

2003

Tyler Hansen and The Workers Compensation Fund of Utah, Petitioners, v. Amanda S. Eyre and The Nature Conservancy, Respondents : Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT UTAH OF THE STATE OF UTAH

TYLER HANSEN and THE WORKERS)
COMPENSATION FUND OF UTAH,)

PETITIONERS,)

vs.)

AMANDA S. EYRE AND THE)
NATURE CONSERVANCY,)

RESPONDENTS.)

PETITIONERS' REPLY BRIEF

Case No. 20030731-SC

Ct. App. No. 20020498CA

PETITIONER'S REPLY BRIEF

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III

ARGUMENT

POINT I

SALT LAKE CITY ORDINANCE 12.80.070 WAS NOT VOID FROM INCEPTION

At Point I A of their Brief, Respondents¹ argue that Salt Lake City Ordinance 12.80.070 which allows travel in a left-hand bicycle lane was void from its inception, and when the Court of Appeals declared the ordinance invalid, it would not deny petitioners due process of law if applied retroactively.

Respondents also argue that this Court should declare the Salt Lake City bicycle ordinance void *ab initio* because it is manifestly contrary to the State statute requiring a bicycle rider to ride on the right side of the roadway.

Citing Utah Code Ann. § 41-6-16, Respondents assert that a city may not enact or enforce an ordinance in conflict with the State's traffic rules and regulations. Petitioners agree with this basic premise. However, Respondents' argument that the City's ordinance is void *ab initio* because it conflicted with State law presumes the very premise upon which the argument is based, i.e., that there was in fact a conflict with State law. This argument is flawed and must fail. There was no obvious conflict between the State statutes and the language of Salt Lake City's Bicycle Ordinance.

¹ Because Respondent, Amanda Eyre, has joined in the Brief of Respondent, The Nature Conservancy, Petitioner will refer to the arguments of The Nature Conservancy as the arguments of Respondents.

Petitioners agree with the general proposition that municipalities derive their powers from the State and that Section 41-6-16 limits the power of a city to adopt an ordinance in conflict with State law. However, it does not follow that the City's Bicycle Ordinance is void *ab initio*. At page 9 of Respondents' brief, they argue: "The ordinance at issue was void from its inception because it purported to permit what the Utah Traffic Control Act prohibits – riding a bicycle against the flow of traffic." Their argument is logically flawed because it presumes that the ordinance allows prohibited conduct. To the contrary, the city ordinance does not allow any conduct that is prohibited by any State law. A bicycle traveling in a designated bicycle lane, adjacent to a vehicle lane, is not riding "against traffic."

Because the Court of Appeals appears to have accepted as true, without analysis, the idea that Hansen was riding against traffic,² the error of using this term in the context argued by Respondents and accepted by the Court of Appeals must be examined.

Respondents characterize Hansen's riding in the left-hand bicycle lane as "riding against the flow of traffic." Respondents assert that the District Court held (1) that state statutory law clearly requires bicyclists to ride with, not against, traffic. Brief of Respondents ("Brief") at 4. The Utah Court of Appeals affirmed the decision of the District

² In the Background paragraph of its opening, the Court of Appeals begins its factual background statement by stating "On February 17, 2000, Hansen was riding his bicycle eastbound on the lefthand side of the street and against the flow of traffic." 74 P.3d at 1184.

Court, holding that to the extent the Salt Lake City Ordinance permits a bicyclist to ride against the flow of traffic, it is invalid. *Id.* (Citation omitted).

The Appellate Court erred in accepting, without analysis, the idea that Hansen was riding his bicycle “against the flow of traffic.” The error in this conclusion is obvious. On any two way roadway, there are eastbound and westbound lanes. In the context used by Respondents and the Court of Appeals, a bicycle traveling westbound in an eastbound lane would be traveling “against traffic.” Such travel would create a conflict between the bicycle and the other vehicles traveling in the same lane and would be dangerous.

However, on every two way roadway, the center eastbound and westbound lanes are contiguous. Vehicles travel in opposite directions in these abutting lanes without conflict or danger. So long as vehicles stay in their assigned lanes, they travel without conflict. Thus, the fact that there is travel in abutting lanes, going in opposite directions, does not mean that vehicles traveling in different directions are moving “against traffic.”

Hansen was not riding “against traffic,” as argued by Respondents and as assumed by the Court of Appeals, because he was not riding in the roadway in a lane where there would be a conflict with the other motorized vehicles. He was riding in a bicycle lane abutting the roadway, and so long as vehicles on the roadway stayed in their lane and the bicycle stayed in its lane there would be no conflict between vehicles in the roadway and bicycles in the bicycle lane.

There is also nothing in the State Vehicle Code that says that a vehicle cannot travel “against traffic.” The term “against traffic” is never used in the Act. Utah Code Ann. §§ 41-6-53, and 41-6-87(1) only say that bicycles are to travel on the right-hand side of the roadway, with some exceptions. However, Hansen was not riding on the “Roadway.” He was riding in a designated bicycle lane.

“Roadway” is defined by Utah Code Ann. §41-6-1(39) as:

“Roadway” means that portion of highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk, berm, or shoulder, even though any of them are used by persons riding bicycles or other human-powered vehicles. If a highway includes two or more separate roadways, roadway refers to any roadway separately but not to all roadways collectively.

Thus a roadway is that portion of a highway open to all vehicular travel.

The term “vehicle” is also defined.

“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks. Utah Code Ann. § 41-6-1(55).

Thus while a bicycle is a vehicle, not all vehicles are bicycles. A bicycle lane limits travel to bicycles. All other vehicles are expressly prohibited from traveling in a bicycle lane. Therefore, a bicycle lane is not part of a “Roadway” because other types of vehicular traffic are forbidden use of the bicycle lane. Sections 41-6-53 and 41-6-87(1) apply to bicycles traveling on a “Roadway.” They do not address a bicycle traveling in a separate lane designated for bicycles which, by definition, is not a part of the “Roadway.”

A correct understanding of the distinction between a designated bicycle lane and the “Roadway” helps clarify the whole statutory scheme set out in Section 41-6-87. Instead of there being conflict, as is argued by the Respondents, we have an orderly traffic scheme designed to prevent conflicts between bicycles and other vehicles using a highway.³

Section 41-6-53 deals generally with “vehicle” travel on a roadway, but Section 41-6-87 deals specifically with bicycle travel on a roadway. While Section 41-6-87(1) reiterates the general rule of Section 41-6-53 that a vehicle on a roadway should travel on the right-hand side of the roadway, and sets out some specific rules for bicycles operating on a roadway, the legislature also said:

“If a usable path for bicycles (a bicycle lane) has been provided adjacent to a roadway, bicycle riders shall use the bicycle path and not the roadway.” Utah Code Ann. § 41-6-87(3).

By providing that a bicyclist must use the bicycle lane and not the roadway, the legislature expressly recognized that it considered a separate bicycle lane not to be a part of the roadway, and that when a bicycle lane was available, a bicyclist should travel in the bicycle lane and not on the roadway.

The legislature, in adopting Utah Code Ann. § 41-6-87(3) clearly envisioned situations where separate travel lanes (bicycle lanes) might be created adjacent to the

³ The term “highway” is defined by the Utah Code Ann. § 41-6-1(15) as “the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.” Thus, a highway could include not only a “Roadway,” but also separate bicycle lanes.

roadway, thus allowing bicycles to travel in their own lanes without any conflict with the vehicles using the roadway.

Section 41-6-17(h) allows a city to regulate bicycle travel. Pursuant to this statute, a city clearly has the power to create and regulate separate bicycle lanes adjacent to the normal travel lanes on a city street.

In adopting its bicycle lane ordinance, Salt Lake City created a carefully crafted plan for designated bicycle lanes to be provided adjacent to roadways traveled by cars. By Ordinance 12.52.140, the city expressly precluded automobiles from traveling in the bicycle lanes. Because cars are excluded from traveling in a bicycle lane, a bicycle lane cannot, by definition, be part of the “Roadway.”

Thus we see that the legislature has provided a scenario where cities are allowed to have a traffic scheme on their streets (highways) where they have both a “Roadway” open to all vehicles, and adjacent bicycle lanes where travel is strictly limited to bicycles. This eliminates the potential conflict between cars and bicycles which exists when a bicycle must travel on a “Roadway” shared with other vehicles.

Notwithstanding the fact the term appears nowhere in the Traffic Control Act, respondents persuaded two of the Appellate Justices that State law prohibited “riding against the flow of traffic.” However, that phrase is not contained in the State Statutes, and it mis-characterizes what occurred in this case. The remaining Justice dissented. If a panel of three learned judges cannot agree that there was an obvious conflict between the city

ordinance and State law, then it's a stretch to say there was such an obvious conflict that the ordinance is void *ab initio* because it is clearly in excess of the power to regulate bicycle travel granted by Utah Code Ann. Section 41-6-17(h).

In addition, a decision that the ordinance is void *ab initio* would seriously erode the confidence of the public in the plain language of the law. It would also foster anarchy by requiring lay people to construe the law at their peril, rather than leaving the job to the judiciary.

As a general proposition, one has a due process right to rely upon the plain language of statutes and ordinances in determining one's behavior. If a city ordinance is in express conflict with a State law, a person might reasonably be expected to obtain legal advice on the subject matter before acting. The cases cited by Respondents relate to situations where there is an obvious conflict, and where due process and ex post facto considerations do not mandate a contrary conclusion. For example, the gambling situation creates an obvious conflict where a person could not argue that he should not have expected a State law prohibiting gambling might trump a county law that purports to allow gambling.

In delegating power to the cities to regulate bicycle traffic, the legislature clearly had in mind that a city might create bicycle lanes which were not, by definition, part of a "Roadway" traveled by cars. This does not create a clear conflict with State statutes as argued by Respondents. Instead, it shows a well reasoned plan to keep bicycles off of the roadway, to avoid their coming in contact with cars traveling on the roadway.

Where the city expressly allows left-hand travel in designated bicycle lanes, and both city ordinances and the State Statute [§41-6-87(3)] mandate use of the bicycle lanes by bicyclists, it would be blatantly unfair to declare the ordinance void *ab initio*. Such a ruling would deprive Hansen of fair warning that his conduct, in obeying the Ordinance, might later be determined to have been prohibited. Such a result clearly would violate accepted principles of due process of law. *Rogers v. Tennessee*, 532 U.S. 451 (2001); *United States v. Lanier*, 520 U.S. 259, 265 (1997); *Rabe v. Washington*, 405 U.S. 313 (1972); *United States v. Harriss*, 347 U.S. 612, 617 (1953).

Any conflict between the city bicycle ordinance and State law is not so obvious as to allow a layman to understand its existence. The Appellate Justices couldn't agree on this issue. How could a lay person be expected to make a correct determination of this issue at his peril. Therefore, Respondents' argument that due process wasn't violated because the ruling of the Court of Appeals was to be expected, is simply without merit. *Id.*

The due process issues in this case arise from the justifiable reliance of Hansen on the language of the Ordinance. The Ordinance by its clear language allows him to travel in a left-hand bicycle lane. There is no conflict between State law and the Ordinance which is so clear as to allow Hansen to understand that he was in violation of any law when he followed the requirements of the Ordinance. Thus to find fault with his following the Ordinance would deny him Due Process of Law. *Id.*

POINT II

RETROACTIVE APPLICATION OF THE RULING OF THE COURT OF APPEALS WOULD DENY PETITIONERS DUE PROCESS OF LAW

The issue of whether the Salt Lake City Ordinance is valid is covered in Points I and III of this Reply Brief. This section deals with the claim of Respondents that retroactive application of the ruling of the Court of Appeals would not deny due process to Petitioners.

The basis of Respondents' argument is that "[T]he court's conclusion that Utah law prohibits bicyclists from riding against the flow of traffic was not so unexpected or indefensible that it deprived Hansen of fair warning." Brief at 7.

To the contrary. Utah statutory and common law existing on the date of Hansen's accident would lead him to believe his conduct, in conformity with the plain language of the ordinance, would not constitute a violation of State law.

As set forth in Points I and III, travel in a bicycle lane is not, by definition, travel on a "Roadway." While state statutes require bicyclists to travel on the right side of a "Roadway," they say nothing about a bicycle traveling in a designated bicycle lane.

On the date of the accident, no court had ever interpreted any State statute to preclude lefthand travel in a bicycle lane that excluded motor vehicle travel.

The language of the state and local laws was also not so clear as to allow the Court of Appeals to agree on what was required by the language of the statutes and ordinances. If the Appellate Judges couldn't agree on the issue of whether or not there was a conflict

between the ordinance and the statutes, one certainly cannot say that the law on this issue was so clear that the ruling of the Court of Appeals was to be expected.

It is an established principle of law that “no man shall be held criminally responsible for conduct he could not reasonably understand to be proscribed.” *United States v. Lanier, supra.*

Respondents argue at length from the case of *Rogers v. Tennessee, supra*, to support their claim that retroactive application of the ruling of the Court of Appeals would not deny due process to Petitioners. However, their argument assumes that the city ordinance was void *ab initio* and that such a ruling would be obvious and expected. Such is simply not the case.

The *Rogers* Court recognized the fact that some limitations on *ex post facto* judicial decision-making are inherent in the notion of due process of law. 532 U.S. at 456. In discussing the Court’s prior ruling in *Bouie v. City of Columbus*, 387 U.S. 347 (1964), the *Rogers* Court held that retroactive application of the Court’s construction of plain statutory language to include acts not set forth therein as criminal, violated due process principles.

The Court said due process requires that a criminal statute must give fair warning of the conduct which is made criminal. The Court stated:

Deprivation of the right to fair warning ... can result both from vague statutory language and from an unforeseeable and retroactive judicial expansion of statutory language that appears narrow and precise on its face ...

[I]f the construction is unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue, the new construction must not be given retroactive effect. 532 U.S. at 457.

The Court explained that the due process principles expressed in *Bouie* rest upon certain core principles of due process of law consisting of notice, foreseeability, and in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to conduct that was previously innocent. 532 U.S. at 451. The Court expressly held:

Due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope. 532 U.S. at 451.

In this case, prior to the ruling of the Court of Appeals, no court had ever ruled that the mandates of Sections 41-6-53 or 41-6-87(1) whose language is limited to travel on a “Roadway,” should be applied to travel in a bicycle lane adjacent to a roadway. The Court in *Rogers* said:

Due process protects against judicial infringement of the right to fair warning that certain conduct will give rise to criminal penalties. 532 U.S. at 451.

Any criminal conviction based upon an unforeseeable judicial construction of a statute violates due process of law. *Id. See Rabe v. Washington*, 405 U.S. 313 (1972).

The determination depends upon whether at the time of the conduct in question, the statute, standing alone or as construed, made it reasonably clear that the conduct was

criminal or prohibited. *United States v. Lanier*, supra at 267. As noted by the Court in *Marks v. United States*, 430 U.S. 188 (1977):

The notion that persons have a right to fair warning of that conduct which will give rise to criminal penalties - is fundamental to our concept of constitutional liberty. Id. at 191. See *U.S. v. Harriss*, 347 U.S. 612, 617 (1953).

In the present case, Hansen was relying on the validity of an ordinance that allowed him to ride eastbound in a designated bicycle lane. Nowhere in any statute or judicial decision was there notice or warning that such conduct was either prohibited or criminal.

Respondents seek to shift blame for the collision away from Eyre who was making a right turn while talking on her cell phone, and failed to yield to a bicycle rider in a designated bicycle lane. They argue Hansen should have foreseen that even though the ordinance specifically allowed his conduct, a State statute that deals with bicycle travel on a roadway would subsequently be construed to apply to travel in a bicycle lane that is by definition not part of the roadway, thereby retroactively removing the permission to ride in the left-hand bicycle lane which is expressly granted by the City Ordinance.

This is the exact vice the United States Supreme Court has said violates due process. Such an interpretation is an expansive reading of language to cover a situation not evident from the statute's plain language, and which had not occurred previously by judicial interpretation. Due process requires fair notice to the actor of that conduct which is proscribed. *Bouie v. City of Columbus*, supra; *Rogers v. Tennessee*, supra; *United States v.*

Lanier, supra; Marks v. United States, supra; Rabe v. Washington, supra; United States v. Harriss, supra.

Because Hansen acted in compliance with the plain language of Salt Lake City Ordinance 12.80.070 and had no fair notice that such conduct might violate a State statute, constitutional principles of due process of law absolutely preclude retroactive application of the Appellate Court's decision.

POINT III

SALT LAKE CITY ORDINANCE 12.80.070 IS A REASONABLE AND VALID EXERCISE OF THE POWER TO REGULATE BICYCLES.

The Court of Appeals incorrectly determined there was a conflict between state law and Ordinance 12.80.070.

In Point II of their brief, respondents argue that the Court of Appeals reasonably determined that State law prohibited Salt Lake City from adopting an ordinance that would allow bicycle riders to “ride against the flow of traffic.” Brief at 23.

Respondents argue that the decision of the Court of Appeals was correct because:

1. A bicycle is a vehicle as defined under the Act. [U.C.A. § 41-6-1(39)]; and
2. Utah Code Ann. § 41-6-1(39) specifies that a bicycle lane painted on the improved surface of the roadway in which Hansen was riding was part of the roadway for purposes of the Traffic Control Act. Brief at 23. (Quoting *Hansen v. Eyre*, 74 P.3d at 1182)

The Court of Appeals erred in their reasoning by concluding that:

1. State law prohibits “riding against traffic,” and
2. Hansen was in fact “riding against traffic,” and
3. That the bicycle lane was a part of the roadway.

As argued in Point I above, there is no language anywhere in the Traffic Control Act which uses the term “riding against the flow of traffic.” The term “riding against the flow of traffic” is simply a label which Respondents have placed upon the conduct of Hansen to lend an emotional component to their arguments.

As more fully set forth in Point I above, the conclusion of the Court of Appeals that a bicycle lane is a part of a “roadway” has no support in the language of the Act. Section 41-6-1(39) clearly defines a roadway as that portion of a highway open to travel by all vehicles including bicycles. Since all vehicles cannot travel in a designated bicycle lane, simple logic, applied to the statutory definition of a roadway, leads to the inescapable conclusion that a bicycle lane is not part of the “roadway.”

The Traffic Control Act clearly defines the terms “highway” and “roadway.” The act defines a highway as being the whole of the right-of-way. A highway may contain roadways, berms, a shoulder area and other areas which are not part of the defined roadway. Excluded from the definition of roadway are all areas of the highway which are not open to travel by all vehicles. While Section 41-6-1(39) expressly removes from the definition of a roadway, sidewalks, berms and shoulders, by implication any area of a

highway which is not open to travel by all vehicles would be excluded by definition from the roadway portion of the highway. This would include a designated bicycle lane.

Although a bicycle lane is not specifically mentioned, the all inclusive definition of “highway” contemplates areas, such as a bicycle lane, that are not part of the roadway. The Act clearly contemplates the ability of a city to place a bicycle lane, which excludes travel by motor vehicles, next to a roadway, but within its right-of-way (highway). Thus a highway could properly contain not only a “roadway” where all vehicles can travel, but also a bicycle lane where only bicycles can travel.

The Appellate Court apparently concluded that because § 41-6-1(39) speaks only about excluding berms, shoulders and sidewalks on a highway from the “Roadway” definition, then the legislature intended to include bicycle lanes as a part of the roadway. Such reasoning requires an enormous leap of faith as nothing in the language leads to such a conclusion. Such a conclusion is simply illogical. It makes more sense to conclude that a bicycle lane is not part of a roadway, because other vehicles cannot travel in a bicycle lane, than to include it in a definition that allows travel by all vehicles.

In addition, the Appellate Court also ignored the fact that the bicycle lane is separated from the roadway travel lanes and set off by a solid white line, the type of marking routinely used to delineate the edge of a roadway. A bicycle lane could also arguably be considered part of the shoulder, which is specifically excluded from the definition of a roadway by § 41-6-1(39).

By creating separate bicycle lanes adjacent to the vehicle travel lanes on city streets, the City clearly intended to create travel lanes for bicycles which would allow a place to ride where there was no conflict with motor vehicles.

Section 41-6-87(1) clearly contemplates that when there are no bicycle lanes, a bicycle must share the roadway with other vehicular traffic. In these situations, a bicycle must, with certain exceptions set forth therein, stay to the right.

But as pointed out by Justice Jackson in his dissent, Section 41-6-87(3), which requires a bicycle to use a bicycle lane when one is available, is superfluous and makes no sense if a separately created bicycle lane where other vehicular travel is prohibited, is in fact part of a roadway which by definition is open to use by all vehicles. This sub-section makes sense only in the context of a bicycle lane which is not a part of the roadway.

A cardinal rule of statutory construction is that the general intent and purpose of an act, taken as a whole, be interpreted in harmony to manifest its objectives. *Miller v. Weaver*, 66 P.3d 592 (Utah 2003). Where the state has delegated to the city power to regulate bicycle traffic, both the State statute and the city ordinance should be construed in *pari materia* and harmonized if possible. *Utah County v. Orem City*, 699 P.2d 707, 709 (1985).

When we consider the fact that the city created separate bicycle lanes with the intent they not be considered a part of the roadway, then the mandates of State law can be harmonized with the bicycle ordinance without violence to either. The bicycle lanes are set

apart from the roadway by solid white lines and other vehicles are prohibited from traveling therein. The bicycle riders have their own exclusive area of travel where there is no conflict with the motorized vehicles traveling on the adjacent roadway. Other vehicles are precluded from traveling in the bicycle lanes. Such a plan makes complete sense and is clearly contemplated in the grant to the cities of the power to regulate bicycle travel within the city.

The bicycle lanes are placed adjacent to the roadway, but are not part of the roadway. They are a part of the shoulder and clearly marked as such under provisions of the Manual on Uniform Traffic Control Devices. They are to be separated from the roadway by a solid white line. The city separates a bicycle lane from a roadway by prohibiting other vehicles from traveling in the bicycle lane.

Thus the city has by specific design separated bicycle lanes from its roadways. By definition, the State statutes which require right-hand travel of bicycles traveling on a roadway do not apply to travel in the separate bicycle lanes. This traffic regulatory scheme in turn validates the meaning of Section 41-6-87(3) which requires that a bicyclist forego travel upon a roadway, where he would compete with other vehicle traffic, and instead use a separately defined bicycle lane when one is provided.

Thus by simply applying the plain wording of the definitions set forth in Section 41-6-1 and the requirements of all three subsections of Section 41-6-87, we see that a bicycle lane is not a part of a roadway; that bicycles must use a bicycle lane when one is provided;

and that rules applicable to bicycles traveling on “roadways” do not apply to travel within a separately designated bicycle lane. Thus there is no conflict between State statutes and the city ordinance regulating bicycle traffic.

Point IV

**THE QUESTION OF WHETHER CONDUCT WHICH COMPLIES WITH THE
PLAIN LANGUAGE OF AN EXISTING ORDINANCE IS NEGLIGENT IS
PROPERLY BEFORE THIS COURT.**

This is a negligence case involving a collision between the Hansen bicycle and a truck driven by Amanda Eyre. Respondents claim Hansen acted negligently in riding in the left-hand bicycle lane, even though such conduct is expressly allowed under Ordinance 12.80.070.

The Summary Judgment Motion filed by Petitioners simply asked the trial court to validate Hansen’s belief that he wasn’t negligent for riding in a left-hand bicycle lane, as allowed by ordinance. This appeal came about because the trial court ruled that State law prohibited use of the left-hand bicycle lane, and the jury would need to be instructed that Hansen had no legal right to act in conformance with the express language of the Ordinance.

Respondents argue Hansen had no right to rely on the Ordinance. Petitioners claim that due process considerations forbid use of a post-collision ruling on the validity of the

city ordinance as a basis for determining whether or not Hansen's conduct on February 17, 2000 violated State law and was, therefore, negligent.

Since Utah law allows a jury to find a person negligent for violating a law intended to promote safety, the determination of whether the mere act of complying with the Salt Lake City Ordinance is a violation of law is crucial to the negligence issues in this case.

This issue is before this Court because the trial court in its ruling, which serves as the basis for this appeal, said the jury is to be instructed that Hansen had no legal right to ride in the left-hand bicycle lane.

However, even if the issue were not before the Court, because it wasn't expressly delineated in the Petition for Certiorari, it is an issue the Court should decide because it will come up at the trial after remand. A decision on the issue at this time will avoid the necessity of another appeal on the issue. Issues not specifically raised may be considered for the purpose of avoiding an additional appeal after remand. *Robinson v. All Star Delivery, Inc.*, 992 P.2d 969 (Utah 1999).

V

CONCLUSION

The definitive issue in the trial upon remand will be whether or not Tyler Hansen's riding in the left-hand bicycle lane was, of itself, a violation of law and therefore prima facie negligent. The issue of whether Hansen had a legal right, protected by due process, to rely on the plain language of Salt Lake City Ordinance 12.80.070 controls the issue of

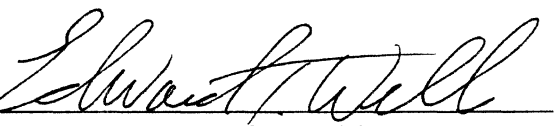
whether he violated any state law by riding in the left-hand bicycle lane. Whether he violated State law controls the issue of whether riding in the left-hand bicycle lane was negligence.

As set forth herein and in Respondents' opening Brief, the Salt Lake City Ordinance was properly adopted by Salt Lake City pursuant to authority granted to the city by the legislature. Even were this Court to find that Salt Lake City exceeded its authority in creating bicycle lanes adjacent to the traveled portion of city streets, a retroactive application of any ruling holding that the city ordinance conflicted with state law would not be allowable because it would deny Hansen due process of law. Because the ruling of the Majority Opinion of the Court of Appeals affirming the ruling of the trial court purported to do so, it effectively denied Petitioners' due process of law.

For the reasons set forth in the Petition for Writ of Certiorari and Briefs filed herein, Petitioners respectfully request that this Court issue a ruling that Salt Lake City Ordinance 12.80.070 is valid and that Hansen had the right, on the date of the collision between the Eyre vehicle and the Hansen bicycle, to legally ride his bicycle in the left-hand bicycle lane pursuant to the express language of Ordinance 12.80.070.

Respectfully submitted this 28th day of May, 2004.

Mel. S. Martin, P.C.


By: 
Attorney for Petitioners

Certificate of Delivery

I certify that on the 28th day of May, 2004, I mailed by first class mail, postage pre-paid, two copies of the foregoing Petitioners' Reply Brief in the above matter to each of the following:

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ADDENDUM

ARTICLE 7
REGULATIONS APPLICABLE TO DRIVING
ON RIGHT SIDE OF HIGHWAY,
OVERTAKING, PASSING AND
OTHER RULES OF
THE ROAD

**41-6-53. Duty to operate vehicle on right side of roadway
— Exceptions.**

(1) On all roadways of sufficient width, a vehicle shall be operated upon the right half of the roadway, except:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement;

(b) when an obstruction requires operating the vehicle to the left of the center of the roadway, but the operator shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portions of the highway within a distance constituting an immediate hazard;

(c) on a roadway divided into three marked lanes for traffic under the applicable rules; or

(d) on a roadway designed and signposted for one-way traffic.

(2) On all roadways a vehicle proceeding at less than the normal speed of traffic under the existing conditions shall be operated in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

History: L. 1941, ch. 52, § 43; C. 1943, 57-7-120; L. 1949, ch. 65, § 1; 1975, ch. 207, § 14; 1987, ch. 138, § 52.

NOTES TO DECISIONS

ANALYSIS

Backing.

Bicycle and truck.

Effect of passing from right to center.

“Half of the roadway” construed.

Instructions.

Negligence.

Presumptions.

Question for jury.

Violation as evidence of negligence.

Cited.

Backing.

Statutes requiring that vehicles keep to right have no applicability to backing. *Naisbitt v. Eggett*, 5 Utah 2d 5, 295 P.2d 832 (1956).

Bicycle and truck.

The driver of a truck who was on right side of street and was not on, near to, or approaching a

crossing where both vehicles and pedestrians might pass either or both ways had the right to relax his vigilance and was not required to do more than to maintain such lookout as would prevent his colliding or coming in contact with anyone on his side of street. *Richards v. Palace Laundry Co.*, 55 Utah 409, 186 P. 439 (1919).

Effect of passing from right to center.

While in case a street or highway is not used by others one may drive on any part thereof, yet, when a motorist or bicyclist passes from right to left of the center of the street, he loses some of his rights, and he may not be heard to complain of the conduct of those who are on the proper side of street to the same extent as though he also were on the proper side. *Richards v. Palace Laundry Co.*, 55 Utah 409, 186 P. 439 (1919).

In action by bicyclist for personal injuries

SALT LAKE CITY CODE

12.52.140 Bicycle Lanes—Right Of Way And Vehicle Restrictions:

1. No motor vehicle shall at any time be driven within or through, or parked or stopped within a marked bicycle lane, except to briefly cross such lane to turn into an intersection, street, alley, driveway or other parking area. Any vehicle so turning must yield the right of way to all bicycles within the lane that are close enough to constitute an immediate hazard. No motor vehicle may use a bicycle lane as a turning lane. On all roads with no bicycle lane, operators of bicycles have the same rights, duties and responsibilities as operators of motor vehicles. (Prior code Title 46, Art. 15 § 246(a))