

# American Bus Transport Philippine Interests

• *Islands' constitution needs clarification of term civil rights as applicable to all American property interests here.*

**NOTE.**—While the following discussion by Attorney L. D. Lockwood is limited to the American interest in the Philippines in the bus transportation business, the point stressed that the term *civil rights* as used respecting Americans and American interests here, in the Tydings-McDuffie act as well as the Commonwealth constitution, requires definition, is of general and specific interest to all Americans and American interests here.—ED.

Bus transportation in the Islands has been peculiarly developed by the Americans. With the exception of the Manila Railroad which operated between Manila and Dagupan, there were practically no land transportation facilities during the Spanish régime. There were very few roads and those that existed were impassable during the rainy season. The motor vehicle had not yet arrived. Most transportation or travel was by water.

During the first years of American occupation the Government was occupied in perfecting its organization, establishing law and order, sanitation, etc., and it was about 1908, under the leadership of Hon. W. Cameron Forbes, then Secretary of Commerce, that a comprehensive road-building program was begun and which has been carried thru to the present date. This has resulted in a good system of highways covering practically all of the well-populated islands. Some of the least populated islands, such as Mindanao, Mindoro, Palawan and some smaller ones, have relatively few roads.

It is a coincidence that the motor vehicle arrived at the same time that the roads were being built and the result has been a rapid and extensive development of motor vehicle transportation.

The first motor bus in the Philippines was operated by Mr. A. L. Ammen in Camarines in 1911. About the same time, Mr. Walter S. Price started bus operations on the Island of Leyte. It is somewhat strange that these two beginnings were made at places distant from Manila, but such is the case. While the growth of the business was slow during the first few years, with the extension of the roads and the improvements in motor vehicles, it later expanded rapidly. When Mr. Ammen, for example, incorporated his business and formed the A. L. Ammen Transportation Co., Inc. in 1914, he was operating 9 buses. Today the Company is operating 225 buses and 50 hire automobiles and transports over 12,000,000 passengers a year. Mr. Ammen also founded the Pangasinan Transportation Co. and his associates started the Batangas Transportation Co., Laguna-Tayabas Bus Co., Bohol Land Transportation Co. and others. Other Americans started bus operations in other parts of the Islands. Uniformly these operations have been successful and have expanded.

The book value of this investment of P4,208,850 is at

least 50% greater than the actual investment and the real or market value of the investment has at least doubled, as, for example, Mr. Price, practically the sole owner of Leyte Land Transportation, values his business at P700,000, while only the original investment of P120,000 is listed above. And shares of some of these companies, like the Batangas Transportation Co., have been selling for between P200 and P300, the par value being P100.

All of the above mentioned investment, except that of the Manila Electric Co., is by citizens of the United States residing in the Philippine Islands.

All of the above-named companies are corporations organized under the laws of the Philippine Islands by Americans and all, with the exception of the Panay Autobus, are managed by Americans.

Only one large bus company has been organized, financed and successfully operated entirely by Filipinos. This is the Pasay Transportation Co. It was not organized until 1928. Filipinos have, however, acquired a very important minority interest in the companies listed above, amounting to P1,804,150 and this interest is gradually increasing. There are also small Filipino bus operators operating from one to fifty buses each. The total number of buses operated in the Philippines is approximately 3,700.

Americans have not gone into the trucking business very extensively. One firm, the Luzon Brokerage, does a very large trucking business, more or less in connection with its customs brokerage business. Mr. L. W. Nantz also does a good-sized trucking business. But these operate as private contractors and not as public utilities. Most of the trucking is done by small Filipino truckers.

The Manila Railroad Co., owned by the Government, operates a large fleet of buses and trucks, especially in making connections for both passengers and freight between the railroad and Baguio.

These utilities operate under franchises or certificates of public convenience which have from time to time been granted by the Government of the Philippine Islands as authorized by Section 28 of the Jones Law (Act of Congress of August 29, 1916.)

These franchises and certificates of public convenience are property. There can be no doubt about that. The courts have repeatedly so held.

Undoubtedly, under the existing law, this property (franchises or certificates already granted) when owned by citizens of the United States, will be acknowledged, respected and safeguarded after independence to the same extent as similar rights of citizens of the Philippines.

But is the term "existing property rights" to be interpreted as to refer only to franchises and certificates of public convenience in existence on the date of proclamation of Philippine

Today the investment of citizens of the United States in bus transportation is as follows:

	Total Capital Invested	Capital Invested by Citizens of U. S.
A. L. Ammen Transportation Co.	P1,000,000	P 700,000
Batangas Transportation Co.	475,000	235,750
Laguna-Tayabas Bus Co.	500,000	189,700
Pangasinan Transportation Co.	500,000	420,000
Pampanga Bus Company	523,800	323,500
Red Line Transportation Co.	233,500	204,400
Northern Luzon Transp. Inc.	151,700	100,500
Rural Transit Co.	400,000	400,000
Cebu Autobus Co.	500,000	350,000
Bohol Land Transportation Co.	300,000	189,000
Mindanao Bus Co.	150,000	102,000
Manila Electric Co. (bus business only)	600,000	600,000
Leyte Land Transportation Co.	120,000	120,000
Panay Autobus Co.	400,000	168,000
Bulacan Bus Co.	58,000	46,000
Cebu Transit Co.	100,000	54,000
Total	P6,012,000	P4,208,850

Independence.

Or is it to be interpreted in a broader sense to include the right to buy or acquire franchises and certificates? As before stated, the term "property rights" usually means not only the right to own, but the right to acquire and sell property.

Citizens of the United States now have the right to acquire and obtain franchises and certificates of public convenience. The present law regarding the granting of certificates of public convenience is found in the Public Service Act (Commonwealth Act No. 146), which was enacted at the last session of the National Assembly. It reads as follows:

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 saving provisions to the contrary:

(a) To issue certificates which shall be known as Certificates of Public Convenience, authorizing the operation of public services within the Philippines whenever the Commission finds that the operation of the public service proposed and the authorization to do business will promote the public interests in a proper and suitable manner: *Provided*, That hereafter, certificates of public convenience and necessity will be granted only to citizens of the Philippines or of the United States or to corporations, copartnerships, associations or joint-stock companies constituted and organized under the laws of the Philippines: *Provided*, That sixty per centum of the stock or paid-up capital of any such corporation, copartnership, association or joint-stock company must belong entirely to citizens of the Philippines or of the United States: *Provided, further*, That no such certificates shall be issued for a period of more than fifty years.

It would seem that this is an existing property right; and, if such, it should be acknowledged, respected and safeguarded after independence.

In other words, that after independence citizens of the United States should have the right to acquire, obtain and own franchises and certificates of public convenience.

But as above stated, there are other provisions of the Constitution which are in conflict with this theory.

The "Constitution of the Philippines" is obviously intended to be the constitution of the future Republic. It is nowhere referred to as the constitution of the Commonwealth and for that reason, in our humble opinion, it should never have been approved by the President of the United States, because it is not a "Constitution for the Government of the Commonwealth of the Philippines" as is provided for in the Tydings-McDuffie Law. The ordinance appended to the Constitution makes it workable during the life of the Commonwealth.

So it is that we now know what the constitution of the Republic will be. We, therefore, have a rather extraordinary opportunity to look into the future and determine what our rights will be. As before stated, the provision acknowledging, respecting and safeguarding the existing property rights of citizens of the United States is incorporated in the Constitution,—and very properly in the Constitution itself and not in the ordinance appended to the Constitution which will become inoperative after independence.

But in Art. XIII, Sec. 8, of the Constitution we find the following:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations of other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the

public interest so requires.

It is, therefore, perfectly clear that it is not the intention to acknowledge, respect and safeguard the existing rights of citizens of the United States to acquire franchises or certificates of public convenience.

And apparently, when present franchises expire it will be impossible for the holders of the same to acquire or obtain new franchises or extensions of the old one.

The same principle is expressed in Art. XII, Sec. 1, regarding natural resources, as follows:

All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations, or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Under this provision the present right of citizens of the United States to locate mining claims will disappear.

And the right to buy and sell even existing real property is limited by Sec. 5 of the said article, which reads as follows:

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

The above quoted Sec. 8 of Art. XIII has already been interpreted by the Supreme Court in the case of *Genehichi Ishi vs. Public Service Commission*, G. R. No. 45134. In that case the petitioner, a Japanese subject, held a certificate of public convenience to operate one hire automobile, issued prior to the establishment of the Commonwealth. After the Commonwealth he applied for authority to increase his equipment by one automobile more. His application was denied by the Public Service Commission on the ground that it would be unconstitutional to grant the increase and this decision was sustained by the Supreme Court which said:

The question presented is whether petitioner's application for an increase of his equipment comes within the constitutional prohibition contained in section 8, Article XIII of the Constitution of the Philippines, it appearing that petitioner had been granted, before the Constitution took effect on November 15, 1935, a certificate of public convenience to operate an automobile "Ford" for transportation of passengers in the province of Davao. We must answer the question in the affirmative. Petitioner is admittedly not a citizen of the Philippines, nor a corporation sixty per centum

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of the capital of which is owned by citizens of the Philippines. His application for an increase of equipment may not call for the granting of a new franchise or certificate, but it certainly calls for an "authorization" the granting of any form of which is limited by the Constitution to citizens and corporations above mentioned. This was clearly admitted by the petitioner himself when he made the averment in paragraph 3 of his petition for a writ of certiorari that in filing below the application which was afterwards denied by the respondent Commission, he sought for "authority" to increase his equipment. In other words, it is conceded by petitioner that he may not increase his equipment without previously being "authorized" to do so by the respondent Commission, as provided in express terms in his certificate of public convenience. The phrase "any other form of authorization" used in sec. 8, Article XIII, of the Constitution is comprehensive enough to include the "authority" asked for by petitioner.

The Constitution provides for the nationalization not only of national resources and all forces of potential energy but also of public utilities, saving solely those rights which were acquired prior to its adoption. This was one of the avowed purposes of the framers of that fundamental law, as declared in its preamble. We cannot agree to the suggestion that because petitioner is the lawful holder of a certificate of public convenience to operate an automobile "Ford" in the province of Davao, he has a vested right to be authorized to increase his equipment by the addition of one or more cars. The challenged order of the respondent Commission is in conformity both with the letter and spirit of the Constitution and it must be upheld.

Would the decision of the Court be any different with regard to citizens of the United States after independence, taking into consideration the other provision of the Constitution that existing property rights of the same shall be acknowledged, respected and safeguarded? We believe not.

But as this is a matter which is to be embodied in a treaty to which the Government of the United States will be a party, it will become the duty of the United States to see to it that the rights of its citizens in the Philippines are duly safeguarded and protected.

*Conclusion and Suggestions.* In view of the foregoing, it is respectfully submitted:

1. That in case the date of independence is advanced, it should be provided that the "civil rights" which citizens and corporations of the United States now enjoy in the Philippines should be continued in force and effect until July 4, 1946, the date set for independence by the Tydings-McDuffie Law; and furthermore, in case a preferential trade-treaty is made and entered into, as is much discussed at the present time, then and in that case, preferential civil rights should go along with preferential trade relations and the present civil rights enjoyed by citizens and corporations of the United States should be continued in force and effect during the life of the preferential trade-treaty.

2. That the term "existing property rights" as used in the Tydings-McDuffie Law, the Philippine Constitution, and to be embodied in a treaty, should be clarified by legislation and/or by the treaty to be made and inter-

preted in the sense intended by Congress, so that there will be no misunderstanding regarding what these rights are.

Manila, Philippines, August 21, 1937.

L. D. LOCKWOOD

For the Philippine Motor Transport Association.

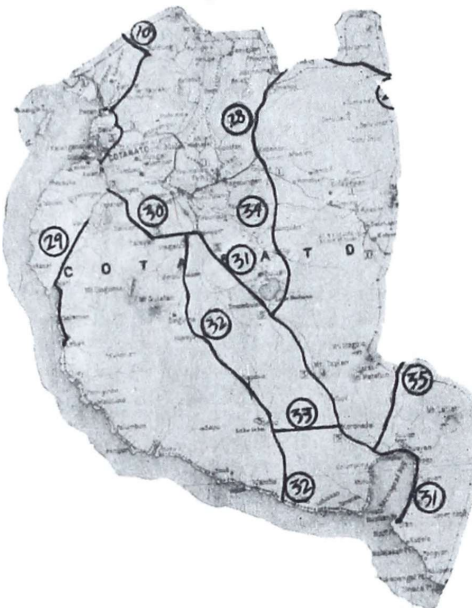
### Kasilag's Five Years . . .

(Continued from page 36)

ment of peace and order in the entire province of Lanao. It will also develop the rice land district around the lake.

PROJECT No. 9—This proposed road will be a short cut from Lumbatan, where the agricultural and normal schools of Lanao are established, to the municipality of Malabang on the northeast coast of Ilana Bay. It will tap the rich agricultural valley of Mafalim River and Lake Butig.

PROJECT No. 10—This is another interprovincial road between Lanao and Cotabato.



Its south terminal is at Parang, the best sheltered harbor in western Cotabato, and its northern terminal is in the sitio of Balaygay on the southeast shore of Lake Lanao, passing through the municipal district of Baldun. It will benefit the rich agricultural district of Barira.

PROJECT No. 11—This is another interprovincial road between Lanao and Bukidnon provinces, connecting the municipal district of Mulundo on the east shore of Lake Lanao with the municipal district of Maramag on the Bu-

kidnon-Cotabato Interprovincial Road. It will serve as a connecting link of the shortest route from the City of Davao to the port of Iligan in northern Mindanao. The country traversed by this proposed road consists of plateaus suitable to the cultivation of corn, fruit trees, coffee, cacao and cattle raising.

PROJECT No. 12—This is another interprovincial road between the provinces of Lanao and Bukidnon, starting from Dansalan, the capital of Lanao, and passing through the municipal district of Kapay and connecting with the municipal district of Talakag in the province of Bukidnon. This will establish a short cut from central Lanao to the port of Cagayan in northern Mindanao.

PROJECT No. 13—This is a road to connect the municipal district of Kapai, interior part of Lanao, with the port of Iligan, and will develop the fertile Kapai and Mandulog River Valleys.

PROJECT No. 14—This proposed interprovincial road between Bukidnon and Agusan provinces starts from Talakag in northwestern Bukidnon, passing through Maramag on the Bukidnon-Cotabato Interprovincial Road and connecting with the municipal district of Waloe in Upper Agusan. It will develop the best agricultural region of the province of Bukidnon, the Pulangui and Omayan River Valleys of northeastern Bukidnon and southwestern Agusan.

PROJECT No. 15—This is a proposed interprovincial road to connect the port of Cagayan in Oriental Misamis with the municipal districts of Baungon and Libona in the northwestern part of Bukidnon province. It will develop 20,000 hectares of fertile agricultural land to be traversed by it.

PROJECT No. 16—This proposed interprovincial road will connect the municipal district of Milagros in Upper Agusan with Odiongan, a progressive portion of the municipality of Gingoog on Gingoog Bay, province of Oriental Misamis. It will be a short cut from Upper Agusan to the coastal road of Oriental Misamis.

PROJECT No. 17—This project is the Agusan-Davao Interprovincial Road now under construction. This road will develop the fertile agricultural land on the west bank of the Agusan River and the rich Tagum and Saug river valleys, province of Davao.

PROJECT No. 17 (a)—This is a connection between the road systems on both sides of the Agusan River at the municipality of Talacogon, Central Agusan.

PROJECT No. 18—This is an interprovincial road between Agusan and Surigao connecting the municipality of Lianga on Lianga Bay, province of Surigao, with Ampayon, a barrio on the

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