

1980

# State of Utah et al v. I. M. C. Mint Corporation et al : Petition for Rehearing

Utah Supreme Court

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PETITION FOR WRIT OF HABEAS CORPUS  
SUPPORTING AFFIDAVIT

THIRD JUDICIAL DISTRICT

The Honorable James F. [illegible]

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FILED

APR 18 1980

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, and STATE OF  
UTAH, by and through JOHN W.  
ROLLY, Director, Utah State  
Trade Commission,

Plaintiff,

vs.

I.M.C. MINT CORPORATION,  
ROBERT GRABOR, GEORGE E.  
TWIBEY, et al.,

Defendants.

Case No. 16555

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PETITION FOR REHEARING — BRIEF OF AUTHORITIES  
SUPPORTING APPELLANT'S PETITION FOR REHEARING

---

REVIEW OF A DECISION OF THE  
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY  
The Honorable James S. Sawaya, Presiding

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*Machine-generated OCR may contain errors.*

As a further point supporting the need for a rehearing in this matter, it should be noted that the effect of the court's holding is to relegate the state of Utah to the status of a general creditor, which will have a substantial impact on tax revenues in a period of time when the state will be hard pressed to provide traditional services heretofore rendered. This severe impact is the result of the multitude of situations wherein the state's claim for taxes is at issue. To wit: State and Federal Receiverships, Federal Bankruptcies, Sheriff's sales, real estate closings, etc.

Appellant respectfully submits that as a matter of public policy, the court should allow the Utah Legislature to elevate the state's claims for taxes above those of general unsecured creditors.

DATED this 17<sup>th</sup> day of April, 1980.

ROBERT B. HANSEN  
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PETITION FOR REHEARING — BRIEF OF AUTHORITIES  
SUPPORTING APPELLANT'S PETITION FOR REHEARING

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POINT I

THE BASIC PREMISE UNDERLYING THE PHILLIPS  
DECISION IS INOPPOSITE TO THE POSITION OF  
THIS COURT AS ASSERTED IN THE I.M.C. MINT  
DECISION.

In Phillips Petroleum Co. v. Wagstaff, 22 Utah 2d 177,  
450 P.2d 100 (1969), the court held that withholding taxes do not  
constitute a lien before the filing of a warrant when it stated:

In the instant case the only record  
as to delinquent withholding taxes rests  
wholly within the knowledge of the em-  
ployer until such time as the Tax Com-  
mission makes its determination as to the  
amount due and delinquent and files its  
warrant with the appropriate county clerk.

We are inclined to the view that the  
lien of a state for delinquent withholding  
taxes begins to run at the time notice  
thereof is given by filing the warrant.

*Id.* at 102.

In the State of Utah v. I.M.C. Mint, No. 16555, filed April 2, 1980, the court declined to overrule Phillips Petroleum when it stated:

The case is of long standing, was in effect accepted as a proper statement of the law in 1973 by the Legislature's reenactment, and, since the Legislature in fact changed the law in 1979, we would in effect be making that enactment retroactive by reversing Phillips Petroleum. We think it sufficient to rely upon the law enacted in 1979 for prospective application. Id. at 3.

The court then cited subsections (2) and (3) of §59-10-22 and stated:

Although lien priority of tax debts is now established by statute to date from the time a tax assessment is made, the ruling of the trial court in the present case is controlled by Phillips and the pre-1979 statutes. Id. at 4 (emphasis added).

Herein lies the resulting confusion. In the Phillips decision, the court declined to allow a state lien for taxes to run until notice is imparted by way of the public recording statute. Yet the court intimates that the new statute, which establishes a lien priority from the date of tax assessment, is capable of altering the Phillips rule prospectively; even though the same basic fact situation which the Phillips court found persuasive still exists in the new lien statute. The fact situation is that in the absence of a warrant, no notice is given the general public through any public record.

The appellant submits that the basic issue to be resolved in this appeal is whether the public's need of tax revenue

to support vital government services is of sufficient import to require the setting aside of the ordinary requirements of notice before a lien can be given effect. Appellant maintains that the needs of the government for tax revenue is of sufficient magnitude to require that statutes such as Utah Code Ann. (1953) §§59-14A-44(e) and 59-10-22 be given literal effect so as to insure the fiscal integrity of local governments. Appellant refers the court to its original brief for case authority supporting the basic proposition that the government's need for tax revenue outweighs any due process concerns that might be present if the claim was founded upon a private contract.

In summary, Appellant submits that the statute passed by the 1979 legislature should be given effect as written; notwithstanding that no public notice is given. Likewise, §§59-14A-44(e) and 59-15-10 should be given effect as written and thereby the receiver should be ordered to pay the state's claim for sales and withholding taxes prior to any payment to general, unsecured creditors in accordance with Rule 66(f) of the Utah Rules of Civil Procedure. To do otherwise is simply to relegate the state to the status of a general creditor; something which should not be allowed to occur as a matter of public necessity and policy.

DATED this 17<sup>th</sup> day of April, 1980.

Respectfully submitted,

ROBERT B. HANSEN  
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MARK K. BUCHI  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing  
Petition for Rehearing — Brief of Authorities Supporting  
Appellant's Petition for Rehearing, postage prepaid, to Herschel  
J. Saperstein, Attorney for Receiver-Respondents, 310 South Main,  
Twelfth Floor, Salt Lake City, UT 84101, on this 17<sup>th</sup> day of  
April, 1980.

Errol Dahlberg