

**CEBU TRANSIT CO., INC., PETITIONER AND APPELLANT, VS.
AGUSTIN JEREZA, RESPONDENT AND APPELLEE.***G.R. No. 39706. November 15, 1933*

Ponente: IMPERIAL, J.

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This is an appeal taken by the Cebu Transit Co., Inc., to set aside the decision rendered by the Public Service Commission in case No. 33431, granting Agustin Jereza's application to operate five (5) midget taxicabs within the City of Cebu, its suburbs and neighboring municipalities, under the rates stated in the said decision.

The appellee herein applied for a certificate of public convenience to begin operating five (5) midget taxicabs, reserving for himself the right to increase the service to fifteen (15). The appellant Cebu Transit Co., Inc., the Cebu Autobus Company and Mrs. Trinidad M. Cui, operator of "Cui's Garage", filed oppositions to the application in question. Upon Mrs. Cui's petition and with the consent of both the appellant and the appellee herein, the commission designated the justice of the peace of the City of Cebu to take the depositions of the witnesses to be presented by the parties concerned and to receive all the evidence which they might deem proper to submit in support of their respective claims. In the order issued to that effect, a day was set for the hearing thereof and the parties thereto, together with their respective counsel, were enjoined to present on that occasion all the evidence they might deem proper. Furthermore, the order in question was published in a local paper. All the interested parties, together with their respective counsel, appeared on the day and at the hour set for the hearing thereof and presented their evidence. The testimony of the witnesses therein was taken in the form of depositions. In the taking of depositions, objections were filed during the examination of the witnesses, which were not passed upon immediately by the commissioner. After the hearing and when the depositions had been taken and all the evidence presented received, the justice of the peace forwarded them all to the commission in Manila, which proceeded to pass upon the evidence thus forwarded and later rendered the decision appealed from, without holding any further hearing nor serving any notice thereof to the counsel of the parties concerned.

In granting the certificate of public convenience applied for and in overruling the oppositions thereto, the commission based its decision upon the following proven facts as stated therein:

"The City of Cebu, which is the most important district to be served by the proposed taxicab service, has a population of approximately 66,000 living within the city proper and its barrios, about 53,000 of whom live in places accessible to the proposed service (1918 figures). In addition, there are transient residents, not a few in number, coming from foreign and inter island or coastwise steamers calling at the port of Cebu.

"To furnish transportation service to this population there are tartanillas drawn by horses; motor service by means of the autobuses of the Cebu Transit Co. and the Cebu Autobus Co.; taxicab service of the opponents; garage cars and PU cars.

"The service rendered by the Cebu Transit Co., through its autobuses, is more or less limited, benefiting mostly those persons living near its fixed lines or routes. Altho its rates are low, its service is not desired by certain people due to the fact that they are required to walk to their lines. Most of the people living outside of the city

and in the barrios which are far distant from the poblacion have to depend on the service of garage cars, PU cars, tartanillas and taxicabs. But, aside from the fact that no opposition was filed by the parties concerned, the services of garage cars, the PU cars and the tartanillas, with their different rates of charges, do not and cannot meet the varying demands of residents of various stations of life in a growing and progressive place like the City of Cebu. The same observation may be made of the present taxicab service of the opponents. As to the service of the animal drawn vehicles called tartanillas, with their cheap rates, it is obvious that they cannot render the same service as the proposed taxicabs of the applicant as this means of transportation is safer, more comfortable and speedy. In short, the commission is satisfied from the evidence that the taxicab service proposed is necessary and no ruinous competition will result from it.

"In view of the foregoing, the commission believes that the granting of this application will promote the public convenience in a proper and suitable manner as provided for in section 15 of Act No. 3108, as amended, and it therefore decides that, upon payment of the corresponding fees, the certificate of public convenience applied for by the applicant, Agustin Jereza, should be issued to him, said certificate to be subject to the following conditions: * * *."

In this appeal, the petitioner contends that the commission erred in granting the certificate applied for without first holding a hearing and without any evidence before it to justify its conclusions. He contends further that even assuming that the depositions taken before the justice of the peace may be considered duly presented and admitted in evidence, nevertheless, the commission erred on the ground that it granted the respondent herein rates so unreasonable and so low that they constitute a ruinous competition with the other taxicab operators within the same territory.

With respect to the first assignment of error, the petitioner contends that the depositions in question should not have been considered as evidence on the ground that no hearing was held before the commission and that they were not presented, read, nor admitted in accordance with the requirements of section 364 of the Code of Civil Procedure.

We are of the opinion that this contention is unfounded. Above all, we should not lose sight of the fact that the justice of the peace was designated by the commission upon petition of the opponent, Mrs. Cui, with the consent of the other parties. Section 23 of the Public Service Law expressly provides that the technical rules of legal evidence contained in the Code of Civil Procedure should not be applied to the procedure followed in the commission. Section 25 expressly authorizes the said commission to take depositions before it or before a commissioner. Upon examination of the language employed in the order authorizing the justice of the peace to take and receive the depositions under consideration, it appears clearly therein that the aforesaid official was in reality designated commissioner for the purpose of receiving all the evidence which the parties concerned might present, including the depositions in question. Inasmuch as the Public Service Commission is an entity created with quasi-judicial powers, we do not hesitate to declare that it is authorized to designate commissioners for the purpose of receiving evidence, particularly when such designation has been made by agreement of all the parties concerned, as in the instant case. The law does not contain any prohibition to that effect and inasmuch as the act complained of does not prejudice any of the parties concerned on the ground that they were not deprived of the opportunity to confront and cross-examine the witnesses, we do not find in such procedure anything contrary to law or to public interests.

It is contended that the commission should have called the case for hearing and that the depositions in question should have been presented as evidence and read as usual in order that the objections contained therein could have been discussed and passed upon. In answer thereto, it may be stated that the hearing held before the justice of the peace constitutes the hearing or due process required by the law and that the objections filed therein should be understood as waived on the ground that they were not reiterated when the depositions in question were received

at the commission. Furthermore, the fact that the commission has considered the depositions and rendered decision therein establishes the presumption that it had passed upon all the objections presented, inasmuch as the commissioners could not have discussed the said depositions without taking such objections into account.

Neither has the next assignment of error any merit. The commission granted the respondent two (2) kinds of rates the last being applicable from 10 o'clock p. m. to 5 o'clock a. m. He was thereby authorized to charge an initial fare of P0.10 for the first 1,000 meters, P0.05 for every succeeding 700 meters, and P0.05 for every six (6) minutes of waiting. For a night rate, he was permitted to charge an initial fare of P0.10 for the first 800 meters, P0.05 for every succeeding 600 meters, P1.00 for every hour of waiting, P0.80 for every 45 minutes of waiting and P0.60 for every half hour of waiting. For religious functions and funerals the operator should apply the first rate plus an additional fare of P0.20. The petitioner claims that these rates would ruin his business on the ground that he is required to charge a higher rate of P0.20 as the initial fare for the first 500 meters and P0.05 for every succeeding 500 meters. We hold that the alleged ruinous competition and unreasonable discrimination do not exist, inasmuch as the taxicabs to be operated by the respondent herein are smaller and less comfortable than those operated by the petitioner. Consequently, the public will have the option to choose the service more suited to its convenience.

The last assignment of error is merely a matter of form and does not require any further discussion.

Not finding anything objectionable nor susceptible of reversal or modification in the decision appealed from, it is hereby affirmed, with the costs against the appellant. So ordered.

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

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