Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (pre-1965)

1951

Charles S. Wyatt, Aaron Hale, Glen Renshaw v. William M. Baughman : Respondent's Supplemental Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1

Part of the Law Commons

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.
Pugsley, Hayes & Rampton; A. U. Miner; Attorneys for Respondent;

Recommended Citation
Brief of Respondent, *Commercial Bank of Utah v. State*, No. 7636 (Utah Supreme Court, 1951).
https://digitalcommons.law.byu.edu/uofu_sc1/1406

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

7636

IN THE SUPREME COURT
of the
STATE OF UTAH

FILED
SEP 24 1951
Clerk, Supreme Court, Utah

COMMERCIAL BANK OF UTAH, a corporation,
Plaintiff and Respondent,

— vs. —

STATE OF UTAH and ROY W. SIMMONS as Bank Commissioner for the State of Utah,
Defendants and Appellants.

No. 7636

RESPONDENT'S SUPPLEMENTAL BRIEF

PUGSLEY, HAYES & RAMPTON
A. U. MINER
Attorneys for Respondent

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT
of the
STATE OF UTAH

COMMERCIAL BANK OF UTAH,
a corporation,
Plaintiff and Respondent,

— vs. —

STATE OF UTAH and ROY W. SIMMONS as Bank Commissioner for the State of Utah,
Defendants and Appellants.

No. 7636

RESPONDENT'S SUPPLEMENTAL BRIEF

This Supplemental Brief is prepared and filed because of the request of the Court that Mr. Miner submit in brief form the matters referred to by him in concluding the argument on respondent's case on September 5, 1951.

During the earlier argument other counsel had referred to the fact that upon the trial in the District Court it had been stipulated that there was not necessarily any relationship between the total aggregate assets

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

of an institution being examined and the amount of time required by the state bank examiners to actually perform the examination, or as the stipulation expressly stated, (R. 10) "That because of the factors which vary from examination to examination and institution to institution, there is not necessarily a correlation between the amount of the fee charged by the State Bank Commissioner for any particular year and the work actually performed by the state banking department in its examining and supervisory capacity during the period * * * (for example, less time is consumed in examining where there are ten well secured loans of $10,000.00 each than where there are 100 loans of $1000.00 each secured by a variety of collateral, each of which must be separately analyzed.) * * *."

In order to better understand the factual basis of this stipulation, we should have in mind just what is done by examiners in making an examination of a bank. The examiners make a check of all the bank assets, including not only the capital structure and all notes, bonds and other evidence of indebtedness, but also including fixed assets, such as buildings and equipment, as well as cash on hand and money in other banks. They make a check of all liabilities, including all kinds of deposits—ordinary savings and checking accounts, public funds on deposit, time certificates of deposit and others.

Every bank is authorized by law to loan a certain percentage of its deposit monies and each bank carries a certain amount of bonds which usually can be converted

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

on short notice to meet cash requirements. The examiners make a check with respect to this available cash and to the loan and deposit ratio and their proportionate ratio to capital structure.

With respect to loans, which are considered as assets of the bank to stand back of deposits and other liabilities, every loan in the bank is checked and examined, not only as to borrower and amount and method of re-payment, but to see if proper credit files are maintained. A check is made as to the security as to whether it is an old car, livestock, a farmer's crop or a pledged government bond or corporation stock certificate or what. The value of the security is checked as against the amount of the loan to see whether the margin of security is ample or insufficient or questionable. The credit files should contain financial statements and appraisal reports of the security and these are examined carefully. The payment ledger or note itself is checked to see if the obligation is past due or if any installments are in default.

After such check is made a written report of examination is prepared and, among other items, every loan that is past due, every loan with insufficient security and every loan upon which there may be a possible loss and every loan which is considered in any way as substandard is specifically written up, and if a loss is apparent the bank is required to write the amount off or part of it off and the amount of the write-off is deducted from the surplus and undivided profits portion of the bank's capital account.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Under Sec. 7-3-41, U.C.A., 1943 as amended by Chapter 11, Laws of Utah, 1943, a Utah bank can loan to any one individual or corporation no more than 15% of the aggregate of its capital and surplus account (with some exceptions covering warehouse receipts and similar title documents). Thus, it will be seen that small country banks with limited capital cannot make very large loans. There is nothing in the record to so show, but it is a fact that this was one of the reasons for consolidating the five banks of Heber, Spanish Fork, Payson, Nephi and Delta into the one large bank with a larger capital structure under the name, The Commercial Bank of Utah. A branch is not limited in making a loan to what may be considered its proportion of the capital, but can make a loan based upon the total capital and surplus of the corporation of which it is a branch office.

It can be readily seen that a country bank with a lot of small farm and crop loans with security that may be a few miscellaneous livestock, crops, water stock, automobiles, trucks or farm machinery, or homes and farm real estate, would be different and would require a different amount of time in its examination, even though its total assets may be comparable, than would a bank such as the one in Springville, Utah, which makes a number of substantially large loans to big contractors, who not only have ample financial statements with large expensive equipment and other assets, but usually also have government or state road contracts or similar items back of them.

It can also be readily seen that with two country

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

banks with very similar loans and similar security, one may have a lot of past due and sub-standard loans which have to be written up and reported on, while the other may have everything up to date and very few items requiring written comment. Drought conditions which have prevailed in Southern Utah, frost which took the fruit crop in Northern Utah last year, and similar conditions are factors which sometime help to create past due and sub-standard loans in spite of what management may do and thus it sometimes happens that the same bank with practically the same total aggregate assets may have a lot of loans to be written up and criticized one year and practically none the next. A considerable amount of extra time is consumed in the detail of examining and writing up reports on these criticized loans.

Therefore, the stipulation provided that "there is not necessarily a correlation between the amount of the fee charged for any particular year and the work actually performed by the State Banking Department."

With specific reference to respondent's situation herein and the manner of examining its assets and liabilities, the main office at Spanish Fork made no loans, received no deposits and cashed no checks. No banking business as such was carried on there. There was a separate Spanish Fork branch which did carry on a banking business, but the main office which was also at Spanish Fork was in effect merely a control and auditing office. All loans made and all deposits and similar matters were kept and maintained and were examined by the banking

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

department at the various branches where such business was conducted. The main office did handle the bond account for the purpose of investing in or cashing government bonds held and adjusted periodically to keep a proper balance between cash on hand and deposits and loans. After other items are examined at the various branches, the bond account is checked at the main office and then general policies and procedures being followed by the bank are discussed with the officers at the main office rather than requiring a separate discussion of policy and procedure with each of the five separate offices as would be the case with separate individual banks.

We think that the nature of these examinations very definitely shows the basis of the stipulation entered into as quoted and referred to hereinabove and the effect that that stipulation should have in a consideration of the statutes under attack herein.

At the oral hearing of September 5, 1951, appellant's counsel argued that the fees charged in this case were excise fees in the nature of occupation taxes. Respondent had referred in its brief to the fact that the paying of the fee was not made a condition precedent to the doing or continuing to do business as is usually done where a license fee or occupation tax is set up. The question was posed by Justice McDonough as to whether or not a fee could not be a license fee or privilege tax imposed for the privilege of doing business and still not be made a condition precedent to the doing or continuing of such business. In answer we will say, perhaps that could be

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

done, but as a matter of practice it is not done so and we think that all medern legislation is practically unanimous in setting up the condition precedent if it was intended by the legislature that the tax or fee charged was to be a fee or tax upon the privilege of engaging in or continuing the doing of such business. We urge that that fact in and of itself—the fact that if intended as a privilege or occupation tax it is usually specifically made a condition precedent to the doing of business—gives us a very strong basis for determining that the intent of the legislature here was not to set up a privilege or occupation tax. This is further strengthened and confirmed by the fact that the legislature, contrary to such an argument, specifically stated that these fees were imposed for and to cover "* * * the cost of supervision and examination * * *" and included in addition thereto at the end of the section that the bank or institution being examined should also pay "necessary traveling and hotel expenses."

After some argument from both sides upon the question of whether an excise tax should be for regulation or revenue, Chief Justice Wolfe asked whether it was not true that in some instances both regulation and revenue are intended to be provided by the same measure.

We admit that there are some instances where a tax or fee might have been set up for the purposes both of regulation and revenue. However, where that is done, at least that portion which is assessed for revenue purposes is in the nature of a property tax and is usually

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

assessed either on inventories or assets or the business done, and by specific application to the case at bar it would be a tax of a certain percentage or so much per thousand on the total of the aggregate assets and property of the bank. We confidently urge that the history of the statutory provisions in question shows that the intent of the legislature was not to impose an excise tax for revenue purposes but only to impose a fee to cover the cost of supervision and examination. Nevertheless, going on with the "regulation and revenue" argument, we insist that if that ever was the purpose and if it be argued that that might be the purpose here the statutory provisions in question here would still be invalid because what the bank commissioner has done pursuant to those sections of the statute is to assess a tax *for revenue purposes* upon the bank's assets and property as a whole—the aggregate assets— and then again assess the tax *for revenue purposes* upon the same property after allocating it to the various branches merely by process of division. This in addition to general property taxes assessed and collected on a county basis on that same property and in addition to corporation franchise taxes assessed on income.

We have one bank—one corporation, which at the time in question had total aggregate assets slightly in excess of $11,000,000.00. Under the direction of the statute, the bank commissioner assessed and collected fees against that corporation and against the main office of that corporation based on those total assets on a basis which had no relationship to the work necessary or ac-

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

tually performed in supervision and examination and could therefore only be justified on the basis of a property tax or revenue raising measure.

The banking business for this bank is done through five branch offices, one at Heber, one at Spanish Fork, one at Payson, one at Nephi and one at Delta, Utah. After assessing those fees against the main office of the plaintiff corporation on a total aggregate asset basis, the bank commissioner then turned around and divided that property and those total assets into five separate parts and pursuant to the statute, collected additional fees assessed against those five separate parts and against those five separate parcels of the same property on a basis which again had no relationship to the work necessary or actually performed in supervision and examination. There being no proper or direct relationship between such additional fees and the work actually performed, such additional fees could be nothing more than additional property taxes *for raising revenue from property already subjected once to identically the same type of tax.* This application of these statutes resulted in the plaintiff corporation paying fees of $3400.00 for the cost of supervision and examination of its assets totaling in the aggregate slightly in excess of $11,000,000.00 while at the same time and for the same year such an institution as the Walker Bank was assessed and had collected from it only $1500.00 for the cost of supervision and examination of total assets aggregating nearly $80,000,000.-00.

We emphatically state that if a taxing measure can

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

include in its purposes both regulation and the raising of revenue, and if it be argued that such is the nature of the fees assessed and collected herein, such fees for both *regulation* and *revenue* cannot be assessed and collected from the property in its aggregate as held by the plaintiff as a banking corporation and then have the same fees for both *regulation* and *revenue* collected again from the same property after it has been allocated by mere arithmetic division to the five separate branches where the actual banking business is done. Therefore, even if we should admit that an act of the legislature can include in its purposes regulation and revenue, double taxation for such revenue cannot be allowed and the statutes herein questioned cannot be sustained.

The principles we here urge have been approved by the members of the recent legislature as well as representatives of the bank commissioner who recently drafted amended legislation which was enacted by the 29th Utah Legislature in the 1951 Session. The specific sections under attack here were amended by Chapters 10 and 12, Laws of Utah, 1951. Chapter 10 amended the law to remove entirely the assessment against the division of aggregate assets in the various branches, and Chapter 12, as amended, assesses a fee—*still for the cost of supervision and examination*—upon an aggregate asset basis. The new law as to fee provides a basic fee of $100.00 which might be considered a license or occupation fee, with an additional license fee of $100.00 for each branch. Then there is a fee which, it might be argued, is for revenue purposes based upon aggregate assets *and*

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

charged against those assets only once, with gradations which remove the discrimination in favor of the larger banks which results under the laws here attacked.

We respectfully submit that under the facts of this case the statutes under attack cannot be sustained upon any theory advanced by appellant and the judgment of the trial court should be affirmed.

Respectfully submitted,

PUGSLEY, HAYES & RAMPTON
A. U. MINER
Attorneys for Respondent

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.