1970

Dodge Town, Inc. v. Vernon B. Romney, Attorney General, State of Utah, Gordon B. Christensen, County Attorney, Salt Lake County, And Delmar L. Larson, Sheriff Of Salt Lake County : Brief of Amicus Curiae

IN THE SUPREME COURT OF THE STATE OF UTAH

DODGE TOWN, INC.,
a Utah Corporation,
Plaintiff and Appellant,

vs.

VERNON B. ROMNEY,
Attorney General, State of Utah,
GORDON B. CHRISTENSEN,
County Attorney, Salt Lake
County, and DELMAR L.
LARSON, Sheriff of
Salt Lake County,
Defendants and Respondents.

Case No.
12044

BRIEF OF AMICUS CURIAE

Appeal from the Judgment of the Third District
Court for Salt Lake County
Honorable Aldon J. Anderson, *Judge*

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CONSTITUTIONS AND STATUTES CITED

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APPEARANCE OF AMICUS CURIAE

Statements of the kind of case, of the disposition in the lower court and of the relief sought on appeal are set forth in Respondent's brief.

Morris Motors is engaged in the business of selling new and used motor vehicles at Provo, Utah, under and by virtue of the license issued by the Motor Vehicle Division of the State Tax Commission of the State of Utah.

Morris Motors' petition for leave to appear in these proceedings and to file a brief amicus curiae

was granted by this Honorable Court by order entered June 20, 1970.

STATEMENT OF FACTS

It will be the purpose of Morris Motors, by this brief, to perform the usual function of amicus curiae. That is, to aid the Court on questions of law; and further to call to the attention of this Honorable Court certain facts and circumstances which should be helpful. The Respondent, in its brief, has set forth the facts as presented and introduced at the trial

It is the position of Morris Motors that Title 76, Chapter 55, Utah Code Annotated 1953, as amended, is constitutional and that the Trial Court should be sustained. It is the further purpose of this brief to cite those cases and the statutes involved that support the proposition that this statute herein involved is constitutional and that the Legislature of the state of Utah had the power and the authority to enact the same, and that it did so within the constitutional limitations of the state of Utah.

ARGUMENT

POINT I.

THE TRIAL COURT PROPERLY RULED THAT THE STATUTE IN QUESTION IS NOT AN UNREASONABLE EXERCISE OF THE LEGISLATIVE POWER, AND THAT IT WAS WITHIN ITS LEGISLATIVE PREROGATIVE TO ENACT TITLE 76, CHAPTER 55.

It is the Appellant's contention and its basis of an appeal from the decision of the Trial Court that

the following provisions of the statute are unconstitutional inasmuch as they violate certain provisions of the Constitution of the state of Utah, and for the convenience of the Court we are setting forth the provisions of the statute under attack:

> "76-55-6. Motor vehicle sales — Sunday transactions by licensees prohibited — Misdemeanor. — Any person holding a license under the terms and provisions of section 41-3-6, who shall carry on or engage or represent or advertise that he is engaged or intends to engage in the business of buying, selling, exchanging, dealing in or trading in new or used motor vehicles at retail; or who shall open any place of business or lot where he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles at retail; or who shall open any place of business or lot where he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles at retail; or who does buy, sell, exchange, deal or trade in new or used motor vehicles at retails as a business on the first day of the week, commonly known and designated as Sunday, is guilty of a misdemeanor."
>
> "76-55-7. Motor vehicle sales — Convictions — Suspension or revocation of license. — Courts having jurisdiction over offenses committed by license holders in violation of section 76-55-5, shall forward a record of conviction to the administrator of the motor vehicle dealers of this state within ten days following conviction. Upon receipt of a second record of conviction, the administrator of the

motor vehicle dealers shall suspend the holder's license for a period of thirty days, and upon receipt of a third record of conviction of a license holder, the administrator of the motor vehicle dealers administration shall permanently revoke the holder's license."

It will be noted that the foregoing sections of the statute apply and are limited solely to those who are required to be licensed in the sale of motor vehicles pursuant to Section 41-3-6, Utah Code Annotated 1953, as amended.

The legislature has seen fit to regulate the sale of motor vehicles and has enacted the various provisions of Title 41, Chapter 3, for the protection of the public and its welfare.

Title 41, Chapter 3 is a very comprehensive regulatory statute, regulating the sale of motor vehicles by dealers and requiring a license to do business not only for themeslves, but for their salesmen. It has been a part of the Utah Code for many years; subsequent amendments have been made, expanding the coverage and the regulation of the sale of motor vehicles from time to time. This act covers almost every phase of the sale and use of automobiles and is designed to protect the public, not only in the sale of motor vehicles, but in the advertising by dealers.

Motor vehicle dealers must be licensed under the terms of the act, as well as the salesmen. This act provides for the appointment of an administrator who has certain powers and duties in the enforce-

ment of the provisions of the act. He has the power to refuse or issue licenses; the power to revoke for just cause. Section 41-3-8.

The legislature has enacted Section 41-3-8, providing for an administrator. The administrator's power and duties are specifically set forth and enumerated in said Section 41-3-8.

Section 41-3-12 sets forth and enumerates classes of licenses issued under the provisions of the act.

Section 41-3-16 and 17 provides for the requirement of a bond in the amount of $5,000.00 for dealers, and $1,000.00 for salesmen, conditioned that the dealer or salesman shall conduct his business as a dealer or salesman without fraud or fraudulent representation, and without the violation of any of the provisions of the act, Title 41, Chapter 3.

Section 41-3-23 sets forth and enumerates the prohibited acts or omissions of licensees. These include the prohibition of intentionally publishing, displaying or circulating any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold, manufactured, handled, or furnished by a licensee. The dealer cannot dismantle or wreck any motor vehicle without first obtaining a dismantling permit; he must give notice of sales or transfers as required by the act. He cannot advertise or otherwise represent, or knowingly allow to be advertised or represented,

on his behalf or at his place of business, that no down payment is in fact required and the buyer is advised or induced to finance such down payment by a loan in addition to any other loan financing the remainder of the purchase price of the motor vehicle.

It further provides that it will be unlawful for the dealer and licensee to violate any law of the state of Utah now existing or hereafter enacted respecting commerce in motor vehicles or any lawful rule or regulation respecting commerce in motor vehicles promulgated by any licensing or regulating authority now existing or hereafter created by the laws of the state of Utah.

It is unlawful for a dealer and licensee to violate any of the terms and provisions of the motor vehicle act or any of the rules and regulations promulgated by the administrator under the authority granted him.

It provides for record keeping pertaining to every motor vehicle which is bought, or exchanged by the dealer and licensee or which is received or accepted by the licensee for sale or exchange. He must keep records of every used part or used accessory which is bought or otherwise acquired. He must keep records of every motor vehicle which is bought or otherwise acquired and wrecked or dismantled by him. He is prohibited from knowingly purchasing, selling, transporting, dismantling or otherwise acquiring, disposing of or handling a stolen motor vehicle.

These are some of the pertinent prohibitions and acts of omission which shall constitute an unlawful act or violation of the act for a dealer to do.

Under Section 41-3-8, Utah Code Annotated 1953, as amended, the administrator has the right from time to time to promulgate, amend and repeal such reasonable rules and regulations, not inconsistent with the act and laws of the state of Utah, as he shall deem necessary, to carry out the purposes of the act. He has broad investigatory powers.

As Mr. Burt, the administrator, testified (Tr. 368-370), his staff consists of eleven people, six who are investigators employed in supervision and investigation of complaints; and further, in the enforcement of the provisions of the act.

Section 41-3-24, 25 and 26 sets forth procedure as to denial of application for or revocation or suspension of a license, together with procedure of hearings with regard to denial or revocation of licenses.

Section 41-3-27 provides that violation of the act shall constitute a misdemeanor.

The purpose of this action by appellant was to have the Trial Court determine that Title 76, Chapter 55 is violative of certain provisions of the Constitution of the state of Utah.

In determining constitutionality, statutes are presumed to be constitutional until the contrary is clearly shown. This burden is upon the one, of course,

attacking the statute. It is only when statutes manifestly infringe upon a constitutional provision that they can be declared void. Every reasonable presumption must be indulged in and every reasonable doubt resolved in favor of constitutionality. See *Broadbent vs. Gibson*, 140 P2d 939, 105 U 53 (1943).

We feel that this Honorable Court has enunciated in unmistakable terms the principles that must be considered where an attack is made on the constitutionality of the statute.

We quote portions of the decision in the case of *Trade Commission vs. Skaggs Drug Centers, Inc.*, 446 P2d 958 (Utah 1968):

> "An alleged violation of the Constitution must be of a specific provision of a particular article therefore. *We have repeatedly held in order to be declared unconstitutional, the statute must clearly violate some constitutional provision, and further, the violation must be clear, complete and unmistakable.*"
>
> "The first is that the legislature of the state is not a government of powers limited to those expressly granted, as is the federal government, (as the federal Constitution says, but is gradually being eroded away). The legislature of the state, which represents the people and thus the sovereign, has all of the residuum of power of government, except only as expressly restricted by the Constitution. *In order to preserve the independence and the integrity of the three branches of government, it is of the utmost importance that the judicial exercise restraint and not intrude into the legisla-*

tive prerogative. It cannot strike down and nullify a legislative enactment unless it is clearly and expressly prohibited by the Constitution or in violation of some plain mandate thereof. *The court must make every reasonable presumption which favors constitutionality. The courts have a duty to investigate and, insofar as possible, discover any reasonable avenues by which the statute can be upheld.* Every reasonable doubt must be resolved in favor of the constitutionality of the statute. *Those who assert the invalidity of the statute must bear the burden of showing it to be unconstitutional.*"

"* * **It does not lie within the province of the court to pass upon the wisdom, the need or the desirability of any legislation, nor to choose between two opposing political philosophies. It is not the function of the court to ameliorate the conditions of those in want, nor is its purpose to solve the economic, social or religious problems and dissensions which beset society.* The court is not the conscience of the State or its people. It does not fall within its duty to express the personal desires or philosophy of its personnel."

"The court must voluntarily restrain itself by holding strictly to an exercise and expression of its delegated or innate power to interpret and adjudicate. *We have been called upon to state what the law is and not what we think it should be.* The question as to whether the statute in question is or is not economically sound or beneficial is not for the court to decide, but such an inquiry is a matter for the legislature. The only question for us to to determine whether or not the particular statute

in question is constitutional." (Emphasis ours)

We again refer to *Broadbent vs. Gibson*, supra, and quote the following:

> "The Legislature has a wide discretion in determining what shall come within the class of activities permitted (on Sunday) and what shall be excluded, and in determining wether such classification is constitional.
>
> "A court is not concerned with the wisdom or policy of the law and cannot substitute its judgment for that of legislative body, and if reasonable minds might differ as to reasonableness of a regulation, the law must be upheld."

In the Utah case of *State vs. Sopher*, 71 Pac. 482, the Supreme Court makes the following pertinent statement:

> "* * * All presumptions are in favor of the validity of a statute, and unless the courts can clearly say that the legislature has erred the act should stand, and the prerogatives of the legislature not encroached upon. Courts may interpret, construe, declare, and apply the law, but may not usurp the functions of the lawmaking power by assuming to interfere with or control the legislative discretion. * * *"

The Motor Vehicle Act (Title 41, Chapter 3) has been in force and effect since May 10, 1949, and new provisions and amendments have been made subsequent to its enactment, which the legislature no doubt deemed necessary to keep pace with changing conditions.

It must be recognized that the automobile has become a definite and well-established part of our way of life; its use, operation, manufacture, sale, license, registration, taxation, insurance, theft, and many other related matters have received special legislative recognition and attention, and particularly has this been done by the Legislature of the State of Utah.

The Legislature of the State of Utah has treated the motor vehicle business and the use of motor vehicles as a special type of business. No other business has been so treated by the Legislature of the State of Utah.

It must be remembered that the Legislature has deemed it necessary to have in force and effect Title 41, Chapter 3, for the well-being and protection of the public.

The Appellant in its Argument, Point I, stated that the Trial Court erroneously ruled that the statute in question is not an unreasonable exercise of the legislative power to regulate property rights and business practices.

Title 41, Chapter 3, Utah Code Annotated 1953, as amended, is a comprehensive and far reaching regulation and restriction on the sale of motor vehicles. The public interest and welfare requires such regulations and restrictions on the sale and use of motor vehicles, as are provided in Title 41, Chapter 3.

How could it be said that the Legislature could

not extend those regulations and restrictions to another phase of the business of the sale of motor vehicles that it deems necessary in the public interest and welfare?

It must be remembered that every Sunday has been declared a legal holiday under and by virtue of Section 63-13-2, Utah Code Annotated 1953, as amended.

We are convinced without a doubt that the classification as defined by this act under attack (Title 76) is proper and reasonable and does not violate the due process clause of the Constitution, nor any constitutional provision of the state of Utah.

Title 76, the law under attack by the Appellant, is nothing more than an amendment of Title 41, Chapter 3.

Utah is not alone in enacting a statute such as the one being attacked by the Appellant.

In the case of *Diamond Auto Sales, Inc., et al vs. Norman Erbe, et al,* 105 NW2d 650, the issues presented to this Court were before the Supreme Court of the state of Iowa regarding the prohibiting of the sale of motor vehicles by dealers on Sunday. The attackers' position was that the act was arbitrary and unreasonable interference with plaintiffs' business; that the law was not uniform in application and discriminatory. These are the same arguments and objections of the Appellant. The Iowa Court made this pertinent statement:

"*It is elementary that the courts have no concern with the wisdom, justice, policy or expediency of the enactments of the legislature and may not interfere because of any supposed lack of those elements in the legislation under attack.* This freedom from lack of responsibility for what the legislature does is at times a comforting position for the judiciary, but it has no further significant here. The question we must determine is whether the lawmaking body acted within its constitutional powers." (Emphasis ours)

We set forth the legislative reasons for the law:

"We quote the explanation: 'Licensed motor vehicle dealers are prohibited by existing laws from selling motor vehicles which do not meet specific safety standards and they are required to furnish the purchaser, prior to delivery of the motor vehicle, certain legal documents that are peculiar to the trade. This bill would amend the motor vehicle dealers licensing law to protect the public:

'(1) from the hazards of driving in Sunday's highly congested traffic unsafe cars purchased from dealers on Sunday when mechanics are not on duty and state enforcement agents are not available for checking dealer lots; and:

'(2) from the risks of being involved in the improper sale of a motor vehicle due to the inaccessibility of essential legal documents on Sunday and, in some cases, protective liability insurance. Thus thiis bill would aid the commissioner of public safety in his enforcement of the existing motor vehicle laws.' The plaintiffs introduced evidence which they think

showed the invalidity of the reasons given by the legislature. *But before discussing this phase of the question it is appropriate to point out that we are not limited to those matters. If any reasonable state of facts can be conceived which will support the validity of the law, it is our duty to sustain it; and it is plaintiff's duty to negative every conceivable basis for upholding it. Dickinson vs. Porter,* 240 Iowa 393, 400, 35 N.W.2d 66, 71; *Eckerson vs. City of DesMoines,* 137 Iowa 452, 476, 115 N.W. 177, 187; *McGuire vs. Chicago, B. & O. Railway,* 131 Iowa 340, 350, 108 N.W. 902, 905, 33 L.R.A., N.S., 706." (Emphasis ours)

The Honorable Court made other statements very fundamental and pertinent to the matter before us, in which it stated:

"Regularly enacted laws are presumed to be constitutional, and this presumption must be overcome by one attacking a statute by proving its invalidity beyond a reasonable doubt."

"* * * The fact that a law may work hardship does not render it unconstitutional."

We quote further from this decision:

"Turning then specifically to the attack on the questioned act because it unreasonably and arbitrarily interferes with the businesses of the plaintiffs, we must determine whether the reasons given by the legislature or any other conceivable state of facts, have been negatived by the plaintiffs by the required quantum of proof. Chapter 243 is unquestionably an attempted exercise of the police power of the state and must be sustained as such or over-

thrown as an arbitrary and unreasonable use of the power. The concept of this power has been broadened in later years. We said, in *Steinberg-Baum & Co. vs. Countryman*, supra, at page 930 of 247 Iowa at page 19 of 77 N.W. 2d; 'Formerly the police power was thought to be limited to measures that promoted merely the public health, safety or morals. Its scope is now generally recognized as much less restricted. *It has repeatedly been held to include at least the promotion of prosperity and the general welfare.*' (Citing authorities). It is in the light of modern authority that we must consider the act before us. (Emphasis ours)

"The legislature said the act is needed because of the danger arising from driving motor vehicles purchased on Sunday when mechanics are not available. The plaintiffs' evidence shows that generally mechanics do not work on Sunday. They counter this, however, by evidence that they check all used cars coming to their lots and sell them only when they are put in good condition for safe driving. This, it seems to us, is a matter for the legislature to weigh. There is evidence that many prospective purchasers of used automobiles prefer to drive them a short distance before buying. Perhaps they choose to have them checked by mechanics of their own selection. In any event we cannot say the evidence of safety is so conclusive the legislature had no reasonable basis for its determination at this point.

'The legislative conclusion that danger of fraud or mistake might arise in Sunday sales of used cars because county recorders' offices are not open so that title and liens can be check-

ed is likewise beyond our power to hold as an arbitrary and unreasonable basis for the act. All dealers in either new or used motor vehicles are required to first procure licenses from the state. Section 122.3, Code of 1958, I.C.A. But this is not a complete guarantee against mistake, fraud or misrepresentation; at least we cannot hold the legislature has been proved to have been arbitrary and unreasonable in so concluding. Many vehicles are subject to conditional sales contracts, mortgages, or tax liens of record. The Sunday buyer has not opportunity to check this for himself; if the legislature though he needs protection, it is beyond our power to say it could not afford it."

We would like to quote from the Iowa case further:

"So with the question of protective liability insurance. It is the public policy of the state, as evidenced by the Motor Vehicle Financial Responsibility Act, Chapter 321A, Code of 1958, I.C.A., that those who drive motor vehicles upon the highways of the state shall be able to respond in damages for the injuries they cause through negligent or reckless operation. Commonly, the owner of a vehicle protects himself and those whom he may injure by public liability insurance. If he does not do so, and he inflicts injuries for which he cannot pay, he is denied the right to operate until he furnishes evidence of financial responsibility. The legislature assumed liability insurance might not be readily available on Sunday, and we cannot say this asumption has been overcome by the plaintiffs beyond a reasonable doubt.

"These considerations would in themselves require a holding that the act is not an arbitrary and unreasonable regulation of plaintiffs' business. But other jurisdictions have found additional reasons for upholding similar legislation. It has been said that, because of the highly competitive nature of the business, the high price of the article being offered for sale and the limited number of buyers, the 'unreasonable and competitive lust' of some dealers forces all to keep their places open every day of the week for long hours, and on Sunday; and this is thought to be inimical to the public welfare. *Gundaker Central Motors, Inc. vs. Gassert,* 23 N.J. 71, 127 A.2d 566, 572, appeal dismissed for want of a federal question, 354 U.S. 933, 77 S.Ct. 1397, 1 L.Ed. 2d 1533. This case was cited with approval in *Tinder vs. Clarke Auto Company,* 238 Ind. 302, 149 N.E.2d 808, 815. The Indiana Supreme Court there added some observations of its own about the need of mankind for a day of rest at regular intervals. In both the Gundaker and Tinder cases the courts of last resort of New Jersey and Indiana, respectively, upheld statutes prohibiting the sales of either new or used motor vehicles on Sunday."

We quote further:

"Other courts have found no constitutional bar to similar statutes. *Irishman's Lot vs. Cleary,* 338 Mich. 662, 62 N.W.2d 668; *Mosko vs. Dunbar,* 135 Colo. 172, 309 P.2d 581; *Rosenbaum vs. City and County of Denver,* 102 Colo. 530, 81 P.2d 760; *Stewart Motor Company vs. City of Omaha,* 120 Neb. 776, 235 N.W. 332. Two jurisdictions have held to the contrary. *McKaig vs. Kansas City,* 363 Mo.

1033, 256 S.W.2d 815 holds such a statute unconstitutional; *but the Missouri Supreme Court specifically puts its holding upon a peculiar provision of the state constitution which made the question of whether a statute or ordinance was a special or general one a judicial question. It pointed out that only three other states — Minnesota, Kansas, and Michigan — have similar constitutional provisions, and therefore precedent from jurisdictions other than the three named were of little value.* 256 S.W.2d at pages 816, 817. At that time *Irishman's Lot vs. Cleary,* supra, had not been decided in Michigan. *It should be noted that even with the same constiutional provision which the Missouri court thought decisive the Michigan Supreme Court, in the Irishman's Lot case, upheld the statute.*" (Emphasis ours)

We quote further:

"The second ground stated for reversal by the plaintiffs is that the act is not universal in its application and is discriminatory. In fact, the contentions that an act is arbitrary and unreasonable and that it is discriminatory are often not greatly different. The plaintiffs seem to recognize this by their brief, which argues both propositions in the same division. An act which is unreasonable and arbitrary is often so because it discriminates. In the case at bar it is urged that selling of used cars at retail is not different from other businesses such as those which sell furniture, groceries, cigarettes, Sunday papers, pets, which furnish taxicab or laundry service, as laundromats, travel bureaus, or which provide entertainment such as moving picture theatres or baseball games. This was the basis for the Florida

Supreme Court's holding in *Kelly vs. Blackburn* and *Henderson vs. Antonacci*, supra.

"But we think there is a clear distinction and that it is pointed out by the reasons set forth in our discussion under Division II above. Thus, other businesses are not subject to the need for services of, or inspection by, a qualified mechanic. The danger of mistake or fraud arising from inability to check titles or liens is not generally present in other businesses; nor do the yas a rule need the protection of public liabiilty insurance."

We quote further:

"The rule is thus stated in *Dickinson vs. Porter*, supra, at pages 400, 401 of 240 Iowa, at page 72 of 35 N.W.2d: 'If there is any reasonable ground for the classifications * * * and it operates equally upon all within the same class, there is uniformity in the constitutional sense and no violation of any constitutional provision invoked by plaintiff.' Authorities in support are cited immediately following. Nor is it sufficient that the court may regard the reason for the classification as weak, or poor, or that the differences upon which it is based are not great or conspicuous. *Dickinson vs. Porter*, supra, at page 401 of 240 Iowa, at page 72 of 35 N.W.2d; 16 A C.J.S. Constitutional Law § 520, page 382."

We quote further:

"So, although our Sunday 'blue laws' have been repealed and citizens generally are permitted to carry on their businesses or vocations on that day without prohibition by our statutes, as plaintiffs point out, we think there is a sufficient basis for the classification made

by the legislature in the act here challenged to bring it within the protection of the foregoing rules. * * * "

We would like to refer this Honorable Court to the case of *Tinder vs. Clarke Auto Co., Inc.*, 149 NE Rep. 2d 808. In this case a Sunday closing law for automobile dealers was held constitutional. We would like to refer the Court to certain statements made in this case by the Supreme Court of Indiana, which are as follows:

> 'The making of classifications in exercise of police power is matter of public policy and in the first instance it is province of legislature to determine what classifications are reasonable in view of purpose to be accomplished, and the Supreme Court may not substitute its judgment on such question for that of legislature, unless calssification is so manifestly arbitrary as to leave no room for reasonable minds to differ on the subject. Const. art. 1, § 23; art. 4, §§ 22, 23."
>
> "Statute subjecting automobile dealers, who engage in business of buying, selling and/or exchanging motor vehicles at retail on Sundays, to fines and/or imprisonment greater than that imposed upon that of other businesses which are made unlawful by general Sunday closing law, is not unconstitutional on ground that characteristics of retail automobile business are not distinctive from auto sales of automobiles, selling of real estate and farm machinery, or grocery store, drug store and filling station businesses, and classification was not arbitrary and unreasonable. Burns' Ann. St. § 10-4301, 10-4305; Const. art. 1, § 23; art. 4, §§ 22, 23."

"Legislature is vested with power and responsibility of declaring public policy with regard to exercise of police power of state, and if persons adversely affected by acts of legislature consider laws enacted to be ill conceived, unreasonable or oppressive, they should seek relief from legislature and could not call upon courts to invalidate laws, if laws are rightfully enacted within scope of legislative authority."

We refer the court to the case of *Gundaker Central Motors, Inc., vs. Gassert,* 127 A2d 566, upholding a New Jersey statute prohibiting the sale of motor vehicles on Sunday. The court made the significant statement that the fact that the sale of motor vehicles as singled out for legislative treatment is no grounds for complaint if there is any reasonable basis for such action.

We feel that the following statement by the New Jersey Court is very pertinent to the matter before this Court:

"The statutes in question here apply to all automobile dealers within the State, without distinction as to class, type, location or otherwise. All are required to close. Fundamentally then, they satisfy the initial inquiry as to equal protection. No economic advantage can be gained by any one within this State by reason of the Sunday regulation because no persons other than those covered by the enactments can engage in the business of selling motor vehicles, R.S. 39:10-19, N.J.S.A. Thus all motor vehicle dealers are protected in their businesses and no substantial loss of revenues can result where the product they deal in is unobtainable elsewhere within the State. The cars that

would be sold on Sunday will now be sold on other days in the week and probably to the same prospective purchasers."

In the case of *Irishman's Lot vs. Cleary*, 62 NW 2d 668, the Supreme Court of Michigan upheld a Sunday closing law for motor vehicles. It enunciated many of the principles that we have hereinabove set forth.

In the case of *Mosko vs. Dunbar*, 309 P2d 581, the Supreme Court of Colorado upheld a Sunday closing law for motor vehicles.

It made the significant statement that the action of the legislature in placing motor vehicle dealers in a classification separate and apart from merchants in general was not arbitrary and unreasonable in view of the fact that sales of automobiles is a special type of business.

The court stated:

"Today the automobile has become a definite and well-established part of our way of life; its use, operation, manufacture, sale, license, registration, taxation, insurance, theft and many other related matters have received special legislative recognition and attention. Certainly the legislature has treated the motor vehicle business as a special type of business. The public has accepted it as such. Were we to hold that it is arbitrary and unreasonable action on the part of the legislature to place motor vehicle dealers in a classification separate and apart from merchants in general, it would be to close our eyes to reality. * * * "

The Supreme Court of Colorado further made the significant statement that under our system of government only the legislature can enact laws, and it is the legislature's right and duty to determine what laws are desirable. That it is well-established by an unbroken line of decisions of the Colorado court, as well as the Federal courts, that it is within the exclusive province of the legislature to determine the necessity, expediency, wisdom, fairness and justness of the law enacted.

The Colorado court further stated that the action of the legislature in placing motor vehicle dealers in a classification separate and apart from merchants in general was not arbitrary and unreasonable in view of the fact sale of automobiles is a special type of business.

It is fundamental that *if any reasonable state of facts can be conceived* which will support the validity of this statute under question, it is the duty of the Supreme Court of the state of Utah to sustain it. Further, that it is Appellant's duty to negative every conceivable basis for upholding it. *This Court cannot substitute its judgment for that of the legislature as to what it deems necessary and reasonable for the proper supervision, regulation, and conduct of the licensees required to be licensed to do business in the state of Utah under Title* 41, *Chapter* 3, *Utah Code Annotated* 1953, *as amended.*

State enforcement agents are not available for

checking dealer lots on Sunday. On Sunday automobile mechanics are not usually available and are not on duty. Used automobiles, as well as new cars, delivered on Sunday, and which have not been checked, can create a hazard on the highways. The chances for the purchasing of stolen vehicles where the inaccessability of essential legal documents on Sunday is present can give a greater opportunity for car thieves to dispose of stolen vehicles. Protective liability insurance is not as available on Sunday as it is on a week day where insurance companies are open for business.

It is the public policy of the state that those who drive motor vehicles upon the highways of the state shall be able to respond in damages for the injuries they cause through negligent or reckless operation. Commonly, the owner of a vehicle protects himself and those whom he may injure by public liability insurance. If he does not do so, and he inflicts injuries for which he cannot pay, he is denied the right to operate until he furnishes evidence of financial responsibility. The legislature has the right to assume that liability insurance might not be readily available on Sunday, a legal holiday.

The Legislature of the state of Utah would certainly have been aware of the danger of fraud or mistake which might arise on Sunday sales of used cars because of the closing of the office of the Tax Commission so that title liens could be checked.

Many vehicles are subject to conditional sale contracts or security agreements, mortgages or tax liens of record. The Sunday buyer has no opportunity to check this for himself. If the legislature thinks he needs protection it is beyond the power of this Court to say that it cannot afford to give him this protection. It certainly could be said that because of the high competitive nature of the business, the high price of the article being offered for sale and the limited number of buyers, the 'unreasonable and competitive lust' of some dealers would force all to keep their places open every day of the week for long hours, and on Sunday. Certainly this could be inimical to the public welfare.

It seems to us without question that Title 76, Chapter 55, is nothing more nor less than an amendment to Title 41, extending the coverage of the motor vehicle act, Title 41, Chapter 3, as the legislature deemed it necessary for the protection of the public and for its welfare. It must be remembered that the legislature has seen fit to amend Title 41, Chapter 3 on occasions to expand its coverage, and by the enactment of Title 76, Chapter 55 has done nothing more nor less than follow its past patterns of amending and extending coverage of the act to protect the public and provide for its welfare in those particulars that it, the legislature, deems necessary.

We feel that the evidence as adduced can be generally summarized as pertaining only to conditions as they *pertain to Salt Lake County.* As we heretofore

quoted from *Diamond Auto Sales, Inc., et al vs. Norman Erbe, et al*, supra, the Court, in order to sustain the position of appellant, would *have to determine that there is no conceivable state of facts which could have justified the legislature in its enactment of the statute in question.* This the appellant has not done. The evidence introduced by appellant was limited somewhat to Salt Lake County. It did not truly reflect the conditions in the state of Utah as a whole. Even the evidence as adduced by appellant did not apply to or cover the various reasons the Legislature could have considered in enacting the act in question.

The evidence by appellant does not negative the required quantum of proof.

Certainly, as we have said before, this Court cannot substitute its judgment for the determination or the reasons considered by the Legislature in justifying this type of legislation.

POINT II

The Appellant in its Argument, Point II, raises the issue of the discrimination against the Appellant, who is a licensed dealer, and that the act also discriminates against the product — licensed vehicles — which the Appellant sells. It sets forth on page 15 of its brief that their point is that the statute arbitrarily discriminates as to products. Further, it is likewise discriminatory in that it does not apply equally to all persons who might sell automobiles on Sunday. Further, it says it is discriminatory because everyone except a licensed dealer may sell on Sunday.

We refer this Honorable Court to the case of *State vs. Mason*, 78 P2d 920, which we feel that this Court has used as a yardstick in determining what is a proper classification.

One of the Appellant's attacks on the statute in question is that the same is discriminatory and unreasonable discrimination. The act before the court on that case was Chapter 4, Laws of Utah 1935, which required a license to be obtained by persons other than commission merchants, who for the purpose of resale obtained from farmers possession or control of farm products without paying cash for the same at the time of obtaining such control or possession; that no person shall act as a commission merchant, dealer, broker, or agent without having obtained a license as provided for in the act. The act defined a dealer as any person other than a commission merchant who for the purpose of resale obtains from the producer thereof possession or control of any farm products, except by payment to the producer at the time of obtaining such possession or control, of the full agreed purchase price of such commodity in lawful money of the United States. The act further provided, however, that the term "dealer" as therein defined shall not be construed to include those who are regularly licensed under the laws of this state to sell tangible personal property exclusively at retail.

The defendant in the *Mason* case attacked the act on the grounds it was unconstitutional, as he contended that it violated Section 7, Article I of the State

Constitution, and Section 1 of the Fourteenth Amendment to the Constitution of the United States. The defendant Mason further contended that the specifications in the act requiring a person to take out a license in order to buy farm products on credit or by payment with a check, exempting those who buy for lawful money of the United States or those who are regularly licensed under the laws of the State to sell tangible property exclusively at retail, denies the equal protection of law and is taking property without due process of law.

Defendant Mason claimed an unreasonable discrimination in three respects: (1) Including in the operation of the act those who obtained possession or control of farm products by other than contemporaneous payment of cash and excluding those who paid contemporaneously with cash; (2) excluding those regualrly licensed under the laws of the State, to sell tangible personal property "exclusively at retail"; (3) a discrimination in the class or group enjoying the intended protection in that it pertained only to farmers and excluded manufacturers and other businessmen.

The court concluded that none of the above classifications were arbitrary or unreasonable, the court making the pertinent statement that every legislative act is in one sense discriminatory. That the legislature cannot legislate as to all persons or all subject matters. It is inclusive as to some class or group and as to some human relationships, transactions, or

functions and exclusive as to the remainder. It made the further pertinent statement that a classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for the differentiation between classes or subject matters included as compared to those excluded from its operation; provided the differentiation bears a reasonable relation to the purposes to be accomplished by the act, as we interpret it.

The objects and purposes of the law present the touchstone for determining proper and improper classifications. And this is a standard for determining propriety of classifications as respects question whether statute is unconstitutionally discriminatory and in violation of the Constitution of the State of Utah, Article I, Section 7.

The *Mason* case makes the pertinent statement, which we think is applicable here, that if a reasonable basis to differentiate those included from those excluded from its operation can be found, the act must be held constitutional.

The Legislature in regard to the act in question had a definite basis or reason for the classification, and the same seemed adequate to the Legislature. It must be remembered, as the *Mason* case states, that the judiciary cannot supplant their judgment for that of the Legislature.

We are appreciative of the fact that there are many people, judges included, who may have specific

economic views. These views, of course, may not influence the Court in its determination.

The Appellant alleges in its Argument, Point II, that the statute unconstitutionally discriminates against licensed motor vehicle dealers by requiring them to close on Sunday and by imposing criminal penalties for violation of the provisions of the statute.

We refer the Court to certain statements made by the Supreme Court of Indiana in the case of *Tinder vs. Clarke Auto Co., Inc.*, 149 NE Rep. 2d 808:

> "Statute subjecting automobile dealers, who engage in business of buying, selling and/or exchanging motor vehicles at retail on Sunday, to fines and/or imprisonment greater than that imposed upon that of other businesses which are made unlawful by general Sunday closing law, is not unconstitutional on ground that characteristics of retail automobile business are not distinctive from auto sales of automobiles, selling of real estate and farm machinery, or grocery store, drug store and filling station businesses, and classification was not arbitrary and unreasonable. Burns' Ann. St. § 10-4301, 104305; Const. art. 1, § 23; art. 4 §§ 22, 23."

It must be remembered that Title 41, Chapter 3 provides for a criminal penalty for a violation of the act. The Legislature did nothing more nor less than make the amendment, Chapter 76, Title 55, consistent with Title 41, Chapter 3.

CONCLUSION

We feel that the Trial Court properly found that the statute in question is constitutional.

The Legislature of the state of Utah by enacting the Act in question extended the supervision and restriction of licensed motor vehicle dealers by restricting the sale of motor vehicles by licensed dealers on Sunday. It is common knowledge that mechanics are not on duty on Sunday, and the delivery of cars to purchasers on that day may increase the hazard of driving; although a car may be new, it may need checking or brake adjustment. Turned in or used cars should be checked for driving safety. These services are not as available on Sundays as on other days. State enforcement agencies are not available for checking dealer's lots; there are risks involved in the improper sale of motor vehicles due to the inaccessibility of essential legal documents on Sunday; and, in most cases, protective liability insurance is not available. Thus, this Act would aid the administrator of the department of motor vehicle administration under Title 41, Chapter 3, Motor Vehicle Act, in his enforcement of existing motor vehicle laws.

It is common knowldege that many prospective purchasers of used automobiles prefer to drive them a short distance before buying. Perhaps they choose to have them checked by mechanics of their own selection. This would be impossible on Sunday. The Legislature certainly is aware of the chances of fraud or mistake arising in Sunday sales of used cars, be-

cause the offices of the Secretary of State and the Department of Motor Vehicles with regard to registration and filings are closed. Liens and titles cannot be checked.

We must confess that the requiring of motor vehicle dealers to close on Sunday is not a complete guarantee against mistake, fraud or misrepresentation; however, it certainly can minimize the risks, and the Legislature certainly had a right to do so by the enactment of the Act in question. If the Legislature felt that the Sunday buyer, having no opportunity to check titles with regard to conditional sale contracts, mortgages or encumbrances of any kind or nature, and he needed this protection, it is certainly beyond the power of this Court to say that it cannot do so.

The Legislature certainly has the right to assume that liability insurance might not be as readily available on Sunday; and, therefore, for the protection of the public it is essential that those who drive motor vehicles on the highways of this state shall be able to respond in damages for the injuries they cause through negligent or reckless operation; and it is almost in every instance the case that the owner of a vehicle protects himself and those he may injure by public liability insurance.

The Legislature has seen fit to restrict and supervise the sale and use of motor vehicles; how can it be said that it cannot extend that supervisory power and restrictions, by prohibiting the sale of motor vehicles on Sunday? A person who purchases a car on

Sunday is certainly handicapped by the inaccessibility of protective insurance; the checking of his car for safety by a mechanic of his own choosing; no opportunity to check records as to whether the title to the automobile is clear. Sunday closing minimizes the chance for fraud and mistake. Banks are not open on Sunday, and many other aspects of normal business services are not open and accessible to the Sunday purchaser. The purchase of an automobile is entirely different from that of any other type of personal property, the reason for Title 41, Chapter 3. The purchase of personal property, other than motor vehicles, does not have the elements of danger in their sale and use as motor vehicles. Also, the amount of money involved is, in most instances, greater.

The administrator of Title 41, Chapter 3, and his asistants and investigators, are not on duty and not available on Sunday.

The Legislature has seen fit by the enactment of Title 41, Chapter 3 to carefully supervise and scrutinize the conduct of motor vehicle dealers.

How can it be said that the Legislature should not have the right to put another restriction on the motor vehicle dealers in order to insure better law enforcement of the provisions of Title 41, Chapter 3?

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