IN THE FOURTH DISTRICT COURT -
SPANISH FORK, UTAH COUNTY, STATE OF UTAH

UTAH SAGE, INC. a Utah corporation dba HOBBY TRACTORS & EQUIPMENT, LARKIN TIRES, INC. a Utah corporation, GARY LARSON, an individual, FRATERNAL ORDER OF EAGLES #3372, a non-profit organization, Plaintiffs, vs. PLEASANT GROVE CITY, Defendant.	**RULING ON COMPETING MOTIONS FOR SUMMARY JUDGMENT** Case No. 190300164 JUDGE JARED ELDRIDGE

This case comes before the court on Competing Motions for Summary Judgment filed by both Plaintiffs and Defendant. There are no material issues of fact. Both parties agree the only questions remaining are legal and as such this matter can be resolved one way or the other by the Court determining the applicable law and applying it to the undisputed facts.

I. SUMMARY

In recent years, like many cities and counties in the State of Utah, Pleasant Grove City found itself facing a budget shortfall making it almost impossible for the City to maintain roads at an acceptable level unless additional funding was found. As a result, the City projected an increasing number of roads would deteriorate to an unacceptable level unless funding could be increased to cover additional maintenance expenses.

Pleasant Grove and other cities and counties brought their plight to the attention of the Utah State Legislature, hoping for some adjustment in the State gas tax that would help alleviate the

increasingly ominous problem of a lack of funds to maintain local roads at an acceptable level. In a compromise, the 2015 Legislature approved H.B. 362 that allowed for, among other things, a county option sales tax that could be used for various purposes including road maintenance by counties and cities within the county. However, before the tax could be imposed it had to be approved by the voters within the county that sought to impose the tax. The question was in fact placed on the ballot for Utah County citizens to consider in November 2017 but ultimately rejected, thus extinguishing Pleasant Grove's hopes of a new funding source to help with the budget shortfall of maintaining local roads.

After the county option sales tax proposition failed, the City Council went back to the drawing board and began to consider other ways to solve the problem of the deteriorating road system. Along the way a citizen generated ballot initiative that would have required the City to take $2.6 million from the City's general fund for road maintenance and construction was placed on the ballot in 2017. The City decided to table discussions about road funding until the ballot initiative was decided so they could take into account the potential impacts of the initiative if it passed. Ultimately, the ballot initiative failed.

In January 2018 a newly elected Mayor and City Council resumed discussions of funding road maintenance and construction and ultimately settled on a road utility fee. The City went through a public process of hearings and discussions which resulted in the City adopting Ordinance 2018-10, "establishing a transportation utility service with the purpose and power of undertaking such maintenance and improvement of City streets, establishing an annual review process, and related matters; and providing for an effective date."[1] and Ordinance 2018-21, to implement the Transportation Utility Fee on April 10, 2018. A short time later the City Council amended the Ordinance and the resulting fee on July 17, 2018 at City Council Meeting.

[1] April 10, 2018, Meeting Minutes, App. Ex. 11, p. 4-5.

The Plaintiffs have now challenged whether or not Pleasant Grove City had authority to implement a Transportation Utility Fee or TUF and also if they did have authority whether or not the fee is actually a disguised tax that should be subject to the public processes before being implemented. Both parties have moved for summary judgment.

II. AUTHORITY TO IMPLEMENT A TRANSPORTATION UTILITY FEE OR TUF.

Utah cities are given broad authority to address municipal problems like funding for deteriorating infrastructure:

> The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

Utah Code Ann. § 10-8-84. *See also Rupp v. Grantsville City*, 610 P.2d 338, 339-40 (Utah 1980) ("In Utah, municipalities are granted broad powers for the protection of the health and welfare of their residents. Among these powers is the statutory authority to establish and maintain public utilities for the benefit of those residents. Inherent in the power to preserve and protect the health and welfare of municipal residents is the authority to adopt ordinances directed at the effectuation of that protection.").

In *State v. Hutchinson*, the Utah Supreme Court described the deference courts should grant a city when reviewing their decisions to implement those broad powers, as follows:

> In short, we simply do not accept the proposition that local governments are not to be trusted with the full scope of legislatively granted powers to meet the needs of their local constituents. On the contrary, the history of our political institutions is founded in large measure on the concept at least in theory if not in practice that the more local the unit of government is that can deal with a political problem, the more effective and efficient the exercise of power is likely to be
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> . . . .

> These cases state the rule which we adopt in this case. When the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare. And the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States. Specific grants of authority may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use of power in a particular manner. But specific grants should generally be construed with reasonable latitude in light of the broad language of the general welfare clause which may supplement the power found in a specific delegation.

State v. Hutchinson, 624 P.2d 1116, 1126 (Utah 1980).

The Court applied these principles more recently in examining whether Sandy City had appropriately charged a storm drain utility fee:

> We hold that Sandy City's decisions regarding the structure, operation, and funding of its storm sewer system are entitled to deference. We generally give latitude to local governments in creating solutions to problems, especially in meeting the challenges and needs caused by accelerated urban growth. *See Price Dev. Co. v. Orem City*, 2000 UT 26, ¶ 19, 995 P.2d 1237; *State v. Hutchinson*, 624 P.2d 1116, 1126 (Utah 1980). Accordingly, we decline to substitute our judgment for that of the Sandy City Council in the resolution of this municipal problem.

Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp., 2004 UT 37, ¶ 31.

All of this argues in favor of the proposition that the City does have broad authority granted by the Legislature to impose a TUF. Adding further strength to the argument is the fact the Legislature adopted Utah Code Ann. § 11-26-301in 2018. This statute purports to define certain terms and place a limit on the imposition of a transportation utility fee. The statute states in its entirety,

> (1) As used in this section:
> (a)(i) "Legal subdivision" means a local government that is recognized by Utah Constitution, Article XI.
> (ii) "Legal subdivision" does not include a local government that Utah

> Constitution, Article XI, only authorizes the Legislature to create.
> (b) "Municipality" means the same as that term is defined in Section 10-1-104.
> (c) "Transportation utility fee" means an ongoing, regular fee or tax imposed:(Ambiguous? "or" could mean "either or" or it could mean "like terms used in the alternative")
> (i) by a municipality for the purpose of maintaining public roads; and
> (ii) on utility customers within the municipality.
> (2) A municipality may not impose a transportation utility fee on a legal subdivision.
> (3) This section does not grant to a municipality any authority not otherwise provided for by law to impose a transportation utility fee.

In exercises of statutory interpretation, the Utah Supreme Court has directed that "[w]hen interpreting statute, "our primary goal is to evince the true intent and purpose" of the legislative body." *In Matter of Adoption of B.B.*, 2017 UT 59, ¶ 39, 417 P.3d 1 (2017) (quoting *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863). "The best evidence of legislative intent is "the plain and ordinary meaning of the statute's terms." *Id.* (citing *Rent-a-Center W., Inc. v. Utah State Tax Comm'n*, 2016 UT 1, ¶ 13, 367 P.3d 989).

The statute bears the title "Definitions—Limitation on imposition of transportation utility fee[.]" The statute's terms define a TUF as "an ongoing, regular fee or tax imposed: (i) by a municipality for the purpose of maintaining public roads; and (ii) on utility customers within the municipality." Utah Code § 11-26-301(1)(c). Section 11-26-301(3) contains a disclaimer clause that "[t]his section does not grant to a municipality any authority not otherwise provided for by law to impose a transportation utility fee." The statute also defines local government entities subject to the limitation. Plainly, Section 11-26-301 is a limitation on a municipality's ability to levy a fee or tax on any other entity or person than those within its jurisdiction. It also demonstrates the State Legislature's awareness that

a municipality could impose a TUF, despite the disclaimer clause that Section 11-26-301 grants no authority for a city to create one not otherwise specified. The most likely repository of that authority is Utah Code Ann. § 10-8-84 as discussed above.

The Court finds that Utah Code Ann. § 10-8-84 allows the City broad authority to pass ordinances which are reasonably and appropriately related to the objectives of providing for the public safety, health, morals, and welfare. That broad authority includes authority to create a transportation utility and implement a fee or tax. Since the City had authority to adopt a TUF to raise funds, the Court will not interfere with the legislative choice of the City unless it is arbitrary or directly prohibited by, or inconsistent with the policy of state or federal laws or the constitutions of the State or the United States. *See Hutchinson*, 624 P.2d 1116, 1126 (Utah 1980). In this case there is no evidence the ordinances at issue were adopted arbitrarily or that they are directly prohibited or that they conflict with state or federal laws or constitutions. Therefore the Court declines to invalidate the TUF the City adopted based on the argument the City did not have authority to implement such a fee or tax.

III. IS THE TUF ADOPTED IN THIS CASE A FEE OR A TAX?

By its plain terms, Utah Code § 11-26-301 defines a TUF as a "fee or a tax". The question in this case becomes, which is it, a fee or tax? If it is a fee then, as long as it is reasonably related to the services provided, benefits received or the need created by those who pay the fee, it could be upheld by the Court. *See V-1 Oil Co. v. Utah State Tax Comm'n*, 942 P.2d 906, 911 (Utah 1996), *vacated in part on reh'g*, 942 P.2d 906 (Utah, Aug. 5, 1997). However, if it is a tax, then the City

would need to go through the additional procedures required by Utah law before a tax increase can be implemented.

The seminal case that address the distinction between a fee or a tax and was cited to the Court by both parties is, *V-1 Oil Co. v. Utah State Tax Comm'n*, 942 P.2d 906, 911 (Utah 1996), *vacated in part on reh'g,* 942 P.2d 906 (Utah, Aug. 5, 1997). In *V-1 Oil*, the State Supreme Court said, "Our cases do not establish a bright line test for distinguishing a tax from a fee. Rather, '[h]ow such exactions should be classified depends upon their purpose.' Generally speaking, a tax raises revenue for general governmental purposes, while a fee raises revenue either to compensate the government for the provision of a specific service or benefit to the one paying the fee or to defray the government's costs of regulating and policing a business or activity engaged in by the one paying the fee." *Id.* at 911 (internal citations omitted).

While there is no bright line test, the Court did suggest, "there are at least two broad types of fees: (i) a fee for service, i.e., a specific charge in return for a specific benefit to the one paying the fee, and (ii) a regulatory fee, i.e., a specific charge which defrays the government's cost of regulating and monitoring the class of entities paying the fee." *Id.* In this case there is no argument the TUF is a regulatory fee but rather that it falls into the first category of a fee for service.

The City argues the TUF falls into the first category because the fee collected is deposited into a restricted fund that can only be used for the specific purpose of maintaining the local road system and that the TUF does not collect an excessive amount of money, in fact it only generates enough revenue to partially address the projected need. The Court acknowledges the City has undertaken impressive measures to make sure they are not collecting an excessive amount of

money and the money that is collected can only be spent to maintain the local road system. However, no matter how you look at the purpose of those funds, the benefit of an improved road systems is a general benefit rather than a specific benefit to those who pay the fees. The benefit not only accrues to the individual property owners in the City but also to anybody who happens to use the City's road system whether they are a city resident or not. Given the nature of the benefit, the Court cannot conclude there is a "specific benefit" that returns to those who pay the fee, rather the benefit is general in nature benefiting the public at large.

In *V1 Oil* the Court said, "We analyze the surcharge under both concepts to determine whether it can be fairly characterized as a legitimate fee under either concept. If it cannot, then it is a general revenue-raising measure and must be classified as a tax." *Id.* In this case after considering whether the TUF collected is a fee for service or a regulatory fee and concluding it is not, the Court can only conclude the TUF must in fact be classified as a tax.

Since the TUF is in fact a tax it must go through the necessary procedures outlined in Utah Code before it can be implemented. Therefore, the Court finds in this case the Plaintiffs are entitled to summary judgment in their favor on this issue.

IV. CONCLUSION

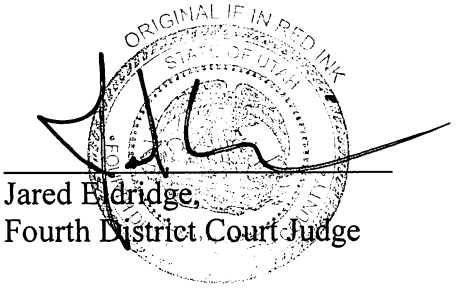
This case presents difficult questions that are not clear cut. This is an important issue and everybody would benefit from the Legislature clarifying its intentions on this issue. However, based on the current state of the law, this Court is persuaded while the City has authority to implement a TUF, the TUF that was implemented here is clearly a tax and therefore improperly collected until the City satisfies the additional requirements set out by the Utah Code for an increase in the tax rate.

ORDER

Based on the foregoing, the Court enters the following order:

1. The Defendant's Motion for Summary Judgment is granted in part and denied in part. The Court will grant summary judgment in favor of the Defendant on the issue that the City does have authority to implement a TUF. However, the Court denies summary judgment on the issue that the TUF, as implemented in this case, is a fee and not a tax.
2. The Plaintiffs' Motion for Summary Judgment is granted regarding the TUF, as implemented in this case, is a tax and not a fee. On the issue of whether the City has authority to implement a TUF, the Court denies summary judgment in favor of the Plaintiffs.
3. The Court directs counsel for the Plaintiffs to prepare an appropriate order to implement the Court's ruling and circulate it to opposing counsel before submitting it for the Court's signature.

Dated this 12th day of February, 2020.



Jared Eldridge,
Fourth District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 190300164 by the method and on the date specified.

MAIL: JODY K BURNETT 10 EXCHANGE PL 11TH FLR SALT LAKE CITY, UT 84111
MAIL: GERALD SALCIDO 43 W 9000 S SUITE B SANDY UT 84070

02/12/2020 /s/ JENNY HUGHES

Date: _____ _____

Signature