

1965

The Bowling Club, A Non-Profit Corporation of the State of Utah v. Lamont F. Toronto, Secretary of State of the State of Utah : Appellant's Petition For Rehearing and Supporting Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE BOWLING CLUB, a non-
profit corporation of the State of Utah,
Petitioner and Appellant,

vs.

LAMONT F. TORONTO, Secretary
of State of the State of Utah,
Respondent.

Case No.
10253

UNIVERSITY OF UTAH

OCT 15 1965

Appellant's Petition for Rehearing
and Supporting Brief

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JUL 13 1965

Clerk, Supreme Court, Utah

GEORGE E. BRIDWELL
Attorney for Petitioner-Appellant
506 Judge Building
Salt Lake City, Utah

RONALD N. BOYCE
Chief Assistant Attorney General
for the State of Utah,
Attorney for Respondent.

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Appellant's Petition for Rehearing and Supporting Brief

Petitioner respectfully petitions the Court for a rehearing in the above captioned matter and it requests the Court to vacate and set aside its decision heretofore made and entered on June 24, 1965.

This petition is based on the following grounds:

I.

There is now prima facie unequal enforcement of the duties pertaining to the Secretary of State regarding enforcement of sanctions against non-profit corporations violating the provisions of the Utah Liquor Control Act, as evidenced by a plea of guilty by the Elks Club of Salt Lake City, Utah, to violation of the Utah Liquor Control Act in December of 1964, and to this date no hearing for charter or bond revocation has been scheduled by the Secretary of State against the said Elks Club. This defense was not available to petitioner at time of hearing before this Court for the reason that briefs were filed prior to the lapse of reasonable time within which the Secretary of State could reasonably have commenced proceedings for hearing for revocation of charter and Five Thousand Dollar (\$5,000.00) bond of the Elks Club. The present lapse of time with no such action makes this position now tenable.

No hearings have been scheduled by the Secretary of State against all of the non-profit corporations that are listed in petitioner's appendix in its initial brief, pages 26 through 33 inclusive, though the fact that possession of said non-profit corporations of the federal retail liquor tax stamp constitutes a prima facie violation of the Utah Liquor Control Act under provision 32-8-34, and such identical point is now pending decision before this Court in the case of the State of Utah vs. The Starlite Club, Case No. 10372. A determination against the state in favor of defendant in that case

would have the effect of abrogating the charter and bond revocation in this case, as there would then be adjudication of unequal protection, constitutionally demanded.

CERTIFICATE OF COUNSEL ON PETITION FOR REHEARING

The undersigned, attorney of record for petitioner and appellant, certifies in support of this petition for rehearing that in his opinion there is good reason to believe that the opinion and judgment of this Court heretofore rendered should be re-examined.

GEORGE E. BRIDWELL
Attorney for Petitioner and Appellant

PETITIONER'S ARGUMENT FOR REHEARING

I.

The concept of unequal enforcement of the law by the Secretary of State is justiciable, and such principle is squarely under consideration in another case now pending before this Court.

There is reasonable grounds for this Court to now consider and pass on the question of unequal application

of sanctions by the Secretary of State that constitutes denial of equal protections under the XIV Amendment to the United States Constitution, and Article 1, Sections 2 and 24, Utah State Constitution. This is so, because at the time of briefs and argument in this case, as pointed out by the respondent in brief at page 16, it is stated:

“Further, there is no showing that in any particular case the Secretary of State is discriminating in his application of the law.”

This is now not so.

The Elks Club, a large non-profit club in Salt Lake City, the possessor of a federal retail alcoholic tax stamp (See entry 43, p. 29 of Appellant's Brief), pleaded guilty to a violation of the Utah Liquor Control Act in Third District Court in December of 1964, and paid Two Hundred Fifty Dollars (\$250.00) fine.

For appellant to have argued the point of unequal treatment at time of brief filing in this case, January, 1965, or even at oral argument before this Court, April 12, 1965, would have been premature.

Now it is not. There is maturity of claim of what should be apparent is unequal enforcement by the Secretary of State. No hearing has been called for the Elks Club, and it is safe now to say there won't be any. If there were, and if there was application of the law, impartially, then this point would have no validity.

The fact is that there is great disparity in enforcement and penalty in this state on alcoholic beverage infringements, which the Court should recognize and denounce.

The concept of lack of equality of enforcement and penalty is squarely before the Court in Case No. 10372, State vs. Starlite Club, and final decision on the case at bar should be stayed pending decision in the Starlite case on those concepts.

Respectfully submitted,

GEORGE E. BRIDWELL
Attorney for Petitioner-Appellant
506 Judge Building

Received two (2) true copies hereof, this
day of July, 1965.

ATTORNEY GENERAL of the
STATE OF UTAH

By

IN THE SUPREME COURT OF THE STATE OF UTAH

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