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IN THE

SUPREME CO

OF THE

STATE OF

BARTON TRUCK LINES,

Plaintiff

vs.

STATE ROAD COMM

Defen

BRIEF OF

Appeal from a the Third Judicial State of Utah, the Presiding.

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

BARTON TRUCK LINES, INC., *Plaintiff and Respondent,* vs. STATE ROAD COMMISSION, *Defendant and Appellant.*	Case No. 13516

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action for removal of an outdoor advertising sign allegedly erected and maintained in violation of the Utah outdoor Advertising Act. A decision in an Administrative Hearing before the Utah State Road Commission was adverse to the sign owner and the sign owner, as plaintiff, petitioned the District Court for a review of that decision.

DISPOSITION IN LOWER COURT

The Findings of the Commission were reviewed and argued to the District Court on the basis of the record of the Administrative Hearing being reviewed. The Lower

Court ruled that the Findings and Conclusions of the Utah State Road Commission that the plaintiff's subject sign is illegal are not supported by the records, exhibits, and transcript on file herein and the Court entered a Judgment for the plaintiff from which the defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the Judgment of the District Court and a Judgment reinstating the decision of the Utah State Road Commission.

STATEMENT OF FACTS

The Utah Legislature enacted the "Utah Outdoor Advertising Act," effective May 9, 1967. Some time between May 9, 1967 and January 29, 1969, Barton Truck Lines erected an outdoor advertising structure at Milepost 0.49 on 18-269-1 in Salt Lake City and County which sign is actually located on the south side of the Fifth South on-ramp, leading onto I-15.

No permit was applied for nor issued by the State of Utah for this sign.

A written notice to remove the subject sign was given the plaintiff, Barton Truck Lines, by the State Road Commission pursuant to the provisions of U. C. A. Section 27-12-136.9 and Barton Truck Lines, Inc., thereafter requested the hearing as provided in said section of the Utah Code.

The hearing took place on March 5, 1969. The commission made and entered its Findings and Conclusions that the subject sign was erected and maintained in violation of the Utah law governing outdoor advertising for the reason that it did not have a permit and did not qualify as an on-premise sign, since the usage of the premises by Barton Truck Lines, Inc., did not constitute an "on-premise activity." The plaintiff appealed to the District Court for a review of the Commission's decision pursuant to provisions of U. C. A. Section 27-12-136.9.

ARGUMENT

POINT I.

THE COMMISSION'S RULING WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IT WAS ERROR FOR THE COURT TO FAIL TO SUSTAIN SAID RULING AS REQUIRED BY THE ACT (U. C. A. Section 27-12-136.9, 1953).

The respondent, Barton Truck Lines, Inc., hereinafter called Barton, sometime after the effective date of the Utah Outdoor Advertising Act erected and ever since that time has maintained an outdoor advertising sign in Salt Lake County, Utah, which sign is situated on the property and premises of Lewis Brothers Stages at 549 West Fifth South, Salt Lake City, Utah, and adjacent to and alongside the Fifth South on-ramp of I-15.

The sign and its location is subject to the control of the State of Utah under the said Act, since it is visible from the main traveled way of the interstate (U. C. A. Section 27-12-136.4 (1), 1953, as amended).

Under this Act, if the sign in question qualifies as an "on-premise" sign, then no permit is necessary and Barton is entitled to erect and maintain the sign. If, on the other hand, the sign is one which requires a permit as provided in Section 27-12-136.7 of the Act to qualify as a legal sign, *no such permit having been applied for or issued*, it follows that the subject sign was and still is illegal.

The only remaining legal basis for the subject sign to continue to exist at that location is that it can and does qualify as an "on-premise" sign, i.e. a sign "advertising activities conducted on the property upon which the sign is located."

The main issue before the reviewing District Court was whether or not, factually, the decision of the Commission that the subject sign did not qualify as an "on-premise" sign was supported by *substantial evidence* as shown by the records, exhibits and transcripts. There was no trial. The matter was, of course, submitted on the record being reviewed.

What then does the record show as to this evidence? Barton has permission or access to park its trailers on the property of Lewis Bros. Stages where the subject sign is located (p. 13, lines 8 and 9 of transcript). There

is no evidence in the record that Barton ever acquired from Lewis Bros. Stages anything more than a *permissive use* of the property on which the sign was erected. The record further shows that a surveilance of the activity of Barton on the premises of the subject sign indicated that at the most, Barton parked two of its trailers on the property of Lewis Bros. Stages and that photographs (21 in all) taken of the subject property and in evidence in the record indicated a very minimal use by Barton of the premises on which the subject sign was and still is located (pp. 23 and 24 of transcript).

Based on this evidence the Commission made Findings that "there is no designated space for Barton Truck Lines, Inc., to utilize, except that no congestion problem be created" and "that a maximum of two trailers were parked in the area during the time and *no evidence of activity within the trailers* such as loading or unloading." (Emphasis added.) (Paragraphs No. 9 and 10 of Commission Findings.)

The Commission made and entered its Conclusions "that the premises of the Lewis Bros. Stages are used *only incidentally* by Barton Truck Lines, Inc.," and that the "Barton Truck Lines, Inc., usage of the premises involved in thi s matter does not constitute an "on-premise activity." The sign was held to be "illegal" and its removal to be effected within 30 days from receipt of the Commission's Findings, Conclusions, and Decision.

Counsel for Barton orally argued and in his mem-

orandum to the Court made an issue of the fact that the subject sign is located in an industrial and commercial zone and that a permit for the sign could have been obtained but wasn't since the permit officer indicated the state would not issue a permit, even though application were to be made. Although this should not have been an issue in the Lower Court nor should it now be an issue, it is not being overly presumptive that such issue will be raised again by counsel for Barton and we, therefore, meet this issue.

The act precludes the erection and maintenance of the subject sign as a "permitted" sign under the provisions of Section 27-12-136.7 of the Act, since even though the area was zoned commercial and industrial, the restriction of Section 27-12-136.5 (3) (d) prohibits the existence of the subject sign.

> No sign may be located on an interstate highway or freeway within 500 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

There is the further prohibition as set forth in Section 27-12-136.5 (3) (a), "No new sign shall be erected adjacent to an interstate or freeway closer than 500 feet to an existing off-premise sign, unless separated therefrom

by a building or other enclosed structure." There was and still is an existing off-premise sign carrying a state issued permit just east of and closer than 500 feet to the subject sign. Therefore, assuming that other objections could be set aside, the subject sign could not meet this spacing requirement of the Act and no permit could be issued under the Act to allow its existence, since the subject sign could not and cannot be permitted where there was on the date of the erection of the subject sign another legal sign (with a valid permit) within 500 feet of the subject sign. The Act requires spacing of 500 feet between signs where both sign facings are visible simultaneously to the traveling public, as is true in the case of the subject sign and the other sign, approximately 400 feet to the east. In any event, the plaintiff, Barton, must exhauust its administrative remedy by making written application to erect the sign and receiving a formal denial of its application before it can proceed with a legal remedy. This it has failed to do. Barton justifies its failure to make the necessary application because the permit officer indicated that, should Barton apply, the application would be denied. This may well have been the only position the state could take under the provisions of the law, but certainly the oral opinion of the local enforcement officer should not exempt Barton from following the requirements of the law. In any event, the remedy of Barton after any final refusal by the state to issue the required permit would be to ask the District Court for a

Writ of Mandamus, to thereby compel the state to issue the requested permit on the grounds that denial was arbitrary and capricious and an abuse of discretion.

Although the validity of the Utah Outdoor Advertising Act is not here being challenged, its effectiveness and enforceability is. There is no question but what the State of Utah in exercising its police power can control any activity which creates for the traveling public a hazard on its highways. The Utah Legislature in the Act specifically set out limited spacing requirements in the vicinity of the interchange. Section 27-12-136.5 (3) (d), supra. The Utah Act is patterned after the guidelines of the Federal Act and the purpose of the above cited section of the Act is embodied in a letter of September 14, 1965, by the then Secretary of Commerce to Senator Randolph:

> "In regard to spacing, obviously some regulation is desirable to prevent a conglomeration of highway signs in the vicinity of an intersection which might involve a traffic hazard."

The Utah Federal Agreement which has been adopted, and by reference is a part of the Utah Act, sets forth the spacing criteria in intersections and interchanges, obviously, with the basic objective in mind as above quoted.

Although there are wide differences of opinion on the subject, there appears to be a need to restrict signs in the general vicinity of interchanges and intersections.

According to studies made by Hughes Aircraft Co., a U. S. motorist in heavy traffic is under greater tension than an astronaut in orbit around the earth. The motorist's heart beats faster, his breath is shorter, his musculature is more tense. On approaching a crowded intersection, the average driver generates more anxiety than an astronaut waiting for the countdown. (Parade Magazine, September 11, 1966). It seems apparent from a safety point of view that areas where such tensions and anxiety are created are inappropriate sites for distraction-causing devices such as outdoor advertising signs. Particularly one which revolves as does the subject sign. *It would seem indisputable that to the extent an outdoor advertising sign achieves its purpose of attracting attention, it also succeeds in distracting the motorist from his driving responsibilities.*

The Supreme Court of Ohio speaking through Chief Justice Taft made the following remarks with respect to billboards:

> "As stated in the Opinion of the Justices, supra, 103 N. H. 268, at 270, 169 A. 2d 762, at 764:
>
> 'With vehicles hurling along at the speed which characterizes travel on interstate or so-called super highways, an instant's inattention or confusion may be disastrous. We need not labor the point that anything beside the road which tends to distract or confuse the driver of a motor vehicle directly affects public safety.

'Signs of all sizes, shapes and colors, designed expressly to divert the attention of the driver and occupants of motor vehicles from the highway to objects away from it, may reasonably be found to increase the danger of accidents, and their regulation along highways falls clearly within the police power.'

"We can take judicial notice of the fact that, except for one familiar with the interchange, getting on or off an interstate highway in the direction that a driver wants to go usually involves some difficulty. A mistake in turn can cause a driver considerable inconvenience, annoyance, delay and even danger. Thus, at an interchange on an interstate highway, billboards can be a considerable cause of distraction, annoyance, inconvenience and even danger to a driver."

Ghaster Properties, Inc. v. *Preston*, 200 N. E. 2d 328, 339.

CONCLUSION

This appeal, reduced to its basic issue, is: Was the decision of the Commission supported by substantial evidence as shown by the records, exhibits, and transcripts? (Section 27-12-136.9). It is respectfully submitted that it, the decision of the Commission, was amply supported by substantial evidence and, therefore, it was error and contrary to the provisions of the Act for the Lower Court to substitute its Judgment for that of the Commission and to thereby fail to sustain the decision of the Commission. This Court should reverse the finding of the

Lower Court and reinstate the Commission's decision. To fail to do so would be to leave the state without a remedy to remove what is obviously an illegal outdoor advertising sign.

Respectfully submitted,

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