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19th District Court of Michigan
16077 Michigan Avenue, Dearborn, Michigan 48126
Chief Judge Virginia A. Sobotka , Judge William C. Hultgren, Judge Mark W. Somers
Mr. Doyne Jackson , Court Administrator
http://www.cityofdearborn.org/courts/index.shtml
Traffic Division phone: 313.943.2062

Court clerk dba under false color of law as The People of Michigan v Joseph Lopez	Case Number: None. There is no case. Ticket Number: T 120274 Motion #7219 Version 0.81 Third motion for Jo Lopez. Demand to Abate. Common Law Non-Statutory Demurrer. Memorandum of Law. Venue for Hearing: Time: 2 pm Date: Tuesday 7 February 2005 Place: Court of Mark Somers

“We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.” - Magna Charta

Notice of Motion

To the prosecutor and court. At the venue designated in the caption above or at such venue as the court shall designate I will demur and demand that you abate this case for the reasons set forth herein.

"We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well." - Magna Charta

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Power of State to Restrict One's Right to Engage in Lawful Occupation, 25 Va. L. Rev. 219 (1938); [33 Or. L. Rev. 6, Fn. 22]. . . . . Page 7 of 12

Public Licenses and Private Rights 1953 Oregon Law Review. http://www.lawyerdude.8k.com/5943.html . . . . Page 5 of 12

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Hurtado v. California, 110 U.S. 516, 536 (1884) http://laws.findlaw.com/us/110/516.html there are such rights in every free government beyond the control of the state . . . . Page 9 of 12

In re Stork (1914) 167 C. 294, 139 P. 684. The original intent of the motor vehicle statutes of California, was that it applied only to commercial activities or to statutory residents, and all others were exempt from the regulations . . . . Page 3 of 12

People v. Drake (1912) 162 C. 248, 121 P. 1006. Placing a statute in a code does not change its meaning or effect. As if the patriot nutballs were correct in asserting otherwise. . Page 3 of 12

People v. Jackson, (1985) 171 Cal.App.3d. 606, 217 Cal.Rptr. 540. There is a extra-statutory right to demur. . . . . Page 3 of 12

Tutun v. U.S., 270 U.S. 568, 578 (1926). [33 Or. L. Rev. 7, Fn. 24].The opportunity to become a citizen of the United States, for example, is said to be merely a privilege and not a right . . . . Page 7 of 12

"We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well." - Magna Charta

Argument for demurrer or abatement.

Memorandum of Law

This is a case that raises two (2) major constitutional questions:

1: Does a Citizen of California have the right to travel; and

2: Does a Citizen of California have the right to purchase, own and utilize his personal property?

A non-statutory, common-law demurrer exists as a legal instrument for constitutional and other attacks on the sufficiency of an accusatory pleading. ***People v. Jackson***, (1985) 171 Cal.App.3d. 606, 217 Cal.Rptr. 540 as cited in brief of Cyril Grosse at http://www.lawyerdude.netfirms.com/cyril.html

The facts as stated do not completely identify a public offense. To establish the facts necessary to create a public offense the law must specify to who it applies, and exactly what is the violation. If one or the other is lacking, the facts are insufficient to constitute an offense. The citation/ complaint does in itself explain or define what the required status must be, to be within the definition of the created "public offense". The code is specific, it applies only to **residents** of the state; it does not apply to anyone else. The California Supreme Court has held that placing statutes in code does not change their meaning or effect. ***People v. Drake*** (1912) 162 C. 248, 121 P. 1006. The original intent of the motor vehicle statutes of California, was that it applied only to commercial activities or to statutory residents, and all others were exempt from the regulations. ***In re Stork*** (1914) 167 C. 294, 139 P. 684.

Thereafter the legislature changed confirmed the private citizen exemption as follows: In the Fourth-Sixth Session of the Legislature, as recorded at page 833, Chapter 412, the legislature legislated the following statute: Section 1, para (b) states:

> **"The word "operator" shall include all persons, firms, associations and corporations...but shall not include...who transports his or its own property...who transports not persons or property for hire...."**

Later in the Fifty-Second Session, Chapter 679, page 1920 the legislature continued and clarified the exemption:

> **"Section 1. The words and phrases used in this act shall be construed for purposes of said act, unless such construction be contrary to or inconsistent with the context thereof, as follows: (a) The term**

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> **"operator" shall include all persons engaging in the transportation of persons or property for hire or compensation by or upon motor vehicles upon any public highway in this State, either directly or indirectly, but shall not mean or include the following: (1) Any person transporting his own property in his own vehicle;"**

The same wording is used in the Statutes of California, Fifty-Third Session page 2654, Chapter 944. This is also the intent of the Statutes of California, Fifty-Fourth Session, page 590, Section 9603.

Here is when the problem arose: In 1957. Two classes combined into one thereby creating the illusion of all-inclusiveness.

Then in 1957, the Statutes of California combined the terms "operators and chauffeurs license" to be called a "driver's license".. These lawful interpretations and intent are carried forward in the current vehicle code Section 11, paragraph 2.

The state bar did virtually the same thing by requiring a “license” of all lawyers - even those not publicly employed.

The state bar has a uniform test for all lawyers - in this state and every state. A “license” would be required for a lawyer to speak for the government - to exercise governmental power. This would be a “privilege” - different than the mere “right” to contract with private persons to work for private persons. Nonetheless the bar treats both classes of lawyers the same; it requires the “license” and approval of the quasi-governmental state bar. This trend is part of the homogenization of America. The government and corporations want us to be interchangeable like interchangeable parts that sparked the industrial revolution. We are now in an age of humanization and self-actualization. We can now address this problematic issue of homogenization. Homogenization of lawyers was an encroachment on the rights of lawyers who are not public servants. [This paragraph was added by Douglas Palaschak.]

Public Licenses and Private Rights, the generalized problem of encroachment upon the private sphere of autonomy.

Because of the rapidly increasing application of the license system to more and more activities by the Federal, state, and local governments, the further consideration of the relation of public licenses to private rights becomes more and more important. The popular understanding of

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the word "license" [required by government for the performance of various activities] undoubtedly is a permission to do something which, without the license, would not be allowable. The object of the license is to confer a right that does not exist without the license.

This subject was discussed well in a Law Review article in Oregon in 1953 entitled ***Public Licenses and Private Rights***. I have excerpted this article at http://www.lawyerdude.8k.com/5943.html .

But, in fact, there is no grant of "privilege" (benefaction) of any kind whatever in a public license. Courts sometimes see this, and sometimes they do not; and so the law has become greatly confused. It will be apparent that principles applicable to public licenses (malefactions) have been confused with those applicable to private licenses (benefactions), largely because the two unrelated concepts have the same name; and that a false analogy of "licenses" (malefactions) to true "privileges" (benefactions) granted by the governments has probably made more mischief in this connection. But these two concepts of privilege have no relation whatever to that of a public "license."

A license is merely a permission to do what is unlawful at common law, or is made so by some statute or ordinance, including the one authorizing or requiring the license. The Laundry License Case, 22 Fed. 701, 703 (D. Or. 1885); [33 Or. L. Rev. 3, Fn. 2].

The following is excerpted from the aforementioned law review article:

> And so courts have, in this connection, distinguished "licensed" vocations from vocations "lawful per se." U.S. v. McFarland, 28 App. D.C. 552, 568 (1907); Peginis v. Atlanta, 132 Ga. 302, 63 S.E. 857, 858 (1909); [33 Or. L. Rev. 3, Fn. 3].
>
> A license is "a personal privilege,...conveys no estate or interest, and is revocable at the pleasure of the party making it."
> De Haro v. U.S., 5 Wall. 599, 627 (U.S. 1866); [33 Or. L. Rev. 3, Fn. 5].
>
> "One-half of the doubts in life arise from the defects of language, and if this instrument had been called an exemption, instead of a license, it would have given a better ideal of its character. Licensing acts, in fact, in legislation, are universally restraining acts ..." Johnson, J., concurring, ***Gibson v. Ogden***, 9 Wheat. 1, 222, 232 (U.S. 1824).

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See also Creighton & Smart, Introductory Logic 79 (5th ed. 1946);

Cohen and Nagel, Introduction to Logic and Scientific Method 17 (1947). [33 Or. L. Rev. 3, Fn. 6].,

The distinction between a true "privilege" and a "right" ("vested right") is historical rather than logical. "Frequently a force of history is felt in the distinction between the citizen's rights and a favor accorded to him by government. It is the difference between taking something away from one who has always had it and giving someone something he has no right to demand. To a large degree what one 'has' which may be 'taken away' is an accident of history.." Hale, Hearings: The Right to a Trial, with Special Reference to Administrative Powers, 42 Ill. L. Rev. 749, 775 (1948).

So the term "right" or "vested right" itself "indicates little beyond the ideal of inviolability."

Freund, Police Power 602 (1909). [33 Or.L.Rev. 4, Fn. 7].

It is thus very clear then that "the requirement of a license is not intended as a privilege, but as a common restraint" ---and a restraint upon activities authorized by the common law. But, as has been said, "a license law ... assumes the illegality of the business, and denounces penalties upon those who pursue it without previously protecting themselves by procuring a license." State v. Parker Distilling Co., 236 Mo. 219, 139 S.W. 453, 462 (1911); [33 Or. L. Rev. 4, Fn. 11].

A license is merely a permit or privilege to do what otherwise would be unlawful. The purpose of it is to regulate and control the manner in which the business is conducted, and prevent its being carried on in such a way as to ignore the public interest. Palmetto Fire Ins. Co. v. Beha, 13 F.2d 500, 503 (S.D. N.Y. 1926); [33 Or. L. Rev. 5, Fn. 13].

The form of licensing to be considered here is the administrative lifting of a legislative prohibition. The primary legislative thought in licensing is not prohibition but regulation, to

be made effective by the formal general denial of a right which is then made individually available by an administrative act of approval, certification, consent or permit. Freund, Licensing, 5 Encyc. Soc. Sci. 447 (1933); [33 Or. L. Rev. 5, Fn. 13].

That is just why licenses are required --- to restrict the liberty in activities already existing at common law. [33 Or. L. Rev. 5-6].

The "liberty" guaranteed by the Constitution "must be interpreted in light of the common law, the principles and history of which were familiarly known to the framers of the Constitution." [U.S. v. Wong Kim Ark, 169 U.S. 649, 654 (1898)]. This liberty denotes the "right of the individual ... to engage in any of the common occupations of life ... and generally to enjoy those privileges long recognized at common law as essential to the ordinary pursuit of happiness by free men." Meyer v. Nebraska, 262 U.S. 390, 399; [33 Or. L. Rev. 6, Fn. 19].

Hutcheson, The Common Law of the Constitution, 15 Tex. L. Rev. 317 (1937); Barnett, Vested Rights in the Common Law, 27 Or. L. Rev. 25 (1947); [33 Or. L. Rev. 6, Fn. 21]. ***Power of State to Restrict One's Right to Engage in Lawful Occupation***, 25 Va. L. Rev. 219 (1938); [33 Or. L. Rev. 6, Fn. 22].

The opportunity to become a citizen of the United States, for example, is said to be merely a privilege and not a right. ***Tutun v. U.S.***, 270 U.S. 568, 578 (1926). [33 Or. L. Rev. 7, Fn. 24].

It has been stated that "numerous authorities ... hold that a license is not within the protection of the Constitution." [Fn. 25 citing, State v. Cote, 122 Me. 452, 120 Atl. 538 (1923)]. However, if some Constitutional protection may be denied, there is no good reason in logic why all may not be denied. Frost Trucking Co. v. Railroad Comm'n., 271 U.S. 583, 593-594 (1926). [33 Or. L. Rev. 8, Fn. 26].

It is an essential ingredient of a legal license, that it confers no right, or estate, or vested interest, but is at all times revocable at the pleasure of the party that grants it ... [33 Or. L. Rev. 8, Fn. 28].

Oppenheim, Unconstitutional Conditions and State Powers, 26 Mich. L. Rev. 176 (1928); [33 Or. L. Rev. 9, Fn. 30].

It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. Frost Trucking Co. v. Railroad Comm'n, supra, at 593-594 (1926); [33 Or. L. Rev. 10, Fn. 32].

"...the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute or the regulations proscribed ... that are repugnant to the Constitution of the United States." Cargill Co. v. Minnesota, 180 U.S. 452, 468 (1901); [33 Or. L. Rev. 10, Fn. 33].

Being a privilege, it [a motor vehicle license] can be given or withheld... As a general rule, the state having the power to deny a privilege altogether may grant it upon conditions, not requiring relinquishment of constitutional rights, as it sees fit to impose....A constitutional power cannot be used by way of condition to obtain an unconstitutional result. McIntyre v. Harrison, 72 Ga. 65, 157 S.E. 499, 506-507 (1931); [33 Or. L. Rev. 11, Fn. 34].

If the wayward courts had only realized that a "license" is not a grant of a new "privilege," but, on the contrary, a restriction on a "right" already existing, all this absurd confusion, with

resulting deprivation of constitutional protections, would have been avoided. [33 Or. L. Rev. 15].

N.B. Citizens Savings and Loan v. Topeka, 87 U.S. 455, 461, 20 Wall. 655 (1874) http://laws.findlaw.com/us/87/655.html ; Hurtado v. California, 110 U.S. 516, 536 (1884) http://laws.findlaw.com/us/110/516.html (It must be conceded that there are such rights in every free government beyond the control of the state.);

'It must be conceded,' said this court, speaking by Mr. Justice MILLER, in Loan Ass'n v. Topeka, 20 Wall. 655-662, 'that **there are such rights in every free government beyond the control of the state.** A government [110 U.S. 516, 537] which recognized no such rights,-which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power,-is after all but a despotism. It is true, it is a despotism of the many,-of the majority, if you choose to call it so,-but it is nevertheless a despotism. It may be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.' - U.S. Supreme Court in ***Hurtado v. California***, 110 U.S. 516, 536 (1884) http://laws.findlaw.com/us/110/516.html

Cf. Adair v. U.S., 208 U.S. 161, 28 S.Ct. 277 (1908) http://laws.findlaw.com/us/208/161.html
Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394 (1923)
http://laws.findlaw.com/us/261/525.html ;

Taxing the Exercise of Natural Rights, Harvard Legal Essays (Maguire, 273, 322 (1934)); and that class of Authority, infra.

The unstated limitation of the “license” to drive.

Although there is some excuse for the use of the term “license” to regulate the commercial activities of statutory "residents” on the public highways the legislature did not intend to encroach on our right to travel. The legislature inadvertently created the illusion of all-inclusiveness by use

of the word “driver”. There has never been any attempt by the Legislature to regulate any Citizen's Right to Travel. Nor was there ever any attempt by the Statutes of California to abolish the Right to Travel or the Right to own property for any Citizen.

The application of this code to a Citizen of California while exercising his Rights to Travel and the utilization of his own property would have a "chilling effect" on the exercise of such Rights and be in direct conflict with the Constitution of the State of California (1849) Article I, Section 1, and Section 21. Courts have no right, no power, to extend statute by construction, so as to dispense with any conditions legislature has seen fit to impose. Gassner v. Patterson, (1863) 23 C. 299; likewise, the Courts must take the statute as they find it. It is their duty to construe it as it stands enacted. Callahan v. San Francisco, (1945) 68 CA2d. 286, 156 P.2d. 479; Santa Clara County Dist. Atty. Investigators Asso. v. Santa Clara County, (1975) 51 CA3d. 255, 124 Cal.Rptr. 115. Courts are not at liberty to extend application of law to subjects not included within it. Spreckles v. Graham, (1924) 194 C. 516, 228 P. 1040.

I am neither an “operator” nor a “chauffeur” and therefore the licensure laws do not pertain to me! Thus, the citation/complaint does not describe a public offense.

To Constitute Jurisdiction in a Criminal Case there must be jurisdiction over the person.

In addition, the citation was obtained under duress of being incarcerated if the Accused did not sign the citation.. Duress means condition of mind produced by improper external pressure or influence that practically destroys free agency of party and causes him to do some act or make contract not of his own volition. Harlan v. Gladding, McBean & Co. (1907) 7 CA 49, 93 P. 400; and Duress is a species of fraud, Leeper v. Beltrami, (1959) 53 C2d. 195, 347 P.2d. 12. Thus, the citation cannot be used as a vehicle for entrapment purposes. In Burns v. Superior Court, (1961) 195 Cal.App.2d. 596, 599, 16 Cal.Rptr. 64, the Court held "To constitute jurisdiction in a criminal case there must be two elements, namely, jurisdiction of the person, and jurisdiction of the subject matter, or, as it is sometimes called, of the offense." In this case the person to whom the law applies is a "resident" of the State of California, a citizen of the United States under the so-called 14th Amendment. The intent of the law is that it does not apply to the common-law Citizen of the State of California. (Exhibit F) The statute being enforced must specifically identify to whom it applies, and in this case it does. It states that it applies to every "resident" of the State, therefore "Citizens of California" are not within the specific definition and intent. Penal Statutes are to be

construed to reach no further than their words; no person can be made subject to them by implication. Twing, In re, (1922) 188 C. 261, 204 P 1082; People v. Garcia, (1940) 37 CA2d. Supp. 753, 98 P2d. 265. The construction of a statute and its applicability to a given situation are matters of law to be determined by the court. Madison Estate, (1945) 26 C2d. 453, 159 P.2d. 630. When the legislators speak through statutes, their enactments must be given a strict interpretation. The law must be applied as it is written. It cannot be extended by judicial interpretation. Chapman v. Aggeler (1941) 47 CA2d. 848, 119 P.2d. 204. The terms "resident" and "Citizen" are not synonymous. They each have a different meaning and application according to law. Prowd v. Gore, 57 Cal.App. 458, 207 P. 490; Baldwin v. Franks, 120 U.S. 678, 7 S.Ct. 656, 32 L.Ed. 766, (a California case). The California Supreme Court in K. Tashiro v. Jordan, (1927) 256 P. 545, 201 Cal 239, 53 A.L.R. 1279, affirmed 49 S.Ct. 47, 278 U.S. 123, 73 L.Ed. 214, 14 C.J.S. Sec. 2, p.1131, n. 75, held that "there is a clear distinction between national and State citizenship, U.S. citizenship does not entitle citizen of the Privileges and Immunities of the Citizen of the State." This statement is true today as when made by the Supreme Court. Thus, the California Supreme Court has made a determination that there are two (2) classes of individuals within this State, those who are Citizens of California, and those who are U.S. citizens who are "resident" within the state. The Accused is not a "resident" but is in fact and in law a "Citizen of California." (See attached Declaration, Exhibit G) Thus, for the foregoing reasons this matter must be dismissed in the interests of justice as an unconstitutional application of the Vehicle Code as it relates to a person not driving for hire.

End of Motion.

Proof of Service

Since there is no prosecutor except the clerk, service of process is simpler. I Joseph Lopez declare under penalty of perjury that I served this paper upon the clerk’s office at the court house in person at the following time and date: _______

I so declare.

Signed ________________ Joseph Lopez

Date: ______________________