taal, the granting of which would make him a regular operator between those points and bring him in direct conflict and competition over the same points with the Batangas Transportation Company under its prior license, and in legal effect that was the order which the Commission made, of which the Batangas Transportation Company now complains.

The appellant squarely plants its case on the proposition:

"Is a certificate of public convenience going to be issued to a second operator to operate a public utility in a field where, and in competition with, a first operator who is already operating a sufficient, adequate and satisfactory service?"

There is no claim or pretense that the Batangas Transportation Company has violated any of the terms and conditions of its license. Neither does the Public Service Commission find as a fact that the granting of a license to Orlanes as a regular operator between the points in question is required or necessary for the convenience of the traveling public, or that there is any complaint or criticism by the public of the services rendered by the Batangas Transportation Company over the route in question.

The law creating the Public Service Commission of the Philippine Islands is known as Act No. 3108, as amended by Act No. 3316, and under it the supervision and control of public utilities is very broad and comprehensive.

Section 15 of Act No. 3108 provides that the Commission shall have power, after hearing, upon notice, by order in writing to require every public utility:

- (a) To comply with the laws of the Philippine Islands;
- (b) To furnish safe, adequate, and proper service as regards the manner of furnishing the same as well as the maintenance of the necessary material and equipment, etc.;
- (c) To establish, construct, maintain, and operate any reasonable extension of its existing facilities, where such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same;
- (d) To keep a uniform system of books, records and accounts;
- (e) To make specific answers with regard to any point on which the Commission requires information, and to furnish annual reports of finances and operations;
- (f) To carry, whenever the Commission may require, a proper and adequate depreciation account;
- (g) To notify the Commission of all accidents;
- (h) That when any public utility proposes to increase or reduce any existing individual rates, it shall give the Commission written notice thirty days prior to the proposed change; and
- (i) "No public utility as herein defined shall operate in the Philippine Islands without having first secured from the Commission a certificate, which shall be known as Certificate of Public Convenience, to the effect that the operation of said public utility and the authorization to do business will promote the public interests in a proper and suitable manner."

Section 16 specifically prohibits any discrimination in the handling of freight charges.

In construing a similar law of the State of Kansas, the United States Supreme Court, in an opinion written by Chief Justice Taft, in *Wichita Railroad and Light Co. vs. Public Utilities Commission of Kansas* (260 U. S., 48; 67 Law. ed., 124), said:

"The proceeding we are considering is governed by section 13. That is the general section of the act comprehensively describing the duty of the Commission, vesting it with power to fix and order substituted new rates for existing rates. The power is expressly made to depend on the condition that, after full hearing and investigation, the Commission shall find existing rates to be unjust, unreasonable, unjustly discriminatory, or unduly preferential. We conclude that a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon which the order is founded, and that, for lack of such a finding, the order in this case was void.

"This conclusion accords with the construction put upon similar statutes in other states. (*State Public Utilities Commission ex rel. Springfield vs. Springfield Gas and E. Co.*, 291 111., 209; P. U. R., 1920C, 640; 125 N. E. 891; *State Public Utilities Co. vs. Baltimore and O. S. W. R. Co.*, 281 111., 405; P. U. R., 1918B, 655; 118 N. E., 81.) Moreover, it accords with general principles of constitutional government. The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities, and also in the creation of administrative boards to apply to the myriad details of rate schedules the regulatory police power of the state. The latter qualification is made necessary in order that the legislative power may be effectively exercised. In creating such an administrative agency, the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith, to give validity to its action. When, therefore, such an administrative agency is required, as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective.

"It is pressed on us that the lack of an express finding may be supplied by implication and by reference to the averments of the petition invoking the action of the Commission. We cannot agree to this point. It is doubtful whether the facts averred in the petition were sufficient to justify a finding that the contract rates were unreasonably low; but we do not find it necessary to answer this question. We rest our decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statutes of the state."

That is to say, in legal effect, that the power of the Commission to issue a certificate of public convenience depends on the condition precedent that, after a full hearing and investigation, the Commission shall have found as a fact that the operation of the proposed public service and its authority to do business must be based upon the finding that it is for the convenience of the public.

In the Philippine Islands the certificate of public convenience is as follows:

"CERTIFICATE OF PUBLIC CONVENIENCE

"To whom it may concern:

"THIS IS TO CERTIFY, That in pursuance of the power and authority conferred upon it by subsection (i) of section 15 of Act No. 3108 of the Philippine Legislature,

"THE PUBLIC SERVICE COMMISSION OF THE PHILIPPINE ISLANDS, after having duly considered the application of for a certificate of public convenience the operation of in connection with the evidence submitted in support thereof, has rendered its decision on, 192...., in case No., declaring that the operation by the applicant of the business above described will promote the public interests in a proper and

suitable manner, and granting to this effect the corresponding authority, subject to the conditions prescribed in said decision.

"Given at Manila, Philippine Islands, this day of, 192.....

"PUBLIC SERVICE COMMISSION OF THE PHILIPPINE ISLANDS

"By

"Commissioner

"Attested:

.....

"Secretary"

That is to say, that the certificate of public convenience granted to Orlanes in the instant case expressly recites that it "will promote the public interests in a proper and suitable manner." Yet no such finding of fact was made by the Commission.

In the instant case, the evidence is conclusive that the Batangas Transportation Company operated its line five years before Orlanes ever turned a wheel, yet the legal effect of the decision of the Public Service Commission is to give an irregular operator, who was the last in the field, a preferential right over a regular operator, who was the first in the field. That is not the law, and there is no legal principle upon which it can be sustained.

So long as the first licensee keeps and performs the terms and conditions of its license and complies with the reasonable rules and regulations of the Commission and meets the reasonable demands of the public, it should have more or less of a vested and preferential right over a person who seeks to acquire another and a later license over the same route. Otherwise, the first licensee would not have any protection on his investment, and would be subject to ruinous competition and thus defeat the very purpose and intent for which the Public Service Commission was created.

It does not appear that the public has ever made any complaint against the Batangas Transportation Company, yet on its own volition and to meet the increase of its business, it has applied to the Public Service Commission for authority to increase the number of daily trips to nineteen, thus showing a spirit that ought to be commended.

Such is the rule laid down in the case of *Re B. F. Davis Motor Lines*, cited by the Public Service Commission of Indiana (P. U. R., 1927-B, page 729), in which it was held:

"A motor vehicle operator having received a certificate with a voluntary stipulation not to make stops (that is, not to carry passengers) on a part of a route served by other carriers, and having contracted with such carriers not to make the stops, will not subsequently be authorized to make such stops where the other carriers are able to carry all passengers who present themselves for transportation within the restricted district."

And in *Re Mount Baker Development Co.*, the Public Service Commission of Washington (P. U. R., 1925D, 705), held:

"A certificate authorizing through motor carrier service should not authorize local service between points served by the holders of a certificate, without first giving the certificate holders an opportunity to render additional service desired."

In the *National Coal Company* case (47 Phil., 356), this court said:

"When there is no monopoly.—There is no such thing as a monopoly where a property is operated as a public

utility under the rules and regulations of the Public Utility Commission and the terms and provisions of the Public Utility Act."

Section 775 of Pond on Public Utilities, which is recognized as a standard authority, states the rule thus:

"The policy of regulation, upon which our present public utility commission plan is based and which tends to do away with competition among public utilities as they are natural monopolies, is at once the reason and the justification for the holding of our courts that the regulation of an existing system of transportation, which is properly serving a given field, or may be required to do so, is to be preferred to competition among several independent systems. While requiring a proper service from a single system for a city or territory in consideration for protecting it as a monopoly for all the service required and in conserving its resources, no economic waste results and service may be furnished at the minimum cost. The prime object and real purpose of commission control is to secure adequate sustained service for the public at the least possible cost, and to protect and conserve investments already made for this purpose. Experience has demonstrated beyond any question that competition among natural monopolies is wasteful economically and results finally in insufficient and unsatisfactory service and extravagant rates."

The rule has been laid down, without dissent in numerous decisions, that where an operator is rendering good, sufficient and adequate service to the public, that the convenience does not require and the public interests will not be promoted in a proper and suitable manner by giving another operator a certificate of public convenience to operate a competing line over the same route.

In *Re Haydis* (Cal.), P. U. R., 1920A, 923:

"A certificate of convenience and necessity for the operation of an auto truck line in occupied territory will not be granted, where there is no complaint as to existing rates and the present company is rendering adequate service."

In *Re Chester Auto Bus Line* (Pa.), P. U. R., 1923E, 384:

"A Commission should not approve an additional charter and grant an additional certificate to a second bus company to operate in territory covered by a certificate granted to another bus company as a subsidiary of a railway company for operation in conjunction with the trolley system where one bus service would be ample for all requirements."

In *Re Branham* (Ariz.), P. U. R., 1924C, 500:

"A showing must be clear and affirmative that an existing utility is unable or has refused to maintain adequate and satisfactory service, before a certificate of convenience and necessity will be granted for the operation of an additional service."

In *Re Lambert* (N. H.), P. U. R., 1923D, 572:

"Authority to operate a jitney bus should be refused when permission has been given to other parties to operate and, from the evidence, they are equipped adequately to accommodate the public in this respect, no complaints having been received in regard to service rendered."

In *Re White* (Md.), P. U. R., 1924E, 316:

"A motor vehicle operator who has built up a business between specified points after years of effort should not be deprived of the fruits of his labor and of the capital he has invested in his operation by a larger concern desiring to operate between the same points."

In *Re Kocin* (Mont.), P. U. R., 1924C, 214:

"A certificate authorizing the operation of passenger motor service should be denied where the record shows that the admission of another operator into the territory served by present licensees is not necessary and would render their licenses oppressive and confiscated because of further division and depletion of revenues and would defeat the purpose of the statute and disorganize the public service."

In Re Nevada California Stage Co., P. U. R., 1924A, 460:

"The Nevada Commission denied an application for a certificate of convenience and necessity for the operation of an automobile passenger service in view of the fact that the service within the territory proposed to be served appeared to be adequate and it was the policy of the Commission to protect the established line in the enjoyment of business which it had built up, and in view of the further fact that it was very uncertain whether the applicant could secure sufficient business to enable him to operate profitably."

In Re Idaho Light & P. Co. (Idaho), P. U. R., 1915A, 2:

"Unless it is shown that the utility desiring to enter a competitive field can give such service as will be a positive advantage to the public, a certificate of convenience will be denied by the Idaho Commission, provided that the existing utility is furnishing adequate service at reasonable rates at the time of the threatened competition."

In Scott vs. Latham (N. Y. 2d Dist), P. U. R., 1921C, 714:

"Competition between bus lines should be prohibited the same as competition between common carriers."

In Re Portland Taxicab Co. (Me.), P. U. R., 1923E, 772:

"Certificates permitting the operation of motor vehicles for carrying passengers for hire over regular routes between points served by steam and electric railways should not be granted when the existing service is reasonable, safe, and adequate as required by statute."

In Re Murphy (Minnesota), P. U. R., 1927C, 807:

"Authority to operate an auto transportation service over a route which is served by another auto transportation company should be denied if no necessity is shown for additional service."

In Re Hall, editorial notes, P. U. R., 1927E:

"A certificate of convenience and necessity for the operation of a motor carrier service has been denied by the Colorado Commission where the only ground adduced for the certificate was that competition thereby afforded to an existing utility would benefit the public by lowering rates. The Commission, said: 'Up to the present time the Commission has never issued a certificate authorizing a duplication of motor vehicle operation over a given route unless it appeared that the service already rendered was not adequate, that there was no ruinous competition or that the second applicant could, while operating on a sound businesslike basis, afford transportation at cheaper rates than those already in effect. There has been no complaint to date as to the rates now being charged on the routes over which the applicant desires to serve. Moreover, the Commission stands ready, at any time the unreasonableness of the rates of any carrier are questioned, to determine their reasonableness and to order them reduced if they are shown to be unreasonable.' In this case the Commission also expressed its disapproval of the practice of an applicant securing a certificate for the sole purpose of transferring it to another."

In Re Sumner (Utah), P. U. R., 1927D, 734:

"The operation of an automobile stage line will not be authorized over a route adequately served by a railroad and other bus line, although the proposed service would be an added convenience to the territory."

In *Bartonville Bus Line vs. Eagle Motor Coach Line* (111. Sup. Court), 157 N. E., 175; P. U. R., 1927E, 333:

"The policy of the state is to compel an established public utility occupying a given field to provide adequate service and at the same time protect it from ruinous competition, and to allow it an opportunity to provide additional service when required instead of permitting such service by a newly established competitor."

Upon the question of "Reasons and Rule for Regulation," in section 775, Pond says:

"The policy of regulation, upon which our present public utility commission plan is based and which tends to do away with competition among public utilities as they are natural monopolies, is at once the reason and the justification for the holding of our courts that the regulation of an existing system of transportation, which is properly serving a given field or may be required to do so, is to be preferred to competition among several independent systems. While requiring a proper service from a single system for a city or territory in consideration for protecting it as a monopoly for all the service required and in conserving its resources, no economic waste results and service may be furnished at the minimum cost. The prime object and real purpose of commission control is to secure adequate sustained service for the public at the least possible cost, and to protect and conserve investments already made for this purpose. Experience has demonstrated beyond any question that competition among natural monopolies is wasteful economically and results finally in insufficient and unsatisfactory service and extravagant rates. Neither the number of the individuals demanding other service nor the question of the fares constitutes the entire question, but rather what the proper agency should be to furnish the best service to the public generally and continuously at the least cost. Anything which tends to cripple seriously or destroy an established system of transportation that is necessary to a community is not a convenience and necessity for the public and its introduction would be a handicap rather than a help ultimately in such a field."

That is the legal construction which should be placed on paragraph (e) of section 14, and paragraphs (b) and (c) of section 15 of the Public Service Law.

We are clearly of the opinion that the order of the Commission granting the petition of Orlanes in question, for the reasons therein stated, is null and void, and that it is in direct conflict with the underlying and fundamental principles for which the Commission was created.

The question presented is very important and far-reaching and one, of first impression in this court, and for such reasons we have given this case the careful consideration which its importance deserves. The Government having taken over the control and supervision of all public utilities, so long as an operator under a prior license complies with the terms and conditions of his license and reasonable rules and regulations for its operation and meets the reasonable demands of the public, it is the duty of the Commission to protect rather than to destroy his investment by the granting of a subsequent license to another for the same thing over the same route of travel. The granting of such a license does not serve its convenience or promote the interests of the public.

The decision of the Public Service Commission, granting to Orlanes the license in question, is revoked and set aside, and the case is remanded to the Commission for such other and further proceedings as are not inconsistent with this opinion. Neither party to recover costs on this appeal. So ordered.

Johnson, Street, Malcolm, and Ostrand, JJ., concur.

DISSENTING

ROMUALDEZ, J., WITH WHOM CONCURS VILLA-REAL, J.:

I believe the Public Service Commission had jurisdiction to try this case and that there is sufficient evidence of record to sustain the appealed judgment. However, I think there should be no conflict between the trip hours, and that the Commission could do away with it by making the necessary arrangements.

Order reversed and set aside, and case remanded for further proceedings.

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