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GOVERNMENT CONTROL OF CORPORATIONS

By CRISANTO N. GUSAYKO, JR.*

INTRODUCTION

A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence. (Section 2, Act 1459.) It is non-physical and exists only in contemplation of the law. Not being physical, it must of necessity act only by means of agents who are the natural persons composing the corporation or its board of directors or employees.

Through its agents, the corporation deals with the public and the government. Through them, it exercises all its powers, privileges and rights, and performs its duties imposed by law or contract. And although it is a general rule that, in contrast to natural persons who are always presumed to have juridical capacity, corporations do not have any capacity or power unless conferred upon it by law, both experience and judicial pronouncements have shown that their powers can be so broad as to make them much more powerful and more difficult to control than individuals.

It is axiomatic that corporations have not only the powers expressly granted but those which are necessarily implied; that while they derive all their powers from the legislature which creates them, it is also true that what is fairly implied is certainly granted as what is expressed; that unless restrained by their charter they have the power to deal precisely, in carrying out the corporate purposes, as individuals seeking to accomplish the same ends; that they may resort to any means that would be necessary and proper for an individual in executing the same, unless they be prohibited by the terms of their charters or some public law from so doing; that while, in regard to their express powers, the grants are construed most liberally in favor of the state and most strictly against the corporation, yet in regard to

* LL.B., University of the Philippines.

incidental powers neither strict nor liberal, but only reasonable, rules of construction are applied; that corporations may so far develop and extend their operations as to engage in matters not primarily contemplated by their founders, provided these matters may be fairly within their scope, and provided, also, that in so developing and extending their undertakings they employ direct, and not indirect, means; that "necessary" when used in defining the powers of corporations, does not mean what is simply indispensable, but also what is useful, convenient and proper to carry into effect the franchise granted. (People vs. Pullman's Palace Car Co., 175 Ill. 125.)

From this nature of the powers of corporations, and from the very non-physical essence of corporations, it is evident that unless government surveillance and control is exercised over them, it is possible for a few individuals to band themselves into a corporation and exercise such tremendous and extensive powers and engage in such wide and diversified activities that no one man alone can exercise or engage in. This in turn makes it possible for that group to take advantage of their power at the expense of the public, unless supervised in their activities by the government. From this situation arises the necessity of government control of corporations.

Government Control In General

Since corporations are creatures of the state, which acts generally through its law-making agency, it would seem that the legislature has absolute powers of a Creator in the control and supervision of corporations, these beings created by it. This absolute power of the legislature, however, is only theoretical. Such legislative power, according to the well-recognized principles of consitutional law, is subject to the limitations of the constitution.

For instance, it was recognized by the early decisions of the Supreme Court of the United States that the charter of a corporation is a contract, and that the obligation of such contract cannot be impaired by the state legislature, because to do so would be a violation of the Federal constitution which forbids any state to pass laws impairing the obligation of contracts. (See Dartmouth College vs. Woodward, 4 Wheat. [U. S.] 518, 4 L. Ed. 629.)

"The term *person* in the Bill of Rights," says a Federal court, "includes, or may include, corporations; which amounts

to what he have already said, that when it is necessary for the protection of contracts or property rights, the courts will look through the ideal entity and name of the corporation to the persons who compose it, and protect them, though the process be in its name. All the guarantees and safeguards of the constitution for the protection of property possessed by individuals may, therefore, be invoked for the protection of the property of the corporation." (County of San Mateo vs. Southern Pacific Railway Co., 13 Fed. 722.)

This language shows very clearly that whatever powers the legislature may have in controlling corporations after they have been created by it, such powers must be exercised within the limits of the Constitution, or of the fundamental law of the land. These limitations are generally the provisions to the effect that no person shall be deprived of property without due process of law, that no law shall be enacted denying to any person the equal protection of the laws, that no law shall be passed impairing the obligation of contracts, that taxation shall be just and uniform, that no private property shall be taken for public use without just compensation, and such other like provisions.

Within these limits, laid down by the fundamental law of the land, the legislature has ample and sufficient powers to control corporations. The control find constitutional justification in the police power of the state and its powers of taxation and of eminent domain; and in statutes, in various reserved powers contained either in corporate charters or in general laws.

POLICE POWER

In General.—Police power is the inherent power in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society. It includes everything essential to the public health, safety, and morals. By virtue of it, the state may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. (U. S. vs. Toribio, 15 Phil. 85.)

It is not possible to define or state the limits of the police power by including everything to which it may extend and excluding everything to which it cannot extend, further than to state that all regulations as an exercise of such power, in order

to be valid, must be reasonable, and not a violation of any of the constitutional limitations. Thus, under the guise of police power, regulations are invalid where they are in effect confiscatory and deprive a person of property without due process of law, or where they deny a person the equal protection of the laws, or where they impair the obligation of contracts. Its use is justifiable only when the following conditions concur: (1) that the interests of the public, as distinguished from those of a particular class or individual, require the exercise of this power, and (2) that the means employed for the accomplishment of the end sought to be achieved are reasonably necessary and are not unduly oppressive to individuals. (U. S. vs. Toribio, *supra.*) The legislature, under the pretext of serving public interests, may not arbitrarily interfere with private business, or impose unusual and unnecessary restrictions on lawful occupations or on the innocent and licit use of private property. (Fabie vs. City of Manila, 21 Phil. 486.) There is an illegal use of the police power when a statute purporting to have been enacted to protect the public health, morals, or safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law. (Mugler vs. Kansas, 123, U. S. 623, 31 L. Ed. 205.)

In this work, however, it will not be necessary to consider in further detail the extent of police power in general, because many of the regulations or laws under this power affect individuals and corporations in the same manner; we are interested here only in those regulations or laws made applicable to corporations only, as distinguished from individuals or other associations of individuals, or applicable only to a certain class or classes of corporations and not to others. For, it is only in the latter that corporations are affected differently from individuals by the exercise of the police power of the state.

All corporations are subject to the police power of the state in the same manner as natural persons. However, certain corporations are subject to more extensive regulations merely because of the public nature of their business. Examples of such corporations whose business is affected with a public interest are: railroad companies, street car companies, public ferry companies, public warehouse companies, telegraph companies, banking corporations, insurance companies, etc.

As very aptly stated by the Supreme Court of the United States—"Property does become clothed with a public interest

when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control." (Munn vs. Illinois, 94 U. S. 113, 24 L. Ed. 77.)

Public Service Corporations.—Public service corporations, by the very nature of their business, become subject to greater control by the government than other corporations. Speaking of vessels, our Supreme Court once said: "Vessels licensed to engage in the inter-island trade are common carriers; and as to them there is an extensive field of regulation and control which may properly be exercised by the state without contravention of the provisions of the Philippine Bill of Rights or those of the Constitution of the United States; and this, notwithstanding the fact that the enforcement of such regulations may tend to restrict their liberty, and to control the free exercise of their discretion in the conduct of their business to a degree and in a form and manner which would not be tolerated under the constitutional guarantees with relation to the private business of a private citizen." (De Viliata vs. Stanley, 32 Phil. 541.)

It is not possible here, however, to go into detailed provisions of the law which regulates public service corporations. It is sufficient to point out that Act No. 3108, and its amendments, place all public service corporations under the direct supervision and control of the Public Service Commission which exercises by delegation the legislative powers of controlling them. This general delegation of power is contained in section 13 of the Act, which is as follows:

"The Commission shall have general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property rights, equipment, facilities, and franchise so far as may be necessary for the purposes of carrying out the provisions of this Act. The term "public service" is hereby defined to include every individual, co-partnership, association, corporation, or joint-stock company, whether domestic or foreign, their lessees, trustees, or receivers appointed by any court whatsoever, or any municipality, pro-

vince, or other department of the Government of the Philippine Islands, that now or hereafter may own, operate, manage, or control within the Philippine Islands, for hire or compensation, any common carrier, railroad, street railway, traction railway, subway, freight, and for passenger motor vehicles, with or without fixed route, freight or any other car service, express service, steamboat or steamship line, ferries, small water craft, such as lighters, pontines, lorchas, and others, engaged in the transportation of passengers or cargo, shipyard, marine railway, marine repair shop, public warehouse, public wharf or dock not under the jurisdiction of the Insular Collector of Customs, ice, refrigeration, canal, irrigation, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, wire or wireless telegraph system, plant or equipment: *Provided*, That as regards such common carriers, by land or by water, whose equipment is used principally or secondarily in furtherance of their private business, the net earnings of the latter business shall be considered in connection with their common carrier business for the purposes of rate fixing: *Provided further,* That the Commission shall have no jurisdiction over ice plants, cold storage plants, or any other service above mentioned, operated by the Federal Government exclusively for its own use and not to serve private persons for pay or compensation, nor over animal-drawn carts or ferries below two tons engaged principally in carrying freight: *Provided lastly,* That the Commission shall not exercise any control or superivision over vessels and air lines operated within the Philippine Islands, except with regards to the fixing of maximum passenger and freight rates."

Sections 14 and 15 specify in greater detail the powers of the Commission over public services, including the power to grant certificates of public necessity and convenience. Says the law: "That in the case of a public service, other than an air service, for the operation of whose business it is necessary to obtain a franchise from either a municipal government, or a provincial government, under the provisions of Act No. 667 as amended by Act No. 1022, or from the Philippine Legislature, such public service shall secure a certificate to be known as Certificate of Public Necessity and Convenience, as required by section 22 of this Act. The power of granting a certificate of convenience and necessity which the legislature has delegated to the Public Service Commission is legislative in character. The power delegated or conferred is broad. So far as the lan-

guage of the section is concerned, it is absolute. The grant of the power is accompanied by no conditions whatever. If only the language of the grant of this specific power is considered, it would seem that the power granted was as broad and comprehensive as the power of the legislature itself; if so, the decision of the Commission upon the question of issuing the certificate is something which the courts cannot review. (Union Cooperative Telephone Company vs. Public Service Commission of Wisconsin, P. U. R. 1923B, 269, 239 N. W. 409.)

Another very important power exercised by the Public Service Commission by delegation from the legislature is the power to regulate and fix the rates of public services. This power cannot be delegated by the Commission to a public service in such a way as to authorize the public service to alter its rates at will or to regard them as the maximum rates whenever in the opinion of such public service it would be advantageous to itself. (Panay Autobus Co. vs. Philippine Railway Co., XXXI O. G. 2197, July 13, 1933.)

The rates fixed by the Commission must, however, be reasonable. Unreasonably low rates amounting to confiscation of property would be a violation of the constitutional prohibition against depriving a person of property without due process of law. There is, however, no fixed standard with which to measure the reasonableness of rates. In the words of the Supreme Court of the Philippine Islands, "Ressonable rates for public utilities are the ultimate object. The public utility is entitled to a just compensation and a fair return upon the value of its property while it is being used by the public." (Metropolitan Water District vs. Public Service Commission, XXXI O. G. 3978, December 28, 1933.) And as to the determination of a "fair return", the United States Supreme Court says:

"What is a fair return within this principle cannot be settled by invoking decisions of this court made years ago based upon conditions radically different from those which prevail today. The problem is one to be tested primarily by present-day conditions * * *. A rate of return upon capital invested in street railway lines and other public utilities which might have been proper a few years ago no longer furnishes a safe critirion either for the present or for the future. Nor can a rule be laid down which can apply uniformly to all sorts of utilities. What may be a fair return for one may be inadequate for another, depending upon circumstances, locality, and risk * * *.

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.

"What will constitute a fair return in a given case is not capable of exact mathematical demonstration. It is a matter more or less of approximation about which conclusions may differ." (United Railway and Electric Co. of Baltimore vs. West, 280, 234, P.U.R. 1930A, 225.)

Broad as the power of the legislature to control public service corporations is, there are certain limitations upon it which have been well-stated as follows: "But broad as is the power of regulation, the state does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or to the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the public service corporation has expressly or impliedly assumed. If it has been held out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that are

not incident to its engagement." (Northern Pacific Railway Co. vs. North Dakota, 236 U. S. 585, 59 L. Ed. 735.)

As said by Justice Person "In one sense there may be, and often is, a taking of property through the legitimate exercise of the power of regulation and as necessarily incident thereto. In such case the company whose business is subjected to the regulation is not deprived of the title to or possession of its property, but it may be required to forego profits which it might otherwise receive; to apply its property, within the dedicated use, to some purpose contrary to its wishes; to expend its money as it would not perform except for the regulation; and to submit to losses which it would prefer to avoid * * *. Inasmuch as the regulation of public utilities is thus, and necessarily, an interference to some extent with private property, it can be justified only by the demands of public convenience and necessity; and the regulation must be reasonable, having in view the public interest to be subserved and the extent of the burden imposed." (Michigan State Tel. Co. vs. Michigan Railroad Commission, 193 Mich. 515, 161 N. W. 240.) Thus, it has been held that a municipality, as a regulation of an electric light company, cannot require it to furnish free of charge incandescent lamps in place of those burned out, not withstanding the company had been in the practice of so doing before the passage of the ordinance. (Ex Parte Goodrich, 160 Cal. 410, 117 Pac. 45.) Nor can the state or municipality require a water company to supply water free to charitable, religious, and educational institution. (Chicago vs. Rogers Park Water Co., 214 Ill. 73 N. E. 375.)

It is to be noted, however, that the Philippine Supreme Court seems to differ from the American Courts on the point of requiring free services from public service corporations. In the case of De Villata vs. Stanley, 32 Phil. 541, on page 551, the local supreme tribunal said:

"We are of the opinion that a regulation requiring all coasting vessels licensed to engage in the inter-island trade to carry the mails and give prompt advance notice in all cases of intended sailings in ample time to permit dispatch of mails, and of changes of sailing hours, (manifestly with a view to make it possible for the post office officials to tender mail for transportation at the last practicable moment prior to the hour of departure) is a reasonable regulation, made in the interests of the public, which the state has a right to impose when it grants

licenses to the vessels affected thereby * * *. Certainly we would not be justified in holding that such a regulation is so plainly and palpably unreasonable and such a flagrant attack upon the rights of property under the guise of regulation as to compel the court to say that its enforcement would be equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public."

The Court, however, justified its holding upon the ground that "considerable expenditures of public money have been made in the past and continue to be made annually for the purpose of securing the safety of vessels plying in Philippine waters. In a word, the Government unhesitatingly spends a considerable part of the public funds wherever and whenever it appears that the safety and even the convenience of shipping in Philippine waters will be advanced thereby. Can it be fairly contended that a regulation is unreasonable which requires vessels licensed to engage in the inter-island trade, in whose behalf the public funds are so lavishly expended, to hold themselves in readiness to carry the public mails when duly tendered for transportation, and to give such reasonable notice of their sailing hours as will insure the prompt dispatch of all mails ready for delivery at the hours thus designated?"

Other Corporations.—Although public service corporations are most subject to regulations under the police power of the state, it must be borne in mind that they are not the only corporations whose business is affected with a public interest. Banking corporations, for instance, are subject to the supervision of the Bank Commissioner, whose duties, powers, and functions are laid down in the Revised Administrative Code, sections 1634 to 1642. It is the duty of the Bank Commissioner to see that all laws relating to banking and to banking institutions are duly executed. He has authority to issue orders, instructions and regulations as he may consider necessary to carry out the provisions of the law governing banking institutions and the supervision thereof, and to forbid a banking institution to transact business which is unlawful or, in his opinion, prejudicial to the creditors of such institution, and to require any banking institution to conduct its business in a lawful and safe manner, but all regulations of a general character must first be approved by the Secretary of Finance. Any banking institution may appeal from any order or instruction issued by

the Bank Commissioner to the Secretary of Finance in accordance with section 79 (c) of the Administrative Code and may appeal from the decision of the Secretary of Finance to the Governor General. (Section 1634, Revised Administrative Code.)

Insurance companies, like banking institutions, are also subject to regulation more or less strict. The Insular Treasurer of the Philippines acts as the Insurance Commissioner and performs the duties imposed upon him as Insurance Commissioner by the provisions of the Insurance Act (No. 2427, as amended.) It is well-settled that the business of insurance is of such a peculiar character, affects so many people, and is so intimately connected with the common good, that the state creating insurance corporations and giving them authority to engage in that business may, transcending the limits of legislative power, regulate their affairs, so far, at least, as to prevent them from committing wrongs or injustice in the exercise of their corporate functions. (Merchants' Mutual Automobile Liability Insurance Co. vs. Smart, 267 U. S. 126, 69 L. Ed. 538.)

Other Manifestations of Police Power.—Several provisions of the Corporation Law are indicative of the exercise of the police power of the state. For instance, section 54 provides that the Governor-General may, at any time, order the Attorney-General, the Insular Auditor, the Insular Treasurer, or any other officer of the Government to make an examination into the business affairs, administration, and condition of any corporation transacting business in the Philippine Islands. It will be noticed that this provision of the Corporation Law constitutes an exception to the rule stated in article 45 of the Code of Commerce, which is as follows: "No official inquiry may be made by a judge or court or any authority whatever to ascertain if merchants keep their books in accordance with the provisions of this code, nor may a general investigation or examination of the bookkeeping in the offices or counting-houses of merchants be made."

Then there are the provisions which tend to prohibit combinations and monopolies, especially with regard to agriculture and mining. Section 13, sub-section 5, of the Corporation Law states in its proviso: "No corporation shall be authorized to conduct the business of buying and selling public lands or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation authorized to en-

gage in agriculture shall be restricted to the ownership and control of not to exceed one thousand and twenty-four hectares of land; and it shall be unlawful for any corporation organized for the purpose of engaging in agriculture or mining; it shall be unlawful for any person owning stock in more than one corporation organized for the purposes of engaging in agriculture or in mining to own more than fifteen per centum of the capital stock then outstanding and entitled to vote of each of such corporations; it shall be unlawful for any corporation to own in excess of fifteen per centum of the capital stock then outstanding and entitled to vote of any corporation organized for the purpose of engaging in agriculture or in mining; any stockholder of more than one corporation organized for the purpose of engaging in agriculture or in mining may hold his stock in such corporations solely for investment and not for the purpose of bringing about or attempting to bring about a combination to exercise control of such corporations, or to directly or indirectly violate any of the provisions of the Public Law. Corporations, however, may loan funds upon real estate security and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving title."

Regarding the holding of agricultural land, the Constitution of the Philippines has provisions to safeguard the agricultural lands of the country for Filipinos. In Article XII, sections 2, 3, and 5, it provides:

"SEC. 2. No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty-four hectares * * *. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association."

"SEC. 3. The National Assembly may determine by law the size of *private* agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law."

"SEC. 5. Save in cases of hereditary succession, no *private* agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

It will be seen that these provisions impose a very high degree of control over corporations in the matter of acquiring public agricultural land, and even *private* agricultural lands,

as provided in section 5 above-quoted. These are distinctly nationalistic provisions of the Constitution designed to apply the slogan "The Philippines for the Filipinos." In the future, therefore, private corporations engaged in agriculture, will find these provisions of the Constitution as regulative measures giving to the National Assembly even the right to determine the size of private agricultural lands which corporations may acquire and hold. (Section 3, *supra.*)

The Blue Sky Law, Act No. 2581, is another statute showing the exercise of police power over corporations. It provides that:

"It shall be unlawful for any person, partnership, association, or corporation, either himself or through brokers or agents, directly or indirectly to sell or cause to be sold, offer for sale, take subscriptions or negotiate for the sale, in any manner whatsoever except as herein provided, of any speculative securities in the Philippine Islands other than those expressly exempted without a written permit from the Treasurer of the Philippine Islands as hereinafter provided." (Section 2.) "Speculative securities" as used in the Act means and includes: (1) All securities to promote or induce the sale of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised or promised; (2) All securities the value of which materially depend upon proposed or promised future promotion or development rather than on present tangible assets and conditions; (3) All securities for promoting the sale of which commission of more than five per cent is offered or paid; (4) The securities of any enterprise or corporation which has included, or proposes to include in its assets as a material part thereof patents, formulae, good-will, promotion or other intangible assets, or which has issued or proposes to issue a material part of its securities in payment of patents, formulae, good-will, promotion or other intangible assets." (Section 1.)

This law is designed to stop the sale of stock in "fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations." (Bracey vs. Durst, 218 Fed. 482.) The law is a regulation of business, constrains conduct only to that end, the purpose being to protect the public against the imposition of unsubstantial schemes and the securities based upon them. What ever prohibition there is, is a means to the same purpose, made necessary, it may be supposed, by the per-

sistence of the evil and its insidious forms and the experience of the inadequacy of penalties or other repressive measures. The name that is given the law indicates the evil at which it is aimed; and is, to use the language of a case, "speculative schemes which have no more basis than so many feet of 'blue sky'; or, as stated by counsel in another case, "to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations." Even if the descriptions be regarded as rhetorical, the existence of the evil is indicated; and the prevention of deception is within the competency of the government. (Hall vs. Geiger-Jones Co. 242 U. S. 539, 61 L. Ed. 480.)

Surrender of the Police Power.—Can the power of the state to control corporations by virtue of its police power be surrendered or given up in any form? In the leading case of Stone vs. Mississippi (101 U. S. 814), the state legislature granted a charter to a corporation authorizing it to conduct lottery for twenty-five years in consideration of a stipulated sum in cash. Subsequently, the legislature enacted a law prohibiting all kinds of lottery within the state. The question was raised whether this later law impaired the obligation of contract embodied in the charter. The United States Supreme Court said:

"No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself * * *. The contracts which the Constitution protects are those that relate to property rights, not governmental * * *. Anyone, therefore, who accepts a lottery charter, does so with the implied understanding that the people, in their sovereign capacity and through their properly constituted agenceis, may resume it at any time when the public good shall require, and this whether it be paid for or not. All that one can get by such a charter is a suspension of certain governmental rights in his favor, subject to withdrawal at will. He has, in legal effect, nothing more than a license to continue on the terms named for the specified time, unless sooner abrogated by the

sovereign power of the state. It is a permit, good as against existing laws, but subject to future legislative and constitutional control and withdrawal."

Even a municipality only cannot divest itself of the police power to control corporations. "No contract between a municipality and a public service company, nor any franchise granted by a municipality to a public service company, can deprive the municipality of its police power to enact such legislation as is necessary for the general welfare, and the proper exercise of such power cannot be attacked as an impairment of the obligation of the contract, where designed for the public safety and convenience. (Charlotte vs. Michigan Telephone Company, 93 Fed. II.) It has even been held that a municipality cannot barter away the exercise of its police power for free municipal service from a public service corporation. (Kenosha vs. Kenosha Home Tel. Co., 149 Wis. 338 N. W. 848.)

Conclusion.—Although attention has been largely focused on government control of corporations whose business is affected with a public interest, it must not be supposed that the power to regulate and control is confined to such corporations. Even though the business is not affected with a public interest, the legislature may enact laws within the scope of its police power, affecting the corporation just the same as in the case of an individual. (State vs. Holden, 14 Utah 71, 46 Pac. 756.)

As well stated in a magazine article, "any attempt to deal with the subject of governmental control of corporations must always recognized that in the police power there is a vast reservoir of control, the extent of which may not be gauged in advance; but the precise application of which in any given case must be submitted to the consideration of the court, unless it clearly oversteps the limits of permissible legislative discretion and becomes the obvious exercise of arbitrary power." (Governmental Control of Corporations, by George W. Wickersham, 13 Columbia Law Review, 187.)

Under the police power as a justification for the control of corporations, corporations can be singled out and regulations made applicable to them which are not applicable to individuals and unincorporated associations; particular classes of corporations, such as public service corporations, can be singled out and regulations made applicable to them which are not made applicable to other classes of corporations; and even corporations of one class can be singled out and regulations made

applicable to them which are not made applicable to other like corporations. These principles, however, are all subject to this important qualification, i.e., there must be a reasonable basis for the discrimination or classification, else the discrimination will amount to a denial of the equal protection of the laws and therefore repugnant to the Constitution.

POWER TO AMEND AND REPEAL CHARTERS

In General.—Although the charter of a corporation is a legislative enactment which the legislative may, theoretically, alter or repeal at will, such power of the law-making body to alter or repeal must be considered as subject to constitutional limitations, among which is the prohibition against the impairment of the obligation of contracts.

The leading case on this point is known as the Dartmouth College Case, decided by the United States Supreme Court in 1819. In that case the King of England, in 1769, granted a charter incorporating "The Trustees of Dartmouth College" for the purpose of maintaining a college founded and endowed by private individuals, and entrusting its management and control to certain individuals as the first trustees, and to their successors to be chosen by them. The corporation as thus constituted was, by the terms of the charter, to exist "from henceforth and forever." In 1816, the legislature of New Hampshire passed acts materially amending this charter, and the corporation attacked them as void under the constitutional prohibition against the impairment of the obligation of contracts. The case reached and was argued before the United States Supreme Court, which held that the corporation was a private corporation; that the charter was a contract within the meaning of the Constitution; and that the acts of the New Hampshire legislature impaired it and were, therefore, void. (See Dartmouth College vs. Woodward, 4 Wheat. [U. S.] 518, 4 L. Ed. 629.)

Private charters, or such as are granted for the benefit of corporators, are held to be contracts for the reason that the liabilities and duties which the corporators assume by accepting the charters constitute a contractual consideration. Therefore, the grant of the franchise is as inviolate against revocation as any other grant of property or legal estate, unless the right to revoke is expressly reserved.

The provision reserving the right is now almost universal. It is contained either in the private charters of particular cor-

porations, or in general laws authorizing the organization of corporations. We have in the Philippines the following provision of the Corporation Law: "This Act or any part thereof may be amended or repealed at any time by the legislative authority, and any or all corporations created by virtue of this Act may be dissolved by legislative enactment. No right or remedy in favor of or accrued against any corporation, its stockholders or officers, nor any liability incurred by any such corporation, its stockholders or officers, shall be removed or impaired either by the subsequent amendment or repeal of this Act or of any part or portion thereof." (Section 76.) This section is in legal effect a reservation of the power to amend or repeal charters, because general laws under which a corporation is formed constitutes its charter and when a corporation is formed under them, a contract exists within the meaning of the constitution the same as if the charter had been conferred by a special act of the legislature. (Abbot vs. Johnstown, 80 N. Y. 27, 36 A. M. Rep. 572.) The reservation contained in the section of the law quoted is a continuing power of regulation and control by the government in the interests of the public. (Delaware vs. Board of Public Utilities, 85 N. J. L. 28, 88 Atl. 849.)

Limitations of Power.—It is well-recognized, however, that this reserved power is not without limitation. It remains subject to other constitutional provisions, like the prohibition of taking property without due process of law or without just compensation. Thus, it has been repeatedly held that this reserved power does not justify the legislature to amend a corporate charter as to take any of the substantial property rights of the corporation, inasmuch as this would amount to confiscation of property. (City of Detroit vs. Detriot & Howell Plank Road Co., 43 Mich. 140.)

It should also be borne in mind that the legislature cannot impose its amendments upon the corporation by virtue merely of its reserved power to amend. An amendatory act, like an original charter, must be accepted by the corporation or its members. It can make no difference that in granting the original charter, the legislature reserved the power to revoke or amend it, for it has no more power to compel persons to continue as a private corporation under an amended charter than it has to create a private corporation in the first instance without the consent of its members. It can certainly repeal the charter, but it cannot impose an amended charter upon the corporation;

to give force and effect to the amended charter, more than an amendment is necessary—the amendment must be accepted. One of the consequences of refusal to accept the amendment is that the corporation cannot conduct its operations in defiance of the power that created it; and if it does not accept the modification or amendment proposed, it must discontinue its operations as a corporate body. (Yeaton vs. Bank of Old Dominion, 21 Gratt. [Va.] 593.)

The amendment to the charter may be accepted either by the board of directors or by the corporators, depending upon the nature of the amendment. If an amendment is such as fundamentally to change the constitution of the corporation, or if it confers power or privileges which are not properly within the general authority vested by the members in the board of directors, the directors cannot bind the corporators by an acceptance, but the acceptance must be by the corporators themselves, as constituting the corporation. (Eidman vs. Bowman, 58 Ill. 444, II Am. Rep. 90.) But if the amendment does not fundamentally change the constitution of the corporation, and merely confers some additional power or privilege, the exercise of which would be within the authority and powers of the board if it had originally been conferred upon the corporation by its charter, it may be accepted by the board of directors. (Eastman Railway Co. vs. Boston, 111 Mass. 125, 15 Am. Rep. 13.) The board of directors, in so accepting, however, must act in good faith and with a view to the promotion of the general good of the corporation; otherwise, its action may be repudiated by the stockholders or members. (Illinois River Railway Co. vs. Zimmer, 20 Ill. 654.)

The acceptance of the amendment to the charter need not always be express. It may be implied from the exercise of powers under the amendment or modification. (Phinney vs. Sheppard, 88 Md. 633, 42 Atl. 58.)

Aside from the fact that amendments to charters must be accepted by the corporations concerned, the reserved power to amend is further limited by the principle that it cannot be exercised to destroy or impair vested rights of the corporation, its stockholders, or its creditors, or to take away arbitrarily and without due process of law property already acquired or the proceeds of contracts previously made. (Opinion of Justices, 66 N. H. 629, 33 Atl. 1078.) This principle is expressed in our Corporation Law thus: "No right or remedy in favor of or

accrued against any corporation, its stockholders or officers, nor any liability incurred by any such corporation, its stockholders or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Act or of any part of the portion thereof." (Section 76.)

Contracts Repugnant to Amendent.—The reserved power of the state to alter, amend or repeal cannot be avoided by a corporation by entering into contracts or incurring debts, since all persons are bound to take notice of the law reserving the power. And if a contract cannot be performed consistently with an alteration in a charter, performance, as thus hindered or obstructed, will be excused under the rule that the performance of contracts is excused when rendered impossible by an act of law. Pursuant to this rule, it has been held that an amendment to a charter of a railroad corporation, giving it the power to issue bonds to construct a bridge which should be open for the use of other railroads, was not defeated by the mortgage foreclosure sale of such railroad, although it appeared that the amendment was enacted after the execution of the mortgage under which the foreclosure sale was held. (Union Pacific Railway Co. vs. Mason City, 199 U. S. 160, 50 L. Ed. 134.)

Applicability of Reservation.—A reservation of the power to alter, amend or repeal applies only to charters of all corporations created or organized after the enactment of the law or the constitution giving the power to amend or repeal. It seems clear that if a corporation has been created or organized by special charter or under general laws at a time when there is no express reservation of the power to amend or repeal, a subsequent law reserving that power to the legislature cannot justify the legislature in amending the charter of a corporation already existing at the time of the passage of the reserving law. To do so would constitute an impairment of the obligation of the contract between the state and the corporation, contained in the original charter which did not reserve any power of amendment or repeal to the state.

TAXATION

In General.—The taxing power is an incident of the highest sovereignty. It is an essential part of every independent government. By the Constitution, and by the principles which

lie at the foundation of every organized society, the state may tax all the persons, natural and artificial, within her borders, and compel them to contribute such part of their property and income as the legislature may think right, to defray the expenses and meet the engagements of the government. The wealth of men who are associated together is not less subject to taxation than if it were owned by individuals. The right is as clear to tax an incorporated company as a mercantile partnership or other unincorporated association. (Bank of Pennsylvania vs. Commonwealth, 19 Pa. St. 144.)

"Wherever the governing principle is taxation, the term *persons* in a statute has been held to include corporations, and under the assessment and tax laws, corporations are assessed and taxed, although the word *persons* is used therein, and corporations are not mentioned." (Crafford vs. Supervisors of Warwick County, 87 Va. 110, 115, 12 S. W. 147.)

The fact that a corporate charter does not expressly reserve to the state the right to tax the corporation does not constitute an implied agreement on the part of the state that it will not impose any taxes upon the entity created, and, therefore, to tax it is not, no exemption having been granted in express terms or by necessary implication, to violate the constitutional prohibition against the impairment of the obligation of contracts. (Providence Bank vs. Billings, 4 Pet. [U. S.] 514, 7 L. Ed. 939.)

Double Taxation.—By double taxation is meant the levying of taxes on the same property more than once during the same period and within the same jurisdiction. American authorities have held that this kind of double taxation is obnoxious and within the condemnation of law. But if the taxes, even though on the same property and for the same period, are levied by different sovereignties, there is no double taxation. When a state finds property within its jurisdiction, it is not necessary, before taxing it, to investigate and ascertain whether any other state has already taxed it or asserts the right to do so; and if it happens that two or more jurisdictions have levied a tax upon the same item or description of property for the same period, it is not double taxation as discountenanced by the law. (Mosby vs. Board Com'rs. Greenwood Co., 98 Kan. 594, 158 Pac. 657; Judy vs. Beckwith, 137 Iowa 24, 15 L. R. A. [N. S.] 142, 114 N. W. 565).

A most important question from this view of double taxation arises, because the doctrine that the property of a corporation belongs in law to the corporation, as an entity separate and distinct from its members, is only a fiction, and the beneficial interest in the property is really in the stockholders and the shares in their hands merely represent such beneficial interest. Some courts hold that there is double taxation if the corporation for its capital stock, and the stockholders are again taxed for the amount of their shares in that capital stock. The Supreme Court of the United States, however, has held a different view, to the effect that the shares of the capital stock of a corporation in the hands of the stockholders, though representing their interest in the property of the corporation, are, for the purposes of taxation, distinct from the property of the corporation, and from the capital stock in its hands, and that to tax both—the former to the corporation, and the latter to the stockholders—is not double taxation. (Shelby County vs. Union & Planters' Bank, 161 U. S. 149, 40 L. Ed. 650.)

Whether double taxation is void in this jurisdiction has not been squarely determined by our courts. In a dictum in the case of De Villata vs. Stanley (32 Phil. 541), however, the Supreme Court intimated that in this jurisdiction, duplicate taxation of the same property, either to the same person or different persons, while not unlawful, should, whenever possible, be avoided and prevented.

Exemption from Taxation.—Corporations may be exempted from the payment of taxes, either in their respective charters, or by virtue of general laws. But no corporation may claim exemption from taxation, unless the state has granted such exemption. Any claim for exemption must be clearly shown, based on language in the law too clear to be mistaken. (Government of the Philippine Islands vs. Monte de Piedad, 35 Phil. 42.) An exemption claimed by a corporation merely on the ground that another corporation or person situated in the same circumstances has not been required to pay or has not paid similar taxes is unjustifiable and should be ignored. (Bank of the Philippine Islands vs. Trinidad, 45 Phil. 384.)

In the Philippine Islands, the Administrative Code (Act 2711, as amended) specifies in general what properties are exempted from taxation. Section 344 of that Code provides that the following property shall be exempt from taxation:

"(a) Property owned by the United States of America, the Government of the Philippine Islands, or by any province or municipality in the Philippine Islands.

"(b) Cemeteries or burial grounds.

"(c) Churches and parsonages or conventos appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, scientific, educational purposes; but this exemption does not extend to property held for investment, or which produces income, even though the income is devoted to some one or more of the purposes above-specified.

"(d) When the entire assessed valuation of real property in any one municipality belonging to a single owner, shall be less than the sum of fifty pesos, the tax thereon shall not be collected, though in any event the property shall be valued for the purposes of assessment and record shall be kept thereof as in other cases.

"(e) Land held by a homesteader under application filed in accordance with law, prior to the vesting of title in him by the issuance of patent; but this exemption does not extend to buildings and improvements thereon the title to which is not in the Government.

"(f) Machinery, which terms shall embrace machines, mechanical contrivances, instruments, tools, implements, appliances, and apparatus used for industrial, agricultural or manufacturing purposes.

"(g) Fruit trees and bamboo plants, except where the land upon which they grow is planted principally to such growth."

Aside from this general law on exempt property, however, the legislature may, and does, pass special laws exempting certain corporations from taxes. The exemption in such cases is usually in the charter or franchise of the corporation. Thus, it has been held by the Supreme Court of the Philippine Islands that a franchise granted by the legislature to a private party for the operation of a certain business on condition that a percentage of its profits should be paid to the government "in lieu of all taxes of every name and nature—municipal, provincial, or central—upon its capital stock, franchise, right of way, earnings" and other property, excludes the grantee of the franchise from everything which may be regarded as taxes. Such grantee cannot even be obliged to affix the stamps re-

quired on bills of lading of all other parties engaged in similar busines. (Philippine Railway Company vs. Nolting, 34 Phil. 401.)

There are times when the exemption is provided for in the Consttiution. But when the provision is merely permissive, that is, to the effect that the legislature *may* exempt certain classes of property, the provision is not self-executing, and it is necessary for the legislature to enact the exempting statute before the property mentioned in the Constitution can be exempt. (People vs. Anderson, 117 Ill. 50, 7 N. E. 625.)

Attention should be directed to the provision of the Constitution of the Philippines in its Article VI, Section 14 (1) which provides: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." This is a self-executing provision, because it is not merely permissive. It effects, by itself, the exemption of the properties named. The legal effect of this provision, however, is not to repeal the provisions of section 344 of the Administrative Code (*supra*). The provisions of the Code subsist; but the legislature may not amend or repeal those provisions as to abolish the exemption of the properties mentioned in the Constitution. The Legislature cannot validly tax the properties named in the constitutional provision.

This leads us to the consideration of the power of the legislature to revoke an exemption already granted to a corporation. When the exemption is in the form of a contract, it is inviolate against impairment as any other obligation protected by the Constitution; hence, the exemption cannot be revoked subsequently. (Minot vs. Philadelphia, 18 Wall. [U. S.] 206, 21 L. Ed. 888.) So that the exemption may constitute a contract binding upon the state, however, there must be a consideration therefor. There is a sufficient consideration if the exemption is granted in the charter of the corporation, or in general law in force at the time the charter was granted and accepted; for the corporation furnishes a consideration in assuming the duties and obligations imposed by the charter, and presumably the state receives a consideration therefrom. (Tomlinson vs. Jessup, 15 Wall. [U. S.] 454, 21 L. Ed. 204.)

But an exemption which does not constitute a contract, and which is merely a "spontaneous concession by the legisla-

ture, not connected with any service or duty imposed upon the corporation" is subject to modification or repeal. The legislature may withdraw the exemption at will in such cases, because it is a mere gratuity possession no element of a contract. (People vs. Com'rs of Taxes, 47 N. Y. 501; West Wisconsin Railway Co. vs. Supervisors of Trempealeu County, 93 U. S. 593, 23 L. Ed. 814.)

However, even when the exemption is in the nature of a contract supported by a consideration, no question can arise as to the impairment of its obligation when the company accepted all of its corporate powers subject to the reserved power of the state to modify its charter and to impose additional burdens upon the enjoyment of its franchise. When such reservation exists, the legislature may subsequently revoke the exemption from taxation or change the mode of taxation. (Sioux City St. Ry. Co. vs. Sioux City, 138 U. S. 98, 34 L. Ed. 898.)

The nature of the taxing power and the reservation contained in our Corporation Law, which empowers the legislature to amend or repeal any portion of the law, makes it possible for the legislature to wield a potential effective control over corporations. Thus, if the business of a corporation is something which the legislature may see fit to discourage or suppress, it can, even after the organization of the corporation, impose heavy taxes upon it, and thus benefit the public coffers while at the same time discouraging engagement in the business in which the corporation concerned is engaged.

EMINENT DOMAIN

Eminent domain is the right of the state to acquire private property for public use upon the payment of just compensation. Since practically all kinds of property may be taken by the state in the exercise of this right, the franchise of a corporation may be taken by the state by eminent domain. The corporation in such case cannot complain that the taking of the franchise is an impairment of the obligation of contracts, even when there is no reserved power to amend or repeal on the part of the corporation. As Mr. Justice Brewer said, "The condemnation proceedings do not impair the contract, do not break its obligations, but appropriate it to the public use." (Long Island Water Supply vs. Brooklyn, 166 U. S. 685.)

The Constitution of the Philippines makes provision for government control of industries and utilities, almost socialistic in nature. Section 6 of Article XII provides: "The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, *upon payment of just compensation, transfer to public ownership utilities and private enterprises to be operated by the Government.*" This is an express recognition of power of the government to take, by eminent domain, the franchise of public utilities and "other private enterprises"— a term that is almost limitless in scope.

EXECUTIVE SUPERVISION

So far government control of corporations has been considered from the power of the legislature to enact laws regulating and controlling corporations. It must not be forgotten, however, that the executive branch of the government exercises a large degree of supervision and control over corporations. This supervision is, of course. power delegated to different executive officials by express provisions of the law. The tendency towards delegating this power of supervision to executive officials is very strong because the highly administrative and detailed character of the work of supervising corporations for the protection of the public.

Thus, the Insular Treasurer is made the Insurance Commissioner charged with the supervision of insurance companies. (Section 169, Act No. 2427.) The Bank Commissioner supervises all banking institution. (Section 1634, Administrative Code.) Public Service corporations are under the Public Service Commission, which has "general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property rights, equipment, facilities, and franchise so far as may be necessary for the purposes of carrying out the provisions" of the Public Service Law (Act No. 3108).

Section 54 of the Corporation Law, which places in the hands of the Governor-General an effective means of supervising the conduct of business of corporations, provides: "The Governor-General may, at any time, order the Attorney-General, the Insular Auditor, the Insular Treasurer, or any other officer of the Government to make an examination into the business affairs, administration, and condition of any corpora-

tion transacting business in the Philippine Islands, and thereupon it shall be the duty of the Attorney-General, the Insular Auditor, the Insular Treasurer, or any other officer designated, to make such examination; and for the purposes thereof, the Attorney-General, the Insular Auditor, the Insular Treasurer, or other official designated shall have the authority to administer oaths to the directors, officers, stockholders, members or other persons, and to examine under oath or otherwise such directors, officers, stockholders, members or other persons in relation to the business transacted by said corporation, the adminstration of its affairs, and the condition thereof. For the purposes of such examination, the books, papers, letters, and documents belonging to such corporation or pertaining to its business administration or condition shall be opened to the inspection of the Attorney-General, the Insular Auditor, the Insular Treasurer, or other officers designated, and a subpoena or subpoena duces tecum may be issued by the said officials directing any person in the Philippine Islands to appear as a witness and to produce for the inspection of the Attorney-General, the Insular Auditor, the Insular Treasurer, or other officer designated, any books, papers, documents, letters or other records in his possession. Any witness failing to obey such subpoena shall, upon the application of the official who issued the same, be liable to punishment by the Supreme Court or the Court of First Instance, as the case may be, in the same manner and to the Supreme Court or the Court of First Instance in a matter pending before either of said Courts.

"The Attorney-General, the Insular Auditor, the Insular Treasurer, or other officer designated, as the case may be, shall make a full and complete report to the Governor-General of the examination made by him, together with his recommendations, and the Governor-General, if he deems proper, shall direct the Attorney-General to take such proceedings as the report may seem to justify and the state of the case require."

The Attorney-General (now the Solicitor-General) is the proper official who institutes proceedings against corporations when these violate their charters or the provisions of the general Corporation Law. Section 190-A of the Corporation Law provides: "The violation of any of the provisions of this Act and its amendments not otherwise penalized therein shall be punished by a fine of not more than five thousand pesos and by imprisonment for not more than five years, in the discretion of

the court. If the violation is committed by a corporation, the same shall, upon such violation being proved, be dissolved by quo warranto proceedings instituted by the Attorney-General or by any provincial fiscal by order of said Attorney-General."

Dissolution of a corporation does not, however, always follow upon the institution of quo warranto proceedings. In such an action the courts have a discretion with respect to the infliction of capital punishment upon corporations, and there are certain misdemeanors and misusers of franchises which are insufficient to justify dissolution. (Government of the Philippine Islands vs. El Hogar Filipino, 50 Phil. 399.) Thus, it has been held that the extreme penalty of the forfeiture of its franchise will not be visited upon a corporation for holding a piece of real property for a period slightly in excess of the time allowed by the law, where the conduct of the corporation does not appear to have been characterized by obduracy or pertinacity in contempt of law. Also, a corporation will not be dissolved where it is apparent that in the proceeding for that purpose, the government made itself a party to the internal strife and friction among the stockholders of the corporation, and that the suit was instituted by the government at the instance of the former president of the corporation. (Government of the Philippine Islands vs. Asia Lumber Co., 53 Phil. 346.)

CONCLUSION

With the methods of government control and regulation of corporations already discussed, and the limitations thereon noted, it may now be safe to draw a conclusion in answer to the question: Is the tendency of the government, generally, towards stricter control of corporations, or towards lessening government interference?

The ever-widening activities of corporations and the organization of corporations by men in order to attain greater power in business, plus the evident danger to the public arising from the fiction that the corporation is a person separate and distinct from its members, have caused the governments of American states and of the Philippine Islands to impose greater control over corporations, with a view to guaranteeing, as far as possible, ample protection of the public. More regulatory laws exist now than many years ago. The reservation of the power to amend or repeal charters and general corporation laws is now universal. The limits of the police power of the state have not

been set out in black and white, and the growing tendency of governments to submerge the individual to the necessities and welfare of the collective group, allows the legislature to assert control over corporations under the cloak of the undefined police power. And the police power is something that has been held to be above the constitutional prohibition against impairment of the obligation of contracts, inasmuch as it cannot be bargained away by the state.

As Fletcher very well says in his Cyclopedia on Corporations, section 4357, "It may be stated with much confidence that he who seeks to set aside a government regulation of a corporation has a hard row to hoe, under most circumstances. The whole tendency of the courts is to uphold such regulation except in very clear cases of abuse of power. When you attack, you are always met with a presumption of validity. It is almost useless at the present day to attack the constitutionality of delegation of power to a commission, and only in rare instances do courts sustain the contention either of want of due process of law, impairment of contract, or denial of equal protection of the laws."

The decisions cited or quoted in the body of this work, especially those of the United States Supreme Court, seem to show that the extent of governmental control and regulation of corporations is ever widening, keeping in step with the onward march of civilization and progress. In fact, there is a very clear tendency to subordinate the so-called personal rights and privileges of the individual citizen (which includes corporations) to the good and welfare of the state. This tendency is most evident in corporations whose business is affected with a public interest, such as public service corporations.

It is submitted that this tendency of governments is for the best. Corporations, from their very nature, can become so powerful as to tempt those directing their affairs or controlling their capital stock to run them purely for self-enrichment, at the expense of the unwary public. Governments should always step in under such circumstances to protect the public and insure clean business. At the same time, government control should not be made to extend beyond the reasonable necessities of the circumstances. To allow it to go further than necessary to safeguard public interest and welfare will be an undue interference with private initiative and business and will be repug-

nant to all principles of democracy and liberty. A firm, steady, and reasonable control and regulation is best.

That such measure of control and regulation may in the future be expected in the Philippines can be deduced from the fact that henceforth all regulation shall be by general laws and no more charters may be granted by the National Assembly. Article XIII, section 7 of the Philippine Constitution provides: "The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof."