1979

Layton City v. Ferrin Douglas Glines : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

LAYTON CITY,	:	
Plaintiff-Respondent,	:	Case No. 16659
vs.	:	
FERRIN DOUGLAS GLINES,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE SECOND JUDICIAL DISTRICT COURT, IN AND FOR DAVIS COUNTY, STATE OF UTAH, THE HONORABLE J. DUFFY PALMER, JUDGE, PRESIDING.

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TABLE OF CONTENTS

AUTHORITIES CITED

TABLE OF CONTENTS - CONTINUED

Page

OTHER

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Ferrin Douglas Glines, was convicted before the Circuit Court of the State of Utah, in and for Layton, Utah of the crime of Driving Under the Influence of Alcohol, in violation of Section 41-6-44, Layton Municipal Code. Upon appeal to the Second Judicial District Court, that judgement of conviction was upheld by the Honorable J. Duffy Palmer, Judge, presiding. From that judgement of conviction, the defendant brings this direct appeal pursuant to the terms and provisions of Article VIII, Section 9 of the Constitution of the State of Utah solely and expressly to test the Constitutional validity and construction of Layton Municipal Code 41-6-44.

DISPOSITION IN THE LOWER COURT

The trial court found the defendant guilty of the crime of Driving under the influence of alcohol, in violation of Layton Municipal Code, Section 41-6-44. Subsequently, the trial court sentenced appeallant to serve a term of six-months in the Davis County Jail.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the verdict and judgment of the trial court upon grounds that Section 41-6-44, Layton Municipal Code is invalid.

STATEMENT OF FACTS

The above-entitled matter came on regularly for trial in the Layton Circuit Court on Monday, May 7, 1979 at the hour of 10:00 o'clock a.m. before the Honorable Douglas L. Cornaby Circuit Court Judge. The matter was before the Court for trial of the defendant for the offense of D.U.I. The matter was prosecuted under a Layton City Ordinance. At the conclusion of evidence in the matter, Defendant moved the Court to dismiss the matter upon grounds that Layton City lacks Constitutional or statutory authority to enact a D.U.I. ordinance. Subsequent to oral argument, the Court denied such Motion and Defendant was there upon convicted of the offense of D.U.I. under Layt

Municipal Code, Section 41-6-44 and sentenced to a term of six-months in the Davis County Jail. From that Judgement of conviction, Defendant brought direct Appeal to the Second Judicial District Court, the Honorable J. Duffy Palmer presiding. On August 9, 1979, the Court affirmed Mr. Glines conviction. From that final judgement. Defendant brings this direct appeal.

ARGUMENT

POINT I

SECTION 41-6-44, LAYTON MUNICIPAL CODE IS INVALID SINCE MUNICIPALITIES ARE NOT EMPOWERED BY STATUTE TO ENACT ORDINANCES PROHIBITING D.U.

In the matter now before the Court, the Defendant, Ferrin Douglas Glines, was charged by Complaint with the offense of Driving Under the Influence of Intoxicating Liquor in violation of Section 41-6-44 of the Revised Ordinances of Layton City. Section 41-6-44 was enacted pursuant to the authority conferred upon the City of Layton and other Municipalities by statute and, specifically, by Utah Code Annotated Section 41-6-43 providing, in pertinent part, as foll.

> (a) Local authorities may by ordinance provide that it shalll be unlawful for any person who is under the influence of intoxicating liquor or is an habitual user or under the influence of any narcotic drugs or any other drug to a degree which rendered him incapable of safely driving a vehicle to drive or be in actual physical control of any vehicle, for the use of chemical tests and for evidentiary pre-sumptions, and for penalties therefore as a first offense consistent with Section 41-6-44.

The above-cited statute was repealed by the Utah State Legislature (Laws 1978, Ch. 33, Section 54) on January 28, 1978, effective March 30, 1978, and said repeal of the statutory authority to enact D.U.I. ordinances, Defendant urges operates to invalidate Section 41-6-44 of the Revised Ordinances of Layton City. (The section has since been re-enacted but

such re-enactment was not effective untill July 1, 1979)

It is well established as a matter of law in this jurisdiction that municipalities possess none of the elements of Sovereignty and that they are " creatures of statute", i.e. that they possess only those powers conferred upon them by the State of Utah or by statutory enactment. Nasfell v. Ogden City, 122 Utah 360, 249 P. 2d 507 (1952); Salt Lake City v. Revene, 101 Utah 504,124 P. 2d 537 (1942); Moss v. Board of Commissioners of Salt Lake City, Utah 2d 60, 261 P. 2d 234 (1923); Lark v. Whitehead, 28 Utah 2d 343, 502 P 2d 557 (1972).

In Nasfell v. Ogden City, 122 Utah 360, 249 P. 2d 507 (1952) the Supreme Court of Utah stated that:

> We are committed to the principle that cities have none of the elements of sovereignty, that "any fair, reasonable substantial doubt concerning the existence of the power is resolved by the Courts against the corporation (city) and the power denied.... That grants of power to cities are strictly construed to the exclusion of implied powers not reasonably necessary in carrying out the purposes of the express powers granted. (249 P. 2d at 508)

In Nasfell, the Court held that Ogden had no power to pass an "ordinance declaring the presence of a vehicle, parked in violation of any ordinance, on any public street in the city, prima facie evidence that the registered owner of such vehicle committed or authorized such violation....."

In Salt Lake City v. Revene, 101 Utah 504, 124 P. 2d 537 (1942), the Defendant was charged with the violation of a city ordinance which prescribed the hours during which barber shops could remain open. In striking down the ordinance the

Court said:

> It has been repeatedly stated by this Court "that a municipal corporation possesses and can exercise the following powers and no other; First, those granted in express words; second those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,... not simply convenient, but indispensible." (124) P. 2d at 538)

The above principles have been consistently strictly construed by the Utah Supreme Court. In Moss, County Attorney ex rel. State Tax Commission v. Board of Commissioners of Salt Lake City, et al, Utah 2d 60 261 P. 2d 961 (1953), the Court reiterated:

> This Court has not favored the extention of the powers of the city by implication, and the only modification of such doctrine is when the power is one which is necessarily implied. Unless this requirement is met, the power cannot be deduced from any consideration of convenience of necessity, or desirability of such result, and no doubtful influence from other powers granted or from ambiguous or uncertain provisions of the law would be sufficient to sustain such authority. (citation omitted) (216 P. 2d at 964)

In Layton City v. Speth, Supra, a case in which counsel for Defendant personally participated, the Utah Supreme Court in striking down a city ordinance, again stated:

> Grants of power to cities are strictly construed to the exclusion of implied powers (578 P. 2d at

The above cited cases and authority to the contrary notwithstanding, it is believed that Respondent will attempt to rely herein upon the case of Salt Lake City v. Kusse, 97 Utah 133, 93, P. 2d 671 (1939) S.L.C. v. Kusse was a

1939 decision in which the Utah Supreme Court held that municipalities have authority pursuant to a general powers statute (U.C.A. 15-8-84, now U.C.A. 10-8-84) to enact a D.U.I. ordinance. Appeallant believes that Respondent's reliance is misplaced.

To begin, Kusse predates the repealed enabling statute, U.C.A. 41-6-43, by two years. Section 41-6-43, U.C.A. was first enacted in 1941. Kusse came down in 1939. Secondly,41-6-43 was a specific legislative grant of authority to enact D.U.I. ordinances, whereas the Section construed in Kusse , 15-8-84 (now 10-8-84), was a general powers ordinance. The clear thrust of all of the above cited cases and authority is that a specific grant of authority controls and delimits a general grant and, by implication, where the specific authority has been expressly repealed one cannot ressurrect it under the guise of general authority. Thus, although one might subsume the power to enact D.U.I. ordinances under a general powers statute as this Court once did in Kusse , once there has been a specific grant of such authority and then such specific grant has been repealed, as here, by the State Legislature , the only reasonable conclusion available is that the legislature intended to preempt thereby the authority of municipalities to enact D.U.I. ordinances. Further, counsel submits that all cases herein cited postdate Kusse on the issue of the authority of cities to enact ordinances and to the extent that Kusse conflicts with such cases or seems to conflict with such cases, its ruling has been clearly and expressly modified or even overuled by such cases.

Applying the rationale of the above-cited cases and authority to the facts in the instant case, it is clear that the Layton City Ordinance must fall since the statutory author for the enactment of said ordinance has been repealed. Absent an express statutory grant of authority, the law is well settle in this jurisdiction that municipalities lack the authority to enact and enforce crimminal ordinances. The policy of this restrictive interpretation as stated in Nasfell is both sound and well settled. "The rule promotes a wholesome, uniform orde amoung the municipalities of the state. Its wisdom is not open to question at this date, and we ought not depart from it light (249 P. at 509)

POINT II

SECTION 41-6-44, LAYTON MUNICIPAL CODE, IS INVALID SINCE THE LEGISLATURE OF THE STATE OF UTAH HAS EFFE IVELY PREEMPTED THAT AREA OF LEGISLATION.

Layton City is further prohibited from enacting and enforcing Section 41-6-44, Layton Municipal Code, in the instant case, on the theory of pre-emption. Layton City effectively intrudes upon the area of legislative enactment pre-emted by the State of Utah pursuant to Section 41-6-44. U.C.A., (1953), which prohibits Driving Under the Influence and which, by recent revision, punishes said offense as a Class "A" Misdemeanor under certain circumstances.

In a case involving prostitution, Salt Lake City v. Allra 10 Utah 2d 254, 430 Pd2d 371 (1967), the Utah Supreme Court he that where the State has enacted comprehensive and complete law pertaining to an offense, it has pre-empted the field. The Cou

further held that a Municipality or City has authority to enact ordinances only in those areas where the State has given authority and a specific grant of authority is not grounds to argue that a city may also prohibit the same conduct. As stated in Sutter; supra:

> It may be, and is, contended that the ordinance in question is only carrying out the general policy of the state as reflected by the legislative enactment making it an offense against the state law for any person to knowingly have in his possession without authority intoxicating liquors within the state. But the policy of the state cannot control in determining the powers of a municipality. (216 P. 2d at 237)

Applying the above-cited rationale, the Utah Supreme Court recently struck down a city ordinance prohibiting possession of a controlled substance. In the decision in Layton City v. Speth, Supra, the Court specifically noted that Municipalities are empowered only to enact ordinances creating offenses punishable as Class "B" Misdemeanors whereas the State has authority to affix more serious penalties for violations of its statutes. Thus, where the City and State have both enacted laws proscribing certain conduct, the Court notes, the fact that the State has set forth a penalty for the offense that exceeds the penalty that the City might lawfully impose, consitutes an indication that the State has intended to pre-empt the field and renders the City Ordinance invalid.

In its decision, the Court, Chief Justice Ellett speaking said:

> The State of Utah has enacted statutes controlling the sale, gift, or use of controlled substances. Subsection (2) (a) (ii) of U.C.A., 1953, 58-37-8 contain the exact language of the ordinance set out above. The City had not power or authority to copy the statute in its ordinance.

If the City could enact an ordinance covering the same offenses as those set out in the statute, there would be a problem. A violation of the ordinance would only be a misdemeanor punishable by fine not to exceed six months while the state statute declares the offense to be punishable as follows:

(a) For the first offense, a fine of $299.00 or jail not to exceed six months, or both;

(b) For the second offense, a fine of $1,000.00 or jail not to exceed one year, or both;

(c) For the third or subsequent conviction, imprisionment in the Utah State Prison for not more than five years.

The City ordinance penalty would apply to a person who was a multiple offender as well as to a first offender for the ordinance applies simply to anyone who knowingly permits his car to be occupied by persons using controlled substances therein.

The conviction of Mr. Speth for violating that ordinance must be set aside. The judgment is reversed. No costs are awarded. (378 P. 2d at

Applying the above cited authority to the instant case, it is clear that the legislature intended at the time of the repeal of 41-6-43, to pre-empt municipalities from the field of D.U.I. legislation. This is apparent since (1) the enabling statute was expressly repealed, and (2) the state has chosen to punish D.U.I. in certain instances as a Class "A" Misdemeanor and said penalty is beyond the authority of cities to enact.

CONCLUSION

Section 41-6-44, Layton Municipal Code, is invalid since Municipalities are not empowered by Statute to enact ordinances prohibiting Driving Under the Influence of Alcohol.

Further, Section 41-6-44. Layton Municipal Code, is invalid since the Legislature of the State of Utah has effectively preempted that area of legislation. For such reasons, this Court should reverse the verdict and judgment of the trial and appellate courts, declaring therewith that Layton Municipal Code 41-6-44 is constitutionally invalid.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of Appellant was duly served on counsel for the Respondent, Bruce C. Barton, Layton City Attorney, 437 North Wasatch Drive, Layton, Utah, by hand delivering three (3) copies thereof this 14th day of November, 1979.

TOM JONES