

1968

Randy Dimmitt v. Maurice C. Jones and J. Patton
Neeley, Judges of the City Court of Salt Lake City;
and The City Court of Salt Lake City : Brief of
Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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RANDY DIMMITT,

Plaintiff and
Appellant,

vs.

Case No. 11137

MAURICE C. JONES and J.
PATTON NEELEY, Judges of
the City Court of Salt
Lake City; and the CITY
COURT OF SALT LAKE CITY,

Defendants and
Respondents.

= = = = =

BRIEF OF APPELLANT

= = = = =

Appeal From the Judgment of the District
Court, Third Judicial District, the
Honorable Bryant H. Croft

= = = = =

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IN SENATE, JUNE 1, 1937, A. COURT OF THE

SALT LAKE CITY

=====

JOHN D. DODD,

)

)

Plaintiff and

)

Appellant,

)

)

vs.

)

Case No. 11137

)

ERICE C. JOHNS and J.

)

ERSON REEDY, Judges of

)

the City Court of Salt

)

Lake City; and the CITY

)

COURT OF SALT LAKE CITY,

)

)

Defendants and

)

Respondents.

)

=====

BRIEF OF APPELLANT

=====

STATEMENT OF NATURE OF CASE

The appellant, a juvenile, sought a writ of prohibition against the City Court of Salt Lake City, for hearing traffic charges against appellant who contends that the juvenile courts have the exclusive original jurisdiction.

ORDER OF THE DISTRICT COURT

The District Court in and for Salt Lake County, Utah, Judge, denied the plaintiff's writ of prohibition and dismissed the complaint.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment below.

STATEMENT OF FACTS

On May 2, 1967, the appellant, then seventeen years old who resided in Salt Lake City, was issued citations charging him with the violation of Section 11, 172, 174 and 179 of the Revised Ordinances of Salt Lake City. The above sections include operating motor vehicle without a valid operator's license; without a valid registration certificate; with an defective muffler and a defective tail light (ss. 19, 26, and 27).

The appellant appeared before the City Court of Salt Lake City, J. Patton Necley, Judge, on May 17, 1967, and moved to dismiss on the grounds that

appellant, under eighteen years of age and therefore under the court had exclusive original jurisdiction. The City Court denied appellant's motion for a writ of habeas corpus and appellant was arraigned and pleaded not guilty (R. 16).

The present case of Dimmitt verses the Judges of the City Court was begun on May 24, 1967, when appellant filed a complaint seeking a writ of prohibition, prohibiting the respondents from hearing the case of Salt Lake City Corporation vs. Dimmitt without a determination that the Juvenile Court of the Second Judicial District had exclusive jurisdiction over the appellant (R. 2). In order to expedite matters Judge Marcellus K. Snow of the First Judicial District, stayed the prosecution of the City of Salt Lake City be enjoined until the termination of this action (R. 26).

Trial was held on October 20, 1967, before the Honorable Bryant H. Croft with the court's memorandum decision being handed down on November 22, 1967. On November 30, 1967, the court signed the

appealed during the void of prohibition sought by
the appellant (P. 26-31).

PROHIBITION

PART I

THE JUVENILE COURT ACT OF 1965 GIVES THE
JUVENILE COURTS JURISDICTION OVER CHILDREN WHO ARE
ARRESTED OR VIOLATING TRAFFIC ORDINANCES.

The Juvenile Court Act of 1965 is included in
the Utah Code Annotated between and including sections
55-10-63 and 55-10-123. The Act spells out the
jurisdiction of the juvenile court as follows:

"Except as otherwise provided by law, the court
shall have exclusive original jurisdiction in
proceedings:

"(1) Concerning any child who has violated
any federal, state, or local law or municipal
ordinance . . ." Utah Code Annotated, § 55-
10-77 (1953) (Emphasis added.)

According to Utah Code Annotated, Section
55-10-64(3) "Child means a person less than eighteen
years of age."

On the facts of this case certain municipal
ordinances were allegedly violated by the appellant,
either within the Juvenile Court Act of 1965.
Therefore, Section 77 appears applicable.

jurisdiction of the juvenile court over matters
of violations of motor vehicle laws is mentioned
throughout the act:

"In the case of violations of motor vehicle
laws or ordinances a petition shall not be
required and the issuance of a traffic citation
or summons shall be sufficient to invoke the
jurisdiction of the court." Utah Code Annotated
§ 55-10-93(3).

"... the board may adopt special rules of pro-
cedure to govern proceedings involving violations
of traffic laws or ordinances. . . ." Utah
Code Annotated, § 55-10-96.

"In cases of violation of traffic laws or ordin-
ances, the court may, in addition to any other
disposition restrain the child from driving for
such periods of time as the court deems necessary,
and may take possession of the child's driver's
license." Utah Code Annotated, § 55-10-100(9).

"Abstracts of court records for all adjudications
of traffic violations shall be submitted to the
Department of public safety . . ." Utah Code
Annotated § 55-10-105(5).

Surely the legislature wouldn't give instructions
to the court on how to deal with traffic problems if
the legislature didn't intend for the court to have
jurisdiction over such situations.

The above instructions from the legislature to
the juvenile court make it very clear that the

juvenile court does have jurisdiction to deal with
petty violations of persons under eighteen years
of age.

POINT II

THE JUVENILE COURT HAS EXCLUSIVE JURISDICTION
OVER ALL OTHER PERSONS UNDER EIGHTEEN YEARS OF AGE ACCUSED
OF TRAFFIC VIOLATIONS.

In the language of the Juvenile Court Act it
intends that the legislative intention was for the
juvenile court to have exclusive jurisdiction over
petty traffic violations of children.

In *Boyd v. Glade*, 114 Utah 2d 435, 201 P. 2d
285, 287 (1948) the Utah Supreme Court stated:

"It is our duty in interpreting a statute to
give effect to the legislative intent as ex-
pressed by wording of the statute."

In looking at the wording of this Act, Section
II, supra, is of paramount importance. The words
"exclusive original jurisdiction in proceedings
concerning any child who has violated any . . .
local law or municipal ordinance" are very clear
and. The word jurisdiction is modified by two
words, exclusive and original. Thus, if the juvenile

jurisdiction over juvenile traffic
and the jurisdiction is exclusive.

As can be seen, the word concurrent is used
expressly jurisdiction in Section 78 of the Juvenile
Code.

"If a person eighteen years of age or over
who is under the continuing jurisdiction of the
juvenile court pursuant to section 55-10-100
violates any federal, state or local law or
municipal ordinance, the district court or other
court exercising jurisdiction over the offense
involved shall have concurrent jurisdiction
with the juvenile court." (Emphasis added.)

Under Utah Code Annotated, §§ 55-10-100 and
55-10-101, the juvenile court has continuing juris-
diction over persons over eighteen years of age and
the same section makes it clear that this "continuing
jurisdiction" is concurrent with "the district court
or other courts." Another example of concurrent
jurisdiction clearly spelled out by the legislature
in Utah Code Annotated § 55-10-86 (1953). Here the
juvenile court is given the power to turn over to
the district court any person of the age of fourteen
or over who has committed an act which would amount

to a felony if done by an adult. It is true that in the above section the concurrent jurisdiction extends down over persons younger than eighteen, but it is limited to a small group under the discretion of the court and should with the district court, not the city court. No such exception is made in the case of traffic violations. Other examples of concurrent jurisdiction with the district court are also found in Utah Code Annotated, § 55-10-78. These appear to be adoption proceedings, appointing a guardian for a child and determining the custody of a child, especially in divorce cases.

The point of the above discussion is that the legislature did deal with the problem of concurrent jurisdiction by listing the areas and courts where such concurrent jurisdiction should exist. The directions of the legislature are explicit, giving exclusive jurisdiction to the juvenile court and then carefully defining the exceptions.

The phrase, "except as otherwise provided by law," which is found at the beginning of Section 77,

...intended to incorporate general inclinations
...throughout the code as the respondent's
... Rather, it simply refers to the limit-
... and exceptions to exclusive jurisdiction
... found within the Juvenile Court Act itself.
... the above phrase only incorporates
... exceptions to exclusive jurisdiction which are
... in the previous paragraph.

If the legislature intended that jurisdiction
in juvenile traffic problems should be concurrent
with the city courts, why didn't it say so? To be
consistent with the way this Act was drafted it is
difficult to see that the legislature just did not intend
there to be concurrent jurisdiction except where
it themselves had defined it.

On the other hand, the legislature did express
its intention that jurisdiction over criminal matters
should be exclusive with the juvenile court (except
in the case of a felony as mentioned in Section 86).
Utah Code Annotated § 55-10-79. In this the legis-
lature states that another court "shall transfer

"... to the juvenile court" upon finding that the appellant is under eighteen years of age. Since the violation of a traffic ordinance is a crime the Salt Lake City Court is obliged to transfer the appellant's case to the juvenile court.

Section 55-10-105 is a key part of the Juvenile Court Act. It reads as follows:

"(1) Proceedings in children's cases shall be regarded as civil proceedings, with the court exercising equitable powers,

"(2) An adjudication by a juvenile court that a child is within its jurisdiction under section 55-10-77 shall not be deemed a conviction of a crime, except in cases involving traffic violations; no such adjudication shall operate to impose any civil disabilities upon the child nor disqualify the child for any civil service or military service or appointment.

"(3) Neither the record in the Juvenile Court nor any evidence given in the juvenile court shall be admissible as evidence against the child in any proceedings in any other court, with the exception of cases involving traffic violations.

"(4) No child shall be charged with crime nor convicted in any court except as provided in section 55-10-86 and in cases involving traffic violations. When a petition has been filed in the juvenile court, the child shall not thereafter be subjected to criminal prosecution based on the same facts except as provided in section 55-10-86.

"(c) All tracts of court records for all adjudications of traffic violations shall be submitted to the department of public safety as provided in section 41-2-17, Utah Code Annotated, 1953, as amended by chapter 84, Laws of Utah, 1961."

It can readily be seen, the legislature felt it important to give special attention to the traffic violations of juveniles. Traffic offenders under age eighteen can be convicted of traffic violations. In reading subsection (5) it is clear that the legislature intended such adjudications to take place in the juvenile court; or why would the juvenile court be instructed to submit their traffic violation records to the department of public safety?

In speaking on the question of how to interpret a statute this court said:

"It is a cardinal rule of statutory construction that all parts of the enactment should be considered together so as to produce a harmonious whole and give effect to the intent and purpose to be devined from the entire act." Great Salt Lake Authority v. Island Ranching Company, 18 Utah 2d 45, 48, 414 P. 2d 963 (1966).

In interpreting subsection (4) of Section 105 (quoted above) the respondents might argue that this

Section 105(4) gives other courts concurrent jurisdiction over juvenile traffic offenders. To be more specific my right intent that the words "in any court" found in the first sentence, and the meaning of the second sentence imply other courts have jurisdiction over juvenile traffic matters.

This interpretation cannot be correct, for if it were Section 105(4) would be inconsistent with other sections of the Juvenile Court Act. For example, in dealing with criminal matters, Section 55-10-79 requires that all other courts transfer the case to the juvenile court upon finding the accused to be under the age of eighteen. Since traffic violations are within the meaning of "crime" it would be inconsistent with the plain meaning of Section 79 to hold that Section 105(4) allows other courts jurisdiction over traffic matters.

The words "in any court" only refer to a court other than the juvenile court insofar as Section 55-10-86 is concerned. To be more specific, Section 86 does refer to the concurrent jurisdiction of the

district court in the case of felonies and the reference to "any court" merely refers to the Section exception. If the legislature had just stated "no child shall be convicted of any crime in the juvenile court except as provided in Section 55-10-86 and in cases involving traffic violations," the statute would not have made sense since Section 86 does not deal with the jurisdiction of the juvenile court alone, but with the jurisdiction of the district court. Therefore, the statute reads "in any court" which it must in order that it be grammatically correct.

In addition to the fact that it would be inconsistent with the remaining sections of the act, respondents' argument that the second sentence of Section 55-10-105(4) shows that the legislature intended there to be concurrent jurisdiction over juvenile traffic offenders cannot stand for at least one other reason (R. 6). The purpose of the sentence in question is to insure that a city or state does not prosecute the juvenile in addition to the action

taken in juvenile court. In fact, the legislature is emphasizing that the juvenile court does have exclusive jurisdiction over all children charged with crimes including traffic offenders, except for the cases mentioned in Section 55-10-86. In other words, the respondents by abusing the rules of statutory interpretation, give the very meaning to Section 55-10-105(4) which the legislature was trying to insure against. In reality the second sentence of subsection (4) is intended to reinforce the notion of exclusive jurisdiction for the juvenile court as is expressed elsewhere in the Juvenile Court Act of 1965.

B. The Juvenile Court Act was passed later in time than any statute with which it may conflict, and therefore, takes precedence over any such statute.

In 1943 Utah Code Annotated § 78-4-16 was passed into law. It reads in part as follows:

"The city court shall have exclusive original jurisdiction of all cases arising under or by reason of the violation of any of the ordinances of the city in which such court is held. . ."

The words "exclusive original jurisdiction" were used by the legislature in defining the jurisdiction of both the city court and the juvenile court; and in addition, both refer to municipal ordinance or ordinances of the city. It is obvious that both the city court and the juvenile court cannot exercise exclusive jurisdiction over city ordinances violated by persons under eighteen years of age.

It was argued by the respondents that the issuance of exclusive jurisdiction over the same subject matter to two different courts equals concurrent jurisdiction (R. 4). That notion is difficult to support legally.

On several occasions this Court has held that insofar as two acts are plainly inconsistent the later enactment takes precedence over the prior.

See Thiocol Chemical Corporation v. Peterson, 15 Utah 2d 335, 390 P. 2d 391 (1964); Pacific Intermountain Express Company v. State Tax Commission, 7 Utah 2d 15, 316 P. 2d 549 (1957); and Nelden v. Clark, 20 Utah 382, 59 P. 524 (1899).

Utah Code Annotated, § 55-10-77 and Utah Code Annotated § 78-4-16 are in direct conflict regarding the jurisdiction over persons under eighteen years of age who are accused of violating city ordinances. Both courts claim exclusive jurisdiction over the same group. Therefore, in accordance with the established law of this jurisdiction the later statute (Section 55-10-77) supercedes the earlier statute (Section 78-4-16); but just insofar as the two conflict. In other words Section 78-4-16 will continue to stand as a valid law except jurisdiction over children who violate traffic ordinances.

C. Because of the nature of the two statutes, Section 55-10-77 should be regarded as an exception to Section 78-4-16.

In quoting a Michigan case this Court stated:

"Where there are two acts of provisions, one of which is special and particular . . . and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision . . ."
Nelden v. Clark, supra p. 526. See Warne v. Harkness, 35 Cal. 601, 387 P. 2d 377 (1963).

In the matter at hand Utah Code Annotated 78-4-16 is general in that it provides a broad base of jurisdiction for all city courts in the state. On the other hand, Utah Code Annotated 55-10-77 can be construed as special and particular in that it deals with the specifically limited jurisdiction of a special court. Where the provision of the two acts are inconsistent the special act (Section 55-10-77) should be construed as an exception to the general act (Section 78-4-16); and the wording of the special act would then control. Thus, the jurisdiction of the juvenile court over persons under eighteen who violate municipal ordinances would be an exception to the general rule that the city court has jurisdiction over the violation of all city ordinances.

POINT III

THE LEGISLATURE PROVIDED THE JUVENILE COURT WITH THE MEANS NECESSARY TO EXERCISE EXCLUSIVE JURISDICTION OVER TRAFFIC VIOLATIONS OF CHILDREN, AND THE JUDICIARY CANNOT REFUSE TO CARRY OUT THE INTENT OF THE LEGISLATURE ON THE GROUNDS THAT THE ACT IS UNWISE.

Several sections of the Juvenile Court Act of 1965 specifically instruct the juvenile court in

the exercising of jurisdiction over traffic matters.

To begin with ". . . the issuance of a traffic citation or summons shall be sufficient to invoke the jurisdiction of the court." Utah Code Annotated § 55-10-83(3). In answer to the question of who can issue the mentioned citation or summons Utah Code Annotated § 55-10-90 states:

"A child may be taken into custody by a peace officer without order of the court (a) when in the presence of the officer the child has violated a . . . local law or municipal ordinance."

While it is true that Utah Code Annotated § 55-10-88 designates the rules of procedure of the juvenile court to be the Utah Rules of Civil Procedure an exception to that is provided for in the case of traffic laws. Utah Code Annotated § 55-10-96, states:

"The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws and ordinances . . ."

As defined in Utah Code Annotated § 55-10-64(2)

"board" refers to the board of juvenile court judges.

The juvenile court is authorized under Utah Code Annotated § 55-10-100 to impose certain controls, limitations and punishments on juvenile law violators. For example, "in cases of violations of traffic laws or ordinances, the court may, in addition to any other designation, restrain the child from driving for such periods of time as the court deems necessary, and may take possession of the child's drivers license" Subsection (9). "Any other disposition" undoubtedly refers to other forms of control or punishment as are authorized in the act such as the impounding of fines or requiring the restitution for damage or loss caused by the wrong doer as listed in subsection 7.

Should the juvenile court err, Utah Code Annotated § 55-10-112 provides the right of appeal to the Utah Supreme Court which right has been clarified by this court recently. In the interest of Persinger, 19 Utah 2d 186, 429 P. 2d 37 (1967).

In order to make the juvenile court system operate effectively the Legislature in Utah Code Annotated § 55-10-119 instructs counties, municipalities and the different State departments to "render all assistance and cooperation within their jurisdiction and power to further the objects of this act." Such an effort on the part of the different branches of government coupled with the powers of the juvenile court would allow the court to effectively exercise the exclusive jurisdiction over juvenile traffic violators which the Legislature intended it to have.

In his Memorandum Decision, Judge Croft explains:

"It is, it seems to me, obvious that traffic violations have become so numerous as to require special exemption from the exclusive jurisdiction of the juvenile court. No doubt a very large percentage of the cases taken before city courts and justices of the peace involve this sort of violation and to shift this tremendous burden to juvenile court judges exclusively would, as far as I am concerned, require a specific affirmative declaration of legislative intent."

In the first place no one is suggesting that the tremendous burden of traffic cases be shifted to

the juvenile courts. It is just a suggestion that the traffic violations involving persons under eighteen years of age be handled by the juvenile court in accordance with the will of the legislature. Furthermore, the "specific affirmative declaration of legislative intent" required of the legislature by Judge Croft has already been provided. What more can be necessary than the granting of exclusive jurisdiction and the tools with which to exercise that jurisdiction?

In Parkinson v. Watson, 4 Utah 2d 191, 291 P. 2d 400, 403 (1955), the court, speaking through Justice Crockett, said:

"It is a rule of universal acceptance that the wisdom or desirability of legislation is in no way for the courts to consider. Whether an act be ill advised or unfortunate, if such it should be, does not give rise to an appeal from the legislature to the courts. But the remedy for correction of legislation remains with the people who elect the successive legislature."

Judge Croft seems to feel that because of the burden of traffic cases the legislation is unwise.

The Legislature has made its intent regarding jurisdiction of the juvenile court clear there is nothing left for the courts to do but put it into effect.

In a New Jersey case a lower court refused to transfer a juvenile to the juvenile court in accordance with a juvenile court act, and instead ordered the fifteen-year old boy to be prosecuted for murder. In setting aside the order and remanding the case to the juvenile court the Supreme Court of New Jersey said:

"Matters of statutory policy are the exclusive concern of the legislature and the executive branches which are fully accountable to the electorate acting at the polls; and statutory enactments may not properly be nullified in whole or in part simply because the judicial branch thinks them unwise."

This case now before the court is very similar. Appellant is a juvenile who requested the city court to transfer his case to the juvenile court in accordance with Utah Code Annotated § 55-10-79. The respondents refused to do so. Since the statute makes clear the responsibility of the city judges

to transfer such a case, they must have decided not to do so on the grounds that they felt it unwise. Such a decision, of course, is not within their power.

POINT IV

THE GRANTING OF EXCLUSIVE JURISDICTION OVER PERSONS UNDER EIGHTEEN WHO ARE ACCUSED WITH THE VIOLATION OF TRAFFIC LAWS TO THE JUVENILE COURT IS CONSISTENT WITH THE PURPOSE OF THE JUVENILE COURT ACT.

According to court in Howe v. Jackson, 18 Utah 2d 269, 421 P. 2d 159, 161 (1966):

"A statute should be considered in the light of its background and purpose, and also in connection with other aspects of the law which have a bearing on the problem, in order that its intent and purpose be fulfilled."

The purpose of the Juvenile Court Act of 1965 as envisioned by the legislature is set out in Utah Code Annotated, § 55-10-63, which reads as follows:

"It is the purpose of this act to secure for each child coming before the juvenile court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the state to preserve and strengthen family ties whenever possible; to secure for any child who is removed from his home the care, guidance, and discipline required to assist him to develop into a responsible citizen, to improve the conditions and home environment responsible for his delinquency,

and, at the same time, to protect the community and its individual citizens against juvenile violence and juvenile law breaking. To this end this act shall be liberally construed." (Emphasis added.)

In reading the words of the statute it is difficult to see how anyone could state that the control of juvenile traffic violations doesn't fit within the purpose of the act. Doesn't society have an interest in giving the young driver "guidance and control . . . as will serve his welfare and best interest of the state?" Don't the people of Utah want the beginning driver to receive "guidance and discipline required to assist him to develop into a responsible citizen?" At the same time is it not necessary "to protect the community and its individual citizens against juvenile violence and juvenile law breaking" by drivers who are less than eighteen years of age? These goals can best be accomplished within the juvenile court system because of the methods and attitudes employed there.

According to Winters, 9 Utah L. Rev. 509 (1965), California and Oregon have comparable juvenile court acts. In discussing the California Juvenile Court Act, 12 Stanf. L. Rev. 388, 427, 428 (1960) states:

"Juvenile violators are thought to merit the special attention of a separate court. Ordinary criminal treatment is considered incompatible with the goal of rehabilitation because it is often insufficiently individualized, severe penalties may be conducive to further anti-social behavior, and the rehabilitative potential of the individual may be destroyed by the social stigma attached to criminal conviction. Therefore, original jurisdiction over juvenile traffic offenders is vested in the juvenile courts.

"In order to achieve a protective rather than adversary atmosphere, juvenile court procedure is substantially more relaxed than ordinary criminal procedure. The juvenile traffic offender is normally brought before the juvenile court by citation or by certification from one of the inferior courts. Should the juvenile court so determine, it may direct that he be prosecuted under the general law. A substantial number of juvenile traffic offenders are handled by referees who have been appointed by judges of the juvenile courts. These referees must certify their findings and recommendations to the juvenile court judge. Inferior court judges who are appointed referees are given the additional authority to make orders governing the juvenile's future conduct for a period not to exceed six months."

Then in speaking of the possibility of giving the local traffic courts exclusive jurisdiction over juvenile traffic offenders the author continues:

". . . such a jurisdictional grant would be contrary to the entire philosophy underlying the juvenile court law: that traffic courts are not equipped to recognize the general behavior problems which initially become evident

through traffic violations, whereas referees working under the juvenile court are so equipped."

Other important matters to be considered in deciding which court should have jurisdiction over juvenile traffic offenders are the essential of due process and fair treatment due to the recent case of In Re Gault, 387 U.S. 1 (1967). Juveniles must now be granted certain procedural safeguards. The first one is the giving of adequate and timely notice of the petition so the youngster and his parents have the opportunity to respond. The child is entitled to be represented by counsel and the state must provide one if his parents are not otherwise able. The third safeguard is the privilege against self-incrimination and the fourth is the opportunity for cross-examination.

At the present time such safeguards are not granted to defendants charged with misdemeanors in the regular State and city courts, Bott v. Bott, Feb. 19, 1968, No. 10992. In light of this fact the juvenile is likely to receive much better treatment in the juvenile court.

The policy reasons for having exclusive jurisdiction over juvenile traffic offenders in the juvenile court were discussed thoroughly in plaintiff's reply brief (R. 14, 15).

CONCLUSION

For the reasons presented, it is submitted that the District Court erred in denying the appellant's petition for a writ of prohibition and the judgment below should be reversed.

Respectfully submitted,

RONALD N. BOYCE