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IN THE SUPREME COURT
of the
STATE OF UTAH

SALT LAKE CITY, a municipal corporation,

Plaintiff-Appellant,

vs.

JOE WHEELER, DAVID [illegible] and JOE JACKSON,

Defendants-Respondents.

BRIEF OF DEFENDANTS-RESPONDENTS

Appeal from the
District Court of Salt Lake County
Honorable D. [illegible]

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STATE OF UTAH

SALT LAKE CITY, a municipal corporation, *Plaintiff-Appellant,* vs. JOE WHEELER, DAVID BOYD and JOE JACKSON, *Defendants-Respondents.*	**Case No.** 11855

BRIEF OF DEFENDANTS-RESPONDENTS

NATURE OF THE CASE

This is an appeal by Salt Lake City Corporation seeking to reverse a District Court decision that its

ordinance permitting warrantless searches of premises having a license for liquor consumption is unconstitutional.

DISPOSITION IN THE LOWER COURT

The Honorable D. Frank Wilkins, Judge of the Third Judicial District Court in and for Salt Lake County, Utah, ruled that Section 19-4-6, Revised Ordinances of Salt Lake City, Utah is unconstitutional and entered a formal order to that effect. This ruling, under fact situations posed, controlled three cases pending before Judge Wilkins. These cases were appealed from the Salt Lake City Court after unsuccessfully attacking the respective charges on the same grounds. Based upon his conclusion that the above ordinance is unconstitutional, Judge Wilkins dismissed the charges against each defendant named as respondents in this appeal.

RELIEF SOUGHT ON APPEAL

Respondents seek to uphold the decision of the Honorable D. Frank Wilkins, District Judge.

FACTS

Confining the Statement of Facts to the record before this Court, respondents are unable to ascertain why three defendants are named in three separate appeals covers from the District Court of Salt Lake County and combined in one appeal. At no time has any order is

sued, nor has any stipulation been made to combine these cases for appeal purposes. Only one notice of appeal and designation of record was filed (R. 6 and R. 7) and perhaps, technically, the cases of Joe Wheeler and Joe Jackson are not before this Court (see R. 10 for substance of the stipulation on argument before Judge Wilkins).

In any event, the issue to be decided by this Court is the validity of 19-4-6, *Revised Ordinances of Salt Lake City*, 1965, which, based upon the fact situations in each case, including the David Boyd case, gives each defendant a constitutional defense to the actions of the police officer complainant. That ordinance reads as follows:

> "*Periodic inspection of premises by police department.* The police department shall be permitted to have access to all premises licensed or applying for license under this chapter, and shall make periodic inspections of said premises and report its findings to the board of commissioners."

POINT ON APPEAL

WARRANTLESS SEARCHES OR INSPECTIONS OF PRIVATE PROPERTY IS UNCONSTITUTIONAL.

ARGUMENT

WARRANTLESS SEARCHES OR INSPECTIONS OF PRIVATE PROPERTY IS UNCONSTITUTIONAL.

Chapter 4 *of Title* 19, *Revised Ordinances of Salt*

Lake City is entitled "LIQUOR CONSUMPTION LICENSES." In substance, the eleven sections in that chapter deal with the licensing of commercial establishments by Salt Lake City for the purpose of permitting patrons to consume alcoholic beverages on said premises, i.e., restaurants, cafes, lounges, nightclubs, etc., not just beer taverns as the City would have this Court believe (see Addendum "A" in this brief). The right to license is not contested (*Vagabond Club v. Salt Lake City*, 21 Utah 2d 318; 445 P.2d 691); nor does respondent contest the right for a reasonable inspection of premises for health and safety purposes as a condition precedent to the granting of a license (*See v. Seattle*, 387 U.S. 541; 18 LE2d 943; 87 S.Ct. 1737; LE at 948), which was not the fact situation upon which these cases turn since all premises had licenses. Respondent also does not contest the right of police or administrative personnel to view any portions of private property open to the public which are available for use or viewing by the general public. What respondent does contest is police or ". . . administrative entry, without consent, upon the portions of commercial premises which are not open to the public. . . " (Mr. *Justice White in See v. Seattle, ibid.*, 18 LE2d at page 947). The ordinance in question purports to grant to the police department and no other administrative agency, access to premises with no restriction as to time, scope or purpose of search. Under this ordinance, any city

police officer would have the right to demand from the proprietor of any business licensed by the City to permit consumption of alcoholic beverages, a key to the premises at any hour of the day or night, on any day of the week, whether his establishment was open for business or not, and conduct a search of licensed private property as he saw fit. The City, in its brief, has cited to this Court numerous cases of varying vintage which were decided before *Camara v. Municipal Court,* 387 U.S. 523; 18 LE2d 930; 87 S. Ct. 1727 and *See v. Seattle,* ibid., which respondent believes to be controlling in striking down the subject matter ordinance; however, the City has failed to cite this Court any case or any authority for the proposition that evidence obtained during the course of a warrantless, blanket police "inspection" could not be used in a criminal proceeding since there obviously is no such authority existing. The appellant would categorize such licensed premises as being "prone to evils" and attempt to justify warrantless, inspection-type searches under an attempted distinction from *Camara* and *See* by the Court of Appeals of the Second Circuit in *Colannade Catering Corp. v. U.S.,* 410 F.2d 197, certiorari granted; ..... U.S. .....; 24 LE2d 66; ..... S.Ct. ....., Oct. 13, 1969. Under the pronouncements of the United States Supreme Court in *Camara* and *Sec*, this is no longer permissible (see pages 9 and 10 of appellant's brief for the complete statement of Mr. Justice White in *See v. Seattle,* partially quoted heretofore in this brief.)

CONCLUSION

The Salt Lake City Ordinance in question, 19-4-6, permitting police inspections of premises licensed for liquor consumption, is unconstitutionally vague, broad, and in violation of Article I, Section 14, Constitution of Utah, and the Fourth Amendment of the Constitution of the United States, since it does not limit the scope of the search, the times the same may be made, and does not require any showing of need to search, much less probable cause. The decision of the Honorable D. Frank Wilkins should be sustained.

Respectfully submitted,

HATCH, McRAE,
RICHARDSON & KINGHORN

Attorneys for Defendants-Respondents

APPENDUM "A"

Chapter 4

LIQUOR CONSUMPTION LICENSES

Sec. 19-4-1. *Unlawful to allow consumption without license.* It shall be unlawful for any owner, operator, manager or lessee, or any agent, partner, associate or employee of such owner, operator, manager or lessee of any "place of business" as in this title defined, knowingly to permit or allow customers, members, guests or any other person to consume "liquor" as defined in this title, without first obtaining a license under this chapter.

Sec. 19-4-2. *Consumption prohibited in unlicensed premises.* It shall be unlawful for any person to consume "liquor" in an unlicensed place of business as provided herein.

Sec. 19-4-3. *License application.* Application of a liquor consumption license shall be upon a form furnished by the city, signed under oath by the applicant, and addressed to the board of commissioners. The form shall require information showing applicant's age, citizenship, moral character and reputation and conviction of a felony or misdemeanor involving moral turpitude, if any. If the applicant is a partnership or association or a corporation, the same information shall be obtained on corporate officers. Each licensee must be over the age of twenty-one years, of good moral character and a citizen of the United States. No license shall be granted to any applicant who has been convicted of a felony or misdemeanor involving moral turpitude. If any applicant is a partnership, association or corporation, each partner, association member or corporate director or corporate officer shall meet all of the foregoing qualifications.

Sec. 19-4-4. *License fee.* The license fee for a liquor consumption license shall be fifty dollars per annum or any part thereof which shall be deposited in the city treasury if the license is granted and returned to the applicant if the license is denied.

Sec. 19-4-5. *Police department investigation of applicants.* The police department shall examine all applications and investigate all applicants for licenses under this chapter. Following such examination and investigation, the recommendations of the police department shall be made in writing to the board of commissioners, who shall be the licensing authority.

Sec. 19-4-6. *Periodic inspection of premises by police department.* The police department shall be permitted to have access to all premises licensed or applying for license under this chapter, and shall make periodic inspections of said premises and report its findings to the board of commissioners.

Sec. 19-4-7. *Suspension and revocation of licenses.* Licenses may be suspended or revoked by the board of commissioners for the violation on the licensed premises of any provision of this title, or of any other applicable ordinance or law relating to alcoholic beverages, or if the person to whom the license was issued no longer possesses the qualifications required by this title and the statutes of the State of Utah.

All licenses issued pursuant to this title may be suspended by the board of commissioners without a prior hearing. Immediately following any suspension order issued without a prior hearing, notice shall be given such licensee, advising him of his right to a prompt hearing, and listing the cause or causes for such suspension. If cause for the suspension is established at the hearing, the suspension order may be continued for up

to one year in duration. However, no license shall be revoked or suspended beyond the initial hearing without first establishing cause therefor, nor shall any license be revoked without first giving the licensee an opportunity for a hearing on the causes specified for revocation. It shall be unlawful for any licensee to permit any person to possess or consume liquor on the licensed premises during the period of suspension or after the revocation of license.

Sec. 19-4-8. *Display of licenses.* Each license issued pursuant to this chapter shall be displayed at all times on the licensed premises in a place readily visible to the public.

Sec. 19-4-9. *Expiration of licenses.* All licenses issued under this chapter shall be issued for one year and shall expire on the 30th day of June of each year.

Sec. 19-4-10. *Storage prohibited on licensed premises.* It shall be unlawful for any person to store any "liquor" in or on places of business licensed by this chapter. It shall be unlawful for any license or any operator or employee of a licensee to hold, store or possess "liquor" on premises licensed by this chapter. Persons other than the licensee or other than the operator or employee of the licensee may, with the consent of the licensee or operator or employee of either, possess and consume "liquor" on the licensed premises.

Sec. 19-4-11. *Minimum light and open view required in licensed premises.* It shall be unlawful for any person to own, operate or manage any premises licensed pursuant to this chapter without complying with the following lighting and view requirements:

(1) During business hours a minimum of one candle power light measured at a level five feet above the floor shall be maintained.

(2) No enclosed booths, blinds, or stalls shall be erected or maintained.

(3) A clear, unobstructed view of all portions of the interior shall be available at all times from some point within the licensed premises at or near the main public entrance.