

1961

Howard Anderson et al v. Utah County and the Board of County Commissioners : Brief of Appellants

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT of the STATE OF UTAH

HOWARD ANDERSON, ET AL,

Petitioners and Appellants,

v.

UTAH COUNTY AND THE BOARD
OF COUNTY COMMISSIONERS
OF UTAH COUNTY,

Respondents,

FILED

NOV 24 1961

Clerk, Sup. Court, Utah
No. 9549

BRIEF OF APPELLANTS

Appeal from the Judgment of the 4th District Court for
Utah County, Honorable F. W. Keller, Visiting Judge

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INDEX

	Page
STATEMENT OF THE KIND OF CASE	1
DISPOSITION IN LOWER COURT	2
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT:	
POINT I:	6
POINT II:	12
POINT III:	22
CONCLUSION:	35

STATUTES

34-1-2, U.C.A. 1953	24
34-16-4, U.C.A. 1953	5
34-16-5, U.C.A. 1953	5
34-16-8, U.C.A. 1953	5
34-16-9, U.C.A. 1953	5
34-16-11, U.C.A. 1953	5
34-16-12, U.C.A. 1953	6
34-16-13, U.C.A. 1953	6

	Page
Alabama Right-to-Work Law, SLL 10:285	22
Arizona Right-to-Work Law, SLL 12:276	22
Arkansas Right-to-Work Law, SLL 13:291	22
Florida Right-to-Work Law, SLL 19:285	22
Georgia Right-to-Work Law, SLL 20:191	22
Iowa Right-to-Work Law, SLL 25:195	22
Mississippi Right-to-Work Law, SLL 34:283	22
Nebraska Right-to-Work Law, SLL 37:291	22
Nevada Right-to-Work Law, SLL 38:287	22
North Carolina Right-to-Work Law, SLL 43:285	23
North Dakota Right-to-Work Law, SLL 44:276	23
South Dakota Right-to-Work Law, SLL 52:267	23
South Carolina Right-to-Work Law, SLL 51:285	23
Tennessee Right-to-Work Law, SLL 53:278	23
Texas Right-to-Work Law, SLL 54:281	23
Virginia Right-to-Work Law, SLL 57:271	23

TABLE OF CASES CITED

A. F. L. vs. American Sash and Door Co., 335 U.S. 358	10
Bell vs. Hill, 74 S. W. 2nd 113, 114	32
Conover vs. Board of Education, 110 Utah 454, 175 Pac. 2nd 209	15
Crocket vs. Board of Education, 58 Utah 303, 199 Pac. 158..	16
E. C. Olsen Co. vs. State Tax Commission, 109 Utah 563	21
Fleming vs. Mohawk Wrecking & Lumber Co., 331 U.S. 111	21

	Page
Norvill vs. State Tax Commission, 98 Utah 170, 97 Pac. 2nd 937	11
Parkinson vs. State Bank of Millard County et al, 87 Utah 278, 35 Pac. 2nd 814	14
Ringwood vs. State, 8 Utah 2d 287	19
Rowley vs. Public Service Commission, 112 Utah 116, 185 Pac. 2nd 937	11
Sinclair Refining Co. vs. State Tax Commission et al, 102 Utah 340	21
Spring Canyon Coal Co. vs. Industrial Commission of Utah, 74 Utah 103, 277 Pac. 206	13
Stevenson vs. Salt Lake City Corp., 7 Utah 2d 28	18
Wrathall vs. Johnson, 86 Utah 50	17

OTHER AUTHORITIES

50 Am. Jur. (Statutes) Page 210, Para. 227	14
29 C.J.S. Page 107, Para. 84	32
82 C.J.S. Page 593, Para. 323	16
82 C.J.S. Page 778, Para. 359	21
Salt Lake Tribune, Sunday, Sept. 17, 1961	26, 27
Sutherland on Statutory Construction, Sec. 24, Page 320	12

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Respondents.

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BRIEF OF PETITIONERS AND APPELLANTS

Appeal from the Judgment of the 4th District Court for
Utah County, Honorable F. W. Keller, Visiting Judge

Throughout this brief all emphasis is ours.

STATEMENT OF THE KIND OF CASE

This case is to determine whether the Utah Right to Work Law, sometimes herein referred to as "Law," or "Act," applies to membership or nonmembership in a political party, and

specifically whether it was lawful under that Law for Utah County to fire 37 men from their county jobs because they were members of the Democratic Party.

DISPOSITION IN LOWER COURT

The trial court held that the appellants had been damaged by their discharge but that the phrase of the Law "labor union, labor organization or any other type of association" did not include political parties, and therefore denied the men the damages and injunctive relief which they sought.

RELIEF SOUGHT ON APPEAL

Appellants, by this appeal, seek to be reinstated in their jobs and to be compensated for the damage caused them by their being discharged as assessed and determined by the trial court.

STATEMENT OF FACTS

On Wednesday, January 4, 1961, the Board of Commissioners of Utah County fired all but three of its highway department employees (R. 48, p 8). Of the three remaining, one was the supervisor of the north crew, one was the supervisor of the south crew, and the other was the book and time keeper for the department. Their employment was terminated on Friday, two days later (R. 48, pp 73-4; R. 48, pp 44-6). All employees so fired were Democrats and had campaigned for the Democratic Party in the previous fall election.

The Board of Commissioners then proceeded to fill the job vacancies in the Highway Department with people who were Republicans, and who were able to obtain, and did obtain, the Utah County Republican Party endorsement, a prerequisite for such employment (R. 48, pp 42, 43, 47).

On Tuesday, January 3, 1961, the day before the wholesale firings, the political composition of the Board of Commissioners had changed from Democratic to Republican, when Democrat Marcellus Neilsen, having lost the election in November, 1960, relinquished his position on the Board to the successful Republican candidate, Sterling Jones. The other commissioners were Republican Rulon Nichols, who had just been re-elected and Democrat Marion Hinckley, a holdover incumbent.

On February 14, 1961, the petitioners filed this action seeking to be reinstated in their jobs and to be given a judgment for damages for their loss of wages. Their action was predicated on the Utah Right to Work Law, Laws of Utah, 1955, Chapter 54; Title 34, Chapter 16 U.C.A., 1953. It was their position that this law prevented the County from firing them if a reason for their discharge was that they were members of any particular "association"; and they asserted that the reason they were fired was because they were members of the Democratic Party and not members of the Republican Party and that such parties were associations within the meaning of the Law.

Respondents moved the Court to dismiss the case because petitioners had failed to state a cause of action. In support of the motion it was argued that the Legislature did not intend a political party to come within the meaning of the word "association", and that if it did mean to include political

parties, then the law was unconstitutional. The Court denied the motion and the case was tried before Judge Keller of the Seventh Judicial District at the instance and request of the presiding judge of the Fourth District.

At the conclusion of the trial, the Court orally announced certain findings of fact (R. 48, p. 439-445), including a finding of damages for the thirty-seven petitioners who appeared at the trial to prosecute their claims, and also found as a reason for their discharge the fact that they were members of the Democratic Party. Having found the issues of fact sufficiently in favor of the petitioners to allow them relief from their loss of wages and other damages if the law applied to their circumstances, the Court then, after taking the matter under advisement, held against them as to the law by reversing the position which the Court, with another judge sitting, had taken when it denied respondents' Motion to Dismiss.

In its Memorandum Decision the Court (R. 27-29) decides the case solely on the meaning of "association". "*This case,*" says the Court, "*turns upon what the Court finds the legislative intention to be in its use of the words 'any other type of association' as used in 34-16-2 UCA, 1953*" (R. 27). The Court then ruled that political parties were not meant to be included within the phrase in question, and therefore denied petitioners the relief which they sought. The ensuing argument shall be limited to the sole point upon which the case turns, viz., the meaning of the phrase "labor union, labor organization, or any other type of association."

First, however, we herewith quote the pertinent sections of the Law which, in the view of appellants, have been violated

by the respondents, together with the remedies provided therefor:

"34-16-4. Any express or implied agreement, understanding or practice between any employer and any labor union, labor organization or any type of association, whereby any person not a member of such union, organization or any other type of association shall be denied the right to work for an employer, or whereby membership or nonmembership in such labor union, labor organization or any other type of association is made a condition of employment or continuation of employment by such employer, or whereby any such union, organization or any other type of association acquires an employment monopoly in any enterprise or industry, is hereby declared to be an illegal combination or conspiracy and against public policy."

"34-16-5. Any express or implied agreement, understanding or practice which is designed to cause or require, or has the effect of causing or requiring, any employer or labor union, labor organization or any other type of association, whether or not a party thereto, to violate any provision of this act is hereby declared an illegal agreement, understanding, or practice and contrary to public policy."

"34-16-8. No employer shall require any person to become or remain a member of any labor union, labor organization or any other type of association as a condition of employment or continuation of employment by such employer."

"34-16-9. No employer shall require any person to abstain or refrain from membership in any labor union, labor organization or any other type of association as a condition of employment or continuation of employment."

"34-16-11. Any employer, person, firm, association,

corporation, employee, labor union, labor organization or any other type of association injured as a result of any violation or threatened violation of any provision of this act or threatened with any such violation shall be entitled to injunctive relief against any and all violators or persons threatening violation, and also to recover from such violator or violators, or person or persons, any and all damages of any character cognizable at common law resulting from such violations or threatened violations. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this act."

"34-16-12. In addition to the penal provisions of this act, any person, firm, corporation, association, or any labor union, labor organization or any other type of association, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this act."

"34-16-13. Any person who may be denied employment or be deprived of continuation of his employment in violation of this act shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this state such **damages as he may have sustained** by reason of such denial or deprivation of employment."

ARGUMENT

POINT I

THE TRIAL COURT'S MEMORANDUM DECISION INDICATES THAT THE RULING HEREIN IS IN ERROR IN THAT IT WAS AN UNWARRANTED JUDICIAL VETO OF LEGISLATIVE AND EXECUTIVE ACTION.

In ruling that a political party was not intended to be included in the word "association", the trial Court gives the following reasons for its decision (R. 28-29):

1. The phrase "any other type of association" is not explicit upon the question of whether political parties are included.

2. It is only because the language may be construed as all inclusive that we draw the implication that political parties are included.

3. Although a political party is an association, it is one which furthers a political end.

4. To accept the language literally to include political parties would be imputing an unreasonable and absurd intention upon the part of the Legislature.

5. We have no statutory law fixing the standards and tenure of public employees.

6. It has been common to elect a person to office in order to provide other and different employees in a particular public employment.

We respectfully observe that these reasons appear to us to accomplish no more than to reveal the trial Court's personal opposition and disagreement with the legislative and executive action in enacting this Law. This is not unexpected, for few laws in the history of our country have, at once, stirred such vigorous acceptance and opposition as has this type of legislation. Of those who study such laws and their effects, there are few who view them passively. And if such be true of the

ordinary "right-to-work" law, much more is it true as to Utah's right-to-work Law, which clearly introduces a new but nevertheless logical and reasonable element which is unique among such laws.

Even so, the trial Court is not within its appropriate powers and rights when it exercises a veto power over legislation which has been duly enacted into law. In the above reasons for the Court's decision, we fail to find any valid rule of interpretation or other legal basis to support or justify the ruling. What we do find, in our view, is nothing more nor less than a substitution of judicial judgment for that of the Legislature.

As to reason 1, 2, 3 and 4, what the Court admits therein would appear to support our position. We are quite willing to concede that the appellants' case does rest upon the premise that the phrase "or any other *type* of association" is all inclusive and that a political party is one of many types of association; and, we assert, that the Legislature in its desire to be "all inclusive" used general language rather than "explicit" language to avoid the risk of overlooking some particular type of association in an enumeration. All that the trial Court does in its first four reasons for its decision is to admit these principles, then disagree with the logical result. We are here forced to observe that the same Court, with the presiding judge sitting, did not think it unreasonable and absurd that political parties were necessarily included in the phrase "or any other type of association" when it denied the County's Motion to Dismiss. This "unreasonable and absurd" point of view was, by the County, strongly urged upon the Court in support of its motion.

As to reason 5, we agree that there is no statutory law fixing the standards and tenure of public employees. But neither are there any statutory standards and tenure as to all the other people who are affected by the Law. When a law regulates an area of activity it does not follow that the law is invalid because it does not regulate other matters that may possibly be associated therewith, nor is there a rule of interpretation that would even suggest it. Otherwise this Law would have to be nullified not only as to public employees, but also as to all other employees who are affected by it, thus nullifying the entire Act.

As to reason 6, there is nothing to prevent a change of employees in public employment if the change is not brought about *because* of one's affiliation with some type of association—a matter which is, and which ought to be recognized as, quite irrelevant to that employment, whether public or private. And what the trial Court and all the rest of us have become accustomed to in the past in this respect will have to be altered as a result of our unique Right to Work Law, just as we are constantly modifying our habits by conforming to new and different rules in a constantly changing and dynamic society. The change may be more good than bad, or more bad than good, and, with time and testing, some social experiments will be eliminated or changed, but that is the nature, indeed the vitality, of a living and growing society; and it is not, under our constitutional form of government, the prerogative of a court to substitute its judgment for that of the Legislature. Time may, or may not, prove the trial Court to be more responsive to the public feeling as to this Law than the Legislature, but that is not the issue. Whether the Law is popular

or not, it is the law, and while it stands, unrepealed by the Legislature, it ought not to be judicially vetoed as to any part of it just because that part seems "absurd" to one of the judges of the Trial Court. For the part that seems absurd to one branch of the Court does not appear absurd to another branch of the same Court; and it is to many other minds the most sensible part of the Law as we shall hereinafter discuss.

Mr. Justice Frankfurter in a concurring opinion in *A.F.L. v. American Sash and Door Co.*, 335 U.S. 538, which was one of the cases involving the constitutionality of a right-to-work statute, makes an effective plea for judicial restraint in nullifying legislative acts when he wrote:

"Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. * * * But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people."

Concluding his thinking on this subject, Justice Frankfurter says:

"Matters of policy, however, are by definition matters which demand the resolution of conflicts of value, and the elements of conflicting values are largely imponderable. Assessment of their competing worth involves differences of feeling; it is also an exercise in prophecy. Obviously the proper forum for mediating a clash of feelings and rendering a prophetic judgment is the

body chosen for those purposes by the people. Its functions can be assumed by this Court only in disregard of the historic limits of the Constitution."

In support of its interpretation, the Court cites the case of *Rowley vs. Public Service Commission*, 112 Utah 116, 185 Pac. 2nd 937. We fail to see any similarity of the problems of interpretation between that case and this case. We do, however, agree with the rules of interpretation therein announced and believe that such rules support our case. We refer especially to the following rule therein announced:

"We have not overlooked the legal principle that if the intent of the legislature is by the statute made clear and certain, even though we may believe the legislation absurd and undesirable, we cannot substitute the judgment of the court for the judgment of the legislature. On the other hand, when the legislative intent is not clear and certain, and a literal interpretation of the language of the statute gives an absurd result, then the court is justified in searching the enactment for further indications of legislative intent. These indications can be determined by the wording of the act or by considering the underlying reasons and necessity of the amendments and the purposes to be accomplished."

The Trial Court admits that the intent of the Legislature is made clear and certain. It says: "I have arrived at the conclusion that *to accept literally the language of this section* would result in finding an unreasonable and absurd intention on the part of the Legislature * * * ." (R. 28).

The Court also cites the case of *Norvill vs. State Tax Commission*, 98 Utah 170; 97 Pac. 2nd 937, another case where the factual problem is, we believe, dissimilar from the

instant case but wherein rules of interpretation are announced with which we agree. We refer to the quotation by the Court from Sutherland on Statutory Construction, Section 24, Page 320 (also quoted in the Rowley case):

“In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion.”

It is among the purposes of this brief to show that the language of the statute clearly includes political parties within the meaning of “association” as used in the Act, and that such meaning is reasonable, was so intended by the Legislature, that it dealt with the mischief felt and the remedy in view, and that the strong statement of public policy in the Act can be fully accomplished only by such an interpretation.

POINT II

THE APPROPRIATE LEGAL RULES OF STATUTORY CONSTRUCTION AND INTENT REQUIRE THE INCLUSION OF ALL TYPES OF ASSOCIATIONS WITHIN THE MEANING OF THE ACT.

This Court has, many times, been required to rule on problems of statutory intent and construction. From a review of these cases we believe the following rules of interpretation clearly appear:

1. That unless a statute is ambiguous, the meaning thereof must be found in the words of the Act itself.

2. That words are used in their ordinary meaning and if any question arises as to their meaning, they should be interpreted liberally to make the law valid.

3. That special consideration be given to the declared purpose and policy of the Legislature.

4. That every word be given effect, and, if possible, the Court should avoid the rendering of any words ineffective or nugatory.

5. That the use of the word "or" in a series does not unify the parts, but separates them.

6. When the intent of the Legislature is made clear and certain, even though absurd and undesirable in the eyes of the Court, the Court cannot substitute its judgment for the judgment of the Legislature.

Under Point I we have discussed the last of the rules above listed. We shall now refer to some cases and authorities which support the other rules of construction as listed.

In *Spring Canyon Coal Company vs. Industrial Commission of Utah et al*, 74 Utah 103, 116, 277 Pacific 206, this Court says:

"It is a cardinal principal of uniform application in the construction or interpretation of a statute that the legislative intent as determined from the language used is of primary and controlling importance. When the language of a statute is plain and unambiguous, courts are bound by such language. They may not

resort to rules of statutory construction and interpretation to defeat the clear and definite meaning of the language used in a statute.”

The general statement of the rule is also found in 50 Am Jur (Statutes) Paragraph 227, Page 210:

“The only mode in which the will of a legislature is spoken, is in the statute itself. Hence, in the construction of statutes, it is the legislative intent manifested in the statute that is of importance, and such intent must be determined primarily from the language of the statute, which affords the best means of its exposition. Indeed, it is the duty of the courts to give a statute the interpretation its language calls for, where this can reasonably be done, and the general rule is that no intent may be imputed to the legislature in the enactment of a law other than such as is supported by the face of the law itself. The courts may not speculate as to the probable intent of the legislature apart from the words. A statute is to be taken, construed, and applied in the form enacted, and so declared, announced, and expounded. Popular demand as to the enforcement of a law adds nothing to, and detracts nothing from, the duty of the court to construe the law as it is. As a reason for these rules, it has been declared that *the legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly, and to have expressed its intent by the use of the words found in the statute.*”

An illustration of how the Court interpreted the meaning of the word “capital” is found in the case of Parkinson vs. State Bank of Millard County et al, 87 Utah 278, 35 Pac. 2d 814. Plaintiff in that case contended that the word “capital” included all of the bank’s assets. The defendant’s position was that the word “capital” meant only the paid-up capital of

the original incorporators and investors, in other words "capital stock." Revised statutes of 1933, 7-3-35, read as follows:

"Whenever any such bank shall accept an appointment as * * * executor * * * the capital of such bank shall be held as security for the faithful performance * * * ."

Plaintiff's claim arose as beneficiary of an estate which the bank was administering, and it became important to plaintiff that the word "capital" meant all of the bank's assets.

In deciding what the word "capital" meant, the Court considered the cases and also text book authorities, and then concluded as follows:

"In view of the text and judicial authorities referred to, it, by the great weight of authority, is clear that the term 'capital' as applied to corporations generally including banking corporations, whether the term be regarded in a popular sense and in the common usage of the language or in a legal sense, embraces the actual estate including assets of the corporation, whether money or property owned by it, and whether represented by money paid in for shares of stock or other property acquired and owned by the corporation. * * * *Ordinarily the legislature speaks only in general terms. Its intention and meaning primarily must be determined from language of the statute which should be given a liberal interpretation. Words and phrases are presumed to have been used according to the plain, natural, and common import and usage of the language, unless obviously used in a technical sense.*"

Again, in the case of Conover vs. Board of Education, 110 Utah 454, 175 Pac. 2d 209, the statute in controversy was one which required an annual statement to be published

in a newspaper of general circulation in the school district showing "the moneys paid out, and for what paid, and in county school districts, also to whom paid."

The school district contended that the part above quoted required that it show only "to whom" the money was paid and not what was paid. Conover, a taxpayer, believed that the general import of the statute also required a showing as to what was paid. In discussing the point, the Supreme Court quoted from a former case, *Crocket vs. Board of Education*, 58 Utah 303, 199 Pac. 158, 159, as follows:

" 'It is apparent from a reading of the statute that it was designed for the benefit and interests of the citizen taxpayer so that they may be informed as to whether or not the financial affairs of the school district each year have been properly and lawfully conducted on the part of the Board of Education.

'It is one of the cardinal rules of construction that a statute must be construed with reference to the objects sought to be accomplished by it. The mere general statement that certain sums of money were received and certain sums paid out on account of the support and maintenance of the public schools affords no information to the taxpayer and subverts none of the purposes intended by the enactment of the statute under consideration.' "

In harmony with the pronouncements of our own Court is the following from 82 CJS, under the title of Statutes, Paragraph 323, Page 593:

"In construing a statute to give effect to the intent or purpose of the legislature, the court must look to the object to be accomplished, and the evils and mischiefs sought to be remedied. In ascertaining the

intent and purpose, the court must also look to the purpose to be subserved by the statute, and should place such construction on it as will, if possible, effect the purpose of the statute, and likewise according to the judicial decisions such construction as will render it valid even though it may be somewhat indefinite.

"In construing a statute to effect the legislative purpose it should be given a reasonable construction, or, as otherwise stated, it should be given a construction which is sensible, practical, workable, or liberal. If a statute is susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, * * * .

"When the purpose of an act is expressed in clear and unambiguous terms, this must be accepted as the solemn declaration of the sovereign, and taken as true unless incompatible with the meaning and effect of the statute. Accordingly, *the legislative declaration of purpose and policy is entitled to the gravest consideration*, unless overthrown by facts of record, and a statute will, if possible, be given a construction which is consistent with its declared purpose."

In determining legislative intent an important principle is that every word in a statute is meaningful and must, if possible, be given an interpretation which will render every word operative. This principle is stated in the case of *Wrathall vs. Johnson*, 86 Utah 50, 103:

"Keeping in mind at least two rules of statutory construction, first, if possible, every word and phrase of a statute must be given effect, and no word shall be rejected if possible to retain them and give them effect and meaning; and, second, the intent of the legislature must be ascertained and given effect, which intent and meaning is to be determined primarily from the lan-

guage of the statutes themselves, recognizing that in so doing it is not proper to consider a word or phrase disconnected from all parts of the act and recognizing that words and phrases must be given their ordinary meaning, unless it is necessary to give to particular words or phrases a restricted or an enlarged meaning so as to harmonize all the provisions of the statute and make them effective. Also keeping in mind the purpose for which the statute was enacted * * * .”

An interesting application of the above rule appears in the case of *Stevenson vs. Salt Lake City Corporation*, 7 Utah 2d 28, wherein the meaning of 10-8-40 U.C.A., 1953, was brought in question. By this statute cities are authorized “to license, tax, *regulate and suppress* billiards, pool, bagatelle, pigeonhole or any other tables or implements kept or used for similar purpose; also pin alleys or table, or ball alleys; may also license, tax, regulate, *prohibit or suppress* dance halls, dancing resorts * * * .”

Pursuant to the above statute, Salt Lake City passed an ordinance *prohibiting* bagatelle, pin ball, and marble machines. The District Court held this was beyond the authority of the city, which the Supreme Court affirmed.

“Although ordinarily the words ‘suppress’ and ‘prohibit’ are somewhat synonymous in that they may mean to stop or prevent or keep back completely, they are clearly not meant to be synonymous in the statute involved herein. *It is a common rule of construction that wherever possible each word in a statute must be given a meaning, and ‘that construction is favored which will render every word operative, rather than one which makes some words idle and nugatory.’* 50 Am Jur, Statutes, Sec. 358, Pages 363-4. If we were to hold that the legislature intended the words ‘sup-

press' and 'prohibit' to be synonymous, we would have to overlook the fact that the legislature in Sec. 10-8-4 in dealing with billiards, pool, bagatelle, etc. only granted the cities the power to license, tax, regulate and suppress, whereas in dealing with the subject of dance halls, they were granted the power to license, tax, regulate, *prohibit* or suppress. If the legislature had not intended to grant different powers in the case of amusements than in that of resorts there would have been no necessity of dealing with them separately in the same section."

Our Supreme Court has also expressed itself on the use of the disjunctive word "or." In *Ringwood v. State*, 8 Utah 2d 287, the question arose as to whether one charged with drunkenness was required to submit himself to a blood test under a statute providing that "any person who operates a motor vehicle in this state shall be deemed to have given his consent to a chemical test of his breath, blood, urine or saliva for the purpose of determining the alcoholic content of his blood * * * ." The officer had advised the motorist that he must submit to a blood test. The Supreme Court did not agree with the officer. It said:

"The words being in a series, the only connective being the disjunctive 'or', it applies to the whole series. Therefore, the ordinary and usual meaning of the language would be that the subject is deemed to give his consent to a test of some one of the designated substances, or of another, but not all of them. That is, of his breath, or of his blood, or of his urine, or of his saliva."

In our view, the foregoing principles of statutory construction should guide the Court in the interpretation of the

Law in question. But we cannot leave this subject without considering the testimony of witness J. Bracken Lee (which appears in full in the appendix), and Petitioners' Exhibit 1 (R. 24). This evidence was offered by petitioners because the respondents and the Court had indicated some disposition toward the view that the Law was not plain and unambiguous on its face. We, therefore, at the trial proceeded on the theory that if the Court and our opponents wanted some interpretive assistance outside the language itself, we would be happy to accommodate them. But our efforts along this line were met by respondents' objections to Exhibit 1 which was sustained so that it was not an influence upon the Court's decision. The Court, however, made the exhibit "part of the record so that the Supreme Court, if this case is appealed, may say whether or not I erred."

Exhibit 1 (R. 24) is an official communication sent out by Governor Lee during the time he was Chief Executive of the State of Utah explaining the Right-to-Work Law (R. 48, p. 60). In the letter he says:

"Although it is not generally known, the Utah 'Right to Work' bill extends to any labor union, labor organization or 'any other type of association' *and is not confined to labor unions alone. It is essential that this be understood in order to gain a proper picture of the bill.*"

The trial judge, referring to other statements in the letter, said during the trial:

"this doesn't mention political parties either. * * * It simply says other organizations, and then he mentioned specifically others, like the Farm Bureau and

Church and so on, but doesn't mention the Democratic or Republican parties, so I don't think that I get any aid from the letter." (R. 48, p. 66). -

Exhibit 1, therefore, is an executive view of the Law which at most means all associations other than labor organizations and at least means some associations other than labor organizations. We submit that if the phrase "or any other type of association" has a meaning that would include one association other than labor, it must, of necessity, include all associations other than labor.

That executive interpretation of statutes are proper aids to their construction is a rule well settled by this Court. *Sinclair Refining Co. v. State Tax Commission et al*, 102 Utah 340; *E. C. Olsen Co. v. State Tax Commission*, 109 Utah 563. See also 82 C.J.S., p. 778, para. 359, and *Fleming v. Mohawk Wrecking and Lumber Co.*, 331 U.S. 111, where the U.S. Supreme Court says:

"Such construction by the Chief Executive, being both contemporaneous and consistent, is entitled to great weight."

While we take the position that the language of the Law is plain and unambiguous and that the foregoing rules of interpretation point clearly to the fact that the intent was to include not only labor organizations but all types of associations, we also take an alternative view that if this Court believes that the Law is sufficiently obscure as to require aid outside the language itself, then Exhibit 1 should be considered and viewed with the significance herein discussed.

With the foregoing interpretive rules and aids we now proceed to an analysis of the statute, confining ourselves to

an analysis of the language itself in the legislative setting then existing in this Country.

POINT III

POLITICAL PARTIES, INCLUDING THE DEMOCRATIC AND REPUBLICAN PARTIES OF UTAH COUNTY, ARE A TYPE OF ASSOCIATION AS CONTEMPLATED BY THE ACT.

The Utah Right to Work Law is unique. When enacted in February, 1955, there were 16 states which had already adopted and retained such laws, but the intent, purpose, and language of the Utah Law manifested a sharp departure from all other such laws in the scope of its coverage. In all the other states, the application of the right-to-work policy was limited to (1) labor organizations and (2) private industry, whereas, the Utah Law is not so limited, but includes any other type of association and also public employment.

A list of the phrasing as to the area covered by the right-to-work laws in these other states as of February, 1955, follows:

Alabama: "labor union or labor organization" SLL 10:285

Arizona: "labor organization" SLL 12:276

Arkansas: "labor unions" SLL 13:291

Florida: "any labor union or labor organization" SLL 19:285

Georgia: "a labor organization" SLL 20:191

Iowa: "any labor union, labor association or labor organization" SLL 25:195

Mississippi: "any labor union or labor organization" SLL 34:283

Nebraska: "a labor organization" SLL 37:291

Nevada: "a labor organization" SLL 38:287

North Carolina: "any labor union or labor organization"
SLL 43:285

North Dakota: "any labor union or labor organization"
SLL 44:276

South Dakota: "any labor union or labor organization"
SLL 52:267

South Carolina: "any labor union or labor organization"
SLL 51:285

Tennessee: "any labor union or employee organization of
any kind" SLL 53:278

Texas: "a labor union" SLL 54:281

Virginia: "any labor union or labor organization" SLL
57:271

In using the term labor union or labor organization some states define the term. Texas has such a definition, and then adds, "and shall not include associations and organizations not commonly regarded as labor unions."

It is apparent from these laws that they do not apply to the state government or to any of the states' political subdivisions. Employers are usually referred to as persons, associations or corporations in a context restricted to employers and employees in private industry. Georgia specifically excludes from the statute's applicaion "the state, or any political subdivision thereof". So these statutes offer obvious warnings to the legislative draftsman if the intent was to be restrictive as to the area of its coverage.

Now, how does Utah react to all of these significant guides?

First, instead of saying "labor union or labor organization," and then stopping as does every other state, Utah deliberately extends the area of coverage beyond labor unions and labor organizations by adding the significant phrase—significant in

view of the above: "*or any other type of association.*" Then, not content to be unique in this respect, the Legislature again sharply departs from the sixteen states and defines employer so as to "*include all persons, firms, associations, corporations, the State of Utah, its counties, cities, school districts and other political subdivisions.*"

If the Legislature wanted to restrict the application of the law to an employee's membership in unions only, as it was restricted in other states, how easy it would have been to plainly do so by using language similar to the then existing legislation in those states. By adopting the provisions referred to above which were, and still are, peculiar only to the Utah Law, it is made very plain that the Legislature wanted to part company with the other states, and really make the right-to-work policy nondiscriminatory and of general application so as to apply also to an employee's membership in any other type of association.

In 34-1-2, U.C.A., 1953, our labor laws had already defined a labor organization. Such an organization, as defined, is not difficult to identify. The Legislature either meant to restrict the coverage to a labor organization or it meant not to so restrict it. If it meant to so restrict it, there is no reasonable or logical explanation for the phrase in controversy and for its marked departure from the language of the laws of the other states. If in addition to labor organizations it meant also to cover associations other than labor unions, then the language is meaningful and will not do violence to the rules of statutory construction heretofore rendered by this Court, and can be used to effect the important declaration of policy in the Law. We believe that we can demonstrate that this is

a reasonable Law and an improvement over those laws from which the Legislature so obviously departed.

This Law must be read and studied in the light of its very strong policy statement. This gives us a sure guide as to what was intended. The policy reads:

“It is hereby declared to be the policy of the State of Utah that the right of persons to work, whether in private employment or for the State of Utah, its counties, cities, school districts or other political subdivisions, shall not be denied or abridged on account of membership or non-membership in any labor union, labor organization OR ANY OTHER TYPE OF ASSOCIATION; FURTHER, THAT THE RIGHT TO WORK MUST BE PROTECTED AND MAINTAINED FREE FROM UNDUE RESTRAINTS AND COERCION.”

So what is it then that was intended? Simply this: That whatever other causes may deprive one of work, his membership or non-membership in an association—*any type* of association—was not to be the cause of such deprivation. What kind of association is involved? Any kind where membership or non-membership therein can be used as a basis for denying or abridging the right to work. It makes no difference what functions such an association may perform. The Legislature was not concerned about the purposes or activities of an association to which an employee might belong. It wanted to assure a man his freedom to join or refrain from joining an association of whatever type he chose, civil, fraternal, political, religious, etc., because that was his own private business and concern which, as a free citizen, he had a right to exercise; and that in the exercise of the right to join an association

and in becoming a member thereof, his right to work was not to be *abridged or denied because of membership or non-membership therein*. The reasoning of the Legislature undoubtedly was that what a man does in his private life, independent of his daily work, is a matter which is entirely irrelevant to a man's ability to serve as an employee, and therefore ought not, in any way, to penalize him in his relations with his employer, certainly, at least, to the extent of depriving him of that employment.

That Utah should be the State to enlarge the area of application of the right-to-work concept to include associations other than labor associations is not surprising in view of the traditional feeling in this state concerning the divine right of free agency to every individual in all phases of life. This view was recently expressed by President David O. McKay of the Church of Jesus Christ of Latter-day Saints. His opinion as to state right-to-work laws had been sought by the United States Chamber of Commerce. In a letter directed to the Chamber, dated June 23, 1961, and signed by Joseph Anderson, Secretary of the First Presidency, we read:

"I am directed by President David O. McKay, president of the Church of Jesus Christ of Latter-day Saints, to advise you that we stand for the Constitution of the United States, and for all rights secured thereby to both sovereign states of the Union and to the individual citizen.

"We believe it is fundamental that the right to voluntary unionism should once again be re-established in this nation and that state right-to-work laws should be maintained inviolate.

"At the very basis of all our doctrine stands the right

to the free agency of man. *We are in favor of maintaining this free agency to the greatest extent possible. We look upon any infringement thereof not essential to the proper exercise of police power of the state adversely.*" Salt Lake Tribune, Sunday, September 17, 1961.

President McKay's view that free agency should be maintained to the greatest extent possible and that ANY infringement thereof is looked upon adversely certainly reflects one of the most basic teachings of the people of this State from its earliest history and also mirrors the broad application of the Law's policy when it states: "further, that the right to work *must be* protected and maintained *free from undue restraints and coercion.*"

When Utah passed its Right to Work Law not one of the states that had such laws had any language to compare with the language above quoted. Arkansas' policy speaks of "Freedom of organized labor," and Texas' policy speaks of "The inherent right of a person to work and bargain freely with his employer," but none speak in the GENERAL language of the Utah Law, which makes no attempt to restrict the meaning to organized labor or to the specific right of a person to bargain with his employer. In our Law there is no limitation. It is simply that a man's right to work must be protected from undue restraint and coercion under ANY circumstance. And in no state would one be more likely to find such a generalized approach to the problem than in Utah where the people have traditionally and with great fervor believed in the divine source of their free agency in all aspects of life. We venture the opinion that few, if any, state legislatures could be per-

suaded to enact what this State has enacted by this Law, and that the reason for it does indeed rest in the belief of the people of Utah to which we here allude.

In speaking of the policy of this State that the right to work should be protected and maintained free from undue restraint and coercion, where, we ask, can one find a greater tendency to violate the spirit of this policy than in the employment practices of our governmental agencies? Where, in fact, can we look to find a more flagrant violation of this policy than in the wholesale firing of the petitioners on the day after the new political regime was sworn into office in Utah County on January 3, 1961? There is not one word of criticism in the entire record of the quality and excellence of the work which these petitioners had been rendering Utah County. On the contrary, there is strong commendation of the work and service which they had performed while employed by the County. (R. 32, 40).

In view of such facts as are present in this case showing, as they do, such an aggravated abuse of a policy so simply and emphatically stated without reservations or limitations, how can our courts resist granting relief from such conduct? Note that after we read "or any other type of association," there is a semicolon, then "FURTHER, that the right to work must be protected and maintained free from undue restraints and coercion." This general language should leave no doubt as to the generality of the word "associations," for the quoted phrase is entirely free of limitation. This is a significant contrast with the two states which speak of a policy of freedom of organized labor or of the freedom of a person to bargain

with his employer. Our State is concerned about the freedom of ALL labor to have their work protected and maintained even including government labor from undue restraints and coercion by virtue of their membership and activities in any type of association.

In view of the general nature of the language used in this Law, it is appropriate to remind ourselves of Article I, Section 24 of the Constitution of Utah: "All laws of a general nature shall have uniform operation." If this Law, therefore, is to apply to any labor it must apply to all labor. In this State a man is free to belong to any association without fearing that such affiliation shall influence his obtaining or retaining a job.

EFFECT OF LAW

If, as the Trial Court states, it would be "absurd" to include political parties within the meaning of association, it presumably and perhaps necessarily follows that the inclusion of any other type of association would be at least equally absurd. And, of course, it has been organized labor's view that this law as applied to labor is absurd.

But let us analyze how the statute works. When an association is involved, how it is involved? Actually the association itself is never involved. What is involved is a dispute between an employer and an employee as to a particular grievance only, which is: Does the employee belong to some association that is obnoxious to the employer or does the employee not belong to some association to which the employer would like him to belong? The association itself and the employee's membership or lack of membership therein is a fact which this Law

says shall not influence the employer-employee relationship; at least such fact cannot be a cause for denying or abridging the right of an employee to work for his employer. The grievance, the dispute, the rights of action, the liability—all exist between, and relate to, the employer and employee, and in no way involves the association to which the employee is or is not affiliated.

The application of the law may be illustrated by one's membership in a union. When an employee joins a union he does so for the purpose of supporting the joint effort of all the employees in obtaining better wages and working conditions. This law says that the employer cannot dismiss that employee for becoming or remaining a member of that union. As we understand it, respondents do not object to this part of the law. Yet in such a case it is very much a matter of concern to the employer because if a majority of his employees vote to have a union represent them as their collective bargaining agent, the employer is going to have pressure on him to divide a greater share of his profits with them.

In this case the particular right to work that has been denied is the right of certain county employees to work for Utah County, and the denial is due to their membership or non-membership in a political association. Of all types of associations, other than labor organizations, that can have an influence on a man's right to work, probably none has had so much influence on that right than has our political parties. Judging from experience, none will come as close to a labor union situation as will a political party. This is because victorious political candidates traditionally have even gone beyond

union shop principles and have often demanded not only that a job holder under his administration become a member of his political party, but have further insisted that the appointee already belong to the party *before* he gets his job. In other words, they have followed a closed-shop practice, a practice which is outlawed as to unions both in the Taft-Hartley Act and also by our own State Law.

Under a statement of policy so strong as is the statement of our right-to-work policy, and under phrasing throughout the entire Law that so consistently and obviously includes, "any other type of association," can there be any serious question but that the Legislature intended to include political parties?

If this law is a good and reasonable law as to an employee's membership in a labor union, a fortiori, it is a good and reasonable law as to an employee's membership in "any other type of association." In applying the general policy of this law to a given employer-employee relationship, it makes no difference with what functions and objectives the association to which the employee belongs is involved. This law says such considerations must not be the cause of terminating that employer-employee relationship. Other reasons, yes, but not this reason. Freedom, says the Legislature, includes the right to join or refrain from joining any type of association, and the right to work for an employer, without the exercise of either right affecting the other.

When the Legislature used the word "association" to include all other groups, it used a word peculiarly applicable to a political party. If there are those who would, although illogically, attempt to convince us that the word "association"

does not apply to the major political parties in this County, State and Nation, they will find no support from the political philosophers, nor from the legal encyclopedias, nor from the cases.

From 29 CJS 107 (para. 84) we read:

“Political parties result from *voluntary association* of electors and not from operation of law; and are political rather than governmental instrumentalities, since such parties are the creation of free men, according to their own wisdom, and in no sense whatever the creation of any department of the government.”

The leading case on this subject is *Bell v. Hill*, 74 S W 2nd 113, 114 (1934). This was a petition by some negroes asking that they be permitted to vote in the primaries of the Democratic Party in Texas. In discussing the problem, the Court said:

“In order that we may understand the questions involved in this case, it is essential that we clearly comprehend the nature of a political party, such as the Democratic Party. First of all, it is a *voluntary association*; an association formed of the free will and unrestrained choice of those who compose it. No man is compelled by law to become a member of a political party; or, after having become such, to remain a member. He may join such a party for whatever reason seems good to him, and may quit the party for any cause, good, bad, or indifferent, or without cause. A political party is the creation of free men, acting according to their own wisdom, and in no sense whatever the creation of any department of the government.”
* * * (The court then quotes at length from 49 CJ p 1075 and emphasizes by italics the “voluntary association” aspect thereof.)

The Court says much more concerning political parties as *associations* and in so doing quotes at great length from De Tocqueville's "Democracy in America" (first published in 1837). The court comments that De Tocqueville "noted at length the celerity with which voluntary associations were formed by the people of the United States for political and other purposes, and the effect which these associations had, not only on governmental affairs, but on social and business endeavors as well." The Court then quotes from De Tocqueville as follows:

"In no country in the world has the principle of association been more successfully used, or more unsparingly applied to a multiple of different objects, than in America. * * *

"An association consists simply in the public assent which a number of individuals give to certain doctrines; and in the engagement which they contract to promote the spread of those doctrines by their exertions. * * *

"The second degree in the right of association is the power of meeting * * * men have the opportunity of seeing each other; means of execution are more readily combined; and opinions are maintained with a degree of warmth and energy which written language cannot approach.

"Lastly, in the exercise of the right of *political* association, the partisans of an opinion may unite in electoral bodies, and choose delegates to represent them in a central assembly. * * *

"In America the liberty of association for political purposes is unbounded." * * *

"The most natural privilege of man, next to the

right of acting for himself, is that of combining his exertions with those of his fellow creatures, and of acting in common with them. I am therefore led to conclude that the right of association is almost as inalienable as the right of personal liberty. No legislator can attack it without impairing the very foundation of society." * * *

"There is only one country on the face of the earth where the citizens enjoy unlimited freedom of association for political purposes. This same country is the only one in the world where the continued exercise of the right of association has been introduced into civil life, and where all the advantages which civilization can confer are procured by means of it.

"In all the countries where political associations are prohibited, civil associations are rare. It is hardly probable that this is the result of accident; but the inference should rather be, that there is a natural and perhaps a necessary connection between these two kinds of associations."

"Civil associations, therefore, facilitate political association; but on the other hand, political association singularly strengthens and improves associations for civil purposes. * * * Political life makes the love and practice of association more general; it imparts a desire of union, and teaches the means of combination to numbers of men who would have always lived apart." * * *

"Political associations may therefore be considered as large free schools, where all the members of the community go to learn the general theory of association."

CONCLUSION

Inasmuch as the trial court was satisfied with the merits of the petitioners' case as to the facts and the law on all points except as to the one problem of interpreting the phrase "any other type of association," we have confined our attention to this problem. We take the general position that the phrase does indeed mean any type of association, and specifically, that whatever type of association it does or does not include, surely it must include political associations because of their traditional and well-recognized influence upon the acquiring and retention of jobs in our various bodies of government. The influence of political associations in this respect is not unlike the influence of unions, and to whatever extent, whether great or small, that any association has such influence, just to that extent did the Legislature intend this right-to-work law to be effective. With this view of the matter, the trial Court clearly erred in assuming that the intent of the Law was not to include political parties within the meaning of associations. The relief sought by petitioners should be granted, namely that the damages which the Court has already assessed, together with any other damage which the petitioners can show since the trial, be granted the petitioners, and they, and each of them, be restored to their employment with Utah County.

Respectfully submitted,

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APPENDIX

J. BRACKEN LEE, called as a witness by and on behalf of the Petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. BECK:

Q. Mayor, would you state for the record your residence and present occupation and name?

A. My name is J. Bracken Lee. My occupation is, at the present time, is Mayor of Salt Lake City. My address is 2031 Laird Drive, Salt Lake City.

Q. How long, approximately have you been a resident of Salt Lake City?

A. Thirteen years.

Q. Prior to your tenure as Mayor of Salt Lake City, Mr. Lee, did you hold any executive position with the State of Utah?

A. I did.

Q. Will you state what it was?

A. I was, served as Governor of the State of Utah from 1949 to January 1957.

Q. I invite your attention, Mayor, to a session of the Legislature in about 1955 that enacted a certain measure or measures, affecting generally the employee-employer relationship and ask you if you

remember specifically a bill commonly known and styled as the Right to Work Bill?

A. I do.

Q. In other words, the short title of that bill was known as Right to Work?

A. That is right.

Q. Was that bill enacted during your tenure as Chief Executive of the State of Utah?

A. It was.

Q. Did you sign that bill into law?

A. I did.

Q. Did you conduct any meetings by yourself through committees or otherwise respecting, affecting the enactment of that right to work bill?

A. Yes. Many meetings.

Q. Could you state with whom and for what purpose you held such meetings?

A. Yes.

Q. I mean just generally.

A. To discuss the merits of the bill with members of the different labor unions. The state head of the labor unions, a committee from the House. A committee from the Senate. And different groups of legislators.

Q. During the progress, prior to the enactment, and what I want to get at is the historical background of the bill as it was then in development and being written and approaching enactment, what was primarily the purpose of you convening these respective meetings? Committee meetings and otherwise?

A. The first, well I might say that I had a number of meetings with Ross Thoreson.

Q. Will you state who Ross Thoreson was and what his function was in the enactment of this bill?

A. He was a member of the legislature and the one who sponsored the bill. I talked to him, a number of legislators. They asked me what I would do if this bill was passed, and I told them that I would sign the bill.

MR. TAYLOR: We object to that and ask that it be stricken as hearsay.

THE COURT: The objection is sustained. The answer is ordered stricken.

Q. I understood you to say that Ross Thurman, Ross Thoreson was the sponsor of the Right to Work bill?

A. One of the sponsors, yes.

Q. Did he attend some meetings respecting enactment of this bill in your office during the time, the process of its being enacted?

A. He did.

Q. If you know, for what purpose did he meet with you and others?

A. To determine the attitude, my attitude toward the bill.

MR. TAYLOR: We object to that question and the answer on the grounds that it is immaterial, hearsay.

THE COURT: Well, he doesn't quote anything. He simply states what the purpose was so it wouldn't be hearsay exactly.

MR. TAYLOR: We fail to see the materiality, Your Honor.

THE COURT: What do you claim for it?

MR. BECK: Merely preliminary, if Your Honor please.

THE COURT: Preliminary to what?

MR. BECK: To the introduction of an exhibit and two more questions.

THE COURT: Well, let the answer remain.

MR. BECK: I might state generally this, Your Honor, in all frankness. We have been through at least three different sessions respecting this case respecting law points, and the primary purpose of that is to place before Your Honor and in the record the position of somebody that was present during the history of the time the bill was enacted, in other words legislative history.

THE COURT: Well, can you prove legislative history that way?

MR. BECK: I would state this generally, if Your Honor please, that legislative history may be proven by one who sponsors a bill, a committeeman who participates in it, by legislative entries and by official communications issued or adopted during the process of the time the bill was enacted. However, I will state that this would be, this is preliminary and if counsel want to make an objection I think—

THE COURT, Well, he answered the question, let it remain and you may proceed.

Q. Now during that time, Mayor, did you yourself actively participate in the drafting of the Right to Work bill as it was ultimately passed and became law?

A. Yes, a portion of it.

Q. What portion did you, what portion of the bill did you actively participate in the writing of?

A. That portion, which set forth those who would be affected by the bill.

Q. Now was the circle of those that would be affected by the bill reduced or enlarged as a result of your amendment?

MR. CORNABY: We object to that as immaterial, if Your Honor please.

THE COURT: I don't see the materiality.

MR. BECK: The purpose behind that question, if Your Honor please, was to, was to elicit just exactly what the issue was during the time the bill was in process of being enacted by the people who were charged with enacting the bill.

(Discussion between Court and Counsel.)

MR. BECK: I might shorten this just a little probably by—Then counsel can make a more formal objection. May this be marked.

Q. Mayor Lee, I invite your attention to what has been marked for identification in this case as Petitioner's Exhibit No. 1 and ask you if that appears to be a facsimile of your signature on the bottom?

A. Yes, sir.

Q. And was that an official communication that was sent out by you during the time you were chief executive of the State of Utah explaining the Right to Work Bill that we have under examination today?

A. Yes, sir.

Q. Do you know approximately how many copies of

that communication were sent out? Just guess, or just an estimate.

A. Better than a hundred.

Q. Do you know the reason it was sent out?

A. Yes.

Q. Would you tell us please?

A. To explain my reasons for supporting the bill. And to set forth— ,