1967

Salt Lake City, A Municipal Corporation of the State of Utah v. Towne House Athletic Club and The University Club : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY, a Municipal Corporation of the State of Utah,

Appellant and Plaintiff,

vs.

TOWNE HOUSE ATHLETIC CLUB and THE UNIVERSITY CLUB,

Respondents and Defendants.

Case No. 10640

BRIEF OF APPELLANT

Appeal from Summary Judgment of the Third Judicial District Court for Salt Lake County, Utah
Honorable Bryant H. Croft, Judge

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AUTHORITIES CITED

29 Am. Jur., Innkeepers, Sec. 9 .....
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STATUTES CITED

Sec. 206, Session Laws of Utah, 1915 .....
Sec. 10-8-39, Utah Code Annotated, 1953 ..... 2, 4,
Sec. 10-8-80, Utah Code Annotated, 1953 .....
Sec. 10-8-81, Utah Code Annotated, 1953 .... 2, 4, 5,
Secs. 16-6-13.1, 13.2 and 13.3, Utah Code Annotated, 1953 .....
Sec. 26-15-44, Utah Code Annotated, 1953 .....

ORDINANCES CITED

Sec. 20-2-62 of the Revised Ordinances of Salt Lake City, Utah, 1955 (Now Chapter 14 of Title 20 of the Revised Ordinances of Salt Lake City, Utah, 1965) 2,

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Case No. 10640

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action brought by the plaintiff and appellant for a judgment against the respondents and defendants for a license fee to operate a private club restaurant.

Lower court granted a summary judgment in favor of the defendants and respondents and against the plaintiff and appellant.

RELIEF SOUGHT ON APPEAL

The plaintiff and appellant seeks a reversal of the summary judgment and that the case be remanded to the lower court with instructions to enter a judgment for the appellant as prayed for in its amended complaint.

STATEMENT OF FACTS

A stipulation of the facts involved in the case was entered into by and between the plaintiff and defendants on the 18th day of November, 1965 (R-9), as follows:

"Comes now the plaintiff by and through its attorney, A. M. Marsden, and the defendants by and through their attorney, Richard R. Wilkins, and stipulates to the truthfulness of the following facts:

1. Plaintiff is a municipal corporation seeking to impose a license fee on each of the defendants under Section 20-2-62 of the Revised Ordinances of Salt Lake City, Utah, 1955, which is an ordinance allowing the plaintiff to impose a license fee on restaurants. The plaintiff claims the right to license the defendants under Section 20-2-62 of the Revised Ordinances of Salt Lake City, Utah, 1955, by virtue of Sections 10-8-39, 10-8-80 and 10-8-81, Utah Code Annotated 1953, as amended, giving cities the right to regulate social clubs.

2. The defendants and each of them are social clubs incorporated as non-profit corporations, licensed, bond

ed and regulated by the State of Utah under Sections 16-6-13.1, and 16-6-13.2 and 16-6-13.3, Utah Code Annotated 1953, as amended, and each has not paid a restaurant license fee for the year 1965.

3. That the defendants and each of them, prepare, serve and sell food and drink only to club members and their guests at their respective place of operations in Salt Lake City, Utah.

DATED this 18th day of November, 1965."

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Arguments were had before the court on the respective positions of the litigant parties and briefs filed by each. (R. 13-17 and R. 18-24). The court made and entered its memorandum decision against the plaintiff and in favor of the defendants on the 25th day of April, 1966 (R. 25-28), and a judgment thereafter on the 19th day of May, 1966 (R. 29), later amended,

but without changing the effect of the judgment and memorandum decision already entered.

Notice of appeal was filed on the 20th day of May, 1966 to the Supreme Court of Utah by the plaintiff.

ARGUMENT

POINT I.

SALT LAKE CITY MAY IMPOSE A RESTAURANT LICENSE AND CHARGE A LICENSE FEE UPON THE DEFENDANTS WHO ARE PRIVATE NONPROFIT INCORPORATED SOCIAL CLUBS.

The question to be briefed for the court is whether or not Salt Lake City, under the provisions of its ordinance, Sec. 20-2-62 of the Revised Ordinances of Salt Lake City, Utah, 1955 (now Chapter 14 of Title 20 of the Revised Ordinances of Salt Lake City, Utah, 1965) may collect a restaurant license fee from the defendants who are private nonprofit incorporated social clubs.

The Legislature has granted the City authority to collect a license fee from restaurants under Sec. 10-8-39, Utah Code Annotated 1953, and has also conferred authority upon tthe City to license and regulate private social clubs whether incorporated or not, under Sec. 10-8-81, Utah Code Annotated 1953.

The defendants claim that they are not subject to the licensing ordinances of Salt Lake City since they are not engaged in carrying on a restaurant business.

It has been stated in 29 *Am. Jur.*, Inkeepers, Sec. 9, Page 12, that "the term restaurant has no definite legal meaning unless defined by statute."

We have no statute in this state defining the term "restaurant." Therefore, it does not necessarily follow that the defendants are excluded from such term since they serve, prepare and sell both food and drink and come within the terms and definition of restaurants under the plaintiff's ordinance cited above provides:

> "The term 'restaurant' as used herein shall be defined to be any place where food or drink is prepared, served, or offered for sale or sold for human consumption on or off the premises."

Sec. 10-8-81, Utah Code Annotated 1953, provides as follows:

> "They (cities) may regulate all social clubs, recreational associations, athletic associations and kindred associations, whether incorporated or not, which maintain club rooms or regular meeting rooms within the corporate limits of the city."

Our Supreme Court has had occasion to determine heretofore the proposition as to whether or not the express power of the city to regulate conduct includes the power to license. That was determined in the case

of *Provo City v. Provo Meat and Packing Co.*, 49 Utah 528, 165 P. 477. That decision was based upon the 1913 Session Laws of Utah, Sec. 206, which in part provides as follows:

> "To provide for the place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions, and regulate the selling of the same."

The court unanimously held as follows:

> " * * * properly speaking, a license fee or a license tax comes within and is based upon the police power of the state to regulate or to prohibit a particular business. * * * Where power is conferred to regulate a particular business or calling the power to license is included within the power to regulate."

In 3 *McQuillin, Municipal Corporations,* Sec. 980, the author says:

> " 'The prevailing rule is that under power to regulate the municipal corporation may license and charge a reasonable fee, to cover the expense of regulation, especially concerning those occupations wherein regulation and supervision appear necessary or desirable for the public good * * *.' "

Any doubt as to whether or not specific power has been conferred upon Salt Lake City by Sections 10-8-39 and 10-8-81, Utah Code Annotated 1953, to regulate and license private social clubs for that part of their activities where they are engaged in preparing,

cooking and selling food and drink to their members and guests as restaurants, must be resolved in favor of the City under Sec. 10-8-84, Utah Code Annotated 1953. This statute delegates the police power of the State to the cities of Utah. It is commonly called the "General Welfare Clause." *Bohn v. Salt Lake City*, 79 Utah 121 and 128, 8 P.2d 391, 81 A.L.R. 215.

Charles S. Rhyne, author of Municipal Law, 1957 Edition, Secs. 4-8, pages 72 and 73, has this to say regarding such welfare statutes:

> "The enumeration of powers in special charters or statutes governing municipal corporations does not necessarily operate as a limitation or exclusion of municipal powers not enumerated. The state legislature, in order to obviate the difficulty of making specific enumeration of all powers it intends to delegate to the municipality, usually confers some power in general terms. Home rule charter enactments or amendments may be couched in the most general terms. The purpose of a general welfare clause in a statute is to extend the powers of a municipality beyond those specifically enumerated to other things which are necessary to accomplish the purposes of municipal government. Special charters are often concluded with a clause conferring general authority to pass all ordinances which may be necessary for the promotion of the health, safety and welfare of the municipality which are not in conflict with the constitution or general laws of the state. The powers granted in a general welfare clause are as a rule designed to confer powers other than those specifically mentioned;

but those specifically enumerated cannot be enlarged and must not be extended beyond the ordinary scope of municipal authority or purposes, or conflict with the powers bestowed upon it by charter general laws or the constitution.

"The courts have held, for example, that a general grant of power conferred the following unspecified powers to: regulate or prohibit the sale of alcoholic beverages; levy special assessments; issue bonds; pay bonuses to employees and heroes; condemn land; *protect public health*; regulate hours and conditions of labor for municipal work; pay dues to municipal leagues; establish parks; provide police protection; levy business, occupation, property and vehicle taxes; and establish a standard of time for the conduct of municipal affairs." (Emphasis added).

Our Supreme Court has held in the case of *Salt Lake City v. Howe,* 106 P. 705, 37 Utah 170, as follows (headnotes 1 and 2):

"Comp. Laws 1907, § 206, Subd. 44, authorizes municipal corporations to regulate the sale of meats, fish, butter, and all other provisions. Subdivision 45 authorizes them to provide for, and regulate, the inspection of meats, butter, etc., and all other provisions. Subdivision 65 authorizes regulations to secure the general health of the city, and prevent the introduction of contagious disease, and subdivision 88 authorizes cities to pass all ordinances, and make all regulations necessary to preserve the health of the inhabitants. HELD, that a municipality was authorized to enact an ordinance regulating the inspection and sale of milk and making it a

offense to sell milk within the city without a permit from the city food and dairy commissioner, *though milk was not specifically included in the statutes as a subject of regulation, it being included in the term 'other provisions' in subdivisions* 44 *and* 45, *and the ordinance was also authorized under the city's power under subdivisions* 65 *and* 88 *to enact ordinances for the protection of health.*

"The Legislature can confer police powers upon a city over subjects included within existing statutes, and authorize it to prohibit and punish by ordinance acts which are also prohibited and punishable by the statute."

It is the contention, therefore, of the plaintiff, that in order to protect the public health, it is necessary that the city be empowered to license such establishments and that such power has been conferred by the Legislature to do so in all of the statutes above cited when construed together.

The right to protect the public health by license and regulation is confirmed by the powers conferred on city health departments under Sec. 26-15-44, Utah Code Annotated 1953, as amended.

CONCLUSION

It is, therefore, the conclusion of the plaintiff from the foregoing statutes and cases cited, that Salt Lake City is completely empowered and authorized to impose a restaurant license fee upon the defendants for that

part of their activities wherein they prepare, serve and sell to their members and guests, food and drink for human consumption.

Respectfully submitted,

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