

Judge Strikes Down Sun Valley Option Tax

by Tom LaRocque

Sun Valley's local option tax, which brings in about 42% of the city's revenue, has been declared void by a Fifth District Court judge.

Judge George Granata, Jr. of Cassia County issued a written opinion to that effect Nov. 21, in a lawsuit filed by Sun Valley Co. last year. The company challenged the legality of Sun Valley's option tax ordinance and a 1978 Idaho statute which made the tax possible in resort cities.

A judgment signed by Granata this week would order Sun Valley to stop collecting the tax immediately. But an appeal would automatically stay the order, at least for a short time, Granata said. Sun Valley city attorney Mark Russell said he will appeal the decision.

Within seven days after the appeal is filed, Granata and Russell will engage in a conference telephone call with Sun Valley Co. attorney Carl Burke of Boise. Granata will then decide whether the stay will remain in effect pending a hearing on the matter, which would probably take place within a month, he said.

A decision would then be made on whether the stay will remain until Sun Valley's appeal is heard by the Idaho Supreme Court, which may not take place for an entire year or longer. Granata said.

If Sun Valley is ordered at some point to stop collecting the tax, it will have to stop spending the revenue it gener-



Mark Russell

ates soon thereafter, according to city treasurer Connie Smart. Option tax payments are made to the city on a monthly basis, and are due approximately three weeks after the end of the month in which they are collected.

Sun Valley's option tax revenue, which is expected to amount to about \$500,000 in the current fiscal year, is earmarked for several specific areas of the budget: police and fire protection, roads and grounds, ambulance service, public information, the KART bus system, capital equipment acquisition, professional fees and land acquisition.

Mayor Ruth Lieder said this week that she is uncertain what areas would be cut if revenue from the option tax is lost. City officials are just beginning to analyze the possibilities, she said.



Judge George Granata, Jr.

Safeguards

Granata's recent ruling said neither the statute nor the ordinance includes certain safeguards which are required by the state constitution and by existing case law.

The statute "is in sharp contrast with other statutes enabling municipal corporations to tax," Granata wrote. "It does not contain a maximum allowable tax. In and of itself, it allows more than one tax to be imposed, and delegates municipal authorities to determine how those tax revenues will be used."

He also criticized the resort option tax statute for allowing cities to determine the duration of the tax, and to choose their own enforcement mechanisms.

An option tax law without the proper safeguards is an invalid delegation of state authority to the cities, Granata said. That

tenet of law was clarified in a ruling by the Idaho Supreme Court last June, in which a local option tax in the Boise area was upheld, he said. The case was Greater Boise Auditorium District vs. Royal Inn.

Russell has argued that proper safeguards indeed exist in the resort-cities option tax legislation and in the city ordinance. Both the ordinance and the enabling legislation require approval of any option tax proposal by at least 60% of the voters in a city, Russell noted.

For example, Ketchum voters recently elected to replace their 5% local option tax on liquor and lodging with a broader-based 1% local option tax. If the proposed tax had been too high, voters would have turned it down, according to Russell's argument.

But Granata rejected the contention that the 60% requirement is an adequate safeguard. The constitution intended, and the Boise Auditorium case confirmed, that more stringent safeguards are necessary, he said.

Uphill Battle

Granata said his recent ruling will have no direct effect on the city of Ketchum. Ketchum's option tax has been challenged in court by a group of merchants known as the Wood River Lodging and Restaurant Association.

Litigants in the Ketchum case will be given an opportunity to argue their positions

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in Granata's court some time in the future, he said. Although Granata could rule differently in the Ketchum case, the issues are identical to those in the Sun Valley case. "I think they'll know they have an uphill battle," he said.

The local option tax is a 5% levy on lodging and liquor sold by the drink in Ketchum and Sun Valley. In addition, hotels and motels must collect a 4% state sales tax and a 2% tourism promotion tax, for a total of 11%. Bars and restaurants selling liquor by the drink collect all but the tourism promotion tax, for a total of 9%.

The tax generates about 42% of Sun Valley's revenue, and about 19% of the Ketchum budget.

Ketchum's newly passed tax would replace the 5% tax with a 3% levy on most items sold in Ketchum, and an additional 1% on lodging and liquor. The ordinance is planned around Jan. 1.

Although Granata's ruling struck down not only the Sun Valley ordinance but also the enabling state legislation of 1978, it will have no bearing on any other resort option taxes in Idaho, he said. Five Idaho cities now collect such taxes. When the Idaho Supreme Court rules on the Sun Valley appeal, it will decide on the constitutionality of the legislation, he said.

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did invalidate any kind of resort option tax in Sun Valley, including a broad-based 1% tax such as Ketchum voters recently passed. Sun Valley too has been considering a broad-based tax.

'Don't Panic'

After analyzing Granata's option tax ruling, Ketchum Mayor Jerry Seiffert's advice to option tax supporters is "don't panic." Ketchum attorney Jim Phillips, who has helped defend Sun Valley's option tax, will continue to take part in the appeals process.

Whether Ketchum will formally appear in Granata's court to argue the case for its own option tax remains to be seen, according to city administrator Jim Jaquet. "Our attorneys are in communication with Sun Valley, and whatever the best strategy is will have to be worked out by them," said Jaquet.

Seiffert said if the resort option tax statute is ultimately thrown out, budget cuts will probably be levelled in the areas of snow removal, emergency services, and police and fire protection. "Ketchum is a labor-intensive operation, so that's where the cuts will lie," he said.

Seiffert added that amending the statute to correct its constitutional flaws "won't be a big problem." Inserting the "safeguards" cited by Granata could

probably be done by the 1985 Idaho Legislature, he said.

Chuck Webb, assistant general manager of Sun Valley Co., expressed approval of Granata's ruling. "The position we've taken all along was that the tax was unconstitutional," said Webb. "We're gratified that it came out that way."

Alan Pennay, owner of the River Run Lodge, has acted as spokesman for the Wood River Lodging and Restaurant Association since it filed suit to stop Ketchum's option tax last year. Pennay also expressed gratification with Granata's decision.

"When we sued them they laughed at us," said Pennay. "Now it appears we have a ruling."

The lodge owners led by Pennay vigorously opposed the 5% local option tax adopted by Ketchum in 1978. It also disapproved of the recent 1% tax, with its additional 1% imposed on lodging and liquor sales. But the group felt the latter tax was "the lesser of two evils," he said.

The prime motivation for the lawsuit was that the group felt the option tax was unfair. He acknowledged that Granata based his decision on constitutional and legal grounds, rather than issues of fairness.

"But if the tax had been fair to begin with, it never would have come to this," he said.

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