VMC RURAL ELECTRIC
SERVICE COOPERATIVE,
INC.,
Petitioner,

versus

C.T.A. CASE NO. 2009

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of respondent assessing petitioner the amount of ₱14,327.65 as deficiency franchise tax and surcharge for the period from July 1, 1966 to November 30, 1967.

The facts of this case are not disputed. Petitioner V.M.C. Rural Electric Service Cooperative, Inc., is a non-agricultural cooperative with net assets of not more than ₱500,000, organized under the provisions of Republic Act 2023 which became effective on June 22, 1957. It is authorized to operate electric light, heat and power service in the Municipalities of Victorias and Manapla, and the City of Cadiz, all in the province of Occidental Negros by virtue of mun-

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icipal franchises granted to it on September 10, 1964. The franchises contain a provision that same are subject to the conditions of Act 3636 and Section 10 thereof further provides as follows:

> The grantee, in consideration of the franchise hereby granted, shall pay quarterly into the Provincial Treasury of Occidental Negros, five per centum (5%) of the gross revenues obtained thru this privilege as required by Section 7 of Republic Act No. 39....

Upon audit and examination of the books and other records of accounts by an auditor of the General Auditing Office, it was ascertained that the petitioner, during the period from July 1, 1966 to November 30, 1967, was selling electric light, heat and power not only to its members but also to non-members and had gross receipts of ₱229,242.47 (pp. 22-26, BIR rec.).

Based on the opinion of the General Auditing Office that petitioner is subject to 5% franchise tax on its gross receipts in accordance with Section 259 of the National Internal Revenue Code, as amended, the BIR Regional Director of Bacolod City issued a letter-assessment dated June 20, 1968, against petitioner, assessing the latter the amount of ₱14,327.65 as deficiency franchise tax and surcharge for the period from July 1, 1966 to

November 30, 1967.

On July 15, 1968, petitioner contested the validity of the assessment, claiming exemption from franchise tax under Section 66 of Republic Act 2023 for being a non-agricultural cooperative duly registered with the Cooperatives Administration Office, which claim was denied by the BIR Regional Director in his letter dated August 13, 1968. On September 5, 1968, petitioner filed, this time with respondent Commissioner of Internal Revenue, another request for reconsideration, which was denied by the latter on January 31, 1969. Hence, this appeal.

The appeal is, in the main, based on Section 66 of Republic Act 2023 which reads as follows:

> SEC. 66. Exemptions. - Cooperatives registered under this Act shall, notwithstanding the provisions of existing law to the contrary, enjoy the following exemptions:
>
> (1) Cooperatives with net assets of not more than five hundred thousand pesos shall be exempt from all taxes and government fees of whatever name and nature except those provided for under this Act: . . .

Petitioner contends that Act 3636, as amended, is a general law while Republic Act 2023 is a special law and its provisions should prevail over those of the former. On the other hand, respondent asserts the contrary, insisting that the former is a special law and should prevail as an exception to, or a qualification of the latter. In this respect, the premises of the parties are not entirely correct. The municipal franchises of the petitioner rest on Act 667 that authorizes municipalities to grant franchises. If Act 3636 is referred to in the franchises in question, it is merely because the municipal grants made the provisions of said Act as the pattern of the conditions of petitioner's franchises. With these observations we will proceed to consider the merits of this petition.

To our mind, the question as to which law is a special law, is beside the point. Nowhere in the provisions of Republic Act 2023 can we find anything from which we can reasonably infer that it has any bearing with Act 667 or Act 3636 or Republic Act 39, all of which solely deal with the franchises and taxes of public utility companies engaged in the production and sale of electric power and current.

Republic Act 2023 was not intended to bring within the protective embrace of its provisions cooperatives that choose to obtain franchises for public utility services. The cooperatives envisaged by said law are essentially those designed "for the mutual benefits of its members" and for services to its members (Section 9, Republic Act 2023). Section 10 thereof emphasizes that "the object of every cooperative shall be to provide maximum service to its members," while Section 58 of the same law expressly restricts the bulk of its allowable business with non-members. These characteristics obviously go against the very grain of the concept of public utility companies which are essentially for compulsory service to the general public without discrimination as to person, subject to particular regulations because of its public nature (New State Ice Co. v. Liebmann, 285 U.S. 262, 76 L ed 747, 52 S. Ct. 371; California v. Central P.R. Co. 127 U.S. 1, 32 L ed 150, 8 S. Ct. 1073). Clearly the avowed functions of one are hardly compatible with those of the other. Needless to say, a cooperative that obtains a franchise to be a public utility company clearly goes beyond the borders of its defined activities for which the protective provisions of Republic Act 2023 were designed.

Again, a franchise has been defined as the privilege of doing that which does not belong to citizens or public generally by common rights (Griffin v. Oklahoma National Gas Corporation, 37 Fed /2d/ 545, 547; Dwarken v. Apartment House Owners Ass'n of Cleveland, 175 N.E. 577, 578, 38 Ohio App. 265). It is essential that a franchise should be created by a grant from the sovereign authority (Denver & Swansea Ry. Co. v. Denver City Ry. Co., 2 Colo. 673, 682), that is, through grants by the legislature or any of its properly constituted instrumentalities (Walla Walla v. Walla Walla Water Co. 172 U.S. 1, 43 L ed 341, 19 S. Ct. 77; Wright v. Nagle, 101 U.S. 791, 25 L. ed 921). The grant is at the same time a contract between the sovereign power and private citizens, made upon valuable consideration, for purposes of public benefit, as well as private advantage (Henderson National Bank v. City of Henderson, 39 S.W. 1030, 19 Ky. Law Rep. 728, 742). Being in the nature of a contract, it stands upon a different footing from a general law (Philippine Railway Company v. Collector of Internal Revenue, G.R. No. 3859, March 23, 1952). Having chosen to obtain franchises for public utility services, petitioner is bound by the term and tenor of the resulting contracts (Grand Trunk Western R. Co. v. South Bend, 277 U.S. 544, 57 L. ed 633, 33 S. Ct. 303; Philippine Railway Co. v. Coll. of Int. Rev., supra).

Having reached the foregoing conclusions, we deem it unnecessary to pass upon the other issues raised by the parties.

WHEREFORE, the decision of respondent is hereby affirmed with costs.

SO ORDERED.

Quezon City, April 21, 1971.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge