

2000

Ira K. Hearn v. Utah Liquor Control Commission : Brief of Petitioner

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH SEP 16 1976

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

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IRA K. HEARN, JR.,

Petitioner,

vs.

UTAH LIQUOR CONTROL
COMMISSION,

Respondent.

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Case No. 14269

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PETITIONER'S BRIEF

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Petition for Review from the Decision of
The Utah Liquor Control Commission

* * * * *

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FILED

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Clerk, Supreme Court, Utah

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Case No. 14269

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PETITIONER'S BRIEF

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NATURE OF THE CASE

This is a petition for review of the decision of the Utah Liquor Control Commission issued September 3, 1975, and predicated on a hearing held on August 22, 1975, dismissing the Petitioner as Director of the Utah Liquor Control Commission. The petition is filed under the provisions of §32-1-32.6, UCA 1953, as amended.

DISPOSITION BY THE
UTAH LIQUOR CONTROL COMMISSION

Following the hearing on August 22, 1975, the Utah Liquor Control Commission issued its order dated September 3,

1975, removing and dismissing Petitioner as Director of the Utah Liquor Control Commission, effective as of said September 3, 1975.

RELIEF SOUGHT BY PETITION FOR REVIEW

Petitioner seeks a reversal of the decision of the Utah Liquor Control Commission and the reinstatement of Petitioner as Director of said Commission.

STATEMENT OF FACTS

Petitioner has set forth in detail the nature of the proceeding for which review and reversal is sought by this petition in his Petition for Review served and filed with this Honorable Court on September 25, 1975. Thereafter, by order of this Honorable Court, dated November 5, 1975, pursuant to stipulation of counsel, Petitioner was granted to and including the first day of December, 1975, in which to file Petitioner's Brief in support of his Petition for Review.

ARGUMENT

POINT I

THE EVIDENCE PRESENTED AT
THE HEARING BEFORE THE UTAH
LIQUOR CONTROL COMMISSION
ON AUGUST 22, 1975 DID NOT
CONSTITUTE "CAUSE" FOR REMOVAL
FROM OFFICE AS REQUIRED BY
SECTION 32-1-5.5(3), UCA 1953,
AS AMENDED BY CHAPTER 90
LAWS OF UTAH 1975

The applicable statute, §32-1-5.5(3), UCA 1953, as amended by Chapter 90 Laws of Utah 1975, provides that the Director of the Utah Liquor Control Commission "may only be removed from office for cause after a public hearing by a majority vote of the Commission."

By letter dated August 14, 1975, the Utah Liquor Control Commission notified the Petitioner that a hearing would be held on the 22nd day of August, 1975, to determine whether or not the Commission should remove Petitioner as Director of the Utah Liquor Control Commission. By that letter, the Commission stated its "cause" for its intended removal of the Director as follows:

"It is the opinion of the Commission that difficulties have arisen over the last six months between the Director of the Utah Liquor Control Commission and the Commission members. It is the Commission's opinion that these difficulties prevent us from working amicably and cohesively with you as Director of the Utah Liquor Control Commission. Because of this, we feel that the Commission's business is not being carried out in a cooperative manner nor with a singleness of purpose."

By letter of August 19, 1975, directed to Robert B. Hansen, Deputy Attorney General of the State of Utah, then acting counsel for Petitioner, the Utah Liquor Control Commission submitted an additional alleged "cause" for removal by stating that, "...we feel

there has been a general deterioration of communication and direction between the Commission and Director which leaves the Commission with no confidence in the Director."

At the hearing on August 22, 1975, the Chairman of the Utah Liquor Control Commission, Gerald E. Hulbert, and the Commissioners, Herbert J. Corkey, Jr. and Ernest F. Durbano, without being sworn, testified as to the Commission's purported "cause" for Petitioner's removal. The said "causes" testified to by the Chairman and Commissioners are set forth in detail on pages 10 through 22 of Petitioner's Petition for Review on file herein, together with Petitioner's response to each said "cause" or charge for removal. These purported "causes" for removal so testified to may be summarized as follows:

- (1) Alleged insubordination and lack of loyalty to the principles of law.
- (2) Unauthorized signing by Petitioner of the employment contract with Mr. Thomas H. Kemp.
- (3) Petitioner's report to the Commission, as requested, concerning a cost study as to the data input system.
- (4) Petitioner's letter of April 17, 1975, to Governor Calvin L. Rampton complaining that the Commission evidently

had no intention of following the Governor's outline (guidelines) as to respective duties of the Commissioners and the Director.

(5) Reports of shortages in various stores of the Utah Liquor Control Commission during the months of February-April, 1975.

(6) Commissioner Corkey's opinion that Petitioner's "...day-to-day direction had not been what it should be or we would not have the morale problem referred to."

(7) Petitioner's alleged desire to change the system of government from a commission to a directorship.

It will be noted that the testimony of the Chairman and Commissioners was not responsive to the broad charges of cause for dismissal set forth in the Commission's letters of August 14, 1975 and August 19, 1975.

Following the hearing, and by its letter of September 3, 1975, the Utah Liquor Control Commission made findings of fact. Only five of the findings can be identified as relating to the alleged causes for dismissal testified to by the Commissioners at the hearing on August 22, 1975. They are as follows:

Finding #1: Responds to number four above that Petitioner directed a letter dated April 17, 1975, to Governor Rampton complaining that the Commission evidently had no intention of following

the Governor's written guidelines concerning the respective duties of the Commissioners and the Director.

Finding #2: Responds to number two above concerning Petitioner's alleged unauthorized signing of the employment contract with Thomas H. Kemp.

Findings #5 and #10: Respond to number four above concerning Petitioner's recommendations as to in-house key taping procedure.

Finding #6: Responds to number seven above concerning Petitioner's expressed desire to change the administration from a full time commission to a part-time commission and full time directorship.

These five findings do relate to the alleged causes for dismissal testified to by the Chairman and Commissioners. However, they are not responsive to the grounds for removal or dismissal set forth in the Commission's letters of August 14, 1975 and August 19, 1975, which are limited to alleged general "difficulties" between the Director and the Commission, and a "general deterioration of communication between the Commission and Director which leaves the Commission with no confidence in the Director."

The remaining eight findings are neither supported by

the charges of causes stated in the letters of August 14, 1975 and August 19, 1975, nor are they responsive to the testimony of the Commissioners. Rather, they relate to new and extraneous matters developed in testimony and documents introduced for the first time at the hearing, as follows:

Finding #3: Failure to route to the Commission Governor Rampton's letter requesting information to assist in responding to Richard B. Kinnersley's letter of August 5, 1975.

Finding #4: Petitioner's letter of March 5, 1975, concerning a proposed pay increase for Clara Pratt.

Finding #8: Petitioner's alleged refusal on August 18, 1975, to sign a personnel action form.

Findings #7, #9, #11, #12 and #13: These findings apparently complain of "a difference of management philosophy" and conflicts in the interpretation of the allocation of duties and responsibilities of the Director and Commissioners as outlined by Governor Rampton's written guidelines of January 20, 1975, and as set forth in Chapter 90 Laws of Utah 1975, which became effective March 13, 1975.

Petitioner's response to these additional findings and his reference to the supporting record are fully set forth in Petitioner's Petition for Review on file herein.

Since these additional findings were not supported by the testimony of the Chairman or Commissioners nor by charges set forth in their letters of August 14, 1975 and August 19, 1975, Petitioner respectfully submits that he had no opportunity to explain or rebut the additional charges contained in the said findings, and they are unavailable to support the alleged basis for his dismissal.

It may well be that the failure of the letters of August 14, 1975 and August 19, 1975 to set forth in detail or with sufficient particularity the alleged causes for Petitioner's dismissal renders it unnecessary for this Court to consider the purported evidence allegedly supporting his dismissal.

The law as to this point is set forth in State ex rel Hart v. Common Council of Duluth, decided by the Supreme Court of Minnesota on May 9, 1893, and reported at 55 N.W. 118, 121. There, the Court stated "Since none of the charges relied on are sufficient in law ... this renders it unnecessary to consider the evidence at all."

The law as to what constitutes cause for removal of a public officer where "cause" for removal is required by statute, is most cogently set forth in the 1951 decision of the Supreme Court of Utah in Taylor v. Lee, 119 Utah 302, 226 P2d 531. In

that case, Justice Latimer, speaking for an undivided Court, stated:

"The reason for throwing this cloak of protection around an office-holder is to assure to him the right granted by the statute; namely, that he shall be removed for cause only and not for political or trifling reasons.... Removing for cause takes a form of punishment, it infers that the office-holder has failed to perform his duties or was incompetent or unsuitable for the position to which he was appointed and directly reflects upon his official or personal qualifications.... Cognizance should be taken of the fact that he who originally hears the charges has, in most instances, already arrived at a decision to remove, and, as a consequence, the original hearing is before one who lacks the impartiality of a disinterested judge."

The Court continues (226 P2d 540) "...the Governor should not remove an officer, which act carries with it the possible ruination of the man removed, until and unless there is some showing by misconduct or otherwise that he does not possess the qualifications, fitness and ability to perform the duties of his office...."

Here, as in the Taylor case, there having been no contention that Petitioner was guilty of fraud or dishonesty in connection with any of the transactions referred to, "this admission limits the issues largely to the question of incompetency or inefficiency on the part of the plaintiff.... We believe that before casting a shadow on a man's character or his capacity to hold office, a showing of unfitness is required.... We believe removal from a position of honor and trust for cause is a harsh remedy which

should be limited to cases where the evidence reasonably establishes that the office-holder failed to meet the ordinary standards of competency and efficiency."

Mr. Justice Crockett in State v. Jones, 17 Utah 2d 190, 407 P2d 571, had occasion to reverse the dismissal of the County Auditor of Salt Lake County under §77-7-1, UCA 1953, which provided for removal for high crimes, misdemeanors or malfeasance in office. In that case, Mr. Justice Crockett, speaking for an undivided Court, stated, "These statutes are not of common law origin, but are creatures of legislative enactment, and due to the seriousness of their consequences, both to the individual in the forfeiture of his office, and as an intervention in the process of democracy, proceedings under them are properly regarded as quasi-criminal in nature. Accordingly, the statute should be strictly construed against the authority invoking it and liberally in favor of the one against whom it is asserted."

The general rule is stated at 67 Corpus Juris Secundum §60 page 248 as follows:

"The cause must be one which specially relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. An officer should not be removed from office on trivial or inconsequential matters, or for mere technical violations of statute or official duty without wrongful intention. The entire record of the employee sought to

be discharged, including that prior to the time the administrative official took office, is reviewable in determining whether just cause exists for the discharge of the employee."

Justice Larson, in a dissenting opinion, in State ex rel Hammond v. Maxfield, 103 Utah 1, 43, 132 P2d 660, quotes with approval from Mechem on Public Officers as follows:

"Section 452: Authority to remove for cause cannot be construed as an implied authority to remove at pleasure."

It is respectfully submitted that a review of the record as set forth in the Petition for Review and attachments thereto must leave the Court with an understanding that in the case at bar Petitioner's removal was without cause and solely for trivial and inconsequential matters strictly of a political nature and reflecting no stigma as to the competence or willingness of the Petitioner to perform his duties.

Testing the initial charges of "cause" against the accepted legal interpretations of that term, it is apparent that "difficulties" and "lack of communication" do not measure up to "cause" for dismissal. There is not a public officer alive who could not be discharged "for cause" if "difficulties" and "lack of communication" were sufficient grounds to make out "cause."

Considering the testimony of the Chairman and Commissioners and testing their unsworn statements against statutory

"cause", several preliminary circumstances call attention to themselves.

First, the three witnesses rely upon widely differing grounds. One, the Chairman, Mr. Hulbert, speaks of insubordination and lack of loyalty to principles of law (whatever that may have meant to the witness). He also complains of Petitioner's allegedly unauthorized signing of an employment contract with Mr. Kemp, and finishes by referring to his disagreement with Petitioner's written report, as requested, giving his judgment as to the relative undesirability of engaging an outside firm to do the data input or key taping operations against continued use of in-house personnel. The second, Commissioner Corkey, complains that Petitioner wrote the Governor reporting that the carefully worked out guidelines as to the respective duties of the Commissioners and Director were not being followed. He also complains vaguely of newly emerging reports showing shortages in various stores revealed by the new accounting system initiated by Petitioner. The third, Commissioner Durbano, complains that Petitioner has different views from the Commissioners as to an efficient organizational structure for the Commission.

One would think that if any specific incompetence or misconduct justified dismissal, the three members might agree in

focusing on such cause in their testimony. Rather, they seem to be searching about for "cause" hoping to find some peg upon which to hang their decision.

Second, the proliferation and multiplicity of alleged "causes" and the willingness of the Commissioners to shift their ground from their initial charges, to their statements at the hearing, and finally, to the widely differing grounds set forth in their "findings", suggests the shallowness of their position. It demonstrates that the causes testified to and relied on are really afterthoughts dredged up to justify a decision already arrived at for other reasons.

Certainly Mr. Hearn was not dismissed because he mistakenly failed to route the Governor's letter from Mr. Kinnersley to the Commissioners. Nor was he discharged because his report and recommendations as to in-house key taping differed with what the Commissioners wanted to hear. Nor could Mr. Hearn's firing have resulted from his signing the employment contract with Mr. Kemp after the Commission obtained the funds it requested for this purpose, the employee had been cleared, and the contract had been approved as to form for the Director's signature by the very counsel who now represents the Commission. Nor could the Commission really complain that Mr. Hearn felt obliged to let the Governor know that the guidelines

so carefully worked out by the Governor personally were not being applied or followed by the Commission notwithstanding the Commission's prior approval.

The real reason for Petitioner's dismissal, and the "cause", if any exists, lies more in the area of "difference of management philosophy", differing opinions as to the allocation of duties between the Commissioners and the Director spelled out by the Governor's guidelines of January 20, 1975, and later by the legislature's adoption of substantially the same allocations in Chapter 90, Laws of Utah 1975. More specifically, the real cause must be found in Petitioner's statements to the Citizens Council and to Commissioner Durbano that he favored a part-time Commission and a full time Director. This is the insubordination and lack of loyalty to principles of law referred to without further specification by Chairman Hulbert. This is the so-called lack of loyalty to the "Commission" complained of in Finding #9. It forms the underlying basis for Findings #12 and #13.

The issue as to allocation of duties and organizational structure of the Utah Liquor Control Commission had been prominently brought to the attention of the Legislature, the Commission, the Governor and the Citizens Council long before the

Petitioner was asked to give his views to the Citizens Council. Having served as Commissioner and then as Director, Mr. Hearn had desirable background from which to express a qualified opinion and judgment. The issue was very much in the public eye and was of considerable interest to the public. Mr. Hearn had as much right to express his view that a part-time Commission and full time Director was more desirable as did the Commissioners that they preferred a full time Commission. If the issue had not been mandated for study by the Governor and Legislature, Mr. Hearn's expression of his views might have seemed somewhat presumptuous. Under the existing circumstances, it was an honest and qualified expression of a conviction deeply held, an exercise of freedom of speech, and does not constitute cause for dismissal even though the Commissioners held differing views in their own interests. Furthermore, Mr. Hearn's views as to the allocation of general policy-making to the Commissioners and day-to-day administration and direction to the Director, was consistent both with the views of the Governor and of the Legislature. His opinion that three full time Commissioners were neither necessary nor desirable for the formulation of policy and tended to provoke conflict and controversy in day-to-day administration was sound, qualified, and in the best interests

of sound public administration of the agency. Surely, his courage in expressing these views does not constitute a lawful "cause" for his dismissal. His views are more in the area of differing political views which should be encouraged rather than punished.

There are a number of decisions of the Supreme Court of Utah which, though somewhat collateral, may be of some assistance to the Court: *People v. McAllister*, 10 Utah 357, 37 P 578; *Pratt v. Board of Police and Fire Commissioners*, 15 Utah 1, 49 P 747; *Heath v. Salt Lake City*, 16 Utah 374, 52 P 602; *Pratt v. Swan*, 16 Utah 483, 52 P 1092; *Gilbert v. Board of Commissioners*, 11 Utah 378, 40 P 264; *Silvey v. Boyle*, 20 Utah 205, 57 P 880; *State v. Beardsley*, 13 Utah 502, 45 P 569; *Taylor v. Gunderson*, 107 Utah 437, 154 P 2d 653; *Sheriff of Salt Lake County v. Board of Commissioners*, 71 Utah 593, 268 P 783; *Everill v. Swan*, 17 Utah 514, 55 P 68; *State ex rel Hammond v. Maxfield*, 103 Utah 1, 132 P 2d 660. See also *State v. Board of Regents of University of Nevada*, 269 P 2d 265; *Sausbier v. Wheeler*, (1937) 299 New York Supp. 466; and the exhaustive annotation at 99 ALR 336-405.

POINT II

THE UTAH LIQUOR CONTROL
COMMISSION DID NOT REGU-
LARLY PURSUE ITS AUTHORITY
IN PROVIDING OR CONDUCTING
A "PUBLIC HEARING" AS REQUIRED
BY SECTION 32-1-5.5(3), UCA 1953
AS AMENDED BY CHAPTER 90 LAWS
OF UTAH 1975

Petitioner has carefully pointed out some fourteen procedural errors which he claims were committed by the Commission in providing and conducting the "public hearing" required by law for consideration of the evidence of "cause" for his dismissal. Without waiving or abandoning any of these alleged procedural errors, this brief will only attempt to review the applicable case law generally with respect to the procedural requirements for such a hearing and specifically the case law with respect to two alleged errors; namely, failure to give due notice concerning the grounds or "causes" for dismissal, and the denial of the right to cross examine the witnesses offered against Petitioner.

Justice Bartch had the opportunity, at the turn of the century, to pass on a series of official removal cases before the Supreme Court of Utah. Perhaps his classic decision is that of People v. McAllister, decided July 27, 1894 and reported at 10 Utah 357, 37 P 578. At 10 Utah 372, Justice Bartch states:

"The conditions of removal are express, and clearly set forth in the statutes, and cannot be disregarded as immaterial. A removal for cause is a judicial act which affects the reputation and rights of the accused. It is in law a punishment for crime, and the proceeding provided by statute can no more be dispensed with in such a case than a court can disregard the statutory provisions in the trial of a cause where a person is charged with the commission of an offense. From an examination of the history of judicial proceedings, it will be seen that officers clothed with the power of removal for cause

have frequently attempted its exercise at pleasure, ex parte, and such examination will also show how futile have been their efforts....."
"The proceeding being thus a judicial one, the power must be exercised under the same limitations, precautions, and sanctions as in any other judicial proceedings."

In Taylor v. Lee, decided January 13, 1951, 119 Utah 302, 226 P2d 531, Justice Latimer addressed himself generally to the procedural requirements for removal of an office-holder for cause and cites Bodmer v. Police Mutual Aid Association, 94 Utah 450, 78 P2d 640. He states the minimum requirements to be as follows:

"(1) A written notice of the nature of the charges couched in ordinary and understandable language; (2) a notice of the time and place of hearing; (3) an opportunity by the office-holder to be heard and answer the charges; (4) the right to be represented by counsel, with opportunity for cross examination; and (5) the presence of a reporter to preserve the testimony so that, if necessary, the question of cause can be made the subject of judicial review."

In Forman v. Creighton School District No. 14, 87 Arizona 329, 351 P2d 165, the Court cites Taylor v. Lee and states the requirements for procedural due process in a removal hearing before the Board of Trustees of the School District.

In Napuche v. Liquor Control Commission, decided by the Supreme Court of Michigan on April 13, 1953, 336 Michigan 398, 58 N.W. 2d 118, the Court reviews and restates the necessary

procedural requirements and quotes the following from Morgan v. United States, 304 U.S. 1, 82 L. Ed. 1129:

"The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies seemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

The Michigan Court then proceeds to list and itemize the procedural rights to which the person charged in at least entitled and quotes approvingly from Hanson v. Michigan State Board of Registration in Medicine, 253 Michigan 601, 236 N.W. 225, 228.

The case of Friedman v. State of New York decided April 23, 1969, 24 N.Y. 2d 528, 301 N.Y.S. 2d 484 not only goes to the issue as to "cause" but states the requirements for proper procedure and questions the combining of the functions of complainant, prosecutor and judge. Further as to the question whether procedural due process requires the disqualification of an outspoken and antagonistic opponent, see Acierno v. Folsom, Supreme Court of Delaware (1975) 337 Atlantic 2d 309. This decision cites and relies on Kennecott Copper Corporation v. F. T. C. (Tenth Circuit)

467 F. 2d 67, 80 (1972). In Taylor v. Lee, 226 P2d 53, 538, the Court notes that where the Governor is the removing officer, "there is no apparent reason why the Governor should not appoint a referee to hear the evidence and make recommended findings." Section 32-1-32.2 UCA 1953 makes express provision for use of hearing officers by the Utah Liquor Control Commission. Surely both the appearance and substance of due process and impartial procedure would have suggested recourse to such a hearing officer here where the Commissioners were required to pass on their own statements as alleged cause for dismissal.

The law as to Petitioner's right to written notice of the charges against him constituting cause for removal is concisely stated Taylor v. Lee, 226 P2d 531, 538, as follows: "...the minimum requirements are these: (1) A written notice of the nature of the charges couched in ordinary and understandable language." It may be that vague references to "difficulties" between the Commissioners and the Petitioner is "ordinary" language, but it certainly is not "understandable" to one who is obliged to prepare a defense to such a charge. Nor was the specification of "charges" improved by the second letter from the Commission on August 19, 1975, three days prior to the

scheduled hearing, where reference is made to a feeling of "general deterioration of communication and direction between the Commission and Director which leaves the Commission with no confidence in the Director".

Justice Bartch is even more specific as to the requirement for notice of the charges against the challenged officer. People v. McAllister, 10 Utah 357, 375, 37 P 357, quotes favorably from Dullam v. Wilson, 53 Michigan 392, 19 N.W. 112, as follows: "There must be charges specifying the particulars in which the officer is subject to removal. It is not sufficient to follow the language of the constitution. The officer is entitled to know the particular acts of neglect of duty, or corrupt conduct, or other act relied upon as constituting malfeasance or misfeasance in office; and he is entitled to a reasonable notice of the time and place when and where an opportunity will be given him for a hearing, and he has a right to produce proof upon such hearing." Petitioner was handed the letter of August 14, 1975 just eight days before the hearing scheduled for August 22, 1975, the supplemental statement of written charges was dated August 19, 1975, and when counsel for Petitioner asked for time to prepare his defense at the close of the Commissioners' statements, he was given

ten minutes and no more.

There can be little doubt that Petitioner was denied procedural due process and the quasi-judicial proceeding mandated by law when, over objections of his counsel, he was denied the opportunity to cross examine the Commissioners at the close of each Commissioner's unsworn statement.

Mr. Justice Latimer in Taylor v. Lee lists as the fourth minimum requirement "the right to be represented by counsel with opportunity for cross examination." Justice Bartch likens a removal hearing to the trial of a cause where a person is charged with the commission of an offense. Surely, such a procedure requires an opportunity to cross examine adverse witnesses even though they may not have been sworn. People v. McAllister, supra at 10 Utah 357, 373.

Forman v. Creighton School District No. 14, 87 Arizona 329, 351 P2d 165, states: "The questions thus presented are as follows: (1) Whether the order of the Board of Trustees which issued pursuant to a hearing in which petition was denied the right to cross examine witnesses appearing against her, denied to her due process of the law.... In connection with the first question, our research indicates that the over-whelming weight of authority holds that for an administrative body, conducting a

quasi-judicial hearing, to preclude the individual concerned from cross examining witnesses appearing against him, denies him due process of law." Citing Taylor v. Lee, supra. The Arizona Supreme Court goes on (351 P2d 165, 167) to state that the person charged "is at least entitled to.... (4) The right to cross examine the witnesses who testify against him."

Friedman v. State, 24 N.Y. 2d 544, 301 N.Y.S. 484, 497, quotes Smith v. Illinois, 390 U.S. 129, 19 L. Ed. 2d 956, to the effect that "... the right of cross examination (is a) fundamental right, the deprivation of which is error of the first magnitude."

POINT III

THE DECISION OF THE UTAH LIQUOR
CONTROL COMMISSION ISSUED SEPTEMBER 3, 1975, REMOVING PETITIONER AS DIRECTOR OF THE SAID COMMISSION AND THE HEARING AND PROCEDURE BY WHICH IT REACHED ITS DECISION VIOLATED THE CONSTITUTIONAL RIGHTS OF THE PETITIONER

It is unnecessary to a reversal of the order of the Utah Liquor Control Commission that Petitioner also establish and that he was deprived of procedural and substantive due process and his right of freedom of speech. Probably those charges are

more pertinent to an action for damages under the Federal Civil Rights Act, 42 USCS Section 1983.

Nevertheless, it is noted in passing that Petitioner's removal resulted from his rightful expression of his views concerning the more efficient organization of the Commission, and that he was removed without proof of lawful cause for removal as required by statute; and that the procedural due process guaranteed him by the state and federal constitutions and the state statute concerning his tenure of office, was denied him.

Certainly the Commissioners acted under color of state law in taking each of the steps which led to Petitioner's removal.

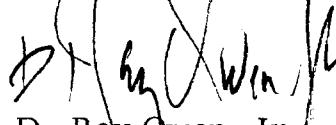
Whether Petitioner's right to damages under 42 USCS 1983 depends upon a disposition of this proceeding in this Court favorable to Petitioner, is an issue yet to be determined by another court.

CONCLUSION

The decision of the Utah Liquor Control Commission dated September 3, 1975, dismissing Petitioner, Ira K. Hearn, Jr., as Director of the Utah Liquor Control Commission should be reversed with instructions to the Commission to immediately reinstate Petitioner with full salary from September 3, 1975.

DATED this 28th day of November, 1975.

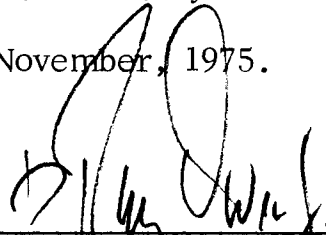
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Brief of Petitioner, Ira K. Hearn, Jr., were duly mailed to William Barrett, Esq., Assistant Attorney General, State Capital, Salt Lake City, Utah, 84114, by first class mail, postage prepaid, this 28th day of November, 1975.



D. Ray Owen, Jr.

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