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214 Va. 93

IN THE

Supreme Court of Virginia

AT RICHMOND

Record Nos. 8106 & 8107

(8106)
MINNIE KRAUSS
Appellant
v.
CITY OF NORFOLK,
Appellee

(8107)
DALTON-BUNDY LUMBER COMPANY, INCORPORATED,
A CORPORATION,
Appellant
v.
CITY OF NORFOLK,
Appellee

JOINT APPENDIX

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IN THE

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 8106

MINNIE KRAUSS, Appellant

v

CITY OF NORFOLK, Appellee

Record No. 8107

DALTON-BUNDY LUMBER COMPANY, INCORPORATED, a corporation, Appellant

v

CITY OF NORFOLK, Appellee

PETITION FOR DECLARATORY JUDGMENT
Minnie Krauss Case
Filed December 14, 1971

Your petitioner, Minnie Krauss, by counsel, hereby files this her Petition for Declaratory Judgment, and in support thereof states:

1. That she is a citizen domiciliary and taxpayer of the City of Norfolk, in the State of Virginia, and is the owner of certain real property designed for residential occupancy therein as follows:

(a) A duplex consisting of two dwelling units, located at 9451 Hickory Street, Norfolk, Virginia;

(b) A duplex consisting of two dwelling units, located at

337 Woodview Avenue, Norfolk, Virginia;

(c) A duplex consisting of two dwelling units, located at 257 Balview Avenue, Norfolk, Virginia.

2. That the property described in items (a) and (b) above she owns and holds as investment property, offering the same for lease to tenants on an annual basis, acting through a local real estate agent, and receives rents therefrom as return on said investment.

3. That the property described in item (c) above she owns and one dwelling unit therein she occupies as her own residence, and the other dwelling unit therein she offers for lease on an annual basis, through a local real estate agent, and receives rents therefrom as a return on her investment.

4. That on May 25, 1971 the City of Norfolk, acting by and through its City Council, adopted Ordinance No. 25,988, effective June 25, 1971, entitled "An Ordinance to Amend the License Tax Ordinance of the City of Norfolk, 1948, as Amended, by Adding Thereto One New Section, to be Numbered 70-A, Imposing and Levying a License Tax on Every Person Engaged, as Principal, in the Business of Renting Residential Property or Business Property", and providing in part as follows:

"BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That, effective on and after May 1, 1972, The License Tax Ordinance of the City of Norfolk, 1948, as amended, is hereby amended by adding thereto one new section numbered and reading as follows:

Sec. 70-A. Renting residential or business property.

(1) Every person who, as principal, is engaged in the business of renting houses, apartments or

other types of dwelling units, whether he acts for himself or through an agent, shall pay for the privilege of doing business a license tax equal to 1 per centum of the gross receipts, as hereinafter defined, in such business during the preceding calendar year.

The business of renting houses, apartments or other types of dwelling units shall be construed to mean the renting of buildings or portions thereof each of which is designed for residential occupancy as a single dwelling unit, but not including hotels, motels, motor lodges, auto courts, tourist courts, rooming houses and boarding houses for which licenses are otherwise required by this ordinance.

The words 'dwelling unit' are defined to mean a room or rooms connected together, with independent kitchen and sleeping facilities, in a dwelling house or apartment or other type of residential building, designed for occupancy by one family for living purposes.

For the purposes of this subsection, a person who rents four or more houses, apartments or other types of dwelling units, or combinations thereof, shall be deemed to be engaged in the business of renting houses, apartments or other types of dwelling units."

5. That the adoption of said Ordinance constituted an assessment against your petitioner of a local license tax by which she is aggrieved, and for relief from which she applies to this Court pursuant to the terms of § 58-1145 of the Code of Virginia, 1950, as amended.

6. That she has received notice from the Commissioner of Revenue of the City of Norfolk of the assessment of said license tax to be imposed upon her as a person engaged as a principal in the business of renting residential property, effective on and after May 1, 1972.

7. That she denies that she is engaged in any business, including the business of renting residential property, and she asserts

that her activities in respect to the property aforesaid, other than the dwelling unit which she occupies as her own residence, are activities limited merely to the protection of her investment and the receipt of returns thereon, and that she is not engaged in the operation or management of said property, nor in the furnishing of services in connection with the management thereof.

8. That said Ordinance, notwithstanding its language to the contrary, is not applicable to her or to others who may own and rent four or more buildings or portions thereof designed for residential occupancy, but who are not engaged as principal in the business of renting residential property.

9. That said Ordinance, to the extent that it purports to be applicable to her and to others who merely own and rent four or more dwelling units designed for residential occupancy, is void in that it defines as engaging in business that which is not, and in that it imposes as a business license an unlawful tax on mere ownership of property or receipt of income therefrom.

10. That said Ordinance, to the extent that it imposes a tax which is not a valid license tax, is void in that it exceeds the taxing authority granted to the City of Norfolk by State statute, and falls within the Constitutional and statutory prohibitions against the imposition of discriminatory real estate taxes and all local income taxes.

11. That said Ordinance, to the extent that it constitutes an exaction of payment without authority, is void in that it contravenes the due process clauses of the Fourteenth Amendment of the

United States Constitution and Article I, §11 of the Constitution of Virginia.

12. That said Ordinance is vague, discriminatory, confiscatory, arbitrary and illusory, and in its application to your petitioner is without statutory authority, and accordingly is void as in contravention of the Constitutions of the United States of America and of the Commonwealth of Virginia, and as an unauthorized exercise of the power of taxation by the City of Norfolk beyond those granted to it by the Commonwealth of Virginia.

13. That said Ordinance is accordingly void, both by its own terms and in its attempted application to and enforcement against your petitioner.

14. That as to the matters hereinbefore set forth an actual controversy exists between the parties hereto and your petitioner is entitled to the declaratory judgment sought.

WHEREFORE, your petitioner, by counsel, prays that this Court declare said Ordinance No. 25,988, adopted by the City of Norfolk on May 25, 1971, to be inapplicable to your petitioner; that the same be declared to be null and void; and that the defendant, City of Norfolk, through its officers, agents and employees, be restrained from the collection of said tax against your petitioner; and that your petitioner may be awarded the costs of these proceedings and all other appropriate general relief.

PETITION FOR DECLARATORY JUDGMENT
Dalton-Bundy Case
Filed December 14, 1971

Your petitioner, Dalton-Bundy Lumber Company, Incorporated, by counsel, hereby files this its Petition for Declaratory Judgment, and in support thereof states:

1. That it is a corporation organized and existing under the laws of the State of Virginia, with its principal office in the City of Norfolk, and is a taxpayer of the City of Norfolk, in the State of Virginia, and is the owner of a certain piece of real property designed for business purposes therein, located at 1324 Ballentine Boulevard.

2. That it owns and holds said property as an asset of the corporation, the same being under lease for a term of ten (10) years with an option for an extension of five (5) years, to a tenant now in exclusive possession, and it merely receives rents therefrom in accordance with the terms of said lease.

3. That on May 25, 1971 the City of Norfolk, acting by and through its City Council, adopted Ordinance No. 25,988, effective June 25, 1971, entitled "An Ordinance to Amend the License Tax Ordinance of the City of Norfolk, 1948, as Amended, by Adding Thereto One New Section, to be Numbered 70-A, Imposing and Levying a License Tax on Every Person Engaged, as Principal, in the Business of Renting Residential Property or Business Property," and providing in part as follows:

"BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That, effective on and after May 1,

1972, The License Tax Ordinance of the City of Norfolk, 1948, as amended, is hereby amended by adding thereto one new section numbered and reading as follows:

Sec. 70-A. Renting residential or business property.

* * *

(2) Every person who, as principal, is engaged in the business of renting property used for professional purposes or commercial, manufacturing, industrial or other business purposes, whether he acts for himself or through an agent, shall pay for the privilege of doing business a license tax equal to 1 per centum of the gross receipts, as hereinafter defined, in such business during the preceding calendar year.

For the purposes of this subsection, a person who rents one or more parcels of land or one or more buildings or one or more portions of or spaces in a building or one or more combinations of the foregoing, used or to be used for professional purposes or commercial, manufacturing, industrial or other business purposes, shall be deemed to be engaged in the business of renting property used for professional purposes or commercial, manufacturing, industrial or other business purposes."

4. That the adoption of said Ordinance constituted an assessment against your petitioner of a local license tax by which it is aggrieved, and for relief from which it applies to this Court pursuant to the terms of § 58-1145 of the Code of Virginia, 1950, as amended.

5. That it has received notice from the Commissioner of Revenue of the City of Norfolk of the assessment of said license tax to be imposed upon it as a person engaged as a principal in the business of renting business property, effective on and after May 1, 1972.

6. That it denies that it is engaged in the business of renting business property, and asserts that it is merely the owner and lessor

of one piece of business property under long term lease, and that it is not engaged in the operation or management of said property, nor in the furnishing of services in connection with the management thereof.

7. That said Ordinance, notwithstanding its language to the contrary, is not applicable to it or to others who may own and rent a single building or portion thereof designed for business purposes, but who are not engaged as principal in the business of renting business property.

8. That said Ordinance, to the extent that it purports to be applicable to it and to others who merely own and rent one or more buildings designed for business purposes, is void in that it defines as engaging in business that which is not, and in that it imposes as a business license an unlawful tax on mere ownership of property or receipt of income therefrom.

9. That said Ordinance, to the extent that it imposes a tax which is not a valid license tax, is void in that it exceeds the taxing authority granted to the City of Norfolk by State statute, and falls within the Constitutional and statutory prohibitions against the imposition of discriminatory real estate taxes and all local income taxes.

10. That said Ordinance, to the extent that it constitutes an exaction of payment without authority, is void in that it contravenes the due process clauses of the Fourteenth Amendment of the United States Constitution and Article I, § 11 of the Constitution of Virginia.

11. That said Ordinance is vague, discriminatory, confiscatory,

arbitrary and illusory, and in its application to your petitioner is without statutory authority, and accordingly is void as in contravention of the Constitutions of the United States of America and of the Commonwealth of Virginia, and as an unauthorized exercise of the power of taxation by the City of Norfolk beyond those granted to it by the Commonwealth of Virginia.

12. That said Ordinance is accordingly void, both by its own terms and in its attempted application to and enforcement against your petitioner.

13. That as to the matters hereinbefore set forth an actual controversy exists between the parties hereto and your petitioner is entitled to the declaratory judgment sought.

WHEREFORE, your petitioner, by counsel, prays that this Court declare said Ordinance No. 25,988, adopted by the City of Norfolk on May 25, 1971, to be inapplicable to your petitioner; that the same be declared to be null and void; and that the defendant, City of Norfolk, through its officers, agents and employees, be restrained from the collection of said tax against your petitioner; and that your petitioner may be awarded the costs of these proceedings and all other appropriate general relief.

PLAINTIFFS' EXHIBIT 1
Both Cases
Filed March 24, 1972

FORM APPROVED: CITY ATTORNEY
CONTENTS APPROVED: DIRECTOR

ORDINANCE NO. 25,988

AN ORDINANCE TO AMEND THE LICENSE TAX ORDINANCE OF THE CITY OF NORFOLK, 1948, AS AMENDED, BY ADDING THERETO ONE NEW SECTION, TO BE NUMBERED 70-A, IMPOSING AND LEVYING A LICENSE TAX ON EVERY PERSON ENGAGED, AS PRINCIPAL, IN THE BUSINESS OF RENTING RESIDENTIAL PROPERTY OR BUSINESS PROPERTY.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That, effective on and after May 1, 1972, The License Tax Ordinance of the City of Norfolk, 1948, as amended, is hereby amended by adding thereto one new section numbered and reading as follows:

Sec. 70-A. Renting residential or business property.

(1) Every person who, as principal, is engaged in the business of renting houses, apartments or other types of dwelling units, whether he acts for himself or through an agent, shall pay for the privilege of doing business a license tax equal to 1 per centum of the gross receipts, as hereinafter defined, in such business during the preceding calendar year.

The business of renting houses, apartments or other types of dwelling units shall be construed to mean the renting of buildings or portions thereof each of which is designed for residential occupancy as a single dwelling unit, but not including hotels, motels, motor lodges, auto courts, tourist courts, rooming houses and boarding houses for which licenses are otherwise required by this ordinance.

The words "dwelling unit" are defined to mean a room or rooms connected together, with independent kitchen and sleeping facilities, in a dwelling house or apartment or other type of residential building, designed for occupancy by one family for living purposes.

For the purposes of this subsection, a person who rents four or more houses, apartments or other types of dwelling units, or combinations thereof, shall be deemed to be engaged in the business of renting houses, apartments or other types of dwelling units.

(2) Every person who, as principal, is engaged in the business of renting property used for professional purposes or commercial, manufacturing, industrial or other business purposes, whether he acts for himself or through an agent, shall pay for the privilege of doing business a license tax equal to 1 per centum of the gross receipts, as hereinafter defined, in such business during the preceding calendar year.

For the purposes of this subsection, a person who rents one or more parcels of land or one or more buildings or one or more portions of or spaces in a building or one or more combinations of the foregoing, used or to be used for professional purposes or commercial, manufacturing, industrial or other business purposes, shall be deemed to be engaged in the business of renting property used for professional purposes or commercial, manufacturing, industrial or other business purposes.

Section 2:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council May 25, 1971
Effective June 25, 1971

TRUE COPY
TESTE:

_____
LOUIS S. HUDGINS, CITY CLERK

By: _____
Deputy City Clerk

EXCERPTS FROM DEFENDANT'S EXHIBITS 2 AND 3
LICENSE TAX ORDINANCE OF THE CITY OF NORFOLK, 1948,
AS AMENDED
Both Cases
Filed March 24, 1972

Sec. 73. Separate license for each place of business.

Any person doing business at more than one place, stall or stand, shall be required to take out a separate license for each of such places, stalls or stands; and each of such places, stalls or stands shall constitute a separate and distinct place of business and shall pay a license tax as provided for under this ordinance.

* * *

Sec. 78. Application for license.

Every person desiring to obtain a license to prosecute any business, employment, profession, or to do anything for which a license is required shall make application therefor in writing to the commissioner of the revenue, in which shall be stated the residence of the applicant, the nature of the business, employment, profession, or thing to be done, the place where it is proposed to be prosecuted, and in case the business to be licensed is taxed upon a graduated scale, as hereinbefore provided, shall make such statement under oath, as required by this ordinance. The commissioner of the revenue shall assess such applicant, or other person of whom a license is required, with the license tax required by law, and shall issue a license signed by him to said applicant to prosecute the business, employment, profession, or thing to be done therein named, which license shall not be valid or effective unless and until the tax required shall be paid to the city treasurer, as collector of city taxes and levies, and such

payment shall be shown on said license; and, if it be a business for which a license can be granted only on the certificate of a court, or other officer, then such license shall not be valid or effective until such certificate shall be obtained.

Sec. 78-1/2. License to designate place of business.

Every license issued by the commissioner of the revenue, unless expressly authorized elsewhere or otherwise, shall designate the place of such business, employment or profession as some definite place within the city. Any person exercising such license, or engaging in such business, employment or profession elsewhere than at such definite place, unless expressly authorized elsewhere or otherwise, shall be held to be without a license.

OPINION LETTER OF JUDGE THOMAS M. JOHNSTON
Both Cases
Filed May 1, 1972

THIRTY-SECOND JUDICIAL CIRCUIT OF VIRGINIA

CIRCUIT COURT OF THE CITY OF NORFOLK

THOMAS M. JOHNSTON
JUDGE

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

May 1, 1972

Mr. Thomas R. McNamara
Attorney at Law
1235 Virginia National Bank Building
Norfolk, Virginia 23510

Mr. William C. Worthington
Attorney at Law
Williams, Worrell, Kelly & Worthington
1700 Virginia National Bank Building
Norfolk, Virginia 23510

Mr. Gordon Tayloe
Assistant City Attorney
City Attorney's Office
City Hall Building
Norfolk, Virginia 23510

Re: Minnie Krauss v.
City of Norfolk
In Chancery No. C-71-1392
and Dalton-Bundy Lumber Company, Inc. v.
City of Norfolk
In Chancery No. C-71-1393

Gentlemen:

The facts of these cases are uncontradicted and quite simple. Minnie Krauss, one of the petitioners, is a resident of the City of Norfolk and a retired civil service worker; she owns three duplex homes or a total of six dwelling units which she purchased during her productive years to supplement her income upon retirement. Mrs. Krauss occupies one of the dwelling units and rents the other five through independent

real estate agents. She provides no services, maintenance, or utilities for the rental units; and her agents are paid by commissions on the rents collected.

Dalton-Bundy Lumber Company, Inc., operates a wholesale brokerage selling pine lumber. It leases an unused portion of its premises located at 1324 Ballentine Boulevard to Bass and Company, Inc., under a lease dated January 1, 1971. Dalton-Bundy has never been involved in real estate transactions except in the ownership of the premises which it occupies and leases.

It is obvious that neither Mrs. Krauss nor Dalton-Bundy have ever engaged in the real estate business. Whether they have engaged in the business of renting residential or business property within the meaning of the Norfolk License Tax Ordinance, however, is quite another question.

On May 25, 1971, the Council of the City of Norfolk amended the License Tax Ordinance of the City by adding thereto Section 70-A which imposes and levies a license tax on every person engaged as principal in the business of renting residential or business property. The Ordinance reads:

> Sec. 70-A. Renting residential or business property.
>
> (1) Every person who, as principal, is engaged in the business of renting houses, apartments or other types of dwelling units, whether he acts for himself or through an agent, shall pay for the privilege of doing business a license tax equal to 1 per centum of the gross receipts, as hereinafter defined, in such business during the preceding calendar year.
>
> The business of renting houses, apartments or other types of dwelling units shall be construed to mean the renting of buildings or portions thereof each of which is designed for residential occupancy as a single

dwelling unit, but not including hotels, motels, motor lodges, auto courts, tourist courts, rooming houses and boarding houses for which licenses are otherwise required by this ordinance.

The words "dwelling unit" are defined to mean a room or rooms connected together, with independent kitchen and sleeping facilities, in a dwelling house or apartment or other type of residential building, designed for occupancy by one family for living purposes.

For the purposes of this subsection, a person who rents four or more houses, apartments or other types of dwelling units, or combinations thereof, shall be deemed to be engaged in the business of renting houses, apartments or other types of dwelling units.

(2) Every person who, as principal, is engaged in the business of renting property used for professional purposes or commercial, manufacturing, industrial or other business purposes, whether he acts for himself or through an agent, shall pay for the privilege of doing business a license tax equal to 1 per centum of the gross receipts, as hereinafter defined, in such business during the preceding calendar year.

For the purposes of this subsection, a person who rents one or more parcels of land or one or more buildings or one or more portions of or spaces in a building or one or more combinations of the foregoing, used or to be used for professional purposes or commercial, manufacturing, industrial or other business purposes, shall be deemed to be engaged in the business of renting property used for professional purposes or commercial, manufacturing, industrial or other business purposes.

The petitioners contend that the Norfolk Ordinance is invalid on its face because it is actually a non-uniform real property tax. They reason that the act of renting property is a necessary incident of the ownership thereof; a tax on the act of renting property constitutes a tax against ownership; a tax against ownership is a tax against the thing itself and is, therefore, a property tax. I cannot agree with this line of reasoning.

In Thompson v. Kreutzer, 72 So. 891, cited by the petitioners, the tax imposed was upon the "privilege of ownership." The Court properly held that the "privilege" of ownership and the "right" of ownership are indistinguishable and that the tax was actually a tax upon the property itself. In Dawson v. Kentucky Distilleries & Warehouse Co., 255 U. S. 288, a license tax was placed upon persons in the business of owning and storing spirits in a bonded warehouse. The case stands for the proposition that the character of a tax must be determined by its incidents rather than the statutory description of the purpose for which it is imposed. In the language of the opinion, "To levy a tax by reason of ownership of property is to tax the property."

I find no authority for the proposition that a license tax may not be imposed upon one engaged in the business of renting property. In fact, the petitioners concede that the business of renting real property may be subject to a license tax as may the business of renting personal property or any other business (Petitioners' Brief, page 3).

The real issue here is whether it is legally permissible for the Norfolk Ordinance to define the rental of four or more dwelling units, or one or more pieces of business property, as "engaging in the business" of renting such property. The petitioners, of course, contend that neither Minnie Krauss nor Dalton-Bundy are engaged in the business of renting property.

The precise question was raised in Young v. Town of Vienna, 203 Va. 265, under an ordinance which contained no language defining what constituted "engaging in the business of renting commercial property." The Court defined the term "engage in the business" as a course of dealing which required the time, attention, and labor of the person so engaged for the purpose of earning a livelihood or profit. In the absence of statutory language specifically providing otherwise, the term implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. Quoting from the opinion of Young v. Town of Vienna, page 268:

> The Vienna town ordinance requires that every person who shall "engage in the business of renting * * * commercial property in the Town shall pay for the privilege of doing business an annual license tax * * *." In giving the language "engage in the business" its usual and commonly accepted meaning when used in statutes and ordinances, it is clear that the one act of the appellant in leasing her land does not bring her within the terms of the ordinance requiring the payment of an annual license tax based on gross receipts. There is no provision in the ordinance declaring that the performance of a single act shall constitute engaging in business. Her one isolated act of renting a parcel of land zoned for commercial use does not indicate that she was engaged in a continuous and regular course of renting commercial property for a livelihood or profit....
>
> (3) It cannot be said that other language of the ordinance requiring only persons renting more than two separate dwelling units to pay the license tax implies that the one act of renting property zoned for commercial purposes comes within the meaning of the ordinance. A revenue ordinance is strictly construed and its meaning cannot be extended by implication.

> If the town council had intended that one act of renting commercial property would constitute engaging in business it could have specifically so stated in the ordinance. In the absence of such language, it cannot be extended by us to mean that the appellant's one act of renting her land requires her to pay a license tax.

In our case, the Norfolk Ordinance clearly and explicitly defines the renting of four or more dwelling units or one or more commercial units as engaging in the business of renting property. The question is whether such a definition is permissible.

Under its Charter, as well as Section 58-266.1 of the Code of Virginia, the City is given the general power to impose and collect license taxes on businesses, trades, occupations, and callings. Regardless of the amount of time devoted by the petitioners to the rental of the properties in question, the fact is that they do own as principal and rent the said real estate. I find nothing arbitrary or discriminatory in the City's exercise of its discretion to define the rentals here involved as engaging in the business of renting. It can certainly not be contested that each of the petitioners derive profit and benefit from the rentals in question. It is also evident that at least some small portion of their time is involved with the rentals.

It has long been established that legislative bodies have the power to define the sense in which words are employed in a statute. Quoting from 50 Am Jur (Statutes, Sections 261, 262) pages 253-255:

> § 261. Legislative Definitions.--It is within the legislative power to define the sense in which words are employed in a statute. A definition in a statute of terms therein used is not an invasion of

the province of the courts to construe statutes. In the exercise of this power the legislature may include within the concept and definition of a term ideas which may not be strictly within its ordinary definition. An act which defines certain words and terms used in it and explains their meaning as they are therein employed is not objectionable on the ground that it gives new and unusual definitions to words and phrases. Moreover, legislative definitions of terms used in a statute are not prohibited simply because they are not the same definitions of the same terms used in other statutes or constitutional provisions. In particular cases, the statutory definition may be a mere affirmation of the common-law definition.

§ 262. Operation of Legislative Definitions.-- The lawmaking body's own construction of its language, by means of definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. Indeed, a statutory definition supersedes the commonly accepted, dictionary, or judicial definition. Where an act passed by the legislature embodies a definition, it is binding on the courts. Where a statute contains its own definition of a term used therein, the term may not be given the meaning in which it is employed in another statute, although the two may be in pari materia. Moreover, the courts should not enlarge statutory definitions so as to include a situation or a condition which, it might be assumed, the legislature would have covered by an enlarged definition if its existence had been comtemplated.

In the case of Mandell v. Haddon, 202 Va. 979, 991, the Court said:

Definition is of the very nature of legislation. It is in this very field that the legislative branch

fulfills its strongest function by determining policy on questions over which reasonable men may disagree.

In Commonwealth v. Whiting Oil Company, 167 Va. 73 (involving a license tax upon the operation of keeping a garage), the Court had this to say concerning the legislative right to define the terms of the statutes:

> The statute itself tells us when this license is to be levied. It is to be levied where five or more vehicles are stored or housed at one time for compensation. Here their number and the compensation paid is not in dispute.
>
> The legislature has undertaken to tell us when this statute shall apply.
>
> (1) "It is well settled that a legislative body has the power within reasonable limitations to prescribe legal definitions of its own language and when an act passed by it embodies a definition it is binding on the courts."

Commonwealth v. Whiting Oil Company also stands for the proposition that statutory classification is a proper device and must ordinarily be sustained if it is based upon a reasonable premise. Quoting again from page 78 of the opinion:

> (5) Classification for the purposes of taxation is a lawful device, commonly resorted to, is at times necessary, and must be sustained if it rests upon any reasonable basis.
>
> (6) "One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

"Classification, unless essentially arbitrary, rests in the judgment of the legislature." Many instances of it appear in our Tax Code. Auctioneers pay a flat fee of $50 and more in towns of over five thousand inhabitants,--section 164 (Tax Code 1930, Appendix, page 2170). Livery stable keepers pay $7.50 in towns of less than two thousand and more in larger places,--section 185 (Tax Code 1930, Appendix, page 2177). The license to restaurant keepers is graduated by the size of the community in which they do business,--section 197 (Tax Code 1930, Appendix, page 2183, as amended by Acts 1932, chapter 225, page 414); and the same system is followed where undertakers are licensed,--section 202. Other instances might be cited but these suffice to show the policy of the State. All of these charges, as are those here under review, are predicated upon what was believed to be a fair estimate of the relative value of privileges conferred.

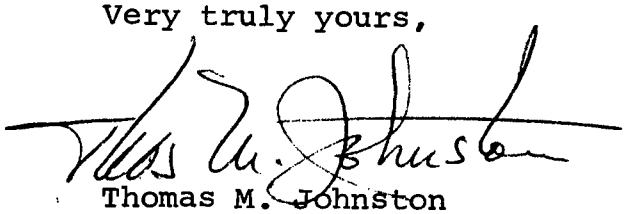
(7) If the classification be lawful, the fact that it may at times bear heavily upon some member of a class will not invalidate it.

"Some injustice is bound to result from any general rule of classification, and equal protection demands only reasonable uniformity in dealing with parties similarly cricumstanced."

For the reasons stated, I have reached the conclusion that the definition in the Ordinance is reasonable and that Section 70-A of the City License Tax Ordinance is valid and should be sustained.

Counsel will prepare an appropriate sketch of an order carrying out the views expressed herein.

Very truly yours,



Thomas M. Johnston
Judge

TMJ:cac

DECREE
Minnie Krauss Case
Filed May 8, 1972

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard on the Petition for Declaratory Judgment of the Petitioner, on the Answer of the Respondent, on the evidence of the Petitioner and Respondent, heard ore tenus, including the exhibits introduced by them, and on the Memoranda of Law submitted by counsel, and argued by counsel.

UPON CONSIDERATION WHEREOF, and for the reasons set forth in its Written Opinion dated May 1, 1972, and filed herein, the Court is of the opinion that Section 70-A of The License Tax Ordinance of the City of Norfolk, 1948, as amended, which Section levies the license tax on the business of renting residential and commercial property, is valid in all respects.

WHEREFORE, the Court doth ADJUDGE, ORDER and DECREE that Section 70-A of The License Tax Ordinance of the City of Norfolk, 1948, as amended, is valid and constitutional in all respects; that the claims for relief set out by the Petitioner in her Petition for Declaratory Judgment are denied; and that the Petition for Declaratory Judgment be, and the same hereby is, dismissed.

It is further ORDERED that the Petitioner pay the cost of this proceeding.

To all of which actions and rulings of the Court the Petitioner, by counsel, notes her objections and saves her exceptions.

DECREE
Dalton-Bundy Case
Filed May 8, 1972

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard on the Petition for Declaratory Judgment of the Petitioner, on the Answer of the Respondent, on the evidence of the Petitioner and Respondent, heard ore tenus, including the exhibits introduced by them, and on the Memoranda of Law submitted by counsel, and argued by counsel.

UPON CONSIDERATION WHEREOF, and for the reasons set forth in its Written Opinion dated May 1, 1972, and filed herein, the Court is of the opinion that Section 70-A of The License Tax Ordinance of the City of Norfolk, 1948, as amended, which Section levies the license tax on the business of renting residential and commercial property, is valid in all respects.

WHEREFORE, the Court doth ADJUDGE, ORDER and DECREE that Section 70-A of The License Tax Ordinance of the City of Norfolk, 1948, as amended, is valid and constitutional in all respects; that the claims for relief set out by the Petitioner in its Petition for Declaratory Judgment are denied; and that the Petition for Declaratory Judgment be, and the same hereby is, dismissed.

It is further ORDERED that the Petitioner pay the cost of this proceeding.

To all of which actions and rulings of the Court the Petitioner, by counsel, notes its objections and saves its exceptions.

ASSIGNMENTS OF ERROR
Minnie Krauss Case
Filed June 2, 1972

Petitioner, Minnie Krauss, assigns as error to the decree heretofore entered in this cause in favor of the respondent, the following:

1. The Court erred in declaring that Section 70-A of the License Tax Ordinance of the City of Norfolk, 1948, as amended, is valid and constitutional in all respects and dismissing the Petition for Declaratory Judgment.

2. The Court erred in refusing to declare Ordinance No. 25,988, adopted by the City of Norfolk on May 25, 1971, by which there was added to the License Tax Ordinance of the City of Norfolk, 1948, as amended, a new section No. 70-A, to be inapplicable to petitioner.

3. The Court erred in refusing to declare Ordinance No. 25,988, adopted by the City of Norfolk on May 25, 1971, by which there was added to the License Tax Ordinance of the City of Norfolk, 1948, as amended, a new section No. 70-A, to be null and void.

4. The Court erred in refusing to restrain the respondent City of Norfolk, its officers, agents and employees, from collection of said tax against petitioner.

5. The Court erred in entering its Decree of May 8, 1972, thereby denying the relief sought and ordering payment of costs by petitioner.

ASSIGNMENTS OF ERROR
Dalton-Bundy Case
Filed June 2, 1972

Petitioner, Dalton-Bundy Lumber Company, Incorporated, assigns as error to the decree heretofore entered in this cause in favor of the respondent, the following:

1. The Court erred in declaring that Section 70-A of the License Tax Ordinance of the City of Norfolk, 1948, as amended, is valid and constitutional in all respects and dismissing the Petition for Declaratory Judgment.

2. The Court erred in refusing to declare Ordinance No. 25,988, adopted by the City of Norfolk on May 25, 1971, by which there was added to the License Tax Ordinance of the City of Norfolk, 1948, as amended, a new section No. 70-A, to be inapplicable to petitioner.

3. The Court erred in refusing to declare Ordinance No. 25,988, adopted by the City of Norfolk on May 25, 1971, by which there was added to the License Tax Ordinance of the City of Norfolk, 1948, as amended, a new section No. 70-A, to be null and void.

4. The Court erred in refusing to restrain the respondent City of Norfolk, its officers, agents and employees, from collection of said tax against petitioner.

5. The Court erred in entering its Decree of May 8, 1972, thereby denying the relief sought and ordering payment of costs by petitioner.

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NATHAN H. BUNDY, JR., called as a witness on behalf of the plaintiffs, having been first sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WORTHINGTON:

Q State your name, please, sir.

A Nathan H. Bundy, Jr.

Q Where do you live, Mr. Bundy?

A 1406 Trouville Avenue, Norfolk.

Q And what is your occupation with Dalton-Bundy Lumber Company?

A I'm secretary of the corporation.

Q And what is the principal business of Dalton-Bundy Lumber Company at this time?

A A wholesale brokerage selling pine lumber.

MR. WORTHINGTON: Your Honor, we offer and without any objection the ordinance which imposes the tax. This is a copy of it.

THE COURT: This will be received and marked Defendant's Exhibit 1.

MR. WORTHINGTON: Plaintiffs'.

THE COURT: Excuse me, Plaintiffs' Exhibit 1. This is in Chancery 71-1393, Dalton-Bundy versus

City.

MR. WORTHINGTON: We can introduce that, I think, in both cases.

THE COURT: All right. Be received then as Plaintiffs' Exhibit 1 in both cases.

(Plaintiffs' Exhibit 1 marked in evidence by the Court.)

BY MR. WORTHINGTON:

Q Mr. Bundy, I hand you another piece of paper which purports to be a letter from the Commissioner of Revenue of the City of Norfolk, dated September 20, 1971. See if you can identify that.

A That is a notice to Dalton-Bundy Lumber Company, Incorporated, of the imposition of the tax in question.

MR. WORTHINGTON: We offer that without objection, I think, from the City as a notice of assessment.

THE COURT: All right. Be received in both cases, then, as Plaintiffs' Exhibit 2.

(Plaintiffs' Exhibit 2 marked in evidence by the Court.)

BY MR. WORTHINGTON:

Q Now, Mr. Bundy, I hand you a document of many pages here which purports to be an agreement of lease between Dalton-Bundy Lumber Company, Incorporated, with Vass and Company, Inc., dated January 1, 1971, and ask you if you can identify that document.

A I can. It is as stated, the lease between the two companies.

Q Now, does this document cover the premises which are rented by Dalton-Bundy Lumber Company, which are sought to be the subject of a license tax by the City of Norfolk in this case?

A It does.

MR. WORTHINGTON: Your Honor, we offer, instead of the document which he's testified to, a copy of it, which we will furnish to the City Attorney, as Plaintiffs' Exhibit 3. I will give you a copy.

THE COURT: This will be Plaintiffs' Exhibit 3. Any objection to this, gentlemen?

MR. TAYLOE: No, sir.

(Plaintiffs' Exhibit 3 marked in evidence by the Court.)

BY MR. WORTHINGTON:

Q Now, what other real estate, if any, is owned

1 by Dalton-Bundy Lumber Company besides the property which is
2 covered by this lease?
3 A None.
4 Q Now, as landlord under the lease that you have
5 just identified, what activities beyond those prescribed for
6 the landlord in the lease are carried on by Dalton-Bundy
7 Lumber Company?
8 A None whatsoever.
9 MR. WORTHINGTON: All right, sir. We have no
10 further questions, Your Honor.
11 MR. TAYLOE: Your Honor, if I may have a few
12 minutes.
13 THE COURT: Certainly, Mr. Tayloe. Take your
14 time. That's quite a lease, gentlemen.
15 MR. McNAMARA: Sure is.
16 THE COURT: Earthquake is about the only thing
17 I see not covered in here.
18 MR. WORTHINGTON: I don't know how we ever
19 overlooked that, Your Honor.
20 MR. TAYLOE: Excuse my time, Your Honor. This
21 is the first time we've seen this.
22 THE COURT: Would you like a short recess?
23 MR. TAYLOE: Yes, sir, if you don't mind.
24 THE COURT: Suppose we take a ten-minute
25 recess.

(The Court recessed at 10:30 o'clock a.m. At 10:40 o'clock a.m. the trial continued as follows:)

THE COURT: Mr. Tayloe, did you have an opportunity to --

MR. TAYLOE: Yes, sir.

THE COURT: -- make the examination you required.

MR. TAYLOE: We reviewed the lease.

CROSS-EXAMINATION

BY MR. TAYLOE:

Q Mr. Bundy, I show you what purports to be a Certificate of Incorporation of Dalton-Bundy Lumber Company, Incorporated, and ask you whether you recognize this document.

A I'm sure I must have seen it in the records of the corporation at one time or another, yes, sir.

Q Drawing your attention to page one and the one, two -- third paragraph in that, would you please read that for the record.

A "To purchase or otherwise acquire, sell, dispose of and deal in real and personal property of all kinds."

1 MR. TAYLOE: All right. Thank you, sir.
2 The City of Norfolk moves this into evidence
3 as City Exhibit. It's got the certificate of the
4 State Corporation Commission on the back.
5 THE COURT: This will be received and marked
6 Defendant's Exhibit 1.
7 (Defendant's Exhibit 1 marked in evidence by
8 the Court.)
9
10 BY MR. TAYLOE:
11 Q Mr. Bundy, would you describe the physical
12 layout of your building and, in regards to your part of the
13 building, where Dalton-Bundy is and where the lessee in this --
14 in this case is.
15 A The building is at 1324 Ballentine Boulevard.
16 There are several buildings there. The office's on the
17 second floor in the front. The Dalton-Bundy Lumber Company,
18 Incorporated, is still maintaining one office in that office
19 space. Bison Company, Incorporated, the lessee, is
20 operating and utilizing the entire remainder of the building
21 and of the property for the purpose of the sale of millwork
22 and building supplies on a wholesale basis.
23 Q So that your operation or offices of
24 Dalton-Bundy is in the same building as the lessee.
25 A My father, who is president of the company,

has an office there. The operating mechanism of the corporation is being conducted out of an office in Suffolk but my father does maintain an office in the building.

Q In the same building --

A That's right.

Q -- in which the lessee --

A That's correct.

MR. TAYLOE: Thank you. I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. WORTHINGTON:

Q Mr. Bundy, I believe you've been questioned about a provision in the articles of incorporation included in some other language with reference to buying, selling, leasing and developing timberland and other real estate. Could you tell the Court what dealings Dalton-Bundy Lumber Company, Incorporated, has had during its entire existence in real estate.

A To my knowledge, the only real estate we have ever acquired is the property at 1324 Ballentine Boulevard, which we still own, and have never sold or disposed of any other property or even owned any other property.

Q And what has been the activity carried on at

1324 Ballentine Boulevard up to the first of January, 1971, by Dalton-Bundy Lumber Company?

A We are in the wholesale millwork and building supply business and the brokerage which is direct shipment of Southern Pine Lumber and other lumber.

Q And, then, is it fair to say that you never engaged in the real estate business in any way except the ownership of the premises on which you operated your main business?

A That's true.

Q And since the first of January, 1971, when this lease that's been introduced into evidence went into effect, what has been the activity of Dalton-Bundy Lumber Company in a business way?

A Our principal business has been the brokerage of -- our only business has been the brokerage of Southern Pine Lumber, the sale of Southern Pine Lumber in truckload and carload lots.

Q And that's carried on out of one office space at 1324 Ballentine Boulevard?

A That's correct.

Q And what is the extent of the operation in Suffolk?

A An office and that's all.

MR. WORTHINGTON: No further questions.

THE COURT: Anything further, Mr. Tayloe?

MR. TAYLOE: No, sir.

THE COURT: Anybody have any further questions, gentlemen?

MR. WORTHINGTON: May Mr. Bundy be excused, Your Honor? Do you need him any further?

THE COURT: You have any objection to Mr. Bundy being excused?

MR. TAYLOE: No, Your Honor.

THE COURT: Mr. Bundy, you may be excused. You may leave, if you wish.

MR. McNAMARA: I'd like to call Miss Krauss, please.

-----oOo-----

MINNIE KRAUSS, a plaintiff, called as a witness on her own behalf, having been first sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McNAMARA:

Q Miss Krauss, will you state your name, please.

A Minnie Krauss.

1 Q Where do you live, Miss Krauss?
2 A 257 Balview Avenue.
3 Q How long have you lived in the City of Norfolk?
4 A Oh, about sixty-five -- let's see. About
5 sixty-six years.
6 Q Sixty-six years?
7 A Uh-huhm.
8 Q Now, what, during your time here, Miss Krauss,
9 has been your occupation?
10 A I've been working for the government, civil
11 service.
12 Q Over what period of time?
13 A I'm retired on twenty-five and a half years.
14 Q When did you retire?
15 A 1967, effective as of 1 January '68.
16 Q So that for twenty-five years prior to that
17 time you worked continuously with the civil service of the
18 Federal government?
19 A Yes, sir.
20 Q Did you have any other occupation?
21 A No, sir.
22 Q Now, during that time -- well, let's not go
23 back over that entire time. Do you now own real estate in
24 the City of Norfolk?
25 A Yes, sir.

1 Q Can you tell us what real estate and where it
2 is.
3 A I own a duplex on 9451 Hickory, a duplex on
4 337 Woodview, a duplex on 257 Balview.
5 Q And 257 Balview is where you live --
6 A Yes.
7 Q -- yourself.
8 A One side.
9 Q You occupy one part of that duplex?
10 A Right.
11 Q And what disposition do you make of the other
12 half of it?
13 A It's -- it's in the hands of a real estate
14 agent, the -- that part is handled and the others are in
15 another.
16 Q All right. Now, which real estate agent is
17 handling the other half of your duplex that you live?
18 A Virginia Realty Company at Ocean View.
19 Q Is that rented and occupied by tenants?
20 A Yes, sir.
21 Q Now, in respect -- is that a one-family
22 dwelling or otherwise?
23 A No, this is a -- it's a two-family dwelling,
24 side by side, duplex.
25 Q But the part that is rented, is that --

1 A It's the other half of the duplex.
2 Q Is that designed for one-family living?
3 A Right.
4 Q Now, you also have a duplex on Woodview
5 Avenue?
6 A Yes, sir.
7 Q That's also in the City of Norfolk, is it not?
8 A Yes, sir.
9 Q How many dwelling units are in that duplex?
10 A Two.
11 Q Do you rent those?
12 A The agent rents that. I have an agent that
13 handles that.
14 Q They are occupied by tenants --
15 A Yes, sir.
16 Q -- who are renting from you through an agent,
17 right?
18 A That's correct.
19 Q How many dwelling units are in that duplex?
20 A Two.
21 Q And is each one of those two designed for
22 one-family dwelling?
23 A Yes, sir.
24 Q And the third piece of property, is it also a
25 duplex?

1 A Yes, sir.
2 Q And where is that?
3 A That's on 9451 Hickory Street, Ocean View.
4 Q That's also in the City of Norfolk?
5 A That's also in the City of Norfolk.
6 Q Is that also being handled by --
7 A Yes, sir.
8 Q -- for you for rentals by a real estate agent?
9 A Yes, sir.
10 Q Which real estate agency?
11 A Jock B. Hughes.
12 Q Hughes. And does Mr. Hughes's agency also
13 handle the Woodview property?
14 A Yes, sir.
15 Q How many dwelling units does this last piece
16 of property, the one on Hickory, contain?
17 A Two.
18 Q And is that occupied by tenants?
19 A Yes, sir.
20 Q Do you own any other real estate in the City
21 of Norfolk?
22 A Just some vacant lots behind me.
23 Q Are these properties rented through written
24 leases?
25 A Yes, sir.

1 Q Now, in respect to the two --

2 THE COURT: Excuse me one second. They also --

3 all of them, as I understand it, you occupy one and

4 rent five duplex-type living units.

5 THE WITNESS: Right, yes, sir.

6 THE COURT: And all of these are in the hands

7 of a real estate agent.

8 THE WITNESS: Yes, sir.

9 THE COURT: Excuse me. Go ahead, Mr. McNamara.

10 MR. McNAMARA: That's all right, sir.

11

12 BY MR. McNAMARA:

13 Q In respect to the two duplexes which are being

14 handled by Mr. Hughes's agency, the one on Woodview and the

15 one on Hickory, I would like to ask you whether you furnish

16 certain services such as electricity --

17 A No, sir.

18 Q -- telephone --

19 A No, sir.

20 Q -- water --

21 A No, sir.

22 Q -- heat --

23 A No, sir.

24 Q -- sewage --

25 A No, sir.

1 Q -- ground maintenance.
2 A No; no, sir.
3 Q Is there any such service that I have
4 overlooked that you do furnish to the --
5 A No, sir.
6 Q -- tenants in these properties?
7 A Not a thing.
8 Q Now, when did you retire, Miss Krauss?
9 A At the end of 1967. You see, they retire on
10 pay periods and the effective date was January the 1st, 1968.
11 Q And did you acquire these properties prior to
12 your retirement?
13 A Oh, yes, sir.
14 Q Can you tell us the years in which you
15 acquired these three pieces of property.
16 A Oh, yes, sir. Let's see now. Balview Avenue
17 was 1950. That was the first duplex.
18 Q That's where you live?
19 A That's where I live.
20 Q All right.
21 A The second one was Hickory Street, 9451
22 Hickory, and that was in 1968 -- I mean, 1958. I'm sorry.
23 Q Fifty-eight?
24 A Fifty-eight.
25 Q All right.

1 A And let's see. Woodview Avenue was 1963.
2 Q 1963. For what purpose did you acquire the
3 duplexes that you don't actually live in?
4 A As a base to -- to have an income when I
5 retired because I knew that on retirement pay, figured on
6 the -- at that time, I couldn't live on just the annuity
7 alone and I wanted additional income to round out the figure
8 so that I wouldn't miss it; I would have enough income coming
9 in to do practically what I wanted to do. And I was advised
10 that real estate was the best way to accomplish this.
11 Q Do you have --
12 A And then --
13 Q Now that you are retired and you made
14 reference to an annuity. You are receiving an annuity?
15 A Yes, my government annuity. That's my monthly
16 check.
17 Q This is your retirement benefit from your
18 employment.
19 A That is correct, yes, sir.
20 Q And you are also receiving certain income
21 from the rents on these properties?
22 A Yes, sir.
23 Q Do you have any other source of income?
24 A Well, not actually -- well, what I have is an
25 interest check from -- from the building and loan that I have.

1 Q You have --

2 A I have a bond and I have a savings account.

3 That's all I have.

4 Q From these three sources, the dividends or

5 interest from your savings and loan, your retirement from

6 the government and the rentals from these properties, how

7 much do you get, say, in a round figure annually?

8 A Including the annuity check and rentals?

9 Q The total, yes.

10 A Well, I'd say in the neighborhood of, say,

11 fifty-two, five thousand two hundred a year. It comes to

12 under six thousand dollars.

13 Q Now, approximately how much of this is from

14 the rentals?

15 A About two thousand five hundred.

16 Q Are you now occupied -- since your retirement,

17 are you occupied -- do you have any other employment?

18 A Oh, no, sir.

19 Q How do you spend your days?

20 A Various ways. I go shopping. I houseclean,

21 cook, you know, usual things that you always wanted to do

22 while you were working and never did. And then I travel a

23 little bit. I spend quite a bit of time out of town.

24 Q And how old are you, Miss Krauss?

25 A I was seventy-three on my last birthday in

1 February.

2 MR. McNAMARA: That's all, Your Honor.

3

4 CROSS-EXAMINATION

5

6 BY MR. TAYLOE:

7 Q Miss Krauss --

8 A Yes, sir.

9 Q -- do you have Mr. Hughes, did I hear you say,

10 as an agent in two of these --

11 A Yes, sir.

12 Q -- spots?

13 A Yes, sir.

14 Q And does he collect the rents on your behalf

15 as your agent?

16 A Yes, sir.

17 Q And does he then take a fee for this service

18 and pay you the difference, is that correct?

19 A Yes, sir.

20 Q Does Mr. Hughes have any authority to make

21 repairs if the need arises?

22 A Yes, he does.

23 Q Could you tell the Court what that authority

24 is.

25 A Well, for instance, it could be plumbing. It

1 could be maybe something to do with the heat, if that goes
2 off, and it's an emergency and he feels that it has to be done
3 right then, he will -- he has a list of people he calls and
4 he will then have that done and deduct that from the check
5 that I'm supposed to get. Usually it's plumbing.
6 Q Now, in the duplex which you live in and rent,
7 do you handle certain of the maintenance of the property?
8 A No. I tell the tenants that since they have a
9 lease with a -- with Virginia Realty, they are to take their
10 claims through them and they do that.
11 Q In the property where at you live --
12 A That's right.
13 Q -- disassociating the other two, do you take
14 care of the gardening, the mowing of the law?
15 A I don't have any gardening. I do the mowing of
16 the lawn myself.
17 Q And that also --
18 A And they do their own.
19 Q There's two separate lots there?
20 A Well, there's two separate lots, which is a
21 dividing -- with a pavement in between it, walkways. And
22 they do theirs and I do mine.
23 Q Is there any joint part of this particular
24 duplex which you live in that is used in common by each -- by
25 the lessee and yourself?

1 A There used to be but there isn't now, no.
2 Q And what did you --
3 A That would be the back yard where we hang our
4 clothes. She would use the lines.
5 Q Who was responsible at that time for that?
6 A Well, we each were. We'd take turns.
7 Q And in regard to inspections, does Mr. Hughes
8 inspect the property from time to time to see whether anything
9 has been damaged or any type of operation?
10 A I believe he does, yes, sir.
11 Q Is there anything else that you can tell the
12 Court that Mr. Hughes does on your behalf in managing the
13 property?
14 A Well, he mainly looks after my interest in the
15 property and there really isn't anything much he can do
16 outside of inspection and --
17 Q And repairs?
18 A -- and repairs. That's about all I know he
19 can do.
20 Q Did I understand that you stated that your
21 rentals came to an amount of $2,500.00?
22 A Yes, sir, that's --
23 Q Is that correct?
24 A Yes, sir.
25 Q Now, that is minus Mr. Hughes's fees?

1 A (Witness nodded.)

2 Q Do you know what the figure was with Mr.

3 Hughes's fees, then?

4 A Well, you can add -- I think it's -- whatever

5 the fee is -- seven percent to that.

6 Q And, so, this is your total amount of fee?

7 A Well, there are deductions. You're forgetting

8 about the -- if there are repairs or anything that have to

9 come out of that.

10 Q All right. Miss Krauss --

11 A Yes, sir.

12 Q -- does not your lease provide on default that

13 you can enter the property and release if that occurs? Are

14 you aware of this provision in your lease?

15 A No. You have to talk to Mr. Hughes about that.

16 I'm not -- he handles all those things for me. I do not

17 enter. He even signs my name to them. I don't enter the

18 property on any condition unless he takes me there.

19 (Some papers shown to Mr. McNamara.)

20 MR. TAYLOE: I'm not finished, Your Honor.

21 However, I would defer to Mr. McNamara to get the

22 leases -- the written leases of Miss Krauss into

23 evidence.

24

25

REDIRECT EXAMINATION

BY MR. McNAMARA:

Q Miss Krauss, did you bring this document into Court this morning?

A Yes, sir.

Q And what is it?

A It's a lease that Virginia Realty holds on the apartment next to mine.

Q That's the lease, then, on the duplex in which you're living, the other half of the duplex in which you live?

A Yes.

Q Is that the lease that is now in effect?

A That's the lease that is now in effect.

MR. McNAMARA: Introduce that, Your Honor.

THE COURT: All right. This will be Plaintiffs' Exhibit 4.

(Plaintiffs' Exhibit 4 marked in evidence by the Court.)

MR. McNAMARA: The other leases we can put in at this time. We were going to put them in through Mr. Hughes but we can do it at this time. I'm not sure, really, that Miss Krauss can identify them. May we put them in by stipulation?

MR. TAYLOE: You wish to do that?

1 MR. McNAMARA: Yeah, be all right?

2 MR. TAYLOE: We're not aware of the situation

3 at all, Mr. McNamara.

4 MR. McNAMARA: I planned to introduce --

5 having them proved by Mr. Hughes but, if you want

6 them in now, I'll be glad to put them in by

7 stipulation, if you're prepared to stipulate that

8 these are the leases on these other pieces of

9 property.

10 MR. TAYLOE: I have no -- we will be glad to

11 stipulate to that.

12 MR. McNAMARA: I hand Your Honor four leases,

13 two on 337 Woodview Avenue, one for apartment A

14 and one for apartment B, and two on 9451 Hickory

15 Street, one for apartment A and one for apartment

16 B, represent to the Court that these are the

17 leases currently in effect on the dwelling units

18 within those two duplexes.

19

20 BY MR. McNAMARA:

21 Q Now, Miss Krauss --

22 THE COURT: Wait just one minute. Let me get

23 this for the record. The lease to William E.

24 Bland and wife, dated 6 August 1971, will be marked

25 Plaintiffs' Exhibit 5. The lease to Gary E. Jenkins,

1 dated March the 2nd, 1971, will be marked
2 Plaintiffs' Exhibit 6. The lease to James A. --
3 looks like Lusan, L-U-S-A-N. Is that what that is,
4 Mrs. Krauss?
5 THE WITNESS: Nujan, N-U-J-A-N.
6 THE COURT: N-U-J-A-N?
7 THE WITNESS: Nujan, yes, sir.
8 THE COURT: Dated August the 23rd, '71, will
9 be marked Plaintiffs' Exhibit 7. And the lease to
10 Mr. and Mrs. Garcia, I guess it is, Mr. and Mrs.
11 Garcia, dated February 4, 1972, will be marked
12 Plaintiffs' Exhibit 8. Go ahead Mr. McNamara.
13 (Plaintiffs' Exhibits 5 through 8, inclusive,
14 were marked in evidence by the Court.)
15 MR. McNAMARA: Your Honor, I think Mr. Tayloe
16 deferred only for the purpose of putting those
17 leases in. I'm not sure he's finished yet. I'll
18 redirect --
19 MR. TAYLOE: If I may pursue.
20
21 RECROSS-EXAMINATION
22
23 BY MR. TAYLOE:
24 Q Miss Krauss, I show you Plaintiffs' Exhibit
25 number 6, which purports to be the lease with Gary E. Jenkins,

1 for 337 Woodview B, and direct your attention to paragraph
2 number three stated as third and ask you to read that.
3 A "Rent in Arrears and Remedies"?
4 Q Yes, ma'am.
5 A "It is further agreed that if said rent in
6 whole or in part shall at any time be in arrears and unpaid,
7 said owner or agent may distrain or sue thereafter, and if
8 the tenant shall fail to comply with any of the conditions of
9 this lease or notice given under the terms hereof, then
10 owner may at his option reenter upon the premises hereby
11 rented without further form or of process of law, and such
12 reentry shall at the opinion of the owner constitute a
13 termination of this lease. No such termination of this lease,
14 however, nor recovering possession of the premises shall
15 deprive the owner of any other action or remedy against the
16 tenant for possession, for rent or for damages."
17 Q If you read paragraph four, marked fourth,
18 directly underneath it.
19 A "If tenant shall breach any covenant or
20 agreement herein contained on his part to be kept and
21 performed, said owner and/or assigns may reenter the demised
22 premises and repossess and enjoy the same as the owner's
23 former estate therein; but before any such reentry shall be
24 made by owner or assigns by reason of any such default or
25 breach, owner shall notice tenant in writing of said default

1 or breach, said notice to be delivered as provided in
2 paragraph one or served on tenant by an officer, specifying
3 the default or breach and demanding that it be remedied; and
4 the right of reentry shall not be true unless tenant shall
5 have failed to remedy the specified default or breach within
6 ten days after receipt of said notice."
7 Q Paragraph numbered fifth.
8 A Well, now, we don't have anything to do with
9 water rent. The tenant pays that.
10 Q Ma'am, would you read the paragraph numbered
11 fifth, please.
12 A "The tenant shall pay all charges lawfully
13 assessed or imposed during the said term upon the said
14 premises for water and sewage disposal charges; and if not
15 so paid, the owner may, if he so elects, pay the same and the
16 amount so paid shall be considered as additional rent of said
17 premises and payable forthwith."
18 Q You've already testified that, I believe --
19 that you have the right in emergency situations, you or your
20 agent, to enter into the property to make the repairs.
21 A My agent does, yes.
22 Q Before any changes in the structure of the
23 building or any additions, are you aware that you have to
24 approve these type of --
25 A Yes.

1 Q -- improvements?
2 MR. TAYLOE: I have nothing further.
3
4 FURTHER REDIRECT EXAMINATION
5
6 BY MR. McNAMARA:
7 Q Miss Krauss, some reference was made to
8 repairs and you've said that you never go near the property
9 hardly. How would it come to your attention that a repair is
10 needed? How would you first learn of a request for a repair?
11 A It would come through Mr. Hughes himself. If
12 he felt that I needed to know about it and it was going to be
13 of such proportions that it was going to cost some vast
14 amount of money, he would naturally call me because then I
15 couldn't count on getting that amount of money in my rent
16 check, I would know.
17 Q Then would you discuss it with him to determine
18 whether or not to authorize him to have the repair made?
19 A Yes, on major repairs.
20 Q And on what basis would you either tell him
21 to make the repair or not to make the repair? What would be
22 the controlling factor in your mind?
23 A Well, the fact of the type of repair and
24 whether the building really needed it, the preservation or
25 whatever you call it of the property, whatever the major

1 thing may be.

2 Q Now, if it dealt with what you're saying,
3 whether the building needed it for the preservation of the
4 property, then you would authorize the repair?

5 A Yes, I certainly would.

6 Q Suppose it was something that had nothing to
7 do with that? What would your action be?

8 A I would leave it entirely to him because he
9 has methods of handling those things and that's really what
10 his purpose of being an agent is.

11 Q Now, do you have any activity with respect to
12 any of these properties other than what is spelled out in
13 that lease -- in those leases?

14 A Really, I don't.

15 Q All right. Is this one of the leases that
16 have been introduced into evidence?

17 A Yeah, that's the one on Woodview Avenue.

18 Q I might ask you, since you've been asked to
19 read one or two paragraphs, to read one or two paragraphs
20 more. Suppose you read paragraph tenth.

21 A "The Tenant Repairs, Upkeep to the Property.
22 The tenant agrees to do at his own expense such improvements,
23 repairs, decorations and upkeep of the premises during the
24 term of the lease as he desires for his convenience and
25 comfort to conform, at his own expense, with such ordinances

1 and regulations which now or may be hereafter put in effect
2 by the City or County wherein the property is located in
3 regard to any matters pertaining to the use and occupancy of
4 the demised premises, including but not by way of limitation,
5 with reference to the control of rats, vermin, insects and
6 other pests as may be provided by ordinance. The tenant
7 agrees to keep the plumbing, sewage and/or septic tank,
8 heating and lighting fixtures in good order and to keep the
9 premises in a sanitary condition."
10 MR. McNAMARA: Thank you, Miss Krauss.
11 THE COURT: Gentlemen, I wonder if we can't
12 stipulate that the paragraphs read by the witness
13 are standard in all -- actually all five of the
14 leases.
15 MR. TAYLOR: That is correct.
16 THE COURT: All right.
17 MR. McNAMARA: We have no further questions.
18 MR. TAYLOE: City has no further questions.
19 MR. McNAMARA: And I'd like to call Mr.
20 Hughes.
21
22 -----oOo-----
23
24
25

1 JOCK B. HUGHES, called as a witness on behalf
2 of the plaintiffs, having been first sworn, was examined and
3 testified as follows:
4
5 DIRECT EXAMINATION
6
7 BY MR. McNAMARA:
8 Q Mr. Hughes, will you state your name and
9 occupation, please, sir.
10 A I'm Jock B. Hughes. I'm a real estate broker,
11 member of the Norfolk Board of Realtors here in Norfolk.
12 Q Do you act as an agent for Miss Minnie Krauss
13 in respect to the rental of certain properties on Woodview
14 Avenue and Hickory Street in the City of Norfolk?
15 A I do.
16 Q Are there in existence written leases in
17 regard to those properties?
18 A Yes, sir.
19 Q These -- I don't know whether you've seen them
20 since we've been in the courtroom. Would you look at these
21 exhibits and tell me whether they are the written leases I
22 just referred to.
23 A Four of them are our leases. One is the
24 Virginia Real Estate Company lease.
25 Q One is not yours.

1 A That's correct.

2 Q The four have to do with what properties?

3 A Hickory Street, 9451 Hickory, and 337 Woodview,

4 both properties in Norfolk.

5 Q Now, Mr. Hughes, what in the way, if any --

6 what in the way of services to these tenants in these

7 properties do you provide on behalf of Miss Krauss?

8 A Well, the way you worded the question I don't

9 quite understand. Our services to the tenant -- we offer no

10 services to the tenant other than what the lease agrees to

11 with the exception of the collection of the rents and that

12 type thing.

13 Q All right. How do you collect the rents?

14 A Well, at the present, the system that we have

15 with the majority of our tenants, after the lease agreement

16 is made and all the different agreements are agreed to and

17 understanding and described, they mail the rent to us each

18 month.

19 Q Is that true in the case of the four tenants

20 here in these two pieces of property that you're handling

21 for Miss Krauss?

22 A Yes, sir.

23 Q They mail the rent in?

24 A Yes, sir, or bring it directly to the office.

25 Q Then how do you handle it from there with

1 regard to you and Miss Krauss?

2 A Well, we do the basic accounting and the

3 control of the ledgers as far as the moneys are retained. We

4 make two payments for Miss Krauss. We have two house payments

5 that we make. I'm talking on two properties. It is unusual

6 but we make the payment on the home that she lives in on

7 Balview, even though the rental is handled by Virginia Realty

8 Company.

9 Q You mean there's a deed of trust --

10 A That's correct.

11 Q -- on these properties.

12 A On Balview Avenue, which I do not manage, but

13 we do make the payment for her from the rental proceeds and

14 we also make the payment on 337 Woodview Avenue.

15 Q Now, in regard to any utility services or the

16 like, do you on behalf of Miss Krauss provide or furnish any

17 such service to these premises?

18 A No, sir, we do not.

19 Q Then, when you receive the rent check, you

20 deduct your commission.

21 A Yes, sir.

22 Q You handle a payment on a mortgage for her.

23 A Two mortgages.

24 Q Two mortgages.

25 A Yes, sir.

1 Q And then what do you do?

2 A Well, we make up our financial statement, of
3 course, a recap each month, take -- showing her the gross
4 amount of money that has come in for that month, our
5 commission deducted, the payments that are deducted and any
6 preservation items that we've had to do for the benefit of
7 her property.

8 Q What do you mean by that?

9 A Well, preservation to me is like -- well, an
10 example, the minimum housing code of the City of Norfolk.
11 There's inspectors all the time going through different
12 areas of the city and they may find there some item like a
13 bad gutter or they may find that there's something in the
14 house that is not satisfactory. That's one example. These
15 duplexes are relatively young in age so, thank goodness for
16 that, we haven't had too much trouble there. But you could
17 have a leak in a water line or you could have a bad fence or
18 a brick loose or something like this. These are the types
19 of things necessary for the preservation and protection
20 against liability.

21 Q So that you, if some such expenditure has
22 become necessary and you have paid for it, then you always
23 deduct that from the net rent before --

24 A Yes, sir.

25 Q -- you send it to Miss Krauss, correct?

1 A Yes, sir.

2 Q Now, are you familiar with the terms of these
3 leases in regard to the maintenance of the property and
4 upkeep and repairs and decorations and so forth?

5 A Yes, sir.

6 Q Does Miss Krauss in her activity with regard
7 to those properties by herself or through you do only what
8 is provided for in the lease or does she voluntarily do more?

9 A The only thing that Miss Krauss does, she does
10 only what's provided in the lease. And if you will read the
11 leases, she has no liability for preservation or repair of
12 anything but common sense tells you that a house needs
13 painting and that a house needs certain types of preservation
14 to retain its value for her own use and little items that do
15 go wrong. Little things on a house must be maintained or it
16 becomes a monster when they're all fixed at one time because
17 there's so many little things.

18 Q And what is the ultimate result of that if
19 the property ran down?

20 A Well, the ultimate result of that would be
21 loss of taxes and a minimum housing code from the city
22 helping us along.

23 Q I mean, from the owner-investor's point of
24 view.

25 A Loss of investment dividend.

1 Q In what way?

2 A Well, if a house is deteriorating and not kept
3 in normal preservation-type of stage, you have a different
4 classification of tenant which would want to rent from you
5 and your rents would automatically go down because of the
6 type and personnel that would come.

7 Q And might it also not affect whether you
8 could rent it at all after so long?

9 A That's very true.

10 Q After someone moved out, rent it to somebody
11 else. Now, have you over the recent times in handling these
12 properties for Miss Krauss made certain visits to the
13 property?

14 A Yes, sir.

15 Q And have you made certain repairs of the
16 nature that you've been describing?

17 A Yes, sir.

18 Q Have you made a review of your records at my
19 request to see, say, within the last year what visits you
20 have made to the property and for what purposes?

21 A Yes, sir.

22 Q Can you tell the Court in respect to these
23 two properties, one on Woodview Avenue and one on Hickory
24 Street, how many times have you been to the property during
25 the last year and what did you do?

1 A Well, counting rerental times and actual --
2 actual inspections, I would say we've been to the properties
3 at least seven or eight times over the period of the year.
4 And for the breakdowns, as you requested, I recapped our
5 work sheets and for 9451 Hickory Street, I'll read you the
6 different items that were taken care of. In April of 1971,
7 we did some plumbing repair which was replacing -- replacement
8 of sink faucets. Now, this type of thing over the period of
9 years of what we consider normal wear and tear, we were not
10 required in accordance with our lease to do it but for the
11 preservation of the property it was to Miss Krauss's
12 advantage to replace the sink faucets. And they cost $35.00
13 because, naturally, water leaking or something like that
14 from a bad faucet, and I don't mean into the sink but I mean
15 down your piping, will create damage to your cabinets, et
16 cetera. Then, again in April -- and I have the dates on our
17 specific bills. I just generalized the month.
18 Q All right, sir. Well, just --
19 A We had a fire damage, tenant's negligence.
20 We had to replace receptacles and door chimes damaged by the
21 fire in an emergency nature to keep the place operating. The
22 tenant's two children -- his name was Distietch, which is
23 not involved in any of the leases that you have here -- his
24 children were playing in the living room with a cigarette
25 lighter and almost burned us down. And we had to spend

1 $86.00 in emergency moneys to get the power back on so that
2 that wouldn't be a continuous problem because we did have a
3 tenant in the other side. But Miss Krauss was reimbursed by
4 the insurance company for that.
5 In June, 1971, we replaced a lock set and
6 duplicate key and that was $8.00. In September of '71, the
7 refrigerator -- this is the property on Hickory Street. This
8 building was built in '57 or '58. We've been managing it
9 since that time.
10 Q Can I interrupt you right there?
11 A Sure.
12 Q Because I wanted to ask this earlier. Are
13 these properties rented furnished or unfurnished?
14 A Unfurnished except for stoves and refrigerators.
15 Q Is that true in regard to all four of the
16 dwelling units --
17 A Yes, sir.
18 Q -- which you handle?
19 A Yes, sir.
20 Q Thank you. Go ahead.
21 A In September, 1970 -- I'm sorry. Yes,
22 September, '71, the refrigerator in one of the units -- this
23 was on Hickory Street -- was just beyond economical repair
24 and because we had leased the property with a stove and
25 refrigerator, we replaced it because it needed to be

1 replaced. In September of '71, we had plumbing repairs,
2 which is one of the flush boxes in the apartment, the inside
3 of the flush box, the ballcock and the float valve, had gone
4 bad and this is preservation and we went ahead and replaced
5 that for $14.10.

6 And then in October of '71, the building did
7 need painting exteriorwise on the wood trim and the window
8 frames quite badly because it has asbestos shingle finish.
9 And we contracted in the amount of $140.00 to have that trim
10 painted. This was the first time the building had been
11 painted exteriorwise in six years.

12 Q All right, sir. Now, Mr. Hughes, in regard to
13 requests that might have been made by the tenants or for
14 services that they might -- that might have been provided
15 for them, without trying to dream up every possibility, I
16 want you to narratively -- let me ask you whether or not in
17 the handling of these properties for Miss Krauss you have
18 performed or authorized the performance of services in the
19 classifications such as cutting the grass, washing windows,
20 janitorial service, heat or electricity, water, light, this
21 sort of thing, painting for decorative purposes, cleaning and
22 this type service.

23 A No, sir, we do not do that.

24 Q All right, sir. How long ago did you first
25 meet Miss Krauss?

1 A I met Miss Krauss when I was eighteen years
2 old in 1943.
3 Q You were here in the Navy, if I'm not
4 mistaken.
5 A Yes, sir. That's how I first came to Norfolk,
6 yes, sir.
7 Q How did you happen to meet Miss Krauss?
8 A Well, I was a sailor boy at the Naval hospital,
9 which is now CINCLANT fleet headquarters. And Miss Krauss
10 was a clerk in the sick officers quarters and I was, in
11 slang, the bedpan commando of that area.
12 Q Is it fair to say that a personal friendship
13 developed between you two?
14 A Actually at that time it did but I didn't
15 realize it would ever culminate to being her real estate
16 agent because at that time I had no idea that I would be a
17 real estate agent.
18 Q Well, at the time or prior to the time that
19 Miss Krauss acquired these properties and put them out for
20 rent, did you have any conversations with her --
21 A Oh, many times.
22 Q -- in regard to that?
23 A Many times. Miss Krauss came to me to get
24 advice because at the time that she came to me, I had been
25 in this business nine years and because she knew me quite

1 well, she came and asked me what would be a good idea. She
2 had a little bit of money that she'd saved over many hard
3 years and asked me what I thought would be advisable for her
4 to do. And she -- of course, she was living in Balview
5 Avenue but she had bought that home to live in as her home.
6 And when she came to me, we talked about the idea of, over
7 the long period of time -- of establishing a program to help
8 subsidize the income that she would lose at the time that
9 she retires. And the only way that it could be done is early
10 enough in her time before retirement, is to build equities
11 in these properties and to build the type of a property that
12 would help bring dividends to her from the investment that
13 she made over the long period of time.
14 Q So you did discuss this with her and advise
15 her in regard to it. Now, are you in a position to say,
16 then, for what purpose she put her money into real estate?
17 A Well, I believe that I am because I think her
18 program of investment was my fault. She bought --
19 MR. TAYLOE: Your Honor, I must object to
20 this on the grounds of certainly hearsay, on the
21 grounds of relevancy, materiality to the issue and --
22 well, I'll rest on that.
23 THE COURT: Seems to me that it may have
24 probative value insofar as the purpose of the
25 property is concerned, the purpose for which

1 Miss --

2 THE WITNESS: Your Honor, we built the --

3 MR. McNAMARA: Wait a minute.

4 THE WITNESS: I'm sorry.

5 THE COURT: Don't tell about what somebody

6 else told you or anything of this nature.

7 THE WITNESS: All right, sir.

8 THE COURT: Tell what you did.

9 THE WITNESS: Well, she came to me and I

10 advised her what I thought was the best investment.

11 So the one in 1958 was built and we managed it and

12 then we built in 1963 the property on Woodview

13 Avenue for her. I accumulated the land for her,

14 had it built, financed it for her and have rented

15 it ever since.

16

17 BY MR. McNAMARA:

18 Q Are you familiar with any other investments

19 in securities or the other investments that Miss Krauss has

20 made?

21 A Well, I know she has a little stock but I

22 don't know anything particular about it.

23 MR. McNAMARA: All right. I think that's all,

24 Your Honor.

25

CROSS-EXAMINATION

BY MR. TAYLOE:

Q Mr. Hughes, in your last statements you refer to "we" in your statements. You are speaking of we as Miss Krauss and yourself --

A No.

Q -- is that correct?

A I'm speaking -- I have a tendency to do that, Mr. Tayloe. We, I mean as her agent and she as the owner and our discussions that through the discussions, as close as Miss Krauss and I are, that we make a decision. I may advise but, of course, she talks and she advises me what she thinks is right and then we come up with what we think is best. But she seems to follow my lead.

Q So, making it perfectly clear, she is the principal and you are her agent.

A That is correct, sir.

Q Okay. Now, you state that you handle collections, including accounting, and I take it this is done once more as her agent --

A That's correct.

Q -- on her behalf as principal. When a unit is vacant, do you seek out potential lessees --

A Yes, sir.

1 Q -- on her behalf? And you have testified that
2 you make emergency repairs and protect from liability and
3 also for the future of maintenance and keeping the building
4 in a sound structure.
5 A Yes, sir.
6 Q And you make routine inspections.
7 A Yes, sir.
8 Q For the same purpose, to see what is necessary
9 to be repaired for the protection of the building.
10 A As a practical control, yes, sir.
11 Q Do you have any set power by the principal,
12 Miss Krauss, as to where you cannot go in and make a repair?
13 A I don't -- I don't know exactly how to answer
14 that, Mr. Tayloe. Miss Krauss relies on me to make her
15 decisions for her. I don't know how to put it any different
16 than that.
17 Q But, once more, you are making them as her
18 agent --
19 A That's correct, sir.
20 Q -- on behalf of her as principal.
21 A Yes, sir.
22 MR. TAYLOE: I have nothing further.
23 MR. McNAMARA: That's all, Your Honor.
24 THE COURT: Thank you, Mr. Hughes. You may
25 step down. Do you wish to keep Mr. Hughes here,

1 gentlemen?

2 MR. TAYLOE: The City doesn't.

3 MR. McNAMARA: He can be excused as far as

4 we're concerned.

5 THE COURT: You may be excused. If you wish,

6 Mr. Hughes, you may leave.

7 MR. McNAMARA: Your Honor, here's a document

8 which we'd like to introduce as an exhibit on

9 behalf of the plaintiff, Miss Krauss. A similar

10 one of Mr. Dalton Bundy has already been introduced.

11 It's a copy of what is introduced by stipulation,

12 notice from the Commissioner of Revenue in regard

13 to this ordinance that we're dealing with.

14 THE COURT: Any objection?

15 MR. TAYLOE: No objection. We so stipulate,

16 Your Honor.

17 THE COURT: This will be received and marked

18 Plaintiffs' Exhibit 9. This is the letter of

19 July 19, 1971, to Minnie Krauss, from Mr. Barfield,

20 Commissioner of Revenue.

21 (Plaintiffs' Exhibit 9 marked in evidence by

22 the Court.)

23 THE COURT: All right, gentlemen.

24 MR. McNAMARA: Your Honor, plaintiffs rest.

25 THE COURT: All right.

1 MR. TAYLOE: Your Honor, the City --
2 THE COURT: Gentlemen, suppose we take a
3 five-minute recess. Go ahead.
4 MR. TAYLOE: With all due respect to the
5 Court's wishes, we are going to put up Mr.
6 Barfield and he should not be more than about
7 three minutes.
8 THE COURT: All right.
9 MR. TAYLOE: And then we will rest.
10 THE COURT: All right.
11
12 -----oOo-----
13
14 SAM T. BARFIELD, called as a witness on behalf
15 of the defendant, having been first sworn, was examined and
16 testified as follows:
17
18 DIRECT EXAMINATION
19
20 BY MR. TAYLOE:
21 Q State your name, please, sir.
22 A Sam T. Barfield.
23 Q And your address, Mr. Barfield.
24 A Business or home address?
25 Q Business would be fine.

1 A City Hall, west wing, City Hall.

2 Q And what is your duties at the City Hall, sir?

3 A I'm the Commissioner of the Revenue for the

4 City of Norfolk.

5 Q Mr. Barfield, I ask you if you can recognize

6 this document.

7 A Yes, sir.

8 Q And what is that document?

9 A This is the -- the ordinance covering the

10 license taxes for the City of Norfolk.

11 Q And it is entitled, "An Ordinance Imposing

12 and Levying License Taxes for the City of Norfolk."

13 A Yes, sir.

14 MR. TAYLOE: Your Honor, I would introduce

15 two copies for the Court, certified copies by the

16 Clerk of the City.

17 THE COURT: All right.

18 MR. TAYLOE: I've furnished counsel with a

19 copy.

20 THE COURT: I'm curious to know why you're

21 introducing two copies.

22 MR. TAYLOE: Well, we assume that there was

23 going to be the two files.

24 THE COURT: Oh, yes.

25 MR. TAYLOE: That's just for the purpose of

1 two -- two different cases.

2 THE COURT: I understand. These will be

3 received and marked Defendant's Exhibits 2 and 3.

4 They're identical copies of the ordinance imposing

5 and levying license taxes.

6 (Defendant's Exhibits 2 and 3 marked in

7 evidence by the Court.)

8

9 BY MR. TAYLOE:

10 Q Mr. Barfield, as your duty of Commissioner of

11 Revenue, is part of your duties to enforce the business

12 license tax book or an ordinance imposing and levying

13 license taxes on behalf of the City of Norfolk?

14 A It is, sir.

15 Q And have you commenced assessment under this

16 particular license tax ordinance?

17 A Yes, sir, I have, sir.

18 MR. TAYLOE: Answer Mr. McNamara.

19 THE COURT: To get the record straight, there

20 are two separate ordinances. Both are received,

21 although they're identical. One for each case and

22 they are marked Defendant's Exhibits 2 and 3.

23 All right.

24 MR. McNAMARA: Defendant's Exhibits 2 and 3

25 are identical, Your Honor?

THE COURT: I am making the assumption that they are.

MR. TAYLOE: Yes, sir.

THE COURT: I have not looked through them but I'm making the assumption that they're identical. Is that assumption correct, Mr. Tayloe?

MR. TAYLOE: Yes, sir, that is correct.

CROSS-EXAMINATION

BY MR. McNAMARA:

Q Mr. Barfield, have you looked over this prepared exhibit?

A Yes, sir, I have.

Q And do I understand that it contains every license tax that is imposed by the City of Norfolk?

A Yes, with the amendments.

Q Well, are the amendments up to date?

A The book that I had has it up to date with the exception, possibly, of the amendment in question today. Now, whether that was inserted last I don't know. This has been certified. I see that the Clerk certified this as complete and let me see if this --

MR. McNAMARA: Your Honor, I think, then, we needn't burden Mr. Barfield with that question.

I'm willing to accept Mr. Tayloe's statement that it is a complete compilation of all the license tax ordinances all the way up to date with all amendments and complete.

THE WITNESS: The City Clerk who prepares these did certify that.

MR. McNAMARA: That's all I wanted to know. Thank you.

MR. TAYLOE: Your Honor, the City rests and we'd ask a break before we continue, sir, if we could.

THE COURT: All right. You gentlemen want Mr. Barfield here any longer? You may be excused, Mr. Barfield.

Gentlemen, suppose we take a five-minute recess.

(The Court recessed at 11:40 o'clock a.m.)