

1952

Ogden City v. Ferrell H. Adams : Petition for Rehearing and Brief in Support Thereof

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.

Paul Thatcher; Charles H. Sneddon; Jack A. Richards; Attorneys for Plaintiff;

Recommended Citation

Petition for Rehearing, *Ogden City v. Adams*, No. 7779 (Utah Supreme Court, 1952).
https://digitalcommons.law.byu.edu/uofu_sc1/1660

This Petition for Rehearing 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.

Case No. 7779

IN THE SUPREME COURT
of the
STATE OF UTAH

OGDEN CITY, A Municipal Corporation,
Plaintiff,

vs.

FERRELL H. ADAMS, State Treasurer of Utah,
Defendant.

PETITION FOR REHEARING AND BRIEF
 IN SUPPORT THEREOF

FILED PAUL THATCHER,
 CHARLES H. SNEDDON,
 JACK A. RICHARDS,
Attorneys for Plaintiff

JUL 14 1952

Clerk, Supreme Court, Utah

INDEX

	Page
PETITION FOR REHEARING.....	1
BRIEF IN SUPPORT OF PETITION.....	2
STATEMENT OF FACTS.....	2
STATEMENT OF POINTS.....	2
ARGUMENT	
POINT I. THE MAJORITY OPINION IS ER- RONEOUS IN NOT CONSTRUING SECTION 46-0-219, UTAH CODE ANNOTATED, 1943, TO MAKE IT OPERATIVE AND EFFEC- TIVE RATHER THAN MAKING A SUB- STANTIAL PART OF IT NUGATORY AND ITS ENACTMENT BY THE LEGISLATURE AN ABSURDITY	2
CONCLUSION	9

AUTHORITIES CITED

Court Decisions

Board of Education vs. Bryner et al, 57 Utah 78, 192 P. 627	4
Maricopa County vs. Doughal, 208 P. (2) 646, 69 Ariz. 35	3
Moormeister vs. Dept. of Registration, 288 P. 900, 76 Utah 146	5
Sacramento County vs. Sacramento City, 75 Cal. App. (2) 436, 171 P. (2) 477.....	3
State vs. Franklin et al, 63 Utah 422, 226 P. 674.....	5
Taft vs. Grande et al, 114 Utah 435, 201 P. (2) 285.....	3
Walters vs. Bank of America Nt. Trust (1937), 9 Cal. (2) 46, 52; 69 P. (2) 839, 110 A.L.R. 1259.....	3
Wrathall vs. Johnson et al, 86 Utah 50, 40 P. (2) 755	5
34 Utah & Pacific Digest 819, "Statutes", Sec- tions 174 and 175	3
Ibid., Key Numbers 174 to 190.....	4

STATUTES

Section 46-0-218, U.C.A. 1943.....	2, 6, 7, 8
Section 82-2-2 U.C.A. 1943.....	9

IN THE SUPREME COURT
of the
STATE OF UTAH

OGDEN CITY, A Municipal Corporation,
Plaintiff,
vs.
FERRELL H. ADAMS, State Treasurer of Utah,
Defendant.

PETITION FOR REHEARING

Comes now the Plaintiff and respectfully shows and represents to the Honorable Court:

The majority opinion is erroneous in not construing Section 46-0-219, Utah Code Annotated, 1943, to make it operative and effective rather than making a substantial part of it nugatory and its enactment by the legislature an absurdity.

For the foregoing reason, plaintiff respectfully petitions this Court to reconsider the case and grant a rehearing thereof, and upon said rehearing, to grant the relief prayed for in the complaint filed herein.

Dated this 12th day of July, 1952.

PAUL THATCHER,
CHARLES H. SNEDDON,
JACK A. RICHARDS,
Attorneys for Plaintiff

BRIEF IN SUPPORT OF PETITION FOR REHEARING

STATEMENT OF FACTS

The facts are adequately stated in the plaintiff's brief heretofore filed. Reference is made to the opinion filed herein, particularly the second to last paragraph of the majority opinion, which reads:

“Thus we conclude that the Legislature intended to remit fines and forfeitures to towns and cities only when the attorneys of such municipalities conduct on behalf of the State the proceedings against the accused, but the Legislature has failed to give town and city attorneys that authorization and hence Sec. 46-0-219, insofar as it provides for the remission of fines and forfeitures to towns and cities, is ineffectual until such time as that authorization is conferred.”

STATEMENT OF POINTS

I. The majority opinion is erroneous in not construing Section 46-0-219, Utah Code Annotated, 1943, to make it operative and effective rather than making a substantial part of it nugatory and its enactment by the legislature an absurdity.

ARGUMENT

The Court's opinion makes ineffective Section 46-0-219, Utah Code Annotated, 1943, except as to that phrase which requires all fines and forfeitures to be paid to the state treasurer. In effect, it holds that the legislature did a useless and meaningless thing in providing that certain fines and forfeitures be remitted to towns, cities and counties.

One of the cardinal rules of statutory construction is that statutes should be construed, if possible, so that they are effective rather than nugatory. See numerous cases digested, 34 Utah & Pacific Digest 819, "Statute", Sections 174 and 175. The editor's comments there, citing many cases, are:

"A statute must be construed, if possible, so as to give it force and effect."

"Courts will construe the language of a statute so as to give effect to, rather than to nullify, it."

"If language will reasonably permit, statutes will be construed so as to render them operative."

In *Walters vs. Bank of America Nt. Trust* (1937), 9 Cal. (2) 46,52; 69 P. (2) 839, 110 A.L.R. 1259; *Sacramento County vs. Sacramento City*, 75 Cal. App. (2) 436, 171 P. (2) 477, the court holds:

"A statute should never be construed so strictly as to render it absurd or nugatory."

This Court in *Taft vs. Grande, et al*, 114 Utah 435, 201 P. (2) 285, held, as reported in Headnote No. 1:

"It is court's duty in interpreting a statute to give effect to legislative intent as expressed by wording of statute and if reasonably possible, effect should be given to every part of statute and if enactment is subject to one or more interpretations by reason of conflicting provisions, then that construction which will harmonize and give effect to all provisions is preferred."

And the Supreme Court of Arizona in *Maricopa County vs. Doughal*, 208 P. (2nd) 646, 69 Ariz. 35, said:

"The court should make every effort to sustain and uphold statutes rather than to defeat them, and to give them operation and effect if

the language will permit, rather than treat them as meaningless.” Utah and Pacific Digest, Statutes Key Number 174 to 190, inclusive.

Another important rule is that the intent of the legislature is the controlling factor and the Court should interpret the statute so that the intent of the legislature is given effect even though technical meanings of words have to be ignored. As this Court said in *Board of Education vs. Bryner et al*, 57 U. 78, 192 P. 627, at Page 82 of the Utah report:

“The doctrine is, however, also recognized that the same words, especially if found in different statutes, may not always have the same effect. It follows that in order to determine the intention and purpose of the lawmaker, and to harmonize conflicting provisions where such occur, it at times becomes necessary for the courts to expand or to restrict the ordinary and usual meaning of words, phrases, or clauses found in a particular section or statute. In that connection, it is also necessary to observe the cardinal rule of construction that every word and phrase must be given some force and effect, if possible, and this notwithstanding the fact that in doing so the effect of the particular section or statute may thereby be enlarged or restricted, as the case may be. When, therefore, the language of a section or statute is ambiguous and doubtful, and on reading the language there is doubt whether it should be applied in accordance with its ordinary and usual meaning or whether it should receive an enlarged or restricted construction and effect, it is the duty of the court to look beyond the statute if by doing so they can better determine the intention and purpose of the law-makers . . .”

and in *Moormeister vs. Dept of Registration*, 288 P. 900, 76 Utah 146, headnote 3:

“Words of statute are frequently given enlarged, restricted, or modified meaning to effectuate legislative intent.”

In *Wrathall v. Johnson et al*, 86 Ut. 50, 40 P. (2nd) 755, the court said, at Page 103, Utah Report:

“Keeping in mind at least two rules of statutory construction, first, if possible, *every word and phrase of a statute must be given effect*, and no words shall be rejected if possible to retain them and give them effect and meaning; and, second, the intent of the legislature must be ascertained and given effect, which intent and meaning is to be determined primarily from the language of the statutes themselves, recognizing that in so doing it is not proper to consider a word or phrase disconnected from other parts of the act and recognizing that words and phrases must be given their ordinary meaning, unless it is necessary to give to particular words or phrases a restricted or an enlarged meaning so as to harmonize all the provisions of the statute and make them effective. . .” (Italics added)

And in *State v. Franklin et al*, 63 Ut. 442, 226 P. 674, at Page 447 of the Utah report, the Court said:

“It is also an elementary rule of statutory construction that the meaning of words found in the statute must be determined from the general context of the same and the intent or object sought to be accomplished by the legislation; that court in attempting to arrive at the intent of the legislature will disregard mere form and look to the substance.”

The Court's opinion holds that town and city attorneys cannot file cases for violation of the Liquor Control Act and pursue them independently of county and district attorneys. The reasons given for such holding are very strong and compelling. As the opinion says, a second system of law enforcement would not be a good thing and would only lead to confusion and overlapping of functions. We must assume that all the arguments against a second and overlapping system were known to the legislature at the time Section 46-0-219 was enacted and the legislature did not want and so did not provide for town and city attorneys to act independently of county and district attorneys in liquor cases. It is also reasonable to assume that at the time of the enactment of Section 46-0-219, there was no reason to suppose that sometime in the future conditions would change so that another legislature would set up a dual system for enforcing the Liquor Control Act. The reasons for not providing for the dual system in the first place are not mere transitory reasons, but are compelling and basic. It follows, then, that the Court's conclusion in the second to last paragraph of its opinion as to what the legislature intended cannot be correct. If the legislature intended to remit fines and forfeitures to cities and towns only when attorneys of such municipalities conducted on behalf of the State proceedings against the accused, the legislature intended something that could never be. This is ridiculous. Under the Court's interpretation of the act, the legislature involved did not provide for cities and towns to ever receive fines and forfeitures back, and that legislature had every reason to know that no subsequent legislature would set up the dual system of enforcement. Thus, at no

time could cities and towns recover any of the fines and forfeitures. It is inconceivable that the legislature would say fines and forfeitures would be returned to towns and cities on certain conditions, knowing the conditions imposed could never be filled and therefore towns and cities could never receive any of the fines and forfeitures.

The intention of the legislature in enacting Section 46-0-219, as found by all members of this Court in this case, was to provide for a return to towns and cities in some cases of the fines and forfeitures forwarded to the state treasurer. The Court's opinion says that the cases when remittances are to be made are only those when the attorneys for the town or city prosecute and conduct the trials and hearings, and since the attorneys cannot do that, towns and cities cannot get any of the fines or forfeitures back. This ruling defeats the obvious and overarching purpose of returning some of the fines and forfeitures and, as clearly shown by the cases herein cited, such an interpretation is to be avoided if there is another reasonable interpretation which will give effect to the legislative purpose.

The Court's opinion which results in holding the legislature did a useless act and defeats its overarching purposes results from the restricted meaning given the words "prosecute" and "conduct" in Section 46-0-219. The opinion insists the usual meaning be attributed to those two words, but in the same paragraph, the Court interprets the word "officer" in the statute to mean not what is usually meant by that word, but the very special and unusual meaning of "town or city attorney".

In addition to the reasons given by Mr. Justice Wade in his dissenting opinion, we submit that “officer”, “prosecute” and “conduct” cannot all be given their usual meaning in this statute and have it make sense. One or more of those words was definitely used by the legislature not in its usual and ordinary meaning. The Court’s opinion chooses to hold that “prosecute” and “conduct” were the words the legislature intended to have their usual meaning and “officers” was used by the legislature not to mean “officers”, but to mean “town or city attorney”. This decision makes the statute a nullity and defeats what is the obvious overall legislative intent to return some fines and forfeitures to the cities and towns. On the other hand, if the Court would give the word “officer” its usual meaning and give “prosecute” and “conduct” the broader meaning than is usually given, the Court would give effect to the overall intent of the legislature, as found by the Court, that some fines and forfeitures be returned, and would avoid the conclusion that the legislature did a useless act when it enacted the latter portions of Section 46-0-219.

In this case, when in any event one or more words will have to be given a different meaning than is usually given, and one interpretation results in a useless and nugatory statute and the other interpretation results in an effective and meaningful statute, the Court should take the interpretation which results in a live statute rather than the one which results in a useless and dead statute. To do otherwise clearly would violate the ex-

press mandate of the legislature that statutory provisions “are to be *liberally* construed with a view to effect the objects of the statutes. . . .” (Emphasis added.) Section 82-2-2, U.C.A. 1943.

The Court’s opinion is contrary to and in effect overrules this statute and the Court’s previous decisions in which it has held that if possible, statutes should be interpreted so that they are effective rather than nugatory.

It is respectfully urged that a rehearing be granted in this matter, and that the interpretation of the statute herein involved be again considered by the Court, and upon said reconsideration, the plaintiff be granted the relief prayed for in its complaint.

Respectfully submitted,

PAUL THATCHER,
CHARLES H. SNEDDON,
JACK A. RICHARDS,
Attorneys for Plaintiff