
Utah State Bar

Annual Business Law Seminar

April 7, 2010

**4 Hours CLE (including 1 Hour
Professionalism/Civility)**

Annual Business Law Section Seminar

Wednesday, April 7, 2010

4 Hrs. CLE (incl. 1 Professionalism/Civility Credit)

- 7:45 - 8:00 a.m. Registration and Continental Breakfast
- 8:00 - 8:30a.m. Business Meeting
· Election of Secretary
· Announcement of Practitioner of the Year
- 8:30 - 9:30 a.m. Legislative Survey
Senator John Valentine - Chair, Senate Business and Labor
Committee; Member, Senate Revenue and Taxation
Committee
- 9:30 - 9:40 a.m. Break
- 9:40 - 10:40 a.m. Private Placement Pitfalls - Using Finders and Other Hazards
to Avoid
Brad Jacobsen, Vantus Law Group
- 10:40-10:45 p.m. Short Break
- 10:45-11:45 p.m. Shareholder Duties? A Debate - McLaughlin v. Schenk and S.B.
179
Senator Dan Liljenquist (Sponsor S.B. 179)
James U. Jensen, ClearWater Governance Group
David Angerbauer, Holland & Hart
- 12:00 - 1:00 p.m. Ethics - Professionalism, Civil Virtue, and the Art of Motorcycle
Maintenance
Troy Booher, Michael Zimmerman - Snell & Wilmer

Legislative Survey

Senator John Valentine

***Chair: Senate Business and
Labor Committee***

***Member: Senate Revenue and
Taxation Committee***

2010 LEGISLATIVE UPDATE

Senator John L. Valentine

I. Background: Facing historic budget shortfalls again this session, we were required to reduce last year's actual budget by over \$850 million dollars; this was on the heels of a one billion dollar base reduction last year. This represented a 22% decrease in general state budgets, with higher education taking a 13% reduction and public education taking a .9% reduction. Utah presently has a 6.8% unemployment rate with some sectors still experiencing growth. The national average is 10.2%. End result: we still have rainy day funds of \$239 million dollars. We are the only state that still has this type of reserves. We raised the excise tax on tobacco, and tuition will increase by about 10% at our colleges and universities, but those were the only increases. Again in the annual performance of states, the American Legislative Exchange (ALEC) rated Utah as the Best Run state. This award was made for the second year in a row and came on the heels of similar awards last year by the Pew Institute, Heritage Foundation, National Conference of State Legislatures (NCSL) and Governing Magazine, all ranking Utah number one for sound fiscal operation.

- A. Ethics Ethics Ethics. Ten major pieces of Ethics legislation passed this session. (Actually on Joint Resolution had two parts, which effected the same area, the Independent Legislative Ethics Commission.
 - 1. SJR 3 and SJR 19 established an Independent Legislative Ethics Commission. For the first time since statehood, an independent body will review ethics complaints against legislators.
 - 2. HJR 15 proposes to amend the Utah Constitution to establish the Independent Ethics Commission. Voters will have a chance to vote on the proposed amendment this November.
 - 3. 2nd Sub HB 124 places tight restrictions on the use of campaign funds while running for office or while holding an elected office. It includes all elected officials.
 - 4. HB 267 requires the disclosure of any expenditure by a lobbyist for a legislator over \$10.00 and prohibits any expenditure over \$10.00 except food, beverage and attendance at meetings.
 - 5. HB 270 requires disclosure by candidates and office holders of their entire financial holdings, including that of their spouses, children or any other adults residing in the office holders household.
 - 6. 7th Sub HB 329 requires electronic filing of all reports and must be posted within

5 days before an interim or summary report. Also imposes fines for failure to file the statements on office holders, candidates, lobbyist, political parties, PACs and PICs.

7. 2nd Sub SB 136 authorizes the Independent Legislative Ethics Commission to convene a closed meeting to review ethics complaints, similar to the Judicial Conduct Commission.
8. 1st Sub SB 138 provides for private status of records of ethics complaints until the Legislative Ethics Commission completes its investigation.
9. HJR 14 requires all legislators to comply annually with the requirements imposed in HB 270 and 7th Sub HB 329. This information is required to be posted on the legislative web site in a searchable form.
10. HR 9 requires House members to submit written requests before any travel is made inside or outside of the state for legislative or legislative related business.

“There could never be enough rules so finely crafted as to anticipate and cover every situation, and even if there were, enforcement would be impossibly expensive and burdensome.”¹

- B. Maintaining employment became a critical issue as we faced budget shortfalls. We continued to use different methods to keep people employed, rather than facing massive state employee layoffs. We used furloughs, consolidation of functions, cutting administration, changing the retirement system and bonding for large capital projects. We authorized major public projects that needed to be completed such as UVU’s Science building, SLCC and Dixie’s classroom buildings. Even with all of these efforts, we are projecting 900 state employees could be laid off by June 30.

II. Criminal Law/ Divorce Law Changes.

- A. HB 462 came at the end of the session after a similar bill was vetoed by the Governor. It finally described the difference between abortion and criminal homicide of an unborn child.
- B. HB 21 adopted a new way to expunge criminal convictions.
- C. HB 284 set out a statutory outline of a “collaborative law” participation in divorce. It basically provides for a alternative framework to resolve disputes in divorce proceedings.

III. Probate Law Changes. SB 121 was the only Probate law change this session of any consequence. It removed the three year limitation for bringing an action against a Personal Representative when there is still an open claim against the liability insurance of the decedent.

IV. Tax Law/ Business and Property Law Changes.

- A. There was no major changes in business entities this session, although there were a number of bills that were reviewed as proposed by the Uniform Commission on State Laws. The Business Law Section needs to engage this summer in reviewing the propose Uniform Acts dealing with corporations, partnerships, limited partnerships and limited liability companies. There are a number of changes that are being proposed that are significantly different from the present law. Examples include not only formation but substantive rights of shareholders, partners and members. There were changes in the fire code, construction code and of course the Alcoholic Beverage Control Act, even though the alcohol bill this year had no substantive changes in the law.
- B. HB 161 limited and prohibited certain real property transfer fees, to only those that are reinvested back into the real property. The exception was large (at least 500 acres or 500 units) with common infrastructure, facilities, programming, resort facilities, open space or recreation amenities. It is not retroactive.
- C. SB 79 provided interesting relief in the interplay between the Fraudulent Transfer Act and the general Utah Statute of Limitations Act. No longer is there a conflicting statute of limitations under these two acts. The general act now applies.
- D. SB 76 clarifies the process, time frames and responsibilities of the parties to a deed of trust for reinstatement and payoff when in foreclosure.
- E. We already mentioned the tobacco tax increase. It was equivalent to a \$1.00 a pack increase. Makes Utah's tax slightly above the national average. (California is \$2.00 a pack. Utah is \$1.70 a pack, while Idaho and Wyoming are \$.62 a pack.)
- F. As to property rights generally, HB 141 repealed the Conatser case and codified the J.J.N.P. Co. case dealing with the right to fish and be on the waters of Utah, while SB 32 gave everyone the right to collect and appropriate their rainwater, even if they did not have a water right to do so.

V. This year's Award. And now, what you have been waiting for . . . this year's Green Jello Award.

This year's award was a tie: SB 11 (Guns manufactured and sold in Utah are exempt from federal regulation) and HB 324 (Utah is now required to file eminent domain and quiet title actions against the federal government to take back federal lands.)

1. Elder Todd Christofferson of the Church of Jesus Christ of Latter Day Saints, October 2009.