

14-2277

TAX TYPE: PERSONALIZED LICENSE PLATE

TAX YEAR: 2014

DATE SIGNED: 5-8-2015

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 14-2277

Case Type: Personalized License Plate

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Applicant

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, from Motor Vehicle Division
RESPONDENT-2, from Motor Vehicle Division

STATEMENT OF THE CASE

PETITIONER (“Petitioner” or “applicant”) is appealing the Motor Vehicle Division’s (“Respondent” or “Division”) denial of her request for a personalized license plate. This matter came before the Utah State Tax Commission for an Initial Hearing on April 7, 2015, in accordance with Utah Code Ann. §59-1-502.5.

On or around October 14, 2014, the applicant applied for a personalized license plate displaying the word “X.” On November 19, 2014, the Division issued a Statutory Notice – Personalized Plates (“Statutory Notice”), in which it denied the application. In the Statutory Notice, the Division informed the applicant that it was denying the requested plate because “X” contains a drug reference. The Division

also indicated in the notice that it “may not issue any combination of letters, words or numbers that connote the substance, paraphernalia, sale, user, purveyor of, or physiological or mental state produced by any illicit drug, narcotic, or intoxicant” and cited Utah Code Ann. §41-1a-411(2) and Utah Admin. Rule R877-22M-34(2)(c) (“Rule 34”).

At the hearing, the Division indicated that the word “X” has a drug connotation that refers to a one-sixteenth of an ounce of Y or Z. As evidence of this connotation, the Division provided the Commission with a decision from the Utah Court of Appeals that included the following sentence, “At Officer NAME-1 request, CI called NAME-2 and requested she sell CI a ‘X’ of Y.”¹ The Court’s decision included a footnote indicating that a “X” is “1/16 of an ounce” or “a little more than 1.75 grams.”² The Division also proffered definitions of the word “X” from an online “urban dictionary,” which indicates, in part, that “X” refers to: 1) “Half an eightball. Refering (sic) to Z[;]” 2) “One sixteenth of an ounce of Z half the size of an eightball . . . [;]” and 3) “a 1/16th of an ounce, generally Y.”³ In addition, one of the Division’s employees proffered that she personally recognized the term “X” as a drug reference because she had a relative who had been convicted of a drug charge.

Because the word “X” has a connotation that refers to an illicit drug, the Division contends that it may not issue a license plate that contains the word, such as “X,” pursuant to Section 41-1a-411(2) and Rule 34(2)(c). In addition, the Division proffered that the Utah Supreme Court has addressed personalized license plates in *McBride v. Motor Vehicle Division*, 1999 UT 9, 977 P.2d 467 (Utah 1999) and determined that the standard to be applied when determining whether a term carries a prohibited connotation is that of an “objective, reasonable person.” The Division contends that an objective, reasonable person would conclude that the word “X” carries a prohibited connotation. For these reasons,

1 *State of Utah v. Wilkinson*, 216 P.3d 973 (Utah Ct.App. 2009). In this case, the Court was reviewing a criminal conviction.

2 In the footnote, the Court indicated that this information came from: “San Francisco Aids Foundation, *Weights and Measures*, <http://www.tweaker.org/html/crystal101/weights.html> (last visited July 19, 2009). See Jacob Santini & Ashley Estes, *Speed Trap*, The Salt Lake Tribune, Sept. 2, 2001, at A1.”

3 The definition is found online at <http://www.urbandictionary.com/define.php?term=X>.

the Division asks the Commission to sustain its denial of the applicant's application for a license plate displaying "X."

The applicant explained that X is a nickname that she was given by friends many years ago that refers to PETITIONERS NICKNAME, the name she goes by the majority of the time. The applicant stated that she has had a personalized license plate referring to this nickname since 2008. Most recently, she received a personalized license plate from STATE-1 that displayed "X," which is identical to the personalized plate she requests from Utah. Earlier, she had received an STATE-2 license plate that displayed "X" (STATE-2 plates only display six letters). She provided photographs of these license plates as evidence to show that other states have not denied a personalized plate that refers to the word "X."

Because X is her nickname, the applicant contends that she is not requesting a personalized Utah license plate displaying "X" for purposes of displaying a drug reference. To show that she would not intend such a connotation, she proffered that she is an accountant who is also an officer in the Utah MILITARY DIVISION. She also proffered that she can provide professional and/or personal character references and copies of military rewards that speak to her character. She further stated that she has recently spoken to police officers who had no idea that the word "X" is a drug reference and asserts that few persons would recognize the drug reference. She also states that she has driven for over a year in Utah with the STATE-1 plate displaying "X" without ever once receiving an inquiry about having a drug reference on her license plate. Finally, she asks the Commission to find that she should be allowed to have a personalized license plate that displays her nickname. Otherwise, she argues, a person whose name is "NAME-3" could be denied a license plate displaying her name because "NAME-3" also refers to an illicit drug.

The Division responded that it has no reason to doubt the applicant's assertion that X is her nickname and that she does not intend for the license plate at issue to make a drug reference. Nevertheless, the Division contends that these factors are not determinative of the issue at hand. Because

“X” contains a drug reference, the Division contends that this combination of letters is prohibited from being displayed on a license plate, regardless of the applicant’s intent. The Division had not researched STATE-2 or STATE-1 law, but asserted that the laws and rules of those states may be different from the ones that govern Utah. Furthermore, even if the laws of these states were the same as Utah’s law, the Division asserts that the decisions of these states are not binding on Utah.

APPLICABLE LAW

Utah Code Ann. §41-1a-411 provides for the application for personalized license plates and the Division’s refusal to issue personalized license plates, as follows:

- (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.

Utah Admin. Rule R873-22M-34 (“Rule 34”) provides guidance concerning the issuance of personalized license plates, as follows in pertinent part:

- (1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.
- (2) Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:
 - (a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.
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 - (c) Combinations of letters, words, or numbers that connote:
 - (i) any intoxicant or any illicit narcotic or drug;
 - (ii) the sale, use, seller, purveyor, or user of any intoxicant or any illicit narcotic or drug; or
 - (iii) the physiological or mental state produced by any intoxicant or any illicit narcotic or drug.
 - (d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.
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In *McBride v. Motor Vehicle Division*, 1999 UT 9, 977 P.2d 467 (Utah 1999), the Utah Supreme Court determined that the “objective, reasonable person” standard should be applied when determining whether terms proposed for a personalized license plate (i.e., “REDSKIN,” “REDSKNS,” and

“RDSKIN”) carried connotations prohibited under Section 41-1a-411(2) and Rule 34(2)(a) and (2)(d), as follows in pertinent part:

....

Relying upon the opinion of any one person or group in determining whether a term carries a prohibited connotation is not a reasonable application of either section 41-1a-411 or rule 873-22M-34. This would be so whether the opinion is that of a government official, . . . or the general public. For example, the personal opinions of individual commissioners should not be relevant in applying the rule, for a term that is offensive or derogatory to one commissioner may be innocuous to another. . . .

Likewise, it would not be reasonable for the Commission to rely upon the general public's perception of a certain term because the general public may be wholly ignorant of a term's connotation. For example, offensive slang in an obscure foreign language may be meaningless to the general English-speaking public; nevertheless, the reasonable person who speaks the foreign language would conclude that the slang carries an offensive connotation. . . .

Finally, the Commission could not reasonably rely upon the opinion of any one group, whether it be small or large. Such an approach could preclude the issuance of any personalized license plate because the members of any group could assert that any given term is offensive to them. . . .

The only reasonable standard that may be applied is that of the objective, reasonable person. . . . If such a person would conclude that the term carries a prohibited connotation, rule 873-22M-34 prohibits the Commission from issuing a license plate carrying that term.

....

DISCUSSION

The question before the Commission is whether the combination of letters “X” is prohibited from being displayed on a personalized license plate issued by the Division. The Utah Legislature has provided that 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.” Section 41-1a-411(2). To implement this law, the Tax Commission has adopted Rule 34, which clarifies that a personalized license plate is a non-public forum and which prohibits the Division from issuing a personalized plate that displays a combination of letters that connote any illicit drug or the use of any illicit drug. Rule 34(1) and (2)(c). The combination of letters “X” is the plural of the word “X,” which refers to a measurement of illicit drugs. As a result, a personalized license plate displaying “X” is prohibited under Utah law.

The applicant argues that the personalized plate she is requesting refers to her nickname and that she has no intent for the proposed plate to make reference to an illicit drug. However, the applicant's intent is not determinative. In *McBride*, the Utah Supreme Court addressed personalized plates and determined that “[r]elying upon the opinion of any one person or group in determining whether a term carries a prohibited connotation is not a reasonable application of either section 41-1a-411 or rule 873-22M-34.”⁴ As a result, it is not the applicant's intent upon which the Commission must rely when determining whether the word “X” is prohibited from being displayed on a personalized plate. The Court has determined that if an objective, reasonable person would conclude that the term carries a prohibited connotation, Rule 34 prohibits the Commission from issuing a plate displaying that term.

The applicant contends that most individuals, including police officers, would not know that “X” has a drug connotation. The Court in *McBride*, however, specifically indicated that this is not the determining factor, stating:

it would not be reasonable for the Commission to rely upon the general public's perception of a certain term because the general public may be wholly ignorant of a term's connotation. For example, offensive slang in an obscure foreign language may be meaningless to the general English-speaking public; nevertheless, the reasonable person who speaks the foreign language would conclude that the slang carries an offensive connotation. . . .

The Court further cited a STATE-3 case in which a license plate was revoked because it contained court reporter symbols representing an offensive word. Few individuals would have recognized these symbols as representing the offensive word. Similarly, few individuals may know that “X” contains a drug reference. The Utah Supreme Court, however, has ruled that this is not the determinative factor. The issue is whether the reasonable person who has knowledge of drug references would conclude that “X” carries an offensive connotation. Such a person would conclude that it carries an offensive connotation.

4 The Commission has routinely relied on the Court's guidance in *McBride* when determining whether a personalized plate is prohibited from being issued under Section 41-1a-411(2) and Rule 34. See, e.g., *USTC Appeal No. 06-0900* (Initial Hearing Order Jan. 26, 2007); *USTC Appeal No. 07-0442* (Initial Hearing Order Aug. 24, 2007); and *USTC Appeal No. 07-1226* (Findings of Fact, Conclusions of Law, and Final Decision Jul. 17, 2008). Redacted copies of these and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

The applicant also suggests that the Commission should not restrict combinations of letters on personalized plates that display a person's name. Unfortunately, some names, when read in isolation, have connotations that are prohibited under Section 41-1a-411(2) and Rule 34. The Commission routinely denies personalized plates that display a person's name when that name has a prohibited connotation. Because the applicant's nickname has a prohibited connotation, Rule 34 prohibits the Commission from issuing a personalized license plate displaying "X."

The Commission recognizes that two other states have issued personalized plates that display the applicant's nickname or a variation of it. Regardless of whether their laws are similar to Utah's, the actions of the other states are not binding on Utah. Under Utah law, a personalized plate displaying "X" is prohibited. It is apparent that the applicant is a person of good character and does not intend for the personalized plate at issue to make a drug reference. Nevertheless, for the reasons explained above, the Commission should sustain the Division's denial of the applicant's personalized plate request.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

The Commission sustains the Division's denial of the applicant's request for a personalized license plate bearing the word "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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner