

1992

# West Valley City v. Dennis L. Streeter : Brief of Appellant

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

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WEST VALLEY CITY, [REDACTED], Appellee Plaintiff/[REDACTED],	:	BRIEF OF APPELLANT
vs.	:	
DENNIS L. STREETER,	:	Case No. 920349-CA
Defendant/Appellant.	:	Priority No. 2

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APPEAL FROM THE THIRD CIRCUIT COURT IN AND FOR SALT  
LAKE COUNTY, WEST VALLEY DEPARTMENT, STATE OF UTAH,  
THE HONORABLE WILLIAM A. THORNE, JR., PRESIDING

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SEP 11 1992

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[REDACTED],  
Appellee,  
Plaintiff/Respondent,  
vs.  
DENNIS L. STREETER,  
Defendant/Appellant.

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,	:	
	:	BRIEF OF APPELLANT
Plaintiff/Respondent,	:	
	:	
vs.	:	Case No. 920349-CA
	:	
DENNIS L. STREETER,	:	
	:	
Defendant/Appellant.	:	

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STATEMENT OF JURISDICTION

This appeal is from a judgment and conviction for Cruelty to Animals, in violation of West Valley City Ordinance 23-5-104(8), a Class B Misdemeanor. This Court obtains jurisdiction pursuant to §78-2a-3(d) Utah Code Annotated (1992 as amended).

NATURE OF PROCEEDINGS

This is an appeal of right from final judgment of conviction for the offense of cruelty to animals entered in the Third Judicial Circuit Court in and for Salt Lake County, West Valley City Department, the Honorable William A. Thorne, Jr., presiding.

STATEMENT OF ISSUES PRESENTED

Standard of Review:

The issues presented for review pertain to whether the court erred in denying defendant's Motion to Dismiss and Motion for Reconsideration because RWVCO 23-5-104(8) is unconstitutional under numerous provisions of the Utah State and United States Constitutions. The standard of review for each of the issues on

review is the clear error standard as to the findings of fact of the court and the correction of error standard as to the court's legal conclusions. State v. Steward, 806 P.2d 213, 215 (Ut.App.Ct. 1991). The trial court's conclusions of law are accorded no deference and are reviewed for correctness. Rimensburger v. Rimensburger, 190 U.A.R. 48 (Ut.App.Ct. 1992).

Issues on Review:

1. Is Revised West Valley City Ordinance 23-5-104(8)(a) unconstitutional pursuant to Article XI, Section 5 of the Utah State Constitution?

2. Is Revised West Valley City Ordinance 23-5-104(8)(a) unconstitutional pursuant to the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the Utah Constitution, as being vague and overbroad?

3. Is Revised West Valley City Ordinance 23-5-104(8)(a) preempted by Title 7, Section 2156(d) of the United States Code, and an unconstitutional interference with interstate commerce and of the right to travel?

4. Is Revised West Valley City Ordinance 23-5-104(8)(a) violative of Section 1, Article I of the Utah Constitution and therefore void?

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES

Revised West Valley City Ordinance 23-5-104(8)(1985):

CRUELTY ANIMALS PROHIBITED.

(8) Animals for fighting:

(a) It shall be unlawful for any person or corporation to raise, keep or use any animal, fowl or bird for the purposes of fighting or baiting; and for any person to be a party to or be present as a spectator at any such fighting or baiting of any animal or fowl; and for any person, firm or corporation to knowingly rent any building, shed, room, yard, ground or premises for any such purposes as aforesaid, or to knowingly suffer or permit the use of his buildings, sheds, rooms, yards, grounds or premises for the purposes aforesaid.

(b) Law Enforcement Officers or Office of Animal Control officials may enter any building or place where there is an exhibition of the fighting or baiting of a live animal, or where preparations are being made for such an exhibition, and the Law Enforcement Officers may arrest persons there present and take possession of all animals engaged in fighting, or there found for the purposes of fighting, along with all implements or applications used in such exhibition. This provision shall not be interpreted to authorize a search or arrest without a warrant when such is required.

Revised West Valley City Ordinance 23-2-102 (1985):

POWERS OF ANIMAL CONTROL OFFICIALS.

(2) The Animal Control Director, his deputies, assistants and Animal Control Officers are hereby authorized and empowered to apprehend and take with them and impound any animal found in violation of this ordinance including, but not limited to unlicensed dogs.

Utah Code Annotated §10-8-84:

Ordinances, Rules and Regulations - Passage-Penalties

They may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city; and may enforce obedience to the

ordinance with fines or penalties as they may deem proper, but the punishment of any offense shall be by fine not to exceed the maximum Class B Misdemeanor fine under Section 76-3-3-1 or by imprisonment not to exceed six months, or by both the fine and imprisonment.

Title 7 U.S.C. Section 2156, (1990):

ANIMAL FIGHTING VENTURE PROHIBITION

(a) Sponsoring or exhibiting animal in any fighting venture

It shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce.

(b) Buying, selling, delivering, or transporting animals for participation in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, transport, or deliver to another person or receive from another person for purposes of transportation, in interstate or foreign commerce, any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture.

(c) Use of Postal Service or other interstate instrumentality for promoting or furthering animal fighting venture

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any interstate instrumentality for purposes of promoting or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.

(d) Violation of State law

Notwithstanding the provisions of subsections (a), (b), or (c) of the section the activities prohibited by such subsections shall be unlawful with the respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of laws thereof.

United States Constitution, Article I, Section 14:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they

reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah State Constitution, Article I, Section 1:

All men have the inherent and inalienable right to enjoy and defend their lives and liberties, to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Utah State Constitution, Article I, Section 7:

No person shall be deprived of life, liberty or property, without due process of law.

Utah State Constitution, Article XI, Section 5: (Please see Addendum for text)

STATEMENT OF THE CASE

This matter arose as the result of a DUI stop on May 27, 1990 (R-1. 37). Defendant was detained by West Valley City police authorities as he was returning from Arizona (R-1. 37) where defendant had engaged birds in fighting ventures where the sport of cockfighting is legal (R-1. 37). On May 30th, Dennis Streeter was charged with six counts of cruelty to animals, in violation of West Valley City Revised Ordinance 23-5-104, under Case No. 901001586 (R-1. 37).<sup>1</sup> The defendant was charged with

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<sup>1</sup> Case No. 901001586MC and Case No. 901001677 were consolidated by the Court of Appeals under Case No. 92-0349CA. Because the trial court's record is numbered individually under

raising, keeping or using poultry for the purpose of fighting. (Id.) The defendant was returning from having fought the birds in Arizona, where such fighting is legal. (Id.)

Subsequently, on May 31, 1992, the defendant was charged with one additional charge of cruelty to animals under a second information in Case No. 901001677MC (R-2. 1). In addition, the defendant was charged with the following violations under that same information:

(1) Doing business without a license in violation of West Valley City Ordinance 17-1-102; (Id.)

(2) Improper Uses for R-1-8 zone for operating a poultry business in violation of Revised West Valley City Ordinance 7-9-103; (Id.)

(3) Improper uses for R-1-8 zone for keeping poultry in non-zoned area in violation of Revised West Valley Ordinance 7-9-102; (Id.)

(4) Too many dogs in violation of West Valley City Ordinance 23-1-101; (Id.)

(5) Too many dogs in violation of West Valley City Ordinance 23-1-101; (Id.)

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each case number, all references to the record shall be as follows: R-1 shall pertain to the record in Case No. 901001586 and all references to R-2 shall pertain to Case No. 901001677.

(6) Failure to Obtain Rabies Vaccination in violation of West Valley City Ordinance 23-4-102; (Id.)

(7) Accumulations of Solid Waste and Littering in Violation of West Valley City Ordinance 24-1-11; (Id.)

(8) Improper Height for Fences in violation of West Valley City Ordinance 7-2-119 (R-2.). (Id.)

The defendant filed a Motion to Dismiss the cruelty to animals charges brought under both Case Nos. 9010011677 and 901001586 (R-2. 55-61), which motion was denied by memorandum decision, dated January 27, 1992 (R-1. 37). Subsequently, defendant filed a Motion to Reconsider the court's denial of defendant's Motion to Dismiss and presented additional grounds for challenging the constitutionality of West Valley City Ordinance 23-5-104, the violation of which was the basis of the cruelty to animals charges filed against the defendant (R-1. 47). Argument pertaining to defendant's Motion for Reconsideration was presented to the court on March 30, 1992 (Tr. 1-17). Said motion together with counsel's request for time to brief the issues set forth therein was denied by the court on the record of the trial proceeding conducted March 30, 1992 (Tr. 13).

On March 30, 1992, the defendant waived his right to a trial on the merits and entered a conditional guilty plea to count one of the information filed in connection with Case No. 901001586, to wit, cruelty to animals, a violation of West Valley City

Ordinance 23-5-104 (Tr. 10, 13, 19, 20). The remaining five charges of cruelty to animals set forth in the information were dismissed (R-1. 66, 67). The defendant also entered a conditional guilty plea to count four of the information filed in connection with Case No. 901001677, to wit, cruelty to animals, a violation of West Valley City Ordinance 23-5-104 (Tr. 11, 13, 19, 20). Defendant pled guilty to counts one, two and eight of the information, to wit, doing business without a license, improper use of R-1-8 zone for operating a poultry business in an improperly zoned area, and accumulation of solid waste and littering, respectively (R-2. 74, 75). All remaining charges filed in connection with Case No. 901001677 were dismissed (Tr. 11; R-2. 74, 75).

The defendant's reservation of right with regard to the conditional guilty pleas entered in both of the above-referenced cases, was put on the record at the sentencing proceeding and was incorporated into defendant's guilty plea affidavits (Tr. 10-15, 19, 20; R-1. 17-22, 49-54). On April 30, 1992, at the hour of 10:00 o'clock a.m., Judge William A. Thorne sentenced the defendant to sixty (60) days in jail and imposed a fine of \$1,000.00 (Tr. 73; R-2. 75). Said sentence was suspended pursuant to defendant meeting certain terms and conditions of said sentence, including the absence of further violations within a one year period, compliance with the terms of probation, and



compliance wit zoning ordinances (Tr. 73; R-2. 75). The defendant filed a Notice of Appeal May 29, 1992, in both Case No. 901001586 and Case No. 901001677 (R-1. 68, R-2. 76). The cases were consolidated by the Utah Court of Appeals under Case No. 920349-CA on June 23, 1992.

#### STATEMENT OF THE FACTS

The appellant is a resident of West Valley City, residing at 3351 South 7200 West (R-2. 1). Appellant has operated a poultry business at said residence, raising game fowl which he utilizes for fighting outside of West Valley City and the State of Utah, including Arizona, where cockfighting is legal (R-1. 37; Tr. 21, ln.13; Tr. 20, ln.17). Appellant was charged with cruelty to animals, inter alia, when he was stopped by West Valley Police officers on May 29, 1992 in connection with a DUI stop (R-1. 37). Defendant was en route to West Valley City from Arizona, where he had engaged fowl in the activity of cockfighting. (Id.)

#### SUMMARY OF ARGUMENTS

Revised West Valley City Ordinance 23-5-104(8)(a) is unconstitutional pursuant to Article XI, Section 5 of the Utah Constitution as it exceeds the regulatory and lawmaking authority endowed West Valley City by the State of Utah and is in conflict with general law. The police powers conferred upon West Valley City by the general welfare clause empower West Valley City to enact only those laws which are reasonably and substantially

related to improving the health, safety and morals of the West Valley City citizenry. The ordinance at issue is not substantially or reasonably related to the protection of the general welfare of West Valley City inhabitants. Accordingly, Revised West Valley City Ordinance 23-5-104(8)(a) is an improper and unconstitutional exercise of the police powers statutorily conferred upon West Valley City and cannot be upheld.

Revised West Valley City Ordinance violates both the Utah and United States Constitutions as it is unconstitutionally vague and overbroad. The ordinance is void for vagueness as it fails to clearly define or set forth explicit standards such that a person of ordinary intelligence may have an opportunity to know what is prohibited by the ordinance. The ordinance is also void for overbreadth as it sweeps within its ambit legitimate activities occurring outside the boundaries of West Valley City or the State of Utah, and constitutes an extraterritorial criminal statute in violation of the Fourteenth Amendment of the United States Constitution as well as Article I, Section 7, and Article I, Section 1 of the Utah State Constitution.

The Ordinance violates the right to travel implicit in the United States and Utah Constitutions and unlawfully interferes with interstate commerce. The Revised West Valley City Ordinance effectively precludes breeders and husbandmen such as appellant from transporting game fowl to be used for fighting in

jurisdictions where the sport is legal. Moreover, the ordinance is preempted by federal law. The United States Congress enacted legislation specifically permitting the interstate shipment of game fowl for fighting ventures in States where such ventures are lawful. The ordinance directly conflicts with the objective of congress which chose to protect said activity and is therefore invalid under the supremacy clause.

Revised West Valley City Ordinance 23-5-104(8) unconstitutionally interferes with the right to own and possess property, in violation of Article I Section 1 of the Utah Constitution. Any restriction upon constitutionally protected property rights must be balanced against the alleged evil sought to be corrected and the limitation of constitutional rights imposed by the ordinance. In the instant case, the conduct proscribed has no effect whatsoever on the inhabitants of West Valley City because the fighting of fowl owned by Appellant occurs outside of the territorial limits of West Valley City. Therefore, the ordinance is unconstitutional pursuant to Article I, Section 1 of the Utah Constitution as it unjustifiably deprives defendant/appellant of constitutionally protected property rights.

#### ARGUMENT

THE COURT ERRED IN DENYING APPELLANTS MOTION TO DISMISS AND MOTION FOR RECONSIDERATION AS REVISED WEST VALLEY CITY ORDINANCE 23-5-104 VIOLATES THE UNITED STATES AND UTAH CONSTITUTIONS.

A. REVISED WEST VALLEY CITY ORDINANCE 23-5-104(8) IS IN CONFLICT WITH GENERAL LAW AND IS THEREFORE CONSTITUTIONALLY INVALID PURSUANT TO ARTICLE XI, SECTION 5 OF THE UTAH STATE CONSTITUTION.

The ordinance at issue herein is ostensibly adopted to promote the health, safety and morals of the inhabitants of West Valley City. Revised West Valley City Ordinance 23-5-104(8)(a) (hereinafter RWVCO 23-5-104(8)(a)) provides, in pertinent part:

CRUELTY TO ANIMALS PROHIBITED

Animals for fighting:

(a) It shall be unlawful for any person or corporation to raise, keep or use any animal, fowl or bird for the purpose of fighting or baiting;

The ordinance in question constitutes an improper exercise of the powers granted to West Valley City by the State of Utah and is constitutionally invalid as it conflicts with general law and is void as ultra vires.

As a chartered city, West Valley City is granted, inter alia, certain police powers by the State legislature to enact ordinances and regulations for the benefit of the municipality.<sup>2</sup> In addition to constitutionally conferred powers, enabling

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<sup>2</sup> Article XI, Section 5 of the Utah State Constitution provides in pertinent part:

Each city forming its charter under this section shall have, and is hereby granted, the authority to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with general law ... (emphasis added).

statutes such as the general welfare clause, provide municipal authority to enact ordinances, not repugnant to law, which are necessary to provide for the safety, health, morals and welfare of the city and its inhabitants.<sup>3</sup> The police powers of West Valley City are strictly limited to those expressly granted by state constitution or statute. Nance v. Mayflower Tavern, Inc., 150 P.2d 773 (1944); Salt Lake City v. Sutter, 216 P.234 (1923); 1 C Antieua, Municipal Corporation Law Section 5.01 (1967); 1 E McQuillin, Municipal Corporations Section 1.93 (3d Ed. 1949). A municipal ordinance which exceeds the authority conferred by statute is invalid as ultra vires and unconstitutional as in conflict with general law. See e.g., Ritholz v. City of Salt Lake, 284 P.2d 702 (1955); Gronlund v. Salt Lake City, 194 P.2d 464, 466 (1948); State v. Salt Lake City, 445 P.2d 691 (1968).

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<sup>3</sup> §10-8-84, Utah Code Annotated (1992) as amended provides: Ordinances, Rules and regulations - Passage-Penalties

They may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for the carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the city and its inhabitants, and for the protection of property in the city; and may enforce obedience to the ordinances with fines or penalties as they may deem proper, but the punishment of any offense shall be by fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301 or by imprisonment not to exceed six months, or by both the fine and imprisonment.

While the police power conferred to West Valley City under the general welfare clause is broad in scope and its legitimate objects are broad and comprehensive, it is, nevertheless fundamental that the police power is limited to the promulgation and enforcement of measures reasonably related to a legitimate object for its exercise, including the public health, morals, comfort and safety of the municipalities inhabitants. McQuillin, Municipal Corporations, Section 24.09 (3rd Edition). Accordingly, the police power conferred upon West Valley City by the State of Utah is not an infinite and unlimited power. Id. See also, State v. Hutchison, 624 P.2d 1116, 1128 (Utah 1980) (Although the general welfare clause has been afforded liberal construction, it does not grant municipalities carte blanche nor limitless power to enact restrictive ordinances under the auspices of protecting the safety, health and welfare of its citizenry). Rather, only those ordinances which bear a substantial and reasonable relationship to the objects of protecting the general welfare may be upheld as a valid exercise of West Valley City's police power. State v. Hutchison, 624 P.2d 1116, 1126 (1980) (When the state has granted general welfare powers to local governments, those governments have independent authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety health, morals and welfare); Parker v. Provo City Corp., 543 P.2d 769 (1975) (Municipal

ordinances enacted to protect public health, safety, welfare and well-being must bear reasonable relation to purposes).

The issue in the instant case is thus reduced to the question of whether the challenged ordinance is substantially and reasonably related to the promotion of the prosperity and improvement of the health, safety and morals of the inhabitants of West Valley City. The circumstances of this case compel a negative answer; there is neither a substantial nor reasonable relationship between the alleged evil to be prevented (to raise, keep or use fowl or birds for the purpose of fighting or baiting) and the protection of the safety, health and morals of the citizens of West Valley City.

In the instant case, the alleged evil sought to be corrected ostensibly has a demeaning and detrimental effect on the morals of the inhabitants of West Valley City. However, the detrimental effect could only occur if the activity to be prevented, the fighting of fowl or birds, occurred within the boundaries of West Valley City where the citizenry may witness or otherwise be directly or indirectly effected by the activity.<sup>4</sup> There is

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<sup>4</sup>In Peck v. Dunn, 574 P.2d 367 (1978), the Utah Supreme Court recognized that "it is now generally thought that the witnessing of animals fighting, injuring and perhaps killing one another is a cruel and barbarous practice, discordant to man's better instincts and so offensive to his finer sensibilities that it is demeaning to morals. Id. at 369 (emphasis added). The operative language in the court's statement is "witnessing."

not a scintilla of evidence in this record on appeal that the fowl raised by Appellant is utilized for the purpose of fighting within West Valley City or within the State of Utah. To the contrary, the record reflects that Appellant utilizes the birds, raised and kept at his residence, for fighting in jurisdictions far distant from Utah, including Arizona (R-1. 37, (T. 20, ln. 15-18, 21, ln 11-14).

It is inconceivable that the fighting of fowl or birds outside the State of Utah could have any affect or impact, detrimental or otherwise, on the citizenry of West Valley City. The act of raising, keeping, or using fowl or birds for the purpose of fighting outside of the geographical boundaries of West Valley City has no tenable relationship whatsoever to the general welfare of West Valley City citizens. Similarly, the act of selling or transferring game fowl to third persons who may eventually utilize the birds for fighting in a foreign jurisdiction has no impact whatsoever on the morals of West Valley City inhabitants.<sup>5</sup> Accordingly, the proscribed activity

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<sup>4</sup>Presumably, if the activity does not occur within a locality where citizens may witness or otherwise be effected by the activity there is no direct or indirect impact upon the morals of the members of the community.

<sup>5</sup>The act of raising does not require the birds to be fought. To the contrary, the raising of specific fighting breeds of birds require the birds be kept separate in order to prevent injury as the birds will fight instinctively if kept together. J.W. Cooper, M.D., Game Fowls, Their Origin and History, p. 35 (standard edition) (1869).



does not so effect the morals and welfare as to justify the interdiction imposed by RWVCO 23-5-104(8). Any other finding would be unconstitutional as the challenged ordinance would be given extraterritorial effect, in violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution.<sup>6</sup> Moreover, a finding of validity would be inconsistent with state precedent. The Utah Supreme Court has struck down as ultra vires numerous ordinances enacted under the general welfare clause which proscribed conduct not immediately related to the protection of public welfare, including ordinances that sought to prohibit keeping pin ball machines,<sup>7</sup> playing pool,<sup>8</sup> advertising prescription eyeglasses,<sup>9</sup> fixing barbershops' closing hours,<sup>10</sup>

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<sup>6</sup> It is axiomatic that West Valley City has no authority to legislate beyond the boundaries of the municipality. American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909) (A Statute must be limited in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. Id. at 357. All legislation is prima facie territorial.) Id. RWVCO 23-5-104(8) clearly constitutes an extraterritorial criminal statute as it allows criminal prosecution of an individual who may "raise, keep or use fowl or birds for the purpose of fighting" without requiring proof that the owner intends to engage in animal fighting within the geographic boundaries of West Valley City, or even within the State of Utah.

<sup>7</sup> Stevenson v. Salt Lake City, 317 P.2d 597 (1957).

<sup>8</sup> American Fork City v. Robinson, 292 P.2d 249 (1930).

<sup>9</sup> Ritholz v. City of Salt Lake, 284 P.2d 702 (1955).

<sup>10</sup> Salt Lake City v. Revenue, 124 P.2d 537 (1942).

and possessing alcohol without authorization.<sup>11</sup>

Based on the foregoing, it is clear that the ordinance at issue does not satisfy the test of validity required by law as there is no substantial or reasonable relationship between the conduct proscribed thereunder and the protection of the general welfare of the citizens of West Valley City. There is no evidence in this record on appeal that the fowl raised by Appellant is fought in West Valley City. Accordingly, there is no tenable relationship whatsoever between the alleged evil to be prevented and the moral well being of the community. Therefore, the challenged ordinance is an improper and unconstitutional exercise of Appellee's state endowed police powers and is invalid as ultra vires and as in conflict with general law.

B. WEST VALLEY CITY ORDINANCE §23-5-104(8)(a) IS UNCONSTITUTIONAL, BEING VOID FOR BOTH VAGUENESS AND OVERBREADTH.

Appellant submits that RWVCO §23-5-104(8)(a), which provides that "[i]t shall be unlawful for any person or corporation to raise, keep or use any animal, fowl or bird for the purpose of fighting or baiting;" regardless of whether such "fowl or bird" engages in fighting or baiting within the boundaries of West Valley City, is unconstitutional as being void for vagueness and overbreadth, in violation of Article I, Section 7 and Article I,

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<sup>11</sup> Salt Lake City v. Sutter, 216 P.234 (1923).

Section 1 of the Constitution of the State of Utah, and the Fourteenth Amendment to the Constitution of the United States.

### I. VAGUENESS

The due process clause of the Fourth and Fourteenth Amendments to the United States Constitution require that a criminal statute be declared void when it is so vague that "men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Constr. Co., 269 U.S. 385, 391 (1926); see also Roberts v. United States Jaycees, 468 U.S. 609, 629 (1984); Colautti v. Franklin, 439 U.S. 379 (1979).

The Supreme Court has explained the relationship between due process and vagueness as follows:

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.<sup>12</sup> Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abuts upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the

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<sup>12</sup>A statute which is uncertain as to persons who may fall within its scope will also be found unconstitutionally vague. See Lanzetta v. New Jersey, 306 U.S. 451 (1939).

exercise of those freedoms." Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."

Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) (citations omitted). See also Kolender v. Lawson, 461 U.S. 352, 257-58 (1983) (citations omitted) ("where the legislature fails to provide . . . minimal guidelines [to govern law enforcement], a criminal statute may permit 'a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections'." )<sup>13</sup>; Dae Woo Kim v. City of New York, 774 F.Supp. 164, 169 (S.D.N.Y. 1991) (citations omitted) (a statute is unconstitutionally vague if it "lacks clear definition or explicit standards such that it does not give a person of ordinary intelligence an opportunity to know what is prohibited").

The Utah Supreme Court has articulated a similar test for vagueness. In State v. Blowers, 717 P.2d 1321 (1986), the Utah Supreme Court struck down a conviction applying a driving while intoxicated ordinance to the rider of a horse, stating that "[a]

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<sup>13</sup>The three standards set forth by the court are independent of each other. Thus, a statute may offend due process simply by violating one of the three standards. See generally LaFave and Scott, Substantive Criminal Law, Section 2.3, at 128-32 (1986). See also NAACP v. Burton, 371 U.S. 415 (1963).

criminal statute 'must be sufficiently clear and definite to inform persons of ordinary intelligence what their conduct must be to conform to its requirements and to advise one accused of violating it what constitutes the offense with which he is charged'." Id. at 1322, citing Greaves v. State, 528 P.2d 805, 807 (Utah 1974) (citations omitted). The court held the attempt by the State to apply the Utah Motor Vehicle Code to persons riding animals on a municipal roadway was too vague to survive constitutional due process challenge.

Thus, the preliminary question to be determined by this Court is whether RWVCO §23-5-104(8) (a) gives a person of ordinary intelligence "a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned. It is clear that a person of ordinary intelligence likely may not understand what it is to "raise, keep or use any animal, fowl or bird for the purpose of fighting or baiting," since the ordinance fails to state the territorial boundaries of the proscribed conduct. Consequently, it would be almost impossible that such a person can reasonably conduct himself or herself to conform to such a law.

Relying on the principle enunciated in Grayned, the Kansas Supreme Court recently struck down a Wichita erotic dancing ordinance. In City of Wichita v. Wallace, 788 P.2d 270 (Kan. 1990), the court found the Wichita ordinance unconstitutionally

vague for a number of reasons, including failure to adequately define the proscribed conduct, overbreadth, and failure to require a scienter or intent requirement. Id. Appellant submits that the West Valley City Ordinance contains numerous deficiencies similar to those found in the Wichita ordinance.

Subsection (8)(a), under which Appellant was convicted, lacks a scienter or intent requirement, thereby rendering the ordinance void for vagueness. See Morissette v. United States, 324 U.S. 246, 250 (1952) (fundamental principle of American criminal jurisprudence is "that an injury can amount to a crime only when inflicted by intention."). For example, under §23-5-104(8)(a), virtually anyone who owns fowl or birds for the purpose of raising to sell for participation in animal fighting ventures in a jurisdiction in which fighting or baiting is legal, is subject to criminal prosecution, based upon their mere ownership of the gamefowl. The ordinance does not require that an individual be charged with fighting such animals, fowl or birds in the State of Utah; it does not distinguish between ownership" for the purpose of fighting or baiting" in states where the sport is legal and states where it is not; it does not distinguish between breeding and selling such birds for "fighting or baiting" to breeders in states where the sport of gamefighting is legal and states where it is not. Rather, the statute sweeps with a broad brush and encompasses ownership of any bird which is

kept or raised for "fighting or baiting" even though that activity is perfectly legal in certain states, and has been so for a hundred years. (R-2. 57) Therefore, a person who unknowingly possesses fowl or birds which could be used for "fighting or baiting," or which may be sold in a state where such "fighting or baiting" is legal, would be punished under RWVCO §23-5-104(8)(a). The Kansas Supreme Court found a similar ordinance lacking an intent requirement to be unconstitutionally vague. This Court should similarly declare RWVCO §23-5-104(8)(a) unconstitutionally vague for violating the basic criminal rule that no crime is committed unless the suspect acted with a criminal intent.

## II. OVERBREADTH

In addition to being unconstitutionally vague, Appellant asserts that RWVCO §23-5-104(8)(a) is unconstitutionally overbroad, because a person of ordinary intelligence cannot discern what is actually being prohibited by the ordinance and because it includes within its prohibitions legitimate and lawful conduct. The void-for-vagueness doctrine and the doctrine of overbreadth are related but distinct. A vague law or ordinance "denies due process by imposing standards of conduct so indeterminate that it is impossible to ascertain just what will result in sanctions; in contrast, a law that is overbroad may be perfectly clear but impermissibly purport to penalize protected

. . . activity." Hastings v. Judicial Conference of U.S., 485 U.S. 1014, 829 F.2d 91, 105 (D.C.Cir. 1987); see also Dae Woo Kim v. City of New York, 774 F.Supp. 164, 170 (S.D.N.Y. 1991) (quoting Grayned v. City of Rockford, 408 U.S. at 114) (a statute is "unconstitutionally overbroad if it includes within its prohibitions constitutionally protected conduct").

In Logan City v. Huber, 786 P.2d 1372 (1990), the Utah Court of Appeals struck down a city ordinance, stating that "[a]n overbroad enactment is one 'which does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of [constitutionally guaranteed] freedom[s]'." Id. at 1375, quoting Waters v. McGuriman, 656 F.Supp. 923, 925 (E.D.Pa. 1987). The court struck down the Logan City ordinance, which proscribed obscene or abusive language spoken with the intent "to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof," as being unconstitutionally overbroad, because the ordinance "punishes as disorderly conduct a significant amount of protected verbal expression, including criticism and challenge, vulgarities and remonstrations, whether it is directed at a police officer, an ordinary citizen, or one who is not even present, without regard for its likely impact . . . ." Id. at 1376.



In the instant case, RWVCO §23-5-104(8)(a) is overbroad in numerous respects. The ordinance provides that an individual commits a crime if he: "raise[s], keep[s] or use[s] any animal, fowl or bird for the purpose of fighting or baiting . . . ." The problem with this sweeping language is that it prohibits conduct, such as the simple possession of the game birds in West Valley City, which may be utilized for legal and legitimate activities in foreign jurisdictions.

Section 23-5-104(8)(a) is overbroad because it rests on "confusing and ambiguous criteria" which are subject to varying interpretations by those who enforce and are effected by the statute. Colautti, supra; Kolender, supra. There is little question that men of common intelligence must necessarily guess as to its meaning and differ as to its application. Greenwood v. City of North Salt Lake, 817 P.2d 816 (Utah 1991). It is unclear if the ordinance simply proscribes ownership of birds which are actively being used for "fighting and baiting" in the State of Utah, or prohibits the possession of gamefowl in the State of Utah, where the owner occasionally drives to Arizona and uses the bird for "fighting or baiting" where the sport is legal. One cannot reasonably determine whether it prohibits breeding and raising gamefowl in the State of Utah - without fighting such gamefowl - and selling the hatchlings to members of Gamefowl Breeders Associations in Arizona, where they will legally be used

for "fighting or baiting" by members of those organizations. Therefore, RWVCO §23-5-104(8)(a) is both vague and overbroad, because it does not allow an individual of common intelligence to know whether he or she has committed a crime, and it sweeps within its ambit activities which are perfectly legitimate.

In addition, the ordinance invites unequal and arbitrary enforcement (Kolender, supra; Colautti, supra.) because West Valley City Ordinance §2-102-8<sup>14</sup> allows the "Animal Control Director or any person employed by the Department of Animal Control as an Animal Control Officer" ad hoc judgment as to which birds are being owned and raised for "fighting and baiting" -- without requiring proof that the bird has actually been used for animal fighting in the State of Utah -- an enormous amount of subjective judgment is interjected into the statute.<sup>15</sup> The ordinance is therefore unconstitutionally overbroad as it creates

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<sup>14</sup>West Valley City Ordinance §23-1-102(2), which is not at issue in the instant case, delineates the "Powers of Animal Control Officers," and vests authority in the "Animal Control Director or any person employed by the Department of Animal Control as an Animal Control Officer" to have the authority and power to "apprehend and take with them and impound any animal found in violation of this ordinance."

<sup>15</sup>If fighting paraphernalia is discovered in proximity of a bird, this ordinance seems to allow the inference that the owner possesses the bird for "fighting or baiting" and justify that the owner become the subject of a criminal prosecution, even though the use of such paraphernalia is equally common to gamefowl raised for show purposes, and never fought. (T. 17).

a "standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." Kolender, supra, 461 U.S. at 358.

Finally, RWVCO, which allows criminal prosecution where an individual keeps, raises or uses a fowl or bird for the purpose of fighting or baiting without requiring proof that the owner intends to engage in animal fighting within West Valley City, or even in the State of Utah, is overbroad as it amounts to an extraterritorial criminal statute, in violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution. RWVCO is limited in its operation and effect to the territorial limits over which the West Valley City Council has general and legitimate power. American Banana Co. v. United Fruit Co., 213 U.S. 347, (1909). All legislation is prima facie territorial. Id. at 357. Accordingly, West Valley City simply cannot sweep within the proscribed conduct of the ordinance legitimate activities occurring in foreign jurisdictions far beyond its territorial boundaries.

Accordingly, the ordinance is unconstitutionally overbroad as it fails to specifically aim at evils within the allowable area of state control and sweeps with its ambit legitimate activities which constitute an exercise of constitutionally protected freedoms. Logan City v. Huber, 786 P.2d 1372, 1375 (1990).

Based upon the foregoing, this court should find RWVCO 23-5-104(8) unconstitutional as being void for vagueness, in addition to being overbroad.

C. RWVCO UNCONSTITUTIONALLY INTERFERES WITH INTERSTATE COMMERCE AND TRAVEL AND IS FEDERALLY PREEMPTED BY 7 U.S.C. §2156(d).

RWVCO 23-5-104(8), which makes it a criminal offense to "raise, keep, or use" a fowl or bird for the purpose of fighting, violates the right to travel implicit in the United States and Utah Constitutions as well as interferes with interstate commerce.

The challenged ordinance does not limit itself to outlawing cockfighting within the boundaries of the State of Utah. Rather, the ordinance imposes a blanket prohibition upon the "keep[ing], rais[ing], or us[ing] any game fowl for the purpose of animal fighting" thus creating a criminal offense for the mere possession (i.e. keeping) of birds which one intends to transport to another State for use where cockfighting is legal.

Such an overreaching law impinges upon the fundamental right to travel embodied in the Fourteenth Amendment of the U.S. Constitution. See Shapiro v. Thompson, 394 U.S. 618 (1969). It also impinges upon the right to travel implicit in Article I, Section 1 of the Utah Constitution.

The Ordinance at issue impinges upon the rights to travel interstate, and the right to engage in interstate commerce, of

citizens of all fifty states, by prohibiting individuals from travelling through West Valley City in possession of gamefowl which is intended to be used "for animal fighting," even if such fighting is to take place in a state where the sport is perfectly legal. Under the ordinance, if a citizen of Arizona, (where the sport is legal) travels through West Valley City on the way to a cockfight in Puerto Rico (where the sport is also legal), he or she is guilty of a criminal offense. Similarly, if a West Valley City resident raises birds for cockfighting, as appellant does, and ships them from the Salt Lake City Airport to Arizona (where the sport is legal), he or she is guilty of a criminal offense. The statute thus unconstitutionally impedes the flow of commerce interstate and violates the constitutional right of interstate travel both of residents of West Valley City and residents of all fifty States.

The egregious constitutional violation imposed by the ordinance, which essentially bans Appellant from raising fowl and from transporting fowl or traveling with fowl to cockfighting competitions in States where the sport is legal, is further evidenced by the fact that the United States Congress has preempted the area by permitting such activity.

In 1976, Congress enacted significant amendments to Title 7 U.S.C., Section 2156, entitled "Animal Fighting Venture Prohibition," which made it unlawful to: (a) sponsor or exhibit

an animal fighting venture;<sup>16</sup> (b) Buy, sell, deliver or transport any animal in interstate commerce for participation in any animal fighting venture;<sup>17</sup> or (c) Use the mail services of the U.S. Postal Service to promote animal fighting.<sup>18</sup>

Significantly, Congress created a specific exemption for individuals who own birds and transport them to States where fighting ventures are legal. Subsection (d) of 7 U.S.C. §2156 provides:

Violation of State Law: Notwithstanding the provisions of subsections (a), (b) or (c) of this section, the activities prohibited by such subsections shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof. Id. (emphasis added)

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<sup>16</sup> 7 U.S.C. 2156(a) provides:

It shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce.

<sup>17</sup> 7 U.S.C. 2156(b) provides:

It shall be unlawful for any person to knowingly sell, buy, transport, or deliver to another person or receive from another person for purposes of transportation, in interstate or foreign commerce, any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture.

<sup>18</sup> 7 U.S.C. 2156(c) provides:

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any interstate instrumentality for purposes of promoting or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.

Thus Congress has entered this area of regulation and has explicitly and/or implicitly created a right to travel interstate for the purpose of selling, breeding, or fighting live birds where the sport of cockfighting is legal. The federal statute thus serves to preempt State laws which would enter the sphere of regulation in which Congress has already acted, and prevents States from enacting laws which come in conflict with the federal scheme.

Congress has specifically provided for preemption in this area, as evidence by 7 U.S.C. 2156(h), which provides:

Conflict with State Law

the provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder. Id. (emphasis added).

Since Gibbons v. Ogden, 9 Wheat. 1 (1824) the United States Supreme Court has emphasized that "acts of the State Legislatures. . . [which] interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution," are invalid under the Supremacy Clause. Id. at 211. The keystone of federal preemption analysis is the determination of whether a challenged State statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941); Perez v. Campbell, 401 U.S. 637, 649 (1970).

In Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1946), the Court held that congressional intent to preempt state regulations could be evidenced "if the enactment of a state policy produces a result inconsistent with the objective of the federal statute." Id. at 230. Even "when congress has not completely displaced state regulations, federal law may nonetheless preempt state law to the extent that it actually conflicts with federal law." California Federal Savings & Loan Ass'n v. Guerra, 107 S.Ct. 683, 689 (1987). This is particularly true if compliance with both laws may be physically impossible or the state law may stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. (quoting Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142-143 (1963)).

In the instant case, RWVCO 23-5-104(8) clearly produces a result inconsistent with the objective of the federal statute. Id. Congressional intent, apparent in the text of the act, was to permit the shipment of birds to States where cockfighting is lawful, despite the lawfulness of cockfighting in the State of origin. The West Valley City Ordinance makes it impossible for West Valley City breeders and husbandmen, such as Appellant, to ship birds from Utah to other States or countries, because, under the ordinance, any possession of the birds in West Valley City with intent that they be fought anywhere in the world is unlawful, even if that activity is legal in the State or country



of destination. Thus, the West Valley City Ordinance makes criminal the very activity Congress specifically chose to exempt from prosecution under the federal law.

The U.S. Supreme Court has consistently struck down State laws where their "administration . . . would conflict with the operation of the federal plan." City of Burbank v. Lockheed Air Terminal, 411 U.S. 624, 539 (1972); Pennsylvania v. Nelson, 350 U.S. 497, 509 (1955); Garner v. Teamsters Union, 346 U.S. 485, 490-91 (1951). The West Valley City Ordinance creates an "irreconcilable conflict" with federal law, as embodied in 7 U.S.C. Section 2156, Rice v. Santa Fe Elevator Corp., supra. Indeed, the legislative history of the federal statute indicates that the interstate shipment of gamefowl for breeding purposes, and for fighting ventures in States where such ventures are lawful, is a protected activity under the statute. See, Pub.L. 94-279, 1976 U.S. Code Cong. and Adm. News., p.797.<sup>19</sup> Therefore, the challenged ordinance which prohibits Appellant from keeping

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<sup>19</sup> The intent of 7 U.S.C., 2156(d) is evidenced by the following conference substitute contained in the legislative history of the Animal Welfare Act: The Conference substitute adopts the House provision with an amendment which provides that the activities prohibited by subsections (a), (b), or (c) of new section 26 of the act shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.

or raising game fowl ultimately to be fought in places where such fighting is lawful, conflicts with federal law and is invalid under the supremacy clause.

D. WEST VALLEY CITY ORDINANCE §23-5-104(8)(a) IS VIOLATIVE OF SECTION 1 ARTICLE I OF THE UTAH CONSTITUTION AND THEREFORE VOID AS AN UNCONSTITUTIONAL RESTRICTION UPON THE RIGHT TO OWN AND POSSESS PROPERTY.

"All men have the inherent and inalienable right to ... possess and protect property."

Article I, Section 1, Constitution of Utah.

RWVCO 23-5-104(8) runs head long into this constitutional guarantee when it makes it unlawful to raise, keep, or use a fowl or bird for admittedly legal purposes, which have no effect upon the public interest or general welfare of the citizens of West Valley City.

The city did not contend below that the raising and keeping of fighting cocks, alone, would run afoul (no pun intended) of city ordinances. Rather it is the raising of birds for the purposes of fighting which is claimed to subject appellant to criminal sanctions.

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The section does not apply to export of live birds to foreign countries nor to interstate shipment of live birds for breeding purposes. Game fowl publications would be unaffected except that advertising of fights involving live birds would be prohibited except in those instances where such fights are to be held in a State or territory where they are not unlawful.

In determining the propriety of such a proscription, any limitation imposed upon the constitutional right to own and possess property in light of Article I, Section 1 of Utah's Constitution "must take into consideration the balance between the alleged evil sought to be corrected and the limitation on constitutional rights the ordinance would impose." Ritholz v. City of Salt Lake, 284 P.2d 702, 705 (S.Ct. Utah 1955).

Ritholz dealt with a city ordinance which sought to prohibit advertising the price of prescription eyeglasses. In holding the ordinance unconstitutional, the court noted the lack of evidence "to show any relationship between advertising eyewear and public health." Id. at 704.

Similarly there has been no showing, nor can there be, that Appellant's subjective intent, to engage some of his fowl in legal sport outside of this state, creates some "evil" or "hazard to public health" against which Appellant's right to possess and raise game cocks must be balanced.

Just as the Ritholz court prevented the city from unduly restraining the advertising and business practices of persons who sought to advertise eyewear, the Utah Constitution does not allow West Valley City to interfere with Appellant's business or hobby of raising show and game cocks absent a nexus between that activity and some dilittarious affect on public health, welfare or morals. See also, Pride Oil Co. v. Salt Lake County, 370 P.2d

355 (Utah 1962) (restrained as unconstitutional a statute relating to posting of gasoline prices.)

Appellant does not contend that his property rights are absolute - where some important public interest requires safeguarding of health, morals, safety or welfare - even the most basic property rights may be limited. The problem with the present ordinance however is that in its application to Appellant it punishes conduct which will take place if at all, outside of the City of West Valley. Therefore, it cannot seriously be questioned that the evil to be corrected has no tenable relationship whatsoever to protecting the public interest of the citizenry of West Valley City. Accordingly, the ordinance is unconstitutional as it unjustifiably infringes upon Appellant's constitutionally protected right to own, possess and use his property.

Appellant's property rights should not be made to yield to meer convenience and expediency. It is the function of this court to look beyond the first blush impression of the enactment to see whether there is a sound basis to justify the city in proscribing and prosecuting Appellant's act of raising poultry with the intent to use them in a legal fashion outside of the State. See, Backman v. Bateman, 263 P.2d 561, (S.Ct. Utah 1953). Accordingly, RWVCO 23-5-104(8) is unconstitutional pursuant to Article I, Section 1 of the Utah State Constitution as there is

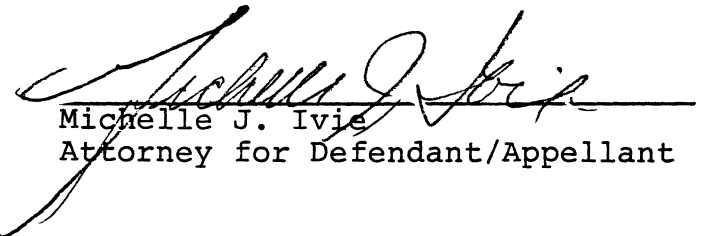
no justifiable basis thereunder for imposing limitations upon Appellant's constitutionally protected property rights.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing, RWVCO 23-5-104(8)(a) is unconstitutional and the court erred in denying defendant/appellant's Motion to Dismiss and Motion for Reconsideration. Accordingly, the Appellant's judgment and conviction of cruelty to animals, in violation of RWVCO 23-5-104(8)(a), heretofore entered by Judge William A. Thorne, Jr. in the Third Circuit Court in and for Salt Lake County, West Valley Department, State of Utah, should be overturned.

DATED this 11<sup>th</sup> day of September, 1992.

CONDER & WANGSGARD

  
Michelle J. Ivie  
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 1992, I caused to be mailed, first-class, postage prepaid, a true and correct copy of the foregoing BRIEF OF APPELLANT to the following counsel of record:

J. Richard Catten  
West Valley City Prosecutor  
Attorneys for Plaintiff/Respondent  
3600 South 2700 West  
West Valley City, Utah 84119

A handwritten signature in cursive script, appearing to read "Richard J. Catten", written over a horizontal line.

ADDENDUM

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FILED

92 MAR 31 AM 8:54

CLERK OF THE CIRCUIT COURT  
WEST VALLEY DEPT.

MICHELLE J. IVIE (#5723)  
of CONDER & WANGSGARD  
Attorneys for Defendant  
4059 South 4000 West  
West Valley City, Utah 84120  
Telephone: (801) 967-5500  
Fax: (801) 967-5563

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IN THE THIRD CIRCUIT COURT, WEST VALLEY DEPARTMENT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WEST VALLEY CITY,	)	
	)	STATEMENT OF DEFENDANT
Plaintiff,	)	CERTIFICATE OF COUNSEL
	)	AND ORDER
vs.	)	
	)	Case No. 901001677 MC
DENNIS STREETER,	)	Judge William A. Thorne
	)	
Defendant.	)	

---

COMES NOW, DENNIS STREETER, the defendant in this case and hereby acknowledges and certifies the following:

I have entered a plea of guilty to the following crimes of (1) Doing Business without a License, violation of West Valley City Municipal Ordinance 17-1-102; (2) Improper Use For R-1-8 Zone, to wit: Operating a poultry business in an R-18 zone, violation of West Valley City Ordinance 7-9-103; and (3) Accumulation of Solid Waste & Littering, violation of West Valley City Municipal Ordinance 24-1-11.. I further enter a conditional guilty plea to the charge of Cruelty to Animals, a violation of West Valley City Ordinance 23-5-104, and enter said plea



conditionally, specifically reserving the right to challenge the constitutionality of said ordinance on appeal.

I understand that the penalties provided for my plea of guilty to the above referenced violations are as follows:

17-1-102, 7-9-103, and 24-1-11 are class B Misdemeanors for which a maximum fine of \$1,000.00 may be imposed and/or a maximum sentence of six months imprisonment for each offense. I further understand that the penalties provided for violation of West Valley City Municipal Ordinance 23-5-104, a class B Misdemeanor, to which I am entering a conditional plea, carries a maximum fine of \$1,000.00 and/or maximum imprisonment of up to six months in jail. I have recieved a copy of the information against me. I have read it, and I understand the nature and the elements of the offenses for which I am entering a guilty plea and/or a conditional plea of guilty.

The elements of the crimes with which I am charged are as follows: A person commits cruelty to animals under WVC Ordinance 23-5-104 if he raises, keeps, or uses any animal, fowl or bird for the purpose of fighting or baiting; A person commits a crime under WVC Municipal Ordinance 17-1-102 if he operates a business without a license; A person commits a crime under WVC Municipal Ordinance 7-9-103 if he operates a poultry business in a zone designated as R-1-8; A person commits a crime under WVC Municipal Ordinance 24-1-11 if he permits solid waste and/or litter to

accumulate on property where there exists no zoning authority to do so.

I am entering this plea voluntarily and with knowledge and understanding of the following facts:

1. I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me.

2. I have not waived my right to counsel. My attorney is Michelle J. Ivie and I have had an opportunity to discuss this statement, my rights and the consequences of my guilty plea with my attorney.

3. I know that I have a right to a trial by jury.

4. I know that if I wish to have a trial I have the right to confront and cross-examine witnesses against me or to have them cross-examined by my attorney. I also know that I have the right to compel my witness(es) by subpoena at state expense to testify in court upon my behalf.

5. I know that I have a right to testify in my own behalf but if I choose not to do so I cannot be compelled to testify or give evidence against myself and no adverse inferences will be drawn against me if I do not testify.

6. I know that if I wish to contest the charges against me I need only plead "not guilty" and the matter will be set for trial. At the trial the State of Utah will have the burden of

proving each element of the charge beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous.

7. I know that under the Constitution of Utah that if I were tried and convicted by a jury or by the judge that I would have the right to appeal my conviction and sentence to the Utah Court of Appeals or, where allowed, the Utah Supreme Court and that if I could not afford to pay the costs for such appeal, those costs would be paid by the state.

8. I know the maximum sentence that may be imposed for each offense to which I plead guilty. I know that by pleading guilty to an offense that carries a minimum mandatory sentence that I will be subjecting myself to serving a minimum mandatory sentence for that offense. I know that the sentences may be consecutive and may be for a prison term, fine, or both. I know that in addition to a fine a twenty-five percent (25%) surcharge, required by Utah Code Annotated §63-63a-4, will be imposed. I also know that I may be ordered by the court to make restitution to any victim(s) of my crimes.

9. I know that imprisonment may be for consecutive periods, or the fine for additional amounts, if my plea is to more than one charge. I also know that if I am on probation, parole, or awaiting sentencing on another offense of which I have been convicted or to which I have plead guilty, my plea in the present action may result in consecutive sentences being imposed upon me.

10. I know and understand that by pleading guilty, I am waiving my statutory and constitutional rights set out in the preceding paragraphs, with the exception of my conditional guilty plea pursuant to which I specifically reserve my constitutional right to appeal the validity of WVC Ordinance 23-5-104, I also know that by entering such plea, I am admitting and do so admit that I have committed the conduct alleged and I am guilty of the crimes for which my plea is entered.

11. My plea of guilty is the result of a plea bargain, to wit: the prosecutor has agreed to dismiss the remaining counts of the information against me. As further part of that plea bargain, the prosecutor has agreed to dismiss a case pending against me in the circuit court before Judge William A. Thorne. The prosecution and defendant have also agreed that the defendant may enter the plea set forth above while preserving the right to appeal the court's ruling on the constitutionality and validity of West Valley City Ordinance 23-5-104, and the defendant expressly reserves his right to appeal the court's denial of his motion to dismiss.

12. I know and understand that if I desire to withdraw my plea of guilty I must do so by filing a motion within thirty (30) days after entry of my plea, but that if I do not receive probation the State will stipulate to the withdrawal of this plea.

13. I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the court may do are also not binding on the court.

14. No threats, coercion, or unlawful influence of any kind have been made to induce me to plead guilty, and no promises except those contained herein have been made to me.

15. I have read this statement or I have had it read to me by my attorney, and I understand its provisions. I know that I am free to change or delete anything contained in this statement. I do not wish to make any changes because all of the statements are correct.

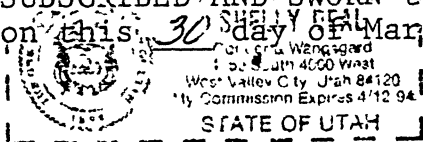
16. I am satisfied with the advice and assistance of my attorney.

17. I am 43 years of age; I have attended high school and I can read and understand the English language or an interpreter has been provided to me. I was not under the influence of any drugs, medication or intoxicants which would impair my judgment when the decision was made to enter the plea. I am not presently under the influence of any drug, medication or intoxicants which impair my judgment.

18. I believe myself to be of sound and discerning mind, mentally capable of understanding the proceedings and the consequences of my plea and free of any mental disease, defect or impairment that would prevent me from knowingly, intelligently and voluntarily entering my plea.

DATED this 30 day of MAR, 1992.

SUBSCRIBED AND SWORN to before me  
on this 30 day of MARCH, 1992.



Dennis Streeter  
DENNIS STREETER  
Shelly Deal  
Notary Public

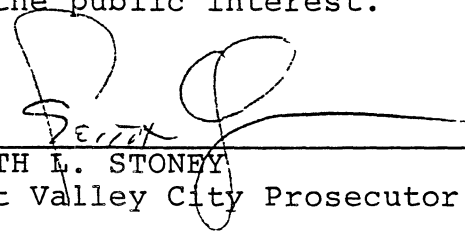
CERTIFICATE OF ATTORNEY

I certify that I am the attorney for Dennis Streeter, the defendant above, and that I know he has read the statement or that I have read it to him and I have discussed it with him and believe he fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief after an appropriate investigation, the elements of the crimes and the factual synopsis of the defendant's criminal conduct are correctly stated and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.

Michelle J. Ivie  
MICHELLE J. IVIE  
Attorney for Defendant

CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in the case against Dennis Streeter, defendant. I have reviewed this statement of the defendant and find that the declaration, including the elements of the offense of the charge and the factual synopsis of the defendant's criminal conduct which constitutes the offense are true and correct. No improper inducements, threats or coercion to encourage a plea have been offered defendant. The plea negotiations are fully contained in the statement and in the attached plea agreement or as supplemented on record before the court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense for which the plea is entered and acceptance of the plea would serve the public interest.



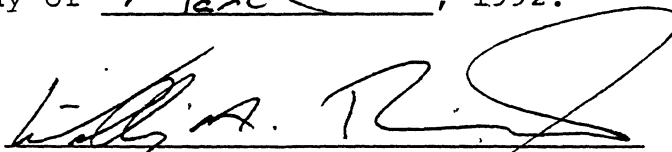
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KEITH L. STONEY  
West Valley City Prosecutor

ORDER

Based upon the facts set forth in the foregoing statement and the certification of the defendant and counsel, the court witnesses the signatures and finds the defendant's plea of guilty together with defendant's conditional plea of guilty, all freely and voluntarily made and it is so ordered that the defendant's plea of guilty, and conditional plea of guilty to the charges set forth in the statement be accepted and entered.

DONE IN COURT this 31<sup>st</sup> day of March, 1992.

  
WILLIAM A. THORNE  
District Court Judge  
Circuit



FILED

92 MAR 31 AM 8:54

CLERK OF THE CIRCUIT COURT  
WEST VALLEY DEPT.

MICHELLE J. IVIE (#5723)  
of CONDER & WANGSGARD  
Attorneys for Defendant  
4059 South 4000 West  
West Valley City, Utah 84120  
Telephone: (801) 967-5500  
Fax: (801) 967-5563

---

IN THE THIRD CIRCUIT COURT, WEST VALLEY DEPARTMENT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WEST VALLEY CITY,	)	AFFIDAVIT OF DEFENDANT
	)	CERTIFICATE OF COUNSEL
Plaintiff,	)	AND ORDER
	)	
vs.	)	
	)	Case No. 901001586
DENNIS STREETER,	)	
	)	
Defendant.	)	

---

STATE OF UTAH           )  
                              :  
COUNTY OF SALT LAKE   )

COMES NOW, DENNIS STREETER, the defendant in this case and hereby acknowledges and certifies the following:

I have entered a conditional plea of guilty to the crime of Cruelty to Animals, a violation of West Valley City Municipal Ordinance 23-5-104, a Class B Misdemeanor as charged in Count I of the information filed against me. I understand that the penalties provided are as follows: For the Class B Misdemeanor as charged in Count I, a maximum fine of \$1,000.00 and/or imprisonment of up to six months. I enter this plea of guilty conditionally and specifically reserve my right to challenge the

constitutionality of West Valley City Municipal Ordinance 23-5-104. I have received a copy of the information against me. I have read it, and I understand the nature and the elements of the offenses for which I am entering my conditional plea of guilty.

The elements of the crime of which I am charged is as follows: A person commits Cruelty to Animals if he raises, keeps or uses any animal, fowl or bird for the purpose of fighting or baiting.

I am entering this plea voluntarily and with knowledge and understanding of the following facts:

I am entering this plea voluntarily and with knowledge and understanding of the following facts:

1. I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me.

2. I have not waived my right to counsel. My attorney is Michelle J. Ivie and I have had an opportunity to discuss this statement, my rights and the consequences of my guilty plea with my attorney.

3. I know that I have a right to a trial by jury.

4. I know that if I wish to have a trial I have the right to confront and cross-examine witnesses against me or to have them cross-examined by my attorney. I also know that I have the

right to compel my witness(es) by subpoena at state expense to testify in court upon my behalf.

5. I know that I have a right to testify in my own behalf but if I choose not to do so I cannot be compelled to testify or give evidence against myself and no adverse inferences will be drawn against me if I do not testify.

6. I know that if I wish to contest the charges against me I need only plead "not guilty" and the matter will be set for trial. At the trial the State of Utah will have the burden of proving each element of the charge beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous.

7. I know that under the Constitution of Utah that if I were tried and convicted by a jury or by the judge that I would have the right to appeal my conviction and sentence to the Utah Court of Appeals or, where allowed, the Utah Supreme Court and that if I could not afford to pay the costs for such appeal, those costs would be paid by the state.

8. I know the maximum sentence that may be imposed for each offense to which I plead guilty. I know that by pleading guilty to an offense that carries a minimum mandatory sentence that I will be subjecting myself to serving a minimum mandatory sentence for that offense. I know that the sentences may be consecutive and may be for a prison term, fine, or both. I know that in addition to a fine a twenty-five percent (25%) surcharge,

required by Utah Code Annotated §63-63a-4, will be imposed. I also know that I may be ordered by the court to make restitution to any victim(s) of my crimes.

9. I know that imprisonment may be for consecutive periods, or the fine for additional amounts, if my plea is to more than one charge. I also know that if I am on probation, parole, or awaiting sentencing on another offense of which I have been convicted or to which I have plead guilty, my plea in the present action may result in consecutive sentences being imposed upon me.

10. I know and understand that by entering a conditional plea of guilty, I am waiving my statutory and constitutional rights set out in the preceding paragraphs, with the exception of my constitutional right to challenge the constitutionality of West Valley City Ordinance 23-5-102, pursuant to my conditional guilty plea hereunder. I also know that by entering such plea, I am admitting and do so admit that I have committed the conduct alleged and I am guilty of the crime for which my plea is entered.

11. My plea of guilty is the result of a plea bargain, to wit: the prosecutor has agreed to dismiss the remaining counts of the information against me. As further part of that plea bargain, the prosecutor has agreed to dismiss a case pending against me in the circuit court before Judge William A. Thorne. The prosecution and defendant have also agreed that the defendant may

enter the plea set forth above while preserving the right to appeal the court's ruling on the constitutionality of West Valley City Ordinance 23-5-104 and the defendant expressly reserves his right to appeal the court's denial of his motion to dismiss.

12. I know and understand that if I desire to withdraw my plea of guilty I must do so by filing a motion within thirty (30) days after entry of my plea, but that if I do not receive probation the State will stipulate to the withdrawal of this plea.

13. I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the court may do are also not binding on the court.

14. No threats, coercion, or unlawful influence of any kind have been made to induce me to plead guilty, and no promises except those contained herein have been made to me.

15. I have read this statement or I have had it read to me by my attorney, and I understand its provisions. I know that I am free to change or delete anything contained in this statement. I do not wish to make any changes because all of the statements are correct.

16. I am satisfied with the advice and assistance of my attorney.

17. I am 43 years of age; I have attended high school and I can read and understand the English language or an interpreter has been provided to me. I was not under the influence of any drugs, medication or intoxicants which would impair my judgment when the decision was made to enter the plea. I am not presently under the influence of any drug, medication or intoxicants which impair my judgment.

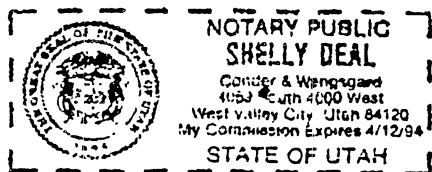
18. I believe myself to be of sound and discerning mind, mentally capable of understanding the proceedings and the consequences of my plea and free of any mental disease, defect or impairment that would prevent me from knowingly, intelligently and voluntarily entering my plea.

DATED this 30 day of MAR., 1992.

Dennis Streeter  
DENNIS STREETER


SUBSCRIBED AND SWORN to before me on this 30 day of March, 1992.

Shelly Deal  
Notary Public  
Residing at SL-CH



CERTIFICATE OF ATTORNEY

I certify that I am the attorney for Dennis Streeter, the defendant above, and that I know he has read the statement or that I have read it to him and I have discussed it with him and believe he fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief after an appropriate investigation, the elements of the crimes and the factual synopsis of the defendant's criminal conduct are correctly stated and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.

  
MICHELLE J. IVIE  
Attorney for Defendant

CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in the case against Dennis Streeter, defendant. I have reviewed this statement of the defendant and find that the declaration, including the elements of the offense of the charge and the factual synopsis of the defendant's criminal conduct which constitutes the offense are true and correct. No improper inducements, threats or coercion to encourage a plea have been offered defendant. The plea negotiations are fully contained in the statement and in the attached plea agreement or as supplemented on record before the court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense for which the plea is entered and acceptance of the plea would serve the public interest.



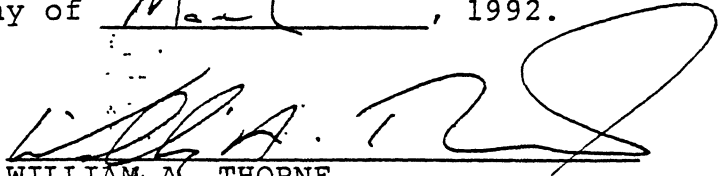
KEITH L. STONEY  
West Valley City Prosecutor



ORDER

Based upon the facts set forth in the foregoing statement and the certification of the defendant and counsel, the court witnesses the signatures and finds the defendant's conditional plea of guilty, all freely and voluntarily made and it is so ordered that the defendant's conditional plea of guilty to the charges set forth in the statement be accepted and entered.

DONE IN COURT this 31 day of March, 1992.

  
WILLIAM A. THORNE  
~~District~~ Court Judge  
Sineat

THIRD CIRCUIT COURT - WVC  
SALT LAKE COUNTY, STATE OF UTAH

CITY OF WEST VALLEY CITY  
VS

JUDGMENT, SENTENCE  
(COMMITMENT)

STREETER, DENNIS L  
3551 S 7200 W  
WVC UT 84120

CASE NO: 901001586  
DOB: 12/30/48  
TAPE: COUNT:  
DATE: 04/30/92

THE ABOVE NAMED DEFENDANT BEING ADJUDGED GUILTY FOR THE  
OFFENSE(S) AS FOLLOWS:

Charge: 23-5-104 CRUELTY TO ANIMALS				
Plea: Guilty	Find: Guilty Plea			
Fine: 1000.00	Susp: 1000.00			
Jail: 60 DA	Susp: 60 DA	ACS:		0
Charge: 23-5-104 CRUELTY TO ANIMALS				
Plea:	Find: Dismissed			
Fine: 0.00	Susp: 0.00			
Jail: 0	Susp: 0	ACS:		0
Charge: 23-5-104 CRUELTY TO ANIMALS				
Plea:	Find: Dismissed			
Fine: 0.00	Susp: 0.00			
Jail: 0	Susp: 0	ACS:		0
Charge: 23-5-104 CRUELTY TO ANIMALS				
Plea:	Find: Dismissed			
Fine: 0.00	Susp: 0.00			
Jail: 0	Susp: 0	ACS:		0
Charge: 23-5-104 CRUELTY TO ANIMALS				
Plea:	Find: Dismissed			
Fine: 0.00	Susp: 0.00			
Jail: 0	Susp: 0	ACS:		0
Charge: 23-5-104 CRUELTY TO ANIMALS				
Plea:	Find: Dismissed			
Fine: 0.00	Susp: 0.00			
Jail: 0	Susp: 0	ACS:		0

FEES AND ASSESSMENTS:

Fine Description: Fine- Prosecutor Spl

Credit: 0.00 Paid: 0.00 Due: 0.00

TRACKING:

Probation (Court)

02/28/93

DOCKET INFORMATION:

Sentence:

Defendant, Counsel and Prosecutor not present

Judge: THORNE, WILLIAM A.

Chrg: CRUELTY/ANIMALS Plea: Guilty Find: Guilty Plea

Fine Amount: 1000.00 Suspended: 1000.00

Jail: 60 DAYS Suspended: 60 DAYS

TERMS; 1. FINE AND JAIL TO BE SUSP IF DEF COMPLIES WITH TERMS 2.

12 MONTHS PROBATION TO COURT NO OTHER VIOLATIONS 3. REVIEW LAW

AND GET INTOA COMPLIANCE 3. RESTRAINING ORDER TO BE LIFTED. 4.

DEF ENTERED CONDITIONAL PLEA ON CHARGE.

BY THE COURT

  
JUDGE, CIRCUIT COURT

NOTE: APPEAL MUST BE FILED WITHIN 30 DAYS  
OF ENTRY OF THIS JUDGMENT.

THIRD CIRCUIT COURT - WVC  
SALT LAKE COUNTY, STATE OF UTAH

CITY OF WEST VALLEY CITY  
VS

JUDGMENT, SENTENCE  
(COMMITMENT)

STREETER, DENNIS  
3551 S 7200 W  
WVC UT 84120

CASE NO: 901001677  
DOB: / /  
TAPE: COUNT:  
DATE: 04/30/92

THE ABOVE NAMED DEFENDANT BEING ADJUDGED GUILTY FOR THE  
OFFENSE(S) AS FOLLOWS:

Charge: 17-1-102 DO BUSINESS W/O LIC			
Plea: Guilty	Find: Guilty Plea		
Fine: 1000.00	Susp: 1000.00		
Jail: 60 DA	Susp: 60 DA	ACS:	0
Charge: 7-9-103 IMP USES FOR R-1-8 ZONE			
Plea: Guilty	Find: Guilty Plea		
Fine: 0.00	Susp: 0.00		
Jail: 0	Susp: 0	ACS:	0
Charge: 7-9-103 IMP USES FOR R-1-8 ZONE			
Plea:	Find: Dismissed		
Fine: 0.00	Susp: 0.00		
Jail: 0	Susp: 0	ACS:	0
Charge: 23-5-104 CRUELTY TO ANIMALS			
Plea: Guilty	Find: Guilty Plea		
Fine: 0.00	Susp: 0.00		
Jail: 0	Susp: 0	ACS:	0
Charge: 23-3-101 FAIL TO LIC DOG			
Plea:	Find: Dismissed		
Fine: 0.00	Susp: 0.00		
Jail: 0	Susp: 0	ACS:	0
Charge: 23-3-101 FAIL TO LIC DOG			
Plea:	Find: Dismissed		
Fine: 0.00	Susp: 0.00		
Jail: 0	Susp: 0	ACS:	0
Charge: 23-4-102 FAIL TO OBT RABIES VACC			
Plea:	Find: Dismissed		
Fine: 0.00	Susp: 0.00		
Jail: 0	Susp: 0	ACS:	0

Charge: 24-1-11 ACCUMULATION OF SOLID WASTE & LITTERING

Plea: Guilty Find: Guilty Plea

Fine: 0 00 Susp: 0.00

Jail: 0 Susp: 0 ACS: 0

Charge: 7-2-119 IMP HEIGHT FOR FENCES

Plea: Find: Dismissed

Fine: 0.00 Susp: 0.00

Jail: 0 Susp: 0 ACS: 0

TRACKING:

Probation (Court)

02/28/93

DOCKET INFORMATION:

Sentence:

Defendant, Counsel and Prosecutor not present

Judge: THORNE, WILLIAM A.

Chrg: DO BUSNS W/O LIC Plea: Guilty Find: Guilty Plea

Fine Amount: 1000.00 Suspended: 1000.00

Jail: 60 DAYS Suspended: 60 DAYS

TERMS: 1. DEF TO BE ON PROB TO COURT WITH NO OTHER VIOLATION. 2. FINE AND JAIL TO BE SUSPENDED UPON DEF COMPLYING WITH ALL TERMS, 3. RESTRAINING ORDER LIFTED. 4. DEF TO REVIEW LAW AND GET IN COMPLAANCE.

5. DEF ENTERED CONDITIONAL PLEA ON CNT 2, IMP USE FOR R-1-8 ZONE

BY THE COURT

  
JUDGE, CIRCUIT COURT

NOTE: APPEAL MUST BE FILED WITHIN 30 DAYS  
OF ENTRY OF THIS JUDGMENT.

## CHAPTER 2

### ANIMAL CONTROL OFFICIALS

SECTION 23-2-101. DUTIES OF ANIMAL CONTROL OFFICIALS.

SECTION 23-2-102. POWERS OF ANIMAL CONTROL OFFICIALS.

SECTION 23-2-103. OFFICER'S AUTHORITY TO TAKE POSSESSION OF ANIMALS  
- LIEN FOR CARE.

SECTION 23-2-104. INTERFERENCE WITH OFFICER PROHIBITED.

SECTION 23-2-101. DUTIES OF ANIMAL CONTROL OFFICIALS.

(1) The Animal Control Director shall:

- (a) Enforce this ordinance and perform other responsibilities pursuant thereto.
- (b) Supervise the municipal animal shelter(s) under his jurisdiction.
- (c) Keep adequate records of all animals impounded and all moneys collected.
- (d) See that all animals and animal holding facilities in his jurisdiction are licensed, controlled and permitted in accordance with any applicable ordinance and/or regulations.
- (e) Establish, in cooperation with the Salt Lake City/County Health Department and other interested governmental agencies, adequate measures for rabies immunization and control.

(2) Each Animal Control Officer shall:

- (a) Enforce this Chapter in all respects pertaining to animal control within the jurisdiction, including the care and impounding of animals and prevention of cruelty to animals.
- (b) Carry out all duties prescribed or delegated by the director.

SECTION 23-2-102. POWERS OF ANIMAL CONTROL OFFICIALS.

(1) The Animal Control Director or any person employed by the Department of Animal Control as an Animal Control Officer shall take the oath of office and shall be vested with the power and authority to enforce this ordinance.

(2) The Animal Control Director, his deputies, assistants and Animal Control Officers are hereby authorized and empowered to apprehend and take with them and impound any animal found in violation of this ordinance including, but not limited to unlicensed dogs.

(3) In the enforcement of this ordinance, any peace officer or the Director of Animal Control or his assistants are authorized to enter onto the open premises of any person to take possession of any dog in violation of this ordinance.

SECTION 23-2-103. OFFICER'S AUTHORITY TO TAKE POSSESSION OF ANIMALS - LIEN FOR CARE.

(1) Any Law Enforcement Officer may take possession of any animals being treated cruelly and, after reasonable efforts to notify the owner, may provide shelter and care for them or, upon permission from the owner, may destroy them.

(2) Officers caring for animals pursuant to this section have a lien for the reasonable value of the care and/or destruction. Any court, upon proof that the owner has been notified of the lien and amount due at least 5 days prior, shall order the animal sold at public auction or destroyed.

(3) Any Law Enforcement Officer may humanely destroy any animal found suffering past recovery for any useful purpose. Before destroying the animal, the officer shall obtain the judgment to the effect of a veterinarian, or of 2 reputable citizens called by him to view the animal in his presence, or shall obtain consent to the destruction from the owner of the animal.

SECTION 23-2-104. INTERFERENCE WITH OFFICER PROHIBITED.

It shall be unlawful for any person to knowingly and intentionally interfere with the director or any Animal Control Officer in the lawful discharge of his duties as herein prescribed.

(3) Care and maintenance: It shall be the duty of any person to provide any animal in his charge or custody, as owner or otherwise, with adequate food, drink, care and shelter.

(4) Animals in vehicles: It shall be unlawful for any person to carry or confine any animal in or upon any vehicle in a cruel or inhumane manner, including but not limited to, carrying or confining such animal without adequate ventilation or for an unusual length of time.

(5) Abandonment of animals: It shall be unlawful for any person to abandon any animal within the jurisdiction.

(6) Animal poisoning: Except as provided in Section 25 herein, it shall be unlawful for any person by any means to make accessible to any animal, with intent to cause harm or death, any substance which has in any manner been treated or prepared with any harmful or poisonous substance. This provision shall not be interpreted so as to prohibit the use of poisonous substances for the control of vermin in furtherance of the public health when applied in such a manner as to reasonably prohibit access to other animals.

(7) Injury to animals by motorists:

(a) Every operator of a motor or other self-propelled vehicle upon the streets of the jurisdiction shall immediately upon injuring, striking, maiming or running down any domestic animal give such aid as can reasonably be rendered. In the absence of the owner, he shall immediately notify the Office of Animal Control, furnishing facts relative to such injury.

(b) It shall be the duty of such operator to remain at or near the scene until such time as the appropriate authorities arrive, and upon the arrival of such authorities, the operator shall immediately identify himself to such authorities. Alternatively, in the absence of the owner, a person may give aid by taking the animal to the Animal Control facility or other appropriate facility and notifying the Office of Animal Control. Such animal may be taken in by the Animal Control Facility and dealt with as deemed appropriate under the circumstances.

(c) Emergency vehicles are exempted from the requirements of this provision.

(8) Animals for fighting:

(a) It shall be unlawful for any person or corporation to raise, keep or use any animal, fowl or bird for the purpose of fighting or baiting; and for any person to be a party to or be present as a spectator at any such fighting or baiting of any animal or fowl; and for any person, firm or corporation to knowingly rent any building, shed, room, yard, ground or premises for any such purposes as aforesaid, or to knowingly



suffer or permit the use of his buildings, sheds, rooms, yards, grounds or premises for the purposes aforesaid.

- (b) Law Enforcement Officers or Office of Animal Control officials may enter any building or place where there is an exhibition of the fighting or baiting of a live animal, or where preparations are being made for such an exhibition, and the Law Enforcement Officers may arrest persons there present and take possession of all animals engaged in fighting, or there found for the purposes of fighting, along with all implements or applications used in such exhibition. This provision shall not be interpreted to authorize a search or arrest without a warrant when such is required by law.

(9) Killing of birds: It shall be unlawful for any person to take or kill any bird(s), or to rob or destroy any nest, egg or young of any bird in violation of the laws of the State of Utah.

(10) Malicious impounding: It shall be unlawful for any person maliciously to secret or impound the animal of another.

(11) Keeping of diseased or painfully crippled animals:

- (a) It shall be unlawful for any person to abandon or turn out at large any sick, diseased or disabled animal, but such animal shall, when rendered worthless by reason of sickness or other disability, be killed in a humane manner by the owner thereof and disposed of as instructed after contacting the Office of Animal Control.
- (b) It shall further be unlawful for the owner or person having the charge, care, custody and control of such animal infected with dangerous or incurable and/or painfully crippling condition to have, keep or harbor such animal without placing the same under veterinary care or to dispose of the same. The failure to take such care is a violation of this ordinance and the Office of Animal Control may take custody of such animals and deal with them as deemed appropriate under the circumstances.

(12) It is a defense to the prosecution under this section that the conduct of the actor towards the animal was by a licensed veterinarian using accepted veterinary practice or directly related to a bona fide experimentation for scientific research provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

#### SECTION 23-5-105. SPECTATOR AT ORGANIZED ANIMAL FIGHT.

(1) It is unlawful for any person to be a spectator at an organized animal fight.

(2) For the purpose of this section only, an organized animal fight means a fight between animals for the benefit of spectators. There is no requirement that an admission fee be charged.

with section 2156 of this title, as so amended, shall commence upon the expiration of said ninety-day period. In all other respects, said amendments shall become effective upon April 22, 1976.

(Pub.L. 89-544, § 24, Aug. 24, 1966, 80 Stat. 353; Pub.L. 94-279, § 15, Apr. 22, 1976, 90 Stat. 421.)

### HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**  
1966 Act. Senate Report No. 1281, Conference Report No. 1848, see 1966 U.S.Code Cong. and Adm.News, p. 2635.

1976 Act. House Report No. 94-801, House Conference Report No. 94-976, see 1976 U.S.Code Cong. and Adm.News, p. 758.

#### References in Text

The Animal Welfare Act Amendments of 1976, referred to in text, is Pub.L. 94-279, Apr. 22, 1976, 90 Stat. 417, which enacted section 2156 of this title, amended sections 2131, 2132, 2134, 2136, 2139 to 2146, 2149, 2153 to 2155 of this title, and section 3001 of Title 39, Postal Service, repealed section 2150 of this title, and enacted provisions set out as notes under section 2131 of this title. For complete classification of this Act to

the Code, see Short Title note set out under section 2131 of this title and Tables volume.

Subsections (b), (c), and (d) of section 2143 of this title, referred to in text, were redesignated subsecs. (f), (g), and (h), respectively, and new subsecs. (b), (c), and (d) of section 2143 were enacted, by Pub.L. 99-198, Title XVII, § 1752(a)(1), (c), Dec. 23, 1985, 99 Stat. 1645, 1647.

#### Amendments

1976 Amendment. Pub.L. 94-279 added provisions setting particular effective dates of compliance for intermediate handlers and carriers and for dealers, exhibitors, operators of auction sales, and research facilities with respect to the amendments made by the Animal Welfare Act Amendments of 1976.

### WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

## § 2155. Annual report to the President of the Senate and the Speaker of the House of Representatives

Not later than March of each year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a comprehensive and detailed written report with respect to—

(1) the identification of all research facilities, exhibitors, and other persons and establishments licensed by the Secretary under section 2133 and section 2142 of this title;

(2) the nature and place of all investigations and inspections conducted by the Secretary under section 2146 of this title, and all reports received by the Secretary under section 2143 of this title;

(3) recommendations for legislation to improve the administration of this chapter or any provisions thereof; and

(4) recommendations and conclusions concerning the aircraft environment as it relates to the carriage of live animals in air transportation.

This report as well as any supporting documents, data, or findings shall not be released to any other persons, non-Federal agencies or organizations unless and until it has been made public by an appropriate committee of the Senate or the House of Representatives.

(Pub.L. 89-544, § 25, as added Pub.L. 91-579, § 22, Dec. 24, 1970, 84 Stat. 1565, and amended Pub.L. 94-279, § 16, Apr. 22, 1976, 90 Stat. 421.)

### HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**  
1970 Act. House Report No. 91-1651, see 1970 U.S.Code Cong. and Adm.News, p. 5103.

1976 Act. House Report No. 94-801, House Conference Report No. 94-976, see 1976 U.S.Code Cong. and Adm.News, p. 758.

#### Amendments

1976 Amendment. Par. (4). Pub.L. 94-279 added par. (4).

#### Effective Dates

1970 Act. Section effective one year after Dec. 24, 1970, see section 23 of Pub.L. 91-579, set out as a note under section 2131 of this title.

### LIBRARY REFERENCES

#### American Digest System

Cruelty to animals, see Animals ¶38 to 40.

#### Encyclopedias

Cruelty to animals, see C.J.S. Animals § 99 et seq.

### WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

## § 2156. Animal fighting venture prohibition

### (a) Sponsoring or exhibiting animal in any fighting venture

It shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce.

### (b) Buying, selling, delivering, or transporting animals for participation in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, transport, or deliver to another person or receive from another person for purposes of transportation, in interstate or foreign commerce, any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture.

### (c) Use of Postal Service or other interstate instrumentality for promoting or furthering animal fighting venture

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any interstate instru-

thering an animal fighting venture except as performed outside the limits of the States of the United States.

**(d) Violation of State law**

Notwithstanding the provisions of subsections (a), (b), or (c) of this section, the activities prohibited by such subsections shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.

**(e) Penalties**

Any person who violates subsection (a), (b), or (c) of this section shall be fined not more than \$5,000 or imprisoned for not more than 1 year, or both, for each such violation.

**(f) Investigation of violations by Secretary; assistance by other federal agencies; issuance of search warrant; forfeiture; costs recoverable in forfeiture or civil action**

The Secretary or any other person authorized by him shall make such investigations as the Secretary deems necessary to determine whether any person has violated or is violating any provision of this section, and the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations, under cooperative agreements with such agencies. A warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this section may be issued by any judge of the United States or of a State court of record or by a United States magistrate within the district wherein the animal sought is located. Any United States marshal or any person authorized under this section to conduct investigations may apply for and execute any such warrant, and any animal seized under such a warrant shall be held by the United States marshal or other authorized person pending disposition thereof by the court in accordance with this subsection. Necessary care including veterinary treatment shall be provided while the animals are so held in custody. Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States at any time on complaint filed in any United States district court or other court of the United States for any jurisdiction in which the animal is found and upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court

in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

**(g) Definitions**

For purposes of this section—

(1) the term “animal fighting venture” means any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment except that the term “animal fighting venture” shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal or animals, such as waterfowl, bird, raccoon, or fox hunting;

(2) the term “interstate or foreign commerce” means—

(A) any movement between any place in a State to any place in another State or between places in the same State through another State; or

(B) any movement from a foreign country into any State;

(3) the term “interstate instrumentality” means telegraph, telephone, radio, or television operating in interstate or foreign commerce;

(4) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(5) the term “animal” means any live bird, or any live dog or other mammal, except man; and

(6) the conduct by any person of any activity prohibited by this section shall not render such person subject to the other sections of this chapter as a dealer, exhibitor, or otherwise.

**(h) Conflict with State law**

The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder. (Pub.L. 89-544, § 26(a)–(h)(1), as added Pub.L. 94-279, § 17, Apr. 22, 1976, 90 Stat. 421.)

**HISTORICAL AND STATUTORY NOTES**

Revision Notes and Legislative Reports Codifications

by ' Pub.L. 94-279, amended section  
3001(a) of Title 39, Postal Service.

#### LIBRARY REFERENCES

##### American Digest System

Cruelty to animals, see Animals § 38 to 40.

##### Encyclopedias

Cruelty to animals, see C.J.S. Animals § 99 et seq.

#### WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

## § 2157. Release of trade secrets

### (a) Release of confidential information prohibited

It shall be unlawful for any member of an Institutional Animal Committee to release any confidential information of the research facility including any information that concerns or relates to—

(1) the trade secrets, processes, operations, style of work, or apparatus; or

(2) the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures,

of the research facility.

### (b) Wrongful use of confidential information prohibited

It shall be unlawful for any member of such Committee—

(1) to use or attempt to use to his advantages; or

(2) to reveal to any other person,

any information which is entitled to protection as confidential information under subsection (a) of this section.

### (c) Penalties

A violation of subsection (a) or (b) of this section is punishable by—

(1) removal from such Committee; and

(2)(A) a fine of not more than \$1,000 and imprisonment of not more than one year; or

(B) if such violation is willful, a fine of not more than \$10,000 and imprisonment of not more than three years.

### (d) Recovery of damages by injured person; costs; attorney's fee

Any person, including any research facility, injured in its business or property by reason of a violation of this section may recover all actual and consequential damages sustained by such person and the cost of the suit including a reasonable attorney's fee.

### (e) Other rights and remedies

Nothing in this section shall be construed to affect any other rights of a person injured in its business or property by reason of a violation of this section. Subsection (d) of this section shall not be construed to limit the exercise of any such rights arising out of or relating to a violation of subsections (a) and (b) of this section. (Pub.L. 89-544, § 27, as added Pub.L. 99-198, Title XVII, § 1754, Dec. 23, 1985, 99 Stat. 1649.)

#### HISTORICAL AND STATUTORY NOTES

##### Revision Notes and Legislative Reports

1985 Act. House Report Nos. 99-271(I), 99-271(II), Senate Report No. 99-145, House Conference Report No. 99-447, and Statements by Legislative leaders, see 1985 U.S.Code Cong. and Adm. News, p. 1103.

##### Effective Dates

1985 Act. Section effective one year after Dec. 23, 1985, see section 1759 of Pub.L. 99-198, set out as a note under section 2131 of this title.

#### LIBRARY REFERENCES

##### American Digest System

Cruelty to animals, see Animals § 38 to 40.

##### Encyclopedias

Cruelty to animals, see C.J.S. Animals § 99 et seq.

#### WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

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of the act, as amended, which relate to them to commence 90 days after promulgation of regulations under section 13 of the act, as amended, which shall be not later than 9 months after enactment: (2) to require compliance by dealers, exhibitors, operators of auction sales, and research facilities with other provisions of the act, as amended, and the implementing regulations 90 days after enactment; and to require compliance by all persons with the veterinary certificate, young animal, and C.O.D. amendments to section 13 of the act 90 days after enactment. All other amendments, principally section 26 (animal fighting ventures), would become effective upon the date of enactment.

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### *Conference substitute*

The Conference substitute adopts the House provision with an amendment which makes new section 26 of the act (animal fighting ventures) effective 90 days after enactment of these amendments.

### 28. ANNUAL REPORT TO CONGRESS (SECTION 25 OF EXISTING LAW)

#### *Senate bill*

The Senate bill amends section 25 of the act to require the Secretary of Agriculture to include in his annual report to the Congress recommendations and conclusions concerning flight safety, including the aircraft, its environment, or equipment as they relate to the carriage of live animals in air transportation, but only those recommendations and conclusions which have been approved by the Secretary of Transportation, the Administrator of the F.A.A. and the Chairman of the C.A.B.

#### *House amendment*

The House amendment would amend section 25 of the act to require the Secretary to include in his annual report to the Congress recommendations and conclusions concerning the aircraft environment as it relates to the carriage of live animals in air transportation.

#### *Conference substitute*

The Conference substitute adopts the House provision.

### 29. ANIMAL FIGHTING (NEW SECTION 26)

#### *Senate bill*

The Senate bill contains no provisions relating to animal fighting ventures.

#### *House amendment*

The House amendment adds to the act a new section 26 which would subject to a fine of not more than \$5,000 or imprisonment for not more than 1 year, or both, any person who knowingly (a) sponsors or exhibits an animal in any fighting venture to which any animal was moved in interstate or foreign commerce, (b) sells, buys, transports, or delivers to another person or receives from another person for purposes of transportation in interstate or foreign commerce any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture, or (c) uses the U.S. mails or any interstate instrumentality for purposes of promoting or

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furthering an animal fighting venture held within the United States. The Secretary of Agriculture would be authorized to make such investigations as he deems necessary and to enlist the assistance of the FBI, Treasury, or other Federal, State or local law enforcement agencies. The provisions of this new section would not supersede or otherwise invalidate any State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict. For purposes of this new section of the act, the term "animal" would be defined to mean any live bird, or any live dog or other mammal, except man.

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*Conference substitute*

The Conference substitute adopts the House provision with an amendment which provides that the activities prohibited by subsections (a), (b), or (c) of new section 26 of the act shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof. The section does not apply to export of live birds to foreign countries nor to interstate shipment of live birds for breeding purposes. Game fowl publications would be unaffected except that advertising of fights involving live birds would be prohibited except in those instances where such fights are to be held in a State or territory where they are not unlawful.

THOMAS S. FOLEY.

W. R. POAGE.

BOB BERGLAND.

JERRY LITTON.

JAMES WEAVER.

TOM HARKIN.

*Managers on the Part of the House.*

WARREN G. MAGNUSON.

WENDELL H. FORD.

LOWELL P. WEICKER, Jr.,

*Managers on the Part of the Senate.*

**Sec. 5. [Municipal corporations — To be created by general law — Right and manner of adopting charter for own government — Powers included.]**

Corporations for municipal purposes shall not be created by special laws. The legislature by general laws shall provide for the incorporation, organization and classification of cities and towns in proportion to population, which laws may be altered, amended or repealed. Any incorporated city or town may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may, by two-thirds vote of its members, and upon petition of qualified electors to the number of fifteen per cent of all votes cast at the next preceding election for the office of the mayor, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election. The ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation. Such candidates shall be nominated in the same manner as required by law for nomination of city officers. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving a majority of the votes cast at such election, shall constitute the charter commission, and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be not less than sixty days subsequent to its completion and distribution among the electors and not more than one year from such date. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provisions for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city, not less than sixty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon, shall become an organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are now in conflict therewith. Within thirty days after its approval a copy of such charter as adopted, certified by the mayor and city recorder and authenticated by the seal of such city, shall be made in duplicate and deposited, one in the office of the secretary of State and the other in the office of the city recorder, and thereafter all courts shall take judicial notice of such charter.

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided for making of charters, or may be proposed by the legislative authority of the city upon a two-thirds vote thereof, or by petition of qualified electors to a number equal to fifteen per cent of the total votes cast for mayor on the next preceding election, and any such amendment may be submitted at the next regular municipal election, and having been approved by the majority of the electors voting thereon, shall become part of the charter at the time fixed in such amendment and shall be certified and filed as provided in case of charters.

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

The power to be conferred upon the cities by this section shall include the following:

(a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.

(c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than [that] needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

**History: Const. 1896.**

**Compiler's Notes.** — The bracketed word "that" in Subsection (c) of the last paragraph appeared in this section as published in the Revised Statutes of 1933.

**Cross-References.** — Incorporation of cities and towns, § 10-2-101 et seq.

Local improvements, § 10-7-20.

Miscellaneous powers of cities and towns, § 10-1-202.

Municipal Code, home rule exceptions to, §§ 10-1-106, 10-3-818.

Powers and duties of all cities, § 10-8-1 et seq.

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Repeal of council-manager charter of city.  
Sewage disposal.  
Water conservancy districts.  
Withholding tax provision.  
Cited.

**Classification of cities.**

The power of the legislature to classify cities according to population is expressly conferred by this section, and statute passed to enable cities of first class to meet needs and requirements of larger municipalities was general, in