

1962

In the Matter of the Premium Tax Liability of the Surety Life Insurance Company : Brief of Defendant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SURETY LIFE INSURANCE COM-
PANY,

Plaintiff,

vs.

STATE TAX COMMISSION OF
UTAH,

Defendant,

Case No.

9570

18 1962

Utah Supreme Court, Utah

BRIEF OF DEFENDANT

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IN THE SUPREME COURT OF THE STATE OF UTAH

SURETY LIFE INSURANCE COM-
PANY,

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STATE TAX COMMISSION OF
UTAH,

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BRIEF OF DEFENDANT

THE NATURE OF THE CASE AND ITS DISPOSI- TION BY THE UTAH STATE TAX COMMISSION

Defendant agrees with plaintiff's statement of the nature of the case and its disposition by the Utah State Tax Commission.

STATEMENT OF FACTS

The Tax Commission based its findings of fact upon a stipulation of facts entered into by the parties to the action. The following is a complete statement of those findings:

1. Surety Life Insurance Company is a stock legal reserve life insurance corporation duly organized under

the laws of the State of Utah, and domiciled in this state. The company commenced business in Utah in 1936 and has thereafter fully qualified and complied with the laws of this state and various other states in which it does business. During the year 1959 the company was qualified and doing business in several states. There follows a statement of the nature and volume of such business allocated by states and territories for the year 1959 with an analysis of premiums paid to the company:

	LIFE	ACCIDENT & HEALTH	TOTAL
Arizona	\$ 132,784.00	\$ 106,295.42	\$ 239,079.42
Colorado	50,195.42	80,947.82	131,143.24
Hawaii	8,646.03	5,757.02	14,403.05
Idaho	184,783.01	197,662.06	382,445.07
Montana	103,372.94	96,191.19	199,564.13
Nevada	181,712.40	87,427.60	269,140.00
New Mexico	25,172.82	20,329.28	45,502.10
Oregon	55,857.66	111,398.74	167,256.40
South Dakota..	42,650.34	28,192.94	70,843.28
Utah	614,350.32	192,481.09	806,831.41
Washington	194,820.25	228,743.23	423,563.48
Wyoming	87,504.15	90,650.77	178,154.92
Misc. States	72,857.50	40,288.74	113,146.24
	<hr/> \$1,754,706.84	<hr/> \$1,286,365.90	<hr/> \$3,041,072.74

2. During the year 1959 a full and complete examination of the business and affairs of the Surety Life Insurance Company was made pursuant to law. A report on this examination was made as of December 31, 1958, published September 4, 1959. The total cost of the examination paid for in the year 1959 by Surety Life Insurance Company was \$15,946.97. This total may be broken down as follows:

Paid to Harold O. Smith, examiner in charge and other examiners from the State of Utah.....	\$3,932.20
Paid to Patrick Coursey, examiner from the State of Colorado.....	3,840.00
Paid to William B. Johnson, examiner from the State of Arizona.....	4,016.88
Paid to L. W. Pfarrer, actuary from the State of Colorado.....	3,892.13
Printing Expenses.....	265.76
	\$15,946.97

3. The Surety Life Insurance Company filed an insurance premium tax return with the State of Utah for the calendar year 1959 which accurately computed the amount of tax on total net premiums at \$13,402.95. The company claimed as a credit therefrom the cost of the insurance examination in the amount of \$15,946.97, leaving no tax due.

4. On or about February 24, 1960, and again on April 5, 1960, the Auditing Division of the Utah State Tax Commission asserted an insurance premium tax deficiency assessment for the year 1959 against the Surety Life Insurance Company in the amount of \$9,172.03 plus \$30.57 interest from 4-1-60 to 4-20-60. On December 2, 1960, this deficiency was sustained by the State Tax Commission with interest at 6 per cent from April 1, 1960. In computing the deficiency against the Surety Life Insurance Company, the Auditing Division of the State Tax Commission ascertained that the ratio of premiums collected by the company in Utah relative to the total premiums collected by the company in all states and

territories for 1959 was 26.5312 per cent. This percentage was then applied against the \$15,946.97 total cost of examination to the Surety Life Insurance Company so that the "examination fees allowable" (26.5312%) was computed at \$4,230.92.

5. Scope of Utah Triennial Examinations

(a) An examination is undertaken and assumed by the Utah Insurance Commissioner as to domestic insurance companies every three years pursuant to law.

(b) A full examination requires complete consideration of the operations of an insurance company, including analysis of business done outside as well as business done inside the State of Utah.

(c) A wholly Utah-conducted examination is as comprehensive as a cooperative triennial-"association" examination.

(d) Whether or not other states join in, the examination is conducted by examiners who analyze phases of the business of the company independent of and not confined to state lines.

(e) Premiums paid in Utah bear no relationship to the scope and comprehensiveness of the examination required by the Utah commissioner. The same scope of examination is required by the Utah commissioner whether one-fourth or three-fourths of the premiums are paid in Utah.

6. Utah triennial examinations are conducted as “association” or “convention” examinations, or in cooperation with “association” or “convention” examinations where insurance companies do substantial business in other states.

(a) Substantially all of the Utah triennial examinations since enactment of the Utah Insurance Code in 1947 have been “association” examinations or in cooperation with “association” examinations where the insurance company in question was engaged in substantial business in other states; where insurance companies are not engaged in substantial business in other states, triennial examinations are nevertheless conducted by the Utah Insurance Department.

(b) Procedures, rules and regulations of the National Association of Insurance Commissioners (NAIC) as found in the “Manual of Association Practice and Procedure, Second Edition, 1951” are consulted and followed as a guidepost for the conduct of the examination whether or not it is conducted on an “association” basis.

(c) Examiners from states other than Utah ordinarily participate in the Utah triennial “association” examination where the insurance company being examined does substantial business in other states. Such examiners act under the supervision of the Utah Insurance Commissioner.

(d) The “convention examination” referred to in U.C.A. 1953, 31-3-1(3) is another name for the “association examination.”

7. Utah triennial examinations are called by the Utah Insurance Commissioner and are under his direction and supervision. As to Utah triennial examinations which are conducted in cooperation with "association" examinations:

(a) The Utah commissioner requests through the office of the executive secretary of the National Association of Insurance Commissioners that an "association" examination be called and that examiners from the states in which the insurance company does business outside of Utah be appointed to cooperate in the examination.

(b) The Utah commissioner supplies assistance and supervises the entire examination.

(c) Actuarial assistance is obtained directly by the Utah Insurance Commissioner.

(d) An "examiner in charge" is directly appointed by the Utah Commissioner. The examiner in charge takes charge of the examination.

(e) Other examiners, including those from other states, have voluntarily acted under the direction of the Utah commissioner through his examiner in charge or directly.

8. Report of examiners relating to Utah triennial examinations which are conducted as "association" examinations or which are conducted in cooperation with "association" examinations:

(a) The "Manual of Association Examination Practice and Procedure" is ordinarily used as a guide for procedures in such examinations and was so used throughout the Surety Life Insurance Company examination. During the administration of Carl A. Hulbert, who was the Utah commissioner of insurance during the 1959 examination of the Surety Life Insurance Company, examiners making triennial-"association" examinations submitted a rough draft copy of their proposed report to the Utah Insurance Commissioner for scrutiny. At this point it was decided, among other things, what matters should be gone into further. Representatives of the company being examined also were given the right to scrutinize the report and to have a hearing on any matter proposed to be contained therein. Thereafter, the Utah commissioner would authorize printing of the report.

(b) Conferences between the Utah commissioner and all examiners as well as the company are contemplated before the report is approved and certified by the Utah commissioner.

(c) The report is approved, certified and adopted by the Utah Commissioner.

(d) Official distribution of the report is authorized by the Utah Commissioner only after he has approved it.

9. Facts relating to Surety Life Insurance Company examination as of December 31, 1958:

(a) The Utah insurance commissioner authorized a triennial examination and requested through the executive secretary of the National Association of Insurance Commissioners (NAIC) that an "association" examination be called and that there be cooperative participation by representatives from states outside of Utah in which the company was doing business.

(b) The examination was conducted under the direction of Utah insurance commissioner Carl A. Hulbert, personally and through his designated "examiner in charge," Harold Smith of Wood, Child, Mann and Smith, Salt Lake City.

(c) The out-of-state examiners from Arizona and Colorado were selected in due course under the "zone" examination procedures of the NAIC. These examiners were accepted by the Utah insurance commissioner, Carl A. Hulbert, and designated by him to participate in the examination here. During the course of the examination, they consulted with and acted under the direction of Mr. Smith as the examiner in charge and worked indirectly through the Utah insurance commissioner's office, having conferences there with Carl A. Hulbert, Insurance Commissioner, and Jack F. Nell, Chief Deputy.

(d) An actuary, Louis Pfarrer, was employed under the direct authority of the Utah Insurance Commissioner to examine all actuarial phases of Surety's business in all states.

(e) The out-of-state examiners and the actuary submitted bills for payment to the examiner in charge,

Harold Smith, who weekly submitted such bills to the Surety Life Company for payment.

(f) The report which was prepared by the Examiners entitled "Report on Examination, December 31, 1958", was first submitted to Carl A. Hulbert, Utah Insurance Commissioner in rough draft form for suggestion and modifications, and after various changes and additions were made at the suggestion of the Utah Insurance Commissioner's office and consultation through the Utah insurance commissioner's office with the Surety Life Insurance Company, the report was approved, certified and adopted by the Utah Insurance Commissioner and the original thereof was filed in the office of the Utah Insurance Commissioner. Thereafter, under the authority of the Utah Insurance Commissioner, the report was circulated to various other states.

(g) The scope of the Surety Life Insurance Company examination and the conduct thereof was in accordance in all respects with the precepts and facts stipulated to be applicable to Utah triennial examinations generally, as contained in paragraphs 5, 6, 7 and 8 herein.

BACKGROUND OF INSURANCE REGULATION AND EXAMINATION PROCEDURES

The insurance code establishes certain standards with which an insurer must comply if he is to engage in the insurance business in the State of Utah. Section 31-

1-8, U.C.A. 1953¹. These standards, however, would mean nothing if the state possessed no means of actually determining whether they are met or violated.

The responsibility for the administration of the regulatory portions of the insurance code is lodged with the Insurance Department and the Commissioner of Insurance, who is its chief executive officer. (Sections 31-2-1 and 31-2-2, U.C.A. 1953.) Thus, the legislature has designated the Commissioner of Insurance as the officer responsible for insuring compliance with the standards of conduct and operation established by the insurance code. In order for the Commissioner to insure such compliance, he has been given power to examine the affairs, accounts, records, documents and assets of each insurer doing business in the State of Utah. (Section 31-3-1, U.C.A. 1953.)

This direction to the Commissioner is not peculiar to the State of Utah. The insurance codes of all of the states of the Union were enacted because the respective legislatures determined that the insurance business is affected with the public interest and, therefore, should be regulated by the state. In that way the public might be protected from unscrupulous profiteers who would willingly accept the public's premiums but who would be unwilling or unable to provide indemnity upon the presentation of claims. The Insurance Commissioner of each

¹. 31-1-8, U.C.A. 1953. "Within the intent of this code the business of insurance is one affected with the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance."

state is similarly directed to examine periodically the insurance companies of his state in order to obtain proper control over the activities, assets, reserves and solvency of such companies in the interest of the citizens of the state. However, the legislatures have recognized that the Insurance Commissioners of each state periodically examine each insurer domestic to such state and have concluded that it would be an unnecessary duplication of effort to require the Insurance Commissioner of each state also to examine periodically each of the foreign insurers doing business within the state.

The Convention or Association Examination (hereinafter referred to as Association Examination) is a practical solution to an otherwise almost insurmountable problem. If each State Insurance Commissioner were to undertake periodically to completely examine every foreign company doing business within his state, the result would be unnecessary duplication of effort, confusion, unwarranted interruption of the company's business and unjustified expense, if not complete chaos, in the insurance industry.

Recognizing the practical difficulties attendant upon such an undertaking by each of the State Insurance Commissioners, the National Association of Insurance Commissioners adopted the Association Examination principle under which the report of the examiner authorized to represent a particular state is accepted by the Insurance Commissioners of other states. In order for an examiner to qualify for participation in the Association Examination, he must be regularly employed by an

Insurance Department or by an accounting firm or consulting actuary representing an Insurance Department to conduct its examination work. Also, his Insurance Commissioner must have certified to the Executive Secretary of the N.A.I.C. that such examiner is authorized to represent his department in Association Examinations. (*Manual of Association Examination Practice and Procedure*, 2nd Ed., 1951 Revised, Sec. 3, page 4.)

That the State of Utah has adopted the Association Examination principle is evident as the Commissioner is directed to consult and cooperate with other Insurance Commissioners, to share with other states in the employment of actuaries, examiners, etc., whose services or the products thereof are made available and useful to the participating states and the Utah Commissioner. The Commissioner of Insurance in the State of Utah is not compelled by statute to examine any foreign insurance company at any time. Indeed, the Commissioner is expressly authorized to accept a report of examination of a non-domestic insurer certified by the Insurance Commissioner of such company's state of domicile. (Section 31-3-1(4), U.C.A. 1953.) However, he is required to examine each domestic insurer not less frequently than every three years. (Section 31-3-1(4) U.C.A. 1953.) In addition, he must conduct his examination of the domiciliary insurer coincident with and as part of the regular Convention Examination, if any, of the insurer made by or on behalf of the other states. (31-3-4(3), U.C.A. 1953).

ARGUMENT

Defendant agrees with the statement of the fundamental question as set forth by plaintiff.

POINT I.

THE EXAMINATION OF PLAINTIFF IN 1959 WAS IN WHOLE OR IN PART AN "ASSOCIATION" OR "CONVENTION" EXAMINATION, MADE BY OR ON BEHALF OF THE OTHER STATES INVOLVED, WITHIN THE PURVIEW OF 31-3-1(3), U.C.A. 1953.

Plaintiff contends that the examination of its affairs was not an Association or Convention Examination made by or on behalf of other states. (Pages 17-18, plaintiff's brief.) It appears that plaintiff attempts to portray the 1959 examination as a solely Utah examination incidentally involving out-of-state specialists employed by Utah. Its contention is that the examination's only out-of-state facet was the residence of the examiners. (Paragraph 2, page 10 of plaintiff's brief.)

Plaintiff also proposes that the Utah Commissioner is responsible as a matter of law for the Association Examination or Association phase of the examination. (Pages 18-19, plaintiff's brief.) In fact, throughout its brief, plaintiff seems to take the position that other states and their officials act as subordinates of the Utah Commissioner; that they really do not function as representatives of other states and as examiners in their own right representing sovereign states with equally critical interests in the management and affairs of the insurer that does business within their boundaries.

The Tax Commission found that the Utah Insurance Commissioner requested through the Executive Secretary of the National Association of Insurance Commissioners that an Association Examination be called and that there be cooperative participation by representatives from states outside of Utah in which the company was doing business. (Page 11, plaintiff's brief.) Such an examination was called and was, then, at least in part (that part handled by representatives from states outside of Utah in which the company was doing business), an Association or Convention Examination.

An Association Examination is cooperative in nature and is by virtue of cooperative agreement among the states, supervised by the state of the insurer's domicile, and:

“Utah triennial examinations are conducted as ‘association’ or ‘convention’ examinations or in cooperation with ‘association’ or ‘convention’ examinations where insurance companies do substantial business in other states.” (Page 7, plaintiff's brief.)

This in no way makes the examination any less an Association Examination within the purview of 31-3-1(3), U.C.A. 1953. The participation of the out-of-state personnel is voluntary. (Page 9 of plaintiff's brief.) They could resign without any consultation with the Utah Commissioner. (Pages 19 and 20 of plaintiff's brief.)

If other states failed to participate, the examination would no longer be even partially an Examination. How-

ever, that is not the case. States other than Utah did examine the company's affairs, accounts, records, documents and assets. To that extent the examination was an Association or Convention Examination within the meaning of 31-3-1(2), U.C.A. 1953. Association Examinations need not be instigated by Insurance Commissioners outside of the State of Utah to be properly denominated as such, and in fact are, in practice, almost always instigated by the state of the insurer's domicile, and, as a matter of practice, the Commissioner of the state of domicile takes charge.

In response to plaintiffs' argument that the payment of the expenses of all examiners can be made only to examiners who have been designated by the Utah Insurance Commissioner and that for purposes of payment such examiners are regarded as the Utah "Commissioner's examiners," Sections 31-3-1 through 7, U.C.A. 1953, read in *pari materia*, make it quite clear that the Utah portion of an examination is referred to in 31-3-6, U.C.A. 1953, and not the Convention portion. (Page 10 of plaintiff's brief.) However, this argument is of little importance as the payments are ultimately forwarded to the participating out-of-state examiners even if channeled through the Utah Commission. That portion of the examination costs is the result of out-of-state participation. The Convention phase of the examination was made by other states and on their behalf. The statutory provision, Subsection 31-3-1(3), U.C.A. 1953,² does excuse

². 31-3-1(3), U.C.A. 1953. "Regular examinations of any domestic insurer authorized to do business in other states shall be coincident with and as part of the regular convention examination, if any, of the insurer made by or on behalf of the other states."

the obligation of the Utah Commissioner to fully examine domestic insurers every three years. (Paragraph 2, page 17, of plaintiff's brief.) It does absolve the Utah Commissioner from a portion of the affirmative duties connected with the examination of the particular company involved. The scope of the 1959 Utah triennial examination was decreased in comprehension due to the participation of other states.

POINT 2.

THE INTENTION OF THE LEGISLATURE IN ENACTING SUBSECTION 31-14-4(3), U.C.A. 1953, WAS TO ALLOW AN INSURER TO DEDUCT ONLY THAT PORTION OF AN INSURANCE EXAMINATION WHICH IS "REQUIRED" BY THE UTAH CODE.

Section 31-14-4(3) provides as follows:

"If any insurance company shall have paid . . . any fee for examination required by this code during said year, it shall be entitled to deduct from the tax herein provided for . . . the amount of any such examination fee. . . ."

We submit that it was the intention of the legislature in 1947 to revise the insurance code in order, among other things, to coordinate examinations of insurance companies with the national pattern of such examinations as outlined by the National Association of Insurance Commissioners. In keeping with this national pattern, it was the intention of the legislature to require complete and full examination of domestic insurance companies every three years, to be conducted in conjunction with national or zone examinations under uniform N.A.I.C.

standards and with an eye toward avoiding duplication of cost to the companies themselves.

Section 31-3-1(3), U.C.A. 1953, provides that:

“Regular examinations of any domestic insurer authorized to do business in other states shall be coincident with and as part of the regular convention examination, if any, of the insurer made by or on behalf of the other states.”

The legislature designed to allow an examination cost deduction. However, it is apparent from the use of the phrase “coincident with and as part of” in conjunction with 31-14-4(3), U.C.A. 1953, that the only fee allowable as a credit against the Utah tax would be the amount that is directly attributable to the Utah business and not the cost of portions of the examinations attributable to foreign state participation which could be duplicated by the company in other states. Otherwise the insurer would be able to use the same, or a portion of the same, deduction in state which allows such an offset, thus artificially multiplying the out-of-pocket cost of the examination partly or fully by that number of states. Even if the deduction were only available in Utah it would be inequitable to assume that the intent was for the State of Utah to absorb by way of loss of revenue the total cost of an examination which directly benefits or is for the benefit of other states interested in the financial condition of an insurer authorized to do business in those other states, especially when Utah did not cause the expense. The insurer seeks to benefit from the greatly reduced expenses of examination under the Association

system, while at the same time offsetting all those expenses as a deduction against the Utah premium tax, adding economic burden to the State of Utah. As the insurer is only taxed on net premiums written within this state, it would appear that certainly less than the full amount of the examination fee alone should be allowed as a deduction, and that the State of Utah should not be required to bear the full economic burden of the cost deducted.

Neither the *Equitable Life & Casualty Insurance Co. v. State Tax Commission*, 122 Utah 293, 249 P.2d 955 (1952) nor the *Utah Farm Bureau Insurance Co. v. State Tax Commission*, 9 Utah 2d 421, 347 P.2d 179 (1959) cases cited by plaintiff spoke directly to the point in issue in this case.

POINT 3.

TO THE EXTENT THE 1959 EXAMINATION OF PLAINTIFF WAS PARTICIPATED IN BY OTHER STATES, IT WAS NOT "REQUIRED BY THE UTAH CODE WITHIN THE PURVIEW OF SUBSECTION 31-3-1(3), U.C.A. 1953.

Plaintiff appears to contend that the Commission requires Association or Convention Examinations. (Page 6 of plaintiff's brief.) Neither the Utah Code nor the Utah Insurance Commissioner has the jurisdictional power to require all or even a part of an Association or Convention Examination. The Utah Commissioner, as a matter of law, is responsible for the conduct of triennial examinations (31-3-1(1), U.C.A. 1953), but he is given a mandate to conduct these examinations in conjunction

with and as part of regular Convention or Association Examinations. Utah takes part in such examinations only upon approval of the National Association of Insurance Commissioners. Such an examination was called in 1959. (Pages 3 and 4 of plaintiff's brief.) Costs were paid by plaintiff to out-of-state examiners. Throughout its brief, plaintiff attempts to make it appear that other states and their officials act as employees of the Utah Commissioner. Its position is that they really do not function as representatives of other states and as independent examiners representing sovereign states with equally critical interests in the management and affairs of the insurer that does business in their state.

It is customary for the participating states in a Convention or Association Examination to voluntarily act under the direction of the domiciliary state's commission and to allow bills for payment to be channeled through that commission. As a matter of fact, this arrangement is convenient and logical in that the home offices of the insurer are located in the domiciliary state and of advantage in that respect in that it lightens the workload and, as a result, the ultimate cost of the examination.

However, the Utah State Legislature cannot require, as such, a Convention or Association Examination, nor can it require that an insurance company submit to one.

POINT 4.

THE PRORATION FORMULA ADOPTED BY THE UTAH STATE TAX COMMISSION IS SOUND IN LAW AND REASON, AND EFFECTUALLY IMPLEMENTS THE INTEN-

TION OF THE LEGISLATURE IN ARRIVING AT THE LEGISLATIVELY CONTEMPLATED DEDUCTION.

One function of an administrative body is to implement and carry into effect the broad and sweeping mandates of the legislative act. The legislature may confer upon administrative authorities the power to enact rules and regulations to promote the purpose and spirit of the legislation and carry it into effect. (42 Am. Jr. 49 Public Administrative Law.)

“Legislation must often be adapted to complex conditions involving a host of details with which the legislature cannot deal directly, and where the legislature legislates and indicates its will, it may delegate to administrative authorities the power to set up the details by . . . the enactment of rules and regulations.” 42 Am. Jr., Sec. 43, Public Administrative Law.

The Utah State Tax Commission is empowered to administer and supervise the tax laws of the state (Article XIII, Section 11, Utah Constitution, as amended), and to prescribe rules and regulations not in conflict with the Constitution and laws of Utah. (59-5-46(2), U.C.A. 1953, as amended.)

We submit that the proration formula was an attempt to, and in fact does, carry out the fair intentment of Section 31-14-4(3), U.C.A. 1953.

State v. Goss, 11 P.2d 340 (1932) is a case referred to by plaintiff on page 23 of its brief in support of its position. An action was brought by the State of Utah

wherein a defendant was charged with the "crime of violating rules and regulations adopted by the Utah State Board of Health affecting sale of sodas, soft drinks and other beverages." From a judgment sustaining defendant's demurrer to the complaint dismissing the cause and discharging defendant, the state appealed. Judgment was affirmed. The court in that case cites *Blue v. Beets*, 155 Ind. 121, 56 N.E. 89 and 93, 50 L.R.A. 64, for the proposition that:

"... It cannot be said that every grant of power to executive or administrative boards or officials involving the exercise of discretion in judgment must be considered a delegation of legislative authority. All that is necessary is that a law, when it comes from the law-making powers should be complete. Still there are many matters relating to methods or details which may be, by the legislature, referred to some designated ministerial officer or body . . . in aid of the successful execution of some general statutory provision. *Cooley, Constitutional Limitations*, 114."

The *Goss* case itself is clearly distinguishable from the instant case, in that there was nothing in the statutes in issue even defining a policy or creating a law with respect to the subject upon which the Board of Health had ruled and based its criminal complaint. As the court stated on page 565 of its opinion:

"The language (of the statute) must be taken to be limited to the particular matters and things specified in succeeding sections of the statute, wherein duties are imposed upon the State Board of Health with respect to particular subjects or situations with respect to the public health."

In the instant case there is a specific statute dealing with the deduction of examination fees, and a mandate to that effect. The words "required by the Code" are quite evidently capable of interpretation, and the Tax Commission has been placed in the position of interpreting and implementing it. In the *Goss* case, the court said, on page 565 of its opinion:

"It is clear that under this general language (Comp. Law of Utah 1917, Chapter 1 of Title 40, Sections 2705-2713) the State Board of Health is not empowered to pass rules and regulations having the force of law regulating the conduct of the people of the state with respect to all matters having some relation to the public health . . . The language must be taken to be limited to the particular matters and things specified in succeeding sections of the statute wherein duties are imposed upon the State Board of Health with respect to particular subjects or situations with respect to the public health."

That in effect is permission to regulate in a situation where there are specific duties imposed upon the administrative body such as in this case.

"In addition, administrative authorities, in the discharge of their duties, are called upon to construe and apply the provisions of the law under which they function. This does not . . . involve an unlawful use of legislative or judicial power. In addition to the power to enact legally binding regulations, administrative agencies may issue interpretations, rulings or opinions upon the laws they administer without statutory authorization to do so. . . . Such construction . . . is given effect by the

court when they are called upon to determine the true construction and interpretation of such legislation.” (40 Am. Jur. 77.)

The Commission has taken the position that a strict interpretation, giving consideration to words such as “required”, “may” and “shall”, would possibly result in the disallowance in full of any examination fees claimed by any insurance company not domiciled in Utah. In attempting to solve the matter in an equitable fashion, it has permitted foreign insurers the deduction of a proportionate part of the expense of the examination. As to domestic insurance companies, the Commission has allowed a proportionate amount of the examination fees to be deducted rather than simply the amount which represented that part of the examination performed by Utah.

Plaintiff is in error in assuming that because the Utah Commissioner supervised the examination procedure that all the costs were incurred by the Utah Commissioner. They were, in fact, paid to the agents of other states.

As to the statute admitting of proration, the statute admits of an examination cost deduction limited to examinations required by the Code. The Code requires only one examination; that is, a triennial examination by the Utah Commissioner of domestic companies. It is a mandate that it be given in conjunction with or as part of the regular Convention Examination, if any. As a result, they are given together or as one. The Tax Commission

must make a segregation of costs. The Tax Commission has segregated it according to a proration formula in an attempt to arrive at a reasonable relationship between business done in Utah by the company, the tax burden Utah places on that company, and a justifiable credit in the light of the company's total business picture. It is believed that other states should, if any advantage be given to the company, share in the burden of giving that advantage in proportion to the extent those states receive premium tax revenues.

POINT 5.

IF THE PRORATION FORMULA IS INVALID, THE ONLY LOGICAL ALTERNATIVE IS THE ALLOWANCE OF A CREDIT MORE LIMITED THAN THAT PRAYED FOR BY PLAINTIFF. THE METHOD ADOPTED MUST REFLECT UTAH-REQUIRED COST, WHICH IS NOT THE TOTAL COST OF THE ASSOCIATION EXAMINATION.

If the proration formula is rejected by the court as the proper method of implementing the legislative mandate contained in Subsection 31-14-4(3), U.C.A. 1953, we submit that in any event something less than the total examination cost should be deductible for reasons set forth in preceding detailed argumentation. Defendant submits a possible approach would be to allow the deduction of all costs actually paid over to and retained by the State of Utah.

POINT 6.

THE RULE OF STRICT CONSTRUCTION OF TAXING STATUTES IS NOT APPLICABLE TO THIS CASE.

The rule of strict construction of taxing statutes is not applicable to this case. The rule in Utah is that exemptions and deductions are to be strictly construed against the taxpayer. *Norville v. State Tax Commission*, 98 Utah 170, 97 P.2d 939, 126 A.L.R. 1318 (1940) cited with approval in *Equitable Life and Casualty Insurance Co. v. State Tax Commission*, 122 Utah 293, 249 P.2d 955 (1942). In any event,

“Without regard as to whether tax statutes should receive a strict or liberal construction, it is elementary that they should receive a fair construction to effect the end for which they were intended. This does not mean such a construction as to defeat the intent of the legislature.” (*Cooley, Taxation*, Vol. 2, Sec. 505, page 1125.)

In addition, we point out that the construction given a statute by those given the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reason. *McKendrick v. State Tax Commission*, 9 Ut.2d 418, 347 P.2d 177 (1959).

CONCLUSION

The 1959 examination of plaintiff was at least in part required by states other than Utah and made on their behalf. At least to that extent the examination was not “required by the Utah Code.” Hence, to that extent its cost is not available as a credit against plaintiff’s

premium tax. The decision of the Utah State Tax Commission should be affirmed.

Respectfully submitted,

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