PROVISIONAL PERMITS: A CRITICAL REVIEW

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INTRODUCTION —

Fewer legal devices have ever captured the public imagination, let alone gained a certain degree of notoriety, than the provisional permits which are being issued by the Board of Transportation (herein cited as BOT). To those who are affected, its issuance never fails to evoke strong feelings—whether he is the applicant or the oppositor. For the former who is benefited by it—satisfaction; and for the latter who is prejudiced—anger. In fact during the year 1979, when an applicant[1] was allowed to operate thirty (30) buses from Batangas Province to Manila and another applicant,[2] fifteen (15) buses from Quezon Province to Manila — both under provisional permits, established bus operators along these lines could not contain their anger, that they even complained to the press. Even the travelling public have voiced concern over the proliferation of so many jeepneys in Metro Manila which are mostly operating under provisional permits. No less than the President of the Philippines after being caught in a traffic jam,[3] expressed so much alarm over the traffic situation in Metro Manila that in November, 1978, he demanded from the then Chairman of the BOT, Leopoldo M. Abellera, an explanation for the "rapid and excessively liberal grant of franchises to jeepneys and other vehicles", with reference to the reported increase of jeepneys from 12,000 to 22,000 in only one year.

While the BOT claims that there are only about 22,000 jeepneys operating in Metro Manila, the Bureau of Land Transportation (formerly LTC Agency) pegged the number at about 27,000, whereas, the press and the public estimated about 50,000 jeepneys.[4] Regardless of the exact number, the fact is that most of them are operating by virtue of these provisional permits which were issued by the BOT. What then is a provisional permit? What is its legal basis?

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1 Application of Leoncio de la Cruz, Case No. 79-31935.

2 Application of Phil. Asia Transit Corp., Case No. 76-3070.

3 Evening Post, September 22, 1979, pp. 1-2.

4 *Ibid.*

CERTIFICATE OF PUBLIC CONVENIENCE DEFINED:

Before we can clearly define a provisional permit,[5] it is necessary to explain first the meaning of the so-called Certificate of Public Convenience, which is also issued by the BOT. As a basic postulate, one cannot just engage in the transportation business without securing the necessary permission from the Board of Transportation. This body is one of the three[6] (3) Specialized Regulatory Boards that succeeded the Public Service Commission which was abolishhed when the Integrated Reorganization Plan (IRP) was adopted as part of the law of the land under Presidential Decree No. 1. This permission is technically called a Certificate of Public Convenience and loosely referred to as "franchise"[7] "line", or "Decision". As explicitly enjoined by the law: "No public service shall operate in the Philippines without possessing a valid and subsisting certificate from the Public Service Commission (now the Specialized Regulatory Boards, e.g., BOT), known as "Certificate of Public Convenience" x x x."[8]

What then is a Certificate of Public Convenience? Professor Generoso O. Almario has defined a Certificate of Public Convenience as "an authorization issued by the Public Service Commission (Specialized Regulatory Boards) for the operation of public service or public utility.[9] It has also been defined as "a formal order (or decision) issued after a public hearing by a regulatory body which grants a public utility service the right to render service to a particular area."[10]

The process of securing a certificate of public convenience for transportation service starts upon the filing of a written application for public utility service, with the BOT. Then this Application is set or scheduled for hearing for which a corresponding Notice of Hearing is also issued and published at the instance of the applicant, in a newspaper of general circulation, at least fifteen (15) days prior to the date of hearing. Copies of this Notice of Hearing are sent to operators whose lines or services are affected by the proposed application, by registered mail with return card, from a list of operators given by the Board. And during the date

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[5] Also referred to as Provisional Authority, Provisional Order or Special Permit.

[6] The other two used to be Board of Communications which was abolished by Ex. Order No. 546, which created the National Telecommunications Commission and the Board of Power & Waterworks which was also abolished by Pres. Decre No. 1206 (1977) which created the Board of Energy.

[7] "Franchise" has a technical definition but it is also used as synonymous to certifiicate of public convenience.

[8] Com. Act Act No. 146 (1936), sec. 15.

[9] ALMARIO, TRANSPORTATION AND PUBLIC SERVICE LAW 288 (1966).

[10] MOSHER, PUBLIC UTILITY REGULATIONS 93 as cited in ROSAL, PUBLIC SERVICE COMMISSION 26 (1940).

of hearing, if the applicant succeeds in proving three requirements, namely: Filipino citizenship, financial capacity and public need, a Certificate of Public Convenience is issued to him.[11] In actual practice, what takes the form of a Certificate of Public Convenience is merely a favorable "decision". This is similar in format to decisions issued by the regular courts. Before the war, when applicants were few, certificates like "diplomas" were really issued to the successful applicants, especially to ice and electric plant operators.

PROVISIONAL PERMIT DEFINED:

How does a provisional permit or authority enter the picture in this matter of applying for a Certificate of Public Convenience? Usually the applicants are in a hurry to operate the unit or units, to be able to pay their monthly amortizations as they are often bought through credit. They include in their applications a Petition for the issuance of a provisional authority during pendency of the application for their ready unit or units by alleging *urgent public need therefor.* And the Board acting upon such Petition may forthwith issue this well-known provisional permit or authority. This is in the form of an Order embodying said permit or authorization and is usually valid for a period of one (1) year, although sometimes, the validity is for six (6) months, two (2) years, from the date of said order or simply valid during the entire pendency of the basic application. These provisional permits are issued immediately, even on the day the application is filed or at most in a few days. And they take effect upon release. Which means that the applicant can bring the permit, authority or order to the Bureau of Land Transportation where on the basis of the same, he is issued the public utility plates which will allow his units to ply the streets. Hence, the appeal of this type of authorization to applicants or operators. Whereas, if they pursue a Certificate of Public Convenience, following normal procedure, at most it will take about twenty (20) days before they can operate the units. Under the present system of issuing provisional permits, in one or a few days, the applicant can already operate the unit or units ready in his Application. Therefore, based on these considerations, a provisional permit or authority is defined as "an immediate temporary grant of operating rights to an applicant during the pendency of his Application for a Certificate of Public Convenience."

HISTORICAL BACKGROUND —

Barredo Ruling — During the colonial period, circa the early 1920's, the Public Service Commission, the forerunner of the Spe-

[11] Rizal Light & Ice Co., Inc. v. Municipality of Morong, Rizal; Rizal Light & Ice Co., Inc. v. PSC, G.R. No. 20993, Sept. 28, 1968, 25 SCRA 285 (1968).

cialized Regulatory Boards earlier mentioned, had been issuing special or provisional permits in the manner similar to the way they are presently issued by the present BOT — *ex parte* or without hearing. However, it was only on March 7, 1933 in the case of *Barredo et al v. Public Service Commission*[12] when the Supreme Court made the first ruling on its validity. Such kind of permit was mentioned in an earlier case, but its validity was not squarely ruled upon.[13] In this case of *Barredo*, a certain Ramon Silos filed an Application for a taxicab service in Manila with a request for provisional authority. This was opposed by Barredo, among others. After the initial hearing, where only arguments took place but no testimony was taken, the Public Service Commission issued a provisional permit in favor of applicant Silos. The governing public utility law then was Act No. 3108, which has no provision on this matter. The Supreme Court nullified such provisional permit because "there was no evidence before the Commission to support reasonably such Order." For its sheer contemporaneous eloquence and validity, the pronouncement in this case is still often quoted by litigants before the Board —

> The powers of the Public Service Commission are found in the legislation creating that body. Their powers are limited to those expressly granted or necessarily implied from those granted. In our basic law, Certificate of Public Convenience can only be granted after hearing and this Court in review is compelled to set aside Orders: 'When it clearly appears that there was no evidence before the Commission to support reasonably such Order'. The action of the Public Service Commission in granting these special or provisional permits is not only not authorized by their organic law but is forbidden by the requirement to take evidence before issuing orders. The orders complained of must therefore be set aside and declared of no effect.

This holding that the Public Service Commission lacked authority to grant special or provisional permits was reiterated in the same month in the case of *Manila Yellow Taxicab, Inc. and Acro Taxicab Co. v. Public Service Commission.*[14]

Javellana Ruling — However, this ruling was modified when after the passage of the present Public Service Law,[15] the Supreme Court in 1937 had occasion again to rule on the matter of provisional permit under a different factual milieu in the case of *Javellana v. La Paz Ice Plant & Cold Storage.*[16] During this period, ice plants were still then under the jurisdiction of the Public Service

[12] 58 Phil. 78 (1933).
[13] De los Santos v. Pasay Trans. Co., et al., 54 Phil. 357 (1930).
[14] 58 Phil. 899 (1933). [Unrep.]
[15] Com. Act No. 146, as amended.
[16] 64 Phil. 893 (1937).

Commission.[17] Here, La Paz Ice Plant which was a grantee of a Certificate to operate an ice plant in Iloilo, applied for an increase of its daily productive capacity. This was opposed by another ice plant operator, Elpidio Javellana. The application was heard and evidence presented by the parties. But, before their respective Memoranda were filed, the Public Service Commission issued a provisional order approving the application. Said provisional order was challenged on certiorari. The Supreme Court upheld the same because there was hearing on the merits, with both parties presenting their respective evidence and what remained to be filed were the Memoranda of the parties, and public convenience and necessity demanded a prompt decision —

> In the case of Barredo vs. Public Service Commission (58 Phil. 79) it was stated that the action of the Public Service Commission in granting the special or provisional permits referred to therein, was not only not authorized by their organic law, but forbidden by the requirement to take evidence before issuing such permit. In said case, no hearing on the merits was had and no evidence was presented, while in this case, there was hearing on the merits and both parties presented evidence for and against the application to increase productive capacity and production filed by respondent. The case could not be decided immediately because the parties asked for time to file memoranda. Inasmuch as the convenience and necessity of the ice-consuming public, demanded the prompt decision thereof, the Public Service Commission was compelled to issue the Order in question.

Sambrano Rulings—First Verbal Permit—

In 1938, in the case of *Sambrano v. Northern Luzon Transportation Co., Inc.*,[18] the Supreme Court also declared that the provisional permit issued to Northern Luzon Transportation in "substitution" of a service of an operator who abandoned it had complied with the requirement (of hearing), because the certificate being taken over was granted after hearing and besides the opposition had failed to seek relief on time against this permit. Some valid questions may be raised against this ruling pertaining to the requirement of hearing having been complied with when the permit is issued to "substitute" an abandoned service. But this portion of the decision is in the nature of *obiter dictum* and not its *ratio decidendi* since the Court even made the qualification that it is not basing its resolution on this alleged compliance, but on the fact

[17] Under Chapter X of the Integrated Reorganization Plan (IRP) which became part of the law of the land through Presidential Decree No. 1, ice plants were excluded from the jurisdiction of the Specialized Regulatory Boards and Presidential Decree No. 43 (1972) in effect provided that there is no need to secure certificates to establish ice plants and cold storages.

[18] 66 Phil. 27 (1938).

that the operator had failed to make a timely resort to the proper legal remedy.

In this same year, the Supreme Court also had occasion to comment on the first verbal provisional permit ever made in the annals of public utility jurisprudence in the Philippines. This pertains to another case of *Northern Luzon Transportation Co., Inc. v. Sambrano.*[19] Here, Judge Roman A. Cruz of the Public Service Commission in an application for bus service in Ilocos "verbally authorized the applicant to start the service immediately while the case has not been heard". This order was made in 1932, a year prior to the *Barredo* ruling of 1933. As there was delay in the determination of the case due to the reorganization of the Commission, a decision was rendered only in 1937. The Court in a passing comment paid homage to the *Barredo* doctrine but since the permit was already superseded by a decision, it merely declared: "Although the granting of a (verbal) special authority is anomalous and the Public Service Commission is without authority to do so, nevertheless, the same having been granted in the present case and utilized for a period of six years to the benefit of the public thereof, the final ratification thereof remedied the anomaly."

Ablaza Ruling — Then, in 1951, the Supreme Court once more reiterated the Javellana doctrine in *Ablaza Transportation Co., Inc. v. Ocampo,*[20] even as the issuance of the permit was done at a much earlier stage of the proceedings compared to the case of *Javellana.* In this case, Pampanga Bus Company applied for a certificate of public convenience on the line Hagonoy to Manila via Malolos which was opposed by Ablaza Transportation Co., Inc. After applicant has presented its evidence and before oppositor Ablaza Transportation Co., Inc. could present its evidence in support of its opposition, the Commission upon Motion granted a provisional permit to applicant. In sustaining the provisional permit the Court explained that there is urgent public need, the case is half-finished and its termination remote due to delays caused by oppositor, hence in line with the *Javellana* ruling, the issuance of the permit is justified:

> It is contended in the first place that the Commission may not issue a provisional permit pending final determination of an application for a permanent certificate and the contention seems to find support in the case of Barredo vs. Public Service Commission, 58 Phil. 79, where this Court ruled that the issuance of such permit is not authorized by law. But we find that this ruling has already been modified and this Court held in a subsequent case (Javellana vs. La Paz Ice Plant, et al., 64 Phil. 893) that when the case cannot be decided at once and the Commission issues a

[19] 66 Phil. 60 (1938).
[20] 88 Phil. 412 (1951).

> provisional permit to meet an urgent need, the Commission does not thereby exceed its jurisdiction. In the present case, there is no denying the need for a prompt measure to do away with the travel at Malolos which constitutes a nuisance to the travelling public. And considering that, with the case only half-finished, the decision is still remote, especially because of various motions for postponements whereby, so it is alleged without contradiction. The opposito[r] has been systematically causing the delay of the hearing, we believe that in line with the ruling laid down in the Javellana case, *supra* the issuance of the provisional permit in the present case is justified and does not constitute excess of jurisdiction.

Silva Ruling —

Once more, the position of the Court was further expanded in 1952 in *Silva v. Ocampo, et al.*[21] to cover issuance of provisional permits based not on the evidence received during its hearing but on the evidence in a previously nullified proceedings or based on "re-submitted evidence." This case is about a rehearing of the application for a ten (10) ton daily productive capacity-Ice Plant in Lipa City, which was opposed by Eliseo Silva. The proceedings had before the Chief Attorney of the Legal Division of the Commission was nullified by the Supreme Court. Applicant in this rehearing, over the objection of oppositor, re-submitted her evidence in the incident for issuance of provisional authority. The Court upheld the permit because there exists urgent public need and the law being silent on the procedure to be followed in the issuance of the provisional permit even without hearing, the "re-submitted evidence" may be its basis:

> In so granting such provisional permit, the Commission partly said: x x x. "This provisional authority should be granted because the public's need for the service is urgent and the hearing and final determination of this case will necessarily take time.
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> There is nothing in the law which prohibits the Commission from receiving any evidence for the purpose of acting on a petition for provisional permit. The law is silent as to the procedure to be followed with regard to provisional permit. The rule even empowers the Commission to act on certain matters of public interest, "subject to established limitations and exceptions and saving provisions to the contrary." (Sec. 17, Com. Act No. 146, as amended). There being no express prohibition in the law, nor any provision to the contrary, we hold that the re-submitted evidence may serve as basis for the issuance of a provisional permit to the applicant.

Transcon Ruling — However, in 1954, the Court speaking through Justice Reyes, while professing to adhere to the teachings of *Barredo, Javellana, Ablaza* and *Silva* cases,[22] actually aban-

[21] 90 Phil. 777 (1952).
[22] *Supra*, notes 12, 16, 20 & 21.

doned the same, in the case of *Transport Contractors, Inc. v. Public Service Commission and Delgado Bros., Inc.*[23] In this case, no hearing whatsoever not even *ex-parte* hearing was ever conducted, nor any proof in the nature of a "re-submitted evidence" was had when the permit was issued. The mood of the country then still basking from the lingering euphoria of the Liberation era was reflected by the Court. This case refers to the application filed on July 17, 1953 for TH truck service by the Delgado Bros. Inc. (DELBROS, for short) within Angeles City, Pampanga to any point in Luzon. Having scheduled the application for hearing on July 29, 1953, the Public Service Commisison issued a provisional permit before this date of hearing. Oppositor, Transport Contractor, Inc. (TRANSCON, for short) sought the cancellation of this permit on the grounds that it "was issued without legal authority and with abuse of discretion and without notice and hearing".

Respondent Commission replied that the permit was issued in view of the exclusive haulage contract by the Delbros with the U.S. Air Force at Clark Field, Pampanga; that said service was of urgent character for the transport of "materials, equipment and all kinds of supplies belonging to the U.S. Air Force, from Clark Force Base in Pampanga to the U.S. Military base in Manila and vice versa"; that "the delay in the rendering of the service would jeopardize and adversely affect the military operations of the Air Force"; and furthermore, the need to extend the maximum possible cooperation to the U.S. Air Force and the U.S. Government "was certified to by the Office of the President and that the order was issued also on the basis of the investigation made by the Commission".

As stated earlier, even as the order disregarded the injunction of *Barredo, Javellana, Ablaza* and *Silva* cases, that there must be a hearing before a provisional permit may be issued, the Supreme Court made the rather strained justification:

> The Court has time and again ruled that the Public Service Commission has power to grant a provisional revocable permit for the operation of a public utility, when the purpose of such permit is to meet an urgent public need. (Javellana vs. La Paz Ice Plant & Cold Storage Co., 64 Phil. 893; Ablaza Trans. Co. vs. Ocampo, 88 Phil. 412; Eliseo Silva vs. Feliciano Ocampo, et al., 91 Phil. 109). In the present case, it appears that the permit was issued for such purpose, so that it cannot be said that the Commission acted without authority. It also appears that the permit was issued after an investigation.

One is sometimes constrained to wonder how a permit on an exclusive haulage contract with a single individual foreign entity,

[23] 95 Phil. 744 (1954).

like the U.S. Air Force at Clark Field, Pampanga could meet an urgent public need. Besides, "urgent public need" is a question of fact[24] which can be validly declared to exist only after hearing. Be that as it may, the *Transcon* case with very few being aware, had actually brought the Commission full circle back to the 1920's, when provisional permits were issued *ex-parte* or without hearing. This case in fact anticipated the *Arrow* case,[25] twenty-one years later. The Transcon case involving only a TH service had not however encouraged the Public Service Commission in practice before it, to issue provisional orders *ex-parte* or without any hearing or some such proceedings in the manner set forth by the Javellana and similar cases.[26]

Arrow Ruling — But with the advent in 1975 of *Arrow Transportation v. Board of Transportation (BOT) and Sultan Rent-a-Car*[27] after the declaration of Martial Law and the promulgation of Presidential Decree No. 101, a complete return to the less stricter days of the 1920's seems to have been allowed by the Court. For thenceforth, issuing provisional permits became one of the major pre-occupations of the Board of Transportation. The facts of the Arrow case are simple. On September 12, 1974, Sultan Rent-a-Car, a domestic corporation, filed an Application for a certificate of public convenience with petition for provisional authority with the BOT to operate PUB auto-truck service from Cebu City to Mactan International Airport and vice-versa. Eight days thereafter, even without the required publication or hearing, a provisional permit was issued in favor of Sultan Rent-A-Car. Upon learning of this grant, Arrow Transportation Corporation, an authorized operator of twenty (20) units of air-conditioned auto trucks or buses on the same line, sought a reconsideration and cancellation of the aforesaid Order for absence of hearing and for lack of jurisdiction, there being no publication as required. Without waiting for its resolution, Arrow Transportation brought the issue to the Supreme Court on certiorari. The Court held:

> As was pointed out in the answer of respondent Board of Transportation, such a claim is hardly persuasive with the procedure set forth in Presidential Decree No. 101, being followed and the provisional authority to operate being based on urgent

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[24] Raymundo Trans. v. Cervo, 91 Phil. 313 (1952); MD Transit & Taxi Co., Inc. v. Pepito, 116 Phil. 444 (1962); Bachrach Motor v. Gueco, 106 Phil. 118 (1959).

[25] G.R. No. 39655, March 21, 1975, 63 SCRA 193 (1975).

[26] Estrella v. PSC & De Guzman, 109 Phil. 514 (1960); Veneracion v. Congson Ice Plant & Cold Storage, G.R. No. 31213-14, July 23, 1973, 52 SCRA 119 (1973); Saulog v. Samala, G.R. No. L-25069, March 25, 1975, 63 SCRA 715 (1975); Pangasinan Trans. Co. v. Pampanga Bus Co., G.R. No. 25023, February 24, 1971, 37 SCRA 588 (1971); and BLTB Co. v. Biñan Trans. & Jose Silva, 99 Phil. 918 (1956).

[27] G.R. No. 39655, March 21, 1975, 63 SCRA 193 (1975).

> public need. Such a contention merits the approval of the Court. The petition cannot prosper....
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> The petition, to repeat, cannot prosper.
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> 1. It is to be admitted that the claim for relief on the asserted constitutional deficiency based on procedural due process, not from the standpoint of the absence of a hearing but from lack of jurisdiction without the required publication having been made, was argued vigorously and developed exhaustively in the memoranda of petitioner. The arguments set forth while impressed with plausibility, do not suffice to justify the grant of certiorari. Moreover, the doctrine announced in the Philippine Long Distance Telephone Company decision, heavily leaned on by petitioner is, at the most, a frail and insubstantial support and gives way to decisions of this Court that have an even more specific bearing on this litigation.
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> 2. A barrier to petitioner's pretension not only formidable but also insurmountable, is the well-settled doctrine that for a provisional permit, an ex-parte hearing suffices. The decisive consideration is the existence of public need. There was shown in the case, respondent Board, on the basis of demonstrable data, being satisfied of the pressing necessity for the grant of the provisional permit sought. There is no warrant for the nullification of what was ordered by it.

SUMMARY OF DOCTRINES —

Let us summarize the doctrinal development on the issuance of provisional permits, as affected by Supreme Court rulings. There are five (5) high points in the history of the issuance of provisional permits by the then Public Service Commission and now the Board of Transportation:

1. *Early 1920's up to the Barredo ruling of 1933*—

During this period, provisional authorizations were generally issued *ex-parte* or without hearing. This was so intimated in the 1933 *Barredo* decision, where the Court noted that the "Commission has been issuing such orders for ten years without question". During these colonial years, it is understandable that authorizations are immediately issued to encourage an infant industry.

2. *Barredo Ruling of 1933*—

The Supreme Court categorically ruled that a provisional permit issued without evidence therefor is a nullity.

3. *Javellana (1937), Ablaza (1951) and Silva (1952) cases*—

These cases, modified or amplified the Barredo ruling to the effect that a provisional permit may be validly issued to meet an urgent public need, after hearing or when the case is submitted for decision, (Javellana), or when there is urgent public need, at an

earlier stage of the proceedings as when the case is half-finished and cannot be decided at once as there is systematic delay by oppositors (Ablaza) or when there is urgent public need and on the basis of a resubmitted evidence (Silva).

4. *Transcon case of 1954*—

Here the Supreme Court returned full circle to the 1920's when it ruled that a provisional permit may be validly issued to meet an urgent public need even without hearing but after investigation made by the Commission. This decision as stated earlier, had to respond to the "Brother American" syndrome of the period. However, the Public Service Commission, as also stated earlier, in its business of issuing permits even after this decision, had preferred to stick to the guidelines set forth by the *Javellana, et al.*, cases.

5. *Arrow case of 1975*—

Here the Supreme Court without citing the *Transcon* case, reiterated its principle and made the return to the early 1920's definite and fully accepted by the Board. *Arrow* further introduced the concept of "demonstrable data" as bases for the finding of pressing or urgent public need, which re-echoes the "certification" and "investigation" of Transcon. The Supreme Court in effect ruled that a provisional permit may be validly issued without the required publication and in the absence of a hearing, based on urgent public need, in the light of Presidential Decree No. 101. Also, the Court stated that "an *ex parte* hearing suffices" in issuing provisional authority. This is the state of the law today.

THE LAWS GOVERNING PROVISIONAL PERMITS —

It is the unique feature of the concept of provisional permit that legal authorities are hard put in citing the exact provisions of the law upon which the authority to issue it by the Board may be based. It is claimed that the basis is found in the public Service Act, as amended, or Commonwealth Act No. 146, as amended and later, Presidential Decree No. 101. However, even a thorough scrutiny of the provisions of the two laws has not yielded any fruitful discovery. In other words, there is no specific provision in either law which authorizes the issuance of a provisional permit especially in the manner it is done today. Unlike in the matter pertaining to the approval of rates, Section 16 (c) of Commonwealth Act No. 146, specifically authorizes: "That the Commission (BOT) may, in its discretion approve rates proposed by public services provisionally and without necessity of hearing".

In *Javellana*,[28] there was reference to Section 16 (h) by way of basis of action of the Public Service Commission in issuing the provisional permit in question. Said provision states:

> SEC. 16. *Proceedings of the Commission, upon Notice and Hearing.* — The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and savings provisions to the contrary....
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> (h) to require any public service to establish construct, maintain and operate any reasonable extension of its existing facilities, where, in the judgment of said Commission, such extension is reasonable and practicable and will furnish sufficient reasons to justify the construction and maintenance of the same and when the financial condition of said public service reasonably warrants the original expenditure required in making and operating such extension.

Reliance on this provision however, seems to be far-fetched. From its very language which begins with "to require any public service" it could easily be gleaned that it pertains to *motu proprio* actions on already operating public services. Clearly, an applicant still asking for a provisional authorization could not be comprehended by this provision. Besides, assuming this covers applications at the instance of operators, this can only pertain to extensions of service by grantees of certificates with existing facilities and not to new applicants.

In *Silva*,[29] reference was made of Section 17 of the Public Service Act or Commonwealth Act No. 146 in justifying the grant of provisional authority in that case, whereby "the Commission shall have power, without previous hearing" to do certain acts. Again, an examination of the various situations enumerated therein cannot link any even remotely to the authority to issue provisional permit. At best, Section 17 is too nebulous to be such sanction. However, some authorities have pointed to paragraph (f) of Section 17:[30]

> * * * to grant to any public service special permits to make extra or special trips within the territory covered by the certificate of public convenience and to make special excursion trips outside of its own territory if the public interest or special circumstances required it: Provided, however, that in case a public service cannot render said extra service on its own line or in its own territory, a special permit for such extra service may be granted to any other public service.

Again, even a cursory reading of this provision easily convinces the reader that this refers to three (3) incidents: (a) author-

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[28] *Supra*, note 16.
[29] *Supra*, note 21.
[30] REGALA, THE PUBLIC SERVICE LAW IN BRIEF 15 (1937).

ization to one who is already an operator to make extra or special trips in his line during fiestas, holidays and vacations to cope with increased passenger volume; (b) to operate for excursion trips and (c) to operate special trips in other lines when so needed, *e.g.*, some provincial buses operated within Metro Manila during rush hours to ease the transportation crisis. Obviously, this could not also be the legal sanction for provisional permits.

Presidential Decree No. 101—

Fortified by the judicial acquiescence in the *Arrow*[31] case, public utilities lawyers at the Board saw in Presidential Decree No. 101 a safer legal sanctuary in the search for statutory authority for provisional permits. But is it so? We humbly submit that it is not. *Presidential Decree No. 101 (1973) does not authorize the Board of Transportation to issue provisional permits ex-parte or without notice and hearing in the manner it is presently done.* The reasons are easily gleaned from the decree.

The rationale of Presidential Decree No. 101 is to carry out the nationwide policy "to improve the deplorable condition of vehicular traffic, obtain maximum utilization of existing public service motor vehicles, eradicate the harmful and unlawful trade of clandestine operators by replacing or allowing them to become legitimate and responsible operators and update the standards that should henceforth be followed in the operation of public utility motor vehicles". In the foregoing declaration, there is nothing whatsoever that can be inferred that it is included in the national policy the grant of new or fresh applications for Certificates of Public Convenience with newly acquired or soon to be acquired units. Hence, what has happened is that *all kinds* of applications for public utility services are issued provisional permits under the authority of this decree.

Even the powers granted to the Board in carrying out this national policy, only pertain to situations logically obtained from the enforcement of this policy.

> (1) To prescribe, redefine or modify the lines, routes or zones of service of operators that now or hereafter may operate public utility motor vehicles in the Philippines;
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> (2) To grant special permits of limited term for the operation of public utility motor vehicles as may, in the judgment of the Board, be necessary to supplement and render adequate the service in any area, as a consequence of the modification of lines, routes or zones of service undertaken pursuant to this Decree;

[31] *Supra*, note 27.

> (3) To grant special permits of limited term for the operation of public utility as may, in the judgment of the Board, be necessary to replace or convert clandestine operators into legitimate and responsible operators;
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> (4) To fix just and reasonable standards, classification, regulation, practices, measurements, or service to be furnished, imposed, observed and followed by operators of public utility motor vehicles.[32]

A quick reflection on the import of Par. 1 above, readily impresses us that the Board here is empowered to "shuffle" or transfer the routes of operators from the congested to the less congested areas to ease traffic jams; par. 2 pertains to special permits issued to supplement the service abandoned, consequent to this "shuffle" or "transfer" of routes; then par. 3 pertains to special permits issued to replace *"colorums"* eliminated and convert *"kabits"* into legitimate operators. And, finally, par. 4 pertains to the fixing of standards and similar guidelines for public utility operators. In the exercise of these powers, the Board shall proceed promptly along the method of legislative inquiry.[33]

Again, there is absolutely nothing from among the above powers where we can reasonably infer that the Board can issue the provisional permits *ex-parte* or without hearing upon a written application. As has been the practice, the mere filing of a written application urging issuance of provisional permit upon an allegation of urgent public need, with an attached xerox copy of the registration certificate of the ready unit or units, would be sufficient basis for the Board to issue the permit prayed for.

The special permits mentioned in the decree are those to be issued only: (a) to render adequate abandoned service because of modification of line, (b) to replace "colorums" and (c) to convert *"kabit"* operators into holders of proper authorizations. The basic rationale of this Decree is the elimination of *"colorums"* and *"kabits"*. This view is further substantiated by the fact that in the "Transitory Provision" of the Decree, it announced, thus: "six months after the promulgation of this Decree" there shall be waged "a concerted and relentless drive towards the total elimination and punishment of clandestine and unlawful operators of public utility motor vehicles". Also, pursuant to this Decree, there was subsequently issued a Joint BOT-LTC Regulation with application forms for "colorums" and "kabits" to be followed in the filing of applications for legalization. Also the method of legislative inquiry advocated in this Decree in the exercise of the power to grant special

[32] Pres. Decree No. 101, sec. 1.
[33] Pres. Decree No. 101, sec. 2.

permits cannot be considered as a basis for authorization by the Board *ex-parte* or without hearing. Even legislative inquiries are conducted by means of hearings with the guarantees of the Bill of Rights.[34]

In fact, in its "Limitations," Presidential Decree No. 101 enjoined that "in the carrying out of the purpose of the Decree", the Board shall "reduce as much as possible any adverse effect on any person or persons affected by this Decree."[35]

In view of the foregoing analysis, it would appear now that there is no specific statutory enactment or Presidential Decree that can sanction the present practice of the Board of issuing Provisional Permits for all public utility services (PUB, PUJ, MCH, etc.) *ex-parte* or without hearing. It must have been this realization that the Board on several occasions cancelled *ex-parte* provisional permits along the principle of the cases of *Barredo* and *Javellana,* that there should be at least a hearing wherein the applicant can show a *prima facie* justification for the immediate authorization. Thus, the permit issued for thirty (30) PUB buses from Batangas Province to Manila, earlier mentioned was in fact cancelled immediately by the Board for "failure to comply with procedural requirement". And the other permit for fifteen (15) PUB buses from Quezon Province to Manila is also being sought to be cancelled along the same grounds. These ambivalence and misgivings were further demonstrated when the Board issued Memorandum Circular No. 78-4 dated January 5, 1978, requiring a preliminary hearing, *en banc,* before any provisional permit may be issued in PUB or bus applications.[36] Therefore, as it stands now, there being no statutory sanction, the only remaining authority or legal basis for the present *ex-parte* issuance of provisional permits by the Board would only be our jurisprudence, particularly the *Transcon* and the *Arrow* cases. However, under Article 8 of the New Civil Code, this jurisprudence "forms part of the legal system of the Philippines".

Here now is the legal dilemna. In its normal business, about two-hundred fifty (250) to three-hundred fifty (350) applications coming from all over the Philippines are filed with the Board of

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[34] CONST., Art. VIII, sec. 12, par. 2; Quinn v. U.S. 349 U.S., 155, 75 S.Ct. 668, 99 L.Ed. 964, 51 ALR 2d 1151 (1954), *cited* in GONZALES, POLITICAL LAW REVIEWER 106 (1965).

[35] Pres. Decree No. 101, sec. 3.

[36] The pertinent text of the Memorandum Circular, states: "...the application for provisional authority (for PUB Service) shall be set for preliminary hearing *en banc,* in which affected CPC holders are notified, for the purpose of determining the probable existence of an urgent necessity for the service applied for."

Transportation almost every day. Virtually all of these applications ask for issuance of provisional permits. And there are only the Chairman and a Board Member to act on these applications. The Board of Transportation as an administrative body that can regulate "public or private affairs on a principle of expediency",[37] has to devise a way to meet these demands for immediate authorizations. The Supreme Court in *Javellana*,[38] has set the attitude which the Board adopts: "The Commission considers that public service cases are partly commercial in nature, not purely judicial and therefore, the time factor should be taken into account." Otherwise, public interest and convenience will severely suffer from any delay in the disposition of these applications. Hence, the Board had to resort to the issuance of provisional permits. On the other hand, in the face of the undeniable absence of any statutory authority for the issuance of provisional permits, we should be reminded of the fundamental tenet of administrative adjudication that the Board has no common law powers. Its powers and jurisdiction are found in the law creating the same. Its powers are limited to those expressly granted or necessarily implied from those granted. Not being a court but a creature of the legislature, it can exercise only such jurisdiction and powers as are expressly or by necessary implication, conferred upon it by statute. Consequently, in the determination of the power of the Board over a certain act, or incident, considerations of necessity are out of the question. And even the consent or agreement of the parties cannot give to the Board such authority to act if such is not found in the statute and even if by the very nature of the service it could probably be within its jurisdiction. Furthermore, nothing will be presumed in favor of the Board's jurisdiction. It must affirmatively appear in the law. Any reasonable doubt on the existence of the Board's power should ordinarily be resolved against its exercise of such power.[39]

The Irony of P.D. 101 and the Arrow Cases—

The first avowed purpose of Presidential Decree No. 101 was to remedy "the serious traffic congestion and disorder" particularly in Metro Manila. This aim was reaffirmed and approved by the *Arrow* case. Yet the irony of the situation is that because of "expeditious" grants of provisional permits for all services allegedly sanctioned by Presidential Decree No. 101 and the Arrow case, numerous permits were issued by the Board in Metro Manila, so much so that the very traffic problems they sought to be remedied

[37] POUND, ADMINISTRATIVE LAW, ITS GROWTH, PROCEDURE AND SIGNIFICANCE 2 (1942).

[38] *Supra*, note 16.

[39] Barredo v. PSC, *supra*, note 12 *cited* in ROSAL, PUBLIC SERVICE COMMISSION 10 (1940).

have in fact worsened. At the risk of being repetitious, Presidential Decree No. 101 pertains to a peculiar class of service — only to the issuance of special permits for specified cases, e.g. render adequate abandoned lines, replace "colorums" and convert "kabits" — and not to those common classes of service, like new applications for PUB, PUJ, MCH and the like[40] or for a new air-conditioned bus service as in the *Arrow* case. Perhaps, if this angle were considered by the Court, the result would have been different.[41] And perhaps, also, no jurisprudential refuge for the present grants of provisional permits will be assumed from this case and Presidential Decree No. 101. All this points only too clearly to that nagging need for the Board to re-examine its position on this matter pertaining to its authority to issue provisional permits.

INVESTIGATION AND DEMONSTRABLE DATA—

In the analysis of the cases of *Transcon*[42] and *Arrow*,[43] reference was made to "Investigation" and "Demonstrable Data" as being considered in the issuance of provisional permits. However, the Court did not make clear as to what are their nature. On the matter pertaining to the "Investigation" being made, this may refer to independent inquiries made by the Board, e.g., personal observation or verification by its employees, reports of checkers or inspectors of passengers of public utilities and passenger volumes in the lines in question, and the like. While this was sanctioned by the Supreme Court in a pre-war case, its stand was divided and the dissenting opinion was quite vigorous. In *Manila Yellow Taxicab v. Araullo, et al.*,[44] the Commission based its decision, denying the applications for taxicab service in Manila on its own findings. Petitioner alleged abuse of jurisdiction on the part of the Commission in basing its judgment upon its own investigation. In sustaining the action of the Commission, the Court held:

> The Public Service Commission in the exercise of its quasi-judicial and administrative function has the power to take into consideration the result of its own observation and investigation on the matter submitted to for consideration and decision, in connection with other evidence presented at the hearing of a case.

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[40] From the Statistics Section of the BOT, it has granted provisional permits mostly to PUB (Public Utility Bus), PUJ (Public Utility Jitney), AC (Auto Calesa), TH (Truck for Hire), TX (Taxi), SB (School Bus), TB (Tourist Bus), PU (Public Utility Automobile), G (Garage) and MCH (Motorized Tricycle).

[41] Counsel for Sultan Rent-A-Car, Atty. Pastor C. Cacani, made available to this writer his records of the *Arrow* case.

[42] *Supra*, note 23.

[43] *Supra*, note 27.

[44] 36 60 Phil. 833 (1934).

Four justices led by Justice Butte strongly dissented stating thus:

> 'The leading case in which the Supreme Court of the United States condemned the use of information which is not made a part of the record, is Interstate Commerce Commission vs. Louisville and Nashville Co. (227 U.S. 88). The language of the Court so aptly fits the case before us that any comment is superfluous. The Court said:
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> *** In such cases, the commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense.

This majority ruling was reiterated in the subsequent cases of *Manila Yellow Taxicab Co. v. NB Stables Co.*,[45] and *Sambrano v. Northern Luzon Trans. Co.*[46]

In the Transcon case, this kind of "Investigation" was also considered in the granting of provisional permit. However, in 1952, in *Bachrach Motor Co. v. Vda. de Fernando*,[47] the Supreme Court reversed a decision of the Public Service Commission and one of its reasons was that the inspector who made the checker's report or investigation was not subjected to a cross-examination. There was also a dissenting opinion in this decision wherein it reiterated the pre-war stand that the Public Service Commission can rely upon its own observation and investigation. But in *Vigan Electric Light Co., Inc. v. Public Service Commission*,[48] where the Public Service Commission reduced the rates of this electric plant based on the Audit Report of the General Auditing Office without any hearing on the same, the Court was emphatic in declaring:

> What is more, it (the questioned Order) is predicated upon the finding of fact — based upon a report submitted by the General Auditing Office — that petitioner is making a profit of more than 12% of its invested capital which is denied by petitioner. Obviously, the latter is entitled to cross-examine the nature of said report and to introduce evidence to disprove the contents thereof and/or explain or complement the same, as well as to refute the conclusion drawn therefrom by the respondent. In other words, in making said finding of fact, respondent performed a function *partaking* of a quasi-judicial character, the valid exercise of which demands previous notice and hearing.
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> Indeed, Sections 16 and 20-(a) of Commonwealth Act No. 146, explicitly require notice and hearing.

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[45] 60 Phil. 851 (1934).
[46] 63 Phil. 554 (1936).
[47] 91 Phil. 584 (1952).
[48] 119 Phil. 304 (1964).

The foregoing, viewed against the pronouncement in the cases of *Manila Yellow Taxicab,*[49] is a ringing rejoinder to the untenability of reliance upon mere "Investigation".

Now, in the *Arrow* case, the Supreme Court introduced the concept of "Demonstrable Data" upon which a provisional authority can be based. The concept suggests facts which are capable of being proved. And in the light of the practice at the BOT these "Demonstrable Data" are construed to be the documents attached to the Applications for public utility service, in support of the petitions for issuance of provisional authority. These may be official Certifications or Endorsements from the Highway Patrol or local officials in the area in question attesting to the need of additional service therein, City or Municipal resolutions urging the BOT to approve said Application, written letter-petitions for such service by residents in the area, or affidavits or verified statements of travellers, businessmen, government employees towards the same effect and the like. By the very nature of these documents they are unilateral declarations tending to prove a question of fact which requires hearing — public need. These types of documents are usually self-serving and like in the case of affidavits, which have been called by Jeremy Bentham as a "most miserable species of evidence" they deny a party the privilege of cross-examination "to elicit truth and detect falsehold."[50]

Abdication of BOT function and Economic emphasis—

Hence, this is another problem area in the issuance of provisional permits or certificates of public convenience for that matter. Provisional Permits are supposed to be issued upon a showing of urgent public need. What proofs or "demonstrable data" should support urgent public need? The Board has yet to define a limit as to these kind of evidence. It has relied on "demonstrable data", "investigations" and judicial notice of its own record, of which the oppositors are not given the opportunity to scrutinize prior to the issuance of the provisional authority. In its Orders and Decisions, it is wont to declare in effect that it takes judicial notice of "the records of the Commission" (BOT) and "into consideration the results of its own observation and investigation besides the evidence".[51] These "investigations", "demonstrable data" or even the "records of the Commission" (BOT) are usualy controverted by oppositors. In the dissenting opinion of Justice Butte in the *Manila*

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[49] *Supra,* note 14.

[50] C. MOORE, TREATISE ON FACTS ON THE WEIGHT AND VALUE OF EVIDENCE 1094-5 (1908).

[51] Malate Taxicab Co. v. PSC, 88 Phil. 539 (1951) and Red Line Trans. v. Gonzaga, 107 Phil. 769 (1960).

Yellow Taxicab case,[52] he pointed out that "it would be absurd to say that a Commission or a Court could take judicial notice of controverted facts". It is certain that the unrestricted use of this kind of evidence will ultimately result in the abdication by the Board of its basic function as a trier of facts.

There has been a plan to alter the system of granting permits or certificates of public convenience. The plan aims at doing away with hearings and the emphasis shall be on economic and statistical data. The present system has been described as "archaic". In the light of the possible legal anomaly of a regulatory body that ceases to try facts, it would do well for the advocates of the economic and statistical data approach to take a harder look at this proposal. If these economic and statistical data are beyond the scrutiny of oppositors and their right to present counter-data thereto, this system easily violates the Constitution, unmakes the Public Service Law and eliminates the adversary method — "archaic" but so far there is no better substitute method in getting at the truth.[53]

Issuance and Cancellation of Permits vs. Due Process—

Another intriguing dilemna posed by the ex-parte issuance and cancellation of provisional permits is the problem of individual rights. As early as 1940, Dean Roscoe Pound of Harvard Law School had noted that: "In administrative adjudication there is an obstinate tendency to decide without a hearing or without hearing one of the parties or after conference with one of the parties in the absence of the other, whose interests are adversely affected".[54] In our jurisdiction, all authorizations to operate public utility services *ex-parte* or without hearing, were consistently met with charges of abuse of discretion, excess of jurisdiction, deprivation of day in court or denial of due process on the part of affected operators on the line or service in question.[55] Even with the ruling of the *Arrow* case,[56] that under such circumstances, an *ex-parte* authorization has not violated procedural due process, oppositors before the Board still allege deprivation of day in court when assailing such provisional permits.

On the other hand, once these permits are issued and the applicants have registered their units and invested on their operations, the Board is also cautioned by the Court not to cancel or

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[52] *Supra*, note 14.

[53] Halili v. PSC, 92 Phil. 1036 (1953), Halili v. PSC, 93 Phil. 357 (1953); Marinduque Trans. v. PSC, 118 Phil. 646 (1963); and Veneracion v. Congson Ice Plant & Cold Storage, G.R. No. 31213-14, July 23, 1973, 52 SCRA 119 (1973).

[54] POUND, *op. cit.*, *supra*, note 32, at 68.

[55] Barredo, Javellana cases, *supra* notes 2 & 16.

[56] *Supra*, note 24.

revoke such permit upon mere whim or caprice but it must render decisions based on credible evidence. Otherwise, this will also violate the right to due process of the applicant. In the case of *Samala v. Saulog Transit*,[57] the Court warned:

> A revocation of a provisional authority of the nature given by the Respondent Commission cannot just be ordered upon mere whim or caprice on its part and must be based on credible evidence since to sanction said act of Respondent Commission would be tantamount to deprivation of due process on the part of the petitioner who must have invested money in making the additional units available for public service.

Since the taking of credible evidence implies hearing, it would appear now that while provisional permits may be or are generally issued *ex-parte* or without hearing, their revocation or cancellation cannot be done in the same manner without violating individual rights. It has been observed however, that the provisional permit issued in *Samala v. Saulog*, was issued during the course of the hearings of this case before the Public Service Commission. But this is of no moment because it does not detract in any way from the considerable investments that go with such authorizations, which are entitled to constitutional protection. Hence, even the Supreme Court in *Pangasinan Transp. Co. v. F. Halili*[58] has acknowledged that: "Certificates of Public Convenience (to which the provisional authorities are eventualy converted) involve investments of a big amount of capital, both in securing the certificate and in maintaining the operations of the lines covered thereby". These thoughts come to mind because of the reported move to phase-out the jeepneys in Metro Manila by revoking or denying the extensions of their permits *ex-parte* or without hearing. Apart from the economic dislocation that may likely result from these revocations, the Board will also have to contend with those constitutional guarantees that loom large.

Ex-Proprio Motu Revocation of Certificates—

Lately, the Board of Transportation has been also toying with the idea of revoking or shortening the validity or life-time of certificates of public convenience ("franchises" according to it), *ex-proprio motu* for jeepneys in Metro Manila.[59] It is submitted that while cancellation *ex-parte* or without hearing of provisional permits had been ruled as constitutionally offensive, the same manner of cancelling or revoking a permanent certificate would not only collide against the Constitution but also against a specific provision

[57] G.R. No. 25069, March 25, 1975, 63 SCRA 215 (1975).
[58] 95 Phil. 694 (1954).
[59] Bulletin Today, Sept. 28, 1979, p. 1.

of law and the repeated jurisprudence in this jurisdiction.[60] In fact, in *Vigan Electric Light Co., Inc. v. Public Service Commission*,[61] the Supreme Court was categorical in denouncing the utter nullity of the act of the Commission in even modifying the rates of *Vigan Electric* without benefit of notice and hearing.

> Hence, a modification of such rates cannot be made over petitioner's objection without such notice and hearing, particularly considering that the factual basis of the action taken by respondent is assailed by petitioner, x x x.
>
> WHEREFORE, we hold that the determination of the issue involved in the order complained partakes of a nature of a quasi-judicial function, and that having been issued without previous notice and hearing, said Order is clearly violative of the due process clause and hence, null and void.

This manner of shortening the validity or lifetime of certificates (having the effect of cancellation or lapsing into "innocuous desuetude") is clearly an amendment or modification or even revocation of such certificates which undoubtedly violates Section 16 (m) of the Public Service Act. The specific provision of the law or Commonwealth Act No. 146 empowers the Board to amend, modify, revoke or cancel any certificate but *only upon notice and hearing*:

> Sec. 16. *Proceedings of the Commisison/Board upon notice and hearing.* — The Commission shall have the power upon proper notice and hearing, x x x x
>
> (m) to amend, modify or revoke at any time any certificate issued under the provisions of this Act, whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed.

If our Supreme Court has elevated the holders of provisional permits to the status of those entitled to constitutional protection, with more reason it should similarly protect certificate holders or grantees. In fact in *Danan v. Aspillera*,[62] it even warned that the offending public officers may be liable for damages:

> This Court, however, cannot help expressing its concern for the Commission's *ex parte* revocations of certificates without giving the operators previous notice and opportunity to explain their side. This practice violates the due process clause of the Constitution, the express provisions of Section 16 (n) of the Public Service Act, and the dictum of the Court (Bohol Land Transp. vs. Jureidini, 53 Phil. 560; Pangasinan Trans. Co. vs. Halili, L-6075, 31 August 1954; Collector vs. Buan, L-11436, 31 July 1958). The Public Service Commission is an agency of the government, and should at all times,

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[60] Bohol Land Transp. Co. v. Jureidini, 53 Phil. 560 (1929); Posas & Manila Railroad Co. v. Toledo Trans. Co., 62 Phil. 297 (1935); and Danan vs. Aspillera, G.R. No. 17305, Nov. 28, 1962, 6 SCRA 629 (1962).

[61] *Supra*, note 48.

[62] G.R. No. 17305, Nov. 28, 1962, 6 SCRA 609 (1962).

maintain a due regard for the constitutional rights of parties litigant. Also, the Commissioners (who are not judges in the true sense) would do well to ponder the implications of Art. 32, No. 6, of the New Civil Code on the responsibility of public officers and employees who impair a person's right against deprivation of property without due process of law.

CONCLUSION

When we ponder the problems of transportation in the country brought about by these provisional permits, we are inevitably tempted to re-examine and blame our regulatory laws. Total reliance is accorded upon these laws to provide that elusive panacea to these problems. But these laws can only do so much. Hence, they have to be up-dated to respond to the needs of the times. Justice Oliver Wendell Holmes has put it more succinctly: "The first requirement of a sound body of law is, that it should correspond with actual feelings and demands of the community."[63] The varying criteria set forth in Supreme Court decisions earlier discussed and the admitted hiatus in the laws are actual demonstrations of the need for such amendment, or clear definition in the regulatory laws as to the circumstances under which a provisional permit may be issued or the power to issue it may be exercised to the end that both the public utilities and the Regulators (e.g., Board) thereof may be properly guided. Indeed, it is of crucial immediacy that we look for remedies along this direction.

[63] HOLMES, THE COMMON LAW 36 (1963).