

TAX TYPE: LICENSE PLATE

TAX YEAR: 2020

DATE SIGNED: JULY 14, 2020

COMMISSIONERS: JOHN VALENTINE, MICHAEL CRAGUN, REBECCA ROCKWELL,
LARRY WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 20-206</p> <p>Case Type: License Plate</p> <p>Judge: Jensen</p>
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Applicant

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, for the Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on DATE in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the “Applicant”) is appealing a DATE denial of a personalized license plate by the Motor Vehicle Division of the Utah State Tax Commission (the “Division”).

APPLICABLE LAW

As of the DATE of the Division’s denial of the Applicant’s requested license plate, Utah law provided for personalized license plates with the limitation set forth in Utah Code Ann. §41-1a-411 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) (a) Except as provided in Subsection (3), 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.
- (b) The division may refuse to issue a combination of letters, numbers, or both as a registration number if that same combination is already in use as a registration number on an existing license plate.
- (3) (a) Except as provided in Subsection (2)(b) or (3)(b), the division may not refuse a combination of letters, numbers, or both as a registration number if:
 - (i) the license plate is an honor special group license plate as described in Section 41-1a-421; and
 - (ii) the combination of letters, numbers, or both refers to:
 - (A) a year related to military service;
 - (B) a military branch; or
 - (C) an official achievement, badge, or honor received for military service.
- (b) If an applicant requests a combination containing only numbers, the division may refuse the combination if the combination includes less than four numerical digits.

Utah Code Ann. §41-1a-411 was amended effective May 12, 2020, to read 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) (a) Except as provided in Subsection (3), the division may refuse to issue any combination of letters, numbers, or both that:
 - (i) may carry connotations offensive to good taste and decency or that would be misleading; or
 - (ii) disparages a group based on:
 - (A) race;
 - (B) color;
 - (C) national origin;
 - (D) religion;
 - (E) age;
 - (F) sex;
 - (G) gender identity;
 - (H) sexual orientation;
 - (I) citizenship status; or
 - (J) physical or mental disability.
- (b) The division may refuse to issue a combination of letters, numbers, or both as a registration number if that same combination is already in use as a registration number on an existing license plate.
- (3) (a) Except as provided in Subsection (2) or (3)(b), the division may not refuse a combination of letters, numbers, or both as a registration number if:
 - (i) the license plate is an honor special group license plate as described in Section 41-1a-421, and the combination of letters, numbers, or both refers to:
 - (A) a year related to military service;
 - (B) a military branch; or
 - (C) an official achievement, badge, or honor received for military service; or
 - (ii) the combination of letters, numbers, or both as a registration number refers to an official state symbol described in Section 63G-1-601.
- (b) If an applicant requests a combination containing only numbers, the division may refuse the combination if the combination includes less than four numerical digits.

Utah Administrative Rule R873-22M-34 provides additional guidance regarding the issuance of personalized license plates as follows:

- (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 Subsection 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.
 - (b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, except as provided in Subsection 41-1a-411(3), "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."
 - (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.
 - (e)
 - (i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.
 - (ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:
 - (A) illegal activity;
 - (B) organized crime associations; or
 - (C) gang or gang terminology.
 - (iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.
- (3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.
- (4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:
 - (a) translation from foreign languages;
 - (b) an upside down or reverse reading of the requested format; and
 - (c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.
- (5) The director shall consider the applicant's declared definition of the format, if provided.

(6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

(7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection (2), the division shall again review the format.

(8) If the division determines pursuant to Subsection (2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).

(9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

(10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

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 is whether the Division properly denied the issuance of personalized license plate “1DIRTY5” on the basis that it carries “connotations offensive to good taste and decency,” contains a combination of letters “with any connotation that is vulgar, derogatory, profane, or obscene,” or connotes “breasts, genitalia, pubic area, buttocks, or relate[s] to sexual and eliminatory functions.”

The Division’s representative explained that when it receives a personalized license plate request, it follows a procedure to determine whether the requested license plate should be denied on the basis of applicable statutes or rules. In this case, the Division completed its review process and found one online reference with sufficient vulgarity that it denied the Applicant’s license plate request. In response to the Division’s license plate denial, the Applicant reached out to the online publisher of the information that the

Division cited. The Applicant asked the publisher to remove the reference as incorrect. The online publisher did so. As of the date of the hearing, the Division indicated that it did not save the results of its prior review process and thus had no copy of the information on which it denied the requested license plate. As of the date of the initial hearing, the Division's representative was unaware of the connotation of 1DIRTY5 that had caused the previous license plate denial.

The Applicant explained that 1DIRTY5 was a reasonably common term that references a VEHICLE, the model of vehicle for which the Applicant requested the personalized license plate. The Division did not dispute this, confirming that after the Applicant was successful in removing the one online reference indicating that 1DIRTY5 referred to anything other than a VEHICLE, internet searches for words and images were either not accurate matches for the phrase or referred to VEHICLE automobiles. At the initial hearing, the Applicant indicated that she remembered the connotation that the Division referenced in its original denial, but preferred to not repeat it other than to indicate that it referred to a sex act.

Under Utah law, courts reviewing license plate requests 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.” *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9 ¶15. Rather, the “only reasonable standard that may be applied is that of the objective, reasonable person.” 1999 UT 9, ¶18. The court in *Mc Bride* was hearing a case based on actions in December 1995, and thus was interpreting a 1995 Utah statute when it applied the objective reasonable person standard. *See* 1999 UT 9, ¶2. In 1995, Utah Code Ann. §41-1a-411 provided 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.

Although Utah Code Ann. §41-1a-411 has additional language as of the January 10, 2020 date of the Division's denial in the case now before the commission as well as more additional language as of May 12, 2020, the Commission finds no reason to abandon the “the objective, reasonable person” standard under the changed law. For that reason, the commission finds good cause to apply the standards of *Mc Bride* to

the January 10, 2020 date that the Division denied the Applicant's license plate application. The commission also notes that it would apply the *McBride* "objective, reasonable person" standard under the facts of this case if it applied the most recent version of Utah Code Ann. §41-1a-41, which went into effect on May 12, 2020.

Applying the "objective, reasonable person" standard to the facts of this case, it appears that only one online source made reference to 1DIRTY5 as a vulgar connotation and that that source later changed its reference. As of the date of the initial hearing in this matter, there is nothing to indicate even with online searching that an objective reasonable person would be aware of vulgar term for a license plate. Even if the Commission were to apply the law that took effect on May 12, 2020, the commission finds that an objective, reasonable person would not be aware of a connotation of 1DIRTY5 that would be a vulgar term for a license plate under that law, and that there is no other provision of that law that would support the Division's denial of the 1DIRTY5 license plate.

The information presented at the initial hearing, presented as a whole, provides good cause to reverse the Division's denial of a 1DIRTY5 license plate.



Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

The Commission finds sufficient good cause to allow a license place with the combination of characters "1DIRTY5". On that basis, the Commission reverses the Division's denial of a license plate bearing the characters "1DIRTY5" to the Applicant. 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

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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

or emailed to:
taxappeals@utah.gov

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

DATED this 14th day of July, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner