1970

# Skaggs Drug Centers, Inc. v. Raedel E. Ashley, Et Al. v. Gary Montgomery, Et Al. v. John Doe 1-5, Et Al., Grand Central, Inc., And Gary Montgomery v. A. U. Cooper, Dba Kearns I.G.A. Foodliner, Et Al : Brief of Appellant Skaggs Drug Centers, Inc.

# IN THE SUPREME COURT OF THE STATE OF UTAH

SKAGGS DRUG CENTERS, INC., a Delaware corporation,
Plaintiff-Appellant,
vs.
RAEDEL E. ASHLEY, et al,
Defendants-Appellees.

GARY MONTGOMERY, et al,
Plaintiffs-Appellants,
vs.
JOHN DOE 1-5, et al,
Defendants-Appellees, and
GRAND CENTRAL, INC., a corporation,
Intervenor,

GARY MONTGOMERY,
Plaintiff-Appellant,
vs.
A. B. COOPER, dba KEARNS IGA FOODLINER, et al,
Defendants-Appellees

Case No. 12123

BRIEF OF APPELLANT
SKAGGS DRUG CENTERS, INC.

Appeal from a Judgment of the Third District Court
In and For Salt Lake County, Utah
The Honorable Leonard W. Elton, Presiding



H. R. WALDO, JR., and
JACK LUNT of
JONES, WALDO, HOLBROOK & McDONOUGH
800 Walker Bank Building
Salt Lake City, Utah
Attorneys for Plaintiff-Appellant
Skaggs Drug Centers, Inc.

BRUCE C. HAFEN of
STRONG, POELMAN & FOX
El Paso Gas Building
Salt Lake City, Utah
Attorneys for Plaintiffs-Appellants
Gary Montgomery, Alan K. Jeppesen,
Richard Harrington, Henry Skidmore,
Gary L. Paxton and Larry R. Keller

(Attorneys for Defendants-Respondents
Listed on inside cover)

KENT B LINEBAUGH
529 East South Temple
Salt Lake City, Utah
Attorney for Defendant-Respondent
Key Rexall Drug

JAMES E. FAUST
922 Kearns Building
Salt Lake City, Utah
Attorney for Defendant-Respondent
Warren's Holladay Pharmacy

MAX K. MANGUM
315 East 2nd South
Salt Lake City, Utah
Attorney for Defendant-Respondent
Success Pharmacy

PHIL L. HANSEN
231 East 4th South
Salt Lake City, Utah
Attorney for Defendants-Respondents
Westside Drug Store
The Broadway, Inc.
Sixth Avenue Pharmacy

RICHARD H. MOFFAT
1311 Walker Bank Building
Salt Lake City, Utah
Attorney for Defendant-Respondent
Harmon City, Inc.

O. ROBERT MEREDITH
425 South 4th East No. 200
Salt Lake City, Utah
Attorney for Defendant-Respondent
Kearns Drug Center, Inc.

LYNN G. FOSTER
315 East 2nd South No. 406
Attorney for Defendant-Respondent
Plaza Pharmacy, Inc.

NED WARNOCK and
A. M. FERRO
414 Walker Bank Building
Salt Lake City, Utah
Attorneys for Defendants-Respondents
The Prescription Pharmacy, Inc.
Lowe's Pharmacy, Inc.

GERALD R. HANSEN
455 East 4th South
Salt Lake City, Utah
Attorney for Defendants-Respondents
Allied War Surplus
Beaver Grocery

RICARDO B. FERRARI
141 East 1st South
Salt Lake City, Utah
Attorney for Defendant-Respondent
Mountair Pharmacy

DOUGLAS E. ROTH, President
Hyland Pharmacy, Inc.
3291 Highland Drive
Salt Lake City, Utah
(No Attorney Involved)

DAVIS K. WATKISS and
ROBERT S. CAMPBELL, JR.
400 El Paso Gas Building
Attorneys for Defendants-Respondents
Miniature Enterprises, Inc.
Blae's Quality Foods

BRYCE E. ROE and
RALPH L. JERMAN
340 East 4th South
Salt Lake City, Utah
Attorneys for Defendants-Respondents
Kwikee Market
The Southland Corp., dba 7-11 Food Stores

JUSTIN C. STEWART
Newhouse Building
Salt Lake City, Utah
Attorney for Defendant-Respondent
Ward Market, Inc.

ROBERT M. YEATES
206 El Paso Gas Building
Salt Lake City, Utah
Attorney for Defendant-Intervenor
Grand Central, Inc.

PARKER M. NIELSON
Kearns Building
Salt Lake City, Utah
Attorney for Defendants-Respondents
A. B. Cooper, dba Kearns IGA Foodliner
L. B. Grainger, dba Grainger's IGA Foodliner

RICHARD GIAUQUE
141 East 1st South
Salt Lake City, Utah
Attorney for Defendant-Respondent
Albertson's, Inc.

CURTIS K. OBERHANSLEY
320 South 3rd East
Salt Lake City, Utah
Attorney for Defendant-Respondent
John Carlson Stereo Living Rooms, Inc.

ROBERT W. INSCORE
J. and E. Market
1101 East 3300 South
Salt Lake City, Utah
(No Attorney Involved)

ROBERT D. CROFTS
County Attorney's Office
220 Hall of Justice Building
Salt Lake City, Utah

## TABLE OF CONTENTS



## CASES

## TABLE OF CONTENTS (continued)



### CONSTITUTIONS



### STATUTES



### HIGHER AUTHORITY

# IN THE SUPREME COURT OF THE STATE OF UTAH

SKAGGS DRUG CENTERS, INC., a Delaware corporation,
Plaintiff-Appellant,
vs.
RAEDEL E. ASHLEY, et al,
Defendants-Appellees.

GARY MONTGOMERY, et al,
Plaintiffs-Appellants,
vs.
JOHN DOE 1-5, et al,
Defendants-Appellees, and
GRAND CENTRAL, INC., a corporation,
Intervenor,

GARY MONTGOMERY,
Plaintiff-Appellant,
vs.
A. B. COOPER, dba KEARNS IGA FOODLINER, et al,
Defendants-Appellees

Case No. 12123

## BRIEF OF APPELLANT SKAGGS DRUG CENTERS, INC.

## NATURE OF THE CASE

This is a consolidation of three actions brought in the District Court of Salt Lake County under Chapter 25, Laws of Utah 1970, commonly referred to as the "Common Day of Rest Act" (the "Act"). Case No.

192780 brought by plaintiff Skaggs Drug Centers, Inc. against defendant individuals and corporations operating licensed pharmacies in Salt Lake County, seeks a temporary and permanent injunction restraining said defendants from violating the Common Day of Rest Act and damages against defendants for violating said Act during the pendency of the action. Case No. 192886 was brought by planitiffs Gary Montgomery, Alan K. Jeppesen, Richard Harrington, Henry Skidmore, Gary L. Paxton and Larry R. Keller, as private individuals, and Case No. 192948 was brought by Gary Montgomery, as a private individual, against defendants operating places of business in Salt Lake County. These two cases seek a permanent injunction restraining the defendants from violating the Act.

## DISPOSITION IN LOWER COURT

In a consolidated hearing limited to the question of constitutionality, Judge Leonard W. Elton, in a decision from the bench on May 12, 1970, held that Utah's Common Day of Rest Act, Chapter 25, Laws of Utah 1970 was, in its entirety, in violation of the provisions of the Constitution of Utah. In an Order of Dismissal entered May 18, 1970, defendants' various Motions for Dismissal and Motions for Summary Judgment were granted and the consolidated actions were dismissed with prejudice.

## RELIEF SOUGHT ON APPEAL

Plaintiffs seek to have the judgment of the lower court reversed and the Common Day of Rest Act declared constitutional.

## STATEMENT OF FACTS

Immediately prior to the hearing below, all parties hereto, both plaintiffs and defendants, stipulated in open court that the question of constitutionality was ripe for decision.

The facts are not in dispute. The only facts before the court were stipulated between all the parties hereto, which stipulation has been included in the Record on Appeal.

On Sunday, April 5, 1970, in Case No. 192780, individuals shopped and made purchases at stores named as defendants, all of which were open to the public and conducted and operated in the usual manner and location. Defendants are all individuals or corporations operating businesses for profit, containing a licensed pharmacy on the premises and selling items at retail to members of the public in competition with the business operated by plaintiff Skaggs.

On Sunday, April 5, 1970, in Case No. 192886 the individual plaintiffs shopped at defendant stores and made purchases named in that complaint. None of the stores so named had filed a notice of intent to remain closed on Saturday.

On Sunday, April 12, 1970, in Case No. 192948 individual plaintiff Montgomery, shopped at defendant stores and made purchases named in that complaint. None of the stores so named had filed a notice of intent to close on Saturday.

## ARGUMENT

### POINT I

### CREATING A COMMON DAY FOR REST AND RECREATION IS A PROPER LEGISLATIVE EXERCISE OF THE POLICE POWER AND DOES NOT CONTRAVENE FIRST AMENDMENT PROTECTIONS OF FREEDOM OR ESTABLISHMENT OF RELIGION.

Cessation of normal commercial activities on Sunday, by legislation or executive fiat, has a lengthy and broad history. Beginning as a Christian edict, Exodus 20:8-11, 23:12, 31:12-17; Deuteronomy 5:12-15; perpetuated as a God-fearing rule by secular leaders, *Gallagher v. Crown-Kosher Super Market,* 366 U.S. 617, 625, 6 L.Ed.2d 536, 541, 81 S.Ct. 1122 (1961) quoting a 1671 pronouncement of the Plymouth Colony; it has been implemented throughout the ages until now some form of Sunday closing exists in 49 of the 50 states, *McGowan v. Maryland,* 366 U.S. 420, 495, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1961) (Frankfurter's separate opinion; *see also* Appendix II thereto).

Like Christmas, Easter and many other customs and traditions which were essentially religious in origin, Sunday has remained a special day, but essentially for secular purposes: for rest and relaxation, for visiting with family and friends, for recreation and playing.

That a state may enact a common day of rest as a valid exercise of the police power has been recognized by the Supreme Courts of Utah and of the United States.

As early as 1903 the Supreme Court of Utah recognized the validity of Sunday closing laws:

> General laws prohibiting the transaction of business on the first day of the week, commonly called Sunday, are so uniformly upheld by the courts as a legitimate exercise of the police power of the state that it is unnecessary to cite or discuss authority in support thereof.
>
> * * *
>
> In Cooley, Const.Lim. §734, the author says on Sunday laws: 'There can no longer be any question, if there ever was, that such laws may be supported as regulations of police. *State v. Sopher,* 25 Utah 318, 71 Pac. 482 (1903).

In 1943 Chief Justice Wolfe in *Broadbent v. Gibson,* 105 Utah 53, 140 P.2d 939, 943, stated that:

> The constitutionality of general Sunday closing laws, which have been enacted in nearly every state, is no longer to be doubted. Such statutes have been uniformly upheld. (Cites omitted.)
>
> * * *
>
> Although these statutes had their origin in religious observance of the Sabbath, they are not now to be so regarded. Their purpose is to protect society by establishing a compulsory day of rest.

*See also Gronlund v. Salt Lake City,* 113 Utah 284, 194 P.2d 464, 466.

Characterizing Sunday closing laws as a valid exercise of the police power, Justice Frankfurter stated:

> Throughout this century and longer, both the federal and state governments have oriented their

> activities very largely toward improvement of the health, safety, recreation and general well-being of our citizens. Numerous laws affecting public health, safety factors in industry, laws affecting hours and conditions of labor of women and children, week-end diversion at parks and beaches, and cultural activities of various kinds, now point the way toward the good life for all. Sunday Closing Laws, like those before us, have become part and parcel of this great governmental concern wholly apart from their original purposes or connotations. The present purpose and effect of most of them is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the States from achieving its secular goals. To say that the States cannot prescribe Sunday as a day of rest for these purposes solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare rather than one of more separation of church and State. *McGowan, supra,* at 444-445.

Despite the wide discretion a legislature has in acting within an area which the courts have unequivocally held to be a valid exercise of the police power for creating a day in which an atmosphere of diversion for rest and recreation is established, the citizenry and the courts are understandably sensitive because that day is Sunday, a day which in this nation and particularly in this State has religious connotations.

In 1961, the United States Supreme Court was directly confronted with a First Amendment attack on Sunday closing laws. They held, in an eight to one decision in

*McGowan v. Maryland, supra,* at 449, the major case in a series of cases sustaining Sunday closing legislation, that:

> The statutes' present purpose and effect is not to aid religion but to set aside a day of rest and recreation.

Despite religious language in the statutes, such as referring to Sunday as the "Lord's Day" and the "Sabbath," the Supreme Court held that the purpose and effect of common day of rest statutes was secular: " . . . We believe that the aim of the day is one of relaxation rather than religion," *McGowan v. Maryland, supra,* at 448. " . . . We do not find that the present statutes' purpose or effect is religious," *Gallagher, supra,* at 630. " . . . We hold that neither the statute's purpose nor its effect is religious," *Two Guys From Harrison-Allentown v. McGinley,* 366 U.S. 582, 598, 6 L.Ed.2d 551, 561, 81 S.Ct. 1135 (1961), reh. den. 368 U.S. 869, 82 S.Ct. 21, 7 L.Ed.2d 69.

It has been contended that the Saturday option (§5(5)) is a discriminatory religious preference as a direct aid to religion and therefore violates the First Amendment. It is true that the Saturday option will alleviate an economic burden from those businesses which must close on Saturday because of religious dictates. But it cannot be said as a matter of logic or common sense that by deleting a possible religious discrimination the State is thereby aiding and preferring religion. Anyone covered by the Utah act may elect the option, for whatever reason. The mom and pop neighborhood gro-

cery store may elect to close on Saturday as may the Kosher delicatessen. That section is complied with by the ministerial act of filing, without fee, a notice of intent to close on Saturday.

The United States Supreme Court in *Braunfeld v. Brown,* 366 U.S. 599, 6 L.Ed.2d 563, 81 S.Ct. 1144 (1961) held that a Sunday closing law was constitutional without a Saturday option but that "a number of States provide such an exemption, and this may well be the wiser solution to the problem" at 608.

## POINT II

### WHEN THE ACT IS INTERPRETED IN LIGHT OF ITS PURPOSE IT APPLIES UNIFORMLY TO ALL AND IS NOT UNCONSTITUTIONALLY VAGUE.

The purpose of the Act is to establish a common day of rest as a diversion from the customary labors of the work-a-day world to a change of pace for rest and recreational activity. The Act asserts this as its purpose and it is not competent for this or any other court to assume another and possibly unconstitutional purpose.

Rest and recreation is clearly an important public purpose and should be endorsed and the means chosen by the Legislature to promote this purpose should be upheld even though enforced rest or recreation for all citizens at the same time is neither required nor desirable. In our complex and interdependent society a total cessation of commercial and business activity *at any time* is

both impossible and undesirable. Hence, some forms of activities and services must be excluded from coverage. And this raises questions of equal protection and due process. But the courts recognize that legislatures do not act in a vacuum; they do not require that legislatures create rules based on neat and tidy abstract logical constructs which collapse when the realities of life are injected into them. As Frankfurter stated in *McGowan, supra,* at 524:

> Neither the Due Process nor the Equal Protection Clause demands logical tidiness . . . No finicky or exact conformity to abstract correlation is required of legislation. The Constitution is satisfied if a legislature responds to the practical living facts with which it deals. Through what precise points in a field of many competing pressure a legislature might most suitably have drawn its lines is not a question for judicial re-examination. It is enough to satisfy the Constitution that in drafting them the principle of reason has not been disregarded.

In addition to the United States Constitution, Article I, §24 and Article VI, §26 of the Utah Constitution are regarded as requiring equal protection of laws. These provisions of the Utah Constitution are construed together and are violated if a statute creates "an unreasonable classification, resulting in a failure of uniform applicaiton of the general law," *Abrahamsen v. Board of Review of Industrial Commission,* 3 U.2d 289, 283 P.2d 213, 215 (1955). Under the Act there is a discriminatory treatment in the sale of goods in that some classes are exempted from compulsory closing. Equal

protection of laws does not prevent classification and discrimination in legislative treatment of a subject. All that is required is that there be "a reasonable basis to differentiate those included from those excluded," *Entre Nous Club v. Toronto,* 4 U.2d 98, 287 P.2d 670, 674 (1955).

In determining reasonableness the court does not make a policy judgment as to the wisdom of the legislation, *Broadbent v. Gibson, supra,* at 944, and will invalidate legislation only if the classifications and discrimination are unreasonable and arbitrary, *State v. Mason,* 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330, 333 (1938). Legislation passes that test so long as there is "some basis" that "bears a reasonable relation to the purposes to be accomplished by the Act," *Ibid.*

This court, in *Broadbent v. Gibson, supra,* at 944 established the following standard for equal protection:

> In determining whether or not this classification is unconstitutional, it must be remembered that discrimination is the very essence of classification and is not objectionable unless founded upon distinctions which the court is compelled to find unreasonable. (Cites omitted.) The legislature has a wide discretion in determining what shall come within the class of permitted activities and what shall be excluded. (Cites omitted.)
>
> A court is not concerned with the wisdom or policy of the law and cannot substitute its judgment for that of the legislative body. If reasonable minds might differ as to the reasonableness of the regulation, the law must be upheld.

This standard was also expressly adopted in *Gronlund v. Salt Lake City, supra,* at 466.

The classifications in the Utah statute are founded upon a rational basis and apply uniformly to all. The exemptions are based on classifications of commodities, not types of businesses. Thus, the exempted items may be sold by anyone, at any time, on any day. As Justice Wolfe stated, "This type of statute is almost uniformly upheld," *Broadbent, supra* at 467.

*Gronlund* offers no clue as to how that exemption should be worded, but some clue is provided in *Broadbent, supra,* at 945-946:

> Unless such an implied exemption [for works of necessity] were read into the act none of the exempted businesses could sell *sick room supplies* other than *compounded medicines.* There are other business activities involving the sale of items *necessary to the maintenance of life and health* which are not specifically exempted from the general closing provision, *yet the legislature cannot under such a statute constitutionally prohibit the sale of such items.* (emphasis added).

Despite the fact that the phrase "works of necessity" has been constitutionally upheld in other states, *Berta v. Georgia,* 154 So. 2d 594 (Ga. 1967), *Opinion of the Justices,* 229 A.2d 188 (N.H., 1967), *State v. Solomon,* 141 S.E.2d 818 (S.C., 1965), *State v. Gates,* 141 S.E.2d 369 (W.Va. 1965), *Arlan's Department Store v. State,* 369 S.W.2d 9 (Ky. 1963), the Utah Legislature chose to be more specific by following the implication of *Broadbent* and exempted:

> The sale of goods or rendering of services necessary to the maintenance of health, safety

and life, such as, by way of example and not by way of limitation, medical or hospital goods or services and prescription medicine.

There are also activities which, of inherent necessity, cannot, in this complex, inter-dependent society in which we live, ever be interrupted or halted without disastrous consequences: transportation and communication facilities, public utilities and privately owned plants which by their nature require continuous operation. The existence of exemptions does not violate constitutional guarantees of equal protection, *McGowan, supra,* at 427. Who would argue that on Sunday there should be no electricity or telephone service, or that airplanes shouldn't land in Utah or that blast furnaces (which take days to heat) should be shut off? It would seem that the Legislature could find that there was a reasonable basis on which to exempt this class—at least facts may be conceived to justify it, *McGown, supra,* at 426, or reasonable minds might so believe, *Broadbent, supra,* at 944—and the class, by definition, provides equal treatment to those similarly situated.

People traveling through the state compose a reasonable class for exemption because they, by necessity, require certain goods and services to travel. Their activities in the state are subject to the same standards as Utah citizens; only goods and services essential to travel —the characteristic which distinguishes them and makes them a class—are exempt.

It is a proper purpose of a common day of rest act to facilitate certain activities, *McGowan, supra,* at 426. "By 'rest' was not meant inaction. It was recognized that in this modern age recreation or change of activity is a form of rest," *Broadbent, supra,* at 945. The exemptions of goods and services normally associated with or incidental to the operation of recreational, educational or entertainment facilities emphasize the secular purposes of a common day of rest by facilitating recreational diversion from one's normal labors.

The classifications of the Maryland statute which was upheld by the United States Supreme Court in *McGowan,* seem capricious and discriminatory when compared to the Utah Act. *See* Appendix to the opinion in *McGowan, supra,* at 453, et seq. The Maryland statute exempts retail outlets employing not more than one person other than the owner, Maryland Ann. Code, Art. 27, §521(b), while the Utah statute exempts anyone who sells exempted items or renders exempted services. The Maryland statute exempts the sale of alcoholic beverages in some counties, at some hours during the day, by some types of licensees in some districts, Maryland Ann. Code, Art. 2B, §28 (a) (2) and (3), §90 (A) (1) and (2), (b) (1) and 2), while the Utah statute uniformly exempts the sale of all beverages, by anyone, anywhere, at any time of the day. The Maryland statute also permitted a differential treatment of the same activities between different counties of the state, at different hours of the day and at different distances from churches where religious services were being held, *McGowan, supra,* at 424.

The categories of the Pennsylvania statutes seem arbitrary and unreasonable in light of the Utah Act. For example:

> The Sunday exhibition of motion pictures is permitted only after 2 p.m., and then only if the voters in each muncipality approve; however, religious motion pictures may be shown by churches at any time providing they are shown within church property and no admission price is charged. Baseball, football and polo receive similar treatment except the permitted hours are between 1 p.m. and 7 p.m. Public concerts, of music of high order though not necessarily sacred, may only be performed after noon. *Two Guys From Harrison-Allentown v. McGinley, supra,* at 586.

Indeed, when compared to the state statutes at issue in the 1961 Sunday closing cases, the Utah Act is model legislation in clarity and rationality.

It has been contended that because the Utah constitutional provisions for equal protection are worded differently from the federal constitutional requirement, that *something more* is required by our Constitution. No case law has been found to substantiate this claim. Indeed, Justice Wolfe in *Broadbent v. Gibson, supra,* cites the United States Supreme Court case of *Nebbia v. New York,* 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934) in his discussion of due process and equal protection standards to be applied to Sunday closing legislation. That landmark case, sustaining a state's right to set minimum prices in the sale of retail milk, held that the court will not examine the wisdom of the policy established by the Legislature, *Id. at* 537; that the

standard "demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained," *Id.* at 525. The Utah Supreme Court, by its reliance on *Nebbia,* has adopted at least for Sunday closing cases, the same approach to equal protection and due process problems as the United States Supreme Court—an approach which renders the 1961 Sunday closing cases decided by the United States Supreme Court highly persuasive authority, if not controlling, to the questions at hand under the Utah Constitution.

The contention that this court should, in interpreting Article I, §24 and Article VI, §26 of the Utah Constitution, make a determination as to the wisdom of the legislation, has serious constitutional infirmities (separation of powers) and constitute a departure from established judicial policy. If such a rule were adopted in this case it would compel the court, in all cases wherein the questions of equal protection were raised, to act as the final arbiter of legislative wisdom and policy. Substantive due process as a method of substituting the court's judgment for the judgment of the legislature was discredited by the United States Supreme Court in the 1930's. Such judicial substitution of judgment has not been the policy of this court and, it is submitted, should not now be adopted.

It may be that reasonable minds may differ as to the wisdom of the particular classifications in the Act at hand. But it cannot be said that those classifications do

not bear a reasonable relation to the legislative creation of a common day of rest.

The Utah Act is different from almost all other Sunday closing legislation in that it is not a criminal statute. The sole enforcement is through the civil remedy of injunctive relief. This distinction is vital. While the Act, like any legislation, must not be so vague that it violates due process standards, it is not subject to the more stringent void-for-vagueness test applied to criminal statutes.

The protections of due process of law under the Utah and United States Constitutions are substantially similar. The language is the same and the United States Supreme Court decisions are highly persuasive of the interpretation of the Utah provisions, *Untermyer v. State Tax Commission,* 102 Utah 214, 129 P.2d 881, 885 (1942). In the 1961 Sunday closing cases, all of which dealt with criminal statutes, the Supreme Court dispelled all due process arguments.

The Utah Act, unlike a statute which establishes criminal sanctions for violation, does not provide any penalty for violation until after one disobeys an injunction issued against him by a court. And before that injunction can issue the defendant must have a court hearing in which he has a full opportunity to explain and justify all the facts and circumstances surrounding the incident complained of. It is only after an injunction is issued and the defendant violates that injunction, that punative action can be taken. That decision will be made by the exercise of sound discretion by a court after a full

understanding of the f a c t u a l situation, not by the mechanical application of rigid labels.

It is possible and even enticing to conjure up *ad absurdum* specific incidents of commercial activity to argue whether they come within this or that phrase of the Act. After such an exercise the Act seems a hodge-podge of unrelated, illogical, dissonant inclusions and exclusions. But the Act cannot be read phrase-by-phrase, word-by-word. Rather, it, like any other statute, must be read and interpreted as an interrelated whole, guided by the legislative purpose it seeks to accomplish and the dictates of common sense.

## CONCLUSION

For the foregoing reasons we respectfully submit that the Common Day of Rest Act is in all respects valid and constitutional. To arrive at this result the court need not and should not indulge in philosophical speculations as to the desirability of this type of legislation. That value and policy decision has heretofore been made through the due course of legislative action. Plaintiffs therefore request this Court to reverse the order of the lower court and to remand these cases for further interpretive proceedings consistent with this declaration.

Respectfully submitted,

H. R. Waldo, Jr. and
Jack Lunt of
JONES, WALDO, HOLBROOK
& McDONOUGH
Attorneys for Plaintiff
Skaggs Drug Centers, Inc.

## APPENDIX

## CHAPTER 25, LAWS OF UTAH 1970

H. B. No. 8 (Passed January 31, 1970. In effect April 2, 1970)

## SUNDAY CLOSING

*An Act Relating to the Establishment of Sunday as a Day of Rest; Providing for a General Prohibition Against the Performance of Labor or Selling on Sunday, For Exemptions From Such Prohibition, and For Definitions and Penalties; and Repealing Sections 76-55-1, 76-55-2 and 76-55-4, Utah Code Annotated 1953.*

Be it enacted by the Legislature of the State of Utah:

Section 1. *Purpose of Act.*

The legislature finds that Sunday has come to have special significance in the state of Utah and throughout the United States as a day of relaxation, entertainment, family activity and diversion from customary labors. Children and parents may be at home together on this day, there being traditionally no school in session and no general conduct of labor or business in the state. In recent times there has been an increase in the general conduct of labor and business throughout the state on Sunday. The restriction of this tendency and the promotion of a uniform day of diversion and relaxation on the

day established by custom are determined to be legitimate subjects for regulation. This determination is based upon the legislature's finding that it is socially desirable to promote weekly rest from the routine of daily affairs and to promote family and social relaxation and entertainment on a uniform day. The legislature also finds it to be necessary in fulfillment of and consistent with these purposes to permit the conduct of certain labor and the sale of certain goods or services which are vital to the maintenance of basic functions of the community or which are necessary for the existence of facilities for diversion, recreation or relaxation. In addition, the legislature recognizes that some citizens of the state observe Saturday as the Sabbath and should not be unjustly affected by a common day of rest act. Because of the difficulties inherent in determining the good faith of religious belief or practice, it is deemed reasonable to eliminate the risk of such injustice by excepting from the general operation of such an act those who do not engage in their daily labors on Saturday. The legislature finds that the number of such persons or persons who would close their businesses on Saturday in order to be open on Sunday is small enough in this state that this exception does not impair the purposes of a uniform day of rest.

Section 2. *Act to be liberally construed.*

This act shall be liberally construed to carry out the objects and purposes and the declared policy of the state of Utah as in this act set forth.

Section 3. *Definitions.*

As used in this act: (1) The words "Sunday" and "Saturday" mean that period of time between midnight at the beginning of such calendar day and the following midnight; (2) The phrases "business or labor for profit" and "operate a place of business" mean the rendering of services, performance of labor, or sale of goods as a primary vocational activity for consideration, and exclude:

(a) Labors of necessity voluntarily performed by one whose activity does not require his contract with the public;

(b) The activities of enterprises conducted solely for charitable or religious purposes;

(c) The activities of federal, state, municipal or local governmental departments or agencies, or their employees, acting in an official capacity;

(d) Activities engaged in for extraordinary purposes of an emergency nature; and,

(e) Isolated or occasional sales by persons not customarily engaged in the business of selling the goods or rendering the services concerned.

Section 4. *Activities deemed unlawful.*

Sunday is hereby established as a day of diversion and relaxation in the state of Utah. Except as hereafter provided, it shall be unlawful on Sunday for any person, firm or corporation:

(1) To engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public; or

(2) To cause, direct or require any employee or agent to engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public.

Section 5. *Exceptions.*

The provisions of the preceding section shall not apply to:

(1) The sale of goods or rendering of services necessary to the maintenance of health, safety and life, such as, by way of example and not by way of limitation, medical or hospital goods or services and prescription medicine.

(2) The sale of goods or rendering of services essential or incidental to operations which are customarily continuous, seasonally or otherwise, such as airlines, railroads, taxicabs, buslines or other transportation facilities: telephone, radio, television, or other communications facilities; power or water supplies and facilities or other public utilities; the extraction or processing of natural resources; manufacturing, processing or assembly plants whose equipment or processes require continuous operation.

(3) The sale of goods or rendering of services essential to travel by persons within or through the state, such as the rental of rooms or other living accommodations;

sales of motor fuels and supplies or services customarily provided by automotive service stations; or sales of food or drink prepared for consumption on the premises where sold.

(4) The sale of goods or rendering of services normally associated with or incidental to the operation of recreational, educational or entertainment facilities, such as newspapers or periodicals; beverages, tobacco products and confections; maintaining theatres, resorts, golf courses, libraries, educational forums, scenic and tourist attractions.

(5) Persons, firms or corporations, who or which:

(a) Neither conduct nor require the conducting by others of any business or labor for profit on Saturday, either by themselves or through firms or corporations under their ownership or control; and

(b) File, without filing fee, a notice of intent to cease doing business on Saturday, specifying the owners of such business and the locations where such business or labor is conducted, with the county clerk in each county where such person, firm or corporation conducts its business.

Section 6. *Violation of act deemed public nuisance.*

The purpose of this act is to promote the health, recreation and welfare of the people of the state of Utah. Any violation of this act shall not be deemed a crime but

is declared to be a public nuisance, and any person or county attorney may apply to any court of competent jurisdiction for, and may obtain, an injunction restraining such violation.

Section 7. *Severability clause.*

If any provision of this act or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Section 8. *Sale of motor vehicles.*

This act applies to the sale of motor vehicles except as provided in sections 76-55-5, 76-55-6 and 76-55-7.

Section 9. *Sections repealed.*

Sections 76-55-1, 76-55-2 and 76-55-4, Utah Code Annotated 1953, are hereby repealed.