TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

SAIPAN BUS COMPANY, MUNICIPALITY OF SAIPAN, and SAIPAN BETTERMENT ASSOCIATION, Defendants

Civil Action No. 152

Trial Division of the High Court

Mariana Islands District

December 30, 1965

Action to enjoin defendant Municipality and defendant Association from operating public transportation service on Saipan during life of plaintiff's franchise with defendant Bus Company. Plaintiff claims unlawful and fraudulent interference with enjoyment of franchise and defendants claim their operation was private service and that franchise was illegal and not properly authorized. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant's activities constitute public transportation, requiring public utility license, and that Franchise Agreement between plaintiff and Bus Company, although invalid as a franchise, constitutes valid permit under Trust Territory law.

1. Fraud-Generally

   Fraud as considered in equity matters regularly involves deceiving person to his disadvantage and is not to be presumed without good cause.

2. Fraud-Generally

   Honest misrepresentations of law, or of what courts finally decide law to be, will not ordinarily form basis of valid claim for fraud.

3. Torts-Malice

   Malice in relation to tort or civil wrong regularly involves wrongful act, intentionally done without justification or excuse, or wish to injure regardless of social duty and rights of others.

4. Torts-Interference with Contractual Relations

   Where acts of party were entered into deliberately and hurt business of another, acts could be considered to have been done with implied malice or "malice in law" if done without justification or excuse.

5. Torts-Malice

   Where malice is necessary for liability or equitable relief, this does not necessarily involve any element of ill will or hatred.

6. Torts-Interference with Contractual Relations

   Implied malice can be understood as liability for purposely causing third person to break a contract, unless one is in position which gives him privilege to do so.

7. Torts—Interference with Contractual Relations

Considerations of public health, morals and welfare are ordinarily held to be justification for interference with another's contract, and whether such justification exists is largely question of fact, the standard being reasonable conduct under all the circumstances.

8. Municipalities—Generally

Municipal officials and civic leaders have legitimate interest in trying to protect welfare of fellow-residents, particularly those in lower income brackets, and trying to see that charges for public utility services are reasonable.

9. Municipalities—Generally

Municipality and local betterment association are justified or privileged in trying by lawful means to have community services provided at lower cost to riders than offered by franchised bus company.

10. Franchise-Generally

A franchise, while it may include a permit or license, is something far more than either of these.

11. Licenses and Permits—Generally

Terms "license" and "permit" may be interchangeable where each is regularly revocable, does not constitute a contract, is not property in any constitutional sense, and creates no vested interest.

12. Franchise-Generally

Franchise regularly involves contract with governmental power subject to governmental control in certain respects because of its public nature.

13. Franchise—Generally

Franchise constitutes property, is entitled to protection of law like other property, and cannot be revoked at mere will of grantor in absence of reservation of such right.

14. Franchise-Grant

Under American concept of separation of powers, grant of franchise is legislative function and franchise rights cannot be given without legislative authority.

15. Legislative Power-Delegation

Legislative power cannot be delegated at will or validly exercised without some clear indication of intent to make law, usually by enacting or promulgating clause.

16. Legislative Power—Requirement of Concurrent Action

Where High Commissioner's legislative authority is limited by requiring Secretary of Interior's approval of any proposed new law or any proposed amendment of existing law, legislative authority of Trust Territory can only be exercised by or in accordance with joint action

of High Commissioner and Secretary or by those to whom they lawfully delegate it in such a manner as to indicate intention to legislate. (Department of Interior Order No. 2876, Section 3)

17. Legislative Power-Requirement of Concurrent Action

Where important power is given to two people, its exercise is not to be presumed merely from showing of action by one of them.

18. Legislative Power-Grant of Franchise

Franchise cannot be supported as District Order under Trust Territory law where such order must be approved personally by High Commissioner and there is no showing of his intent to legislate as to it. (T.T.C., Sec.20(d»

19. Franchise-Unauthorized

When franchise has not been legally authorized, Franchise Agreement and Contract for Transporting School Children made pursuant to it are not entitled to be given full effect.

20. Franchise-Unauthorized

Where object of franchise and contract made pursuant to it is :riot inherently bad or involving acts that are "mala in se", nor prohibited by law, and their provisions are divisible, effect will be given to legal portions apart from unauthorized portions.

21. Contracts-Voidable Contracts

Where arrangement between two parties may be voidable at option of one of them, it is neither entirely void nor voidable at option of one not a party to it.

22. Franchise-Unauthorized

Franchise agreement which is of no force and effect as a franchise may still be effective as a permit and as specification of work to be done for payments called for in contract. (T.T.C., Sec. 1100)

23. Licenses and Permits-Generally

Permit which is issued prior to change of law is not terminated or revoked by that law where it is not intended to have retrospective effect or upset permits or licenses issued previously.

24. Public Utility-Generally

Where local betterment association's transportation service is offered to all Micronesians who ask to take advantage of it, it does not meet test for exemption from classification as public utility.

25. Public Utility-Generally

Fact that person or organization conducting type of activity ordinarily done as a business runs it as low cost without any attempt at profit does not relieve activity from license requirements of law.

26. Public Utility-Generally

Providing commuting transportation service, offered during hours of day when it is normally wanted, to all Micronesians on island in Micro-

nesia where Micronesians overwhelmingly predominate in population, even though done at cost, constitutes engaging in public transportation and requires license from Trust Territory Government as public utility. (Congress of Micronesia Public Law No. 1-6)

27. Municipalities-Charter

Where municipal charter grants broad powers in general terms, municipality may engage in public transportation services or subsidize ,such services by private organization, if all necessary approvals required by charter and necessary license from Trust Territory are obtained.

28. Municipalities-Charter

Municipal charter which grants broad powers in general terms indicates legislative iIlltent to control activity of municipality through supervision of District Administrator rather than through detailed limitation of powers.

29. Municipalities-Charter

Precedents in United States as to strict construction of municipal charters cannot fairly be applied to charter which grants broad powers in general terms with no detailed limitation of powers.

30. Contracts-Void Contracts-Restitution

Where lease agreement between parties is irregular or lacking in formal authority, party may be able to recover under it rent and other charges for period when services are rendered in accordance with it.

31. Contracts-Voidable Contracts

No future service can legally be rendered under unauthorized lease agreement unless and until ·required license is obtained and no payments need be made under it except for services already rendered or that may be rendered after license is obtained.

32. Corporations-Ultra Vires

Whether engaging in certain kind of land transportation is in violation of corporation charter or not is matter of concern to government which issued charter, corporation's stockholders and, under some circumstances, to those contracting with it, but it is not open to collateral attack by others.

33. Equity-Injunctions

Mere literal meaning of "irreparable injury" as ordinarily used in other connections cannot be relied on as used in connection with injunctive relief.

34. Equity-Injunctions

Protection against operation of public utility without franchise or license is well recognized situation in which injunction maybe used.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff has failed to sustain the burden of proving either fraud or actual malice in fact on the part of the Municipality of Saipan, the Saipan Betterment Association, or any of their respective officers.

2. The Municipality of Saipan and the Saipan Betterment Association entered into the "Lease Agreement" complained of in good faith in an honest attempt to aid a large number of residents of Saipan, in whose welfare they have a legitimate interest.

3. The commuting transportation service provided by the Saipan Betterment Association was offered to all Micronesians on Saipan regardless of whether or not they were members of the Association; although all users of the service were invited to join the Association, the number of users was more than twice the number of people who could be actually identified as members of the Association.

OPINION

This action arises out of the decision of the Trust Territory Government to discontinue providing directly with its own vehicles and own employees free transportation for school children to and from school and for government workers to and from work on Saipan and substitute for this a more comprehensive bus service provided under contract by a private company to be compensated in part by fares charged to riders, except for the school children.

Under date of March 30, 1965, the Trust Territory, through the District Administrator for the Mariana Islands District, issued an invitation for proposals for the operation of a public transportation system on Saipan, to be received until 3:00 p.m., April 12, 1965. It has not been brought out how or to whom this invitation was distri-

buted,but it appears that only one proposal was received. This was from an organization describing itself as the Saipan Bus Company, which already had a business license from the Municipality of Saipan as a licensed "PASSENGERS CARRIER". It appeared during the course of the trial in this action that actually the "Saipan Bus Company" is merely a name under which the Saipan Shipping Company carries on its land transportation activities, this having been authorized and officers and directors for it designated by resolution of the Board of Directors of the Saipan Shipping Company. As a result of this proposal and after considerable negotiations, two closely interrelated agreements were executed under date of June 30, 1965, between the Government of the Trust Territory of the Pacific Islands, acting by Roy T. Gallemore, District Administrator, Mariana Islands District, and Saipan Bus Company, Saipan, M. L, acting by Pedro P. Tenorio, certified (by Santiago C. Tenorio as secretary) to be the then president of "said corporation".

By one of these agreements entitled "Franchise Agreement", the Government of the Trust Territory of the Pacific Islands purported to give the "Saipan Transportation Company" a franchise to provide commercial bus service, according to certain terms and conditions, for five years, subject however to annual review, and agreed not to issue a franchise to any other firm, company, or operator for the same type of commercial bus service over the same routes at the same or lower fares during the entire period the franchise remained in effect. Among the terms was a provision for a stipulated rate of ten cents (10¢) per person within one established zone, "provided, however, that a saving for passengers should be encouraged through the sale of twelve trips for one dollar", subject to a provision that ninety (90) days from the commencement of public service the rates to the gen-

eral public might be "revised upon application of either party and by mutual agreement readjusted". The other agreement was entitled "Contract for Transporting School Children", and provided that in consideration of the mutual promises and covenants contained in the Franchise Agreement, the Government agreed to pay the Saipan Bus Company for transporting of school children, according to a certain schedule, three thousand six hundred dollars ($3,600.00) per month for the school year period of 1965-66. Apparently the use of the name "Saipan Transportation Company" in the Franchise Agreement was a purely inadvertent error and the intent was to grant the franchise to the Saipan Bus Company.

The clear effect of the above arrangement in actual practice was to reduce the take-home pay of all commuters who had formerly used the free government service and now found it necessary to use the Bus Company service. Service under the two contracts was started September 22, 1965, and simultaneously therewith the Municipality of Saipan commenced providing free transportation service, at least for poor people, and continued it the next day. It then entered into a "Lease Agreement", dated September 24, 1965, with the Saipan Betterment Association by which the Municipality leased certain of its vehicles for certain hours to the Betterment Association, which then proceeded to use these vehicles to provide commuting service for all Micronesians who wished to use it. These users were invited and urged to join the Betterment Association, but were not required to do so. The President of the Betterment Association testified that they could not refuse transportation to any Micronesian who requested it, and as shown in the third finding of fact, the number of users far exceed the number of members. Membership in the Association required payment of an initiation fee of two dollars ($2.00) and

monthly dues of fifty cents (50¢), which officials of the Betterment Association claim should be sufficient to cover the actual costs of the service rendered. If it is not sufficient, however, to make the payments called for in the Lease Agreement, the Betterment Association asserts it will raise the necessary money to cover those payments. This situation continued until the Betterment Association'sservice was stopped by a temporary restraining order issued by the court in this action October 14, 1965.

The plaintiff's primary contention is that the actions of the Municipality and the Betterment Association have unlawfully, fraudulently, and with malice on the part of the Municipality interfered with the Saipan Bus Company's enjoyment of its franchise to such an extent that the Bus Company served notice of its intention to discontinue furnishing transportation to government employees, although it was willing to continue the regular run for the school students. The plaintiff further contends that the Municipality has no power or legal authority to engage in the field of public transportation or to permit, authorize, or grant permission to any person or persons, association, or business organization to engage in public transportation, and that the Saipan Betterment Association has no legal authority to operate a public transportation system. On these grounds, the plaintiff asks that the Municipality and the Betterment Association be enjoined from operating a public or private transportation system on Saipan for the life of the Bus Company's franchise and that all agreements between the Municipality and the Betterment Association pertaining to the operation of a public transportation system on Saipan be declared null and void.

In response to this, the Municipality and the Betterment Association have claimed that the Franchise Agreement in question was beyond the authority of the Dis-

trict Administrator, was illegal because it was granted without compliance with the Secretary of the Interior's Order No. 2876, dated January 30, 1964, that the operation of the transportation service set out in the Franchise Agreement is beyond the powers of the Saipan Shipping Company (which, as explained above, is the legal entity referred to by the name "Saipan Bus Company"), that the Betterment Association has a right to provide the service which it did for the mutual benefit of its membership without any license or permit, and that the plaintiff has not shown that it will suffer any such irreparable injury as to entitle it to equitable relief in the form of an injunction.

[1,2] Fraud, as considered in equity matters such as this, regularly involves deceiving a person to his disadvantage, and is not to be presumed without good cause. Vol. 1, Bouvier's Law Dictionary, 3rd Revision, Fraud, p. 1306. 24 Am. Jur., Fraud and Deceit, §§ 225-257. It is not at all clear how the plaintiff claims to have been deceived in this case. There was sharp difference of opinion between the plaintiff and the Municipality as to what the latter and the Betterment Association could or could not legally do, but there was no indication that the plaintiff had relied to its detriment on the claims of either of these defendants. Furthermore, honest misrepresentations of law, or of what the courts finally decide the law to be, will not ordinarily form a basis for a valid claim of fraud. 23 Am. Jur., Fraud and Deceit, § 45. The court, therefore, considers that no question of fraud in a legal sense need be further considered in connection with this case.

It is clear from the evidence that the plaintiff's claim of malice on the part of the Municipality can only be sustained, if at all, on the technical basis of something implied by the law.

[3] "Malice", in relation to a tort or civil wrong as here, regularly involves a wrongful act, intentionally done without justification or excuse, or a wish to injure regardless of social duty and the rights of others. Vol. 2, Bouvier's Law Dictionary, 3rd Revision, Malice, p. 2068. 34 Am. Jur., Malice, §§ 2 and 3. 30 Am. Jur., Interference, § 27.

[4,5] The activities of the Municipality and the Betterment Association complained of were clearly entered into deliberately, and they undoubtedly hurt the business of the Bus Company. In a broad sense, therefore, they could be considered to have been done with implied malice or "malice in law" if they were done without *justification or excuse*. While it is often said that "malice" is necessary for liability or equitable relief in such a situation, it is clear that this does not necessarily involve any element of ill will or hatred. Whether such implied malice existed accordingly turns primarily on the question of the justification or excuse for the acts.

[6,7] This concept of implied malice is so confusing that it is believed the situation can be much more clearly understood if considered from the point of view of liability for purposely causing a third person to break a contract, unless one is in a position which gives him a privilege to do so. This is the approach adopted in the American Law Institute's Restatement of the Law of Torts, Vol. IV, Sec. 766, made applicable by the Trust Territory Code, Section 22. See especially the "Special Note" on page 62 of the comment on Section 766 in the Restatement. Section 767 of the same Restatement sets out factors involved in such a question of privilege as follows:-

"In determining whether there is a privilege to act in the manner stated in Sec. 766, the following are important factors:

(a) the nature of the actor's conduct,

(b) the nature of the expectancy with which his conduct interferes,

(c) the relations between the parties,
(d) the interest sought to be advanced by the actor and
(e) the social interests in protecting the expectancy on the one hand and the actor's freedom of action on the other hand."

Whether considered as a matter of privilege or of justification, substantially the same result is obtained. Thus, considerations of public health, morals, and welfare are ordinarily held to be justification for interference with another's contract, and whether such justification exists is largely a question of fact-the standard being reasonable conduct under all the circumstances. 30 Am. Jur., Interference, § 34, note 5. *American Surety Co. v. Schottenbauer,* 257 F.2d 6, at p. 13 (1958).

[8] Here we have a situation in which there is a very deep-seated and sincere difference of opinion as to the type of transportation service which should be provided on Saipan, what it should cost, the relative weight that should be given to comfort and safety as against cost, and what part of the total cost should be borne by commuters. Municipality officials and civic leaders have a legitimate interest in trying to protect the welfare of their fellow residents-particularly those in the lower income brackets-and trying to see that the charges made them for public utility services are reasonable. In the United States legislative authorities frequently make extensive provisions for regulation of such charges and disclosure of information concerning costs of service and profits accruing therefrom to private companies, and such requirements are regularly upheld by the court as valid. See 43 Am. Jur., Public Utilities and Services, §§ 202 and 220.

The appearance of local officials and leaders before legislative committees, public service commissions, or the like, to be heard on questions of rates to be permitted or services required of public utilities in the States is a matter of accepted practice and common knowledge, often

given publicity in newspapers and magazines of wide circulation.

[9] The court, therefore, considers that in the present case, the Municipality and the Betterment Association, and their respective officers, were "justified" or "privileged" (whichever view is taken) in trying by lawful means to have commuting services provided at lower cost to the riders than that offered by the Bus Company. The question on this point simply comes down to whether the means they chose were lawful-without any element of blame for ill will or bad motive.

[10-13] This brings us to the question of the validity of the Franchise Agreement which the plaintiff seeks to uphold. A franchise, while it may include a permit or license, is something far more than either of these. So far as this case is concerned, the terms "license" and "permit" appear interchangeable. Vol. 2, Bouvier's Law Dictionary, 3rd Revision, "License-in Governmental Regulations", p. 1976, "Permit", p. 2569. A license or permit is regularly revocable, does not constitute a contract, is not property in any constitutional sense, and creates no vested interest. 33 Am. Jur., Licenses, §§ 2, 21, and 65. A franchise regularly involves a contract with a governmental power, subject to governmental control in certain respects because of its public nature, but constitutes property, is entitled to the protection of the law like other property, and cannot be revoked at the mere will of the grantor in absence of reservation of such a right. 23 Am. Jur., Franchises, §§ 2-6.

The clear intent of the Franchise Agreement involved here was to grant a true franchise. This appears not only from the use of the term "franchise", but also from the substance of the agreement. On the other hand, there seems to have been no consideration given to the legislative aspects of such a grant. The whole matter is shown

to have been handled as if it were purely an administrative one.

[14] Under the American concept of separation of powers, the grant of a franchise is a legislative function and franchise rights cannot be given without legislative authority. 23 Am. Jur., Franchises, § 10.

It is argued on behalf of the plaintiff and the Bus Company that the High Commissioner had full legislative authority prior to July 12, 1965, under Section 36 of the Trust Territory Code and that this franchise was granted under that authority. It should be noted that the exercise of authority through subordinates which that section authorizes, is limited to "administrative responsibility". The section as printed in the 1959 Edition of the Code reads as follows :—

"Sec. 36. *High Commissioner.* The High Commissioner of the Trust Territory shall have, subject to the supervision and direction of the Secretary of the Interior, all executive and legislative powers of government in the Trust Territory, and over the inhabitants thereof, and shall have final administrative responsibility, which may be exercfsed through subordinate administrators."

[15] When this section was promulgated as a part of the Code, Department of the Interior Order No. 2658 of August 29, 1951, was in effect and the executive and legislative powers of the Trust Territory were largely merged in the High Commissioner so that there was little practical need in most instances to differentiate between executive and legislative action. Possibly on that account, less emphasis than usual under American concepts appears to have been placed on the normal requisites for and limitations on the exercise of legislative power, but it is well established that legislative power cannot be delegated at will or validly exercised without some clear indication of intent to make law, usually by an enacting or

promulgating clause. 16 Am. Jur. 2d, Constitutional Law, *§§24D-256.* 50 Am. Jur., Statutes, § 153.

[16] By the Secretary of the Interior's Order No. 2876 of January 30, 1964, however, a start was made in separating executive authority from the legislative. A limitation was placed by Section 3 of that Order on the High Commissioner's legislative authority by requiring Secretarial approval of any proposed new law or any proposed amendment to an existing law (except in the event of an emergency, which is not involved here). The court holds that the effect of this order was by necessary implication to qualify the broad terms of Section 36 of the Code by specifying how the supervision and direction therein (and in Order No. 2876) referred to was to be exercised thereafter. While Section 3 of that Order remained in effect, the legislative authority of the Trust Territory (not already legally delegated) could only be exercised by or in accordance with the joint action of the High Commissioner and the Secretary (except for the provision for emergencies, not involved here). This legislative power could thus be exercised only by the personal action of the holders of those offices-either regular or acting-or by those to whom they had lawfully delegated it in such a manner as to indicate an intention to legislate.

[17] Here there is no clear indication as to what action the High Commissioner himself had taken concerning the granting of the franchise in question, but it may fairly be inferred that he had approved the general idea, and he certainly implied personal approval of this particular franchise in his letter of October 1, 1965, to the Mayor. It was expressly stipulated at the trial, however, that there had been no Secretarial approval of the issuance of the franchise. Where an important power is given to two people, its exercise is not to be presumed

merely from a showing of action by one of them. Thus, in a case involving an attempted sale of land of the United States by the Solicitor of the Treasury, who had been authorized to sell with the approval of the Secretary of the Treasury, the United States Supreme Court said:-

"As the important power of selling the property of the United States acquired in .payment of debts can only be exercised by the Solicitor with the approval of the Secretary, there would seem to be the best of reasons for requiring some written evidence of this approval, not only for the security of the purchaser, but for the protection of the Government.

The defendant, therefore, is not in default, because there is nothing in the record to show that this consent of the Secretary has been obtained.

If the authority to make the sale had been delegated to the Solicitor alone, and its exercise confided to his discretion, his acts would carry with them prima facie evidence that they were within the scope of his authority. But where the power is divided there must be joint action before any presumption can arise." *United States v. Jonas,* 19 Wall. 598, at 605, 22 Law. Ed. 177, at 178 (1874).

This franchise, therefore, cannot be considered to have been issued by the general legislative authority of the Trust Territory.

[18] Although none of the parties has argued that the franchise might be supported as a District Order under Trust Territory Code, Section 20(d), the court has considered that possibility, but has come to the conclusion that the franchise cannot be justified on that basis. District Orders are regularly designated as such and submitted for the formal approval of the High Commissioner (except for emergency orders, designated as such). In accordance with the principles discussed above, this approval must be given personally by the High Commissioner-i.e., by either the regular or acting incumbent of that office. Here although there was clear intention to do

something requiring legislative action, there is simply no showing of the necessary intent to legislate.

[19-23] The court, therefore, holds that the franchise here involved has not been legally authorized and that the Franchise Agreement and Contract for Transporting School Children are not legally entitled to be given full effect. Their object, however, is not one inherently bad, or involving acts that are "mala in se", nor is it one expressly prohibited by law. The court considers that their provisions are divisible and that effect should therefore be given to the legal portions of these documents, apart from the unauthorized portions, and that while the whole arrangement may be voidable at the option of one of the parties to it, it is neither entirely void nor voidable at the option of one not a party to it, such as the Municipality or the Betterment Association. 17 Am. Jur. 2d, Contracts, § 230. The court, therefore, further holds that while the Franchise Agreement is of no force and effect as a franchise, it is still effective as a permit under Trust Territory Code, Section 1100 and as a specification of the work to be done for the payments called for in the "Contract for Transporting School Children". This permit, having been issued prior to the enactment of Public Law No. 1–6 discussed below, has not been terminated or revoked by that law. This new law shows no intention that it should have any retrospective effect or that it should of itself upset permits or licenses previously validly issued. 50 Am. Jur., Statutes, § 478.

On its broader claim that the Municipality of Saipan and the Saipan Betterment Association have no authority to engage in public transportation, the plaintiff is on stronger ground because of Public Law No. 1-6 passed by the Congress of Micronesia and approved by the High Commissioner August 23, 1965, in accordance with the provisions of Secretarial Order No. 2882, dated September

28, 1964, which superseded Section 3 of Order No. 2876, effective July 12, 1965. Section 1 of that law provides that the Government of the Trust Territory, through the High Commissioner and the Congress of Micronesia, shall have primary responsibility, among other things, for:-

"(c) Control of banking, organization of business corporations, business associations, credit unions and cooperatives, insurance, sale of securities, and public utilities, *including the exclusive licensing of such activities.* Persons and companies engaged in these activities shall be subject to local general taxation, but not subject to any local licensing requirements or payment of license fees for these activities other than to the Territorial Government." (Italics added.)

[24] The Betterment Association claims that it is not engaged in public transportation or in any business, but has merely endeavored to serve its members, citing in support of this contention 43 Am. Jur., Public Utilities and Services, § 6. The evidence shows, however, as indicated above, that the Association's transportation service was offered to all Micronesians who wished to take advantage of it. Undoubtedly the Association sincerely wished all its riders would join, but it is very clear that this wish had not been fulfilled and compliance with it was not insisted upon. The President of the Association testified they could not refuse transportation to non-members, and that the Association's drivers might not remember who were members or not members. Thus, the service rendered does not meet the test for exemption from classification as a public utility, set out in the authority cited.

[25] The fact that a person or organization conducting a type of activity ordinarily done as a business, runs it at cost, without any attempt at profit, does not relieve the activity from the license requirements of the law according to American precedents, which the court considers controlling on this point in the absence of any indica-

tion of any legislative intent to the contrary. 33 Am. Jur., Licenses, § 47.

[26] The court therefore holds that providing commuting transportation service, offered during the hours of the day when it is normally wanted, to all Micronesians on an island in Micronesia where Micronesians overwhelmingly predominate in the population, even though done at cost, constitutes engaging in public transportation and requires a license from the Trust Territory Government as a public utility under Public Law No. 1-6. It follows that the Betterment Association has no legal authority to operate such a system without the required license.

[27-29] The court can find nothing in the charter of the Municipality which would prevent it from engaging in public transportation service on Saipan or subsidizing such service by a private organization, if all necessary approvals required by the charter and the necessary license from the Trust Territory were obtained. The type of charter involved here, granting broad powers in general terms, is similar to that of Tinian, discussed in the opinion in *Ambros, Inc. v. Municipality of Tinian*, 3 T.T.R. 48. As there held, the court considers that this type of charter indicates a legislative intent to control the activity of the Municipality through supervision by the District Administrator rather than through any detailed limitation of powers and that precedents in the United States as to strict construction of the municipal charters usual there, cannot fairly be applied to the type of charter involved here. Admittedly, the Municipality of Saipan provided transportation primarily for school children, but occasionally for others, from about 1954 to about 1962.

[30,31] Just how and by whom, other than the Mayor who signed it, the Lease Agreement between theMu-

nicipality and the Betterment Association was authorized on behalf of the Municipality has not been shown, but it was agreed it was executed as indicated therein. The plaintiff has failed to show anything affirmatively wrong about it, other than that it was entered into to enable the Betterment Association to carryon an activity for which the court holds a license was required, which it did not have. Even if there was something irregular or lacking about the formal authorization, it may well be that the Municipality can recover under it the rent and other charges for the period services were rendered in accordance with it. 38 Am. Jur., Municipal Corporations, § 514. 17 Am. Jur. 2d, Contracts, § 222. The court, therefore, makes no determination as to the validity of the Lease Agreement, except to hold that no future service can legally be rendered under it unless and until the Betterment Association obtains the required license from the Trust Territory for its transportation service and that no payments need be made under it, except for services that have already been rendered or any that may be rendered after the Association obtains the required license.

[32] The court considers that it is unnecessary to decide in this action whether the operation of the Bus Company's service involved here is ultra vires and contrary to the charter of the Saipan Shipping Company. The court adopts the view, which appears to be held in the great majority of jurisdictions in the United States, that a corporation has the capacity to act possessed by natural persons, even though its authority is limited. Whether the engaging in this particular kind of land transportation is a violation of the charter or not, is a matter of concern to the government which issued the charter, to the corporation's own stockholders, and, under some circumstances, to those contracting with it, but is not one open to collateral attack by others. It is therefore not a mat-

ter of which either the Municipality of Saipan or the Betterment Association is entitled to take advantage. This view as to the limitations on those who can take advantage of a claim that a corporation has acted ultra vires is explained in detail in the Notes to Sections 10 and 11 of the former Model Business Corporation Act by the Commissioners on Uniform State Laws. These will be found in Vol. 9, Uniform Laws Annotated, p. 140-150. See also 19 Am. Jur. 2d, Corporations, §§ 963-972, especially § 966.

[33, 34] It is very difficult to give any satisfactory comprehensive definition of what constitutes such "irreparable injury" as will warrant relief by way of injunction. It is quite clear that the mere literal meaning of these words as ordinarily used in other connections cannot safely be relied on very heavily. 28 Am. Jur., Injunctions, § 48. Protection against the operation of public utilities without a franchise or license, however, is well recognized as one of the situations in which an injunction may be used. 28 Am. Jur., Injunctions, § 164. The court considers, under all the circumstances, that a proper case for reliefbyinjunction has been made out.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. The temporary restraining order issued in this action on October 14, 1965, is hereby dissolved.

2. The "Franchise Agreement" between the Government of the Trust Territory of the Pacific Islands and the Saipan Bus Company, dated June 30, 1965, is hereby declared to be of no force and effect as a franchise and as a limitation on the issuance of another franchise by legislative authority, but to constitute a valid permit under Trust Territory Code, Section 1100, and a specification of the work to be performed by the Bus Company to become entitled to the payments set forth in the compan-

ion agreement of the same date entitled "Contract for Transporting School Children".

3. The defendant· Municipality of Saipan and the defendant Saipan Betterment Association, and each of them, their respective agents, employees, officers, and attorneys are permanently enjoined and prohibited from operating any public transportation service on Saipan (including a transportation service merely for Micronesian commuters, regardless of the method or amount of charges, if any, to the riders), without a license from the Government of the Trust Territory of the Pacific Islands under Public Law No. 1-6.

4. The defendant Municipality of Saipan is enjoined and prohibited from rendering any service hereafter under the "Lease Agreement" dated September 24, 1965, between it and the defendant Saipan Betterment Association, unless and until the Betterment Association obtains the type of license described above, and the defendant Saipan Betterment Association is relieved of all obligation to make payments under said agreement for any services, except those already rendered and any that may be rendered if it obtains such a license.

5. The Municipality of Saipan, its agents, employees, officers, and attorneys are permanently enjoined and prohibited from leasing its vehicles and equipment, to, or subsidizing, any person, persons, company or association, by whom it knows or should know that said property or subsidy will be used for the purpose of providing any public transportation on Saipan (including any of the types described in paragraph 3 above) without such a license as described above.

6. Neither the use of private car pools of not more than seven (7) members each, nor transportation by the Municipality of Saipan of its own officers and employees, shall be considered as "public transportation service",