

07-0442
Personalized License Plate
Signed 08/24/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	07-0442
v.)		
)		
MOTOR VEHICLE DIVISION OF)	Tax Type:	Personalized License Plate
THE UTAH STATE TAX COMMISSION,)		
)		
Respondent.)	Judge:	Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1
PETITIONER 2
PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Appeals Specialist, Motor Vehicle
Division
RESPONDENT REPRESENTATIVE 3, Deputy Director, Motor Vehicle
Division
RESPONDENT REPRESENTATIVE 4, from the Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on July 26, 2007 in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing Respondent’s decision to recall the personalized license plate with the combination of letters “(X).” The plate had been issued in 1999, and on March 7 2007, Respondent had issued a Statutory Notice recalling the plate.

APPLICABLE LAW

Utah law provides for personalized license plates with the limitation set fourth in Utah Code Ann. §41-1a-411:

- (1) An applicant for personalized license plates or renewal of the plates shall file an application for the plates in the form and by the date the division requires, indicating the combination of letters, numbers, or both requested as a registration number.
- (2) The division may refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or that would be misleading.

The Tax Commission has adopted a rule to determine when a combination of letters or numbers is offensive or misleading. Utah Admin. Rule R873-22M-34 states in pertinent part:

- (1) The personalized plate is a non-public forum . . .
- (2) Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:

....

- (c) Combinations of letters, words, or numbers that connote the substance, paraphernalia, sale, user, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant.

In *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9, 977 P.2d 467, the Utah Supreme Court gave direction for the Tax Commission to follow regarding personalized license plates. The Commission should not rely “on the opinion of any one person or group in determining whether a term [on a license plate] carries a prohibited connotation.” 1999 UT 9, ¶15. Rather, the “only reasonable standard that may be applied is the objective, reasonable person.” 1999 UT 9, ¶18.

DISCUSSION

The question before the Commission in this appeal is whether the personalized license plate “(X)” violates a rule that forbids a combination of letters that connotes “any illicit drug, narcotic, or intoxicant.” The parties generally agree that “(X)” has three generally understood meanings: THREE LINES REMOVED REFERENCING OTHER MEANINGS. The parties not only stipulate to these multiple meanings of the word “(X)” but agree that they generally appear in dictionaries and online descriptions in the order provided above.

Petitioner argues that the plate in question does not violate Utah law because “(X)” would not necessarily be perceived as a (X). Even though Petitioner agrees that (X) is a (X), Petitioner has received comments regarding the “(X)” plate that would indicate that an objective, reasonable person in Utah may not be familiar with (X) as a (X). Petitioner testified that some have asked if (X) was a family name. Others have pronounced “(X)” as if it rhymed with “(X).” Among those who do recognize (X) as a (X), Petitioner argues that (X) and the color referred to as (X) are likely to come to mind upon viewing the plate “(X).”

Petitioner’s argument regarding the different possible meanings of “(X)” fails for two reasons. First, courts have generally held that even if a license plate is not understood by all, it can still violate the law if those who do understand it perceive it in a sense that would violate applicable statutes. *See, e.g., Kahn v. Dep’t of Motor Vehicles*, 16 Cal. App. 4th 159, 20 Cal. Rptr. 2d 6 (2d Dist. 1993)(upholding revocation of plate even though potentially offensive message only understood by those familiar with court reporter keystrokes). Second, a license plate with more than one meaning is not acceptable if one meaning violates statute, notwithstanding other meanings that are acceptable under applicable statute. *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9 ¶18, 977 P.2d 467 (license plate connoting “(X)” still offensive as a racial term notwithstanding another accepted meaning as name of football team).

Applying these rules, “(X)” refers to a (X), even if those not familiar with the (X) would not know this. That (X) refers to a type of (X) or a (X) cannot change the reasonable interpretation of (X) as a type of (X). Thus, (X) connotes an intoxicant.

Petitioner argues that even if (X) is understood as a type of (X), it should nevertheless be held to be acceptable under Utah law because nothing about the term “(X)” is offensive to the objective, reasonable viewer. As evidence of this, Petitioner points out that even though nearly 10 years and 150,000 miles have

passed since issuance of the “(X)” plate, no one has complained about the plate until recently. As further evidence, Petitioner provided testimony that comments regarding the plate have been generally positive. Some of the comments refer to the (X) of the car on which Petitioner displays the plate. Other comments have been in reference to other (X) with names too long to fit on a license plate. Given the generally favorable reception to this plate, Petitioner argues that it is an acceptable plate under Utah law and one that should stay on Petitioner’s car.

The problem with Petitioner’s argument is that the Utah Tax Commission has limited its own authority to issue plates by drafting Utah Admin. Rule R873-22M-34. The Commission has consistently interpreted this rule as requiring denial of a license plate if the letters or numbers on the plate “connote . . . *any* . . . intoxicant.” Utah Admin. Rule R873-22M-34(2)(c) (emphasis added). Under this rule, the Commission has given up the discretion to allow some references to intoxicants but to disallow others. It must apply Utah Admin. Rule R873-22M-34 evenly and fairly by denying a plate connoting *any* intoxicant. Thus, a license plate that connotes “(X)” is an impermissible plate under Rule R873-22M-34.

DECISION AND ORDER

Based on the foregoing the Commission recalls the personalized license plate “(X).” It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Appeal No. 07-0442

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

Clinton Jensen
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Commissioner R. Bruce Johnson, Concurring:

I concur in the decision of my colleagues. Several facts are clear. The statute prohibits license plates that “may carry connotations that are offensive to good taste.” The Tax Commission has adopted Rule R873-22M-34 (“Rule 34”) which prohibits license plates that “connote” illicit drugs, narcotics or intoxicants. A reasonable person would be aware that a connotation of “(X)”, probably the most common connotation, is a (X). (X) is an intoxicant. Thus the license plate clearly violates Rule 34.

Some things, however, are less clear. I believe that a reasonable person would find references to many illicit drugs, narcotics or intoxicants to be offensive. It is less clear, however, that a reasonable person would find a reference to any intoxicant to be offensive. The word “(X)”, I believe, would not be offensive to a

reasonable person. Neither would the term (X) to name a few others. Given the reasonable sensitivity of many reasonable people to drunk driving, however, I believe references to certain mixed drinks or other alcoholic beverages would carry at least one unfavorable connotation. For example, given the oft quoted response to a police officer investigating suspected drunk driving, I think a reasonable person could be offended by the license plate “2 BEERS”.

Thus, the question for me is whether Rule 34, as applied in this case, is unlawful because it is unduly broad. I think the answer is “no.” I believe that it would not be a good use of public resources to have Tax Commission personnel trying to parse which intoxicants may be offensive and which may not be. The Rule is a good-faith attempt to implement the Legislature’s intent. Line-drawing is an inherent part of the administration of any law. I believe the Commission, in Rule 34, has drawn a line that is reasonable, understandable to the public and Commission employees, and consistent with statutory intent. A few license plates may be denied by the rule that are not, themselves, offensive. The Tax Commission’s rule attempts to minimize those occurrences, but cannot eliminate them.

I would find that Rule 34 is a valid interpretation of the statute and that the license plate “(X),” though not itself offensive, was properly denied pursuant to the rule.

R. Bruce Johnson
Commissioner