

RUSSWURM *v.* HELENA.

Crim. 3961

Opinion delivered September 30, 1935.

APPEAL AND ERROR—FORMER OPINION AS LAW OF CASE.—A former opinion of the Supreme Court in this case holding valid a city ordinance imposing an occupation tax *held* the law of the case in the absence of any additional evidence tending to establish that the ordinance was discriminatory.

Appeal from Phillips Circuit Court; *W. D. Davenport*, Judge; affirmed.

*Jo M. Walker*, for appellants.

*C. L. Polk, Jr.*, for appellee.

MEHAFFY, J. This is the third appeal in this case. The decision on the first appeal is *Helena v. Russwurm*, 188 Ark. 968, 68 S. W. (2d) 1009, and the opinion on the second appeal is *Helena v. Russwurm*, 190 Ark. 601, 79 S. W. (2d) 993.

When the case was here on first appeal, it was decided that the ordinance involved in the suit had not been repealed by subsequent ordinances, and that the effective ordinance of the city of Helena imposed upon

all persons practicing the professions of physicians and surgeons or dentists an annual occupation tax of \$50.

When the case was here on second appeal, this court stated in effect that the provision of the Constitution with respect to uniformity applies only to property tax, and has no reference to the taxation of privileges, and that the only restriction which the law imposes upon the exercise of the power is that there shall not be a discrimination between persons in like circumstances, and pursuing the same class of occupation. The court further said: "But the question presented to us is that of power, and not that of expediency. The fact that the tax in the city of Helena exceeded that imposed upon similar occupations in other cities even larger is not one which will control our determination of its validity."

The court also quoted with approval the following: "It has therefore been held that the only limitation on license taxation seems to be that it must not be so unreasonable as to show a purpose to prohibit a business which is not in itself injurious to public health or morals. \* \* \* Whether a license tax is prohibitory is primarily a legislative question."

There is no additional evidence in the case tending to show that the ordinance was discriminatory. We do not deem it necessary to restate the facts, and the former decisions are the law of this case. *Postal Tel. & Cable Co. v. White*, 190 Ark. 365; *Bankers' Reserve Life Co. v. Harper*, 188 Ark. 81, 64 S. W. (2d) 327; *Dodd v. Gower*, 188 Ark. 958, 68 S. W. (2d) 463; *Amer. Ry. Express Co. v. Cole*, 185 Ark. 532, 48 S. W. (2d) 223; *Milsap v. Holland*, 186 Ark. 895, 56 S. W. (2d) 578; *Ark. Bapt. College v. Dodge*, 189 Ark. 592, 74 S. W. (2d) 645.

The facts and the law as declared by this court will be found in the decisions on the former appeals referred to above.

This case is controlled by the decisions in the former appeals, and must therefore be affirmed.