

1960

Members of the Utah State Motel Association through Ralph D. Howe, their president v. The State of Utah Tax Commission : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Herbert B. Maw; Attorney for Appellants;

Recommended Citation

Brief of Appellant, *Utah State Motel Ass'n v. Tax Comm. Of Utah*, No. 9201 (Utah Supreme Court, 1960).
https://digitalcommons.law.byu.edu/uofu_sc1/3590

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In the Supreme Court of the State of Utah

FILED

DEC 12 1960

MEMBERS OF THE UTAH STATE MO-
TEL ASSOCIATION, through RALPH D. HOWE, their President, *Plaintiffs,*

vs.

THE STATE OF UTAH, through its TAX
COMMISSION, consisting of OR-
VILLE GUNTHER, Chairman; AL-
LAN M. LIPTON, ARIAS G. BEL-
NAP, and HERBERT F. SMART,

Defendants.

Case No.
9201

APPELLANT'S BRIEF

HERBERT B. MAW

Attorney for Appellants

CONTENTS

	Page
Statement of Facts	3
Statement of Points	5
Point One	5
Classification cannot be discriminatory or arbitrary.	
Point II	8
The Trial Court erred in granting defendant's motion to dismiss plaintiffs' complaint before hearing evidence re- garding the reasonableness of the classification.	
Point III	9
The classification complained of was arbitrary and dis- criminatory.	
Point IV	11
The law requires that all businesses falling within the same class be treated alike.	
Point V	15
Is classification in instant case reasonable?	
Conclusion	17

CASES CITED

Hartford SBI & Inc. Co. vs. Harrison, 301 U.S. 459, 8 L.Ed. 1223	6
Louisville Gas & E. Co. v. Coleman, 277 U.S. 32, 37, 38, 72 L.Ed. 770, 773, 774, 48 S.Ct. 423	7

Frost v. Corp. Com. of Oklahoma, 278 U.S. 515, 73 L.Ed. 483	7
Power Mdf. Co. v. Harvey Sanders, 274 U.S. 490, L.Ed. 1167	7-8
Louisville Gas & El. Co. v. Coleman, 277 U.S. 39, 72 L.Ed. 770	8
White v. Moore, 46 P2nd 1077 (Aug)	11-16
Gaulden v. Kirk, 47 So. 2nd 567 (Florida)	

TEXTS CITED

12 Am. Jur. 128 Paragraph 469	5
12 Am. Jur. 147, 151	6

In the Supreme Court of the State of Utah

MEMBERS OF THE UTAH STATE MO-
TEL ASSOCIATION, through RALPH
D. HOWE, their President,

Plaintiffs,

vs.

THE STATE OF UTAH, through its TAX
COMMISSION, consisting of OR-
VILLE GUNTHER, Chairman; AL-
LAN M. LIPTON, ARIAS G. BEL-
NAP, and HERBERT F. SMART,

Defendants.

Case No.
9201

APPELLANT'S BRIEF

STATEMENT OF FACTS

This is an action contesting the constitutionality of certain additions to Section 59-15-4 (The Sales Tax Law) which were passed by the 1959 legislature. These additions are as follows:

(e) A tax equivalent to 2% of the amount paid or charged for all services for repairs or renovations of tangible personal property, or for installation of tan-

gible personal property rendered in connection with other tangible personal property.

(f) A tax equivalent to 2% of the amount paid or charged for tourist home, hotel, motel or trailer Court accommodations and services; provided that this subsection shall not apply to the amount paid or charged for tourist home, motel, hotel or trailer court where residency is maintained continuously under the terms of a lease or similar agreement for a period of not less than thirty days.

(g) A tax equivalent to 2% of the amount paid or charged for laundry and dry cleaning services.

It was the contention of the plaintiffs in the District Court that paragraph (f) is in violation of the 14th amendment of the Constitution of the United States and Article I, Section 24 of the Constitution of Utah, each of which guarantees equal protection of the law to all persons.

The appellants, who are members of the Utah State Motel Association, filed its action in the District Court of Salt Lake County on the constitutionality of said act and prayed that the defendant, State Tax Commission, be restrained from enforcing its provision against them. In response the State Tax Commission moved for a dismissal of plaintiffs' complaint. After hearing arguments and the submission of briefs, the Honorable Maurice Harding, sitting as judge of the District Court of Salt Lake County, rendered a memorandum decision dismissing the action on the ground that the complaint fails to state a claim upon which relief can be granted. It is from that decision this appeal is taken.

May it be pointed out that appellants do not dispute the rule that acts of legislatures are presumed to be constitutional

unless shown to be otherwise. On the other hand appellants do dispute the right of the trial judge to deprive them of the privilege of offering evidence for the purpose of proving that the act is unconstitutional as was done in the instant case. Neither is it disputed that the legislature may classify business for taxation and other purposes, *provided that such classifications include all competitive businesses within the field covered by the classification.*

ARGUMENT

POINT I

CLASSIFICATIONS CANNOT BE DISCRIMINATORY OR ARBITRARY.

Decisions involving an interpretation of the 14th amendment of the Constitution of the United States are so numerous and in most matters uniform that reference will be made herein to only a few of them.

It is universally held that classifications for business or other purposes made by legislatures of the various states must not be discriminatory, capricious or arbitrary. This rule is clearly stated in 12 A. Jur. 128 Paragraph 469, as follows:

Page 129. "It has been repeatedly said that the guaranty of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or *other classes in like circumstances*, in their lives, liberty, and property, and in pursuit of happiness. It has frequently been stated that 'the equal protection of the laws is a pledge of the protection of equal laws.' One court has added the concept that it means equality of

opportunity to all in like circumstances. The guiding principle most often stated by the courts is that this constitutional guaranty required that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

On page 147 of the same volume of Am. Jur. it is stated that,

"One of the essential requirements as to classification, in order that it may not violate the constitutional guaranty as to equal protection of the laws, is that the classification must not be capricious or arbitrary, but is based on some natural principle of public policy.

"The rule is well settled that arbitrary selection can never be justified by calling it classification. This is forbidden by the equal protection demanded by the Fourteenth Amendment."

Page 151: "It is frequently difficult to determine whether a particular classification is reasonable or unreasonable, and no definite rule has or can be laid down whereby this may be determined. The legislature cannot arbitrarily create a class, however, and when thus created make it binding on the courts so that they would be bound to accept such classification as a proper one."

The above principle has been upheld by the United States Supreme Court as well as the highest courts in most of the States.

In the case of *Hartford S.B.I. & Ins. Co. vs. Harrison*, 301 U.S. 459, 81 L.Ed. 1223, the Supreme Court of the U. S. passed on the constitutionality under the 14th amendment of a law enacted by the Georgia Legislature a different burden upon stock insurance companies than upon mutual insurance companies under classification legislations. In finding the act unconstitutional the court stated:

"The applicable principle in respect to classification has often been announced. It will suffice to quote a paragraph from *Louisville Gas & E. Co. vs. Coleman*, 277 U.S. 32, 37, 38, 72 L. Ed. 770, 773, 774, 48 S. Ct. 423.

'It may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances . . . and that it applies to the exercise of all of the powers of the state which can affect the individual or his property, including the power of taxation.'

Later the court added, "Discriminations are not to be supported by mere fanciful conjecture. - - - They cannot stand" as reasonable if they offend the plain standards of common sense.

In *Frost vs. Corp. Com. of Oklahoma*, 278 U.S. 515, 73 L.Ed 483, the same Court held as follows:

"The purpose of the clause in respect of equal protection of the laws is to rest the rights of all persons upon the same rule under similar circumstances."

In applying that rule to the case before it the court stated, "Stripped of all immaterial distinctions and reduced to its ultimate effect, the proviso as here construed and applied, baldly creates one rule for a natural person and a different and contrary one for an artificial person, notwithstanding the fact that both are doing the same business with the general public and to the same end, namely, that of reaping profits. That is to say, it produces a classification which subjects one to the burden of showing a public necessity for his business, from which it relieves the other, and is essentially arbitrary, because based upon no real or substantial differences having reasonable relations to the subject dealt with by the legislature."

In reversing the Supreme Court of Arkansas in the case of *Power Mdf. Co. vs. Harvey Sanders*,

274 U.S. 490, L. ed. 1167, the court held: that in order for a classification to be legal under the 14th amendment, "the classification must rest on differences pertinent to the subject in respect of which the classification is made."

In *Louisville Gas & El. Co. vs. Coleman*, 277 U.S. 39, 72 L. ed. 770, it was held that a law imposing a tax for recording mortgages wherein the debt is secured matured within five years while imposing no such tax for recording mortgages where the debt matures after five years was improper classification and therefore unconstitutional. In its discussion the court stated, "In the first place it may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances - - - the classification must be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated like."

The courts, both Federal and State, so unanimously follow the above stated rules that it seems unnecessary to make further citations.

POINT II

THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT BEFORE HEARING EVIDENCE REGARDING THE REASONABLENESS OF THE CLASSIFICATION.

In their complaint the plaintiffs alleged as follows:

Para. 6 Sub Sec. 2: "Said statute denies some operators of motels, hotels, tourist homes and trailer courts of the equal

protection of the laws applying to other operators of similar businesses.”

If that allegation could have been proved by evidence, then it follows that the legislation in question was discriminatory and therefore unconstitutional. Certainly plaintiffs should have been given an opportunity to offer evidence showing that the act imposes a burden upon some while exempting others who were competitors in the same business, and that the legislature had arbitrarily created a classification which is discriminatory, unreasonable, unjust and therefore unconstitutional. Without such evidence the court was in no position to pass upon the constitutionality of the act. In fact in its decision the court stated: “There may well be slight inequities in the operation of the statute, but perfection is not required.” As to whether such inequalities were slight or great could not possibly be determined without evidence. Certainly the appellants were entitled to present evidence in the matter. Without such evidence the Court was in no position to make the ruling it did.

POINT III

THE CLASSIFICATION COMPLAINED OF WAS ARBITRARY AND DISCRIMINATORY.

The legislature in enacting paragraph “f” of the sales tax law, apparently intended that tourists should be taxed on their rentals while in the state while permanent citizens should be exempted. The constitutionality of the provision in question must, therefore, depend on whether all of the tourist rentals or short term rental business of the state are being handled by the operations included in the classification, namely: tourist

homes, hotels, motels, and trailer camps. If the answer to that question is in the negative, it follows as a matter of law that the classification is discriminatory and in violation of the 14th amendment, for the courts will not permit a discriminatory classification.

It is well known in this state that there are many other businesses offering rental accommodations to tourists and others on a daily or weekly basis which are not included within the classification. For example, in most of the communities of the state, apartment houses offer accommodations on a weekly basis, particularly during the tourist season. To require a motel or hotel to collect a sales tax and exempt an apartment house from doing so is the rankest kind of discrimination. In various parts of the state transient workmen are offered temporary employment on road building and reclamation projects. If these workers live in a motel or hotel for less than a month, they must pay a sales tax, but if they occupy a housekeeping room in a private residence or in an apartment house on a daily or weekly basis they are required to pay no tax. In such cases a tax of two or three dollars over a two or three week period gives a distinct competitive advantage to the unclassified competition.

Within the state are numerous guest houses, dude ranches, resorts, and rooming houses which offer rental accommodations for periods of less than one month, none of whom are included within the classification complained of and none of whom need collect a sales tax. Certainly it is obvious that such a situation is highly discriminatory and unjust.

POINT IV

THE LAW REQUIRES THAT ALL BUSINESSES FALLING WITHIN THE SAME CLASS BE TREATED ALIKE.

The Supreme Courts of two states have passed upon the constitutionality of sales tax laws on rentals and each of them has confirmed the principle that such legislation must include within the classification all business falling within the same class.

WHITE vs. MOORE, 46 P.2nd 1077 (Arizona)

This is a case wherein two points unrelated to the instant case were decided, namely whether the receiver of an insolvent bank which rents buildings must collect sales taxes on rentals even though solvent banks must do so; and whether the language "or any other business or occupation charging storage fees or rents" included business properties when the classification intended by the legislature to apply only to residential property. Neither of these points apply to the issue before this court.

The Arizona act as quoted by the court in its decision imposed a 2% sales tax "upon every person engaged or continuing within this state in the following businesses:

2. Hotels, guest houses, dude ranches, and resorts, rooming houses, apartment houses, automotive rental services, automobile storage garages, parking lots, tourist camps, *or any other business or occupation charging storage fees or rents* . . . "

In that case, the constitutionality of the above classification was attacked on the grounds that it did not include business

property rentals. The court rightly held that the legislature had a right under the 14th amendment to classify businesses renting residential property without including renters of business property within the classification. In this connection the Court held:

“It must be kept in mind that a privilege tax is not a tax on property but a tax on the right to engage in business and that the Legislature may impose it on any class or classes of business it cares to and decline to apply it to others, *its only limitation in this respect being that the classification it makes must be reasonable not arbitrary or discriminating and such that all those falling within the same class will be treated alike.*”

Plaintiffs agree that the above is a correct statement of the law.

The Arizona act listed hotel, guest houses, dude ranches, resorts, rooming houses, and apartment houses as coming within the classification and then included the phrase “or any other business or occupation charging storage or rents.” That language included within the classification every business renting residential property whether on a day, week or monthly basis. This the legislature had a right to do for it treated all such businesses alike, and discriminated against no one.

If the legislature of Utah had done likewise, this action would not have been filed. But it did not so act. Instead it selected four of a dozen or more types of renters of residential properties on less than a monthly basis, each of which are in competition with the other and imposes the duty of collecting a sales tax on the four while allowing the remaining competitors to rent their property without collecting such a tax from

their tenants. Such action is discriminating, arbitrary, and unjust for it fails to treat all those falling within the class of renting to the traveling public alike, and is therefore in violation of the equal protection amendment to the Constitution.

There is no saving clause which includes all businesses within the classification in the Utah law as there is in the Arizona statute. Instead the Utah law limits the responsibility of collecting and imposing the tax on tourist homes, hotels, motels, and trailer camps and permits every other person engaged in the same class of business to go free from that responsibility. In Arizona every renter of property for residential purposes is included in the classification, while in Utah many who are engaged in the same type of business such as those who offer for rent apartments on a weekly basis, house-keeping units, dude ranches units, boarding houses, private residence rooms and other competitive businesses in the same field of activity are exempt from such responsibilities. Under the Arizona law an owner of a residence, an apartment house in an area where road or reclamation projects are being constructed, who offers temporary accommodations to the workmen thereon, must collect the same tax from their tenants as does the motel or hotel operator within the vicinity; while in Utah every one of those competitors of the hotel and motel operator in the same area are free from such impositions. To say to a moter operator in a town for instance where a temporary road building project is underway, "You must collect a tax from every workman who resides in your motel, but the operator of an apartment house next door or the renter of rooms in a private residence, each of whom are your competitor for business from those workmen, need collect no tax

from those who rent from them," is discrimination which destroys the protection afforded by the Constitution.

Until the Utah law is made to include all of the competitive business of hotels, motel, tourist homes, and trailer courts as is the case under the Arizona law, the law is arbitrary, discriminating, and unfair and is in violation of the federal Con-

GAULDEN vs. KIRK, 47 So. 2nd 567 (Florida)

The above named Florida case was decided on issues, each one of which is unrelated to the one in the instant case. But in deciding that the Florida tax on motels, etc., was constitutional the court indirectly supported the principle of law discussed above.

Like the Arizona law, the one passed by the Florida Legislature included all businesses renting living quarters. It discriminated against none of them. The language of the statute is as follows:

"It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing or letting any living quarters, sleeping or housekeeping accommodations - - - for the exercise of said privilege a tax is hereby levied - - - equal to three per cent (3%) of and on the total of rental charge - - - ."

This statute includes everyone operating within the same field of business. No one is excluded from the operation of the law. Such a classification is constitutional for the same reason that the Arizona statute is constitutional.

It is because the Utah statute does not include everyone within the class of such businesses that the Utah act is invalid.

POINT V

IS CLASSIFICATION IN THE INSTANT CASE REASONABLE?

The only remaining question seems to be whether it is reasonable and fair on the one hand or arbitrary and discriminating on the other for the Utah Legislature to single out tourist homes, motels, hotels, and trailer courts and place them in a classification requiring the collection of a sales tax, while exempting their competitors who are carrying on similar business and offering accommodations to the same class of people in many instances under different designations. It is undisputable for instance that an apartment house offering accommodations on a weekly basis is in the same business as a motel which does likewise. So likewise are private residences who offer temporary housing to workmen, or sportsmen, or visitors attending carnivals or church conferences, etc., in the same business as hotels and motels. In fact, as pointed out previously in this brief, there are a number of businesses in competition with the ones which the legislature has classified who are placed in an advantageous position through the enactment of the legislation objected to.

In Utah the tourist business is seasonal, confined primarily to summer months. Operators of motels must rely on patronage from local citizens who cannot be classified as tourists in order to survive through the many off-tourist months. The legislation in question will give their competitors who are free

from collecting sales taxes from short term tenants great advantages during those periods.

There is no basis for such discrimination under the 14th amendment. If the legislature had taxed tourist trade and made a classification of every business offering accommodations to tourists, such a classification may have been justifiable. But to require motel operators to collect a tax not only from tourists but also from non-tourists who rent their accommodations and who provide for them a substantial portion of their annual revenue without imposing a similar responsibility on the many other competitive businesses who do not deal with tourists but do compete with motels for local trade, is unjust, unfair, arbitrary and discriminatory. *Certainly it is not the kind of legislation which treats all persons alike under like circumstances and conditions* as the courts require. There is no fair and reasonable difference between those engaged in offering living accommodations on a daily or temporary basis to both tourists and non-tourists, to justify a classification of part of them and excluding from the classification the others.

In *Gaulder vs. Kirk*, 47 So. 2nd 567, the Court stressed the generally accepted principle that "Courts should always give words in the statutes and constitutional provisions the meaning accorded them in common usage unless a different connotation is expressed in or necessarily implied from the context of the statute or constitutional provision in which they appear."

Applying that principle to the instant case, the words "tourist homes, hotels, trailer courts, motels," have very distinct meanings in their common usage. They could not possibly be reasonably interpreted, nor are they interpreted by

the Tax Commission to include within their meaning apartment houses offering accommodations on weekly basis, or housekeeping apartments operating by the week, or private residences offering temporary accommodations to workmen, conference visitors, etc., or dude ranches, or any other business which is competing with hotels, motels, tourist homes, or trailer camps for non-tourist as well as tourist trade, none of which are included within the provisions of the act.

CONCLUSION

If the legislative classification had been set up to cover all those serving tourists and the tax levied only on them, as against those serving local citizens who are temporarily away from their homes; or all those offering housekeeping services as against those who do not; or some other classification which included all businesses offering accommodations to people away from home, there might have been reasonable justification for the classification. But to arbitrarily select four businesses from a dozen similar businesses of the same nature, each competing with the other, and imposing a burden upon the four which need not be borne by the others, is legally arbitrary, discriminating and unjust legislation which violates the equal protection amendment of the Federal Constitution, and departs widely from the fundamental doctrine universally adopted by the courts of a free land "that all those within the same class shall be treated alike," *White vs Moore*, 47 P.2nd, 181 (5-6).

Respectfully submitted,

HERBERT B. MAW
Attorney for Appellants