

I. BECK, INCORPORATED, PLAINTIFF AND APPELLANT, VS. VICTOR ALFONSO, AS CITY TREASURER OF MANILA, DEFENDANT AND APPELLEE.*G.R. No. 38954. August 17, 1933*

Ponente: MALCOLM, J.

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The novel question presented by this action relates to the right of the City of Manila, to compel I. Beck, Incorporated to obtain a license as an advertising agent for its radio broadcasting station KZIB. The decision in the trial court sustained the pretensions of the City and accordingly dismissed the complaint of the operator of the broadcasting station. No analogous authority has been cited, and our own researches have disclosed none.

As above indicated, I. Beck, Incorporated, operates in the City of Manila a radio broadcasting station known as radio station KZIB. During specified hours the radio station broadcasts programs for the entertainment of the public. The operator of the station permits business concerns, upon proper payment, at certain intervals of the broadcasting period, to make use of its station to present programs under their patronage and to make themselves known to the public by advertising their business. It is stipulated "that I. Beck & Co. does not solicit advertisements, but any person or entity requiring the services of the station to advertise its business or for any other purpose, if acceptable to I. Beck, Inc., is permitted to make use of the station with or without compensation."

The Manila Charter, section 2444 (l), empowers the municipal board to regulate and fix the amount of the license fees for advertising agencies. In conformity with this authority, the municipal board has seen fit to provide that "no person shall maintain, conduct, or engage in the business or calling of an advertising agent, or in the business of bill posting or street advertising, without first having obtained a license therefor" (Revised Ordinances, sec. 603), the amount fixed for the fee being the sum of P500 per annum (Revised Ordinances, sec. 604).

We feel safe in concluding that the broadcasting station of the plaintiff, like most radio broadcasters, is to a large extent engaged in the business of commercial advertising for pay, and that the broadcasting station is supported in part by advertising. Indeed, these facts are practically admitted. On the other hand, it is equally true that the plaintiff does not solicit advertising, which is an important matter to be remembered.

We agree to a considerable extent with the interpretation of the applicable provisions of the city ordinances given by the city fiscal. For instance, we think him right in his argument that a very slight basis could be laid for any differentiation between the business of an advertising agent and the business of bill posting or street advertising. In other words, the language of the ordinances recognizes two forms of advertising, namely, a general one included in the words "advertising agent" and a special one included in the words "bill posting or street advertising". But we do not think this interpretation at all decisive of the case. In our opinion the city fiscal as well as the trial court have overlooked fundamental considerations.

Even a cursory reading of the sections of the Revised Ordinances having to do with the subject "advertising.

agencies" discloses that it is not upon advertising as advertising that the license fee is imposed. Nor is it the means or instrumentality which is licensed, as for example, a magazine containing advertising. On the contrary, it is "the business or calling of an advertising agent", to use the exact language of the ordinances, for which the license is required. Moreover, the Insular Law, Act No. 3846, in providing for the regulation of radio stations and radio communication in the Philippine Islands, requires of the person or corporation operating a radio station within the Philippine Islands that it secure a franchise therefor from the Philippine Legislature and a license from the Secretary of Commerce and Communications, without, however, giving the slightest indication that a broadcasting station shall further be considered to be an advertising agent.

A comparison is sought to be made by the plaintiff between the methods followed by a radio broadcasting station and the methods followed in the use of the telephone and the post office. However, an argument along this line impresses us as rather far-fetched. A more appropriate comparison would be between the newspaper and the radio broadcasting station. The newspaper sells space for advertising purposes; the broadcasting station sells time for advertising purposes. In the case of the newspaper, to our knowledge, it has never been contended that because it contains advertising for which compensation is received, the newspaper publisher is thereby engaged in the business of an advertising agent. We may take cognizance of what is familiar to every one, which is that in the business of an advertising agent, he occupies himself in securing advertising, in preparing the copy, and in causing the copy to be disseminated to the public through various media. The advertising agent may utilize the columns of a newspaper or he may utilize the time of a broadcasting station. The person thus engaged in business is an advertising agent, but the operator of the radio station is not.

Ruling that the City of Manila is without legal right to compel I. Beck, Incorporated, to obtain a license as an advertising agent for its radio broadcasting station KZIB, the result will be the reversal of the judgment of the trial court and the substitution therefor of another judgment against the defendant for the return to the plaintiff of the sum of P655, with legal interest from June 8, 1932, and with the costs of both instances.

Avanceña, C. J., Villa-Real, Hull, and Imperial, JJ., concur.

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