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Recommended Citation
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, Plaintiff-Respondent vs. SAMUEL S. TAYLOR, Defendant-Appellant	:	Case No. 13949

BRIEF OF APPELLANT

Appeal from the judgement and sentence entered against him by the Third Judicial District Court, in and for Salt Lake County, State of Utah.

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent	:	
vs.	:	
SAMUEL S. TAYLOR,	:	Case No. 13949
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IN THE SUPREME COURT OF THE STATE OF UTAH

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Defendant-Appellant	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, SAMUEL S. TAYLOR, appeals from the finding of guilty of the crime of operating a business without a valid Salt Lake County Business license entered against him in Third Judicial District Court.

DISPOSITION IN THE LOWER COURT

On November 11, 1974, this came on for trial *de novo.* Following stipulation as to the facts and arguments by counsel for the state and Mr. Taylor, appearing *pro se,* Judge Bryant H. Croft found the defendant guilty as charged and sentenced him to payment of a fine.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the lower court on the grounds that the statute charged is violative of provisions of the United States and Utah Constitution.

STATEMENT OF THE FACTS

Appellant was charged with violation of Section 11-9-3 of the Salt Lake County Ordinances. It was alleged that on or about the 27th day of November, 1973, he operated the Taylor Hearing Service in Salt Lake County without obtaining a business license.

Mr. Taylor waived a jury trial and agreed to stipulate to the facts and stated that he desired to present arguments going to the constitutionality of the statute under which he was charged. Accordingly, Appellant stipulated that on the 27th day of November, 1973, he did operate Taylor Hearing Service in Salt Lake County without a valid 1973 business license. Further, it was stipulated by Mr. Taylor and counsel for the state that Mr. Taylor operated a hearing service from his home at 3682 South 500 East, which is within unincorporated Salt Lake County; and that he had done so since 1968; that he had no employees other than himself; that he did a gross business of less than $10,000.00; and that he did not pay the required $7.50 fee as required by Section 11-9-2 of the ordinances of Salt Lake County for the year 1973 for those businesses having gross sales of less than $10,000.00 for the preceding calendar year.

Based upon the above mentioned stipulation, Mr. Taylor moved for dismissal of the case on the grounds that the ordinance requiring payment of a business license is unconstitutional. Following arguments from both

sides, after which the Court took the motion of Mr. Taylor under advisement. On December 2, 1974, the Court, in a memorandum opinion, found no merit to the defendant's motion and upon the basis of the stipulated facts found the defendant guilty as charged.

On December 9, 1974 the Appellant was sentenced to payment of a fine.

ARGUMENT

POINT I

THE BUSINESS LICENSE IS A VIOLATION OF APPELLANT'S RIGHT TO EQUAL PROTECTION UNDER THE LAW IN THAT SAID LICENSING STATUTE DISCRIMINATES AGAINST THE SMALL BUSINESSMAN. APPELLANT'S MOTION TO DISMISS DUE TO UNCONSTITUTIONALITY OF THE AFORESAID STATUTE SHOULD HAVE BEEN GRANTED.

Under the terms of Section 11, Chapter 9 of Salt Lake County Ordinances the licensing provisions are intended solely as a revenue generating measure. Section 11-9-15 provides that "(t)his ordinance is enacted solely to raise revenue for county purposes." This act is undertaken under the ostensible authority of Section 17-5-27, Utah Code Annotated 1953, which provides that counties" may license for purpose of regulation and revenue all and every kind of business . . . " This grant of power is, in turn, based upon the Constitutional authority given to the Legislature to do so by Article XIII, Section 5 of the State Constitution.

However, the mere grant of authority to tax does not grant to local authorities the right to impose arbitrary, capricious or grossly unfair taxation burdens upon its citizens. As this Court held in Orem City, v. Pyne, 16 U 2d 355, 401 P2d 181 (1965), a local ordinance which placed some businesses on a flat-fee basis with about 1/12 as much tax as other businesses which were taxed on sales-tax basis was unconstitutionally discriminatory.

The disparate nature of the taxation in this case is quite extreme. The appellant would be required to pay $7.50 per year as an operator of a business with gross earnings of less than $10,000.00. While large corporations with gross earnings several thousand times that of the earnings of the Appellant are subject to a maximum of a ten-fold increase in license costs.

While the local governments may constitutionally impose taxes for various purposes (Salt Lake City v. Christensen Co., 34 U. 38, 95 P. 523 (1908), it has an obligation to tax proportionally throughout the tax base. The provisions of Section 11-9-2 place such a disproportionate burden upon the small businessman that it must be considered a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. The maximal fee of $750.00 when applied as a revenue generating measure to the larger corporations in Salt Lake County must be considered as being only nominal in nature, and consequently, the larger corporations are effectively excluded from the class being taxed.

Such a consequence must be seen as sufficiently disparate to dictate constitutional prohibition.

POINT II

THE EQUAL PROTECTION CLAUSE DICTATES THAT CLASSIFICATIONS MAY BE MADE UPON A REASONABLE BASIS. CLASSIFICATION OF SOLE OPERATORS AS BUSINESSES IS ARBITRARY AND CAPRICIOUS. THEREFORE THE ORDINANCE SHOULD BE OVERTURNED AS BEING VIOLATIVE OF THAT CONSTITUTIONAL PROVISION.

In considering "equal protection of the laws" the guiding principles frequented asserted by various courts is that all persons in like circumstances be treated alike. Hartford Steam Boiler Inspection and Ins. Co. v. Harrison 301 U. S. 459, 81 L. Ed. 1223, 57 S. Ct. 838. As a corollary to this definition of equal protection, classifications which have some rational basis are generally upheld.

However, the mere fact that common parlance assigns to huge profit-making organizations and single operators the same term, i. e. "business," should not be allowed to obfuscate the central fact that they have little, if anything, in common.

Section 11-9-3 of Salt Lake County ordinances defines "business" as "all activities . . . carried on for the purpose of gain or economic profit." The definition specifically exempts employees from its scope. In actual fact, the person who I have denominated as a "sole operator" bears a much stronger financial resemblance to an employee than to a true "business." In the instant case, Mr. Taylor probably does precisely those things he would do as an employee of a hearing aid business, except he apparently makes less money than he would as an employee. In fact

we donominate such a person as being "self-employed."

In the case of Provo City v. Provo Meat, 49 U 528, 165 P. 477 (1917), the Utah Supreme Court held that ordinances like the one presently before the court were "occupational taxes" and consequently not regulatory in nature. If this is true then employee occupations have been arbitrarily excluded.

To counter this, it may be said that since under the terms of Section 17-5-27, Utah Code Annotated, 1953 counties are not authorized to license employees, but rather only businesses. However, this only shifts the arbitrariness from the county to the legislature and does not validate the classification. The fact that the legislative sanction has allowed discrimination against small businesses is simply further proof that the current situation is the product of legislative caprice.

POINT III

THE STATUTES PROVIDING FOR TAXATION OF BUSINESS LICENSES IS ARBITRARY IN THAT IT EXCLUDES INSURANCE AGENTS FROM THE TAX. THIS IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Insurance businesses are specifically excluded from the revenue generating taxation provided for by the statute before us. The legislature established a regulatory licensing procedure in lieu of all other licenses and fees in Section 31-14-4 (5) Utah Code Annotated (1953).

At first blush it appears that since the legislature has set up licensing on a state level, that that would preclude business licensing on a county level. However, as the court points out in Provo City v. Provo Meat and Packing Co. (op. cit.) a regulatory license can in no way be considered to take the place of a revenue license. Therefore, the legislature, for no apparent reason, has exempted insurance agencies from business licenses by excluding the power to tax them from powers granted to counties, from the above it follows that since the grant of power to the counties arbitrarily excludes insurance agencies, it violates the equal protection clause of the United States Constitution.

CONCLUSION

The imposition of the requirement of a business license is unfair to the appellant in that it denies him Equal Protection under the laws as provided by the Fourteenth Amendment of the United States Constitution. Therefore, Section 11-9-3 is invalid as an abuse of authority delegated to Salt Lake County or because the statute under which that was granted is unconstitutionally discriminatory. Therefore the judgement from the Court below should be reversed.

Respectfully submitted,

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