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J. A. Stevenson et al v. Salt Lake City Corporation and Cleon Skousen : Brief of Defendants and Appellants

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

J. A. STEVENSON, RAY T. SAMUELSON, JOHN B. DAVIES, MAX K. HORTON, JACK LLEWELYN, R. L. HOLT, EUGENE S. PHELPS, GUS WEISER, WILLARD SELANDER, SAMUEL A. McHARG, JAMES H. SPRUNT, and IRVING MONSEY, individually and as members of INTERMOUNTAIN MUSIC OPERATORS ASSOCIATION, an unincorporated association,

Plaintiffs and Respondents.

—VS—

SALT LAKE CITY CORPORATION, and CLEON SKOUSEN, Salt Lake City Chief of Police,

Defendants and Appellants.

BRIEF OF DEFENDANTS AND APPELLANTS

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IN THE SUPREME COURT of the STATE OF UTAH

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Plaintiffs and Respondents.

—vs—

SALT LAKE CITY CORPORATION, and CLEON SKOUSEN, Salt Lake City Chief of Police,

Defendants and Appellants.

Case No. 8638

BRIEF OF DEFENDANTS AND APPELLANTS

STATEMENT OF FACTS

On November 8, 1956, the Board of Commissioners of Salt Lake City passed an ordinance which, as amended on November 15, 1956, reads as follows:

“Section 32-2-1. PROHIBITION OF BAGATTELLE, PIN BALL AND MARBLE MACHINES, ETC. It shall be unlawful for any person, firm or corporation or any other group or association of individuals however styled or designated, to keep, use, maintain, possess, permit, allow, or have under control, or make available in any store or place of business or establishment in which the public may enter or be upon, or in any other place of public resort, or in any place of business, club, association, or establishment where without warrant the right of direct police inspection exists within the corporate limits of Salt Lake City, either as owner, bailee, lessee, agent, employee, mortgagee or otherwise, any of the following where the operation, use or play of which is controlled or set in operation by the deposit of any coin, plate, disk, plug, key or other subject or by the payment of any fee or charge:

“(a) Any game of bagatelle, pigeonhole or device or contrivance commonly known as pin game, pin ball game, marble, one shot marble game;

“(b) Any game, device, contrivance or machine which contains a pay-off or award device or mechanism for the return of money, coins, slugs, checks, credit, tokens or for the delivery of anything of value or representing or exchangeable or redeemable for anything of value; provided, that this section shall not cover the items included in Section 2 of this ordinance.

“Section 32-2-2. EXCLUSIONS. The provisions of this ordinance shall not apply to machines, devices, or contrivances which are used,

operated or maintained exclusively for the purpose of dispensing and sale of merchandise or producing music or providing rides or showing of pictures.

“Section 32-2-3. PENALTY. Any person violating any provisions of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not more than Two Hundred Ninety Nine and 00/100 Dollars (\$299.00) or by imprisonment in the County Jail not to exceed six (6) months, or both such fine and imprisonment.

“Section 32-2-4. LICENSE NO DEFENSE. The fact that any machine, table, device, game or contrivance mentioned in this ordinance may have been licensed under the licensing authorities or that a tax for the operation thereof may have been paid, shall constitute no defense to any action or prosecution brought under the provisions of this ordinance.

“Section 32-2-5. SEPARABILITY CLAUSE. It is the intention of the Board of Commissioners of Salt Lake City that each separate provision of each section of this ordinance shall be deemed independent of all other provisions of said sections and of each of them and it is further the intention of the Board of Commissioners of Salt Lake City that if any provision of said sections or any of them be declared invalid for any purpose or application, all other provisions thereof shall remain valid and enforceable.

“Section 32-2-6. REVOCATION OF LICENSE. The Board of Commissioners of Salt Lake City may revoke any type of license of any licensee issued by Salt Lake City for any violation of this ordinance by such licensee.

“Section 32-2-7. All ordinances or parts of ordinances in conflict herewith are hereby repealed.”

Subsequent to the enactment of this ordinance and before its scheduled effective date, the District Court of Salt Lake County on December 27, 1956, entered a temporary restraining order against enforcement of the ordinance and an order to show cause why defendants should not be permanently enjoined from the enforcement of the ordinance.

On January 10, 1957 the District Court entered its decision holding the ordinance invalid. The final paragraph of the Court's decision reads as follows:

“It would seem that the ordinance in question goes beyond that involved in the Lawrence case and goes beyond the power conferred upon the city by the Legislature, and it is the decision of this court that the ordinance referred to above is unconstitutional.”

The judgment dated January 25, 1957 reads in part as follows:

“. . . that Chapter 2, as amended, of Title 32 of the Revised Ordinances of Salt Lake City 1955 goes beyond the power conferred upon Salt Lake City by the Legislature of the State of Utah and that the said ordinance is ultra virus.”

STATEMENT OF POINTS

POINT 1.

CHAPTER 2 OF TITLE 32 OF THE REVISED ORDINANCES OF SALT LAKE CITY, 1955, DEALING WITH PIN-BALL MACHINES AND OTHER SIMILAR DEVICES, CON-

STITUTES A VALID EXERCISE OF THE POLICE POWER OF SALT LAKE CITY AND IS NOT VIOLATE OF CONSTITUTIONAL DUE PROCESS.

POINT 2.

CHAPTER 2 OF TITLE 32 OF THE REVISED ORDINANCES OF SALT LAKE CITY, 1955, DEALING WITH PIN-BALL MACHINES AND OTHER SIMILAR DEVICES, IS LAWFULLY WITHIN THE POWER CONFERRED UPON SALT LAKE CITY BY THE LEGISLATURE OF THE STATE OF UTAH.

ARGUMENT

POINT 1.

CHAPTER 2 OF TITLE 32 OF THE REVISED ORDINANCES OF SALT LAKE CITY, 1955, DEALING WITH PIN-BALL MACHINES AND OTHER SIMILAR DEVICES, CONSTITUTES A VALID EXERCISE OF THE POLICE POWER OF SALT LAKE CITY AND IS NOT VIOLATE OF CONSTITUTIONAL DUE PROCESS.

On a basis substantially the same, in terms of language of the ordinance and devices suppressed, as the ordinance now before the court, the authorities universally uphold such an enactment on the theory that the prevalence of the devices, their tendency to foster the gambling instinct, their adaptability to gambling, and their known temptation to school children and minors, constitute ample legal justification in curbing the machines by restrictive regulations. In 6 *McQuillin Municipal Corporations*, page 683, it is stated:

“... But as is well known, marble and pin ball games and the like frequently are gambling devices or readily converted into such by a mere

mechanical adjustment or by their use for wagering. *Snyder v. Alliance*, 41 Ohio App. 48, 179 N.E. 426; *Coleman v. Chicago*, 297 Ill. App. 130, 17 N.E. (2d) 365; *Baker v. City of LaFayette*, 202 Ga. 666, 44 S.E. (2d) 255. Consequently, it is not surprising that municipal and state gaming legislation in many instances is directed at all such devices for 'skill' or 'pleasure' as well as at those which definitely are gaming devices. *Woodward v. City of Lithonia*, 191 Ga. 234, 11 S.E. (2d) 476. It has been observed that ordinarily the evil or dangerous character of outlawed articles is clear and obvious, but the power to abate a nuisance by forbidding the possession of certain articles may be exercised with respect to articles which are entirely harmless when properly used or controlled. *Dallmann v. Kluchesky*, 229 Wis. 169, 282 N.W. 9. This is true with respect to marble, pin ball and other table or mechanical 'skill' or 'pleasure' games, with respect to their potential use for gambling. *Dallmann v. Kluchesky*, 229 Wis. 169, 282 N.W. 9. Accordingly, under power to provide for the government and good order of the city, an ordinance prohibiting the possession of table games, basketball machines and the like, without regard to their actual use for gambling purposes, is valid as protective of the welfare of the youth of the city. *Dallmann v. Kluchesky*, 229 Wis. 169, 282 N.W. 9. Thus, such an ordinance prohibiting pin ball or similar machines for games of chance or skill is not violative of due process of law as required by the federal and state constitutions. *Woodward v. City of Lithonia*, 191 Ga. 234, 11 S.E. (2d) 476. Nor is such an ordinance void as unreasonable because its effect is to completely destroy and confiscate the business and property of persons possessed of such machines at the time

of the enactment of the ordinance. *Woodward v. City of Lithonia*, 191 Ga. 234, 11 S.E. (2d) 476.”

Other authorities are universally to the same effect as those supporting the law announced in the foregoing quotation. In the case of *Columbus Legal Amusement Association v. City of Columbus*, 79 N.E. 2d 915, it is stated at page 919, as follows:

“The unrestricted and unregulated use of amusement devices operated by coins or slugs, wherein there is a certain element of chance, even though not classified as gambling devices, may reasonably present a question involving the public welfare or the public morals. It would not seem necessary to develop this fact because it is commonly understood. The problem presented to the city is increased and made more difficult where there is presented in a limited space many such devices varying in type and allure, but all intended to have an appeal to the public, and especially the youth. Manifest such devices may be innocent enough in themselves, or if properly supervised but if not regulated, may readily be the means of offending against public morals.”

Similarly, in the case of *Savoy Vending Co., Inc. v. Valentine Police Commissioner of the City of New York*, 33 N.Y. Supp. 2d 324, the court states at page 327, as follows:

“It is needless to burden this writing with a complete resume of what the answering affidavits contain. Two fundamental points, however, have been made patently and painfully clear. First, the sponsors of coin operated machines, invariably, have not aimed to respect the law, but

rather to evade it, and second, the effects upon youth have been evil. A few references will suffice. The industry stimulates the gambling instinct among young people and children of school age. Machines located in neighborhood candy and stationery stores, in ice cream parlors and similar establishments attract patronage to these places, which become 'hang-outs' for children of all ages. Many of the devices are in locations within a block of public and parochial schools and are operated by pennies as well as nickels. It is hardly likely that the child who has no lack of opportunities for play and clean amusement is drawn from his healthy associations to squander lunch money and often hard earned spending money upon the play of coin-operated machines for mere amusement. It is the lure and enticement of a hoped for but never realized easy gain. And there we have the beginning of a hold upon fancy and imagination that increases its demand, nurtured by unsavory associates until, too late, the path of petty crime, juvenile delinquency and hardened criminality has claimed another victim."

Again, in the case of *State Ex Rel. Green, Deputy Solicitor*, 241 Ala. 455, 3 So. 2d 27, the Supreme Court of Alabama said:

"We think it clear enough from the language of this act, especially definition (d), that the law making body deemed it necessary to prohibit all such machines and devices which could be operated as a game of chance, regardless as to whether there was a 'pay-off' or not, in order to fully suppress the gambling evil. That this was within the police power of the State and violated no provision of the constitution, either State or Federal, is well demonstrated in the Eccles case,

supra, as well as in our own case of State Ex. Rel. Wilkinson v. Murphy, 237 Ala. 332, 186 So. 487.’’

Many additional authorities are to the same effect: *J. L. Murphy v. People of the State of California*, 225 U.S. 623, 56 L. Ed. 1229; *Woodward v. City of Lithonia*, 191 Ga. 234, 11 S.E. 2d 476; *Dallmann v. Kluchesky*, 229 Wis. 169, 282 N.W. 9; *State v. Wiley*, 232 Iowa 443, 3 N.W. 2d 620.

It appears therefore that the Legislative bodies of various municipalities throughout the nation have seen fit to suppress these devices in a fashion similar to the ordinance of Salt Lake City. One particular very instructive and informative case treats virtually every contention raised by plaintiffs in their petition for an order to show cause. The California case of *Ex Parte Lawrence*, 55 Cal. App. 2d 491, 131 P. 2d 27, concerns an ordinance of Long Beach very similar to defendant’s enactment. The language of the Long Beach ordinance follows:

“Sec. 235.02. Possession of Certain Games Prohibited. It shall be unlawful for any person, firm or corporation to keep, maintain, possess or have under control in any place of business, or in any other place of public resort, either as owner, lessee, agent, employee, mortgagee or otherwise, any table game or device commonly known as a ‘pin game,’ ‘pin ball game,’ ‘marble game,’ ‘one shot marble game,’ ‘horse race machine,’ claw, scoop or grab machine, or any automatic pay-off machine, the operation, use or play of which is controlled by placing therein any coin,

plate, disk, plug, key or other device, or by the payment of any fee.”

This well reasoned opinion of *Ex Parte Lawrence*, supra, is supported by appropriate citation of ample authority including the Supreme Court of the United States. A brief comparison between the allegations of plaintiffs’ petition and the law announced in the *Lawrence* case is appropriate.

In Paragraph 4 of plaintiffs’ petition it is contended specifically that the ordinance is not within the scope of the police power. To this contention the California court said:

“Such power is as broad as public welfare (State v. Mountain Timber Co., 75 Wash. 581, 135 P. 645, L.R.A. 1917D, 10), is ‘coextensive with the necessities of the situation’ (In re Santos, 88 Cal. App. 691, 264 P. 281, 283) and all property is subject to the proper exercise of the police power, as the Supreme Court declared in *Ex parte Quong Wo*, 161 Cal. 220, 118 P. 714. Indeed it has been repeatedly held that a business lawful in itself is not so protected, even by the Fourteenth Amendment, that it cannot be regulated out of business by the adoption of regulatory ordinances under the police powers. Such was the situation in the case of *Ex parte Murphy*, 8 Cal. App. 440, 97 P. 199, where the city of South Pasadena adopted an ordinance prohibiting the maintenance of poolrooms or billiard parlors for hire; and although the question was presented to the Supreme Court of the United States, petitioner in that case representing that he was being legislated out of his business and being deprived of his property without due process of

law, no relief was afforded him, the highest court affirming the right of the local governing body to adopt the ordinance in question (*Murphy v. State of California*, 225 U.S. 623, 32 S. Ct. 697, 56 L. Ed. 1229, 41 L.R.A., N.S., 153). Upon this proposition the Supreme Court of the state likewise has unequivocally declared itself that all property is held subject to the exercise of police power and that constitutional provisions against the impairment of contracts and the taking of property without due process of law have no application as against the right of duly constituted legislative bodies to regulate property in the proper exercise of the police powers. *Odd Fellows' Cemetary Ass'n v. City and County of San Francisco*, 140 Cal. 226, 73 P. 987; *In re Zhizhuzza*, 147 Cal. 328, 81 P. 955."

In paragraph 6 of plaintiffs' petition it is contended that property is taken without due process of law and that the ordinance bears no relation to public health or morals. Again, in the *Lawrence* case the California court answered a similar contention, as follows:

" . . . Plainly, petitioner was bound to know that his activity in maintaining the games in question, while lawful in itself, i.e., not interdicted by state or federal law, was yet subject to municipal regulatory measures within the scope of the police power conferred upon municipalities by the state Constitution and by statutory enactments."

* * * *

" . . . A similar enactment in Alabama entirely prohibiting such machines was held by the Supreme Court of that state to be within the lawful exercise of the police power (*State ex rel.*

Green v. One 5c Fifth Inning Baseball Machine, 241 Ala. 455, 3 So. 2d 27); and as above pointed out, in *Murphy v. State of California*, 225 U.S. 623, 32 S. Ct. 697, 56 L. Ed. 1229, 41 L.R.A., N.S., 153, South Pasadena Municipal legislation prohibiting poolhalls for hire as unlawful was upheld by the Supreme Court of the United States. Similar regulatory ordinances without number have met with judicial approval. Even if the business regulated has not yet become injurious or offensive but in the sound discretion of the legislative body may become so, it is the proper subject of regulatory legislation. In *re Pedrosian*, 124 Cal. App. 692, 13 P. 2d 389."

The California court concludes with the statement that, "In fact, we have been pointed to no opinion holding such regulation unreasonable."

The case of *Bountiful City v. De Luca*, 77 Utah 107, 292 P. 194, involved an action to restrain defendants from permitting goats to graze within 300 feet of a stream contrary to an ordinance passed under an enabling statute designed to give the city the power to protect its water shed from pollution. After judgment for the City, on appeal the case was reversed. The Supreme Court held that the unlawful acts charged were not supported by the evidence, but if the acts had been so supported the case would have been affirmed. The court reasoned that the defendants were doing everything possible to prevent a pollution of the stream; that the city should have diverted the water at a different point, thus averting the problem. The court said:

“. . . that every one must use his property so as not to unreasonably or unnecessarily injure others, and that he holds his property and the use and enjoyment of it subject to a reasonable and lawful exercise of the police power and to such reasonable restraints and regulations over it as the legislature within its governing and controlling power vested in it *may deem necessary and expedient to protect and promote public health*, public safety, morals, and general welfare; that the state may without compensation regulate and restrain the use of private property when the health, safety, morals, or *welfare of the public requires or demands it*; . . .” (Emphasis added)

The Utah Court held further that the lawful exercise of the police power may deprive the owner of all profitable use of his property if it is injurious or pernicious to the public health or welfare. Thus, the Bountiful City case is, contrary to plaintiffs’ position, substantial authority for upholding the subject enactment of Salt Lake City since that case involved a business which in no way has factors inherently of an injurious character to the health and welfare of the people as is the case here. Moreover, it is important to note that the Salt Lake City ordinance does not absolutely prohibit the possession and use of the various devices, but rather the devices are suppressed only in places of public resort and in those establishments where without warrant the right of direct police inspection exists. Hence, the ordinance is regulatory and is not an absolute prohibition. This distinction is made clear in the California case of *Ex Parte Lawrence*, supra.

The case of *Utah Manufacturers Association v. Stewart*, 82 Utah 198, 23 P. 2d 229, holds that a statute authorizing the Governor to designate exclusive warehouses for distribution of alcohol was a valid exercise of the police power. Moreover, a statement by the court bears emphasis, as follows:

“It is well settled that the courts will not declare an act of the Legislature unconstitutional unless it clearly and manifestly violates some provision of the state or Federal Constitution. Every presumption will be indulged in favor of constitutionality and every reasonable doubt resolved in favor of validity. *State v. Packer Corporation*, 77 Utah 500, 297 P. 1013. *When legislative action is within the scope of the police power, fairly debatable questions as to reasonableness, wisdom, or propriety* are not for courts but for the Legislature. *Standard Oil Co. v. Marysville*, 279 U.S. 582, 49 S. Ct. 430, 73 L. Ed. 856 . . .”
(Emphasis added)

The underlined portion of the foregoing quotation we respectfully contend deprives the courts of all power to resolve any question with respect to the wisdom or propriety of the ordinance.

Other Utah cases should be called to the attention of the court. In *State v. Briggs*, 46 Utah 288, 146 P. 261, the Supreme Court upheld a conviction for having sold liquor in violation of a local option statute. The court said:

“. . . All the constitutional provisions, however, respecting the rights of acquiring, possessing, and protecting property, in whatever terms

expressed, must nevertheless be construed and applied in connection with the police power of the state, unless it is in express terms otherwise provided in the Constitution itself . . .”

The recent Utah case of *Condas et al. v. Board of Salt Lake County Commissioners*, et al., 5 Utah 2d 1, 295 P. 2d 829, upheld the validity of a county ordinance defining a nuisance as a place where dancing is permitted on premises licensed for the sale of beer. The language of Justice Worthen in a concurring opinion is of particular importance to the facts of this case. Justice Worthen said:

“Every man who engages in a business which is considered as questionable and which to a greater or less degree violates the social and moral standards espoused by a substantial part of society must do so faced with the possibility that the operation of such business is not one of absolute right, but one permitted and tolerated with some reservation.”

In the case of *Shaw v. Orem City*, 117 Utah 288, 214 P. 2d 888, the Supreme Court of Utah upheld an ordinance of Orem City prohibiting sale of beer at retail on Sunday. The court pointed out that the Utah Code Annotated, 1953, Title 10-8-84 confers upon a city the power to enact such ordinances and regulation “*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 . . .*”

Moreover, the Supreme Court in the *Shaw* case reasoned that a specific enabling statute existed. Again in succeeding sections of this brief we will point out that Salt Lake City is acting under lawful authority granted by the Legislature.

POINT 2.

CHAPTER 2 OF TITLE 32 OF THE REVISED ORDINANCES OF SALT LAKE CITY, 1955, DEALING WITH PIN-BALL MACHINES AND OTHER SIMILAR DEVICES, IS LAWFULLY WITHIN THE POWER CONFERRED UPON SALT LAKE CITY BY THE LEGISLATURE OF THE STATE OF UTAH.

As indicated in the foregoing, the Utah Code Annotated, 1953, Title 10-8-84, confers upon cities the general powers to pass ordinances and regulations “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” In addition to this general grant of police power which is sufficient to sustain the subject ordinance now before the court, a particular and specific grant of power exists in Utah Code Annotated, 1953, Title 10-8-40, which provides as follows:

“They may license, tax, regulate and suppress billiard, pool, *bagatelle*, pigeonhole or other tables or implements kept or used for similar purposes.” (Emphasis added.)

To regulate the various machines and devices contained in the ordinance by suppression in places of public

resort and in other places of business or establishments where without warrant the right of direct police inspection exists, is a proper exercise of the power conferred upon Salt Lake City by the Legislature of the State of Utah. The universal holding of the many authorities previously cited conclusively show that these machines may be entirely prohibited from the corporate limits of the legislative body. But here, as indicated in the foregoing, the scope of the ordinance amounts to a mere suppression and not a complete prohibition in that the machines are generally proscribed only in places of public resort. In the California case of *Ex Parte Lawrence*, supra, the following language appears:

“In his argument on the point whether the ordinance here in review bears any real or substantial relation to the public health, morals, safety or general welfare (which it is admitted is the test to be applied to this inquiry), petitioner fails to discriminate between two classes of cases, one of which deals with ordinances which prohibit entirely lawful businesses and occupations and the other of which seeks only to regulate such businesses. Cases such as *People v. Hawley*, 207 Cal. 395, 279 P. 136; *Pacific Rys Advertising Co. v. Oakland*, 98 Cal. App. 165, 276 P. 629, and others of like tenor cited by petitioner, either expressly or in effect prohibit entirely the lawful businesses or occupations under consideration therein. In the case now before us, regulation, not prohibition, is decreed by the ordinance. The games are proscribed only in places of business or in any other ‘place of public resort,’ and exception is made of the amusement zones described in another Long Beach ordinance. In other words,

‘pin ball’ and other games denominated in the ordinance may be maintained at private houses or in certain delineated amusement zones, but not generally in places of business or public resort. The ordinance is not prohibitory but regulatory only, and as such is unquestionably within the scope and purview of the police power.”

In the case of *American Fork City v. Robinson*, 77 Utah 168, 292 P. 249, an ordinance only regulating use by club members of billiard and pool tables was held invalid. Several major distinguishing features exists in the case now before the court. In the *American Fork* case the opinion specifically notes that an ordinance existed prohibiting “the keeping for use in any *public place* in the city any billiard or pool table.” (Emphasis added.) This particular ordinance was not attacked in the case and by inference and express language it is recognized that a prohibition in places of public resort is within the power conferred upon a municipality by the Legislature. In this regard, it is important to note that the ordinance of Salt Lake City suppresses the pin ball machines and other similar devices in places of public resort and in those business establishments where without warrant the right of direct police inspection exists. Hence, under the *American Fork* decision the provisions of the Salt Lake City ordinance suppressing the machines in places of public resort cannot be validly attacked.

Admittedly, included in the Salt Lake City ordinance is the phrase “or in any place of business, club, association, or establishment where without warrant the right

of direct police inspection exists” which covers establishments similar to those involved in the *American Fork* decision. However, the court held the ordinance invalid because it purported to regulate the sole subject of *use* by club members and “did not deal with the subject of keeping billiard or pool tables . . .” The Supreme Court recognized that the ordinance would have been valid if it had included the power of regulation and suppression in keeping the billiard and pool tables, which is precisely what Salt Lake City has done with respect to pin ball machines. It is stated in the case as follows: “Part of the ordinance in question does not deal with the subject of keeping billiard or pool tables”

Additionally the foregoing cases have outlined the evils which the ordinance is designed to extirpate. More compelling reasons exist for the suppression of pin ball machines than those supporting the ban on billiard or pool tables in the *American Fork* case, and hence, restriction of pin ball machines under the power to “improve the morals, peace and good order . . . of the city and the inhabitants thereof . . .” is proper and valid.

In other words, the *American Fork* ordinance was not sufficiently broad to qualify under the enabling act since the restriction concerned only the use of the tables, and hence, the ordinance purported only to control the conduct of club members and not their conduct in relation to devices which had been validly prohibited under the enabling act. This is the only reasonable interpretation of the case and is consistent with the unanimous body

of judicial authority supporting the prohibition of pin ball games.

We must conclude, therefore, that the *American Fork* case stands as authority for the position taken by Salt Lake City in enacting the ordinance in question.

The phrase "place of public resort" as used in the ordinance now before the court means a place resorted to by the public for the use of the designated machines, *Shaw v. Carpenter*, 54 Vt. 155, 161, 41 Am. Rep. 837. The phrase does not include private businesses where the public does not resort for the use of the machines. *Harvey, Inc. v. Sissle*, 53 Ohio App. 405, 5 N.E. 2d 410. Nor by very definition does the phrase include any other private home or establishment. The machines may be warehoused, sold, repaired and used. It is only the scope of the possession and use which is restrained.

The test is whether the general public has common use of the machines, is allowed to enter and play the machines without special invitation, and may come and go without restraint. Ballentine Law Dictionary, Second Ed., page 1046; 24 Am. Jur. 418.

The sole exception to the suppression of the machines only in places of public resort is in those places "where without warrant a right of direct police inspection exists." This exception is covered by the right of police officers to enter clubrooms of non profit corporations, as set forth in Utah Code Annotated, 1953, Title 16-6-14. It is in these so-called private clubs where the evils created by machines are magnified.

Hence, a broad segment of our society remains unaffected by the ordinance which covers only the question of public morals as such, and amounts only to a suppression rather than an outright prohibition of possession and use of the machines.

That the Legislature intended to grant cities substantial powers of suppression is clearly shown by analogy to the enabling statutes for counties of the state where the power is included completely to prohibit the possession and use of the machines.

Utah Code Annotated, 1953, Title 17-5-27 provides as follows:

“... they may license, tax, regulate, *suppress and prohibit* billiard, bagatelle, pigeonhole, or any other tables or implements kept or used for similar purposes; . . .” (Emphasis added.)

It is inconceivable that the Legislature intended to grant broad powers of prohibition to counties without granting to cities substantial powers of suppression. Actually, the terms “prohibit” and “suppress” are virtually synonymous. *Schwuchow v. City of Chicago*, 68 Ill. 444. “Supress” means to prevent, put down or end by force. *Ogden v. City of Madison*, 111 Wis. 413, 87 N.W. 568, 569. The word “suppress” is equivalent to prohibit, put down or end by force. *State v. Mustachia*, 152 La. 821, 94 So. 408.

The word “suppress” is defined in Webster’s New International Dictionary, Second Edition, 1934, as follows:

“‘Suppress’ — to put down or out of existence by authority, force or pressure; to quell; to crush; to subdue; to force into impotence or obscurity; to extinguish by prohibiting, dissolving, etc.; as, to *suppress* a revolt, a religious order, or freedom of speech. To keep from public knowledge; as (a) to refrain from divulging; to leave undisclosed; as, to *suppress* all names in an account of a scandal. (b) to prohibit or interdict the publication or revelation of; to withhold from circulation; as, to *suppress* the truth, a rumor or a book.”

In any event the ordinance of Salt Lake City amounts only to a suppression of the machines as the case of *Ex Parte Lawrence*, supra, makes abundantly clear. The effect is not, as stated by the lower court, an absolute prohibition. The scope of the ordinance is shown by the foregoing analysis. To say, as inferred by the lower court in its decision, that the ordinance would be valid had use of the machines been allowed in public amusement parks, amounts to the court acting as a superior legislative body completely ignoring the intent of the Legislature to grant cities broad powers of suppression of the subject machines.

The Utah case of *Nasfell v. Ogden City*, 249 P. 2d 507 is entirely consistent with the subject ordinance now before the court. The power to pass the ordinance is granted by express words or at the very least is necessarily implied. *Salt Lake City v. Revenue*, 101 Utah 504, 124 P. 2d 537. We contend that the ordinance is a valid exercise of the police power, in harmony with the enabling statutes, and certainly the *Nasfell* case is authority

only for situations where cities have exceeded granted powers. The language of Justice Crockett in the dissenting opinion bears emphasis, as follows:

“I expressly agree with Mr. Chief Justice Wolfe’s statement, ‘some of our holdings we have too narrowly construed the granted powers.’ No better examples of this could be pointed out than those cited in the prevailing opinion. Narrow to the point of being unreasonable (as it seems to me) are the holdings: that to regulate and *suppress* billiard tables did not authorize an ordinance prohibiting billiard playing . . .” (*American Fork City v. Robinson*, 77 Utah 168, 292 P. 249).

In *2 Sutherland Statutory Construction* at page 326, the universal rule is recognized that every presumption favors the validity of an act of the Legislative body. And so in the case of *Price v. Tuttle*, 70 Utah 156, 258 P. 1016, the Utah Supreme Court recognized the duty of the courts to construe a statute and consider not only the language of the act, but also the purpose and objects sought by the Legislative body.

CONCLUSION

The authorities are uniformly consistent in holding that a suppression of pin ball machines and other similar devices is a valid exercise of the police power. The apparent evils have been listed and discussed throughout the decisions, and the evils created by the prevalence of the devices and the resulting injury to public morals and welfare have been treated by the Legislature in granting

to cities the power to suppress the machines. Scope of the suppression is not a valid subject for judicial inquiry. The lower court's decision is, therefore, an unwarranted interference with the legislative process and should be reversed.

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