

## Legislative Policy Committee Meeting

Minutes for January 9, 2017

Welcome on behalf of League of Cities and Towns from Beth Holbrook Bountiful City Council, 1<sup>st</sup> Vice President of ULCT.

Announcement: Next meeting at the Capital once session starts.

Adopt December 2016 minutes. Call for questions or amendments, question asked about highlighted text, was there a particular reason for the highlighted section? League determined no reason for highlighted text. Received a motion to adopt minutes from Jewel Allen, Council Member from Grantsville; and Mayor Carmen Freeman from Herriman City, seconded.

Ken B: Encouraged everyone to take the Land Use Development Handout created. This will serve as a 1 page flyer on the issue requested by Steve Fairbanks, to give them an overview of what it is. Will also be available online.

Ken B: Senator Curt Bramble District 16- A tax expert at the legislature. The League has a positive working relationship with Senator Bramble. He is known for being informed and extremely knowledgeable on this issue of online sales taxes. He has extensive background on the topic. He will address where he sees things going in the Legislature this session. Also, want to let everyone know that tomorrow the League is meeting with Deputy Director of the Office of Planning & Budget, and he will no doubt want to discuss the distribution of sales tax. Exceptionally sensitive issue to everyone in this room, so just want to let you know that there will be a next stage in this process and that will be regarding distribution.

Members were shown a video of a news story about online sales tax hurting brick and mortar stores like Macy's, Sears and Kmart. Layoffs and closures announced at all of these stores. The traditional mall shopping experience is no longer the norm.

Senator Bramble: State of Utah has been on the forefront of the National Debate since 1998-1999. Gov. Leavitt foresaw the challenges of online sales early on. Utah was one of the charter members of the streamline sales tax project. Trying to bring uniformity to definitions of products sold. On June, 2016, Supreme Court Justice Anthony Kennedy invited a legal challenge over whether states can require out-of-state and online retailers to collect sales taxes. Justice Kennedy's opinion was issued as part of the Supreme Court's unanimous ruling in *Direct Marketing Association v. Brohl*. Kennedy's comments reveal the court's awareness of the need for federal intervention that would enable states to collect e-commerce taxes. In "In his opinion, Kennedy added that he believes that the Quill(1992 State had to have physical presence for State to collect sales tax) and National Bellas Hess decisions, which establish the physical presence rule for sales tax, are "now inflicting extreme harm and unfairness on the states." Now that conclusion is wrong when the case was decided, there is powerful case to be made that retailers have nexus to posing some minor tax collection duty even if business is done thru mail order or internet. This issue has grown stronger and more urgent with time. When court decided Quill mail order sales increased from 180 billion to 3.16 Trillion in this timeframe. Merchants use Quill to say merchants don't need to do it. While that is true it's not the whole story. Businesses believe it is an undue burden on interstate commerce, unless Congress finds that it isn't. States have petitioned Congress to pass uniform federal standard to allow States to join a compact, to allow States to collect sales tax if States willing to modify statutes to meet standardized criteria. And Congress has done what they do best, which is nothing. They have done nothing effectively. A year ago, the National Congress

of state legislatures led by Governor Herbert, Chairman of NGA at the time, conference of mayors, joined to put full court press on this. One way to do this is to encourage State all over the country to begin enacting legislation to encourage Congress to overturn the Quill decision two ways to overturn- Congress take action or States can challenge the status quo. What Colorado did was instructive, the DMA, direct market association, had a statute would require that the business not collect taxes but to report the details of the transaction and information about the citizen that made the purchase (address, phone number, what they bought, how much they spent, etc.) Then the tax commission could decide if they wanted to audit the citizen. The District Court and 10<sup>th</sup> circuit sided with the State of Colorado. The Supreme Court denied cert now that is the law. We could require every seller to report to the tax commission. We could require every seller to report to the tax commission to report the details of the transaction. In South Dakota, administrative rule in Alabama & Ohio it passed for state that have a certain level of economic activity. That threshold would give them sub economic presence to collect and remit taxes to the State of Utah. Once strategy is in place they could challenge Quill. Upheld Ohio provision with an economic nexus. Amazon, on their own has agreed to collect taxes in 29 states whether they have physical presence or not, Utah being 1 of those States.

State of Federal action boils down to currently Two camps: 1-Sponsored by Congressman Bob Goodlatte that is origin based on where a business resides. Create new bureaucracy that allows federal gov't to collect taxes and then decide thru clearing house how to remit the funds to the States. Imagine the controversy for Congress to try to create a clearing house and then try to collect. Give Congress, for the first time in history to give the feds, the control of our sales tax revenue. I don't know anyone that thinks that's good policy US Congressman Chaffetz introduced remote transaction parody act has 80-90 sponsors. Go through the Judiciary committee or it would have to go to committee. Chaffetz chairs oversight committee, Goodlatte chairs the judiciary committee, this bill would have to go to judiciary committee and he has refused to allow the Chaffetz bill to come up for hearing, knowing it has the votes to pass. Congressman Sensenbrenner from Wisconsin has introduced legislation that would codify the Quill statute permanently in federal statute, interesting because the Governor of Wisconsin, Governor Kasich in Ohio, Governor of Virginia have aggressively said they don't like Congressman Goodlatte's bill. Don't want to codify Quill and they like Chaffetz bill.

Status in Utah-Pieces of legislation this year: State level to deposit any taxes into restrictive account then look at how we look at State portion of tax to make revenue neutral- Bill introduced this year 1- Create definition of economic nexus comparable to SD would be the default-any retailer selling in Utah that pass certain threshold would be required to collect and submit-this creates a level playing field-pay same tax online or in store(treat businesses the same, treat tax payers the same)-this has not been upheld judicially, part of challenge to Quill. Severability piece in the bill. We have fall back affiliate nexus sales platform, take Amazon, when you purchase/buying directly or from Amazon or from affiliates, it affects tax consequences. You buy the product and there are affiliates down the side you can buy from those affiliates. New York has said anyone that has sales platform with affiliates if affiliate has physical presence in your state then the affiliate becomes an agent for company-upheld by circuit court of appeals in NY. Supreme Court denied cert so that law stands and will be upheld or now we go to reporting. Nexus is the solution-severability clause in the bill-should it be overturned would have default. Trying to convince federal gov't that Congress needs to take action and give us a solution. Congress failure to act has left states to deal with it on their own. How untenable for online business to comply with 50 states and taxing jurisdictions. And what a burden that would be to have patchwork. That is what will happen if quill is overturned. Prefer Fed. Solution but willing to champion patchwork in the absence of it because we have to solve the problem, and if enough states introduce legislation we can do it. SD already in court, day after law passed, online retailers, accelerated judicial review standard

in the bill. Ideal is fed solution to have one stop audit, safe harbors, standardized definitions that is Chaffetz bill. Utah joining the fray if that doesn't happen. Macy's closing the store. Who are our constituents- brick and mortar –how many times have you been in a store people having a demonstration while also ordering the product online to avoid sales tax.

Q-Online from Erin Wells, Highland-What would threshold be for companies to meet standard for sales tax?

A-We are looking at a couple 100 thousand or more. On that issue-I steer IT steering committee. I have Masters in taxation-IT computer science. When these companies say it's too complex to figure out the sales tax, these companies use data analytics that can tell what you are thinking about ordering next week before you know you want it. They can determine how to use Just in Time delivery of their product will be and they have lots of sophistication that deals with ecommerce today-those same merchants tell you it's too difficult-I'm missing something here. Most tie in with sales platforms that 2-3 100 thousand

Q-Janet Towers, Chief Administrative Officer in Murray-Have you heard what the Trump administration will be doing on this?

A-Are there reports in the room? I got a call from Trump administration in August to ask me to be a surrogate for him and I told them I would love to but I would have to know what his position is on any given issue. They never called back. We are all elected officials so I guess my answer is you would have to ask him on any given day on any given topic. I would say buy some popcorn get in a comfortable seat and watch the show. I have spent a lot of time in WA, I have testified before Congress several times. We do know Ryan has said we need a solution in 2016. There is an optimistic hope that a solution will be found. Many have expressed concern for level the playing field. Conclusion would be optimistic, but that is different than saying I know what he is going to do.

Q-Tom Hanson, Washington Terrace-When you consider the revenue neutral aspect of this and the erosion we have been wrestling with the last few years, how much of this is going to be revenue neutral? Or shouldn't that be an uptick in revenues because that is tax we should have gotten all along?

A: I have not gone into the weeds on the bill on that point, but the current standard is we have to put money into restricted account and we do this Kabuki dance to figure out what the rate should be to keep to maintain revenue neutrality. My bill will repeal all of that out of the chute to have fiscal analyst project revenue what the tax will be by opening up to economic nexus or affiliate nexus. Then have commensurate 1% time reduction in rate-to make it revenue neutral-uptick for following year. Currently there is growing pressure, you feel the pressure because what we view as general fund revenue stream at State level you view as one of your primary source of revenue taxes at the municipal/local level. With citizen initiatives raising income taxes 7/8% nominal increase; the effective rate is closer to 20% being pushed as citizen initiatives. Those of us who accumulate all of our taxes each year, we can either have reduction or close loop hole stop unintentional easing/evading of sales taxes before we talk about raising taxes. We increased property, gas tax and authorized voter approved increase in sales tax. Traveling within CSL, so I don't know current sentiment in legislature, but I suspect that the 20% increase in effective taxes when we have 100's of millions in taxes that we could collect. I suspect that will be part of debate, will be introduced with revenue neutral provision in the first year only, repeal ongoing neutrality attempt, but whether that stays or not will be up to my colleagues.

Q-Jewel Allen, Grantsville-With Chaffetz bill having difficulty, will the other bill-the origin based bill will happen? What timeline are we looking at? Will it take place on the Federal level this year? Will we have a good year?

A: No-Chaffetz bill has sponsors has significant support from both sides of the aisle. For Goodlatte there is hardly even a bill- has not defined form. Don't believe will see light of day

Timeline A: How does it not work? Congress does nothing which is what Congress does best. Trump administration will not change the dynamic of gridlock. I think the way to encourage congressional action, if it appears eminent that that Quill is ready to fall-If States get Quill overturned the appetite for Congress to do anything is gone. If defeated, then State ability for to do their own. With new administration and ACA all other things committed to this year, I don't know if this will rise to the level of Congressional action. I do know States are not patient any longer they are enacting legislation to enact something and by doing that that will motivate Congress.

Q-Lynn Pace, Holladay-On the hold and the revenue neutral portion relative to state taxes-Would your bill propose to make state portion revenue neutral would your bill repeal that hold.

A: First Part-Doesn't touch the local or UTA the other pieces of taxes not part of State portion. Second answer-Thought I made that clear Yes, my bill will eliminate that restrictive account and all of that of that bill.

Q-Online-Council Member Tom Smart from Oakley: Smaller cities like Oakley gain sales tax when sale originates from their city.

A: Yes-We are not messing with allocation formula, driven by merchants reporting where assessed. We would not administer that any differently but we could get into discussion about the allocation portion, but that is not this bill. How you cut up the pie is different what the size of the pie ought to be.

League excused Kaysville Mayor Steve Hiatt, ULCT President, who was unable to attend.

Sen. Todd Weiler, Chair Senate Judiciary, Law Enforcement Committee. Started in City Council-and served on the board of ULCT, then we were talking about getting reimbursed through Olympic Committee for all of the bonds the cities had. When I was on the board of this organization, I served with many of you here. Having served 4 years on the city council and now 5 years in State legislature so I can tell you the biggest difference is now I have people all over state that don't like me not just in my neighborhood. I have been on the Senate Judiciary standing committee for the last 5 sessions, now chair of the Senate interim committee for the same time period. Standing committee meets during 45 days Interim committee meets between sessions. There are some issues I want to discuss

Issues to upcoming session-some relate 2yrs back JRI-Justice Reinvested-step back see what's working in the criminal justice system and what can be improved. In conjunction with Pew Institute worked all summer and fall before session. We were the 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> State to go thru this process. Georgia went before and we were trying to learn from success and failures of other states. I know we have Ross from the Bountiful Police Chief is here. We were told you are going to get push back from prosecutors and law enforcement. And we have gotten that pushback and they don't love JRI. The Idea is let's start treating Drug Offenders for their mental condition/addiction, punish for crime, but focus on getting them help they need to recover, let's treating hardened criminals like hardened criminals. Do this instead of treating everyone like same type of criminals and putting them all in the same soup. Gov. Herbert-mentions in almost every speech how Utah is the best managed state and all of the accolades

we received, but one area where we do not excel is the recidivism rate. What is that, recidivism is when someone is released from prison and they boomerang and return year after year-our rate is higher than most States. Costs state of Utah, and costs counties, 30,000 to incarcerate someone cost to rehabilitate addiction/drug treatment program costs 15,000-20,000. If there is insurance, then it will cost less with insurance offsets. Let's screen these folks out and treat them differently-with screening, behavioral analysis, find out what kind of person is this and treat them accordingly. This saves taxpayer money and gets a better result. Love all of the facts you learn being in the legislature. One of these facts is that right now in the population of the Prison 97% of all inmates will eventually be released and they will return to our neighborhoods. We have learned in the last 100 years that if you lock someone up and slip them food under the door and treat them that way-they are sometimes crazy and usually very angry. Those are the people we will be releasing back into our neighborhoods. The new system we will have is, I say tongue in cheek, like the three degrees of glory. Based on attitude and behavior you have move up levels-this has proven cheaper and prisoners come out less angry and less crazy and better able to assimilate to society. Recently, toured 5 prisons in 24 hours in Phoenix, AZ. Learned a lot in visiting those prisons in Arizona. Also toured the prisons for California inmates since they are also being housed in AZ.--that was interesting. Idea behind JRI-is to give people shorter sentences if they are not hardened criminals, reduce categorization, and change some felonies to misdemeanor, that is where prosecutors get upset for taking tools out of their tool box. We are trying to be pioneers and do something different. We continue to tweak it, whenever we are doing a new piece we tweak year after year. Now we are going to be doing JRI 2.0 focusing on the juvenile system. Lowry Snow from St. George, Stuart Adams will be the Senate floor sponsor-partnered with PEW, very Utah centric approach, collected tons of data and analyzed it and it's been fascinating. Where the youth resides has an impact. We can look at where a juvenile resides and saw that determined outcomes-we can look at incarceration rates of those areas. Some districts-have a much higher rate of incarceration-for the same offenses- it looks like in certain areas there are different personality of judges. There really is no rhyme or reason. We learned that you are three times more likely to be removed from the home as in other parts of the state. It appeared to me-if a juvenile detention facility was nearby Judges than they were more likely to put a teen in that facility. That is my own conclusion, one of my take-aways.

It costs the State of Utah 300-500% more to take a child out of their home and put them in detention facility-and the results that we get are much worse. If you incarcerate a teenager when the brain is developing, and put them into criminal justice system, remove them from their parents-in prison with other offenders their chances of finishing high school decrease and chances of repeat offending skyrocket. Paying more money and getting exact opposite

I am guilty of thinking of a juvenile just like adult, but data shows, that because they are still figuring out their place in the world-they take on that identity. Going thru JRI process as a legislature-we found out that prison gives them a wakeup call. For juveniles, they embrace it and that is how they act the rest of their lives. Indigent Defense. Under 6th amend right to council. US Supreme Court decision in the 60's said that it is the obligation of states that people have adequate public defense. For whatever reason, in Utah we took that responsibility for all the indigent people and we punted it to the counties and said good luck. Small counties could be bankrupt trying to do one of these capital punishment cases. SL County, Weber County done an excellent job, excellent defender program Salt Lake County did a really good job, but other counties, rural Utah not so much. Did a study by a work group for four years-this group studied counties all across the state and they observed what was happening. The data that was brought back the anecdotal observances was terrifying. Had Justice Court in rural Utah, after Judge had sentenced the person to jail the court observer asked the Judge should you have offered them an attorney before sentencing someone to prison and the Judge shrugged shoulders and said I don't know.

That happened less than 2 years ago. We passed this major piece of legislation and we created an indigent defense commission 11-member board-Michael Zimmerman is the chair of this board, and I am a member. We will be monitoring what's happening in all 29 counties, and we have state money that counties can apply for grants most of that is matching funds. For those that have Justice courts, there have been 3 major pieces of legislation that happened in last 15 years. Justice Courts adjustments were necessary, example bill last year bill to make all Justice Court Judge trained attorneys, most of that was watered down now they only have to be trained attorneys along the Wasatch Front not in rural areas. This issue of right to council does not go away. I am concerned about people coming back into justice court for contempt proceedings and things-and this is happening in Juvenile court this has happened as well. They don't pay their fine, and when they come back they are sentenced to juvenile detention due to breach and never offered attorney.

Q: Rob Wall-Sandy city attorney-have had dealings with four different justice courts up-experience that indigent defense really a money issue. Places where they handle well the principle reason, they developed good working relationship with Judge and defense bar. In an appropriate way, what are your thoughts on coming up with scheme that helps with funding statewide, as opposed to hiring attorneys?

A: It all comes down to money- we were looking for 6-8 million to help with this last year and got 1 million. ACLU waited for several years while we waited for case. They were about the most patient people in the world-they waited gave us opportunity to do more than x,y,z and all we did was x,y,z. Made 2016 as a baseline year. If you want to increase you have to spend that amount and then can increase has to be shared effort. In first 6 months, most of our focus on rural Utah. Family member picked up in rural Utah, for a crime, and they can't afford attorney, they will spend 7-8 minutes total with public defender and will be told to plead guilty.

Q: Gary Crane, Layton City Attorney -Where is the Money? Problem with JRI-reduction in penalties, funding 12-13k that assists in restoring these people. We don't have any resources to send people anywhere to get assistance. Conditioned on Medicaid expansion, that would be the money to help those people. We are handling the problem but have no resources.

A: I've been a vocal proponent for this the whole JRI piece was contingent on the Medicaid expansion-when that wasn't expanded we are still working on that piece it will be difficult without Medicaid expansion. Let me just tell you that someone put together a graph with all of the elevation in penalties in the State, it was staggering of upgrading penalties to felony. There is constant pressure on legislature to upgrade different laws and make different things a felony. People get causes and want to push to upgrade laws. Abusing a pet can be a harder penalty than abusing a human. Everything getting upgraded, longer sentences and longer time and all of this winds up costing the State. Still getting pressure to make misdemeanor into felonies. As soon as we pass JRI, we continue to get that pressure, hard to do more without a reset button.

Q: Sam Klemm, Wasatch Front Regional Council-Funding eight month waiting list to get people money. Salt Lake County making the point that Police feel that it's not even worth arresting them anymore waiting period so long doesn't matter anymore.

A: JRI promise was contingent on Medicaid expansion happening, that did not come thru. Doubt it will get fixed this year with Trump. Was not aware of eight month waiting period appreciate learning that.

Gary Hockaveen However, Senior VP with Rocky Mountain Power: Utah Net Metering Not expected to be a legislative issue in 2017 passed in 2014 State Tax incentive currently capped at \$2,000.00 that will be addressed, but we are not discussing that today.

Ongoing process began in 2014 SB208 (Bramble)-set out process for rooftop solar. Contract to reimburse 10.5 cents for every kwh generated. Just filed 2016 results of projected rates: Each customer gets paid roughly \$400 a year-this is projected to grow dramatically. Will be significant cost shift.

Talking to rooftop solar companies at the request of Gov Herbert. Contentions issue, probably heard about this on the news. The \$400 is the reason we are talking about it. Hearing scheduled for August of next year. How big an issue? It is small but growing. 667billion dollars over next 20 years. 20k customers, that is expected to double if we did nothing about it. Not bad thing. Love solar power, want to take Solar Power, but we want to take it at lowest cost to our customers. Roof top Solar vs. Solar farms. Being built in Central and Southern Utah where there are eight times as much on these large farms. Farms sell that power for 4-5 cents they are now paying 10.5 to rooftop customers. Do need lines.

Points to the slides included. Shows complicated graph meant to be simple. Brown bar is the amount of time that rooftop person uses the curb. Blue curve is the output of solar generation system, red typical usage. Point where those cross-2 micro seconds where they correspond-they use the network. Services for which everyone pays, they are using it 23.9 hours of the day, back up services, etc. Pay for what you use rather than using it at all. Our filing is meant to reflect the fact that you pay for what you use. Give rooftop credit-don't pay for what they are using. That is what we are trying to fix. Most interesting piece of graphic. Reflection of average customer bills for usage. 0% is how much they pay today without any rooftop solar. Highlighted row average net metering customer, rooftop solar. Uses 700 kwh/1000 rts \$74 dollar what they would pay. Today they would pay \$55. \$20 increase.

AVG. \$74-look at other parts of spectrum. Anything that is negative that would result in lower cost, to those that would put smaller systems and face them to the west they would get more power late afternoon. They would get more power late afternoon, and would be beneficial for all customers and reduce our costs. That is what is reflected here. Dramatic increases out here. If you have large kwh now pay eight dollars if you put in large enough system. Doesn't compare to what they need for what they use. Payment of the usage of the system.

Trying to be fair to all of our customers, we want customers to pay for systems they use, those that choose not to put solar on their rooftop we don't believe should be paying for those that do.

Subsidies might be ok, this might be good to incentivize these people. This is good for environment-good tax policy. What we argue with is forcing it through this public service commission process, which is simply meant to make people pay for what they use. Should be done through elected leaders at the legislature.

Cameron: Jan 30<sup>th</sup>-postpone rest of agenda-Local official's day 11:00 AM legislative briefing. Showing 80 bills put into software, record number of bills again this year.

Motion to adjourn.