

1987

Little America Hotel Corporation and Utah Hotel Company v. Salt Lake City : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

UTAH
DOCKET NO.
K.F.

45.9

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DOCKET NO.

870286

IN THE SUPREME COURT

OF THE STATE OF UTAH

LITTLE AMERICA HOTEL)
CORPORATION, a Utah)
corporation, and UTAH HOTEL)
COMPANY, a Utah corporation,)

Plaintiffs and Appellants,)

vs.)

SALT LAKE CITY, a municipal)
corporation within the State)
of Utah, et al.,)

Defendants and Respondents.)

Case Nos. 870259

870286

Category 14(b)

BRIEF OF RESPONDENTS

Appeal from the Judgment of Third District Court
in and for Salt Lake County, State of Utah
Honorable Timothy R. Hanson, Judge presiding

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23
870259
Clerk, Supreme Court, Utah

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OF THE STATE OF UTAH

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LIST OF ALL PARTIES

The following are a list of all parties to the action filed in the Third District Court:

A. Plaintiffs:

1. Little America Hotel Corporation, a Utah Corporation.

Attorneys: RICHARDS, BIRD & KUMP

2. Hotel Utah Company.

Attorneys: CALLISTER, DUNCAN & NEBEKER

3. Pearson Enterprises Partnership Company, a Utah limited partnership;

Boyer-Gardner Hotel Properties Partnership;

Tri-Arc Hotel Associates; and

Holiday Inns, Inc.

Attorneys: PARSONS, BEHLE & LATIMER.

B. Defendants:

1. Salt Lake City, a Utah municipality; and
2. Ted L. Wilson, Mayor of Salt Lake City.

Attorney: Roger F. Cutler, Salt Lake City
Attorney.

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SUMMARY OF PROCEEDINGS BELOW AND JURISDICTION

A. Summary of Proceedings. The appellants (Little America Hotel and Hotel Utah), together with a coalition of other innkeepers filed a lawsuit in the Third District Court challenging a City revenue license tax.

Judge Timothy R. Hanson of the Third District Court granted partial summary judgment on the per se validity of the ordinance and the enabling power issues; however, the lower court reserved the "as applied" validity questions for further factual development. Following admissions of the appellant-Hotels that they had no facts to demonstrate the ordinance was discriminatorily applied, the lower court granted Salt Lake City's Motion for Summary Judgment.

Two of the innkeepers, Little America Hotel Corporation and the Hotel Utah Company, have appealed that decision.

B. Jurisdiction.

Jurisdiction in the Utah Supreme Court is asserted as an appeal from a final civil judgment, pursuant to the provisions of Article VIII, Section 3 of the Utah Constitution and Section 78-2-2(3) Utah Code Ann., 1953, as amended.

STATEMENT OF ISSUES

The following issues are presented by this appeal:

1. Are municipal taxing ordinances and their classifications of taxpayers entitled to a presumption of constitutionality?

2. Does Salt Lake City have enabling power to impose a gross receipts based business revenue tax?

3. Does the record legally justify the separate tax classification of the approximately 100 innkeepers within the City?

4. Did the lower court err in granting a discovery protective order (insulating Utah Power and Light Company from a burdensome production of franchise tax payments made by innkeeper-competitors of the appellant-Hotels) where appellants avowed use was to compute the total of all taxes paid by the class of innkeepers and compare that number with appellants' estimated value of governmental services received?

5. Does a corporate taxpayer have a legal right to challenge a taxing classification on the basis of comparing the amount of total taxes paid with the cost of benefits received, absent claims of confiscatory taxation or that the tax rate was wholly arbitrary or capricious as being beyond the revenue needs of the City?

6. Is the City's business revenue license tax an illegal "sales" or "income" tax where: (a) the tax is imposed on the business for the privilege of doing business in the City and not assessed to the consumer based on the value of services received; and (b) there is no formula to deduct expenses or otherwise tax "net" income on a graduated basis?

7. Does discretionary enabling power granted to Salt Lake County to the tax hotels for tourist promotion under Chapter 31, Title 17 U.C.A. preempt the statutory enabling power of Salt Lake City to reasonably classify and tax businesses in the City, under Sections 10-8-39 and 80 U.C.A.?

DETERMINATIVE CONSTITUTIONAL/STATUTORY
ORDINANCE PROVISIONS

1. 10-8-39 Utah Code Ann., 1953. See Appendix "10".
2. 10-8-80 Utah Code Ann., 1953:

10-8-80. License fees and taxes.

They may raise revenue by levying and collecting a license fee or tax on any business within the limits of the city, and regulate the same by ordinance; provided, that no Utah city or town shall collect a license fee or tax hereunder from any solicitor or salesman who solicits, obtains orders for or sells goods in such city or town solely for resale; and no enumeration of powers of cities contained in this chapter, shall be deemed to limit or restrict the general grant of authority hereby conferred. All such license fees and taxes shall be uniform in respect to the class upon which they are imposed.

3. Chapter 3, Title 20 Revised Ordinances of Salt Lake City, 1965 as amended. See Appendix "8".

STATEMENT OF CASE AND FACTS

A. Nature of the Case.

Salt Lake City adopted Bill No. 40 of 1982 imposing a one percent business occupation or privilege tax on the

classification of innkeepers who provide rooms to persons for 30 days or less. Three groups of innkeepers challenged the tax on numerous constitutional, statutory and common-law grounds. The appellant-Hotels seek a declaratory judgment voiding the ordinance and approximately \$571,000 in taxes paid to the date of the Summary Judgment. If the ordinance is invalidated, it would prospectively have a revenue impact on the City of approximately \$550,000 per annum.

Following extensive discovery (the record totals over 1300 pages), cross motions for summary judgment were filed by the appellants and the other innkeepers, who chose not to appeal. The lower court reviewed in depth this record and, after nine months of deliberation, granted a partial summary judgment to Salt Lake, upholding the per se validity and constitutionality of the ordinance; it reserved for factual determination whether or not the tax was being applied in a discriminatory or unconstitutional manner.

Later, appellants admitted they had no facts on the remaining issue of the case, and following additional briefing, Judge Timothy R. Hanson granted Salt Lake City a complete Summary Judgment of dismissal, with prejudice.

B. Facts.

The undisputed facts, when viewed in a light most favorable to the losing party below, but considering the relevant presumptions and burdens of proof, demonstrate the following:

1. Salt Lake City is a municipal corporation of the State of Utah. It is the seat of Utah government and the State's only first class city. (Article XIX, Section 3 Utah Constitution; 10-2-301 Utah Code Ann., 1953, as amended).

2. Effective July 1, 1982, Salt Lake City adopted a Business Occupation Revenue Tax. This privilege or occupation tax is imposed on innkeepers, located within the corporate limits of the City; it totals a maximum of 1% of gross receipts from the rental of rooms to guests staying 30 days or less, with a minimum base charge. (Affidavit of Ruth Dyer; Bill 40 of 1982, R-211).

3. Should the tax assessments not be paid by the licensee, the privilege for doing business will be revoked. It is illegal to operate a business within Salt Lake City, without a Business Revenue License. (20-3-3 Revised Ordinances of Salt Lake City, 1965, as amended; Affidavit of Ruth Dyer, R-211).

4. Salt Lake City is regional, national and, in some instances, an international recreation, religions, governmental, commercial, education and medical center. These functions draw large numbers of visitors annually to the City and create a market for services provided by innkeepers doing business within the City. (Affidavit of Craig Peterson, R-202).

5. Salt Lake has expended substantial public resources (including lending its credit for industrial revenue bonds)

to maintain a business climate favorable to the appellant-hotel and innkeeper businesses. Among others, these efforts have included financing development of the Crossroads Shopping Mall, including the Marriott Hotel; expansion of the Salt Palace; expanding hospital capacity; and financing expansion of industrial parks, including the one served by the Hilton Hotel operated by the lower court plaintiff, Pearson Enterprises. (Affidavits of Lance Bateman and Craig Peterson, R-195, 202, 233).

6. The City maintains and operates the Salt Lake City International Airport and has issued general obligation bonds to support its development. As of the filing date of this suit, it had recently completed a five year, \$80,000,000, expansion project which uniquely benefits the suppliers of transient rooms by encouraging and permitting travel of visitors to and from the City. (Affidavit of Louis Miller, R-189).

7. The City has a declining resident population, which has decreased approximately 13,000 persons within the last ten years prior to the ordinance adoption. However, the cost of government has substantially increased. This increase is due to many factors including inflation, but is also due to expanded commercial and visitor service demands. It was the specific intent and purpose of the City Council in passing the innkeeper tax, to ease the increasing tax burden on the resident population and more equitably share

the cost of providing municipal services to include the innkeepers whose patrons increase the cost of City government. (Affidavit of Sydney Fannesbeck, R-207).

8. There are high expenses in providing municipal services to the central business district, specifically including hotels and motels catering to transient guests and visitors. (Affidavit of Chiefs Willoughby and Pederson, R-195, 199).

9. The suppliers of accommodations for transient guests are a distinct and separate class. This distinction is recognized by themselves in forming a trade association separate from the renters of residential property for permanent residency. Further, the taxed class of innkeepers' accommodations include a full range of services, such as: maid, eating, and room service; valet service; and other conveniences to accommodate persons who are away from the amenities of their permanent abode.

The rental rate structure is substantially higher for these innkeepers from those businesses providing permanent housing. Further, they engage in marketing activities to recruit business and recreation travelers seeking entertainment, business or convention services in the City. In addition, their guests are away from their permanent connections to medical, recreation and other contacts. Thus, the numbers of patrons, rates of turnover, and demand for City services distinguish the taxed class of innkeepers

from other businesses. (Affidavit of Robert F. Babcock, R-229).

10. For the City's 1982-83 fiscal year \$67,502,000 general fund budget, the 1% tax was estimated to generate approximately \$550,000 from the approximately 100 innkeepers in the City. This sum constitutes approximately eight-tenths of one percent (0.8%)) of the City's general fund budget. (Affidavit of Lance Bateman, R-233).

11. Salt Lake City is the seat of State government; a local center for federal governmental agencies; the headquarters for the LDS Church, plus many other religious organizations; the seat of County government; and the headquarters for many education, eleemosynary, health service and other tax exempt organizations. As a result, approximately 25% of its property for the fiscal year 1982-83 was property tax exempt. This fact resulted in a loss of property tax revenue totaling approximately \$4,737,000 per year. The innkeepers, including appellants, are direct beneficiaries of the business and services needed by such organizations in providing care and hotel accommodations to their guests and invitees. (Affidavits of Milton Yorgason and Lance Bateman, R-192, 233).

12. None of the innkeeper plaintiffs, including the appellant hotels, have even alleged that they would be driven out of business by the imposition of the tax. (See entire record).

13. Although appellant-Little America asserts it provides enhanced security, garbage and maintenance services for itself (appellants' facts Nos. 5, 6 and 7), it is not a separate enclave. All City services available to any business in the City are provided to every one of the taxed class of innkeepers. There are no facts in the record and no allegation in the pleadings asserting that any innkeeper in Salt Lake does not receive full City services, including police protection; fire protection; paramedic service; adjacent street maintenance and snow removal.

14. After over 9 months of deliberation, the lower court granted a Partial Summary Judgment in favor of respondent, Salt Lake City, reserving one issue for trial. That issue is whether the classification for taxation was "arbitrary and/or discriminatory". (The lower court's Memorandum Decision and Partial Summary dated January 16, 1984, R-913, 924 are attached as Appendix "1" and "2").

15. Disagreements over the meaning of the partial summary judgment caused the lower court to request additional briefing and argument; thereafter, the court clarified its intent and quashed two subpoena duces tecums directed against Utah Power and Light Company because they merely sought to impose unreasonable burdens on non-parties and sought irrelevant information on a rejected theory that tax payments create a right to an equivalent value of governmental services. (See, Memorandum Decision dated May

28, 1984, R-1135 attached as Appendix "3"). The lower court order stated:

The scope and intent of the previous Partial Summary Judgment was to dismiss all claims, assertions, and legal theories advanced by Plaintiff [LAHCO], as a matter of law, excepting only the issue of whether the tax classification selected by Salt Lake City Corporation was arbitrary; that is, the legislative decision for classification lacked a rational basis and/or whether the tax was discriminatory as applied within the defined tax classification of the ordinance. The matter left for trial or further proceeding on the within case does not include a comparison of the public service benefits received by the Plaintiff [LAHCO] from the City in relation to taxes paid by it. (Emphasis added), (Order Clarifying Partial Summary Judgment and Granting Protective Order, R-1141, 1142 attached as Appendix "4").

16. The appellant hotels admitted that they had no information on the remaining issue, as defined by the lower court and Motions for Summary Judgment were filed with additional briefing on 10 consolidated cases. (R-1208, 1216, 1233 and Stipulation and Order of Consolidation, R-1292). The lower court heard the arguments, took the matter under advisement and issued its Minute Entry decision. (R-1291) attached as Appendix "6"). It granted the final Summary Judgment in favor of respondent Salt Lake City and Mayor Ted L. Wilson on July 7, 1987. (R-1296, attached as Appendix "7").

SUMMARY OF ARGUMENTS

1. Municipal ordinance tax classifications are presumptively valid.

Like state statutes, municipal taxing ordinances are presumptively valid and constitutional. In deference to the elected legislative body's responsibilities to the electorate to create a fair and balanced tax system and in respect for the separation-of-powers principle, Courts will indulge in every reasonable construction to render a tax classification valid; that is, if there exists any rational basis for a distinction, the class will be approved.

The challenger has the burden to establish, by admissible evidence, that there is no rational basis for the classification and must negate every conceivable basis that might support it, by proof beyond a reasonable doubt.

These concepts are not in conflict with those asserted by the appellant-hotels; that is: enabling power or authority to tax is never inferred and ambiguities in tax laws will be construed in favor of the taxpayer. However, these legal principles are not applicable to the constitutional challenges advanced by appellants; therefore, the authority cited is irrelevant.

2. The City has enabling power to impose a business revenue license tax on reasonably classed businesses.

Sections 10-8-39 and 80 of the Utah Code specifically authorizes cities to classify business and tax them solely to raise general fund revenue.

Appellant-hotels' case law challenging this authority either does not stand for the proposition asserted or is distinguishable.

3. There exist rational distinctions to justify separate classification of innkeepers as a taxing class.

Uncontroverted facts demonstrate many reasons for distinguishing transient room providers (innkeepers) as a separate tax classification. These distinctions include: (a) the desire to equitably spread tax burdens to include others than property taxpayers living in the City; (b) the benefits uniquely provided to these businesses by the City; (c) additional service costs generated by the transient visitor patrons of the tax innkeepers; and (d) the unique clientele and methods of doing business of innkeepers.

In a frequently litigated area, virtually every jurisdiction considering the identical or similar challenges to taxing innkeepers have approved identical classifications. In fact, this same class was approved by this Court in 1966.

The tax classification is rationally based and the lower court properly so ruled.

4. A general fund revenue license tax is not limited in amount to the cost of providing governmental service.

There is a long recognized distinction between a regulatory or service fee charges and a general fund revenue tax. Regulatory and service charges are limited to the cost

of regulation or service; however, general fund revenue taxes are not so limited. Appellants have incorrectly cited "regulatory" cases as authority for an argument against a "revenue" taxing ordinance.

Courts give great deference to tax rate decisions of legislative bodies, which are answerable to the electorate. Only when tax rates are wholly arbitrary will they be judicially set aside. To be judicially overturned, they must be so confiscatory as to destroy, not just a single taxpayer, but a whole class or be demonstrably beyond the needs of the taxing jurisdiction.

Also, revenue taxes are not an "assessment of benefits." It is irrelevant to an evaluation of a taxing ordinance that the amount paid by a taxed class is less than the services provided by the taxing jurisdiction. Therefore, the lower court properly quashed otherwise oppressive discovery directed against Utah Power and Light Company seeking tax information.

Similarly, the opinions about the cost of services received against taxes paid advanced by appellants' in the Affidavit from Mr. Norman are irrelevant because they also go to an "assessment of benefits theory," which does not state a cause of action, as a matter of law.

Since there exists no facts to demonstrate confiscatory or wholly arbitrary taxation, beyond the needs of the City, the tax must be affirmed.

5. The City revenue tax on innkeepers is imposed as a privilege or occupation tax and is not an illegal "sales" or "income" tax.

A "sales" tax is characterized by several incidents, including the predominating feature that the tax is imposed on the "transaction" and levied against the consumer. An "income" tax is distinguished as a tax against an income producing entity or person, where the tax is based on "net" income. It is often assessed on progressive rates, for tax and social policy reasons.

By contrast, occupation or privilege taxes are revenue producing taxes imposed by local jurisdictions for the privilege of doing business in that community. The fact that a revenue license tax is computed as a percentage of the gross receipts of a business does not render it a "sales" or "income" tax. Rather, that method of computation is simply a fair method selected by the local legislature to measure benefits to the business and to set equitable rates. It will not be disturbed by the Courts, unless wholly arbitrary or confiscatory.

Virtually every other jurisdiction considering the challenge made by appellants to such license taxes have been rejected. This Court should similarly uphold the decision by the lower court.

6. The City taxing ordinance has not been preempted by discretionary state enabling power given to counties to tax the same class of innkeepers for tourist promotion.

Preemption exists where the state has expressly prohibited local governmental intrusion into an area or (by implied preemption) when it has so comprehensively regulated an area that its intent to exclude local governmental action is inferred by the Courts. Chapter 31 of Title 17 of the Utah Code does neither.

The legislation, in fact, does not even deal with the state or produce revenue for it; rather, it is simply discretionary enabling power for a county to tax hotels and motels to raise money for tourist promotion. It has no more dignity or precursive effect than the grant of power to cities to tax and regulate the same class of businesses found in Section 10-8-39, 80 Utah Code Ann., 1953.

There is no prohibition against separate jurisdiction imposing taxes on the same class of taxpayers. Therefore, in the absence of facts demonstrating that the City tax operates to substantially interfere with the functioning of a state statute or undermine its purpose, this challenge must fail.

ARGUMENT

POINT I

MUNICIPAL ORDINANCES ARE ENTITLED TO A PRESUMPTION OF VALIDITY AND CONSTITUTIONALITY. EVERY REASONABLE CONSTRUCTION WILL BE UTILIZED TO RENDER AN ORDINANCE AND ITS CLASSIFICATIONS VALID. THE BURDEN OF PROOF IS ON THE CHALLENGER TO PROVE BEYOND A REASONABLE DOUBT THE INVALIDITY OF AN ORDINANCE.

Municipal ordinances, like state statutes, are presumptively valid. Courts will indulge in every reasonable construction to render the legislative act valid and constitutional. Professor McQuillin, in his respected treatise on municipal corporations, has stated:

No ordinance or law will be declared unconstitutional unless clearly so, and every reasonable [effort] will be made to sustain it. Not only must unconstitutionality appear clear, but, it has been asserted, it must appear and be proved beyond a reasonable doubt . . . If the constitutional questions raised are fairly debatable, the court must declare the ordinance constitutional, as the court cannot and must not substitute its judgment for that of the local legislative body. 5 McQuillin, Municipal Corporations, Section 19.06 at pp. 377-78 (3rd Ed.Rev.); see also, Id. Section 19.14.

This Court has adopted this rule of construction. It held:

It [a city ordinance] should not be held to be invalid unless it is shown beyond a reasonable doubt to be incompatible with some particular constitutional provision. Salt Lake City v. Savage, 541 P.2d 1035, 1037 (Utah, 1975), cert. den. 425 U.S. 915, 47 L.Ed.2d 766 (authorities omitted, emphasis added).

In no other area is this presumptive validity of statutes and ordinances applied more stringently than in the area of classification for tax purposes. New York Rapid Transportation Corp. v. New York City, 303 U.S. 573, 578, 58 S.Ct. 721, 82 L.Ed. 1024, 1030 (1939); Menlove v. Salt Lake County, 18 Utah 2d 203, 418 P.2d 227 (Utah 1966); State v. Taylor, 541 P.2d 1124, 1125 (Utah 1975); Slater v. Salt Lake City, 1115 Utah 476, 206 P.2d 153, 160 (Utah 1949); See

also, Aldine Apartments Inc. v. Commonwealth of Pa., 426 A.2d 1118, 112-22 (Pa. 1951), holding classifications valid if it is imposed on some standard capable of reasonable comprehension, such as the ability to produce income.

This Court has held that such tax law's presumptive validity is such that the government need not even present proof of the reasons for its classifications. Baker v. Matheson, 607 P.2d 233 (Utah 1979).

The United States Supreme Court has explained that this legislative power to set legislative classifications for tax purposes is a Separation of Powers issue. It noted that the greatest deference should be afforded to the legislatures by the Courts in this area. It held:

'In the field of taxation, more than other fields, the legislature possesses the greatest freedom in classification, and to attack such as a violation of the Fourteenth Amendment places the burden on the one attacking them to negate every conceivable basis which might support the classification.' Madden v. Kentucky, 309 U.S. 83, 84 L.Ed. 590 (1940), quoted in C & D Trailer Sales v. Taxation and Revenue Dept., 604 P.2d 835, 837 (N.M. 1979).

In a recent case, the U.S. Supreme Court noted another reason for the Courts to give deference to the legislative taxing classifications. It noted that it was uniquely the legislative body's obligation to weigh local factors and design a balanced tax system. It observed:

'Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden.'

. . . Since the members of a legislature necessarily enjoy a familiarity with local conditions which this court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against the particular persons and classes.' Reagan v. Taxation With Representation of Washington, 461 U.S. 540, 547, 76 L.Ed.2d 129, 138 (1980) (footnotes omitted in the original quotation and emphasis added).

Treatise writers have, similarly, noted the law's rightful deference to the legislative branch's power to define tax classifications. In sum, these treatise writers note:

Equal protection of the law permits wide discretion in classification. 5 McQuillin Municipal Corporations Section 19.14 at 398; see also Section 319.13 at 391 (Third Revised Edition).

The proof must show that the classification is wholly without any rational basis and is essentially arbitrary. Id. at 398 (Emphasis added).¹

These rulings are not in conflict with the authority cited by the appellant-Hotels to the effect that the enabling power to tax is not inferred and that ambiguities in a taxing statute are construed in favor of the taxpayer. (Appellant-hotels' brief p. 37). Those concepts are not disputed by the City, but they are irrelevant to the issues

¹ See also, 5 McQuillin Municipal Corporations 41.03 at 267; Lawrence v. State Tax Commission, 286 U.S. 276, 52 S.Ct. 556, 76 L.Ed. 1102 (1932) holding that a reasonable basis is all that is necessary to adjust a classification for tax purposes.

of this case. Here, appellants challenge the constitutionality of the ordinance and the classification decisions of the City's legislative body. These direct challenges to the legislative process are governed by the presumptions and burdens above discussed, not those dealing with the grant to enabling power or construction of an unclear tax law.

The test, then, is whether there exists any reasonable distinction or differences in the taxed business, its operations, rights, privileges, public policy or tax policy to justify the legislative classification. The burden of proof is on the challenger to establish beyond a reasonable doubt the arbitrariness of the classification. The government need not present any evidence; that is, the presumption of validity must be overcome by affirmative admissible evidence presented by the challenger.

Although this issue was previously extensively briefed before the lower court, appellant-Hotels have not discussed these precedents; rather, their brief continues to premise its arguments on the concept that the tax law classifications are presumptively suspect. The appellant-Hotels have failed to present the required proofs; thus, the decision of Judge Hanson should be affirmed.

POINT II

THE IMPOSITION OF A ONE PERCENT GROSS
RECEIPTS OCCUPATION OR PRIVILEGE TAX ON
THE PLAINTIFF AND OTHER HOTELS AND

ROOMING HOUSES SIMILARLY SITUATED IS
BASED ON REAL AND SUBSTANTIAL
DISTINCTIONS. AS SUCH, IT IS A VALID
CLASSIFICATION FOR PURPOSE OF RAISING
REVENUE FOR MUNICIPAL PURPOSES.

The precise taxing classification at issue in this case has already been approved by this Court; it approved, as a separate class for taxing purposes, innkeepers (hotels, motels, etc.) providing rental accommodations to persons occupying rooms for less than 30 days. Menlove v. Salt Lake County, 418 P.2d 227 (Utah 1966).

In this case, the Court noted that a county tax (based on a percentage of gross receipts and imposed for the purpose of tourist promotion) was a pure revenue producing measure; as such, it was ruled an occupational privilege tax.² Therefore, the legislative branch of local government was exercising its revenue-producing prerogative and the taxing classification was upheld. In this case, the Court observed:

Where neither the constitution nor the state imposes absolute restrictions on the power of taxation, the courts may not arbitrarily impose any, unless it clearly appears the tax imposed is oppressive or clearly and unreasonably discriminatory, and thus is an

² The appellant-Hotels argue the case is distinguishable because it was a "special purpose" tax. (Appellants' brief, p. 27). That fact was not determinative for the Menlove court; further, the hotels have failed to find any cases where any other court found that distinction violated an innkeeper tax classification. It is a distinction without a difference and fails to refute all of the other differences that also justify the classification.

abuse of the taxing power. This court cannot set up its judgment against that of the [county] legislature in determining who shall be required to contribute to the revenues. Menlove v. Salt Lake County, 418 P.2d 227 (Utah 1966) (Emphasis added).

The Court specifically rejected the argument that the tax levied on a particular group, for the benefit of all businesses, rendered it invalid. In doing so, it quoted from the United States Supreme Court as follows:

'The power to make distinction exists with full vigor in the field of taxation, where no 'iron rule' of equality has ever been enforced upon the states. (citations omitted) Menlove v. Salt Lake County, supra at p. 230, citing New York Rapid Transportation Cor. v. City of New York, 303 U.S. 573, 82 L.Ed. 1024.

The Court also stated:

. . . [T]he Fourteenth Amendment is not a limitation of a taxing power, unless the court is compelled to conclude that the act is so arbitrary that does not involve an exertion of the taxing power, but constitutes in substance and effect, a different and forbidden power, such as, confiscation of property. The court [United States Supreme Court] observed that collateral purposes are motives of the legislature of levying a tax of a kind what in breach of its lawful powers or matters beyond the scope of judicial inquiry. Id. at p. 231 (Emphasis added).

Appellant-Hotels' arguments are a rewrite of the rejected arguments in Menlove and should similarly be rejected.

This conclusion is buttressed, not only by Utah law and the rationale above stated, but by virtually every decision involving similar facts which the writer or appellants has been able to discover. The following are several cases involving the precise issue before this Court:

1. In the case of Edwards v. City of Los Angeles, 119 P.2d 370 (Cal.App. 1941), Los Angeles imposed a gross receipt's business occupation tax on those persons engaged in renting or letting any rooms in any hotel, rooming, boarding house, apartment house for lodging. The California Court ruled the classification valid and upheld the tax against all challenges, including a charge that it was discriminatory.

2. In the case of City of Inglewood v. Wright, 364 P.2d 569 (Colo. 1961), a revenue occupation tax computed from the gross receipts of businesses renting commercial or residential property within the city was challenged. It was upheld against a variety of challenges, including an assertion that it was an illegal income tax, was discriminatory, and otherwise constituted an invalid or unconstitutional classification.

3. In the case of Chestnut, Inc. v. City of St. Louis, 389 S.W.3d 823 (Mo. 1965), the Missouri Supreme Court upheld a 2% gross receipts tax virtually identical to the one before this Court. Here the gross receipts occupation tax was levied on the daily rental receipts of hotels from transient guests, who by definition were those who rented rooms in hotel or motels for 31 days or less. Like the case before the bar, a challenge was made that this classification was discriminatory and unconstitutional in view of the fact that other businesses paid on a different

formula; that is, some other businesses paid on fixed or flat license fee basis as little as \$100 and others were taxed on rates as low as \$1.75 per thousand of annual gross receipts.

The Missouri Court held the legislative differentiations to be appropriate, constitutional and reasonable (both with regard to those businesses not paying a gross receipts tax and to hotels and motels, not catering to transients); it stated:

A difference in the method of conducting a business is generally a sound basis for classification, particularly if it appears that the tax was fixed in proportion to the amount of business, which may be determined by different but reasonable methods.' (citation omitted) . . . Such division or classification is recognized generally throughout the business world; indeed, in the hotel and apartment trade, the difference between the business of furnishing living accommodations of transients and the business of supplying living accommodations to permanent guests or tenants is well known and accepted.' (citations omitted). It is not clearly apparent that the tax fixed by the board of aldermen is arbitrary, unreasonable, oppressive or prohibitive, virtually confiscatory or prohibitive of hotel and motel business, under the rule state in City of Washington v. Reed citation omitted. Id. at p. 832 (Emphasis added).

4. In the City of Portsmouth v. Citizen's Trust Co., 222 S.E.2d 532 (Va. 1976), the Court upheld a City gross receipts business occupation tax levied on those businesses in the business of renting residential property. The Court correctly observed:

. . . [T]he Supreme Court has held that equal protection does not compel identity of the treatment but 'only requires that classification rest on real and not feigned differences, that distinction has some relevance to the purpose for which the classification is made, and that different treatments not be so disparate, relative to the difference in classification, as to be wholly arbitrary.'³ (citation omitted).

In all of the writer's research,⁴ there is only one case voiding a classification or a gross receipts business occupation tax on hotels and motels, renting to persons on a transient basis of six months or less.⁵ All other such decisions have following the Utah Menlove rationale and have held that such classification was entirely proper and constitutional.

McQuillin summarizes the holding of these many decisions, upholding innkeepers as a separate taxing classification. This treatise observed:

³ For other older cases see upholding the classification of hotels, motels, etc. and the validity of a gross receipts tax on them based on differing rates computed on hotel size see: Cobb v. Durham County, 30 S.E. 338 (N.Carolina, 1898); Fulgrum v. Nashville, 7610 (8 LEA) 635 (1881); L.A. v. Landershim, 118 P. 215 (Cal. 1911); see also McBriety v. Baltimore, 148 A.2d 408 (Mc. 1959) upholding a tax on rooming houses and multiple family dwellings as a license tax on housing accommodations; White v. Moore, 46 P.2d 1077 (Ariz. 1935), upholding a business occupation tax.

⁴ For a virtually complete compilation of all relevant cases see "Tax on Hotel-Motel Room Occupancy", 58 A.L.R. 4th 274-326.

⁵ Lexington v. Motel Developers, Inc., 465 S.W.2d 253 (Ky.Ct.App. 1971) cited at p. 24 of appellant-Hotels' brief. This case has never been cited by any other court outside Kentucky and is devoid of supportive authority.

However, hotels and boarding houses of a specified capacity, furnishing either board or lodging or both for compensation may be placed in a separate class. 9 McQuillin Municipal Corporation Section 26.119 at p. 262-263 (3rd Ed.Rev.) (Emphasis added).

The specific facts before this Court, likewise, demonstrated that there are numerous reasons to uphold the City's taxing classifications. See Statement of Facts 4-11, supra.

These facts clearly demonstrate a rational reason to justify the classification. Therefore, this Court should follow the Menlove decision and rule that the City's 1% business occupation tax does not violate equal protection or due process in its classification.

POINT III

REVENUE LICENSE TAXES ARE NOT ASSESS-
MENTS OF BENEFITS AND SUCH TAXES ARE
VALID, EVEN IF TAX PAYMENTS EXCEED THE
VALUE OF GOVERNMENTAL SERVICES RECEIVED.

In Point I of appellant-Hotels' brief, they have continued an erroneous line of logic from their lower court arguments, which wrongly mixes cases dealing with regulatory and impact fees, confiscatory taxation and per se tax classification issues.⁶ Their argument stirs this, mostly, unrelated mix of authorities with an assertion that discovery was improperly limited by the lower court; thus, they argue factual issues exist which preclude summary

⁶ Point 1A and B, appellant-Hotels' brief at pp. 13-25.

judgment.

However, the legal theories (for which they seek discovery or upon which they assert disputed material factual issues exist) do not state a claim upon which relief may be granted, as a matter of law. The following point will discuss these issues.

A. APPELLANT-HOTELS' AUTHORITIES WRONGLY
CONFUSE REGULATORY AND FEE CASES WITH
CITY POWER TO IMPOSE REVENUE LICENSE
TAXES.

To properly analyze appellant-Hotels' argument, it must first be noted that there is a significant legal distinction between a license "revenue" measure and a "regulatory" one.

McQuillin correctly summarizes the law as follows:

License fees for regulation must bear a reasonable relation to the expense of regulation, as discussed in detail in the following section. However, this rule has no application to license fees or taxes enacted under the taxing powers for revenue purposes. 9 McQuillin, Municipal Corporations Section 26.35 at p. 76 (3rd Ed.Rev.) (Emphasis added).

Utah recognized this distinction of "regulation" versus "revenue" licensing as early as 1898. In this case, the Utah court upheld a revenue occupation tax on telephone companies imposed by Ogden, under the predecessor statute 10-8-39 Utah Code Ann., 1953. It observed:

It is held that the municipality is not limited to the mere expense of the regulation, but it may impose a reasonable license tax for the purpose of obtaining revenue necessary to meet the general expenses of such municipality. Ogden City v.

Crossman, 53 P. 985, 989 (Utah 1898)
(Emphasis added); see also, Salt Lake City v. Christensen Co., 95 P. 523 (Utah 1908).

Appellants have ignored this distinction and wrongly argue against the legality of this revenue tax from regulatory or impact fee cases. ⁷ Admittedly in such cases, the correct rule of law is that the regulatory fee must reasonably relate to the cost of regulation. However, as above noted, that limitation is not applicable to revenue tax assessments, like the case at bar. The cases cited do not stand for the proposition asserted; that is, that a City's revenue tax can be challenged by comparing the costs of services to taxes paid.

Salt Lake City v. Utah Light and Railway, 45 Utah 50 142 P. 1067 (1914) cited by appellants⁸ is a "revenue" license dispute. However, in that suit the issue was whether a taxing classification distinction based only on

⁷ See: Weber Basin Home Builders Assn. v. Roy City, 487 P.2d 866 (Utah 1971), cited at appellant-Hotels' brief at p. 15, 20. This case is a building permit fee dispute where developers argued development permit assessment were not reasonably related to the cost of regulation. Banberry Development Corp. v. South Jordan City, 631 P.2d 899 (Utah 1981), cited at appellant-Hotels' brief p. 21. Similarly, this case is a development impact fee assessment imposed as a condition for a water connection and subdivision plat approval, not a revenue tax assessment. Call v. City of West Jordan, 614 P.2d 1257 (Utah 1980), cited at appellant-Hotels' brief at p. 21. In this case, the City imposed a 7% land donation requirement as an impact assessment as a condition for City development approvals to develop parks and flood control.

⁸ Appellant-Hotels' brief at p. 22.

whether electrical service was metered or unmetered was without a "rational basis." The Court held:

But in limiting the tax to those who use meters for the purpose mentioned in the ordinance destroys its uniformity. Id. at p. 1071.

The dicta quoted by appellants is not illuminative to the issues or many distinctions of innkeeper's business present in this case.⁹

Likewise, the 1900 case of Cache County v. Jensen, 21 Utah 207, 61 P. 303 (1900) is unavailing to appellants.¹⁰ That case interpreted a County enabling statute and found the legislature had not granted them power to issue a revenue license tax. The Court noted that taxing authority would not be inferred and that the County only had "regulatory" powers. Id. at p. 306, 307.¹¹ The Cache holding relates only to the statutory provisions of counties and is not relevant to the issues of this City taxation case.

⁹ See Statement of Facts Nos. 4-11, supra and Discussion in Point II, supra.

¹⁰ Appellant-Hotels' brief, p. 17.

¹¹ This Court subsequently affirmed the difference of county and city enabling powers to impose business revenue license taxes. Cf. Section 17-5-27 Utah Code Ann. and Mountain States Tel. and Tel. Co. v. Salt Lake County, 702 P.2d 113 (Utah 1985) (County enabling authority) with broader city taxing power illustrated by Mountain States Tel. and Tel. Co. v. Salt Lake City, supra and granted powers in Section 10-8-39, 80 Utah Code Ann.

Lastly, the City has no quarrel with the general proposition that classifications of taxpayers must be based on rational distinctions. However, that principle is entirely different from equating the amount of taxes paid to the benefits received. When one applies the correct body of case law dealing with "revenue" licensing (as opposed to "regulatory" fees) appellant-Hotels' authority for its argument to equate tax payments with service delivery evaporates. The lower court ruling was correct and should be affirmed.

B. THERE ARE NO DISPUTED ISSUES OF MATERIAL FACT JUSTIFYING A REMAND BECAUSE TAX PAYMENTS ARE NOT AN ASSESSMENT OF BENEFITS.

Much of the appellant-Hotels' argument before the lower court and that underpinning their claim before this Court is predicated on their interpretation of Continental Bank and Trust v. Farmington City, 599 P.2d 1242 (Utah 1979).¹² Appellant-Hotels claim that a factual dispute exists and assert the right to further discovery based on the theory that a taxpayer can claim discrimination and unconstitutional taxation, if it pays more taxes than it receives in back governmental services. The law is to the contrary and Continental Bank does not so hold.

¹² See appellant-Hotels' brief, p. 13, 14, 15, 19, 20, 22, 33.

First, it must be noted that Courts consistently and uniformly held that there is no requirement that the benefits received by a taxpayer must equate to the taxes paid. The United States Supreme Court held as follows:

'A tax is not an assessment of benefits. . . . The only benefit to which the taxpayer is constitutionally entitled is that derived from the enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . .' Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 522-23, 81 L.Ed. 1245 (1937), quoted in Tiffany Const. Co., Inc. v. Bureau of Revenue, 603 P.2d 632, 634-35 (N.M. 1979) (Emphasis added).

The Supreme Court, further, observed:

"The Fourteenth Amendment does not require taxes to be levied according to benefits received by the person or entity . . . [paying them]. Missouri Pac. Railroad v. Road District, 266 U.S. 187, 69 L.Ed. 237 (1924) (Emphasis added).

McQuillin summarizes this universal principle applicable to all general revenue taxation (as opposed to regulatory or fee assessments) as follows:

So it is immaterial that no benefit is derived by the taxpayer from the payment of taxes, or that he is less benefited than others who pay the same or less tax. 16 McQuillin, Municipal Corporation, Id. at Section 44.50 at p. 110 (3rd Rev.Ed.) (Emphasis added); see also Id. Section 44.47.

Utah has specifically upheld this view of the law in a case virtually identical to the one before the Court. Like the case before this Court, hotels asserted that a gross receipts tax was unreasonable and arbitrary because they did not obtain measurable benefits; this Court held:

A tax is not an assessment of benefits.'
(citation omitted) Taxes are repeatedly
imposed on a group or class without regard to
the responsibility for the creation of relief
of the conditions to be remedies. . . .
There is no need to be a relationship between
a class of taxpayers and the purpose of the
appropriation. Menlove v. Salt Lake County,
supra at p. 230. (Emphasis added).¹³

The Continental Bank case holding and rationale is not to the contrary. In this case, a single taxpayer which was really a separate enclave and provided essentially all of its own municipal services, but was singled out for oppressive taxation. Significant to the Court was the fact that this sole business "shoulders the (tax) burden alone. . . ." Id. at p. 1245. Also, important was the fact that the business operated on a low profit margin, payed no dividends, was heavily in debt and the assessment represented a ". . . potentially crippling tax on a single business for the benefit of the community as a whole . . ." Id. at p. 1246 (Emphasis added).

The Continental Bank case is factually poles apart from the case at bar. There, the City (in a sham classification really comprised of a single taxpayer) established tax rates

¹³ For other authority holding that a revenue taxing measure need not bear any relationship to the cost or the amount of services delivered to the taxes entity. See: 9 McQuillin Section 26-35 at p. 76 (3rd Rev.Ed.); Ogden City v. Crossman, 53 P. 985, 989 (Utah 1898); Blue Top Motel v. City of Stevens Point, 320 N.W.2d 172 (Wis. 1982); Edwards v. City of L.A., 119 P.2d 370, 372 (Cal.App. 1942); Chestnut Inc. v. City of St. Louis, 389 S.W.2d 823 (Mo. 1985).

near the limits of economic survival and required that business to fund a major portion of the City budget. To the contrary in the case at bar, the class of taxpayers includes over 100 hotels and motels which each receive a full umbrella of health, safety and other City services. Each contributes to and feeds off of the City's economic environment in a unique way; the City's innkeepers are not an isolated self-contained sub-community as was that taxpayer. (See Statement of Facts and discussion in Point II, supra).

Neither are the innkeepers oppressively taxed to the point of extinction. It is interesting that of the 100 businesses within the class, all but these two appellants have not pursued a challenge to the tax. That lack of participation hardly suggests the oppression and discrimination required by case law as illegal and confiscatory taxation.

Further, the Continental Bank case does not uphold appellant-Hotels' suggestion that the Due Process Clause invites the Court to compare benefits received with taxes paid; by close analysis, it is really a confiscatory tax case. It does not support appellant-Hotels' premises that the lower court erred in dismissing the case and granting Utah Power and Light Company's Motion for a Protective Order against discovery.

It must be noted that before the lower court, the Hotels argued that Summary Judgment should not be granted, and proffered evidence that they wanted to compare tax payments made by innkeepers with services and taxes paid by others in the downtown area.¹⁴ In their brief, filed with this Court, they similarly argue error because they want to compare ". . . taxes paid to benefits received."¹⁵ As above argued, this analysis is not a claim or theory upon which they may legally challenge this tax.

The discovery against which Utah Power & Light was protected went to the this issue: The Hotel sought the amount of franchise taxes paid by all innkeepers through that utility.¹⁶ Appellant-Little America sought privileged, sensitive and confidential information about competitors' business operations; further, it was burdensome and

¹⁴ See Answer to City's Third Set of Interrogatories, p. 2, wherein the appellant, Little America states:

"[It] intends to proffer evidence . . . as to the tax burden imposed on [it] . . . in comparison with those imposed on average residents . . . or owners of other commercial property in a downtown area." (Emphasis added)

¹⁵ Appellant-Hotels' brief, p. 25.

¹⁶ It should be noted that the affidavit of Mr. Norman was the subject of an objection, which the lower court never ruled upon because, even accepting the foundationless opinions, summary judgment was proper, as a matter of law. (R-870-75).

oppressive to the utility.¹⁷ However, more importantly, the information would add nothing to the suit, except the amount of total taxes paid for appellants' invalid theory that a comparison of benefits to tax payments was important.

It is respectfully submitted that appellant-Hotels' extenuated argument concerning its asserted lack of benefits in comparison to the amount of taxation paid by them is irrelevant and immaterial. Those arguments may have some applicability to a challenge alleging confiscatory taxation; however, that cause of action has not been pled. Therefore, the lower court's rulings on discovery and its summary judgment should be affirmed.

C. THE CITY'S HOTEL OCCUPATION TAX IS NOT
CONFISCATORY OR CONSTITUTIONALLY
OPPRESSIVE.

The United States Supreme Court, Utah and virtually every other state decision is clear that establishing a tax rate is purely a legislative function. The Courts are loath to question the reasonableness or the amount of a tax, so long as it is not an assessment beyond the legitimate needs

¹⁷ Appellant-Little America's first subpoena was quashed on objection by Utah Power and Light Company. A second subpoena duces tecum was more generic as to the general class of innkeepers in an effort to avoid privilege and confidentiality concerns. However, it was still burdensome and the information ruled irrelevant because it only went to the issue of an assessment of benefits tax theory, properly rejected by the learned District Judge. See, first Protective Order and Order Granting Partial Summary Judgment and Granting Protective Order (R-1141 attached as Appendix "4").

of the taxing entity or does not constitute an abuse of the taxing power, by being tantamount to a confiscation of private property. 16 McQuillin Municipal Corporations, Section 44.25 at p. 65. The United States Supreme Court held:

'Except in rare and special cases, the due process of law contained in the Fifth Amendment is not a limitation on the taxing power conferred upon congress by the Constitution An no reason exists for applying a different rule against the state in the case of the Fourteenth Amendment That clause is applicable to a taxing statute such as the one here assailed only if the act be so arbitrary as to compel a conclusion that is not involved in exertion of the taxing power, but constitutes in substance and effect, a direct exertion of a different and forbidden power, as, for example, the confiscation of property. Marnano Co. v. Hamilton, 292 U.S. 40, 78 L.Ed. 1109 (1934).

Likewise, our Supreme Court observed:

. . . by granting the power [power to tax] the legislature imposed upon the city council the discretion to determine just how far they could go within the limits imposed, . . . as to be the best judge of the necessities.
. . . In such cases the council [city legislative body] and not the court, is the proper repository of the public trust; . . . Under the circumstances, the court ought not to interfere upon the ground that the ordinance is unreasonable, but is restricted to the constitutionality of the act granting the power. Ogden v. Crossman, supra, at p. 989 (Emphasis added).

In measuring when the "line-of-abuse" has been crossed, this Court and many others have stated that the facts must demonstrate that the tax was beyond the City's needs or would destroy the taxed business class. This Court stated that a city lacked the power to tax, only when it acted:

. . . Beyond the necessities of the city, or
. . . one so excessive as to prohibit or
destroy the occupation or business upon
which it is imposed." Ogden v. Crossman,
supra at p. 989 (Emphasis added).

Other Courts considering this issue have similarly ruled. For example the Washington Supreme Court upheld a 2-1/2% gross receipts business or occupation tax on those selling fuel oil, when they complained they were unfairly discriminated against by virtue of a parallel 5% occupation tax on natural gas, electrical and telephone suppliers. It held:

Therefore, for a tax to be declared invalid, it must be shown that it actually tends to destroy as a whole the business, industry, or entity which is being taxed. It is not enough that the tax imposes an unpleasant or heavy financial burden on individual operators or the industry as a whole. To be invalid, a tax must be so oppressive or unreasonable as to amount to a confiscation or destruction of the business being taxed. The Oil Heat Institute of Washington v. Town of Mulilteo, 498 P.2d 864, 866 (Wash. 1972)¹⁸ (Emphasis added).

The case at bar presents no facts where the hotel industry is going to be subject to the confiscation of property, under the standard enunciated by these many Courts. Further, the facts are not in dispute that the tax was imposed to meet City needs and not in excess of budget.

¹⁸ Accord: Koffman v. City of Tucson, 433 P.2d 282, 286 (Ariz. 1967); Pittsburgh v. Alco Parking Corp., 417 U.S. 369, 41 L.E.2d 132, 137, upholding a 20% gross receipts tax on commercial parking business, even if the tax destroyed particular businesses.

Therefore, the Summary Judgment granted by the lower court against the appellant-Hotels was proper. The appellant-Hotels have failed in fact and law to establish a claim of a City abuse of its taxing power sufficient to constitute an "oppressive" or "confiscatory" tax, which violates due process or equal protection principles of the U.S. or State Constitutions.

POINT IV

THE LICENSE TAX IMPOSED ON THE CLASS OF TRANSIENT ROOM PROVIDERS BY THE CITY IS WITHIN THE CITY'S ENABLING POWER AND IS NOT AN ILLEGAL INCOME OR SALES TAX.

- A. UTAH ENABLING POWER AUTHORIZES THE CITY TO ADOPT A GROSS RECEIPTS OCCUPATION TAX.

State law specifically provides:

They [cities] may raise revenue by levying and collecting a license fee or tax on any business within the limits of the City, and regulate the same by ordinance; . . . 10-8-80 Utah Code Ann., 1953 (Emphasis added).

It also clearly authorizes cities to tax hotels; the law provides"

They [cities] may license, [and] tax . . . hotels and other public places, boarding houses, . . . lodging houses . . . and all others pursuing like occupations. . . . 10-8-39 Utah Code Ann., 1953 (Emphasis added).

In construing this specific grant of power, this Court has ruled that cities have the power to impose an occupation tax computed from the gross receipts of the business.

Davis v. Ogden City, 215 P.2d 616, 621 (Utah 1950).

Specifically, with regard to the appellants' claim, this Court held:

An occupation tax does not become an income tax [or a sales tax] because the amount levied is based on gross income. Id. at p. 624 (Emphasis added).¹⁹

Subsequently, the Utah Supreme Court again upheld the per se validity of a Salt Lake City ordinance levying a gross receipts tax on a business, under enabling power granted in Section 10-8-80. In so ruling, the Court stated: "On its face the taxing scheme is . . . constitutional . . ." Mountain States Tel. & Tel. v. Salt Lake City, 596 P.2d 649, 652 (Utah 1979).

B. THE LICENSE TAX IS NOT A SALES OR INCOME TAX.

The recognition that a gross receipts tax has not become an illegal income tax or sales tax by virtue of its tax on gross receipts is also virtually uniformly upheld in other jurisdictions. McQuillin states as follows:

The power to license for revenue as well as police purposes may be conferred upon the municipal corporation.

. . .

¹⁹ Accord: Town v. Hackleburg v. Northwest Alabama Gas District, 277 Atlanta 355, 170 So.2d 792 (Ala. 1964); National Biscuit Co. v. City of Philadelphia, 197 P.2d 788 (Cal. 1948); In Re 320 West Thirty-Seventh Street Inc., 22 N.E.2d 313 (N.Y. 1939) holding a gross receipt based business tax not a sales tax.

The amount of the license tax or fees may be based on the amount of business done or sales made, measured by gross sales, gross receipts or gross income. 9 McQuillin, Municipal Corporations, Section 26.30 at p. 62, Section 26.37 at p. 83 (Emphasis added); see also, Id. Section 44.12, p. 32; Section 44.190, p. 475.

This work further summarizes a large body of law regarding the gross receipts tax as follows:

The term [gross receipts tax] while amply descriptive of the methods of computation, is of no significance in determining the nature of the exaction imposed in any particular tax legislation.

. . .

A gross receipts tax is not invalid as a tax on income or on property. McQuillin, Id. at Section 44.192 at p. 490. (Emphasis added). See also P. Lorillard Co. v. Seattle, 83 Wash.2d 586, 521 P.2d 208 (1974).

Thus, the law is virtually uniform in holding that a gross receipt tax is not a sales or income tax.

Specifically, those jurisdictions considering the issue before this Court concerning the validity of gross receipt taxes on rooming houses or hotels have held them valid against challenges that they were illegal sales or other types of taxes, not within the taxing authority of the City.

For example, a 1982 decision by the Supreme Court of Wisconsin upheld a 4% gross receipt business occupation tax,

computed income derived from innkeepers, providing rooming accommodations for transient guests staying for less than a month. The Court upheld the City tax against challenges it was an illegal income tax and beyond the City's enabling power. It held:

"We hold that the City can use the gross receipts as the basis by which to determine the room tax." Blue Top Motel v. City of Stevens Point, 320 N.W.2d 172 (Wis. 1982).

For other cases see: Edwards v. City of Los Angeles, 119 P.2d 370, 372 (Cal.App. 1941); Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823 (Mo. 1965),²⁰ upholding a two percent gross receipts tax on daily rental receipts received on hotel from transient guests; Green v. Panama City Housing Authority, 110 So.2d 490 (Fla. 1959) cited at 93 A.L.R.2d 1140, holding a gross receipts room rental tax was ruled to

²⁰ Appellant-Hotels cite a 1979 Missouri case that a 1% gross receipt tax was an illegal sales tax imposed by a city at page 42 of their brief. That case did not overrule Chestnut and did not hold that a business occupation tax based on gross receipts was illegal. Here, a tax on food and drink transaction was held to be a sales tax because of the way the tax was structured, which taxed net sales to the customer. The court, however clearly notes: "This case does not concern a municipality's power to enact such a [gross receipts business occupation] tax." Suzy's Bar & Grill, Inc. v. Kansas City, 580 S.W.2d 259, 262 (Mo. 1979)

be an excise and not an income tax;²¹ State v. Heymann, 115 So. 101 (La. 1933), a one percent tax on income from receipts earned on the rental of office buildings was ruled to be an excise and not an income tax or property tax; Dicks v. Naff, 500 S.W.2d 350 (Ark. 1973), upholding 1% gross receipt tax on hotels and restaurants.²²

Appellant-Hotels cite the Lexington v. Motel Developers, Inc. case for the proposition that a gross receipt business tax (like Salt Lake City's) is per se void

²¹ The appellant-Hotels cite at p. 42 of this Brief a lower court of appeals Florida case, affirmed by the Florida Supreme Court, which held void a \$10.00 tax on the sales of motore vehicles on each \$1,000 of value, reduced to \$1.00 on sales over \$3,000. The court here found significant that the ordinance taxed "sales" not gross receipts. Those facts have little or nothing in common with the facts and ordinance here under discussion. Birdsong Motors, Inc. v. Tampa, 235 S.2d 318 (D.Ct.App. Fla. 1970) aff'd 261 So.2d 1 (Fla. 1972).

At page 40 and 46 of appellant-Hotels' brief, they cite Minturn v. Foster Lumber Co., 548 P.2d 1276 (Colo. 1976) for the proposition that all gross receipt occupation license taxes are illegal income taxes. Interestingly, the court cites with approval City of Inglewood v. Wright, 364 P.2d 569 (Colo. 1961) which upheld a tax computed at \$4.00 per room. This case was (in reality) a gross receipt or a property tax, which was ruled beyond the City's enabling power. It correctly ruled that this tax was not an income or a property tax, but a legal occupation license tax. A room charge of \$4.00 can be translated to a percentage of the rental, but Minturn discussion fails to discuss this issue. Minturn stands alone and without acceptance by any other reported decision. It is specifically in contradiction to Utah law and the vast majority of other decisions approving occupation license fees, determined by a percentage of gross receipts.

²² Case cited erroneously by appellants at p. 35 of their brief as supporting contrary position.

as a sales tax.²³ Contrary to the implication in appellants' brief, that case, holds that the gross receipts business occupation tax for hotels was not void as a sales tax. It expressly stated of the 5% license tax on room rentals:

"We conclude the tax here under consideration properly may be characterized as a permissible license tax which the City of Lexington may impose on a business and is not an excise [sales] tax which cities . . . are not empowered to levy." Lexington v. Motel Developers, Inc., 465 S.W.2d 253, 256 (Emphasis added), voiding the tax on an invalid classification, which issue was discussed supra.

The other cases cited in appellant-Hotels' brief on this point likewise do not stand for the proposition asserted or

²³ See page 41 of appellant-Hotels' brief, quoting a position from a concurring judge expressing a concurring opinion, expressly rejected by the majority.

are clearly distinguishable.²⁴

The uncontroverted facts demonstrate that the tax in question was intended to be and has all the incidents of a privilege or occupation Business Revenue Tax. (a) The tax is called and passed as a license tax; (b) The tax on innkeepers is imposed on the party engaged in business, not the consumer for the privilege of doing business in the

²⁴ In Columbus v. Atlanta Cigar Co., Inc., 143 S.E.2d 416 (Ct.App.Ga. 1965), cited at p. 42 of appellant-Hotels' brief, the court specifically approved of business occupation taxes computed on gross receipts. It noted that its holding prohibiting sales tax impositions by the City " . . . shall not be construed to apply to a . . . occupation or franchise tax based on gross receipts or on a gross receipts basis." Id. at p. 418 (Emphasis added). In that case the court found that a 2 cent tax on each 20 cigarettes possessed by anyone was preempted by a state statute. Further: "It is clear that the tax . . . [is not] imposed on one for the privilege of doing business . . . , but is a sales or use tax imposed on individual transactions" Id. at p. 418. (Emphasis added).

In City of Homer v. Gangl, 650 P.2d 396 (Alaska 1982), cited at page 43 of appellant-Hotels' brief, the question of sales versus license tax was not even at issue. The city, through a special referendum vote, passed a 5% transient room tax under its perceived general revenue taxing powers; it was not structured or even asserted to be an occupation license tax. The room tax was based on the: "actual rental of a room, and imposed, computed and collected according to traditional sales tax methods . . ." Id. at p. 399. It was structured as a tax on each transaction and not on the privilege of doing business; as such, it was held void as a sales tax. Appellants' assertion that the tax was "similar" to Salt Lake's tax is simply untrue.

For a discussion Suzy's Bar & Grill, Inc. v. W.F. Jensen Candy Co., and Eugene Theatre Co., Coos Bay, Birdsong Motors, Inc. See footnotes 20, and 21, supra.

City;²⁵ (c) In computation of gross receipts, there is no deduction permitted for any operating expenses or any included excise taxes on products used;²⁶ and (d) It is irrelevant to the City if the tax is included in the cost of appellant-Hotels' operation or surcharged to their patrons. See Statement of Facts; Chapter 30, Title 20 Revised

²⁵ Appellant-Hotels suggest that the fact that the tax is assessed against the business is irrelevant in distinguishing a sales tax from an authorized occupation or privilege license tax. Page 40 of appellant-Hotels' brief. However, every case on the subject, including those cited by appellants, note this factor as relevant distinction.

Sales taxes are on imposed individual "transactions" and ordinarily assessed by statutory authorization at the point of sale to the consumer. Similarly, the Utah Code dealing with sales taxes provides: "The word 'tax' means the tax payable by the purchaser . . . or the aggregate amount of taxes due from the vendor . . ." Utah law imposes the sales tax "upon every retail sales" and the law specifically requires collection at the point of sale; it says vendors ". . . shall be responsible for the collection of the amount of the [sales] tax imposed on the sale [transaction]." 59-15-2, 4, 5; 11-1-1 et seq. Utah Code Ann., 1953 as amended (Emphasis added).

By contrast, license taxes are imposed on business receipts. That distinction is a major "incident" to demonstrate the difference between a sales and a license tax. The fact that the vendor is liable, if he does not collect the tax is irrelevant to the structure or "incidents" of these different taxes.

²⁶ Appellant-Hotels assert no new privilege was conferred by the change in the rate structure for the occupation tax. Page 41 of appellant's brief. Tax rates continually change; the Utah Supreme Court specifically held cities had the power to increase license tax rates in Mt. States Tel. & Tel. v. Ogden City, 487 P.2d 849 (Utah 1971). Appellant-Hotels' privilege to do business in Salt Lake is contingent on paying license fees and their ipse dixit statement to the contrary is not supported by any law or facts known to this writer and appellant-Hotels have cited none.

Ordinances of Salt Lake City, attached as Appendix "8".²⁷

The tax is not a "sales tax" because it taxes the business for the privilege of operating within the City and is not a tax on the "transaction" assessed against the consumer, based on the value of the service or commodity received. It is not an "income tax" because it lacks the incidents of this type of a tax, such as taxing "net" income, generally on a progressive rate basis. The tax is what it facially purports to be; it is a privilege or occupation privilege revenue tax on a distinct class of businesses and should be upheld.

POINT V

CITY'S ORDINANCE HAS NOT BEEN PREEMPTED BY STATE LAW.

Appellant-Hotels contend²⁸ that the City tax is preempted under the State enabling statute which allowed County governments to establish recreation, tourist and convention bureaus. See 17-31-1 et seq. Utah Code Ann., 1953, Chapter 12 of Title 59 Utah Code Ann., 1953. The following point will demonstrate the fallacy of this assertion.

²⁷ Also see, Kansas City v. John Deere Co., 577 S.W.2d 633 (Mo.); United Airlines, Inc. v. Joseph, 121 N.Y.S.2d 692; Evers v. Daveville, 61 S.2d 78 each holding that a gross receipts business occupation tax was not a "sales tax."

²⁸ See p. 47 of appellant-Hotels' brief.

It is undisputed that where a state has preempted a legislative field, including taxation, local government may not intrude into the area. Antieau, Municipal Corporation Law, Vol. 2A Section 21.10; 16 McQuillin, Municipal Corporations Section 44.190a at p. 477.

However, Antieau also correctly summarizes many cases by stating:

A state tax regulatory in nature does not ordinarily preclude a municipal tax levied for revenue. Even when a state has occupied a field by regulation, local governments can generally tax businesses carried on within their boundaries and enforce such taxes by requiring business license taxes for revenue. Id. Section 21.10

In the case before the bar, however, there exist a specific grant of power for cities to pass occupation taxes and express Utah case law which permits the tax to be computed on gross receipts.²⁹ Therefore, appellant-Hotels' challenge must be premised on an "implied" preemption. In deciding such issues, Courts attempt to determine "intent" of the State legislature. Speaking to this issue of preemption, this Court noted of the power of local governments to adopt ordinances as follows:

A state cannot empower local governments to do that which the state itself does not have authority to do. In addition, local governments are without authority to pass any ordinance prohibited by, or in conflict with, state statutory law. (citation omitted)

²⁹ See 10-9-39, 80 Utah Code Ann. and discussion supra.

Also an ordinance is invalid if it intrudes into an area which the Legislature has preempted by comprehensive legislation intended to blanket a particular field.
State v. Hutchinson, 624 P.2d 1116, 1121
(Utah 1980) (Emphasis added).

In a leading case, our sister state, Alaska, recently considered an issue similar to the one before the bar and articulated these principles. Liberati v. Bristol Bay Burrough, 584 P.2d 1115 (Ala. 1978). In this case, a municipality levied a 3% gross receipts tax on all fish caught within the Burrough of Bristol Bay. The state had already imposed a 3% tax on fisheries, a part of which tax was shared with Alaska municipalities.

Fishermen contested the tax, among other reasons, charging that it constituted an illegal severance tax. Specifically, they complained that the city tax was preempted by the state tax on the same income on the sale of fish. Alternatively, they argued specific commodity sales tax, outside the city's taxation power and preempted by state law.

The Court rejected each of these arguments and held (similar to State v. Hutchinson, supra) that Alaska cities did not follow the archaic Dillon Rule of strict construction. After noting general statutory authority for city taxation, the Alaska Court discussed the issue of preemption. It noted:

Merely because the state has enacted legislation concerning a particular subject

does not mean that all municipal power to act on the same subject is lost. . . . only where an ordinance substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose. Id. at p. 1122.³⁰

It also held:

In view of the constitutional and statutory commandment that municipal power be broadly interpreted in Alaska, we adopt the view that there is no general prohibition against like municipal and state taxes. Id. at p. 1122 (Emphasis added); see also, 56 Am.Jur. "Municipal Corporations" Section 374 at p. 408.

The strong presumption of validity of municipal ordinances requires that the "preemption" by the state be clearly manifest before it can be held the powers of cities has been withdrawn. Junction City v. Lee, 532 P.2d 1292 (Kan. 1975); Klimet v. Ghent, 423 NYS 2d 517 (NY 1979). Also preemption cannot apply where there exists no conflict. 56 Am.Jur. Municipal Corporations Section 374 at p. 409, 411.

Consistent with this clear law, Utah has upheld a 6% gross receipt business occupation tax on public utilities, regulated by the Public Service Commission against a challenge that cities were preempted by the State regulatory scheme. Mountain States Tel. and Tel. v. Ogden, supra.

³⁰ See also, 72 Harvard L.Rev. "Conflict Between State Statutes and Municipal Ordinances" 737, 745 (1959) (Emphasis added); see also: Ray v. Atlantic Richfield Co., 435 U.S. 151, 55 L.Ed.2d 179 (1978).

Based on similar principles, other Courts have also upheld City gross receipts tax on amusement businesses, holding they were not preempted by State sales tax laws. Estelle Realty, Inc. v. City of Mayfield Heights, 199 N.E.2d 875 (Ohio 1964). They held that the gross receipts tax is not in conflict with the corporate tax or foreign corporation franchise tax. National Biscuit Co. v. City of Philadelphia, 98 A.2d 183 (Pa. 1953).

Thus, it can be summarized that preemption occurs where: (a) There is an express prohibition by State statute, or (b) the taxing scheme would substantially interfere or make impossible the performance of a state revenue producing or regulatory undertaking. None of these conditions exist or are alleged in the case before the bar.

The State statutes here in question does not even concern itself with State regulation or with producing revenue for the State of Utah. Rather, it is merely an enabling statute permitting counties of the state to raise money (if they so choose) for the promotion of recreation, tourist and convention bureaus.³¹ This permissive authority

³¹ The law urged to be precursive by the Appellant-Hotels specifically provides that it is not mandatory; it states of its purpose that:

" . . . the method of financing such bureaus is not exclusive or mandatory." See title of the act quoted in the annotation of 17-31-1 Utah Code Ann., 1953.

It also has no more dignity or effect than that granting City enabling authority under 10-8-39 Utah Code Ann., 1953.

to raise funds certainly demonstrates a lack of any "manifest" legislative intent to preempt City taxing authority.

Thus, it is respectfully submitted that business occupation tax does not substantially interfere with or preclude state regulatory purpose or function and the City tax should be upheld.

CONCLUSION

The City has clear enabling authority for a gross receipts business occupation revenue tax under Sections 10-8-39 and 80 Utah Code Annotated, 1953. Further, computing a business license tax based on gross receipts of a business does not render it a impermissible sales or income tax. The City has not been preempted from the imposition of a license when the State granted counties the power to, simultaneously, tax the same businesses. Since the tax classification is based on rational distinctions, it is constitutional. The lower court's Summary Judgment should be affirmed.

Respectfully submitted this _____ day of February, 1988.

ROGER F. CUTLER
Salt Lake City Attorney
Attorney for Respondent

RFC:cc

APPENDIX

APPENDIX I

MEMORANDUM DECISION OF NOVEMBER 30, 1983 (R-913)

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

NOV 20 1983

[Signature]
County Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LITTLE AMERICA HOTEL	:	
CORPORATION, a Utah	:	MEMORANDUM DECISION
corporation, et al.,	:	
Plaintiffs,	:	CIVIL NO. C-82-5220
vs.	:	
SALT LAKE CITY, et al.,	:	
Defendants.	:	

This matter comes before the Court on cross Motions for Summary Judgment between the various plaintiffs and the defendants. Also before the Court are cross Motions to Strike all or portions of affidavits filed by the respective parties in support of or in opposition to the Motions for Summary Judgment. This matter was extensively briefed and argued by the parties' respective counsel. Following argument, the Court took the matter under advisement and has now considered further the oral arguments made by counsel for the respective parties, the exhaustive Memoranda submitted by all parties, reviewed the cases cited by the parties, and has conducted further independent research on the questions and issues raised.

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The Court is now fully advised on the issues, and therefore enters the following Memorandum Decision.

The Court declines to deal individually or in depth with the multitude of legal issues raised by the various parties, inasmuch as the legal Memoranda of the respective parties accomplish that task in an extremely adequate fashion, and to restate those legal arguments here would only tend to unduly lengthen this Memorandum Decision.

With regard to some of the issues raised by the parties, the Court is satisfied that the application of proper law and proper legal analysis allows this Court to make disposition of those issues as a matter of law. Other issues, however, necessarily encompass disputed material issues of fact that under the rules applicable to motions for summary judgment, prohibit determination as a matter of law, and require full resolution of those contested issues of fact by a trier of fact.

The Court is of the opinion that the affidavits to which objections have been raised, should be allowed, for purposes of these Motions, at least for determination as to the weight to be given to the statements offered by the various affiants. The Court is mindful of the potential foundational difficulties that exist in some or all of the affidavits, and has considered those potential foundational problems in determining the weight

to be given to the respective affidavits. The cross Motions to Strike affidavits (referred to by the defendant as "Objections") are denied. The Court has considered the affidavits in light of the above standards and even giving the appropriate weight to the affidavits, the affidavits lead this Court to the inescapable conclusion that a portion of the issues raised in the respective Motions for Summary Judgment contain material questions of fact prohibiting disposition of this case as a matter of law.

The Court concludes, based upon the undisputed facts or upon those facts where no "substantial" disputed facts exist, and upon application of the legal authorities urged by the defendants, which the Court accepts as proper and appropriate under the circumstances of this case, that Summary Judgment in part as suggested above, is appropriate. The Court finds in favor of the defendants and against the plaintiffs on all legal issues raised by the pleadings and Motions, together with those suggested in the supporting Memoranda, with the exception of the issue of "classification" and whether or not such a classification is arbitrary and/or discriminatory. A determination of the issue of the reasonableness of the classification under the circumstances of this case must be based on the facts as they may eventually be found by a trier of fact. The affidavits, considered in the light set out above, make clear that contested issues of fact remain for ultimate resolution at trial on the classification issue.

The legal authorities and positions urged by the plaintiffs regarding the validity of the defendant Salt Lake City's ordinance other than the "classification" issue are not, in the Court's judgment well taken or are otherwise not applicable in this case.

While the plaintiffs attempt to raise fact questions in some limited areas in their Reply Memorandum, for example: interference with interstate commerce, there exists no "genuine issue of material fact" so as to prohibit Summary Judgment on those issues.

Accordingly, the Motions of the respective plaintiffs for Summary Judgment are denied. The Motion for Summary Judgment of the defendants is granted in part and denied in part in conformance with this Memorandum Decision.

Counsel for the defendant is requested to prepare an Order reflecting the foregoing, and submit the same to the Court for review and signature pursuant to Rule 2.9 of the Rules of Practice for the District Courts of the State of Utah.

Dated this 30 day of November, 1983.


TIMOTHY R. HANSON
DISTRICT JUDGE

MAILING CERTIFICATE

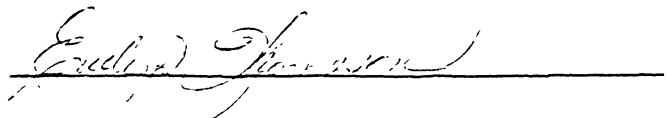
I hereby certify that I mailed a true and correct copy of
the foregoing Memorandum Decision, postage prepaid, to the
following, this 21 day of November, 1983:

Lon Rodney Kump
Attorney for Plaintiff
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Salt Lake City, Utah 84111

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APPENDIX II

JUDGMENT ON MOTIONS FOR SUMMARY JUDGMENT (R-924)

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

JAN 16 1984

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H. D. [Signature] - Ingley, Clerk 3rd Dist. Court
By [Signature] Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

LITTLE AMERICA HOTEL)	
CORPORATION, a Utah	)	JUDGMENT ON MOTIONS FOR
corporation, et al.,	)	SUMMARY JUDGMENT
)	
Plaintiffs,	)	Civil No. C 82-5220
)	
vs.)	
)	
SALT LAKE CITY, et al.,)	
)	
Defendants.)	
)	

The plaintiffs Pearson Enterprises Partnership Company, Boyer-Gardner Hotel Properties Partnership, Tri-Arc Hotel Associates, and Holiday Inns, Inc.'s Motion for Partial Summary Judgment and the defendants' cross Motion for Summary Judgment came on regularly for hearing before the Honorable Judge Timothy R. Hanson on the 25th day of March, 1983. The Court on said date further considered the defendants' objections and motion to strike plaintiff's affidavits. The court having reviewed the memorandum of counsel, having conducted its own independent research, having heard the arguments of counsel, having entered

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its Memorandum Decision, and being fully advised in the premises

HEREBY ORDERS, ADJUDGES AND DECREES as follows:


1. The aforesaid plaintiffs' Motion for Partial Summary Judgment should be and the same is denied, with prejudice.

2. The defendants' Motion for Summary Judgment is granted in part. All of the plaintiffs' claims are dismissed with prejudice, excepting only the issue of the legality of tax classification of the City ordinance subject of the within dispute and whether or not such classification is arbitrary and/or discriminatory as applied.

3. The defendants' objection to the Affidavit submitted by the plaintiffs is denied.

DATED this 16 day of JANUARY, 1984.

BY THE COURT:


TIMOTHY R. HANSON, Judge

ATTEST

H. DIXON HINDLEY

Clerk

By 
Evelyn Thompson
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Judgment on Motions for Summary Judgment, by depositing the same in the U.S. mail, postage prepaid, this 31st day of December, 1983 to the following:

Lon Rodney Kump
Attorney for Plaintiff
333 East Fourth South
Salt Lake City, Utah 84111

Kent M. Winterholler
James M. Elegante
Attorneys for Plaintiffs Pearson Enterprises
185 South State Street
P.O. Box 11898
Salt Lake City, Utah 84147

Dorothy C. Pleshe
Attorney for Plaintiff Utah Hotel Company
Kennecott Building, Suite 800
Salt Lake City, Utah 84133

cc80

Chris Clark

Approved as to form.

Lon Rodney Kump

Kent M. Winterholler

Dorothy C. Pleshe

APPENDIX III

MEMORANDUM DECISION OF FEBRUARY 14, 1986 (R-1135)

FEB 14 1986

H. Dixon Hindley, Clerk 3rd Dist. Court

By *Julian Thompson*
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LITTLE AMERICA HOTEL	:	MEMORANDUM DECISION
CORPORATION, a Utah corporation,	:	
Plaintiff,	:	CIVIL NO. C-82-5220
	:	
vs.	:	
	:	
SALT LAKE CITY, et al.,	:	
	:	
Defendants.	:	
	:	

The matter pending before the Court in the above-referenced proceeding is the defendant Salt Lake City Corporation's Motion for a Protective Order, wherein the City seeks to relieve a third party, Utah Power and Light, from the obligation to respond to a Subpoena Duces Tecum, dated July 11, 1985, issued and served at the request of the plaintiff. The matter of the type of discovery sought by the proposed inquiry directed at Utah Power and Light has been before the Court on at least two prior occasions. On those prior occasions the Court has refused to allow the inquiry, and has granted the protective relief sought, or on the last occasion, has refused to reconsider a prior Order. At the latest hearing, all interested parties appeared and argued their respective positions. It was clear to the Court that the Court's prior rulings regarding the defendant City's Motions for Summary Judgment are not clear as to what issues remain for determination in this suit. Accordingly, the Court directed

001335

counsel to set forth their positions as to the breadth of the Court's prior rulings on the City's Motions for Summary Judgment regarding the remaining issues, in letter form. The parties have done that, and the Court has reviewed those materials. The Court was hopeful that the capsulized versions in the aforementioned letter briefs would allow the Court to re-evaluate the issues and resolve the questions regarding the remaining issues for trial determination without the necessity of reviewing all the prior Memoranda in the prior extensive files that led up to this Court's Order dealing with the plaintiff's Motion for Partial Summary Judgment which were denied, and the defendants' Motion for Summary Judgment which was granted in part and denied in part. Unfortunately, such was not the case, and to adequately advise itself regarding the reasons and basis, and more particularly the scope and breadth of the Court's rulings regarding remaining issues the Court has again reviewed the materials submitted in this case by all parties. Having accomplished that task, and having taken into account the arguments of the parties, the Court makes the following Memorandum Decision.

As to the position of the parties as to the scope and breadth of the Court's ruling on the defendant City's Motions for Summary Judgment, the position asserted by Salt Lake City is correct. Whether or not the benefits received by the plaintiff from the defendant bears any relationship to the taxes paid is not an

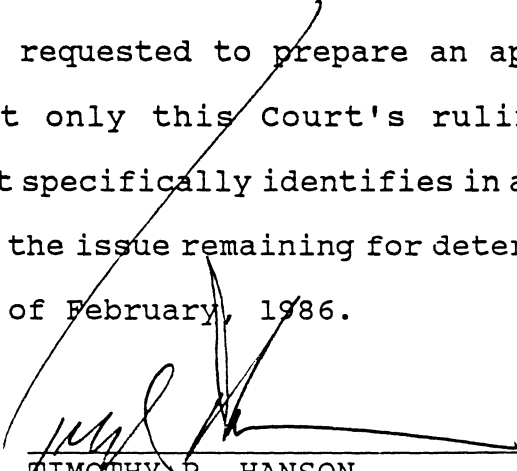
00133E

issue that remains for determination. The Court's prior rulings on the defendants' Motion for Summary Judgment encompassed such a claim, and by this Memorandum any ambiguity contained in either the Memorandum Decision or the subsequent Order signed by the Court is resolved. The only remaining issue is whether or not the tax classification in question is arbitrary and/or discriminatory as applied.

Based upon the foregoing clarification of the Court's prior Orders, the information sought from non-party Utah Power and Light to which the defendant City objects and seeks a protective order is not material nor relevant to the remaining issues, and therefore the protective order sought by the City should be granted.

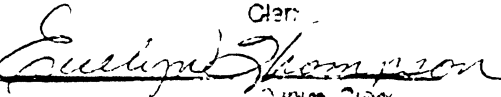
Counsel for the City is requested to prepare an appropriate Order which encompasses not only this Court's ruling on the requested protective order, but specifically identifies in accordance with the foregoing discussions the issue remaining for determination.

Dated this 13 day of February, 1986.


TIMOTHY R. HANSON
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY

Clerk

By 
Deputy Clerk

003257

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 14 day of February, 1986:

Lon Rodney Kump
David J. Bird
Attorneys for Plaintiff
333 East 400 South
Salt Lake City, Utah 84111

Roger F. Cutler
Salt Lake City Attorney
Attorney for Defendants
100 City & County Bldg.
Salt Lake City, Utah 84111

John Fellows
800 Kennecott Bldg.
Salt Lake City, Utah 84133

Kent M. Winterholler
185 S. State Street, Suite 700
Salt Lake City, Utah 84111

Paul H. Proctor
Attorneys for Utah Power and Light
1407 W. North Temple, Suite 340
P. O. Box 899
Salt Lake City, Utah 84111

By *Evelyn Thompson*
Deputy Clerk

001128

APPENDIX IV

ORDER CLARIFYING PARTIAL SUMMARY JUDGMENT
AND GRANTING PROTECTIVE ORDER (R-1141)

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

MAY 28 1986

ROGER F. CUTLER, USB No. 791
Salt Lake City Attorney
Attorney for Defendants
100 City & County Building
Salt Lake City, Utah 84111
Telephone: 535-7788

H. Dixon Hindley, Clerk 3rd Dist. Court
By *Ernest L. Thompson*
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

-----ooo0ooo-----

LITTLE AMERICA HOTEL
CORPORATION, a Utah
corporation,

Plaintiff,

vs.

SALT LAKE CITY, et al.,

Defendants.

ORDER CLARIFYING
PARTIAL SUMMARY JUDGMENT
AND GRANTING PROTECTIVE
ORDER

Civil No. C-82-5220
(Timothy R. Hanson)

Salt Lake City's Motion for a Protective Order of July 30, 1985, concerning a Subpoena Duces Tecum served on Utah Power and Light came on regularly for hearing before the Honorable Timothy R. Hanson on August 12, 1985. The issues regarding said motion turned on the issues remaining for trial following the Court's granting of the City's Motion for Partial Summary Judgment on December 20, 1983; therefore, the Court reviewed the memorandums and submittals of the parties, heard oral argument and again reviewed the matters heretofore presented to the Court in support of the original motions for summary judgment.

001262

The Court having reviewed all such matters and being fully advised in the premises and having entered a Memorandum Decision regarding said matter on February 13, 1986,

HEREBY ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

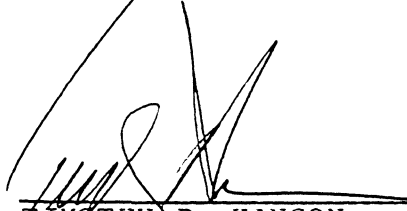
1. The City 's Motion for a Protective Order concerning a certain subpoena duces tecum dated on or about July 11, 1985, directed against Utah Power & Light, should be and the same is hereby granted. Said subpoena is quashed and Utah Power & Light is relieved of any obligation to respond thereto.

2. The Partial Summary Judgment heretofore entered by the Court is hereby clarified to aid the parties in conducting further discovery and trial preparation. The scope and intent of the previous Partial Summary Judgment was to dismiss all claims, assertions and legal theories advanced by the plaintiff, as a matter of law, excepting only the issue of whether the tax classification selected by Salt Lake City Corporation was arbitrary and/or discriminatory as applied. The matter left for trial or further proceeding in the within case does not include a comparison of the public service benefits received by the plaintiff(s), or other innkeepers subject to the ordinance challenged by plaintiffs in the within litigation, from the City in relation to taxes paid by them. Thus, any further discovery from Utah Power & Light Company or other utility companies regarding the amount of tax paid by said utility companies to the City, attributable to the payments made by the plaintiff, is irrelevant,

immaterial and not subject to further discovery. Further, whether or not benefits received by plaintiff from Salt Lake City bear any relationship to the amount of taxes paid by plaintiff is not an issue remaining for determination in this case.

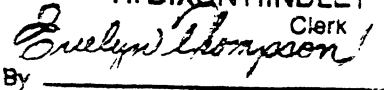
DATED this 28 day of May 1986.

BY THE COURT:


TIMOTHY R. HANSON
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

ATTEST
H. DIXON HINDLEY


By Evelyn Thompson Clerk

I hereby certify that I mailed a true and correct copy of the foregoing Order Clarifying Partial Summary Judgment and Granting Protective Order to the below-listed parties by depositing same in the U.S. mail with postage prepaid thereon this 2nd day of April, 1986:

Lon Rodney Kump
David J. Bird
Attorneys for Plaintiff
333 East 400 South
Salt Lake City, Utah 84111

John Fellows
800 Kennecott Building
Salt Lake City, Utah 84133

Kent M. Winterholler
185 S. State Street, Suite 700
Salt Lake City, Utah 84111

Paul H. Proctor
Attorney for Utah Power & Light
1407 W. North Temple, Suite 340
P.O. Box 899
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "Paul H. Proctor", written over a horizontal line.

cml31

APPENDIX V

LITTLE AMERICA HOTEL CORPORATION'S ANSWERS TO
DEFENDANT'S THIRD SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS (R-1207)

RECEIVED
CITY ATTORNEY'S OFFICE

DATE 10/20/86

David J. Bird (#0334)
RICHARDS, BIRD & KUMP
Attorneys for the Plaintiff
333 East Fourth South
Salt Lake City, Utah 84111
Telephone: (801) 328-8987

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

LITTLE AMERICA HOTEL CORPORA-	:	
TION, a Utah corporation,	:	LITTLE AMERICA HOTEL
	:	CORPORATION'S ANSWERS
Plaintiff,	:	TO DEFENDANT'S THIRD
	:	SET OF INTERROGATORIES
vs.	:	AND REQUEST FOR PRODUCTION
	:	OF DOCUMENTS
SALT LAKE CITY, a municipal	:	
corporation of the State of	:	
Utah,	:	Civil No. C-82-5220
	:	
Defendant.	:	Judge Timothy R. Hansen
	:	

Little America Hotel Corporation answers Defendant's
Third Set of Interrogatories and Request for Production of Documents
as follows:

Interrogatory No. 1: Please state in full detail all
information tending to support or deny that the Ordinances establish
a tax classification that is "arbitrary, lacking a rational basis,
and/or discriminatory as applied."

ANSWER NO. 1: Plaintiff LAHCO objects to this interrogatory
because the portion of the interrogatory in quotation marks does
not properly reflect the issue remaining for determination as
stated in the Court's Memorandum Decision of February 13, 1986

333 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
Phone 328-8987

or in its Order Clarifying Partial Summary Judgment and Granting Protective Order dated May 28, 1986, which states that the issue remaining for determination is "whether the tax classification was arbitrary and/or discriminatory as applied." Because of this objection, Interrogatory No. 1 will be treated as seeking information on the issue as stated in the Court's Order.

The Court's Order dated May 28, 1986 states that:

the matter left for trial . . . does not include a comparison of the public service benefits received by the plaintiff(s), or other innkeepers subject to the ordinance challenged by plaintiffs in the within litigation, from the city in relation to taxes paid by them.

LAECO and its counsel are uncertain of the breadth of the Court's ruling. LAECO has no evidence that the ordinance has been arbitrarily applied or discriminatorily applied, with the understanding that those terms mean that the ordinance was applied to LAECO and not other members of the class subject to the tax imposed by the ordinance. But the Order of May 28, 1986 can be read to reserve the issue of whether the ordinance itself is arbitrary. For that reason, and on the issue of whether the ordinance is arbitrary, plaintiff intends at trial to proffer evidence through its expert, Merrill Norman, whose affidavits have previously been submitted, as to the tax burden imposed upon Little America Hotel and its customers in comparison with those imposed on average residents of Salt Lake City or the owners of other commercial property in the downtown area. Little America

Hotel Corporation will also proffer evidence, from Mr. Kenneth Y. Knight, and Mike Fletcher regarding the lack of any demand for city services by hotels and motels different from those of other residents and/or commercial properties. Also, records of the Salt Lake City Police Department and Fire Department are prepared yearly on police calls and fire calls in various four block square sections of Salt Lake City. These will be used as evidence that hotels and motels do not create special demands on the fire department or police department. Some of this information is contained in the unification study dated October, 1978 and prepared by the Salt Lake City Police Department and Salt Lake County Sheriffs' Offices.

Other information relevant to the determination of the arbitrariness of the ordinance include the minutes and transcripts of the Salt Lake City Council Meetings, which were Exhibits "B" and "C" to the Second Affidavit of Kathryn Marshall and were Exhibits "2-A" through "2-D" of Salt Lake City Corporation's Answers to Plaintiff LAHCO's First Set of Interrogatories (hereinafter "City's Answers"). Also the documents considered by or referred to by the City Council during its consideration of the ordinance, including the letter from Michael Fletcher, City's Answers Exhibit "2-G", the Hotel Motel Fact Sheet, City's Answers Exhibit "2-H", the original draft of the ordinance, City's Answers Exhibit "2-I", the Impact Statement, City's Answers Exhibit "2-J", The Innkeeper

License Tax as an Alternative Revenue Source, City's Answers Exhibit "4-G", Mike Fletcher's Report, Exhibit "4-H", Al Haines' Report of Objections, City's Answers Exhibit "4-I", the report of the Blue Ribbon Committee, City's Answers Exhibit "4-J". Also, records of budget expenditures, City's Answers Exhibits "10-A", "11-A", "11-B", "11-C", "11-D", and "11-E", records of the department budgets for the police, fire, park and recreation, and public works departments, City's Answers Exhibits "13-A" through "33-A", Public Works Department's records of man hours spend by sub-categories, City's Answers Exhibit "37-A". This information will show that the classification of innkeepers as subject to the special tax was not justified by any factual basis or distinction in any way related to the purposes of the ordinance.

The information will show that singling out innkeepers for the tax was arbitrary and was created only for the purposes of balancing the budget, avoiding raising property tax levels, and to make up for a short-fall resulting from the invalidity of the City's franchise taxes against utilities, and not for any reason which would justify separate taxation of innkeepers as a revenue source.

Plaintiff is aware, through defendant's previous submittal of affidavits, of the contention of Salt Lake City that police and fire departments are disproportionately impacted by innkeepers compared to other businesses or residents similarly situated. If such testimony is introduced at trial, LAHCO will introduce

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evidence to dispute those claims, including previously identified records of yearly calls, the National Standards for Fire Protection, and ~~such other information as is deemed appropriate to dispute the claims of Salt Lake City's witnesses.~~

Plaintiff has not yet deposed the members of the City Council at the time the ordinance was passed, but reserves the right to call those members as witnesses to supply further information regarding the consideration of the ordinance by the Salt Lake City Council.

Interrogatory No. 2: Identify the origin or source of the information offered in response to Interrogatory No. 1 above. For each source or person identified, please describe their relationship to the parties in this case and their full name, address, and telephone number as specified previously in Section I, "Preliminary Statement" above. Please include a detailed description of the qualifications and background any such source or person.

ANSWER NO. 2: Refer to Answer to Interrogatory No. 1.

Interrogatory No. 3: Please state the name, address, and telephone number of each and every witness plaintiff still intends to call to testify in any further proceedings regarding resolution of the remaining issue in this litigation. Include in that answer:

(a) A summary of the testimony expected to be elicited, and;

(b) An identification of each and every exhibit which will be utilized by said witness, including a brief summary of the exhibit and its contents.

(c) A detailed description of the qualifications and educational background of any proposed expert witness.

(d) The factual basis for any expert opinion expected to be introduced.

ANSWER NO. 3:

I. Kenneth Y. Knight
550 East South Temple
Salt Lake City, Utah
363-5100

(a) Testimony regarding the taxes paid or collected by Little America Hotel Corporation, the services provided by Little America Hotel Corporation which are provided by Salt Lake City free of charge to others. Payments actually made by Little America Hotel Corporation pursuant to the tax established by the ordinance.

(b) Exhibits: No exhibits have been identified or prepared for introduction through Mr. Knight, but may include accounting records relating to the subjects of his testimony.

(c) Not applicable.

(d) Not applicable.

II. Merrill Norman
RMG Main-Hurdman
4th Floor Kennecott Building
Salt Lake City, Utah 84133

(a) See Affidavits of Merrill Norman previously submitted and description of testimony in Answer to Interrogatory No. 1, above.

(b) See Exhibits to Affidavits previously submitted. Otherwise, plaintiff has not yet determined what exhibits will be entered through the use of Mr. Norman.

(c) See Affidavit of Merrill Norman.

(d) See Affidavit of Merrill Norman.

Plaintiff LAECO has not yet determined whether to call as witnesses surviving members of the City Council at the time the ordinance was passed--Sydney Fannesbeck, Palmer DePaulis, Alice Shearer, Ron Whitehead, and Grant Maybey, or Al Haines, former administrator with Salt Lake City. They would testify as to their knowledge of the matters considered by and deliberations of the City Council.

Plaintiff may also call representatives of the Salt Lake County Convention and Visitors Bureau with regard to the information in the possession of that body about tourists, the amount of money they spend in Salt Lake City, the length of their stay, their impact on public revenues, and their use of public benefits.

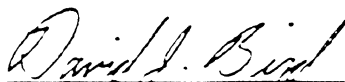
Plaintiff may call Jack Olson of the Utah Tax Payers Association, 1309 Wilson Avenue, Salt Lake City, Utah, regarding the basis and reasons for his comments to the City Council with regard to this ordinance. Other witnesses may include a representative of the Utah State University Institute of Outdoor Recreation and Tourism regarding studies performed by that institute and their results. While plaintiff LAECO has not finalized its trial preparations, these are the witnesses currently anticipated to appear or who may appear as plaintiff's witnesses during its case in chief.

Interrogatory No. 4: Please state the name, address, telephone number, and position with the plaintiff of the person answering these Interrogatories.

ANSWER NO. 4: Because the Interrogatories asked by defendant Salt Lake City seek information uniquely in the possession of its counsel, these Interrogatories have been prepared by David J. Bird of Richards, Bird & Kump, 333 East Fourth South, Salt Lake City, Utah 84111, 328-8987, who has signed them in his capacity as attorney for plaintiff.

DATED this 17th day of October, 1986

RICHARDS, BIRD & KUMP



David J. Bird
Attorneys for Little America
Hotel Corporation

STATE OF UTAH)
 : ss.
 COUNTY OF SALT LAKE)

On the 17th day of October, 1986, personally appeared before me DAVID J. BIRD, who by me being first duly sworn that he is the person who signed the foregoing document and that the statements contained therein are true to the best of his knowledge.

My Commission Expires:

June 20, 1989

Dequita J. Hughes
) NOTARY PUBLIC

Residing at Salt Lake County, Utah

CERTIFICATE OF SERVICE

This certifies that on the 17th day of October, 1986, I served the foregoing LITTLE AMERICA HOTEL CORPORATION'S ANSWERS TO DEFENDANT'S THIRD SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS by mailing true and correct copies hereof, postage prepaid, addressed to:

Roger F. Cutler, Esq.
 Salt Lake City Attorney
 100 City & County Building
 Salt Lake City, Utah 84111

Dequita J. Hughes

ROGER F. CUTLER #791
Salt Lake City Attorney
Attorney for Defendant
324 South State, 5th Floor
Salt Lake City, Utah 84111
Telephone: (801) 535-7788

IN THE THIRD JUDICIAL COURT FOR SALT LAKE COUNTY

STATE OF UTAH

LITTLE AMERICA HOTEL)	
CORPORATION, a Utah	)	AFFIDAVIT OF ROGER F. CUTLER
corporation, et al.,)	
	)	Civil No. C-82-5220
Plaintiff,	)	Judge Timothy R. Hanson
)	
vs.)	
)	
SALT LAKE CITY, a)	
municipal corporation)	
of the State of Utah,)	
)	
Defendant.)	
_____)	

STATE OF UTAH)
 : ss.
County of Salt Lake)

ROGER F. CUTLER, Attorney for Defendant Salt Lake City Corporation, having been first duly sworn upon oath, deposes and says:

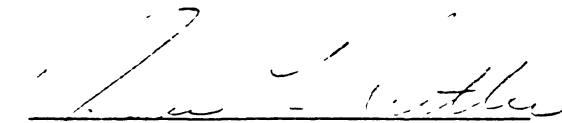
1. The attached letter dated October 21, 1986 was written as an objection to Plaintiff's Answers to Defendant's Third Set of Interrogatories, asking that LAHCO amend its answer to fully respond to Interrogatory No. 1, if any information was in their

21536

possession with reference to the question as asked.

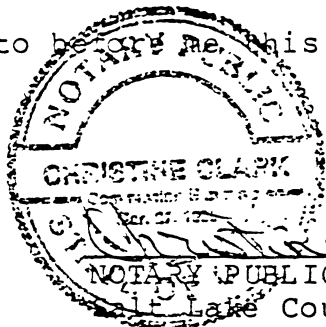
2. The attached letter, dated October 30, 1986, was received from Plaintiff LAHCO in response to Affiant's letter of October 21, 1986.

DATED this 6 day of March, 1987.



ROGER F. CUTLER, Affiant

SUBSCRIBED AND SWORN to before me, this 6th day of March, 1987.



NOTARY PUBLIC, residing in
Salt Lake County, Utah

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Affidavit of Roger F. Cutler to David J. Bird, RICHARDS, BIRD & KUMP, Attorney for Plaintiff, 333 East 4th South, Salt Lake City, Utah 84111; John Fellows and Dorothy C. Pleshe, 800 Kennecott Building, Salt Lake City, Utah 84133; and to Kent M. Winterholler, 185 South State Street, Suite 700, Salt Lake City, Utah 84111 by depositing the same in the U.S. mail, postage prepaid, this _____ day of March, 1987.

ROGER F. CUTLER
CITY ATTORNEY
CHERYL D. LUKE
CITY PROSECUTOR

SALT LAKE CITY CORPORATION

LAW DEPARTMENT
100 CITY AND COUNTY BUILDING
SALT LAKE CITY, UTAH 84111
(801) 535-7788

October 21, 1986

ASSISTANT ATTORNEYS
RAY L. MONTGOMERY
GREG R. HAWKINS
JUDY F. LEVER
LARRY V. SPENDLOVE
STEVEN W. ALLRED
BRUCE R. BAIRD
FRANK M. NAKAMURA
ASSISTANT PROSECUTORS
JOHN N. SPIKES
DONALD L. GEORGE
ARTHUR L. KEESLER, JR.
CECELIA M. ESPINOZA

David J. Bird, Esq.
RICHARDS, BIRD & KUMP
333 East Fourth South
Salt Lake City, Utah 84111

Re: Little America v. SLC

Dear Dave:

I am in receipt of your answers to our third set of interrogatories, but object to your rephrasing my question on the premise that my interrogatories must be limited by the language of a Court Order or by your interpretation of that Order.

I hereby request that you amend your answer to fully respond to Interrogatory No. 1, if any additional information is in your possession with reference to the question as asked.

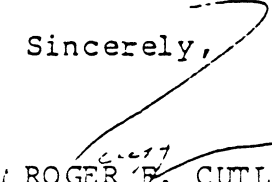
In addition, I object to the vague answer on page 5 suggesting that you will produce such other information as deemed appropriate to dispute. If you have any such information, we require that it be disclosed. If that information is not now in your possession, we will expect that, pursuant to the rules of procedure, you will make it available as an amendment to these answers as soon as it is available. In any event, at this date, we need an affirmative statement as to whether any additional information is in your possession upon which you intend to rely.

This letter is written in lieu of making formal objection pursuant to the new rules which require communication between counsel. I would appreciate an amendment to your

David J. Bird, Esq.
October 21, 1986
Page -2-

answers within ten days to avoid the necessity of further
court proceedings in this matter.

Sincerely,


cml
ROGER F. CUTLER
City Attorney

RFC:cml48

LYNN S. RICHARDS
RICHARD L. BIRD, JR.
LON RODNEY KUMP
JAMES M. RICHARDS
STEVEN C. JOHNSON
DAVID J. BIRD
LISA K. OLSEN

LAW OFFICES OF
RICHARDS, BIRD & KUMP

A PROFESSIONAL CORPORATION
333 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111

TELEPHONE 328-8987
AREA CODE 801

October 30, 1986

RECEIVED
CITY ATTORNEY'S OFFICE

DATE 10/31/86

Roger F. Cutler, Esq.
Salt Lake City Attorney
100 City & County Building
Salt Lake City, Utah 84111

Re: Little America Hotel Corporation vs. Salt
Lake City

Dear Roger:

This letter is in response to yours of October 21, 1986 relating to the Answers to Interrogatories sent to you by mail on October 17, 1986.

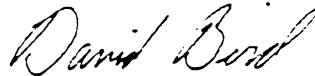
First, you dispute my objection to your first interrogatory, which adds the phrase "lacking in a rational basis" as one of the issues to be determined. I believe that the Court did limit the issues to those to which I have responded by the Answers to Interrogatories. Accordingly, I believe that the objection stated in the answers is well-taken. However, the only evidence we have which would relate to the issue of whether the tax classification is lacking a rational basis is that stated in the Answers to Interrogatories, plus the tax information the Court has previously ruled was beyond the scope of discovery and was not admissible as evidence in the case.

Second, you object to the portion of my answer at the top of page 5 of the Answers to Interrogatories. The purpose of this statement is merely to say that we intend to produce evidence to rebut testimony which you might produce during the trial. I have in my answers already anticipated the evidence you might put on in support of your position as best as I am able, and identified what evidence we would use to dispute that. But I am unable to say what testimony you might produce and what would be appropriate to rebut that testimony. Accordingly, I think it is impossible to give a more specific response. If you identify what specific evidence you will produce, I will identify how that will be rebutted, if at all. But I can't be held to be limited in my rebuttal by what I might now anticipate you producing at trial. Accordingly, I find it impossible to address your second objection to my answers.

I hope that this clarifies my intentions by my Answers to Interrogatories.

Very truly yours,

RICHARDS, BIRD & KUMP

A handwritten signature in cursive script, appearing to read "David Bird".

David J. Bird

DJB:lgh

cc: Little America Hotel Corporation

ROGER F. CUTLER #791
Salt Lake City Attorney
Attorney for Defendant
324 South State, 5th Floor
Salt Lake City, Utah 84111
Telephone: (801) 535-7788

IN THE THIRD JUDICIAL COURT FOR SALT LAKE COUNTY

STATE OF UTAH

LITTLE AMERICA HOTEL)	
CORPORATION, a Utah	)	AFFIDAVIT OF JOHN KATTER
corporation, et al.,)	
	)	Civil No. C-82-5220
Plaintiff,	)	Judge Timothy R. Hanson
)	
vs.)	
)	
SALT LAKE CITY, a)	
municipal corporation)	
of the State of Utah,)	
)	
Defendant.)	
_____)	

STATE OF UTAH)
 : ss.
County of Salt Lake)

JOHN KATTER, having been first duly sworn upon oath, deposes
and says:

1. He is a duly appointed supervisor of the Salt Lake City
Business License Department.
2. All innkeepers within the scope of Salt Lake City's
Business Revenue Tax Ordinance are equally taxed according to the
schedule set forth in that ordinance. Each is required to pay

upon penalty of revocation of their business license, the legislatively established tax. To affiant's best knowledge all within the taxing classification are paying the tax. Any who do not timely pay are identified and collection measures vigorously pursued to the extent legally permitted.

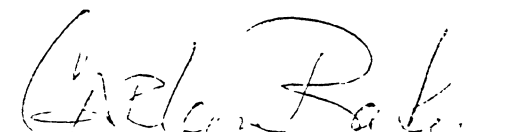
3. To affiant's best knowledge, after diligent inquiry, no transient room provider within the meaning of the ordinance subject of the above captioned lawsuit has not been identified, included in the tax law's application, and payment made.

DATED this 4th day of March, 1987.



JOHN KATTER, Affiant

SUBSCRIBED AND SWORN to before me this 4th day of March, 1987.



NOTARY PUBLIC, residing in
Salt Lake County, Utah

My Commission Expires:

7/7/1990

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Affidavit of John Katter to David J. Bird, RICHARDS, BIRD & KUMP, Attorney for Plaintiff, 333 East 4th South, Salt Lake City, Utah 84111; John Fellows and Dorothy C. Pleshe, 800 Kennecott Building, Salt Lake City, Utah 84133; and to Kent M. Winterholler, 185 South State Street, Suite 700, Salt Lake City, Utah 84111, by depositing the same in the U.S. mail, postage prepaid, this _____ day of _____, 1987.

ccl36

APPENDIX VI

MINUTE ENTRY (R-1291)

THIRD JUDICIAL DISTRICT

County of Salt Lake - State of Utah

FILED

LITTLE AMERICA CORPORATION, ET AL

Plaintiff

SALT LAKE CITY CORPORATION

Defendant

CASE NO: C82-5220

Type of hearing: Div. _____ Annul. _____ Supp. Order _____ OSC. _____ Other sj

Present: Pltf. _____ Deft. _____

P. Atty: DAVID J. BIRD (P) _____

D. Atty: ROGER F. CUTLER (P) _____

Sworn & Examined: Russell Kurl (P) _____

Pltf: _____ Deft: _____

Others: _____

Summons _____ Stipulation _____

Waiver _____ Publication _____

☐ Default of Pltf/Deft Entered

Date: MAY 18, 1987

Judge: TIMOTHY R. HANSON

Clerk: E. THOMPSON

Reporter: Bunny Hunsacker

Bailiff: J. AIRSMAN

ORDERS:

- ☐ Custody Evaluation Ordered ☐ Custody Awarded To _____
- ☐ Visitation Rights _____
- ☐ Pltf/Deft Awarded Support \$ _____ x _____ = _____ Per Month
- ☐ Pltf/Deft Awarded Alimony \$ _____ Per Month/Year ☐ Alimony Waived
- ☐ Payments to be made through the Clerk's Office: _____
- ☐ Atty. fees to the _____ in the amount of _____ ☐ Deferred
- ☐ Home To: _____
- ☐ Furnishings To: _____ Automobile To: _____
- ☐ Each Party Awarded their Personal Property
- ☐ Pltf/Deft. to Maintain Debts and Obligations
- ☐ Pltf/Deft. to Maintain Insurance on Minor Children
- ☐ Restraining Order Entered Against _____
- ☐ Pltf/Deft. Granted Judgment for Arrearage in the Sum of \$ _____
- ☐ 90-Day Waiting Period is Waived
- ☐ Divorce Granted To _____ As _____
- ☐ Decree To Become Final: ☐ Upon Entry ☐ 3-Month Interlocutory
- ☐ Former Name of _____ Is Rest _____
- ☐ Based on the failure of Deft to appear in response to an order of the court and on motion of Pltfs counsel, court orders _____ / _____ shall issue for Deft. _____
- Returnable _____ Bail _____
- ☐ Based on written stipulation of respective counsel/motion of Plaintiff's counsel, and good cause appearing therefor, court orders the above case be and the same is hereby dismissed without prejudice.
- ☒ Based on written stipulation of respective counsel/motion of Plaintiff's counsel, court orders arguments defts motion for summary judgment is well taken and granted.

APPENDIX VII

SUMMARY JUDGMENT (R-1296)

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JUL -7 1987

H. Dixon Hindley, Clerk 3rd Dist. Court
By *Eugene J. Kumpson*
Deputy Clerk

ROGER F. CUTLER #0791
Salt Lake City Attorney
Attorney for Defendants
100 City & County Building
Salt Lake City, Utah 84111
Telephone: 535-7788

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

LITTLE AMERICA HOTEL	)	SUMMARY JUDGMENT
CORPORATION, a Utah	)	Civil No. C 82-5220
corporation, et al.,	)	Judge Timothy R. Hanson
	)	Consolidating Case Nos.:
Plaintiffs,	)	C 82-5220, Judge Hanson
	)	C 82-5586, Judge Hanson
vs.	)	C 82-7511, Judge Hanson
	)	C 83-5577, Judge Fishler
SALT LAKE CITY, et al.,	)	C 84-2549, Judge Rigtrup
	)	C 85-657, Judge Conder
Defendants.	)	C 85-7323, Judge Fishler
	)	C 86-5809, Judge Hanson
	)	C 87-2888, Judge Rokich

The Court entered a Partial Summary Judgment on or about December 20, 1983 and clarified that order in an Order Clarifying Partial Summary Judgment and Granting Protective Order, entered on or about May 28, 1986. Additional discovery was undertaken and the defendant, Salt Lake City, moved for total Summary Judgment on the remaining issues, which Motion came on regularly for hearing before the Court on Monday, May 18, 1987. The defendants were represented by their attorney, Roger F. Cutler. The plaintiff, Little America Hotel Corporation, was represented by its attorneys Lon Rodney Kump and David J. Bird. The Hotel

000-50

Utah was represented by its attorney, Russ Kearl. The other parties were not present or represented by counsel. The Court having heard the arguments of the counsel, having read the memoranda and reviewed the matters of record and being fully advised in the premises;

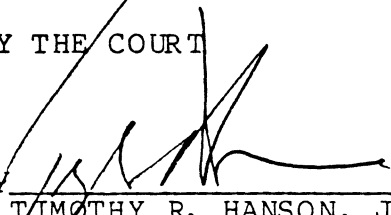
HEREBY ORDERS, ADJUDGES AND DECREES as follows:

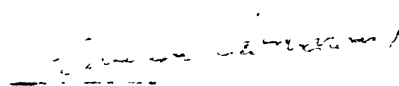
1. There is no genuine material issue of fact and the defendants are entitled to and are hereby awarded a Summary Judgment of dismissal on all remaining issues of the case. All causes of action and claims should be and the same are hereby dismissed, with prejudice.

2. Defendants are awarded costs.

DATED this 7 day of ^{July}~~June~~, 1987.

BY THE COURT

By 
TIMOTHY R. HANSON, Judge

CERTIFICATE OF MAILING: 

I hereby certify that I mailed a copy of the foregoing Summary Judgment to Lon Rodney Kump and David J. Bird, RICHARDS, BIRD & KUMP, Attorney for Plaintiff, 333 East 4th South, Salt Lake City, Utah 84111; Russ Kearl and Dorothy C. Pleshe, 800 Kennecott Building, Salt Lake City, Utah 84133; and to Kent M. Winterholler, 185 South State Street, Suite 700, Salt Lake City,

Utah 84111 by depositing the same in the U.S. mail, postage prepaid, this 24th day of June, 1987.

Chris Dalk

ccl46

APPENDIX VIII

CHAPTER 3, TITLE 20 REVISED ORDINANCES
OF SALT LAKE CITY (R-218)

20-2-6—20-3-1 LICENSE AND BUSINESS REGULATION

Sec. 20-2-6. Contract with State Tax Commission. Heretofore, this municipality has entered into an agreement with the State Tax Commission to perform all functions incident to the administration or operation of the sales and use tax ordinance of the municipality. That contract is hereby confirmed and the mayor is hereby authorized to enter into such supplementary agreement with the State Tax Commission as may be necessary to the continued administration and operation of the local sales and use tax ordinance of the municipality as re-enacted by this ordinance.

Sec. 20-2-7. Penalties. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine in an amount less than \$300.00 or imprisonment for a period of not more than six months, or by both such fine and imprisonment.

Sec. 20-2-8. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance, including but not limited to any exemption is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Bill No. 48, May 20, 1975

Chapter 3

BUSINESS REVENUE LICENSE

Sections:

- 20-3-1. Definitions.
- 20-3-2. License fee levied.
- 20-3-3. Unlawful to operate without license.
- 20-3-4. License additional to all regulatory licenses.
- 20-3-5. Delinquent date and penalty.
- 20-3-6. Records to be maintained.
- 20-3-7. Returns not to be public.
- 20-3-8. Unlawful to file false return.
- 20-3-9. Revocation of license.
- 20-3-10. License fees declared to be a debt.
- 20-3-11. Exemptions to license.
- 20-3-12. Fee not to constitute undue burden on interstate commerce.
- 20-3-12.1. Branch establishments.
- 20-3-12.2. Joint license.
- 20-3-12.3. Revenue measure.
- 20-3-13. Separability clause.
- 20-3-14. Utility revenue tax.
- 20-3-14.1. Revenue tax on business in competition with public utilities.
- 20-3-14.2. Commercial consumers of gas or electric energy.

Sec. 20-3-1. Definition. For the purpose of this chapter the following terms shall have the meanings herein prescribed:

Dec., 1975
Nov., 1977
April, 1978

(1) **Business.** "Business" means and includes all activities engaged in within the corporate limits of Salt Lake City carried on for the business of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term business unless otherwise specifically prescribed.

(2) **Engaging in Business.** "Engaging in business" includes but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment.

(3) **Place of Business.** "Place of business" means each separate location maintained or operated by the licensee within Salt Lake City from which business activity is conducted or transacted.

BILL NO. 60 — JUNE 23, 1970

(4) **Employee.** "Employee" means the operator, owner or manager of said place of business and any persons employed by such person in the operation of said place of business in any capacity and also any salesman, agent or independent contractor engaged in the operation of said place of business in any capacity.

(5) **Number of Employees.** "Number of employees" shall mean the average number of employees engaged in business at the place of business each regular working day during the preceding calendar year. In computing said number, each regular full-time employee shall be counted as one employee, and each part-time employee shall be counted as that fraction which is formed by using the total number of hours worked by such employee as the numerator and the total number of hours regularly worked by a full-time employee as the denominator.

(6) **Person.** "Person" shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise.

(7) **Gross Sales.** "Gross sales" shall not include:

(a) The amount of any Federal tax, except excise taxes imposed upon or with respect to retail or wholesale sales, whether imposed upon the retailer, wholesaler, jobber or upon the consumer and regardless of whether or not the amount of Federal tax is stated to customers as a separate charge; and

Feb 1968
April, 1976

20-3-2-20-3-6 LICENSE AND BUSINESS REGULATION

(b) The amount of net Utah State Sales Tax. The term "gross sales" includes the amount of any manufacturer's or importer's excise tax included in the price of the property sold, even though the manufacturer or importer is also the wholesaler or retailer thereof, and whether or not the amount of such tax is stated as a separate charge.

Sec. 20-3-2. ^{251.152} ~~License fees levied. (a) There is hereby levied upon the~~ business of every person engaged in business in Salt Lake City at a place of business within the city, an annual license fee of \$40.00 per place of business, plus an additional fee of \$4.00 for each and every employee, exceeding one, engaged in the operation of said business, based upon the number of employees defined in Section 20-3-1; provided, however, that any such person may receive an exemption of \$25.00 annually upon submitting an affidavit that his gross sales of goods and/or services for the preceding calendar year were less than \$10,000 at such place of business, and, further provided, that there shall be a maximum fee of \$1,500.00 for each place of business.

Bill No. 60, June 23, 1970
Bill No. 151, Dec. 10, 1975

(b) There is hereby levied upon every person engaged in business in Salt Lake City, Utah, not having a place of business in said city, and not exempt as provided by Sec. 20-3-11 of this chapter, a license fee based upon the percentage of gross sales and/or services made or performed within the city in relation to the total gross sales and/or services made or performed from a place of business outside the corporate limits of Salt Lake City from which business within Salt Lake City is transacted and by applying such percentage to the fee which would otherwise be assessed for such place of business were it located within the corporate limits of Salt Lake City.

Sec. 20-3-3. Unlawful to operate without license. It shall be unlawful for any person to engage in business within Salt Lake City without first procuring the license required by this chapter.

February 6, 1968

Sec. 20-3-4. License additional to all regulatory licenses. The license fee imposed by this chapter shall be in addition to any and all other taxes or licenses imposed by any other provisions of the ordinances of Salt Lake City.

Sec. 20-3-5. Delinquent date and penalty. All license fees imposed by this chapter shall be due and payable on or before January 1, of any calendar year and in the event any fee is not paid on or before such date, a penalty shall be assessed pursuant to the provisions of 20-1-13 of this title, which penalty shall become part of the license fee imposed by this chapter.

February, 1970

Sec. 20-3-6. Records to be maintained. It shall be the duty of every person liable for the payment of any license fee imposed by this chapter

Feb 1968
April, 1976

SALT LAKE CITY ORDINANCE
No. 35 of 1982

(License Fees Levied)

AN ORDINANCE AMENDING SECTION 20-3-2 OF THE REVISED ORDINANCES OF SALT LAKE CITY, UTAH, 1965, RELATING TO LICENSE FEES LEVIED

Be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1 That Section 20-3-2 of the Revised Ordinances of Salt Lake City, Utah, be, and the same hereby is amended to read as follows.

Sec 20-3-2 License fees levied (1) Fee for business located in Salt Lake City. There is hereby levied upon the business of every person engaged in business in Salt Lake City at a place of business within the city, an annual license fee of \$50.00 per place of business, plus an additional fee of \$5.00 for each and every employee, exceeding one, engaged in the operation of said business, based upon the number of employees defined in Section 20-3-1.

(2) Exceptions, maximum fee and new business. The foregoing notwithstanding, any such person taxed in subsection 1 above:

(a) may receive an exemption of \$25.00, annually, upon submitting an affidavit that the gross sales of goods and/or services for the preceding calendar year were less than \$20,000 at such place of business,

(b) shall pay a license fee of \$25.00 for the first year, or part thereof, of operation of a new business.

(3) Fee for businesses located outside Salt Lake City. There is hereby levied upon every person engaged in business in Salt Lake City, Utah, not having a place of business in said city, and not exempt as provided by Sec. 20-3-11 of this chapter, a license fee based upon the percentage of gross sales and/or services made or performed from a place of business outside the corporate limits of Salt Lake City from which business within Salt Lake City is transacted and by applying such percentage to the fee which would otherwise be assessed for such place of business were it located within the corporate limits of Salt Lake City.

SECTION 2. This ordinance shall take effect upon its first publication.

Passed by the City Council of Salt Lake City, Utah, this 8th day of June, 1982.

S. Fønnesbeck
CHAIRMAN

ATTEST

Kathryn Marshall
CITY RECORDER
Transmitted to Mayor on June 15, 1982.

Mayor's Action: June 15, 1982

Ted Wilson
MAYOR

ATTEST

Kathryn Marshall
CITY RECORDER
(SEAL)
BILL 35 of 1982
Published, Deseret News
6/28/82
D-23

000821

to keep and preserve for a period of three years such books and records as will accurately reflect the amount of his gross annual sales of goods and services for any year for which an exemption is claimed, and the number of employees and from which can be determined the amount of any license fee for which he may be liable under the provisions of this chapter.

Sec. 20-3-7. Returns not to be public. Returns made to the license assessor or collector of Salt Lake City, as required by this chapter, shall not be made public nor shall they be subject to the inspection of any person except the city license assessor and collector or his authorized agent, or to those persons first authorized to do so by order of the board of commissioners. It shall be unlawful for any person to make public or to inform any other person as to the contents of any information contained in, or permit the inspection of any return, except as is in this section authorized.

Sec. 20-3-8. Unlawful to file false return. It shall be unlawful for any person to make a return that is false knowing the same to be so.

Sec. 20-3-9. Revocation of License. A license issued under the provisions of this Chapter may be revoked by the Board of City Commissioners after hearing of said Board, upon the Board's finding a violation of any provision or failure to comply fully with the provisions of this Chapter or any other City Ordinance.

BILL NO 5, Jan 14, 1976

Sec. 20-3-10. License fees declared to be a debt. Any license fee due and unpaid under this chapter and all penalties thereon shall constitute a debt to Salt Lake City and shall be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

Sec. 20-3-11. Exemptions to license. (a) No license fee shall be imposed under this chapter upon any person (1) engaged in business for solely religious, charitable, eleemosynary or other types of strictly non-profit purpose who is tax exempt in such activities under the laws of the United States and the State of Utah; (2) engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah; (3) engaged in a business operated under the supervision of the Division of Exposition of the Utah State Department of Development Services and located exclusively at the Utah State Fairgrounds during the period of the annual Utah State Fair; or (4) not maintaining a place of business within Salt Lake City who has paid a like or similar license tax or fee to some other taxing unit within the State of Utah, and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, businesses domiciled in Salt Lake City and doing business in such taxing unit.

Bill No 16, Feb 5, 1976

(b) Reciprocal agreement. The city license assessor and collector may, with approval of the Board of Commissioners of Salt Lake City, enter into reciprocal agreements with the proper officials of other taxing units,

20-3-12—20-3-12.2 LICENSE AND BUSINESS REGULATION

as may be deemed equitable and proper in effecting the exemption provided for in paragraph (a) of this section.

Sec. 20-3-12. Fee not to constitute undue burden on interstate commerce. None of the license fees provided for by this chapter shall be applied as to occasion an undue burden on interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the license assessor and collector for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony show his method of business and the gross volume or estimated gross volume of business and such other information as the license assessor and collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The license assessor and collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of facts from which he shall determine whether the fee fixed by this chapter is discriminatory, unreasonable or unfair as to applicant's business and shall recommend to the board of commissioners a license fee for the applicant in an amount that is nondiscriminatory, reasonable and fair, and if the board of commissioners is satisfied that such license fee is the amount that the applicant should pay, it shall fix the license fee in such amount. If the regular license fee has already been paid, the board of commissioners shall order a refund of the amount over and above the fee fixed by the board. In fixing the fee to be charged, the license assessor and collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature; provided, however, that the amount assessed shall not exceed the fee prescribed in section 20-3-2.

Sec. 20-3-12.1. Branch establishments. A separate license must be obtained for each branch establishment or location of business engaged in, within the city, as if such branch establishment or location were a separate business and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license, provided, that warehouses and distributing places used in connection with or incident to a business licensed under this ordinance shall not be deemed to be separate places of business or branch establishments.

Sec. 20-3-12.2. Joint license. Whenever any person is engaged in two or more businesses at the same location within the city, such person shall not be required to obtain separate licenses for conducting each of such businesses, but shall be issued one license which shall specify on its face all such businesses. The license tax to be paid shall be computed as if all of

BUSINESS REVENUE LICENSE 20-3-12.3—20-3-14

said businesses were one business being conducted at such location. Where two or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license tax for such business.

Sec. 20-3-12.3. Revenue measure. This ordinance is enacted solely to raise revenue for municipal purposes and is not a substitute for other regulatory ordinances. The foregoing notwithstanding, no revenue license may be issued for a business operation which, on the face of the license application, would be in violation of criminal laws or ordinances or where the place of business would be located in an area not zoned for such business activity.

Sec. 20-3-13. Separability clause. If any subsection, sentence, clause, phrase or portion of this chapter, including but not limited to any exemption, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The board of commissioners of Salt Lake City hereby declares that it would have adopted this chapter and each subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more subsections, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Sec. 20-3-14. ¹⁸²Utility revenue tax. There is hereby levied upon the business of every person or company engaged in business in Salt Lake City, Utah, of supplying telephone, gas or electric energy service as public utilities, an annual license tax equal to four percentum of the gross revenue derived from the sale and use of the services of said utilities delivered from and after January 1, 1981, within the corporate limits of Salt Lake City, said fee being in addition to the two percent franchise fee.

The term "gross revenue", as used herein, shall be construed to mean the revenue derived from the sale and use of public utility services within Salt Lake City, provided that "gross revenue" as applied to the telephone utility shall be construed to mean basic local exchange services revenue received from subscribers located within Salt Lake City and directly connected with the switchboards of said utility located in the City.

"Public utility services" shall mean the sale and use of electric power and energy, natural gas and local exchange telephone services.

Within forty-five days after the close of each month in a calendar year, any public utility taxes hereunder shall file with the City Treasurer of Salt Lake City a report of its gross revenue derived from the sale and use of public utility service in Salt Lake City as defined herein, together with a computation of the

526a

May, 1974		April, 1978
March, 1977	April, 1980	June, 1975
Oct., 1976	July, 1977	July, 1981
Nov., 1977		

600722

SALT LAKE CITY ORDINANCE
No. 2 of 1982

(Utility Revenue Tax)
AN ORDINANCE AMENDING SECTION 20-3-14 OF THE REVISED ORDINANCES OF SALT LAKE CITY, UTAH, 1965, RELATING TO UTILITY REVENUE TAX.

Be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. That Section 20-3-14 of the Revised Ordinances of Salt Lake City, Utah, be, and the same hereby is amended to read as follows:

Sec. 20-3-14. Utility revenue tax. (1) There is hereby levied upon the business of every person or company engaged in business in Salt Lake City, Utah, of supplying telephone, gas or electric energy service as public utilities, an annual license tax equal to four percentum of the gross revenue derived from the sale and use of the services of said utilities delivered from and after July 1, 1980, within the corporate limits of Salt Lake City, said fee being in addition to the two percent franchise fee.

(2) Definitions:

(a) Gross revenue. "Gross revenue", as used herein, shall be construed to mean the revenue derived from the sale and use of public utility services within Salt Lake City, provided that "gross revenue" as applied to the telephone utility shall be construed to mean basic local exchange services revenue.

(b) Basic local exchange service revenue. Basic local exchange service revenue as used herein shall mean revenues received from the furnishing of telecommunications within Salt Lake City and access to the telecommunications network to either business, residential or other customers whether on a flat rate or measured basis, by means of an access line. Basic local exchange service revenues shall not include revenues

obtained by the telephone public utility company from the provision of terminal telephone equipment services (such as basic telephone sets, private branch exchanges and key telephone systems), or from other telephone equipment which is obtainable from both the telephone company and other suppliers.

(c) Public utility services. "Public utility services" as used herein shall mean the sale and use of electric power and energy, natural gas and basic local exchange telephone service.

(3) Remittance Date. Within forty-five days after the end of each month in a calendar year, the public utility taxed hereunder shall file with the city treasurer of Salt Lake City a report of its gross revenue derived from the sale and use of public utility service in Salt Lake City as defined herein, together with a computation of the tax levied hereunder against the utility. Coincidental with the filing of such report, the utility shall pay to the city treasurer the amount of the tax due for that calendar month subject to said report.

SECTION 2. This ordinance shall become effective July 1, 1982.

Passed by the City Council of Salt Lake City, Utah, this 5th day of January, 1982.

Sydney R. Fonnesebeck
CHAIRMAN

ATTEST:

Kathryn Marshall
CITY RECORDER

Transmitted to Mayor on 1/11/82

Mayor's Action: Ted Wilson
MAYOR

ATTEST:

Kathryn Marshall
CITY RECORDER
cm 39

(SEAL)

BILL 2 of 1982

Published January 27, 1982

D-55

000005

20-3-14.1 — 20-3-14.2 LICENSE AND BUSINESS REGULATION

tax levied hereunder against the utility. Coincidental with the filing of such report, the utility shall pay to the City Treasurer the amount of the tax.

April, 1968
Bill No. 115, 1976
Bill No. 36, 1977
Bill No. 118, 1977
Bill No. 21, 1980
Bill No. 74, 1980

#1 182
Sec. 20-3-14.1. Revenue tax on business in competition with public utilities. There is hereby levied upon the business of every person or company engaged in the business in Salt Lake City, Utah, of supplying telephone service, gas or electric energy service in competition with public utilities, an annual licence tax equal to six percentum of the gross revenue derived from the sale and use of such competitive services delivered from and after November 1, 1977, within the corporate limits of Salt Lake City.

“In competition and public utilities” shall mean to trade in products or services within the same market as a public utility taxed under section 14 of this chapter.

Within forty-five days after the close of each month in a calendar year, any business taxed hereunder shall file with the city treasurer of Salt Lake City a report of its gross revenue derived from the sale and use of services specified hereunder rendered in competition with public utilities in Salt Lake City, together with a computation of the tax levied hereunder against such business. Coincidental with the filing of such report, the business shall pay to the city treasurer the amount of the tax.

Bill No. 119, 1977
Bill No. 171, 1977

#1 182
Sec. 20-3-14.2. Commercial consumers of gas or electric energy. Any commercial consumer of gas or electric energy which is engaged in business in Salt Lake City, Utah, and which consumes gas or electric energy provided by a public utility subject to the utility revenue tax imposed by this section shall be entitled to a rebate of that portion of the combined utility revenue tax and two percent franchise fee which exceeds three-fourths of one percent of the gross sales of said commercial consumer.

For the purposes of this subsection it shall be deemed that the amount paid by each qualifying commercial consumer to each subject public utility for gas or electric energy includes a payment of six percent utility revenue tax and a payment of two percent franchise fee. The term “gross sales” as used in this subsection, shall be defined consistent with the definition of that term as found in the Internal Revenue Code as of the effective date of this ordinance.

Rebates shall be made on a yearly basis to coincide with the commercial consumer's taxable year as adopted for federal income tax purposes. Application shall be made to the City Treasurer of Salt Lake City for the rebate provided herein no sooner than forty-five days and no later than four months after the close of the commercial consumer's taxable year.

ac 20-3-15 Income Tax 6182

Bill No. 132, 1977

May, 1974
June, 1975
Oct. 1976
March, 1977
July, 1977
Nov. 1977
April, 1978
April, 1980
July, 1981

SALT LAKE CITY ORDINANCE

No. 1 of 1982

(Revenue Tax on Business in Competition
with Public Utilities and Commercial
Consumers of Gas or Electric Energy)

AN ORDINANCE AMENDING SECTIONS 20-3-14.1 AND
20-3-14.2 OF THE REVISED ORDINANCES OF SALT LAKE
CITY, UTAH, 1965, RELATING TO REVENUE TAX ON
BUSINESS IN COMPETITION WITH PUBLIC UTILITIES
AND COMMERCIAL CONSUMERS OF GAS OR ELECTRIC
ENERGY.

Be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. That Sections 20-3-14.1 of the Revised Ordinances of Salt Lake City, Utah, relating to revenue tax on business in competition with public utilities, be, and the same hereby is amended to read as follows:

Sec. 20-3-14.1. (1) Revenue tax on business in competition with public utilities. There is hereby levied upon the business of every person or company engaged in the business in Salt Lake City, Utah, of supplying basic local exchange telephone service, as defined in Section 20-3-14 of the Revised Ordinances of Salt Lake City, Utah, natural gas or electric energy service in competition with public utilities, as annual license tax equal to four percentum of the gross revenue derived from the sale and use of such competitive services sold, used or delivered within the corporate limits of Salt Lake City, after November 1, 1977.

(2) Definitions. In Competition With Public Utilities. "In competition with public utilities" shall mean to trade in products or services within the same market as a public utility taxed under section 14 of this chapter.

(3) Remuneration Date. Within forty-five days after the end of each month in a calendar year, any business taxed hereunder shall file with the city treasurer of Salt Lake City a report of its gross revenue derived from the sale and use of services specified hereunder rendered in competition with public utilities in Salt Lake City, together with a computation of the tax levied hereunder against such business. Coincidental with the filing of such report, the business shall pay to the city treasurer the amount of the tax due for the calendar month which is the subject of the said report.

SECTION 2. That Section 20-3-14.2 of the Revised Ordinances of Salt Lake City, Utah, relating to commercial consumers of gas or electric energy, be, and the same hereby is amended to read as follows:

Sec. 20-3-14.2. Commercial consumers of gas or electric energy. Any commercial consumer of gas or electric energy which is engaged in business in Salt Lake City, Utah, and which consumes natural gas or electric energy provided by a public utility subject to the utility revenue tax imposed by this section shall be entitled to a rebate of that portion of the combined utility revenue tax and two percent franchise fee which exceeds three-fourths of one percent of the gross sales of said commercial consumer.

For the purposes of this subsection it shall be deemed that the amount paid by each qualifying commercial consumer to each subject public utility for natural gas or electric energy includes a payment of six percent utility revenue tax and a payment of two percent franchise fee. The term "gross sales" as used in this subsection, shall be defined consistent with the definition of that term as found in the Internal Revenue Code effective for the consumer's taxable year during which a rebate is sought.

Rebate shall be made on a yearly basis to coincide with the commercial consumer's taxable year, as adopted for federal income tax purpose. Application shall be made to the city treasurer of Salt Lake City for the rebate provided herein no sooner than forty-five days and no later than four months after the close of the commercial consumer's taxable year.

SECTION 3. This ordinance shall become effective July 1, 1982.

Passed by the City Council of Salt Lake City, Utah, this 5th day of January, 1982.

Sydney R. Fønnesbeck
CHAIRMAN

ATTEST:
Kathryn Marshall
CITY RECORDER
Transmitted to Mayor on 1/11/82
Mayor's Action:

Ted Wilson
MAYOR

ATTEST:
Kathryn Marshall
CITY RECORDER
cm 39
(SEAL)
BILL 1 of 1982
Published January 27, 1982
D-53

SALT LAKE CITY ORDINANCE
No. 40 of 1982

(Innkeeper License Taxes)

AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 20 OF THE REVISED ORDINANCES OF SALT LAKE CITY, UTAH, 1965, BY ADDING A NEW SECTION 15 RELATING TO INNKEEPER LICENSE TAX.

Be it ordained by the City Council of Salt Lake City, Utah:
SECTION 1. That Chapter 3 of Title 20 of the Revised Ordinances of Salt Lake City, Utah, be, and the same hereby is amended by ADDING a new Section 15 thereto to read as follows:

Sec. 20-3-15. Innkeeper license tax.

(1) There is hereby levied upon the business of every person, company, corporation, or other like and similar persons, groups or organizations, doing business in Salt Lake City, Utah, as motor courts, motels, hotels, inns or like and similar public accommodations, an annual license tax equal to one percent (1%) of the gross revenue derived from the rent for each and every occupancy of a suite, room or rooms, for a period of less than thirty (30) days.

(2) For purposes of this section, gross receipts shall be computed upon the base room rental rate. There shall be excluded from the gross revenue, by which this tax is measured:

(a) The amount of any sales or use tax imposed by the State of Utah or by any other governmental agency upon a retailer or consumer;

(b) The amount of any transient room tax levied under authority of Chapter 31 of Title 17, Utah Code Annotated, 1953, as amended;

(c) Receipts from the sale or service charge for any food, beverage or room service charges in conjunction with the occupancy of the suite, room or rooms, not included in the base room rate; and

(d) Charges made for supplying telephone service, gas or electrical energy service, not included in the base room rate.

(3) Any person or business entity subject to the payment of taxes provided under subsection (1) of this section, shall be entitled to credit against the amount of taxes due thereunder, the amount of license taxes due the City under Sections 20-3-2 and 20-15-3 of these ordinances.

(4) The tax imposed by this section shall be due and payable to the City Treasurer quarterly on or before the thirtieth day of the month next succeeding each calendar quarterly period, the first of such quarterly periods being the period commencing with the first day of July, 1982. Every person or business taxed hereunder shall on or before the thirtieth day of the month next succeeding each calendar quarterly period, file with the License Division a report of its gross revenue for the preceding quarterly period. The report shall be accompanied by a remittance of the amount of tax due for the period covered by the report.

The City may contract with the state tax commission to perform all functions incident to the administration and operation of this ordinance.

SECTION 2. This ordinance shall become effective July 1, 1982. No tax shall be due or accrue under this enactment prior to such effective date.

Passed by the City Council of Salt Lake City, Utah, this 8th day of June, 1982.

S. FONNESBECK
CHAIRMAN

ATTEST:
KATHRYN MARSHALL
CITY RECORDER

Transmitted to Mayor on June 15, 1982
Mayor's Action: June 15, 1982

TED WILSON
MAYOR

ATTEST:
KATHRYN MARSHALL
CITY RECORDER

(SEAL)
BILL 40 of 1982
Published June 25, 1982
D-47

APPENDIX IX

OBJECTION TO THE AFFIDAVIT OF
MERRILL R. NORMAN (R-870)

FILED

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

MAR 24 4 59 PM '83

H. DIXON H. DIXON CLERK
3RD DIST. COURT

BY [Signature]
DEPUTY CLERK

ROGER F. CUTLER
Salt Lake City Attorney
Attorney for Defendants
100 City & County Building
Salt Lake City, Utah 84111
Telephone: 535-7788

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

LITTLE AMERICA HOTEL)	
CORPORATION, et al.,	)	OBJECTION TO THE AFFIDAVIT
	)	OF MERRILL R. NORMAN
Plaintiffs,)	
	)	Civil No. C 82-5220
vs.)	
)	
SALT LAKE CITY, et al.,)	
)	
Defendants.)	
_____)	

COMES NOW the defendant by and through its attorney, Roger F. Cutler, and objects to the Affidavit of Merrill R. Norman, in whole and in particular, on the grounds that it is irrelevant, immaterial, lacks foundation, asserts opinions on beliefs beyond the expertise of the witness, is based on hearsay and contains matters either not admissible or not yet admitted properly in evidence. Further, the Affidavit was not timely filed in accordance with Rule 56 of the Utah Rules of Civil Procedure and the calendaring order of the Court, and, therefore, cannot be used to support motions for summary judgment by plaintiffs in

000870


this action. Among others, defendants specifically object as follows:

1. The affidavit on file in the within action in many material ways is premised on matters not in evidence. For example, it contains summaries of business records which are not in evidence and of which there is no foundation that he is custodian. See Exhibit "10". It assumes population figures for Salt Lake City based on heresay, without foundation or evidence before the Court. See Exhibit "8". It assumes building height and size based on heresay. See Exhibit "6". It assumes tax distributions without foundation and based on heresay. See Exhibit "4".

2. The affidavit makes conclusions and expresses opinions and belief without foundation and beyond the field of the witness expertise. Defendants specifically object to the paragraphs and exhibits set forth in the attached summary of objections on the basis of hearsay and that affiant has no competence on the matters therein asserted and that there are insufficient facts upon which to base the conclusions, opinions and beliefs stated.

3. The affidavit is irrelevant and immaterial to the matters at issue.

DATED this 24 day of March, 1983.


ROGER F. CUTLER
Salt Lake City Attorney
Attorney for Defendants

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Objection to the Affidavit of Merrill R. Norman to Lon Rodney Kump, RICHARD, BIRD & KUMP, 323 East 400 South, Salt Lake City, Utah 84111; James M. Elegante, PARSONS, BEHLE & LATIMER, 185 South State Street, P.O. Box 11898, Salt Lake City, Utah 84147; and to Dorothy C. Pleshe, GREEN, CALLISTER & NEBEKER, 800 Kennecott Building, Salt Lake City, Utah 84133, by depositing same in the U.S. mail with postage prepaid thereon this 24th day of March, 1983.

Carle Morgan

cc68

SUMMARY OF OBJECTIONS TO
AFFIDAVIT OF MERRILL R. NORMAN

<u>Affidavit Paragraph</u>	<u>Improper Allegation</u>	<u>Objection</u>	<u>Rule</u>
5	Nature of Airport funding	No foundation Hearsay	56 U.R.E. 63 U.R.E.
6	Characterization and alleged necessity of alleged operations, nature and effect of Airport concession activities, and nature of Airport funding	No foundation Hearsay	56 U.R.E. 63 U.R.E.
7	Benefit from Airport	No foundation Hearsay	56 U.R.E. 63 U.R.E.
8	Tax discrimination	No foundation Hearsay	56 U.R.E. 63 U.R.E.
9	Characterization of defendant's claims	No foundation Hearsay	
	Affiant's lack of awareness of financing alternatives	No foundation Irrelevant	56 U.R.E. 63 U.R.E.
10	Airport cost sharing and tax discrimination	No foundation Irrelevant	56 U.R.E. 63 U.R.E.
11	Claims of E.L. Bud Willoughby	No foundation Hearsay	56 U.R.E. 63 U.R.E.
12	Relative police benefits, police benefits to plaintiff, police computations, acre computations, police utilization computations	No foundation Hearsay	56 U.R.E. 63 U.R.E.

13	Police Department expenditures, cost of service computations, taxes paid to general fund, relative Police Department expenditures, taxes paid for Police operation	No foundation Hearsay	56 U.R.E. 63 U.R.E.
14	Payments by guests for police and security	No foundation Hearsay	56 U.R.E. 63 U.R.E.
15	Relative per capita call rate	No foundation Hearsay	56 U.R.E. 63 U.R.E.
16	Relative financial burdens	No foundation Hearsay	56 U.R.E. 63 U.R.E.
17	Affidavit of Fire Chief	No foundation Hearsay	56 U.R.E. 63 U.R.E.
18	Fire Department services and taxes, nature of hotels and motels, building heights and classifications, high-rise use and floor space, sources of tax revenues and tax effects	No foundation Hearsay	56 U.R.E. 63 U.R.E.
19	Ambulance and paramedic services and financing	No foundation Hearsay	56 U.R.E. 63 U.R.E.
20	Fire Department Expenditure allocations, general fund taxes and tax allocations, relative service and tax computations, and effects of innkeeper tax	No foundation Hearsay	56 U.R.E. 63 U.R.E.
21	Tax comparisons and computations, tourist development benefits, effects of innkeeper tax	No foundation Hearsay	56 U.R.E. 63 U.R.E.
	Tax Law charges	No foundation Hearsay	56 U.R.E. 63 U.R.E.

23	Adoption and effect of tax law charges	No foundation Hearsay	56 U.R.E. 63 U.R.E.
24	Impact on innkeeper tax	No foundation Hearsay	56 U.R.E. 63 U.R.F.
25	Taxes and relative tax burdens	No foundation Hearsay	56 U.R.E. 63 U.R.E.
Exhibits 1 - 11	Taxes, populations, expenditures and services; comparisons and computations	No foundation Hearsay	56 U.R.E. 63 U.R.E.

APPENDIX X

10-8-39 UTAH CODE ANNOTATED

line *Harding v Alpine City* 656 P 2d 985 (Utah 1982)

City did not have authority to enact an ordinance requiring mandatory sewer connections of all buildings located on property within 500 feet of an existing sewer line for the purpose of defraying sewer construction costs this section limits city's authority to require mandatory sewer connections to those buildings located on property within 300 feet of an existing sewer line *Harding v Alpine City*, 656 P 2d 985 (Utah 1982)

Scope of city's powers.

A city has a wide discretion in acting under this section *Kiesel v Ogden City* 8 Utah 237,

30 P 758 (1892) overruled on other grounds *Cobia v Roy City*, 12 Utah 2d 375 366 P 2d 986 (1961)

This specific grant of power carries with it such power as is necessarily and fairly implied or incident thereto *Bohn v Salt Lake City* 79 Utah 121 8 P 2d 591 81 A L R 215 (1932)

State water pollution control board.

Maintenance of a sewage disposal system is a proper function of a city and Utah Const Art VI § 29 prohibits state water pollution control board from applying rules interfering with the internal sewer system of a city *State Water Pollution Control Bd v Salt Lake City* 6 Utah 2d 247 311 P 2d 370 (1957)

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am Jur 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 569 to 574

C J S. — 63 C J S Municipal Corporations § 1049

A.L.R. — Right of municipality to refuse services provided by it to resident for failure of

resident to pay for other unrelated services 60 A L R 3d 714

Validity and construction of regulation by municipal corporation fixing sewer-use rates, 61 A L R 3d 1236

Key Numbers. — Municipal Corporations ⇌ 170

10-8-39. License of certain businesses.

They may license, tax and regulate hawking and peddling, pawnbrokers and loan agencies, employment agencies, auctioneers and auction houses, music halls, theaters, theatrical and other exhibitions, shows and amusements, the business conducted by ticket scalpers, distilleries and breweries, brokers, and keepers of public scales, stages and buses, sight-seeing and touring cars or vehicles, cabs and taxicabs, and solicitors therefor, bathhouses, swimming pools, skating rinks, smelters, crushers, sampling works and mills, hotels, and other public places, boardinghouses, restaurants, eating houses, lodginghouses, laundries, barbershops and beauty shops, hackmen, draymen, and drivers of stages, buses, sight-seeing and touring cars, cabs and taxicabs and other public conveyances, porters, expressmen and draymen and all others pursuing like occupations, and prescribe their compensation, may license, tax and regulate secondhand and junk stores and forbid the owners or persons in charge of such stores from purchasing or receiving any articles whatsoever from minors without the written consent of their guardians or parents, may license tax and regulate storage houses and warehouses and require bond to the city for the benefit of bailors therein, may license, tax and regulate the business conducted by merchants, wholesalers and retailers, shopkeepers and storekeepers, automobile garages, service and filling stations, butchers, bakeries, laundries, druggists, photographers, assayers, confectioners, billboards, bill posting and the distribution or display of advertising matter

History: R.S. 1898 & C.L. 1907, § 206, subd. 38; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x38; L. 1931, ch. 9, § 1; R.S. 1933 & C. 1943, 15-8-39.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Boxing contests, § 11-5-1 et seq.

Clubs allowing consumption of liquor on premises, § 11-10-1 et seq.

Counties, licensing businesses for regulation and revenues, § 17-5-27.

Employment offices, license required, § 34-29-1 et seq.

General grant of authority, § 10-8-80.

Insurance companies, license or tax prohibited, § 31-14-4(5).

Pawnbrokers and secondhand dealers, § 11-6-1 et seq.

Power to fix terms and manner of issuance, § 10-8-4.

NOTES TO DECISIONS

ANALYSIS

Barbershops.

"Business" construed.

Butchers.

Hotels and rooming houses.

Interstate commerce.

Lawyers.

Licensing in general.

Merchants.

Motor transport companies.

Price advertising of eyeglasses.

Restaurants and eating houses.

Rules and regulations.

Social clubs.

—Restaurant activities.

Taxicabs.

Telephone instruments.

Barbershops.

Under this section, an ordinance fixing the hours of business for barbershops is invalid. *Salt Lake City v. Revane*, 101 Utah 504, 124 P.2d 537 (1942).

The rulemaking power given to cities in reference to barbershops does not mean any rule, but such rules reasonably related and designed to protect the health of the public. *Salt Lake City v. Revane*, 101 Utah 504, 124 P.2d 537 (1942).

"Business" construed.

The term "business" denotes the employment or occupation in which a person is engaged to procure a living. *Morgan v. Salt Lake City*, 78 Utah 403, 3 P.2d 510 (1931).

Butchers.

A retail meat dealer is included within the word "butchers," and this section, together with §§ 10-8-43 and 10-8-80, justifies an ordinance imposing a license upon such business. *Provo City v. Provo Meat & Packing Co.*, 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Hotels and rooming houses.

This section confers upon the board of commissioners and city council express authority

to regulate and license rooming houses and hotels. The right to license includes the right to refuse a license for cause, and when it is refused, the presumption is that it was for a good and sufficient cause. *Larsen v. Salt Lake City*, 44 Utah 437, 141 P.98 (1914).

Interstate commerce.

Former provision requiring license to canvass or sell by sample certain goods shipped into state, but permitting the canvassing or selling without license of goods not shipped into state was void. *State v. Bayer*, 34 Utah 257, 97 P. 129, 19 L.R.A. (n.s.) 297 (1908).

Lawyers.

Under former statute, cities had no power to exact a license fee from lawyers. *Ogden City v. Boreman*, 20 Utah 98, 57 P. 843 (1899).

This section is not applicable to the business of practicing law, since the power of cities to tax, license and regulate, under this section, is limited to businesses listed therein. *Davis v. Ogden City*, 117 Utah 315, 215 P.2d 616, 16 A.L.R.2d 1208, rehearing denied, 118 Utah 401, 223 P.2d 412 (1950).

Licensing in general.

It is believed that under this section the city councils and the boards of commissioners have

a large discretion as to the person to whom the license may be granted and as to the place of business. *Perry v. City Council*, 7 Utah 143, 25 P. 739, 11 L.R.A. 446 (1891).

The power given by this section to "regulate" includes the power to license. *Provo City v. Provo Meat & Packing Co.*, 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Merchants.

City may impose a general merchant's license tax upon one who is engaged in a general merchandising business, including the sale of meats, and impose a further license tax upon such a business. *Provo City v. Provo Meat & Packing Co.*, 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Motor transport companies.

Under this section, cities are given power with respect to motor transport companies; there, however, is no power to grant or require franchises to use streets. *Utah Light & Traction Co. v. Public Serv. Comm'n*, 101 Utah 99, 118 P.2d 683 (1941).

Price advertising of eyeglasses.

Ordinance prohibiting price advertising of eyeglasses does not have any basis of relationship to public health and is therefore invalid. *Ritholz v. City of Salt Lake*, 3 Utah 2d 385, 284 P.2d 702 (1955).

Restaurants and eating houses.

Cities have the power to pass reasonable ordinances regulating restaurants and eating houses. *Ogden City v. Leo*, 54 Utah 556, 182 P. 530, 5 A.L.R. 960 (1919).

Ordinance prohibiting maintenance of booths of certain dimensions in restaurants so as to prevent persons of both sexes having no regard for law or good morals from meeting in such places was reasonable. *Ogden City v. Leo*, 54 Utah 556, 182 P. 530, 5 A.L.R. 960 (1919).

Neither this section nor Constitution of Utah authorizes municipalities to enact civil rights legislation and there is no common-law duty resting on tavern keeper to serve patrol, thus complaint seeking damages for defendant's refusal to serve food to plaintiff "under either the common law or by statute or valid city ordinance" stated no cause of action. *Nance v. Mayflower Tavern, Inc.*, 106 Utah 517, 150 P.2d 773 (1944).

Rules and regulations.

Where the power "to regulate" a particular calling or business is conferred on a city, it authorizes such city to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary and wholesome in conducting the business in a proper and orderly manner. *Salt Lake City v. Revene*, 101 Utah 504, 124 P.2d 537 (1942).

The power to regulate business can mean only such regulations as are reasonably and substantially related to the safeguarding of the public health. *Ritholz v. City of Salt Lake*, 3 Utah 2d 385, 284 P.2d 702 (1955).

Social clubs.

—Restaurant activities.

This section's grant to cities of the power to license and regulate certain activities within its jurisdiction, including restaurants, is a general grant of licensing and regulatory power over certain named activities, but by enacting additional statute giving cities the power to license and regulate social clubs, recreational associations, athletic associations and the like, legislature indicated it did not construe this section as containing such grant, so that city's authority for licensing and regulating the restaurant activities of social club must be found in latter statute. *Salt Lake City v. Towne House Athletic Club*, 18 Utah 2d 417, 424 P.2d 442 (1967).

Taxicabs.

This section permits a city council to require that taxicab operators providing service within the city to have a certificate of public convenience and necessity, even though their primary areas of service are outside the city limits. *Butt v. Salt Lake City Corp.*, 550 P.2d 202 (Utah 1976).

Telephone instruments.

Under Constitution, as it read originally, and former statutes, cities had the power to levy and collect, for revenue purposes, a reasonable license fee for each telephone instrument, operated and maintained by any person or corporation and used exclusively within the city limits for a local business and for which a rental or a charge was made. *Ogden City v. Crossman*, 17 Utah 66, 53 P. 985 (1898).

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits § 91 et seq.; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 471 et seq.; 58 Am. Jur. 2d Occupations, Trades, and Professions § 5.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 168, 229 et seq.

A.L.R. — Application of city ordinance requiring license for laundry, to supplier of coin-operated laundry machines intended for use in apartment building, 65 A.L.R.3d 1296.

Brokers suspension or revocation of real estate broker's license on ground of discrimination 42 A L R 3d 1099

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations, 46 A L R 3d 1393

Validity and construction of statute or ordinances forbidding treatment in health clubs or massage salons by persons of the opposite sex, 51 A L R 3d 936

Validity of municipal ordinances regulating time during which restaurant business may be conducted 53 A L R 3d 942

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events 81 A L R 3d 655

Key Numbers. — Municipal Corporations ⇐ 621

10-8-40. Resorts and amusements.

They may license, tax, regulate and suppress billiard, pool, bagatelle, pigeonhole or any other tables or implements kept or used for similar purpose; also pin alleys or tables, or ball alleys; may also license, tax, regulate, prohibit or suppress dancing halls, dancing resorts, dancing pavilions, and all places or resorts to which persons of opposite sexes may resort for the purpose of dancing or indulging in any other social amusements.

History: R.S. 1898 & C.L. 1907, § 206, subd. 39; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x39; R.S. 1933 & C. 1943, 15-8-40.

Compiler's Notes. — "They," as used at the

beginning of this section, refers to boards of commissioners and city councils of cities See § 10-8-1

Cross-References. — Boxing contests and wrestling matches, §§ 11-5-1, 11-5-2.

NOTES TO DECISIONS

ANALYSIS

Bagatelle, pinball, and marble machines.
Billiards and pool.
Card games.

Bagatelle, pinball, and marble machines.

The words "suppress" and "prohibit" as used in this section are not synonymous, thus, a city ordinance prohibiting the use for any purpose of bagatelle, pinball, and marble machines is not authorized, since under this section the cities have only the right to restrict in a reasonable manner the use of these machines *Stevenson v. Salt Lake City Corp.*, 7 Utah 2d 28, 317 P 2d 597 (1957)

Billiards and pool.

This section, when read in connection with §§ 10-8-81 and 10-8-84, confers power with reference to billiard and pool tables, but does not extend beyond the regulation or suppression of

keeping them, and § 10-8-81 does not go farther than the regulation of clubs. Accordingly, an ordinance prohibiting any person from playing at billiards upon any billiard or pool table in any clubroom is invalid, for such power is neither expressly granted nor necessarily implied or incident to any express grant *American Fork City v. Robinson*, 77 Utah 168, 292 P 249 (1930)

Card games.

This section, even when construed with §§ 10-8-39 and 10-8-80, does not authorize a city to levy a license tax upon one maintaining a room open to the public in which card games are played *Morgan v. Salt Lake City*, 78 Utah 403, 3 P 2d 510 (1931)

COLLATERAL REFERENCES

C.J.S. — 62 C J S Municipal Corporations §§ 168, 245, 263, 287

Key Numbers. — Municipal Corporations ⇐ 594(6), 621