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Jane Phan, Administrative Law Judge

For Petitioner: Margaret Plane, Attorney at Law
Elizabeth Solomon

For Respondent: Laron Lind, Assistant Attorney General
Kevin Park, Assistant Director, Division of Motor Vehicle
Lynette Bryd, Appeals Specialist

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the Utah Code Sec. 59-1-502.5, on May 16, 2005. Petitioner is appealing the denial by Respondent for three personalized license plates. Prior to the hearing, Respondent agreed to allow one of the license plates, "GAYWEGO." At the hearing Petitioner argued that Respondent should also issue license plates requested which were "GAYSROK" and "GAYRYTS."

APPLICABLE LAW

Utah law provides for personalized license plates with the limitation set out in Utah Code Sec. 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 concerning the denial of personalized license plate requests.

Utah Admin. Rule R873-22M-34 states in pertinent part:

- A. 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.
- B. Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:
 1. Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.
 2. Combinations of letters, words, or numbers that . . . relate to sexual and eliminatory functions. . .
 4. Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

DISCUSSION

On the Statutory Notice, issued March 11, 2005, in which Respondent denies the requested license plates, the reason offered for the denial was "Not a Public Forum." In its Answer to Petition, Respondent argued additional basis for denial stating, "the proposed plates were offensive to good taste and decency, relate to sexual functions and express superiority of a gender." Respondent cites to Utah Code Sec. 41-1a-411(2) and Utah Admin. Rule R873-22M-34 as the basis for the denial. Petitioner argues that Utah has

provided a forum for expression by authorizing personalized plates and there is nothing in the authorizing statute or rule that permits the Respondent to arbitrarily deny requests.

Upon consideration of the argument Respondent has made for denial of the plates, the Commission agrees with Petitioner that the plates at issue do not express superiority of a gender. Respondent's argument under Utah Admin. Rule R873-22M-34(B)(4) which prohibits license plates that express contempt, ridicule, or superiority of a gender, was that the requested plates violate this section because the term "gay" usually only referred to homosexual men and not homosexual women. This is not a reasonable interpretation of the rule. The Commission would be concerned if the term "gay" were considered to express contempt or ridicule against homosexuals. Petitioner argued that it does not and provided the Oxford Dictionary and Webster's Dictionary definitions of "gay," pointing out that they indicate the term "gay" is not used disparagingly and, additionally, is often used by male homosexuals with reference to themselves. Certainly the manner in which Petitioner is using the word "gay" is not disparaging and Petitioner explained that it was her intent to show support for homosexuals.

A second rule provision specifically argued by Respondent concerning the plate at issue is the subsection at Utah Admin. Rule R873-22M-34(B)(2) which expressly prohibits references to sexual functions. However, the rule is silent as to sexual orientation or preference. The Commission disagrees with Respondent that sexual functions could be interpreted so broadly as to encompass the word "gay" such that the license plates would be prohibited under subsection (2) of the rule. In addition this position is inconsistent with Respondent's action in allowing the plate "GAYWEGO."

Turning to the third section of the rule specifically referred to by Respondent as a basis for disallowing the plates at issue, Utah Admin. Rule R873-22M-34(A), that section indicates that the personalized license plate is not a public forum. The Legislature, by imposing statutory restrictions on the content of license plates, has made it clear that the plate is not a public forum. We here reaffirm the Commission's

position that there are lawful restrictions on personalized plates and the license plate is not a public forum for persons to express themselves in whatever manner they wish. However, subsection (A) of the rule does not, itself, provide limitations on the content of plates. The categories of prohibited words and subject matter are those are listed in the statute and further elaborated in Utah Admin. Rule R873-22M-34(B). Thus, unless the plate contains an expression that is prohibited by the statute, or Tax Commission rules that properly interpret the statute, the plate must be allowed.

The subject license plates refer to matters that are currently at issue in both political and social arenas. "GAYRYTS," appears to be a connotation of "gay rights." "GAYSROK" appears to be "gays are ok." In authorizing the issuance of personalized license plates, the Utah Legislature did not prohibit plates solely on the basis that they refer to current political or social issues. The plates must be offensive or misleading. Accordingly, the Commission concludes that it does not have authority from the authorizing statute to adopt a rule that prohibits plates solely on the basis they express a political or social opinion as it is beyond the scope of the statutory prohibitions. The authorizing statute provides only that the Commission may refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or are misleading. See Utah Code Sec. 41-1a-411(2).

Certainly plates expressing a political or social issue that are also offensive, misleading or violate provisions of the rule or statute are prohibited. The Tax Commission adopted the rule to provide specific guidance on what would be "offensive to good taste and decency." The Commission notes that the rule does prohibit license plates that express contempt, ridicule, or superiority of a political affiliation. Utah Admin. Rule R873-22M-34(B)(4). However, the subject plates do neither. The expression that a group is "ok" does not imply superiority of that group, nor does it express ridicule or contempt for any opposing group.

The Supreme Court has instructed the Commission when considering personalized license plates the standard to be applied is that of the objective reasonable person. The case before the Supreme Court was an appeal of an order in which the Tax Commission failed to revoke licenses the plates "REDSKIN" and "REDSKNS." In that case, Brummett v. Motor Vehicle Div. of Utah State Tax Comm'n., 361 Utah Adv. Rep. 56 (1999), the Court stated:

The only reasonable standard that may be applied is that of the objective, reasonable person. In other words, under rule 873-22M-34 the Commission had to determine, in light of all the evidence presented, whether an objective, reasonable person would conclude that the term "REDSKIN" contains any vulgar, derogatory, profane, or obscene connotation, or expresses contempt, ridicule, or superiority of race or ethnic heritage.

Giving this consideration, the question before the Commission is whether an objective, reasonable person would find the license plate "GAYSROK" or "GAYRYTS" offensive to good taste and decency. There are certainly segments of the community that support "gay rights" and segments of the community that object to the "gay" lifestyle and who may find the lifestyle itself to be offensive to decency. We are not required to opine on any particular lifestyle, however. The narrow issue before us is whether a reasonable person would believe the terms "gays are ok" and "gay rights" are, themselves, offensive to good taste and decency. It is the conclusion of the Commission that a reasonable person would not.

DECISION AND ORDER

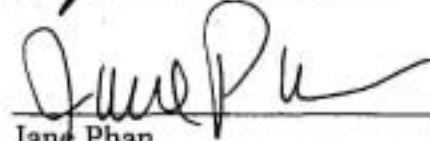
Based on the foregoing Petitioner's request for the personalized plates "GAYSROK" and "GAYRYTS" is hereby granted. It is so ordered.

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

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

DATED this 19 day of July, 2005.


Jane Phan
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 19 day of July, 2005.


Pam Hendrickson
Commission Chair


Palmer DePaulis
Commissioner




R. Bruce Johnson
Commissioner


Marc B. Johnson
Commissioner