

1982

# Salt Lake City v. Guy V. Ronneburg : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT

STATE OF UTAH  
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SALT LAKE CITY, a municipal  
corporation of the State of  
Utah,

Plaintiff and Appellant,

vs.

GUY V. RONNEBURG,

Defendant and Respondent.

Case No. 18116

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BRIEF OF APPELLANT

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Appeal from decision rendered by the  
Third Judicial District Court for Salt Lake County,  
Honorable Bryant H. Croft, presiding

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FILED

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT

STATE OF UTAH  
-----

SALT LAKE CITY, a municipal	)	
corporation of the State of	)	
Utah,	)	BRIEF
	)	
Plaintiff-Appellant,	)	Case No. 18116
	)	
vs.	)	
	)	
GUY V. RONNEBURG,	)	
	)	
Defendant-Respondent.	)	

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NATURE OF THE CASE

The Appellant, Salt Lake City, seeks to have this Court uphold the constitutionality of both the City's ordinance, Section 19-3-9, Revised Ordinances of Salt Lake City, Utah, which prohibits persons under twenty-one years of age from remaining in or about a tavern, and its right, under the police power, to enact such an ordinance.

DISPOSITION IN THE LOWER COURTS

The Defendant, Guy V. Ronneburg, was charged and convicted in the Fifth Circuit Court for allowing minors in a tavern in violation of Section 19-3-9 of the Revised Ordinances of Salt Lake City, Utah, 1965, as amended. Respondent-Ronneburg thereafter appealed his conviction to the Third Judicial District Court.



The district court, through the Honorable Judge Bryant H. Croft, ruled that the enactment of the subject ordinance was beyond the power of the City and was therefore unconstitutional, on the grounds of being arbitrary and unreasonable.

The City then instituted this appeal to this Court.

#### STATEMENT OF THE FACTS

The facts of this case demonstrate the following:

1. The Defendant-Ronneburg was employed as the food and beverage manager by the Ramada Inn located in Salt Lake City.

(T-6, 26)

2. On the evening of November 6, 1980, the defendant, as the acting manager of the motel and was in charge of the motel premises, including a tavern known as "The Study", which is located on the premise of the motel. (T-6, 26)

3. During the time the defendant was in charge of the premises, a fashion show was conducted on the premises of The Study, which is the possessor of a Class "C" beer license issued by the City. (T 4-5)

4. The Salt Lake City Police Department had been notified that persons under the age of twenty-one had been participating in the fashion shows held in the tavern.<sup>1</sup> Police were present on

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<sup>1</sup> Holders of Class "C" Beer licenses are commonly referred to as bars, taverns, or lounges. Such establishments may sell draft beer on their premises and are required to keep from their premises persons under the age of twenty-one. See Sections 19-2-6 and 19-3-9, Revised Ordinances of Salt Lake City, Utah, 1965, as amended, attached as Appendixes "A" and "B".

the evening of November 6th, and ascertained that two individuals participating in the fashion show held in the tavern were under the age of twenty-one. Both persons received citations for said offense. (T 4-5)

5. After the police officers had ascertained from the defendant that he was in charge of, and had responsibility for, the premises, the defendant was issued a citation for permitting persons under twenty-one years of age to remain in a tavern. (T-5-7)

6. The defendant was tried on the 9th day of December, 1980 in the Fifth Circuit Court and was found guilty of permitting persons under the age of twenty-one to remain in a tavern, in violation of Section 19-3-9 of the Revised Ordinances of Salt Lake City, Utah. (T-1, 26)

7. The defendant thereafter appealed his conviction to the Third Judicial District Court. On appeal, the Honorable Judge Bryant Croft, sua sponte, raised the issues of the City's power to enact a strict liability ordinance and its power to prohibit persons under the age of twenty-one from the premises of taverns. Finding the City had neither power, the District Court held that Section 19-3-9 of the Revised Ordinances of Salt Lake City, Utah, was unconstitutional on grounds of being arbitrary and unreasonable. (The memorandum decision of Judge Croft is



attached hereto. as Appendix "C".)

8. The Appellant City thereafter filed the current appeal with the Utah Supreme Court.

### ARGUMENT

#### POINT I

THE ENACTMENT OF SECTION 19-3-9, REVISED ORDINANCES OF SALT LAKE CITY, UTAH, CONSTITUTES A VALID EXERCISE OF THE CITY'S POLICE POWER AND THE ORDINANCE IS CONSTITUTIONAL IN ALL RESPECTS.

- A. LOCAL GOVERNMENTS HAVE BEEN GIVEN BOTH SPECIFIC AND GENERAL POWERS TO REGULATE THE CONDITIONS UNDER WHICH BEER MAY BE SOLD WITHIN THEIR JURISDICTIONS.

Section 19-3-9, Revised Ordinances of Salt Lake City, Utah, 1965, as amended, is one of a number of ordinances enacted by the City in order to regulate the sale and consumption of alcoholic beverages within the City's limits. This section provides:

"It shall be unlawful and shall constitute an offense of strict liability for any licensee of a Class "C", or Class "D", license for the sale of beer or any operator, agent, or employee of such licensee to permit any person under the age of twenty-one years to remain in or about such licensed premise."

On appeal, the district court held this ordinance unconstitutional in part, on the basis that the City did not have the power to enact an ordinance prohibiting persons under the age of twenty-one from being present on the premises of a tavern.

The court so held notwithstanding the provisions of Section 10-8-47, Utah Code Annotated, 1953, as amended, which provides in

part:

"They [cities] may prevent intoxication . . . and may prohibit the sale, giving away or furnishing of intoxicating liquors or narcotics, or of tobacco to any person under twenty-one years of age. . . ."

The district court strictly construed this statute and ruled that it did not include the right of the City to also prohibit individuals under the age of twenty-one from being on certain premises where such beverages are sold.

The Court also reviewed Section 10-8-84, Utah Code Annotated, 1953, as amended, the City's general welfare clause, which gives municipalities authority to enact all ordinances necessary and proper to provide for the peace and general welfare of the City.<sup>2</sup> However, the district court was not persuaded that the two statutes together gave the cities an expanded right to enact the present ordinance. It therefore declared the ordinance invalid.

The City respectfully submits that based upon the above two statutes, 10-8-47 and 10-8-84, it does have power to enact the ordinances in question. An additional basis for such power is found in Section 32-4-17, Utah Code Annotated, 1953, as amended, which provides in relevant part:

"Cities and towns within their corporate limits, . . . shall have power to license, tax, regulate or prohibit the sale of light beer, at retail, in bottles or draft; . . ." (emphasis added)

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<sup>2</sup>The provisions of Section 10-8-84 are set forth in Appendix "D".

Interpreting the powers given to a city under the above-cited statute, this Court has held that "since a city can regulate or prohibit the sale [of beer] entirely, certainly it can impose any reasonable regulations thereon." Triangle Oil Inc., v. North Salt Lake, 609 P.2d 1338, 1339 (1980), emphasis added. In finding that North Salt Lake's restriction regarding the number of outlets the City had authorized for the sale of beer, this Court held:

"In relation to the problem dealt herein, it is generally recognized that because beer is a beverage containing alcohol, its sale is sufficiently related to the public health, morals and safety, that it is subject to regulation under the police power. . . ." (emphasis added) Id. at 1339.

The court concluded its opinion with the following language:

". . . Because of the seriousness of judicial responsibility in having the final word in its inter-relationship with other departments and institutions of government, it has been found to be wise and proper judicial policy to exercise its powers with restraint, and not to intrude into or interfere with the discretionary functions or the policies of other departments of government. Accordingly, the courts generally will not so interfere with the actions of a city council unless its action is outside of its authority or is so wholly discordant to reason and justice that its action must be deemed capricious and arbitrary and thus in violation of complainant's rights." (emphasis added) Id. at 1339, 1340.

Since the City has the power to absolutely prohibit the sale of beer within its corporate limits, the City may also enact reasonable regulations pertaining to the sale of such beverages. It is beyond dispute that local governments, under

the police power, can restrict the sale of beer within close proximity of schools, and churches,<sup>3</sup> they may also under such power and the Twenty-first Amendment, prohibit certain conduct, otherwise permitted by the First and Fourteenth Amendments, on premises which allow the sale or consumption of intoxicating liquors.<sup>4</sup>

The City submits that inasmuch as it is contrary to state law to sell beer to any person under the age of twenty-one, that the subject ordinance is a reasonable extension of its power to prohibit persons under the age of twenty-one from frequenting certain establishments holding Class "C" beer licenses which have as their principal business activity the selling of beer.

Finally, the City maintains that the decision of the district court is totally in error due to its failure to recognize the principles enunciated in this Court's decision in State v. Hutchinson, 624 P.2d 1116 (Utah, 1980). In Hutchinson, the Court upheld the right of Salt Lake County to enact an ordinance under the general welfare power to regulate elections even though the County had not been given a specific grant of authority to enact such an ordinance. In so doing, the Court overturned the Dillon Rule, which had long been the law of this

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<sup>3</sup>Section 32-4-17, Utah Code Annotated, 1953, as amended, attached as Appendix "E".

<sup>4</sup>California v. LaRue, 409 U.S. 109 (1972).



state, and which provided that all powers granted to local governments should be strictly construed. The court held:

"When the state has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e. providing for the public safety, health, morals and welfare. (citations omitted) And the courts will not interfere with the legislative choice of the means elected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this state or of the United States. Specific grants of authority may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use of power in a particular manner. But specific grants should generally be construed with reasonable latitude in light of the broad language of the general welfare clause which may supplement the power found in a specific delegation.

"Broad construction of the powers of counties and cities is consistent with the current needs of local governments. The Dillon Rule of strict construction is antithetical to effective and efficient local and state government." Id. at 1126.

While paying lip service to this Court's holding in Hutchinson, the district court nevertheless strictly construed both the specific grant of authority given to cities to prohibit the sale of beer to persons under twenty-one and also the City's general welfare clause. The district court struck down the ordinance as an ultra vires act of the City. The City maintains that such a decision is simply contrary to the enabling statutes cited above and to this Court's holding in Hutchinson.

B. LEGISLATIVE ENACTMENTS ARE PRESUMED TO BE CONSTITUTIONAL AND SHOULD NOT BE LIGHTLY OVERTURNED.

The decision of the district court is even more troubling in view of the ease with which the district court came to the conclusion that the subject ordinance was unconstitutional. It has long been the law of the state that legislative enactments are presumed to be constitutional and will be overturned only if the statute or ordinance is clearly in conflict with a higher law or the constitution. This Court recently reaffirmed this principle in Zamora v. Draper, 635 P.2d 78, (Utah, 1981). In upholding the constitutionality of a state statute, the Court held:

"There are certain principles of law relating to the validity of statutes which have a bearing on the problem of constitutionality here presented. The first and foundational one is that the prerogative of the legislature as the creators of the law, is to be respected. Consequently, its enactments are accorded a presumption of validity; and the courts do not strike down a legislative act unless the interests of justice in the particular case before it require doing so because the act is clearly in conflict with the higher law, as set forth in the Constitution." Id. at 80.

The ordinance in question was enacted pursuant to the authority delegated to the City by the legislature, and springs from the police power. This is a power inherent in the state to safeguard the general welfare of its citizens. Laws passed pursuant to it are purely local in nature and sensitive to the particular needs of the people. This court has enunciated the

following rule regarding judicial interference with legislative enactments made pursuant to local police powers:

"The act must be upheld and enforced unless it manifestly bears no relation to public health, morals, welfare, or other legitimate objects of the police power, or, if it does bear such relation, unless it is a plain invasion of constitutional rights." State v. Packer, 77 Utah 500, 297 Pac. 1013 at 1016 (Utah, 1931)

The legislature has declared that it is unlawful for a person under the age of twenty-one to buy or consume alcoholic beverages. Bars and taverns have as their primary activity the selling of draft beer. It is certainly reasonable to restrict those persons who cannot lawfully buy or consume alcoholic beverages from such premises.

Such a regulation is even more sustainable in light of the fact that adult entertainment is often provided on such premises in the form of "go-go dancers". The environment, atmosphere, and in many cases, the clientele of bars and taverns simply make such places not suitable for the presence of minors and under-aged persons.

In fact, the legislature has prohibited taverns and bars from being located in proximity to churches and schools--places where minors are likely to be.

The City has further restricted such establishments to commercial districts, away from its residential neighborhoods and parks in order to preserve the integrity of the latter and reduce the influence of bars and alcohol in the community.



Regulations pertaining to the sale of beer are without question permissible and desirable under the police power. In contrast, however, the district court has failed to give any reason, other than its feeling that the state law prohibiting the sale of beer to persons under age twenty-one should be strictly construed, why the ordinance is arbitrary or unreasonable in keeping such persons from bars where draft beer is sold.

As demonstrated above, the ordinance clearly bears a relationship to the public welfare by regulating the sale of beer in the community. Section 19-3-9, Revised Ordinances of Salt Lake City, Utah, 1965, as amended, is one of a number of regulations established by ordinance which serves to restrict the influence of bars and taverns from schools, churches, parks, and under-aged persons. The ordinance constitutes a legitimate and reasonable exercise of the police power delegated to the City and its validity should be upheld.

C. THE CITY HAS EXPRESS AUTHORITY TO ENACT STRICT LIABILITY ORDINANCES.

The district court recognized the right of the state to enact strict liability statutes which dispense with an intent or mens rea requirement. The validity of strict liability statutes has long been upheld as an exception to the general rule requiring intent as an element of criminal statutes. See Morissette v. U.S. 342 U.S. 246 (1951) and U.S. v. Bailey, 440 U.S. 394 (1979).

The United States Supreme Court has stressed both the state's power to enact strict liability statutes as well as the limitations of such power:

"Still, it is doubtless competent for the State to create strict criminal liabilities by defining criminal offenses without any element of scienter . . . though there is precedent in this Court that this power is not without limitations." Smith v. California, 361 U.S. 147, 150 (1959)

Utah has provided for the enactment of strict liability statutes in the State Criminal Code, Section 76-1-101, et seq., Utah Code Annotated, 1953. Section 76-2-101, provides:

"No person is guilty of an offense unless his conduct is prohibited by law and:

"1. He acts intentionally, knowingly, recklessly, or with criminal negligence with respect to each element of the offense as the definition of the offense requires; or

"2. His acts constitute an offense involving strict liability.

Section 76-2-102 provides:

"Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability only when a statute defining the offense clearly indicates a legislative purpose to impose strict liability for the conduct by the use of the phrase 'strict liability' or other terms of similar import."

The district court, however, ruled that these two statutes were only applicable to the state legislature, and that like authority was not afforded to local governments under these

statutes. Finding no other enabling legislation specifying that municipalities may enact strict liability ordinances, including the general welfare power, the district court ruled that the City had exceeded its powers by including a strict liability provision in Section 19-3-9 and held the ordinance unconstitutional.

The City respectfully submits that it is bound by the state Criminal Code both by the provisions of the Code itself, and by the declarations of this Court. Section 76-1-103, Utah Code Annotated, 1953, as amended, provides in relevant part:

"The provisions of this code shall govern the construction of, the punishment for, and defenses against any offense defined in this code or . . . any offense defined outside this code . . ."

This court has previously held that municipalities are subject to the provisions of the state criminal code. Allgood v. Larsen, 545 P.2d 530 (Utah, 1976). In Allgood, this court struck down the City's trespass ordinance on the basis that it allowed imprisonment as a penalty for violation of the ordinance. Under the state criminal code, trespass had been reclassified as an infraction for which no imprisonment could be imposed. This Court held that the City had no power to make trespass a greater offense than that provided by state law and cited the provisions of Section 76-1-103, set forth above, as authority for its holding.

Though the only ordinance before the court was Section 19-3-9, the district court also noted that all of the offenses in

Chapter 3 of Title 19 of the City's ordinances contained a strict liability element. This chapter contains fifteen sections which all pertain to the regulation and sale of beer.<sup>5</sup> Six of the provisions specifically pertain to persons under the age of twenty-one. These six sections prohibit such persons from being present on certain premises or portions of premises, where beer or liquor is served, prohibit the sale of beer to such persons, and prohibit such persons from having such beverages in their possession.

The remainder of the ordinances in this chapter pertain to regulations and conditions upon which beer may be sold, i.e., it is unlawful to sell beer to an intoxicated person.<sup>6</sup>

The district court held that whatever powers the general welfare clause conferred upon the City, those powers did not include the right to make a portion of the City's regulations pertaining to beer sales strict liability offenses. The district court reasoned:

"If the general welfare clause authorizes cities to enact such ordinances, what is to prohibit a city from making all its offenses 'strict liability offenses', thereby removing state of mind as a necessary element in all crimes." p. 5 Memorandum Decision, attached as Appendix "C".

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<sup>5</sup>Chapter 3, Title 19, ROSLC is attached as Appendix "F".

<sup>6</sup>See Section 19-3-2, ROSLC, in Appendix "F".

The City submits that the only strict liability offenses it has enacted are contained in Chapter 3 of Title 19, Revised Ordinances of Salt Lake City, Utah. These ordinances, as has been pointed out, are very narrow in scope and pertain to only a limited portion of the City's regulations governing the sale of alcoholic beverages. The City has recognized these ordinances as an exception to the general requirement that intent is either imputed or specifically required in all criminal offenses.

Title 32 of the Revised Ordinances of Salt Lake City, Utah, contains the public offenses relating to peace, morals, property and conduct of the City, none of which contain a strict liability provision, nor do any of the other City ordinances involve such a provision.

The City submits that it is prohibited from including a strict liability provision in all of its ordinances by the law, as set forth by the United States Supreme Court, cited above. The City readily acknowledges that it could not, has not, and does not intend to, make all violations of City's ordinances strict liability offenses. However, the subject ordinance does fall within the guidelines set forth by the United States Supreme Court in Morrisette, supra, for enacting a strict liability offense:

"The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities.



\* \* \*

"Many statutes which are in the nature of police regulation, as this is, impose criminal penalties irrespective of any intent to violate them; the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible." Id. at 256, 257.

The City maintains that tavern licensees and their employees are in positions, whereby with reasonable execution and due care, they may insure that persons under the age of twenty-one will not be allowed to enter such premises. The burden of so doing is minimal as compared to the public's interest in regulating alcohol and protecting minors.

In the instant case, the Defendant-Ronneburg and the employees under his supervision were admittedly aware of the law prohibiting under-aged persons from the premises of the tavern. The defendant had instructed the employees of the tavern to keep such persons from the tavern premises. The defendant and his subordinates were in a position to prevent the offense with no more care than society might reasonably expect.

The district court has, by implication, ruled the entire chapter of regulations, pertaining to the sale of beer, unconstitutional because of the strict liability element included in each. The City maintains the district court's decision is based upon unsound reasoning and should be overturned.

### CONCLUSION

The City respectfully submits that Section 19-3-9, Revised Ordinances of Salt Lake City, Utah, 1965, is constitutional in all respects. The ordinance's presumptive validity is sustained by both specific enabling legislation and by the case law of this state. The City has been given both specific and general grants of authority to regulate the sale of beer, including its complete prohibition within the City's jurisdiction. The enactment of an ordinance which prohibits under-aged persons from the atmosphere and elements of premises of bars and taverns is reasonable exercise of the City's police power.

The City also has specific enabling powers in limited instances to enact strict liability offenses. The City has chosen to do so in regulating the sale of alcoholic beverages and persons under the age of twenty-one. Such a limited exercise of this power by the City is reasonable under its police power and the constitutionality of the ordinance should be upheld.

DATED this \_\_\_\_\_ day of February, 1982.

ROGER F. CUTLER  
Salt Lake City Attorney

PAUL G. MAUGHAN  
Assistant City Attorney  
Attorney for Appellant

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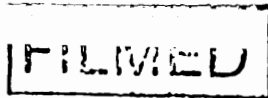


## APPENDIX "A"

Sec. 19-2-6. Class "C" license. A class "C" retail license shall entitle the licensee to sell beer on draft for consumption on or off the premises and to all the privileges granted the holders of class "A" and "B" retail licenses in accordance with the liquor control act of Utah.

## APPENDIX "B"

Sec. 19-3-9. Unlawful to permit minors in certain establishments. It shall be unlawful and shall constitute an offense of strict liability for any licensee of a class "C", or class "D", license for the sale of beer or any operator, agent, or employee of such licensee to permit any person under the age of twenty-one years to remain in or about such licensed premises.



29 1981

W. Sterling Evans, Clerk 3rd Dist Court  
By                       
Deputy Clerk

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

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SALT LAKE CITY, :  
Plaintiff/Respondent, :  
vs. : MEMORANDUM DECISION  
GUY V. RONNEBURG, : CASE NO. CRA 81-4  
Defendant/Appellant. :  
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This case is before this court on appeal from a judgment of conviction and sentence entered in the Circuit Court, Salt Lake Department, wherein the defendant was charged with violation of Section 19-3-9 of the Revised Ordinances of Salt Lake City, the complaint alleging that on November 6, 1980, the defendant unlawfully permitted or allowed a minor under the age of 21 to remain in or about a class C tavern licensed to sell beer. Cheryl D. Luke, Esq., appearing for Salt Lake City, Plaintiff, and Robert H. Henderson, Esq., appearing for Guy V. Ronneburg, Defendant. Upon request, oral argument was heard, following which counsel were given the opportunity to submit briefs on the question of the constitutionality of the ordinance. The briefs having been submitted and considered, the court renders its decision thereon.

In November, 1980, the defendant was employed as the food and beverage manager at the Ramada Inn. On November 6, 1980, the manager of the Inn was away for the day and left defendant in charge of the Inn as the acting manager. On that day a regularly scheduled fashion show took place in the Study Lounge which operated with a class C beer license. One of the participants in the fashion show was Dusty Larkin, a 19 year old woman. On the 6th of November police officers went to the Ramada Inn to investigate a

*Copies mailed to counsel 2/29/81*  
60 *Bb*

complaint that minors were participating in the fashion show. A police officer talked to Dusty Larkin in the change room, determined that she was 19 years old, and when defendant advised the officer he was in charge of the Inn that evening, the complaint charging him with violation of Section 19-3-9 was filed. He was tried, convicted and appealed to this court.

That ordinance provides that it shall be unlawful and "shall constitute an offense of strict liability" for any licensee, or any employee of such licensee, to permit any person under the age of 21 years to remain in or about such licensed premises. There was no evidence presented at the trial that defendant knew on the evening in question that Larkin was under the age of 21 years, but counsel for the city contends that the ordinance being one of "strict liability", knowledge and intent are not necessary elements of the offense in question. Such appears to be the law under strict liability statutes. (21 Am Jur 2d 169, Sec 89; Morissette v U.S., 342 U.S. 246; U.S. v Dolterwiech, 320 U.S. 277.) In People v. Battin, 77 Cal App 3rd 635, 95 ALR 3rd 248, the court noted that strict liability crimes are those which, unlike general intent and specific intent, do not require the union of criminal acts and criminal intent. Section 76-2-102, UCA 1953, as amended states that every criminal offense "not involving strict liability" shall require a culpable mental state. That section also states that an offense shall involve strict liability only when a statute defining the offense clearly indicates a legislative purpose to impose strict liability for the conduct by use of the phrase "strict liability." Section 76-2-101 states that no person is guilty of an offense unless the conduct is prohibited by law and that person acts intentionally, knowingly, recklessly or with criminal negligence with respect to each element of the offense as the definition requires or the acts "constitute an offense involving strict liability." These provisions apply to state statutes and are not to be

construed as constituting legislative authority to cities or counties to enact ordinances defining crimes as "strict liability" offenses.

As I see it, the main issue involved in this case is the constitutionality of the ordinance. This involves a consideration of the scope of the offense as well as its "strict liability" provision. In her brief, counsel for the city contends that legislative authority for the city to enact the ordinance in question is to be found in Sec. 10-8-84, commonly referred to as the "general welfare clause", which authorizes cities to pass all ordinances as are necessary and proper to provide for the safety and preserve the health and promote the prosperity and to improve the morals, peace and good order, comfort and convenience of the city and the inhabitants thereof.

Counsel cites State v. Hutchinson, decided by the Supreme Court of Utah on December 9, 1980, Case No. 16087 as holding that this general welfare clause is not to be strictly construed and constitutes legislative authority to enact the ordinance in question. In Hutchinson the court said:

"The enactment of a broad general welfare clause conferring police power directly on the counties was to enable them to act in every reasonable, necessary and appropriate way to further the public welfare of their citizens."

It further stated:

"These cases state the rule which we adopt in this case. When the state has granted welfare power to local governments, those governments have independent authority apart from, and in addition to specific grants of authority to pass ordinances which reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals and welfare. (Citation omitted) And the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws, or the constitution of this state or of the United States. Specific grants of authority may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use



of power in a particular manner. But specific grants should generally be construed with reasonable latitude in light of the broad language of the general welfare clause which may supplement the power found in a specific delegation."

Also:

"County ordinances are valid unless they conflict with superior law; do not rationally promote the public health, safety, morals and welfare; or are preempted by state policy or otherwise attempt to regulate an area which by the nature of the subject matter itself requires uniform state regulation. Of course a specific power delegated to municipalities may imply a restriction upon the manner of exercise of that power, but the restriction of the exercise of that power is to be construed to permit a reasonable discretion and latitude in attaining the purpose to be achieved".

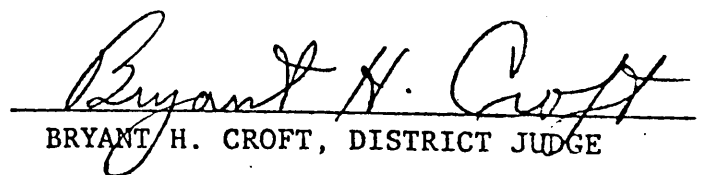
Section 10-8-47, UCA 1953, contains a specific grant of authority to cities to, among other things, prohibit the sale, giving away or furnishing of intoxicating liquors or narcotics or tobacco to any person under 21 years of age. The state legislature expressly has provided that no person shall sell or supply alcoholic beverage to any person under the age of 21 years, (Sec. 32-7-15(1)) and also that no person under the age of 21 shall purchase, consume or possess any alcoholic beverage (Sec. 32-7-15.4). I have found no statute that prohibits persons under 21 from being in or about premises where alcoholic beverages are sold or consumed. Indeed, there is no prohibition under the state law for children under 18 years of age from being in or about premises such as restaurants where alcoholic beverages may be obtained or consumed.


Two things about the ordinance in question trouble me from a constitutional point of view. It seems arbitrary and unreasonable to me for the city to prohibit an adult person under 21 years of age from being in or about a public lounge in a public hotel merely because the lounge has had a class C beer license issued to it, particularly where a specific grant of authority is granted to the city only to prohibit the sale of intoxicating liquor to persons

under 21. Secondly, it is apparent that in Chapter 3 of Title 19 of the city ordinances, all offenses defined therein are given a "strict liability" element. As noted, this does away with any intent as a necessary element. If the general welfare clause authorizes cities to enact such ordinances, what is to prohibit a city from making all its offenses "strict liability offenses", thereby removing state of mind as a necessary element in all crimes. I do not believe such an ordinance is "reasonably and appropriately related" to the power to provide for public safety, health, morals and welfare of the people. I believe that this sort of a "legislative choice" is arbitrary on the part of the city. I see no compelling reason making it necessary to make the offense in question one of strict liability. I do not believe the broad interpretation to be given the general welfare clause under the Hutchinson case extends to such a grant of authority.

For the reasons stated I find the ordinance is unconstitutional and so rule. Accordingly, the judgment of the Circuit Court is vacated and the complaint filed in the case is dismissed.

Dated this 29 day of July, 1981.

  
BRYANT H. CROFT, DISTRICT JUDGE

ATTEST  
W. STERLING EVANS  
CLERK  
BY   
Deputy Clerk



## APPENDIX "D"

Sec. 10-8-84. Ordinances--Punishment. They may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and such as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the city and the inhabitants thereof, and for the protection of property therein; and may enforce obedience to such ordinances with such fines or penalties as they may deem proper; provided, that the punishment of any offense shall be by fine in any sum not to exceed \$299 or by imprisonment not to exceed six months, or by both such fine and imprisonment.

## APPENDIX "E"

Sec. 32-4-17. Retail licenses--Light beer--Sales to minors.--(a) Cities and towns within their corporate limits, and counties outside of incorporated cities and towns shall have power to license, tax, regulate or prohibit the sale of light beer, at retail, in bottles or draft; provided, that no such licenses shall be granted to sell beer in any dance hall, theater or in the proximity of any church or school. The commission granting the license shall have authority to determine in each case what shall constitute proximity.

(b) In addition to other penalties which are provided in this act, the license of any person to sell light beer shall either be revoked or suspended for a period of not less than thirty (30) days, upon conviction of selling or furnishing beer to a minor.

## APPENDIX "F"

### Chapter 3

#### BEER REGULATIONS

(Sec. 19-3-1—19-3-15 Amended)  
Bill No. 42, 1978

##### Sections:

- 19-3-1. Unlawful to sell beer without license.
- 19-3-2. Sale to intoxicated person prohibited.
- 19-3-3. Advertising sale.
- 19-3-4. Nuisance prohibited.
- 19-3-5. Wholesaler and retailer not to have common interests.
- 19-3-6. Minimum light and open view required in licensed premises.
- 19-3-7. Sale to minors prohibited.
- 19-3-8. Presence of minors in certain establishments prohibited.
- 19-3-9. Unlawful to permit minors in certain establishments.
- 19-3-10. Presence of minors in portions of certain establishments prohibited.
- 19-3-11. Unlawful to permit minors in portions of certain establishments.
- 19-3-12. Possession of beer prohibited to minors. Exception.
- 19-3-13. Unlawful to permit intoxicated persons on licensed premises.
- 19-3-14. Sale or disposition of beer between certain hours unlawful.
- 19-3-15. Entertainer regulations.

Oct., 1976  
Aug., 1978

**Sec. 19-3-1. Unlawful to sell beer without license.** It shall be unlawful and shall constitute an offense of strict liability for any person to sell beer or to permit the consumption of beer in any premises unless such premises are licensed for such sale or consumption. It shall be unlawful and shall constitute an offense of strict liability for any licensee to violate the terms of his license and it shall be unlawful and constitute an offense of strict liability for any person, unless he shall be so licensed, to sell bottled, canned or draft beer to be consumed on the premises.

**Sec. 19-3-2. Sale to intoxicated person prohibited.** It shall be unlawful and shall constitute an offense of strict liability for any person to sell beer to any intoxicated person or to any person under the influence of any intoxicating beverage.

**Sec. 19-3-3. Advertising sale.** It shall constitute an offense of strict liability to violate the provisions of this section. It shall be unlawful to advertise the sale of light beer except under such regulation as is made by the liquor control commission of Utah; provided, that one simple designation of the fact that beer is sold under city license may be placed in or upon the window or front of the licensed premises which designation shall not exceed one hundred dollars in cost. No beer, wholesaler, distributor, warehouseman, or other person shall furnish to any retailer nor shall any retailer display any sign which shall exceed fifteen hundred square inches in area.

**Sec. 19-3-4. Nuisance prohibited.** It shall be unlawful and shall constitute an offense of strict liability for any person to keep or maintain a nuisance as the same is defined in this title.

**Sec. 19-3-5. Wholesaler and retailer not to have common interests.** It shall be unlawful and shall constitute an offense of strict liability for any dealer, brewer or wholesaler to either directly or indirectly supply, give or pay for any furniture, furnishings or fixtures of a retailer, and it shall be unlawful and shall constitute an offense of strict liability for any dealer or brewer to advance funds or money or pay for any license for a retailer or to be financially interested either directly or indirectly in the conduct or operation of the business of any retailer.

**Sec. 19-3-6. Minimum light and open view required in licensed premises.** It shall be unlawful and shall constitute an offense of strict liability for any person to own or operate any premises licensed for the sale of beer without complying with the following lighting and view requirements:

- (1) During business hours a minimum of one candle power light measured at a level of five feet above the floor shall be maintained.
- (2) No enclosed booths, blinds, or stalls shall be erected or maintained.
- (3) There shall be a clear and unobstructed access to all portions of the interior where patrons are permitted or served.

April, 1976  
April, 1978  
Aug., 1978

**Sec. 19-3-7. Sale to minors prohibited.** It shall be unlawful and shall constitute an offense of strict liability to sell beer to any person under the age of twenty-one years.

**Sec. 19-3-8. Presence of minors in class "C" and class "D" premises prohibited.** It shall be unlawful and shall constitute an offense of strict liability for any person under the age of twenty-one years to: (a) Enter or be in or about any premises licensed as a class "C", or class "D" establishment, for the sale of beer, or (b) To drink beer or any other alcoholic beverages in said licensed premises. (c) Any person violating any provision of this section shall be deemed guilty of an infraction and may not be imprisoned, but shall be punishable by a fine not to exceed \$299.

No. 74, 11 July 1980

**Sec. 19-3-9. Unlawful to permit minors in certain establishments.** It shall be unlawful and shall constitute an offense of strict liability for any licensee of a class "C", or class "D", license for the sale of beer or any operator, agent, or employee of such licensee to permit any person under the age of twenty-one years to remain in or about such licensed premises.

**Sec. 19-3-10. Presence of minors in or around any lounge or bar area prohibited.** It shall be unlawful and shall constitute an offense of strict liability for any person under the age of twenty-one years to: (a) Enter or be in or around any lounge or bar area in premises licensed with a "club" or "seasonal" license for the sale of beer, or (b) Be in or around any lounge or bar area or premises licensed with a liquor consumption license. (c) Any person violating any provision of this section shall be deemed guilty of an infraction and may not be imprisoned, but shall be punishable by a fine not to exceed \$299.

No. 74, 11 July 1980

**Sec. 19-3-11. Unlawful to permit minors in portions of certain establishments.** It shall be unlawful and shall constitute an offense of strict liability for any licensee of a "club" or "seasonal" license for the sale of beer or licensee of a liquor consumption license or any operator, agent or employee of said licensee to have any person under the age of twenty-one years in or about the lounge or bar area of such licensed premises.

**Sec. 19-3-12. Possession of alcoholic beverages prohibited to minors. Exception.** It shall be unlawful and shall constitute an offense involving strict liability for any person under the age of twenty-one years of age to purchase, accept or have in his or her possession an alcoholic beverage, including beer or intoxicating liquor; provided, however, that this section shall not apply to: (a) The acceptance of alcoholic beverages by such person for medicinal purposes supplied only by the parent or guardian of such person or the administering of such alcoholic beverage by a physician in accordance with the law, or (b) persons under twenty-one years of age who are bona fide employees in class



**SALT LAKE CITY ORDINANCE**

**No. 26 of 1981**

**(Sale or disposition of beer between certain hours unlawful)**

**AN ORDINANCE AMENDING SECTION 19-3-14 OF THE REVISED ORDINANCES OF SALT LAKE CITY, UTAH, 1965, RELATING TO SALE OR DISPOSITION OF BEER BETWEEN CERTAIN HOURS UNLAWFUL.**

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

**SECTION 1. That Section 19-3-14 of the Revised Ordinances of Salt Lake City, Utah, 1965, relating to Sale or disposition of beer between certain hours unlawful, be, and the same hereby is, amended as follows:**

**Sec. 19-3-14. Sale or disposition of beer between certain hours unlawful. It shall be unlawful and shall constitute an offense of strict liability for any licensee or any employee thereof to sell, dispose, or give away or deliver beer or permit the consumption thereof on the licensed premises between the hours of one o'clock a.m. and seven o'clock a.m. on any day from November 1 to April 30, inclusive, or between the hours of two o'clock a.m. and seven o'clock a.m. of any day from May 1 to October 31, inclusive, regardless of whether Daylight Savings Time may be in force or effect. As an exception to the foregoing requirements, beer consumption on the licensed premises may be permitted until two o'clock a.m. on New Year's Day.**

**SECTION 2. This Ordinance shall take effect thirty (30) days after its first publication.**

**Passed by the City Council of Salt Lake City, Utah, this 7th day of April, 1981.**

**PALMER DePAULIS  
CHAIRMAN**

**ATTEST:**

**KATHRYN MARSHALL  
ACTING CITY RECORDER  
Transmittal to Mayor on April 7, 1981**

**Mayor's Action:**

**TED L. WILSON  
MAYOR**

**ATTEST:**

**KATHRYN MARSHALL  
ACTING CITY RECORDER**

**(SEAL)  
BILL NO. 26 of 1981  
Published April 14, 1981**

**C-67**

"A" licensed premises while in the discharge of their employment therein or thereabouts. Any person violating any provision of this section shall be deemed guilty of an infraction and may not be imprisoned, but shall be punishable by a fine not to exceed \$299.

No. 74, 11 July 1980

**Sec. 19-3-13. Unlawful to permit intoxicated persons on the licensed premises.** It shall be unlawful and shall constitute an offense of strict liability for any person licensed to sell beer or for any of his agents or employees to allow intoxicated persons to remain in or about any licensed premises.

April, 1976  
April, 1978

Aug., 1978

## LIQUOR CONSUMPTION LICENSES 19-3-14—19-3-15

**Sec. 19-3-14. <sup>26 Aug</sup> Sale or disposition of beer between certain hours unlawful.** It shall be unlawful and shall constitute an offense of strict liability for any licensee or any employee thereof to sell, dispose, or give away or deliver beer or permit the consumption thereof on the licensed premises between the hours of one o'clock a.m. and seven o'clock a.m. on any day from November 1 to April 30, inclusive, or between the hours of two o'clock a.m. and seven o'clock a.m. of any day from May 1 to October 31, inclusive, regardless of whether Daylight Savings Time may be in force or effect; provided, however, that when New Year's Day falls on Monday the sale and consumption of beer on licensed premises may be permitted until three o'clock a.m. of said day as an exception of the foregoing requirement.

**Sec. 19-3-15. Entertainer regulations.** It shall be unlawful and shall constitute an offense of strict liability for any owner, operator, manager, lessee or licensee, or any agent, employee or person acting with the consent of such owner, operator, manager, lessee or licensee of any place of business licensed to sell beer in Salt Lake City, to allow or permit any dancer, entertainer or other person to appear in or on said place of business naked or so clothed as to expose in any way the buttocks, genitals, pubic area, or the female breast of said dancer, entertainer or other person.

It shall also be unlawful and constitute an offense of strict liability for any such dancer or entertainer or other person to appear in said place of business naked or so clothed as to expose at any time of appearance the buttocks, genitals, pubic area or the female breast.

Violations of provisions of this chapter shall be grounds for suspension or revocation of the license or licenses of the establishments where violations occur.

### Chapter 4

## LIQUOR CONSUMPTION LICENSES

Unlawful to allow consumption without license

Consumption prohibited in unlicensed premises.

License application.