

1980

Wells Fargo Armored Service Corporation v. Public Service Commission of Utah, Milly O. Bernard, Chairman, David R. Irvine, and Kenneth Rigtrup, Commissioners of the Public Service Commission of Utah, and Brinks, Inc : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Wells Fargo Armored Service v. Public Service Comm'n of Utah*, No. 16862 (Utah Supreme Court, 1980).
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IN THE SUPREME COURT OF
THE STATE OF UTAH

WELLS FARGO ARMORED SERVICE
CORPORATION, :

Plaintiff, :

vs. :

PUBLIC SERVICE COMMISSION :
OF UTAH, MILLY O BERNARD, :
Chairman, DAVID R. IRVINE :
and KENNETH RIGTRUP, :
Commissioners of the PUBLIC :
SERVICE COMMISSION OF UTAH, :
and BRINKS, INC., :

Case No. 16862

Defendants. :

BRIEF OF APPELLANT

Appeal, By Writ of Certiorari, from an Order
of the PUBLIC SERVICE COMMISSION OF UTAH

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FILED

MAR 19 1980

Clerk, Supreme Court, Utah

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE.	1
DISPOSITION IN LOWER TRIBUNAL.	1
RELIEF SOUGHT ON APPEAL.	1
STATEMENT OF THE FACTS	2
ARGUMENT	3
POINT I. PROPER CONSTRUCTION OF SECTION 54-6-12(f), LIMITS THE EXEMPTION TO MOTOR VEHICLES WHEN CONSTRUCTED AS ARMORED CARS AND USED FOR THE SAFE CONVEYANCE OR DELIVERY OF MONEY OR OTHER VALUABLES TO A 15 MILE RADIUS OF THE LIMITS OF ANY CITY OR TOWN.	3
CONCLUSION	15

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AUTHORITIES CITED

Cases

<u>Columbia Broadcasting System, Inc. v.</u> <u>Democratic Nat. Committee, (US)</u> 36 L. Ed. 2d 772, 93 S. Ct. 2080	14
<u>Milne Truck Lines, Inc. v. Public</u> <u>Service Commission, 13 U.2d 72, 368 P.2d 590</u> (1962).	5
<u>New York State Dept. of Social Services v.</u> <u>Dublino, (US)</u> 37 L. Ed. 2d 688, 93 S. Ct. 2507.	14
<u>Norville v. State Tax Commissioner,</u> 98 Utah 170, 97 P.2d 937 (1940)	6

<u>Realty Purchasing Company v. Public</u> <u>Service Commission, 9 U.2d 375,</u> <u>345 P.2d 606 (1959)</u>	9
<u>Rio Grande Motor Way, Inc. v. Public</u> <u>Service Commission of Utah, 572 P.2d</u> <u>1368 (1977)</u>	6
<u>Rio Grande Motor Way, Inc. v. Public</u> <u>Service Commission of Utah, 21 Utah 2d 377,</u> <u>445 P.2d 990 (1968)</u>	11
<u>Salt Lake City v. Salt Lake County,</u> <u>568 P.2d 738 (1977)</u>	9, 14

Statutes

Section 54-6-12(f) U.C.A., 1953 as amended.	4, 12
Section 54-6-2 U.C.A., 1953 as amended.	13

Texts

73 Am. Jur. 2d Sec. 231, P. 415.	11
73 Am. Jur. 2d Sec. 168, P. 371.	14

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and BRINKS, INC., :

Case No. 16862

Defendants. :

APPELLANT'S BRIEF

STATEMENT OF THE CASE

Petition of respondent, Brinks, Inc., (herein-
after referred to as Brinks) for a Certificate of Exemption
from regulation by the Public Service Commission.

DISPOSITION IN LOWER TRIBUNAL

The Public Service Commission (hereinafter
referred to as the "Commission") granted respondent's
Petition for Exemption.

RELIEF SOUGHT ON APPEAL

Appellant asks the Court to reverse and set
aside the order of the Commission.

STATEMENT OF FACTS

There are no disputed facts involved.

Procedurally, defendant Brinks, Inc. filed an application for a "certificate of exemption" with the Public Service Commission based upon its contention that Section 54-6-12(f) Utah Code Annotated, as amended, entitled it to statewide exemption from the provisions of the Motor Vehicle Transportation Act except for the requirements of insurance, safety regulations and accident reports. On January 25, 1979, plaintiff filed a motion to dismiss the application for exemption contending that Section 54-6-12(f) exempted vehicles when constructed as armored cars and used for the safe conveyance or delivery of money or other valuables only when such vehicles were operating within a 15 mile radius of the limits of any city or town.

Argument was had upon the application and the motion and on October 31, 1979, the Commission issued its report and order granting statewide exemption to applicant Brinks. It is that report and order which is the subject of this appeal.

The single issue raised in this appeal is the proper construction of Section 54-6-12(f) Utah Code Annotated 1953, as amended. The question specifically is whether the exemption contained in that section as it relates to armored cars is limited to operations within

a 15 mile radius of the limits of any city or town or whether the exemption is statewide.

ARGUMENT

I

PROPER CONSTRUCTION OF SECTION 54-6-12(f), LIMITS THE EXEMPTION TO MOTOR VEHICLES WHEN CONSTRUCTED AS ARMORED CARS AND USED FOR THE SAFE CONVEYANCE OR DELIVERY OF MONEY OR OTHER VALUABLES TO A 15 MILE RADIUS OF THE LIMITS OF ANY CITY OR TOWN.

As indicated in the Order of the Commission, appellant, Wells Fargo, applied for, and received from the Commission, a Certificate of Convenience and Necessity authorizing it to operate as a common motor carrier transporting money and other articles of extraordinary value in armored cars between all points and places in the State of Utah (Report and Order Case No. 6258 Sub 1, In the Matter of the Application of Wells Fargo Armored Service Corporation for a Certificate of Convenience and Necessity to operate as a common motor carrier of property in intrastate commerce, P.S.C. Utah, November 7, 1974).

Up until January of 1979 Brinks had been operating an armored car service within 15 miles of Salt Lake City without authority from the Commission relying upon the 15 mile exemption in 54-6-12(f).

Section 54-6-12 U.C.A. provides in part:

"54-6-12. Exceptions from provisions of act--Public liability and property damage policies-- Rules and regulations--Supervision of carriers excepted.-- Except for the provisions of 54-6-17 relative to requirements of insurance, 54-6-21, relative to safety regulations, and 54-6-22 relative to accident report no portion of this act shall apply:

. . (f) To motor vehicles when especially constructed for towing, wrecking, maintenance, or repair purposes, and not otherwise used in transporting goods and merchandise for compensation; or when constructed as armored cars and used for the safe conveyance or delivery of money or other valuables, or when used as hearses, ambulances, or licensed taxicabs, operating within a fifteen mile radius of the limits of any city or town; or to motor vehicles used as ambulances or hearses by any person, firm or corporation duly licensed in the state as an embalmer, funeral director, or as a mortuary establishment, provided that use of such motor vehicles as an ambulance shall be incidental to the use of embalming or funeral directing. [;or]"

Rather than file an application for a Certificate of Convenience and Necessity in accordance with the provisions of Section 54-6-5 Utah Code Annotated 1953, as amended, as did the appellant, Brinks opted to file an application for exemption from regulation as heretofore indicated. The granting

of the certificate of exemption to Brinks, put it, for the first time, in direct competition with Wells Fargo in its statewide operations pursuant to its Certificate of Convenience and Necessity No. 1710. We respectfully submit that the armored car exemption in Section 54-6-12(f) is limited to the fifteen mile radius of any city or town as therein stated and that Section 54-6-5 U.C.A. sets forth the exclusive method of obtaining a Certificate of Convenience and Necessity, namely, by filing an application therefor and proving that public convenience and necessity require the operation proposed.

Section 54-6-4 U.C.A. gives the Commission the power and the duty to supervise and regulate all common motor carriers. In Milne Truck Lines, Inc. v. Public Service Commission, 13 U.2d 72, 368 P.2d 590 (1962) this Court stated:

"The Commission is required by statute to regulate so as to prevent unnecessary duplication of services in areas where the existing transportation service adequately meets the needs of the public." (Citing Section 54-6-4 U.C.A. 1953, as amended).

See also Rio Grande Motor Way, Inc. v. Public Service Commission of Utah, 572 P.2d 1368 (1977) in which case Rio Grande Motor Way, Inc. attempted to obtain authority under the theory of an "alternate route" or a "route deviation" rather than by an application pursuant to Section 54-6-5 U.C.A.

In that case this Court stated:

"It is our opinion that if Uintah Freightways is to be granted the authority to haul freight directly from Salt Lake City to Price, it should be done in a forthright manner and by compliance with the requirements of U.C.A. 1953, Section 54-6-5, rather than to permit it to acquire such authority by the back-door method here employed. In view of the failure to so comply with the law, the order of the Commission granting such authority is vacated."

Section 54-6-12(f) sets forth exemptions which are in derogation of the duty of the Commission to regulate as set forth in Section 54-6-4, supra. In Norville v. State Tax Commissioner, 98 Utah 170, 97 P.2d 937 (1940) this Court held that statutes exempting taxpayers from a general taxing statute, being in derogation of the taxing power, are constrictly construed against those seeking to escape the tax burden. That theory is most applicable here.

The Commission arrived at its conclusion that the exemption under consideration was statewide

by application of the so-called "last antecedent" rule of statutory construction. The Commission and the respondent, Brinks, overlooked the fact that by applying the "last antecedent" rule in the instant situation, the 15 mile radius restriction would operate only to taxi cabs since "taxi cabs" is the last antecedent. However, the rationale of Brinks and the Commission clearly indicate that they concede that the limitation applies not only to taxi cabs but also to hearses and ambulances. Such a concession is necessary in applying the rule since the legislature has so construed the exemption. In 1951 the legislature added the last full phrase to paragraph (f) removing the 15 mile limitation from hearses and ambulances that are used incidental to the business of embalming or funeral directing. Obviously, the legislature was aware that the 15 mile radius at least applied to hearses and ambulances as well as to taxi cabs. Had it intended to remove the 15 mile limitation from armored cars, certainly that was the time to do so. Section 54-6-12 U.C.A. 1953 was enacted in 1935 and except for the amendment just described in 1951, sub section (f) has been intact to the present date.

The Commission adopted the respondent Brinks'

argument that transportation of passengers and dead bodies somehow has an inherent difference, from a regulatory standpoint, than the transportation of money or other valuables for financial institutions. We respectfully submit that there is no rational basis whatever for such a conclusion. The Commission is charged with the regulation of all common carriers in the transportation of passengers and property. The Commission states, in its Order:

"Further, as pointed out by applicant in its Memorandum, the potential customers for applicant's specialized service are financial institutions in a strong bargaining position, vis-a-vis applicant. The need for regulation by this Commission would, accordingly, appear to be minimal. Regarding ambulances, hearses, and taxi cabs, the rationale for exemption would be that they frequently are the subject of regulation by local jurisdictions. The fifteen mile radius limitation thus makes more sense in their case than it would in the case of the armored car service."
(Emphasis added)

We fail to find any justification for this conclusion. The Commission has historically, on a regular basis, exercised its power and discharged its duty to regulate the transportation of all kinds of property. We fail to see any basis for the conclusion that there is a "minimal" need for regulation of motor vehicles used for the transportation, safe conveyance and delivery

of money or other valuables. On the contrary, it can be argued that carriers transporting such commodities need more, not less, regulation than those carriers transporting less valuable commodities.

In the case of Realty Purchasing Company v. Public Service Commission, 9 U.2d 375, 345 P.2d 606 (1959) the Court tacitly approved the grouping of the vehicles in paragraph (f) as all being limited to the 15 mile radius. The Court quoted from the statute as follows:

"(f) * * * [wreckers] * * * [armored cars]
* * * hearses, ambulances, or licensed taxi
cabs, operating within a fifteen-mile
radius of the limits of any city or town. * * *"
(Emphasis added)

Although the exact question of the application of the fifteen mile limitation was not in issue, the quotation of the statute as including wreckers and armored cars being subject to the 15 mile radius does indicate the Court's approval of such construction.

In the case of Salt Lake City v. Salt Lake County, 568 P.2d 738 (1977), the Court dealt with the "last antecedent" rule which applicant urges in support of its position. The Court refused to apply the rule in that particular case for the reason that strict application would have subverted the intent of the Legislature.

The Court stated on Page 741:

"We have no doubt of the correctness of that rule of construction as a generality, if applied in appropriate circumstances. But helpful as rules of construction often are, they are useful guides, but poor masters; and they should not be regarded as having any such rigidity as to have the force of law, or distort an otherwise natural meaning or intent. Their only legitimate function is to assist in ascertaining the true intent and purpose of the statute."

The Court further recognizes the value in statutory construction of considering the fact that a statute has existed without change for a long time.

On Page 741, the Court stated:

"Nevertheless, we further observe that the correctness of the trial court's decision also finds support in this additional proposition that in case of any uncertainty or ambiguity in a statute, a reasonable administrative interpretation and practice should be given some weight. And this is particularly true when such an administrative interpretation and practice has persisted for a long time without any legislative correction or change."

Application of the "last antecedent" rule is improper here by reason of the punctuation employed by the Legislature. Not only did they fail to use a semi colon after the words "or other valuables" which would have clearly evidenced an intent to exclude armored cars from the limitation, but they employed the use of a comma after "taxi cabs" which shows an intent to relate the limitation to all preceding phrases. See

73 Am. Jur. 2d Sec. 231, P. 415 where it is stated:

"The presence of a comma separating a modifying clause in a statute from the clause immediately preceding, is an indication that the modifying clause was intended to modify all the preceding clauses and not only the last antecedent one."

In the case of Rio Grande Motor Way, Inc. v. Public Service Commission, 21 Utah 2d 377, 445 P.2d 990 (1968) the Court expresses the value of statutory construction which allows the general purpose of the statute to be preserved without being changed by technical rules of statutory construction. The Court stated with respect to the rule of "expressio unius est exclusio alterius" which was urged upon it:

"It has no force of law; and it has no proper application when its effect would be to obstruct rather than to carry out the purpose of the statute. It has been aptly said that it is 'a valuable servant, but a dangerous master.'"

We respectfully submit that the proper interpretation of the statute is aptly and succinctly set forth by former Commissioner Kenneth Rigtrup in his dissent and we quote it in full:

"I respectfully dissent:

Had the Legislature intended the construction of Section 54-6-12(f), Utah Code Annotated, 1953, as

arrived at by the majority of the Commission and as proposed by Applicant, such intention could have been made clear with the simple utilization of a semicolon in the following portion of subsection (f):

' . . . or when constructed as armored cars and used for the safe conveyance or delivery of money or other valuables; or when used as hearses, ambulances, or licensed taxi cabs, operating within a fifteen mile radius of the limits of any city or town; . . . ' (Emphasis added)

Without the use of such a semicolon, it appears to me that the statutory provision in question is extremely unclear and is susceptible of more than one interpretation. Given the vagueness and ambiguity involved, I would prefer not having to rely on a rule of construction to arrive at the appropriate result.

In my view, reliance on and consistent application of a prior Commission interpretation of an unclear and ambiguous statute, assuming a rational basis therefor, provides a sounder basis for statutory construction than that relied on in this case. On April 5, 1974, Wells Fargo Armored Service Corporation applied to this Commission for a certificate of convenience and necessity to operate as a common carrier for the transportation of money and other valuables in armored cars between all points and places in the State of Utah. Wells Fargo specifically acknowledged it had applied for

a certificate because it was unclear from the subject statute whether the fifteen mile limitation applied to armored cars, but did so 'in an abundance of caution to assure that future operations were strictly in accordance with the provision of the Utah Motor Carrier Act.' On November 7, 1974, in Case No. 6258 Sub 1, the Commission issued Certificate of Convenience and Necessity No. 1710 Sub 1, thus assuming jurisdictional regulatory responsibility over an armored motor carrier operating beyond a fifteen mile radius of a city or town. To conclude that the prior Commission did not weigh and consider whether its jurisdiction was properly invoked in the Wells Fargo case wherein the subject statute was specifically raised, though was not opposed directly in an adversary setting, gives our predecessor Commissioners absolutely no credit at all. I prefer giving them the benefit of the doubt.

The general grant of jurisdictional authority of this Commission is set forth in Section 54-6-2, Utah Code Annotated, 1953, which provides:

"All common motor carriers of property or passengers as defined in this act are hereby declared to be common carriers within the meaning of the public utility laws of the state, and subject to this act and to the laws of this state. . ."

Section 54-6-12, Utah Code Annotated, 1953, carves out certain exemptions from the general regulatory jurisdiction. If there is some vagueness or ambiguity about a possible exemption, I would conclude that application of the general grant of authority is the sounder approach. Apparently, that is what the former Commission did in the Wells Fargo case, which I feel should be consistently applied by subsequent Commissions, there being no substantial reason being put forth as to why the original interpretation given the statute by the Commission was fatally flawed."

Commissioner Rigtrup's construction is fully supported by and consistent with the courts holding in Salt Lake City v. Salt Lake County, supra, that reasonable administrative interpretation should be given substantial weight. See also 73 Am. Jur. 2d Sec. 168 for the proposition that the construction of a statute by the administrative body charged with its execution should be followed unless there are compelling indications that it is wrong. Citing New York State Dept. of Social Services v. Dublino, (US) 37 L. Ed. 2d 688, 93 S. Ct. 2507; Columbia Broadcasting System, Inc. v. Democratic Nat. Committee, (US) 36 L. Ed. 2d 772, 93 S. Ct. 2080.

CONCLUSION

1. The Public Service Commission has the duty to regulate all common carriers. See Section 54-6-2 and 54-6-4, U.C.A., 1953.

2. The exemption contained in 54-6-12(f) is in derogation of that duty and must be strictly construed.

3. Section 54-6-5 U.C.A. 1953, sets forth the exclusive procedure for obtaining a certificate of convenience and necessity.

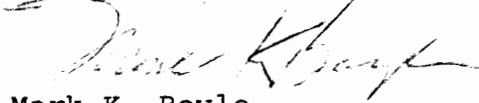
4. The fifteen mile limitation in Section 54-6-12(f) has been contemporaneously construed as being applicable to all of the "motor vehicles" referred to in that section by the Public Service Commission itself, by acquiescence from the Legislature and by interpretation from this Honorable Court.

5. The strained construction advocated by Brinks and adopted by the Commission resulting from the application of the "last antecedent" rule is improper.

6. For all of these reasons the proper construction of Section 54-6-12(f) limits the exemption to motor vehicles when constructed as armored cars and used for the safe conveyance or delivery of money or other valuables to a fifteen mile radius of the limits of any city or town.

WHEREFORE, Plaintiff Wells Fargo Armored Service Corporation respectfully prays that the Court vacate the Order of the Commission issuing a Certificate of Exemption to defendant Brinks, Inc.

Respectfully submitted,



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