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CITY COUNCIL MINUTES

City Council Chambers
Tuesday, Feb. 18th, 1969

The meeting was called to order by Mayor Rasmussen at 4 P. M.

Present on roll call 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson Murtland, Zatkovich and Mayor Rasmussen. Absent 0.

The Flag Salute was led by Mrs. Banfield.

No minutes were submitted for approval.

HEARINGS & APPEALS:

a. This is the date set over for hearing on the appeal filed by St. Vincent De Paul on the assessment covering its business license.

b. This is the date set over for hearing on the appeal filed by Tacoma Goodwill Industries Rehabilitation Center, Inc. on the assessment covering its business license.

c. This is the date set over for hearing on the appeal filed by The Salvation Army on the assessment covering its business license.

d. This is the date set over for hearing on the appeal filed by Y. M. C. A. on the assessment covering its business license.

VERBATIM REQUESTED BY MAYOR RASMUSSEN

Mayor Rasmussen: Mr. Hamilton, would you lead off by reading the law that these hearings are being held under and the law that governs the taxes that Mr. McLennan's office is seeking to collect.

Mr. Hamilton: These are before the Council on an appeal, pursuant to Sec. 6.68.390 of the Official Code of the City of Tacoma relating to the Business and Occupation Tax, which section provides as follows: "Any Taxpayer aggrieved by the amount of the fee or tax found by the Director to be required under the provisions of this chapter, may appeal to the City Council from such finding by filing a written notice of appeal with the City Clerk within ten days from the time such taxpayer was given notice of such amount. The Clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than sixty days after the filing of the notice of appeal, and he shall cause a notice of the time and place thereof to be mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The City Council shall there upon ascertain the correct amount of the fee or tax by resolution and the City Clerk shall immediately notify the appellant thereof by mail, which amount, together with costs of the appeal if the appellant is unsuccessful therein must be paid within three days after such notice is given.

The Mayor or Chairman of the City Council may by subpoena require the attendance thereof of any person, and may also require him to produce any pertinent books

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and record. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Chairman in charge of the hearing on appeal as to any matter required of him pertinent to the appeal, and it shall be unlawful for him to fail or refuse so to do."

Mayor Rasmussen: Mr. Hamilton, have you reviewed the matter with the Director of Tax & License, Mr. McLennan, and has he had things properly filed.

Mr. Hamilton: Procedurally, they have been correctly filed, Your Honor. I have not attempted to review them as to accounting or contents. I didn't feel that was my function.

Mayor Rasmussen: No. Thank you, Mr. Hamilton.

Mayor Rasmussen: Mr. McLennan, would you give a resume of the actions by your department, what you have done and the reasons for it. I would first like to ask, are all the people represented in this hearing, represented by attorneys. Would you gentlemen come forward and give us your names and addresses, and the people that you represent.

Mr. Arthur S. Langlie: Your Honor, and members of the City Council, I am Arthur S. Langlie and represent in this matter The Salvation Army.

Mayor Rasmussen: Any relation to Ex-Governor Langlie.

Mr. Langlie: Yes.

Mayor Rasmussen: You face looks very similar. Glad to meet you, Art.

Mr. Bradford Gierke: Mr. Mayor and members of the Council, my name is Bradford Gierke, 813 So. K St., I represent Tacoma Goodwill Industries.

Mayor Rasmussen: Thank you, Mr. Gierke.

Mr. Joseph J. Roller: Mr. Mayor and members of the City Council, I am Joseph J. Roller, Attorney at 3821 So. Yakima Ave., and I represent the Particular Council of the Society of St. Vincent DePaul in the City of Tacoma.

Mayor Rasmussen: Mr. Roller, do you not represent the Arch-bishop. Do they have other representation here.

Mr. Roller: This St. Vincent DePaul had been advised by letter of Jan. 29th that has been sent out by the Arch-bishop, a corporate sole, that was originally incorporated as the St. Vincent DePaul Salvage Bureau Incorp., and the Tacoma operation is stated to be called the Particular Council of St. Vincent DePaul of Tacoma Incorporated.

Mayor Rasmussen: Thank you Mr. Roller.

Mr. Richard Taylor: Mr. Mayor, I'm Richard Taylor from the Y. M. C. A. and I am the Associate General Secretary. Mr. Gerald Lynch has been retained to represent the Y. M. C. A. and is expected momentarily.

Mayor Rasmussen: Thank you.

Mayor Rasmussen: I would like to ask, do you gentlemen wish to handle this jointly or on an individual basis. Have you conferred together.

Mr. Langlie: Your Honor, I think possibly I can simplify this, I have handed out and filed with the Clerk a brief statement of the position that I have prepared for The Army and I have requested a one week extension of the hearing so I could prepare that, and I appreciate it. I think that's available to you for review and consideration by the Council. I think my remarks can be limited to about five minutes, and then I'll be finished and I don't know, unless you have some questions, what more I could add. I think the statement will be helpful to you and will set out the facts and the law.

Mayor Rasmussen: All I wondered if you have agreed if you would appear jointly on the individual aspects of the various appeals here or appear separately.

Mr. Langlie: As far as I know, it would be separately, Your Honor, because I think each one is represented. As far as I know, that's how it would be.

Mayor Rasmussen: O. K., thank you very much.

Mr. Roller: I think there is one modification in that, we have not tried to duplicate certain of the City's records. One group has presented a particular letter of March 12th, 1951, some citations of the law. The factual situation is pretty much uniform as far as the actions of the City are concerned in various elements, and we have not tried to duplicate the City's records.

Mayor Rasmussen: As far as the audit, you mean.

Mr. Roller: Yes, and as far as what the City of Tacoma has done. The individual activities may differ as far as individual appellants. We are not trying to pool our appeal in that respect but as far as any factual matters brought before the Council or any items of briefs and laws, we would not try to duplicate this brief individual account.

Mrs. Banfield: May I ask a question. Are you just retained for this particular hearing, or are you retained the whole time.

Mr. Roller: I am representing the Particular Council for St. Vincent DePaul in Tacoma. I am volunteering. I am not, as such, retained as an attorney, but I am, in fact, servicing the problem in this respect.

Mrs. Banfield: I see, I wonder about the rest of the, too. If I might ask, Mr. Langlie, are you retained on full time or are you just here for the hearing today.

Mr. Langlie: I am a member of The Salvation Army Advisory Board and I am here only for this matter. I have no other relationship on a full time basis.

Mrs. Banfield: Mr. Gierke.

Mr. Gierke: Mrs. Banfield, I am retained, particularly for this case. I am not a member of the Goodwill Board.

Mrs. Banfield: Mr. Lynch.

Mr. Lynch: Mayor and Mrs. Banfield, I am a member of the Board of the Y. M. C. A. and have been retained for this specific item.

Mayor Rasmussen: Thank you, Mr. Lynch.

Mrs. Banfield: Thank you.

Mayor Rasmussen: Mr. McLennan, would you give a general statement to the actions of your office, the Tax & License Dept., and the complete story and then we'll approach the individual cases as the Council has suggested they would like to have them handled individually.

Mr. McLennan: Mr. Mayor and members of the Council, do you want me to generalize this in summary form or how.

Mayor Rasmussen: No, I would like you to state the reason for the audit. The dollar amounts that you have arrived at that are due. The penalties involved, if completely paid, and the whole story so the Council may become familiar with it.

Mr. McLennan: In 1967, an audit of our department was performed by Knight, Vale and Gregory, and it was brought to their attention that some inequities on some of these organizations existed. This matter had previously---

Mayor Rasmussen: What date was that.

Mr. McLennan: Well--

Mayor Rasmussen: 1967.

Mr. McLennan: I think it was the 1967, Knight, Vale and Gregory report, Your Honor. For sometime the Manager and I have reviewed this matter and we thought, under the circumstances, it should be brought out in the open so that any inequities that may exist can be corrected.

In clearing our files in the early part of 1968, we came across correspondence, a copy of a letter addressed to St. Vincent DePaul in which the taxpayer, or the registered person, requested to know whether or not they were subject to the City's business and occupation tax. And, at that time it was about 1951, they were notified that, not only The Salvation Army but also the Goodwill and Y. M. C. A., or anyone else that might have been registered with the State were required to register with the City.

The St. Vincent DePaul Society, did file a registration application and did comply with our registration provision. They claimed exemptions under Section 8-H, as it was known at that time, which was not applicable at all, and the former City Controller, under the Commission form of Government, advised these people they would be required to re-register.

In addition, the St. Vincent DePaul did file two tax returns on a bi-monthly basis. By bi-monthly basis, I mean for the period of Jan., Feb. which would be due in March; March and April, which would have been due in May. And between the time of the notification of the communication written to St. Vincent DePaul, a notation was made on the carbon copy of the letter in our office to the effect that they have apparently contacted the City of Seattle and that the City of Seattle was not imposing the tax upon this organization and the trail left from that point on.

Mayor Rasmussen: What organization was this.

Mr. McLennan: This was on the St. Vincent DePaul.

Mr. Bott: Mr. Mayor, point of information.

Mayor Rasmussen: Mr. Bott.

Mr. Bott: Did I understand, you said on the carbon copy, was it on the return this organization had sent to you. They made that notation or was this made in your office by someone in your office.

Mr. McLennan: This notation was made on the carbon copy of the letter that was originally sent to St. Vincent DePaul. In other words, Councilman Bott, if I write you a letter, I'll retain a copy of it and then if I subsequently talk to you, I'll then possibly make a notation on the carbon copy.

Mr. Bott: I thought, perhaps, they had contacted Seattle, but this was in your own office, in your own file.

Mr. McLennan: Yes.

Mr. Lott: Thank you.

Mr. McLennan: St. Vincent DePaul apparently was innocent on this thing, as I look at it. And this is where the trail lapsed. And, so I'm assuming as time went on, or shortly after this period of time, that some notation, or someone advised these organizations they were not subject to our regulation.

Well, so in reviewing the regulation as written in 1950, effective 1/1/51, and subsequent amendments to Chapter 6.68 involving the business and occupation tax; this particular section other than where the supposedly exemption is required, it was formerly known as Remington Revised Statutes, which subsequently became known and codified as RCW. And that's the only prevailing changes that affect this particular section we are talking about. And, as a result, then as time went on, this did exist and Mr. Rowlands and I reviewed this matter several times and we felt, I say, we, we took into consideration all the facts involved. We had received no complaints from other organizations concerning these charitable organizations as to their liabilities, that to follow the Commission form of interpretation, or policy, whatever you want to call it, set out.

And in 1967 some inquiries were made concerning this matter from outsiders and it was from that point on that I reviewed this matter again with Mr. Rowlands and he felt that it would be to everybody's advantage to get this into the Knight, Vale and Gregory report. Now, Knight, Vale and Gregory didn't come across this sort of thing. It was called to their attention so that if any inequity did exist, or does exist, they should be corrected. That's the primary purpose of it.

Now, I think, in further summarizing this, I believe the taxpayer and, I think also the City of Tacoma, has been in error in this thing in permitting it to exist. It did exist and it is now before the Council to make a determination, how long do you put a taxpayer in jeopardy. These people, I'm not pleading for them, I've been in this business a long time and there are rules and regulations that are set forth that could crucify anybody. You can violate any of our rules and regulations. I don't think people would do it intentionally, but the City was a party to this and I feel strongly---

Mayor Rasmussen: Mr. McLennan, I think your position as the Director of Tax and License, is only to explain the procedure of your office, and I think you are out of place in making a plea at all, Mr. McLennan.

Mr. McLennan: Well, I'm trying to give you a little background on this thing

before you get into it.

Mayor Rasmussen: If you would give us the legal basis on which you proceeded, and then would you tell us, you say what was the date that you first became aware of the delinquencies, in 1967.

Mr. McLennan: It was in the fall of 1967, Knight, Vale & Gregory's investigation, I believe, it was; in their report.

Mayor Rasmussen: What was the date when you talked with Mr. Rowlands on the matter.

Mr. McLennan: Well, I don't have an exact time on it and all I can say is that I did review this with him, on this thing, and we thought it should be incorporated in the Knight, Vale and Gregory report.

Mayor Rasmussen: You thought it should be incorporated in the Knight, Vale and Gregory report. Didn't Knight, Vale and Gregory as our auditors make that determination, themselves.

Mr. McLennan: They put it in the report all right; we can't tell them what to put in the report and what to omit.

Mayor Rasmussen: Then why do you say that---

Mr. McLennan: We asked them to put it in the report because we brought it to their attention.

Mayor Rasmussen: I see, that was 1967.

Mr. McLennan: If that was the year in which they made the report.

Mayor Rasmussen: Who made the determination after the auditor said there was a deficiency in the collections. Who made the determination that we were not to collect the taxes from that date on.

Mr. McLennan: Well, I don't think; frankly speaking, I think I made that determination, Sir.

Mayor Rasmussen: All on your own.

Mr. McLennan: Yes, Sir.

Mayor Rasmussen: Would you tell us, Mr. McLennan, what the procedure would be with the average business man conducting, let's say, a stationary store where he would become deficient in his B & O tax. And, what would your procedure be. Would you go through the mechanical portion of it.

Mr. McLennan: Well, Your Honor, it depends upon what facts are involved. Again, you have to be rather representative of this thing; that if this taxpayer was informed by our department that he wasn't required to be registered I think we'd lend a lot of credence to that, as far as going back at all.

Mayor Rasmussen: This is aside from the question. What's your mechanical procedure for collecting taxes, when you find a person deficient.

Mr. McLennan: Well, go into an audit, if it is not a voluntary disclosure. Even if it is a voluntary disclosure, we'll go back to the period involved when they first engaged into the business activity. This could mean if he was involved in an activity since 1/1/51 or any subsequent period thereafter, we would assess that liability from that point on.

Mayor Rasmussen: What penalty.

Mr. McLennan: With our normal 20% penalty.

Mayor Rasmussen: 20% for what.

Mr. McLennan: For delinquency.

Mayor Rasmussen: Day, months or years.

Mr. McLennan: No, we have in our regulation a penalty for failure to file and a penalty for failure to pay. Well, if the taxpayer has done neither one of these things, as a result of it, there is strictly a 20% penalty. So, before the due date of any particular year, the audit is based upon the penalty for the year involved, which would be a 20% penalty, Sir.

Mayor Rasmussen: How do you proceed to collect.

Mr. McLennan: Well, we then perform the audit. The audit is reviewed with the taxpayer and he either concurs with the auditor's findings or he doesn't. And, if he concurs in it, he gets the assessment notice along with a copy of the audit and he has ten days from the date of the assessment notice to make the payment.

Mayor Rasmussen: How many delinquencies do you have in a year.

Mr. McLennan: On audit.

Mayor Rasmussen: On the question of the B & O tax.

Mr. McLennan: Oh, you have a certain number of chronics that feel that it is cheaper to pay penalties than it is to pay the tax liability and most instances the penalty is greater than the tax, in these particular areas. But, you take a representative taxpayer who has a considerable amount of tax liability, he will file a timely return. And so, we have an average of about 300 delinquents per quarter. And most of these are people who are engaged in small business activities merely to subsidize their incomes. They are here today, and by the time we send out a tax return, they have moved or we have to send the agent out to make collections and close it out eventually.

Mayor Rasmussen: If you don't pay the tax, you close the things up.

Mr. McLennan: We have never closed any business up to my knowledge, Sir, from non-payment. We try to work with these people on a partial payment agreement basis because we would rather keep them in business than out of business. And, we've applied this partial payment agreement to many representative taxpayers where our findings involve \$5 to \$6,000, which creates a hardship upon them to make full payment, and as long as they enter into a partial payment financial statement with us, and we find that they're solvent, why we'll enter into this partial payment and if they miss one payment, the whole balance is due. They have a day in court once, and that is enough.

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Mayor Rasmussen: It was in 1967 that the auditor became aware of a deficiency and you determine then that you would not attempt to collect the tax.

Mr. McLennan: Well, it was in the communication that I---

Mayor Rasmussen: Mr. Hamilton, would this hearing be considered that the people testifying are under oath, or should it be required that we put people under oath.

Mr. Hamilton: I think, to be technically correct, Mr. Mayor, should you wish anybody under oath, you had better swear them.

Mayor Rasmussen: Would you take care of the swearing, Mr. Hamilton.

Mr. Murtland: Point of order on this. Would it not be for the majority of the Council to determine whether or not an oath should be administered, rather than just the Mayor.

Mayor Rasmussen: No, I would think not; Mr. Hamilton, this matter may go to court and this is a formal court that the Council---

Mr. Murtland: My name is Murtland.

Mayor Rasmussen: Mr. Murtland, thank you, Mr. Murtland. This---it is quite possible we could ask our legal staff. Mr. Hamilton, is this a judicial decision that the Council is required to make on this case.

Mr. Hamilton: The Council is sitting, in effect, as a judicial body at this time, Mr. Mayor.

Mayor Rasmussen: And theⁿ, in your opinion, should the people testifying be put under oath.

Mr. Hamilton: Well, I think that is something that the Council itself should decide, whether you're taking arguments which, of course, would not be sworn to; statements of fact which you may wish to have an oath administered covering those. It is up to the Council sitting as an appeals committee here. I might point out, Mr. Mayor, that the Chairman of the hearing is the one who actually administers the oath. So, if there is an oath to be administered, it should be done by you.

Mr. Finnigan: Mr. Mayor.

Mayor Rasmussen: I think, Mr. Murtland had the floor, he is asking---

Mr. Murtland: My question is still the same, it should be the determination of the Council, as to who administers the oath, I think Mr. Hamilton is correct. But I think it is certainly the determination of the Council whether or not an oath should be given.

Mayor Rasmussen: Mr. Finnigan.

Mr. Finnigan: Mr. Mayor, I would assume, if you intended this hearing to be this critical, a court reporter would have been provided, certainly you are going to have to ask the Clerk to provide verbatim minutes of all these conversations and comments.

Mayor Rasmussen: Mr. Finnigan, I think that it will be required these minutes be verbatim. This is a little bit broader than a hearing on an L I D; involving

thousands of dollars of the City's money, and---

Mr. Finnigan: That's a matter of opinion, Mr. Mayor. I think that each hearing we have is equally important. This is a matter of individual opinion, as far as I'm concerned.

Mr. Bott: Mr. Mayor, I was just going to ask Mr. Hamilton, if the minutes as we take them here, would the recording be accepted in court, or do you have to have a court reporter, actually.

Mr. Hamilton: No, I think any method of reducing statements of people is admissible. As a matter of fact, my recollection of what may be testified to under oath by someone, may be admissible for what it is worth. Probably a certificate by a court reporter would be the best evidence, but assuming that the transcript is accurate and can be heard, I think it would be admissible in court.

Mr. Bott: If you have tried to listen to some of these transcripts, you know they are a little difficult to transcribe.

Mayor Rasmussen: Further questions from the Council. Dr. Herrmann.

Dr. Herrmann: The law states, "The Mayor or Chairman of the City Council by subpoena requires the attendance of any person." Then it goes on to say, "any person served with a subpoena shall appear at the time and place therein stated;" it further goes on to say, "shall testify truthfully under oath administered by the Chairman in charge of the hearing on appeal as to any matter required of him pertinent to the appeal." There is a specific reference to people who are here by subpoena, rather than individuals who are testifying. I don't see that the oath would add anything.

I might further add, that in spite of the fact that this is an ordinance, this seems to me to be a clear, unseparation of the legislative and judicial and I wasn't elected to be a judge, or to sit here as a judge, and I would rather assume my legislative functions. But, if that's the way it is, I guess that's the way it is.

Mrs. Banfield: I would like to point out to Dr. Herrmann that the legislative body is the one that makes the laws and most certainly it is up to us to see if they are carried out.

Mayor Rasmussen: Is there any question in your minds, members of the Council, that this is an important matter and should be handled a little bit out of our usual run of handling Council meetings in an informal manner.

Mr. Bott: Mr. Mayor, I choose to think that anybody testifying here would tell the truth. And then, do you then by the same token, when you ask one person to bring suggestions, I believe one person to be sworn in, do you then require all the other persons who testify to be sworn in, as well.

Mayor Rasmussen: We could.

Mr. Bott: If you did not intend to, you would be discriminating then against just one.

Mr. Murtland: How does this differ any from the appeal we had not long ago on the taxi driver and his wife, and that was his bread and butter. I don't think we swore anyone in on that one, did we. We were certainly making a determination there, that was just as important as this one; thousands of dollars had nothing

to do with it; the effect on the individual or on the City.

Mayor Rasmussen: Mr. Murtland, you being a lawyer are probably more familiar with the laws and the ordinances of the City than the Mayor is. But in that hearing it didn't specifically provide for the subpoena. In the case of the Tax & License ordinance, where you have an appeal to the Council it provides, any taxpayer aggrieved by the amount of the fee or tax found by the Director, and also in that same law that was passed Sept. 14, 1965, provides that the Mayor or Chairman of the City Council may by subpoena require the attendance thereof of any person and may also require him to produce any pertinent books and records. It also provides that the Mayor could require them to testify under oath, administered by the Chairman.

Now, there seems to be some doubt in the minds of some Council members. There is no doubt in the mind of the Mayor that, when our audit firm of Knight, Vale and Gregory, had made a recommendation in 1967 that it is very important that we determine just who issued the orders, if any were issued, and Mr. McLennan has said he made the determination on his own, that they would take no action, even after he testified that the auditors, Knight, Vale and Gregory, had included this in their report, at the request of himself and Mr. Rowlands. From that time up until the present date, no action was taken.

I thought it was quite important that we determine how, in regard to City employees, that have taken action, improperly with City funds, which may be a case where you go to the bonding company to recover it. There again, it is a legal determination.

The Mayor is only trying to proceed in what would be the logical and legal approach, and I am depending on our City Attorney's staff to see that this hearing is conducted in the proper manner.

Mr. Murtland: Mr. Mayor, may I ask, did you subpoena, Mr. McLennan.

Mayor Rasmussen: No, I did not subpoena, Mr. McLennan.

Mr. Murtland: Then I refer you to the same ordinance, that I believe that it is only those who are subpoenaed that would be required to be put under oath.

Mayor Rasmussen: Do you wish me to get a subpoena. If so, if Mr. Murtland is insisting on a subpoena, would you prepare the subpoena and serve it, Mr. Hamilton. If he is insisting, it's a simple matter of jotting down a few words.

Mr. Bott: He isn't insisting, he only asked you about it.

Mayor Rasmussen: Well, if the Council feels so strongly that you should not have any testimony under oath, the Mayor is certainly willing to let it go into the courts, and, the court is where all testimony is taken under oath. You may proceed Mr. McLennan, with the subpoena.

Mr. McLennan: Thank you, Mr. Mayor.

Mayor Rasmussen: Would you testify as to these dates then again.

Mr. McLennan: Well, I think Knight, Vale and Gregory had been in our office making an audit in '67 and we finally got the report in March. Some assignments were made and it takes a little while to get around to conducting some of these audits. Some of them are assignments we have had on appeal for two years due to the lack of time and personnel to process the work.

I would like to go back to Section 6.68.390--Appeal to the City Council--for a minute. In connection with the last paragraph that you have reference to, I construe this to mean, that where the taxpayer refuses to produce books and records,

etc. to determine what their tax liabilities are, then they shall be subpoenaed before the City Council. That's my interpretation of it, and I think it is correct, Sir.

Anyway, the audits were made on The Salvation Army. We covered the period from Oct. 1st, 1955 to Sept. 30th, 1968. Pardon me a minute, I'm sorry.

Mayor Rasmussen: Could you tell us, Mr. McLennan, when were the letters sent out notifying these people that they were liable for the tax.

Mr. McLennan: At the request of Council, we sent out the letters around Dec. 3rd, 1968, advising the taxpayers they were going to be audited for the period from 1951 on, or subsequent, which ever is applicable, and we performed our audits on that basis and bring the records up to date.

In connection with the St. Vincent DePaul we performed a field audit, covering the business and licensing activities of this taxpayer for the period of Jan. 1st, 1951 through Sept. 30th, 1968. We issued our assessment number AD 221 on Dec. 31, 1968 for a deficiency of \$5,687.48. In accordance with the provisions as set forth under Section 6.68.390 of Chapter 6.68 of the official code of the City of Tacoma. The taxpayer filed his notice of appeal within the time prescribed. The St. Vincent DePaul maintains presently, outlets at 4009 So. 56th, 3805-7 So. Yakima, at 1349 Tacoma Ave. South, and also a location in the City of Puyallup. Their operations consist of the collection of donated merchandise, retail sales and wholesale sales of non-usable merchandise.

Records relating to determining the gross income were not available for the periods prior to July 1st, 1957. The auditor was informed that the receipts were treated on a daily basis and no records were kept during the period after the receipts were accounted for; therefore, it was necessary to base the prior income on a projected average income for Store #1 in accordance with the information that was available to the auditor. In other words, what we did in this case, we projected on a formula basis on periods for prior liability. And this is the customary audit procedure used by taxing bodies performing audits, whether, State, Federal or City. And at this time we included for the Council, some of these documents I made reference to.

We received a notice of protest from St. Vincent DePaul in January and along with the other three they were advised that their first notice of hearing would be on Jan. 21st, 1969.

Mr. Bott: Mr. McLennan, have they subsequently, from the time you sent them the notice, have they been paying their B & O tax----

Mr. McLennan: Our records, to the best of my knowledge, you mean on this assessment notice.

Mr. Bott: No, on the regular B & O tax. After you notified them that they were; the City considered them liable to pay.

Mr. McLennan: Yes, they started. I think, they started to file tax returns on the basis, of the current basis, since then--I could be mistaken about this quarter.

Mr. Bott: So your reference went out only to that which had accumulated prior to the time--

Mr. McLennan: Prior to the time, we included it all, in all of these audits, on any returns that were filed on a current basis included in the audit and they get credit for tax paid.

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Mr. Bott: How long, or when did they first start paying the amount on a regular basis again, after your notification.

Mr. McLennan: Well, just a minute, please, Sir. Beginning with the second quarter of 1968, The Salvation Army filed their first taxable tax return to the City of Tacoma.

Mr. Bott: Are you going to give us all of them; we were just talking about St. Vincent DePaul.

Mr. McLennan: I meant St. Vincent DePaul.

Mr. Bott: O. K. Beginning the second quarter, you said.

Mr. McLennan: Yes, Sir.

Mr. Bott: Quarter, of when.

Mr. McLennan: The second quarter of 1968, this includes the period of April, May and June.

Mr. Bott: Thank you.

Mayor Rasmussen: Proceed, Mr. McLennan.

Mr. McLennan: This assessment was based upon the definition of persons engaged in a business which we have accounted for in our regulations. And then, of course, this applies to all of these organizations. This is a tax for the act or privilege of engaging in a business activity. The tax is measured by the application of rates against the value of products, gross proceeds of sale and gross income of the business; in other words, not only this business and occupation tax in the City of Tacoma but as well as the State, and in most other cities that have a bonafied business and occupation tax, we are talking about a transactions tax. The regulations are not concerned whether or not people are engaged on a non-profit operation or whether they take a loss or whether they are charitable. We make no distinction, and we feel they come strictly within the purview of our regulations as enacted as of January 1st, 1951.

Mayor Rasmussen: Is St. Vincent DePaul the only one that is now paying B & O tax.

Mr. McLennan: No, there are two others that are paying it.

Mayor Rasmussen: Just two.

Mr. McLennan: Yes, Sir.

Mayor Rasmussen: What time did they start paying it.

Mr. McLennan: In the case of The Salvation Army, it commenced with the second period of 1968.

Mayor Rasmussen: That's the same as St. Vincent DePaul.

Mr. Bott: Mr. McLennan wasn't that right after the time you had notified each of the agencies.

Mr. McLennan: Pardon, Sir.

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Mr. Bott: Was that just after the time then that you had notified these agencies that they were subject to the tax.

Mr. McLennan: We contacted these agencies and---

Mr. Bott: In 1968, you said.

Mr. McLennan: In 1968, shortly after we received our Knight, Vale and Gregory report.

Mr. Bott: Then, right after that they started paying, when you told them they were required to pay.

Mr. McLennan: Yes, Sir. Just a minute, Sir. In the case of Goodwill Industries, they filed their first return for the quarter April, May and June 1968.

In the case of the Y. M. C. A., we did not get around to them until the fall, about November or so; we had a little trouble trying to get together, their attorney and our auditor just didn't get there, so as a result we consequently made a jeopardy assessment according to our regulation. So if there were going to be hearings on this thing, we might as well have them all at the same time. Since that time the Y. M. C. A. has registered with us; they haven't filed any tax return because it is all included in our assessment officially issued to them in February of this year.

Mayor Rasmussen: This jeopardy assessment went back to what date.

Mr. McLennan: The jeopardy assessment went back to 1951, Sir.

Mayor Rasmussen: The same as all the rest.

Mr. McLennan: Yes Sir. All except St. Vincent DePaul, but I think that covered a shorter period of time because they did not have a location at that time in Tacoma.

Mayor Rasmussen: I have a date here of Oct. 1, 1965 through Sept. 3rd, 1968, is the period of your audit. Is that for all four organizations or just an individual organization.

Mr. McLennan: It was just partially, they didn't have all of these locations and then some of them began in the late fifties or early sixties. I do not have that exact information. I can get it for you, if you like, Sir.

Mayor Rasmussen: To date, now then, all four organizations are registered and presumably are going to pay their taxes.

Mr. McLennan: All four organizations, as far as I am concerned, are registered with us. We have assessed the general licenses that are applicable to their applications, we have assessed the tax and we have assessed the penalties.

Mayor Rasmussen: Are they paying their tax to your department, under protest.

Mr. McLennan: I couldn't tell you right off hand. I don't recall any of them coming in on protest; they could be very well, but under protest, actually doesn't mean anything.

Mrs. Banfield: I would like to ask Mr. McLennan a few questions if I could. How many years have you been Director of the Tax and License Dept.

Mr. McLennan: Well, I came to the City of Tacoma from the State Tax Commission and they asked me to come to work for them in the fall of 1957.

Mrs. Banfield: 1957.

Mr. McLennan: Yes Ma'am. As a result of it, I was told to try to get this--at that time the business and occupation tax, Tax and License, was a division of the Dept. of Finance. I was Assistant Finance Director as of Jan. 2, and I got docked for the first day because I wasn't on the payroll fifteen minutes on Dec. 31, 1957. I thought it would take about six months, and I could get my feet on the ground pretty much, but I've concluded that you never can get your feet on the ground.

What has happened in the past, is not for me to say, I can't judge for the periods prior. All I can say is that I try to do a representative job. Try to follow out the complaints that come in, both from violations standpoint as well as people trying to rob other people out of their money. We have so many people, we can only do so much work and we are not infallible.

Mrs. Banfield: I didn't mean that at all, but I was just trying to figure out. You came with the department in 1957, but you weren't aware of these violations until 1967, is that right.

Mr. McLennan: I don't think that would be correct, Mrs. Banfield. I think I was aware of these and I discussed them with Mr. Rowlands and we talked about it and this is the policy that was instituted by the Commission form of Government. Regardless of whether it was the Council, Manager form of Government or what Government we were in, it was the policy that was set forth and it was determined then and I can't speak for what Mr. Rowlands may have to say but,--

Mayor Rasmussen: I'll get to Mr. Rowlands, very shortly, he can speak for himself.

Mrs. Banfield: May I ask a couple of questions, please.

Mayor Rasmussen: You have the floor, Mrs. Banfield.

Mrs. Banfield: Was there ever a person or persons present at your discussions who is not an employee or officer of the City of Tacoma; when you were discussing this.

Mr. McLennan: I think I understand this. You are asking whether or not there was any other person there in the presence of Mr. Rowlands and I.

Mrs. Banfield: Yes.

Mr. McLennan: Mrs. Banfield, I don't recall, really, I don't.

Mrs. Banfield: You never requested anyone to concur with the suggestion that you let bygones be bygones, and not make any attempt to collect the delinquent taxes.

Mr. McLennan: That's a pretty hard question to answer. I've tried to interject something here a little bit earlier and I was set down by the Mayor a little bit.

Mayor Rasmussen: Well, Mr. McLennan.

Mr. McLennan: Yes, Sir.

Mayor Rasmussen: When you are asked a question by the Council members, a direct question, try and give a direct answer as you can. This is very important. You are not under oath. But, you may be, if it is required. Numerous people may be put under oath at some later date, but now we are searching for facts. What the Mayor quoted to you was that you were not in a position to plead the case.

Mr. McLennan: You are correct, Sir.

Mayor Rasmussen: You are here to plead your own case as Director of Tax and License, representing the City, your sole duty is to collect all taxes that are due in as legal and proper manner as you can. That's why I was---

Mr. McLennan: We're trying to do it.

Mayor Rasmussen: So, Mrs. Banfield has asked you a question, will you please answer it as exactly as possible.

Mr. McLennan: Will you please restate your question again, Mrs. Banfield.

Mrs. Banfield: Well, I just wanted to know if you ever requested anyone to concur with the suggestion made by you, that it would be well to let bygones be bygones and not attempt to collect the delinquent taxes and penalties that were due the City by the appellant's corporations.

Mr. McLennan: Well, may I ask your indulgence. I would appreciate you referring the question to someone else. I mean, would you mind directing it to Mr. Rowlands.

Mayor Rasmussen: She is directing it to you, Mr. McLennan. If there was any other person present and concurred or suggested to let bygones be bygones. Now, you're giving the testimony.

Mr. McLennan: I think it was the matter of, on that basis, that here are some taxpayers that were led to believe; whether it was right or wrong, it is not for me to judge; but anyway, they were led to believe they weren't liable for these assessments that we put up, or what we proposed to do in the future. And I think, that I have a letter here, dated Nov. 15, 1968 in which I quoted that it would be inequitable at this late date to impose the taxes on a retroactive basis upon the file information in our possession. This is an actual fact, this is not intended to take anyone off the hook and it was not meant to be that way. But it can certainly be fair play, that we look at it from the standpoint when somebody is led to believe something, whether it is right or whether it is wrong, then go all the way back, it is rather hard for any taxing authority to impose that sort of thing. Now, if the people were not told, this is something else.

Mayor Rasmussen: Mr. McLennan, I think Mrs. Banfield's question was, were there people present, and who were they. Is that your question.

Mrs. Banfield: Yes.

Mayor Rasmussen: Who were the people that were present.

Mr. McLennan: The only person that I can mention is, that was present, was Mr. Rowlands.

Mayor Rasmussen: Mr. McLennan, you can answer truthfully.

Mr. McLennan: I am answering you truthfully.

Mayor Rasmussen: Then give the names of anybody that was present.

Mr. McLennan: If there was anybody else present, Mayor, I am not aware of it. I do not recall.

Mayor Rasmussen: It is not the Council's position, in fact I think it is the Council's position, that all employees are going to be protected and there will be no vindictive action permitted.

Mr. McLennan: I'm sure of that Mayor, and I appreciate what you say. I'm trying to give an honest, direct answer as much as I know how.

Mayor Rasmussen: Is that the answer, Mrs. Banfield.

Mrs. Banfield: He didn't answer, Mr. Mayor.

Mayor Rasmussen: Will you re-state your question.

Mrs. Banfield: I asked if there were any person or persons present at any discussion between you and Mr. Rowlands, that wasn't an employee of the City, concerning---

Mr. McLennan: That was not an employee of the City, I'm sorry, Mrs. Banfield, I thought you meant, of the City. I think there was someone there on one discussion that I know of that I think Mr. Patterson was present. Now, just what was discussed at that meeting, and this happened a couple of months ago, I actually don't recall.

Mrs. Banfield: Where was that discussion held.

Mr. McLennan: That was in the Manager's office.

Mrs. Banfield: The Manager's office.

Mr. Finnigan: I wondered if the Mayor and any of the Council members have discussed this with the Administrative Dept. of the City of Tacoma before this evening in the office, I mean in your office or the Manager's office or whatever the appropriate office would be. Has it been discussed among the staff members previous to this, by you Mr. Mayor or Mrs. Banfield.

Mayor Rasmussen: Are you asking me.

Mr. Finnigan: I am asking you mainly, and Mrs. Banfield, about this whole thing. Has this been discussed with Mr. Rowlands and the rest of the staff, those who are interested and concerned about it.

Mrs. Banfield: You're asking me.

Mr. Finnigan: I'm asking the Mayor, and then I'll ask you, Mrs. Banfield. I want to know. Are you bringing out in the open now for the first time, with all these staff members, or have you discussed all of this with them before, so they will know what the answers are to some of these questions. I would just kind of like to know, Mr. Mayor.

Mayor Rasmussen: Mr. Finnigan, I can speak for the Mayor. After reviewing

Knight, Vale and Gregory's report; you will recall it was six months after that report was issued, the Mayor called a study session and asked the auditors to come up and review the report with us, the Council members. At that study session we went down each one of the recommendations, and in reply to the questions, we asked Mr. Rowlands, has any action been taken to implement these recommendations by our auditors. They received some \$10,000 for making that audit. In answer to each one of the questions, Mr. Rowlands, answered, no. One of the recommendations, Mr. McLennan has stated, was that there were certain organizations in the City that were not paying B & O tax. And, most assuredly, this should be brought to the attention, and action taken on it. Further, in the 1969 budget request by Mr. Rowlands, in his letter of instructions to all Department heads on a pink sheet, it was stated that action should be taken to collect all B & O taxes due. And that a special drive should be put on to collect the B & O tax. Then, I'm---

Mr. Finnigan: Mr. Mayor, have you had conversation, pertaining to this.

Mayor Rasmussen: Yes.

Mr. Finnigan: Between Mr. Rowlands' office and your office.

Mayor Rasmussen: No, not with Mr. Rowlands.

Mr. Finnigan: That's what I wanted to know.

Mr. Finnigan: Mrs. Banfield.

Mayor Rasmussen: Now, Mr. Finnigan, let me say further, so you'll have the full story.

Mr. Finnigan: I think I have it.

Mayor Rasmussen: I don't think you have. The discussion was held in the Mayor's conference room between Mr. Patterson, Mr. McLennan and Mr. Hamilton. And we reviewed the matter of the tax and license, the taxes that apparently were due according to our auditor's report, not Mr. McLennan's auditors, and as to what action would be taken.

The Mayor stated at that time, that the matter was very serious, that he could not make the decision. This was a decision either for the Council as a whole or for the court. And if there was malfeasance or misfeasance in office, or improper conduct by an officials, it then would have to be approached on the basis of whatever the legal determination was. But I refused to handle the matter in the Mayor's office as I have refused to handle any other matters when I think it is up to the Council to make that determination.

I did, and Mr. McLennan is a very hard and conscientious worker; I did tell Mr. McLennan of any communication that he had with any organization about tax matters should be handled by letter, properly signed and copies kept, and that telephone conversations were out, so far as the Mayor was concerned. I think it is important when you handle City business, you handle, it in the proper manner.

That Mr. Finnigan, is the extent of the Mayor's involvement in the matters. He thought it was a matter for the Council to decide.

Mr. Finnigan: You have never discussed this with the City Manager, either in your office or his office, or any other office.

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Mayor Rasmussen: No.

Mr. Finnigan: Just in that study session you referred to.

Mayor Rasmussen: Well, let me say, that this was a request, not as the Mayor's request. It was the matter of people looking for answers, and they looked the wrong place, as the Mayor was not prepared to make a determination. Now, you can ask Mrs. Banfield her question.

Mr. Finnigan: Mrs. Banfield, have you discussed this with the City Manager at all, prior to this hearing.

Mrs. Banfield: Only in the study session, Mr. Finnigan.

Mayor Rasmussen: I might say, I was present at the study session. I think you were present and Mr. Rowlands was present at the time the auditor's recommendations were discussed, and apparently no action had been taken. Is that the answer you're looking for, Mr. Finnigan.

Mr. Finnigan: It was as I expected, Mr. Mayor.

Mr. Bott: I feel concern for our Director of Tax & License here, because he has evidently been put on the spot. The fact is, we are basing this upon the recommendations and I say, recommendations, and this is what I understand, that Knight, Vale and Gregory's audit was a recommendation; it was not an edict. These people by consent or otherwise and the one person has been notified they were exempt from this. It has been the policy, so our Director was working directly within the policy of the City and he wasn't, himself, trying to circumvent any of his responsibility or take anybody off the hook. And I don't think we should put him in the light of the feeling that he was the one that was the culprit.

Mayor Rasmussen: Mr. Hamilton, could you advise the Mayor who is the policy making body for the City.

Mr. Hamilton: Mr. Mayor, there is no question about that, the Mayor and Council are the policy making body for the City.

Mayor Rasmussen: Now, Mr. Hamilton, are you aware that the Council by resolution or ordinance has ever relieved any business or organization from paying any B & O tax.

Mr. Hamilton: No, Sir, I am not.

Mayor Rasmussen: Mr. Bott, it is quite apparent that you are not aware that the City Council is the policy making body and the reason for that is that we make policy by resolution, by motion, by ordinance, and all of the people of the City become aware of that, by reason we are required to do that out in the open.

Mr. Bott: It might be evident to you that I am not aware of that, but I am aware of it. I think may be I was aware of it a little bit before you were so concerned with it. But then, you have also been on the Council for the length of time that you have, and by consent I was aware of the fact that these people were not paying that, and if I don't pressure the case, I don't think they should have too. I realize what they do, and the good they do for the community, and we all were aware of it. You must have been aware of it too.

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Mayor Rasmussen: Mr. McLennan will clarify this point. Has the Council established the policy of exempting any organizations within the City from the B & O tax, or any business, that you know of.

Mr. Bott: By consent.

Mr. McLennan: No. All I know is that as far as these organizations are concerned, since 1951, they have.

Mayor Rasmussen: You have something on file, down at your office.

Mr. McLennan: I have nothing on file.

Mayor Rasmussen: A resolution.

Mr. McLennan: No, Sir. But, I mean the evidence up to that point that was all ready brought out here, during the period of 1951; apparently that was the Commission form of Government's policy and this has been carried on right straight through to the Council-Manager form of Government. And, unless that policy changes, I don't know, and this is the reason why it is kicking around right now.

Mayor Rasmussen: Mr. McLennan, you have people that are in various types of business. You have people that are in the wheat business, people in the flour milling business and would this determination be made by you, as to whether you would tax them and what level you would tax them.

Mr. McLennan: Let's talk about me then in connection with this. Anyone engaged in a business activity in the City of Tacoma may be subject to our regulations, depending upon the activity in, and, in many instances I have gone back to 1951; our auditors have gone back to 1951 and assessed tax and liabilities that may be owing to the City of Tacoma.

But these people are the people who claim they never were aware that we have these regulations, which doesn't excuse them any, but in this instance, apparently St. Vincent DePaul was aware of it and they were apparently advised, but nothing was done subsequently about it. And we subsequently in Nov. of 1968 received a signed statement from the former Controller, Mr. Lyle Lemley, who said that was the policy that was formulated at that time by the Commission form of Government.

Mayor Rasmussen: Do you have a letter in the files in the Tax and License Dept., Mr. McLennan, advising these people that they are exempted from the tax; each one of the organizations---

Mr. McLennan: No, they are also going to testify themselves, as they were going to search their files. In my records, Your Honor, I have no records in our files that show that they were taken off the hook, or were not subject to the tax, other than a pencilled notation in connection with the carbon copy of the original letter that was addressed to St. Vincent DePaul.

Mayor Rasmussen: Do you collect tax, B & O tax from rummage sales.

Mr. McLennan: No, Sir.

Mayor Rasmussen: Do you collect tax from the sales of the confection stands.

Mr. McLennan: Yes, Sir.

Mr. Murtland: I wish to make a statement, Mr. Mayor. Whatever policy was established, whether it was done by the Legislative branch of our particular City Government, or in some other way, it was established in 1951 by the Commission form of Government. It was a few years before the Council-Manager form of Government came into being. As I say, at that time, whether or not it was proper, I think we should relate it back to that time, and not put the monkey on the Manager's back by referring constantly to the fact that what has been done during this time.

Now, you are always talking about prior Councils; let's talk about prior Commissions. You are always saying how bad the prior Council's were; they didn't do this and they didn't do that. Why not refer to the Commission for a while and see if they were not the ones that were lax, and the Commission was the one that was elected by the people. They represented the people, if they saw fit to let this thing go by and the thing carried on. Alright, we have it now; they put it into effect, let's get on with it.

Mayor Rasmussen: Mr. Murtland, I don't know just what you're referring to.

Mr. Murtland: I think you do.

Mayor Rasmussen: I haven't heard anybody say anything about the Manager, other than that he will have a chance to speak for himself. There was quite a question in the time lag, as to when they became aware. Mr. McLennan has stated that he has known for sometime that these organizations were not paying the tax and he suggested to the auditors that they make a report on it, and that this has been discussed with--maybe, Mr. Rowlands; I would think he would be the appropriate one to discuss it with, incidentally, any employee of the City is not entitled to make a determination by himself with respect to something as serious as tax and licenses.

So, whatever you may say, Mr. Murtland with regard to this outcome, you are free to say. But we are allowing time to determine the amount of tax, when it was due, and Mr. Hamilton has read the law, that there are no exemptions. Mr. McLennan has properly filed the audits and now the organizations are here to tell us why they feel they should not pay.

Mr. Johnson: Mr. Mayor, from what has been said here in this meeting and the entire meetings that we have had on this, it is very evident to the entire Council I believe, that the staff has been acting under the policy and the implied direction of the policy making group of the City going back to 1951, prior to this form of government. They have been acting under the implied, at least, instructions and possibly direct instructions that organizations of this type are to be exempt from these taxes that we're talking about. And, I think, they are perfectly justified in carrying that policy through until they are instructed to do something different.

Now, if it is the will of this Council that they be changed, and that these taxes be assessed to these people, I feel that's quite all right. We have the perfect right to do it, and I might say, that I've changed my mind about one thing, I think that they, perhaps, should be required to pay comparable taxes from now on. But, to attempt to go back and re-hash this into past history, I think it is totally wrong on the part of this Council. I think we're stepping into a field of retroactivity that we have no business being in, and I feel that the staff has been perfectly justified in doing exactly what they have done.

Mayor Rasmussen: Mr. Hamilton, would you advise the Mayor and the Council what is the statute of limitations regarding taxes.

Mr. Hamilton: Mr. Mayor and members of the Council, it depends on the facts and circumstances. A party who never files a return or is guilty of fraud or misrepresentation in the material facts, the statute in so far as taxes is concerned

as a general rule, it never does toll.

The ordinance provides for a four-year statute of limitations for an error in computation or applying a wrong theory, or something of that nature. Where, if a person files a return, though improper, and assuming that there's no material misrepresentation or fraud, and it is an erroneous mistake, if the auditors should fail to catch it, within the four year period, then they cannot go back and assess beyond that period of time.

Mayor Rasmussen: Does this clear the matter up for the Council members.

Mr. Bott: Mr. Hamilton, what is the prerogative of the Council as far as dismissing any of those back taxes.

Mr. Hamilton: The Council, according to the ordinance, after the hearing shall determine what, and fix the tax pursuant to resolution. There are several alternatives which the Council has. As I indicated some weeks ago, in my judgment, the Council may by resolution, if it so desires, collect the full amount of the taxes together with all penalties. Then it will probably have a court determination as to whether or not such an assessment is proper.

I am also of the opinion, assuming the Council finds as a fact, based upon credible evidence that the taxpayers in question make a due and diligent inquiry as to whether or not the taxes were payable; whether or not they were misled in their inquiry by somebody purporting to have authority, whether they had actual authority or not, to make a statement in that regard, and if the taxpayers relied on that information, then I think the Council has two alternatives. One, is to assess the full amount of the tax and forgive the interest and penalties. The second, would be to let the four-year statute apply.

There are some cases and I believe I read some quotations some weeks ago, to the effect that if the party having an interest in land, in good faith applies to the proper officer, for the purpose of paying tax thereon and payment is prevented by mistake or fault of such officer, the attempt to pay is considered in most jurisdictions as the legal equivalent of payment in so far as to discharge any lien or bar the sale of the property.

If you convert that statement to the present situation, if the Council should find from credible evidence that these organizations made some attempt to pay and were thwarted in their desire to register or whatever steps were needed at that time, then in effect, there was a constructive finding of a return, even though it may have been erroneous; therefore, the Council, in my judgment could apply the four-year statute of limitations.

Mr. Bott: Mr. Hamilton, could the Council then say, for example, just revert it back to the time they received notification, which was I believe, Dec. 3rd, a letter sent to St. Vincent DePaul. Could we, then legally go back to the time they were notified by the City, that the City figured that it was their obligation to pay from now on.

Mr. Hamilton: In my judgment, Mr. Bott, and members of the Council that alternative is available, if the Council should desire to utilize it. Provided, that they find that there was a genuine estoppel which existed. In my judgment, and for what it's worth, that's probably the least defensible for the negotiations.

Mr. Cvitanich: Mr. Mayor, I would merely like to make a couple of comments before we hear from anybody else involved. No. 2, one member of the City Council, on the right, stated we had a policy of overlooking tax payments, and went on to add they do a great deal of good in the community. I don't think I would argue with the position what good they do in the community.

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As one of the Council members, I knew that we had this policy on non-profitable organizations, charitable, etc., but after this came out, why then it raised some questions in my own mind. Now, some people are trying to form the impression that we are blaming the City Manager form of government; then we turn around and try to blame the Commission form. I find it very unique and odd, when the form of government did get changed, most all policies in the City of Tacoma were reviewed. And those areas of concern were brought to the Council's attention, and if the policy required reviewing or amending, it was done by the Council.

I can point out I inherited a policy of toleration in 1960 and we have it in the City of Tacoma with the full knowledge of this Council and prior Councils. This form of government was supposed to clean up the town which was a bad situation, but we condone a policy of toleration.

So if this situation was bad in 1951, and the Commissioners saw fit to exempt these people. Perhaps, it is still good today and perhaps, it isn't, but to say that it comes as a surprise, etc., I can't buy that. We periodically review policies, whether it is the L I D or annexation policy, a number of policies, so to try to put the blame on the Commission form of government anymore than we do or the City Manager form of government is a real weak argument.

Mr. Johnson: It's a statement of fact.

Mr. Zatkovich: Well, I think Mr. Cvitanich expressed his feelings somewhat the same way as I do. Now, it appears that someone is trying to blame the old Commission form of government. If the Councilman on my left wants the floor, he may have it, but I thought, Mr. Mayor you gave me the floor.

Mayor Rasmussen: You have the floor, Mr. Zatkovich. Other Councilmen will remain silent.

Mr. Zatkovich: As a matter of fact, this same Councilman mentioned back since 1951 we inherited this policy. Well, since I've been a member of this Council, we haven't discussed this particular policy with management. And I don't know whether he has ever discussed this with any other Council member, I also feel that there should be something done, after all, anyone in private enterprise, he has to pay his taxes, no question about it, regardless of feeling. But, the question in my mind now, is how far back do we go. I think there was--something wrong to begin with and, of course, two wrongs don't make a right. If you're going to blame it on the old Commission form well, then we'd better review the whole thing. It seems to me, like Mr. Cvitanich said, that quite a lot of things were reviewed, but because this thing is particularly bad now, we have to go back to the old Commission form. I am sure we can dig out plenty if we have to do that.

The question in my mind now, I believe, is that they should be taxed like anyone else, but how far back do we go to pick them up. I'm not going to say that I'm going to blame these organizations, either, entirely, even though they knew they were getting away with something that was a policy, no question about it. It was a policy. But I think that this policy is not exactly appreciated by people in this City or any other City. So I think, that where do we go from here, that's the question now and how far back do we go to pick up these taxes.

Mayor Rasmussen: Mr. McLennan, what is the amount of tax for a thousand dollars worth of business one-tenth of one percent.

Mr. McLennan: Well, we're talking about, one-tenth of one percent in some instances.

Mayor Rasmussen: That's for retailing.

Mr. McLennan: Retailing, wholesaling, manufacturing. We are talking about a

quarter of one-percent in connection with service activity.

Mayor Rasmussen: Are some of these organizations connected to the service activity.

Mr. McLennan: Well, by service activities, I mean service classifications. We're talking about rental of facilities that are not on the basis of rental of real estate.

Mayor Rasmussen: Rental of rooms.

Mr. McLennan: Rental of rooms, is retailing. And, if it is on a transient basis or on a 30-day over basis, it's not taxable at all because it is considered to be rental of real estate. The State tried to tax on that basis a number of years ago and this is why we get into a period, of over a thirty-day period in this rental of real estate; that's not subject to tax. Off-hand, we are talking about in the neighborhood on an adjusted basis of about twenty-seven thousand, three hundred and-----

Mayor Rasmussen: Services then they would be, Mr. McLennan; what base are they taxed on.

Mr. McLennan: They are one-quarter of one percent, Sir. The areas that we are talking about are possibly, the Goodwill and Y. M. C. A.--

Mayor Rasmussen: For service.

Mr. McLennan: Yes, Sir.

Dr. Herrmann: I agree with what has been said. I agree with what has been said, I think we could shorten this hearing if we come to some determination about whether, in fact, any tax was due.

I didn't understand that we were trying to blame any particular one form or another, but if these was traditional or it was policy, and it was kind of by right of having it exist, and we frequently talk about, we did during the budget hearings, people work for equal pay and may be, equal tax for equal services.

I would be interested whether the City of Seattle does, in fact, tax these non-profit organizations. After all, the end product in all of these is, people that don't have anything to do with making a profit, and I don't think you can quite consider them in the same light as a confectionery stand or a business that is operated for a profit. I would also be interested, in whether or not there is any obligation by any of these to the State. You probably know about that, you were down there for a long time, whether the State requires a tax from these organizations.

It seems to me we don't have to cross-examine people or blame the form, if, in fact, these groups were satisfied that no tax was required of them because no tax had ever been, or because they had been instructed that they were not taxable sometime in the distant past, and this thing had never been corrected. They certainly are not at fault and I think of interrogating individuals and trying to make a big full blown hearing out of this, that we should shorten it and come to some rational conclusion about whether or not any liability is there and, if there is a liability, how far does it extend back in time.

Mayor Rasmussen: Dr. Herrmann, you have made several points there that are quite true, and we are in accord with that; the organizations are doing a good valuable work and they do humanitarian work. There is no question about that. But, we are

also taxing other organizations that are doing equally good work. What we must do and why it is very important, is that you have your city departments, and they are doing the job they are supposed to do. The law says that they shall do it. Then, there is several determinations to be made. When did they, as City Department heads, become aware that the tax should be paid, and why was the Council not made aware of it. That would be one question. The other question would be, if they are determining policy, who gave them that authority to determine policy. Then, you have the final question, are those people liable for full penalties.

It is apparent that they were served proper notice at one time by the then controller, Lyle Lemley. Mr. Gaisford indicated that he was in conference at the time the decision was made. All we have to sustain Mr. Gaisford's and Mr. McLennan's statements is, that we have a pencilled note on a carbon, not on onion skin copy, but on a yellow sheet of paper, I think, isn't it Mr. McLennan. It is a note that says 'exempt'. And the organizations at the previous hearing were going to produce their letters showing that they had received an official letter exempting them from the tax. They were all served at one time. And the other question, we did make this request of Mr. Rowlands, an investigation discloses that only St. Vincent DePaul and the Y.M.C.A. are paying the business and occupation tax to the Department of Revenue. The Dept. of Revenue in Olympia is lax that they are taxing one organization and not taxing the others, if these taxes are, as stated, in the information you have here. And, in the case of Seattle there is a court case that we will refer to later, in regards to the, you have it in your files, the Y. M. C. A. and that the Supreme Court, made a determination that the tax was due. All of these questions is what we are arriving at and getting information. Do you wish to speak, please give your name and address.

Clay Patterson: I am Clay Patterson, 729 St. Helens, Tacoma. I did not get a letter in for the organization that I happen to be an Executive Director of because I did not plan on appearing at this particular hearing. However, I have been in constant conference over a period of many months with Mr. McLennan. I had a conference with Mr. Rowlands, with our Mayor, with Mr. Hamilton and I have conferred with Mr. Hamilton in his office a couple of times on this matter.

Many of you are beginning to say, well, what in heavens name, how does Patterson enter into this situation; and I would like to clarify that at this time.

Prior to the incorporation of the organization in which I am an Executive Director, which is a non-profit organization of physically disabled people, Mrs. Patterson and myself appeared personally in the office of Mr. McLennan and in a lengthy conference with him after saying exactly what codes we would come under as a non-profit corporation, it was ascertained that we would, if we manufactured or sold anything, we would be subject to pay the B & O tax, and it would require a registration. He also informed us that we would also need in addition to that, the State registration. So, we got both of those registrations. We have complied one hundred percent with the code, we have filed our reports consistently and accurately as our books will testify. We have been in business for more than a year now.

I merely bring that point out to show what my interest is. We have an aggrieved organization in this matter. I have been listening here, attentively, Mr. Mayor and members of the Council, and I have heard numerous members of our City Council tonight, refer to the policy that was established by the previous commission form of government here in exempting the various non-profit corporations who are the appellants here tonight at this hearing.

Let me say this, Mr. McLennan has certainly missed the boat on his homework. I took my auditor, Mr. Lyle Tibbits, and we went into Mrs. Melton's office and requested the 1951 minutes and we sat there hours on end. Mr. Tibbits, my auditor, went through that thing scrupulously from page to page to page, from Jan. 1, 1951 if you please Mr. Mayor and members of the Council, to December, to the end of the year.

Now, not one notation, either by resolution by a motion or in any way shape or form is made in the 1951 minutes in reference to excusing or exempting these four non-profit corporations who are the appellant corporations here at this hearing tonight. And I will say this, for members of the Council here tonight, and I say it in earnest criticism for them to constantly refer to the policies set by the previous form of government, this is a complete error.

No policy has been established. I even got my hands on a copy, and they are hard to get I assure you, of the old Charter, effective June 1, 1927, and it expired, of course, when the new Charter came into effect, Jan. 1, 1953, when the present form of government was enacted, and that was when the new Charter took over. Now, no place in there does it authorize the City Council, or the Commission to grant tax exemptions to any firm, and I might quote from the Constitution of the State of Washington from Article I, the Bill of Rights, Section 12 and I will paraphrase this--Mr. Hamilton's, I'm sure, legal mind would do much better than I will, and it concerns special privileges and immunities. It merely says this. no law shall be passed. It doesn't say the Legislature. No law shall be passed, this is for the entire State and would include this body, and other legislative bodies; no law shall be passed that shall grant special immunities or privileges to any citizen, group of citizens or corporations other than municipal that shall not equally be granted to all citizens, any citizens, group of citizens or corporations. That is the end of Section 12 of the State Constitution.

So, it is obvious Mr. Mayor and members of the City Council, from what I have said, that inasmuch as no records of this transaction to which Mr. Gaisford volunteered the information that he was present at in 1951, he volunteered that information verbally here on the first of last month at a special hearing. No place, at any time was there any records of any legislative action taken by the previous administration, the commission form of government to make it legal, so if it was a political situation, rest assured, Mr. Mayor, it was a hanky panky, backroom deal. There is no question, no doubt about it. The only way that a deal of that kind could have been consummated, Mr. Mayor, would be by and between Mr. Lyle Lewley and whatever City officials were in on the transaction, and the representatives who represented the various organizations at that particular time. Now, as I recall, on Jan. 21st at the initial hearing, at which time the Council, granted a thirty-day postponement, or a three-week's postponement, the Mayor instructed each one of them that they should bring with them a letter authorizing them that they were tax exempt from the B & O tax.

I would like to go further, Mr. Mayor and members of the Council, and say that we are constantly talking about the business and occupation tax. This is a major portion, but also it could be considered a minute portion of the assessed taxation that is due the City of Tacoma, and justly due. We're talking about a violation of 6.15 the Charitable Solicitations Code, here. No mention of that has been made here tonight. Good heavens, the B & O tax is only one tenth of one percent; that's an insignificant amount. We are talking about (17) years of violations of 6.15 of the Charitable Solicitations Code. Each and every one of these organizations have been guilty of this. They have never taken out, until just recently, until the heat became too great, any charitable solicitation license, which is demanded by the Code under 6.15.

We are also talking about violations of 6.44, Secondhand Book Dealers and Secondhand Dealers' licenses, over a period of (17) years. So we are not talking exclusively Mr. Mayor and members of the Council, about the B & O tax.

Much has been said here tonight, let's overlook it, because of the good these organizations are doing. Mr. Mayor and Ladies and Gentlemen of the Council, if we are going to do that, then let's pass a resolution to excuse all Doctors, good heavens, look at the good they do. Let's also excuse all morticians, look at the good they do. The Doctors bring us in and the morticians put us away, and

let's excuse all those in the interim, in the intervening period that deal in businesses of various kind.

In your agenda tonight, you will find excerpts, xerox copies, of a case that was adjudicated on July 11, 1963 by the Supreme Court. This was an en banc decision. The Young Men's Christian Association, Versus the State of Washington, and it concerns B & O taxes. I prepared that. Mrs. Patterson outlined one specific area there, Item (4) for you, which defines where the Supreme Court defines persons, and I think if my memory serves me correct, Mr. Mayor and members of the Council, they go as far as saying, that not only are all persons engaged in business subject to the State B & O, business and occupation tax, under 32.04.030, but whether they are non-profit, charitable, organized or not. That's a pretty broad statement.

At the Jan. 21st hearing here, Mr. Gentry, the Executive Director of Goodwill, I'll name it properly, Tacoma Goodwill Industries Rehabilitation Center, Inc., their name was changed for some strange reason on May 6th, 1964. One of the Councilmen filed the change of name as their acting attorney. His services are gratuitous. I compliment him for that.

Now, Mr. Gentry stood at this platform before this very microphone on Jan. 21st, Ladies and Gentlemen of the Council and in response to a query by Mayor Rasmussen, whether or not his firm paid the State B & O tax, his answer was, no. I might say at this time that I have contacted, I have made it my business to contact Mr. Stanford of the Dept. of Taxation who is the right hand arm of Mr. George Kinear who runs the Dept. of Revenue down there, and they are amazed. How on earth, an organization that grossed a million dollars last year, could turn in their sales tax for all retail sales on approximately 1/2 half a million dollars, and yet not show anything in the business and occupation tax, is one that I can't possibly conceive. And, Mr. Kinear, I assure you is equally baffled to date.

We're not talking about just B & O taxes, we're talking about a worse thing than that. We're talking about the lack of registration. Now, I have heard much criticism of 6.68 here tonight, Mr. Mayor and members of the Council, and I would like to remind the distinguished body that there are four members here now that voted on Feb. 14, 1965 to enact this very ordinance that they are now criticizing and haggling over as to who has the responsibility to administer an oath, or what the statute says. I can quote the statute, perhaps, forward and backward, for you if you would like to have me do it, but I don't want to take that amount of your time or my time. But I will say this, you are all familiar with your City Charter, I am sure, and you are certainly familiar with Sec. 6.4 which is your oath of office in which you hold up your right hand and swear to uphold the Constitution of the United States, the Constitution of the State of Washington and to enforce, if you please, all of the laws and ordinance of the City of Tacoma. Now, we are concerned here tonight Mr. Mayor and members of the Council, with a radical violation, seventeen or eighteen years ago, as a result of some hanky panky backroom politics. Not legislative action, if you please, but backroom politics, that's all it was, and that's all it can be, and I brand it as such.

Now, whether, Mr. Lemley was implicated, I really don't know. I only know this, that the cover letter that has been concerned here tonight, of great concern here, the cover letter or that letter of the carbon copy which Mr. McLennan mysteriously produced in his files here, not to many months ago, with a pencilled notation on it; the pencilled notation is made directly on the carbon copy, indicating, of course, that the cover letter which all of you have read, you have it in your agenda, the cover letter went out without the notation as to the exemption on it. And it notified St. Vincent DePaul, if you please, that not only they but the Y. M. C. A., The Salvation Army and the Goodwill, were in Mr. Lemley's opinion subject to the payment of the B & O tax. Then something happened, and what happened, well, the Lord only knows. But whatever happened, didn't happen in the Council

Chamber because, the 1951 minutes do not show any reference to any exemption, and I repeat that over and over.

Now, you are asked to resolve the question here tonight, so I would like, if you please, Mr. Mayor and members of the Council, for you to remember that you are public servants as member of this Council. You are not here to disregard the ordinances that are on the books, that at least four of you voted for and put in this book on Feb. 14, 1965. And, I would like to have you remember that you have a duty to perform to the citizens and the taxpayers and property owners and others in the City of Tacoma, as public servants. To forgive this tax as computed by Mr. McLennan would be tantamount to tearing the Charter to shreds and throwing it aside and saying, to heck with it, we'll make our own Charter and operate as we darned well see fit. And I'm sure that that will never happen with this honorable bunch that we have here on our Council at the present time.

I would like to say this in conclusion, that it would be extremely interesting inasmuch as Mr. Gaisford volunteered the information that he was there in 1951, it would be extremely interesting for this body to query Mr. Gaisford inasmuch as his memory was so good on Jan. 21st for him to come out now publicly again and state who, besides himself was there. Who were the parties, what representation was there. And I say this without fear of contradiction; that the taxpayers of this City are sick and tired of carrying the weight of non-profit corporations. Please remember Mr. Mayor and members of the Council, that we have just experienced a tremendous expenditure for the removal of snow from our streets. I wonder what the representatives of these organizations would think if we would have said, well, we're sorry, but we can't remove any snow from in front of your area because you haven't contributed to the tax structure of the City of Tacoma. They expect fire protection. They expect police protection and they enjoy it. Not as taxpayers, but as non-taxpayers.

One of the Councilmen said tonight, that well, maybe we'd better look at the good they are doing. They are certainly not in the business for profit. I'm not going to name any specific organization, Mr. McLennan knows, this, and I know it. And I know where the 200 and some thousand dollars went, and I know what date it arrived, and one of these non-profit corporations shipped approximately a little over 200 and some thousand dollars down to a certain location in San Francisco, Calif, not too long ago and it shows in the audit. Mr. McLennan has that knowledge. I certainly hope you would disclose it to the proper authorities. Thank you very much.

Mayor Rasmussen: We tax morticians and we tax Doctors, do we tax Hospitals.

Mr. Patterson: I'm not familiar whether or not--are they a non-profit corporation. I should assume they are taxed.

Mr. Bett: Maybe the department can answer that.

Mayor Rasmussen: Mr. Patterson was here and I was going to ask him. What I did say was that, we are bound by law and not by what our hearts might dictate in regard to these organizations. In effect your organization is paying B & O tax other organizations are paying it. But we can't disregard our oath of office and say, we feel in this instance some of them are doing good and this should be, regardless of the facts.

Mr. Patterson: This is absolutely correct Mr. Mayor, and I might add at this time, that I heard the word, estoppel, here tonight as a plea. Quite a laughable thing occurred, I received a letter from one of the city officials regarding this matter, many, many months ago in which the words, inequitable, estoppel, was used, so I queried this gentlemen in his office and asked just what did you mean by that.

He said, it is a legal term. So we skirmished around for fifteen minutes and finally, I said, look, you don't actually know what the term means, do you. And he finally admitted and said, no, he didn't. Well, then pray tell me, how in the heck did it ever get into your letter, of course I know how it got in and I know who put it in there and why it was put there. I might say I am certain that based on the evidence of the nature of the exemptions, the illegal act, by whatever group of people got together in 1951 and made that backroom policy and did not duly record it in the minutes of the City, I am hesitant to believe that any court would consider it a valid plea in the case of this kind; not, when it is based on hanky-panky backroom politics.

Mayor Rasmussen: Does any Councilman have a question of Mr. Patterson.

Mr. Murtland: Mr. Patterson, this organization you speak of, who is the President.

Mr. Patterson: Beg pardon.

Mr. Murtland: Who is the president of this organization you referred to several times.

Mr. Patterson: The one, I am Executive Director of.

Mr. Murtland: Yes, Who is the president of it. You said, the organization made application to the office of McLemans. Who is the president of the organization.

Mr. Patterson: Mr. John McCoy is the President of Washington Disabilities, Inc.

Mr. Murtland: You were the president.

Mr. Patterson: I was the president until our last Board of Directors meeting. I served the initial year.

Mr. Murtland: Who is Secretary.

Mr. Patterson: Mr. Lyle Tibbits.

Mr. Murtland: I see. Who is the ^{PRIOR} ~~private~~ secretary.

Mr. Patterson: Mrs. Grace Patterson.

Mr. Murtland: That's your wife, isn't it.

Mr. Patterson: That's correct.

Mayor Rasmussen: Further questions of Mr. Patterson. Thank you very much Mr. Patterson, I feel that the radio audience should know that Mr. Patterson is blind and I certainly wish that I had his capabilities.

Thelma Coonan: My name is Thelma Coonan, 614 No. Meyers. I'm sorry to speak again tonight. I noticed that some of our Council members who were members of the Council in 1965 seem to refer to this going back to 1951, and the former form of government. I am amazed at these Council members who don't know their Charter better. More particularly I'm amazed that apparently some of them had to vote for it or it wouldn't have passed. Section 6.68 of our Charter, every single Chapter of it, was passed by Ordinance 17926, Sept. 14, 1965. Now five of these members of this Council were members of the Council at that time. One is an attorney, he vaguely refers to things that go back to 1951 under the old former form of government. Mr. Mayor and members of the Council again I refer, it would seem that our governing body should know the code of the City of Tacoma. They took an oath to uphold it. I don't know

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How they could uphold anything if they don't know what it was. Yes, it is Mr. Murtland.

Mayor Rasmussen: Mr. McLennan, does the City pay B & O tax to the State.

Mr. McLennan: You mean, utilities tax, Title 2, Title 3, Title 4 and Title 5.

Mayor Rasmussen: And also the business and occupation tax.

Mr. McLennan: Under Title 2, and utility tax.

Mayor Rasmussen: What other departments in the City are paying the tax.

Mr. McLennan: To the State.

Mayor Rasmussen: Yes.

Mr. McLennan: Well, I imagine all these utilities are paying taxes under the Department of Revenues regulations. I audited the City of Tacoma in 1954 and I can assure you they are.

Mayor Rasmussen: Do we pay it on our business operations out at the park.

Mr. McLennan: I know they do, yes Sir. Mr. Mayor, Mr. Patterson made a question here, about hospitals, or you made an inquiry. I'd like to verify that hospitals are exempt, other than their restaurant operations. They're required to pay the tax on that.

Mayor Rasmussen: Mr. Gaisford, you stated that you were present; I'm making it easy for you attorneys that are present here, and asking questions so that you'll have all the facts before you. Mr. Gaisford, you stated you were present at the time that Mr. Lemley made this determination, that no tax was due. Is this correct.

Mr. Gaisford: Yes Sir, Mr. Mayor.

Mayor Rasmussen: What year was that.

Mr. Gaisford: In 1951, Sir.

Mayor Rasmussen: And who was present, Mr. Gaisford at that meeting.

Mr. Gaisford: At that particular time, I do not believe the Commission itself were present, I believe Mr. Jack Riedinger, who is now working as an accountant for the Tacoma Transit System was present, and he, along with Mr. Lemley were requested to go over to Seattle and check with their organization over there to see whether or not a tax was being paid on these types of organizations. They did come back with the statement that they were not.

Now, I believe in all fairness to Mr. Lemley; his name has been used here considerably this evening in regards to back-door tactics. I believe in all fairness to Mr. Lemley, he should be subpoenaed to this Council and give him the right to make his statement. I believe he is one of the most honorable men that the City of Tacoma has ever had as a servant to the City of Tacoma. And for anything that he might do in his duties as City Controller, during the years of 1946 through 1953 were honorable and as City Treasurer from 1953 up to last year, let's see, it was Oct. of 1967, were nothing but honorable things for the City. And, I do not believe his reputation or any statement as back-door tactics being taken by a prior elected official, or an appointive employee, should be taken without the presence of Mr. Lemley, himself.

Mayor Rasmussen: Mr. Gaisford, Mr. Lemley was present, and yourself and Mr. Jack Riedinger. Jack, at that time, what was his position.

Mr. Gaisford: Jack was, I believe, classified as an Accountant I or an Account-Clerk. I'm not to certain as to his classification. He was in charge of the E & O tax.

Mayor Rasmussen: What was your position.

Mr. Gaisford: I was Assistant Controller.

Mayor Rasmussen: And, there was nobody else present.

Mr. Gaisford: Not that I recall.

Mayor Rasmussen: I think this is pretty clear in your mind, you know you were there and Mr. Lemley was there, and Mr. Riedinger --

Mr. Gaisford: I believe if you would call Mr. Lemley he would --

Mayor Rasmussen: You are sure there was nobody else present.

Mr. Gaisford: I could not recall of any other person; that was eighteen years ago, Sir. I do recall there was considerable contact made with Seattle in regards to our B & O tax.

Mayor Rasmussen: No elected official.

Mr. Gaisford: I do not recall of any elected official. Now, here is another thing you might contact. All individuals are available, with possibly the exception of Mr. Jim Kerr. Now, I do not know his whereabouts, I saw Mr. Kerr when he was in the Council here some months back, but --

Mayor Rasmussen: He's available.

Mr. Gaisford: But, Mr. John Anderson is available, Mr. Clif Erdahl is available, Mr. Roy Craig is available, Jack Roberts is available. I think all these people are readily available and I'm quite certain if there is any knowledge about the business and occupational tax, they certainly would be able to substantiate any statements being made.

Mayor Rasmussen: Was--well if none of these gentlemen were present, was the matter ever discussed.

Mr. Gaisford: That's why I say, Mr. Mayor, Mr. Lemley should be here, because he was the elected official. I was a City employee on a leave of absence as Assistant Controller.

Mayor Rasmussen: I was just wondering, if this determination was made in the office and these were the only people present, -- as Mr. Patterson has said, there was certainly no ordinance passed and no resolution.

Mr. Gaisford: Mr. Mayor, I think if you read the particular phase here in the newspaper, it says, 'there was formal action to amend the business and occupational tax ordinance, Gaisford said' But, I do know these firms were told --

Mayor Rasmussen: What are you reading from.

Mr. Gaisford: I'm reading from the article in the newspaper that was brought forward. There's no sense to the article, itself, because it says here that there was formal action taken and then it turns right around and says that I do not know these firms were told. So, I mean the statement itself does not bring together any coherent item of what was said.

Mayor Rasmussen: You agree that there was no formal action taken.

Mr. Gaisford: I agree that no formal action, but it says that there was formal action taken.

Mayor Rasmussen: Well, I think that was your statement previously. There must have been formal action because nobody ---

Mr. Gaisford: No Sir, I do not believe I said that there was formal action. There was no formal action.

Mayor Rasmussen: The only people in power to make a decision, of course, were the elected officials.

Mr. Gaisford: Yes Sir: I believe I made the statement also, that it was probably an oversight on the part of the Commission that the particular ordinance adopting the B & O tax was not amended. It was an oversight on the Commission itself.

Mayor Rasmussen: Well,

Mr. Gaisford: Lyle was an elected official, as you know. He was not just a City employee. He was elected from 1946.

Mayor Rasmussen: The Controller was elected at that time.

Mr. Gaisford: Yes, Sir.

Mayor Rasmussen: And, this was within his power.

Mr. Gaisford: This was within his power, yes, Sir.

Mr. Herrmann: Well, I resented some of the remarks about the backroom politics, and Mr. Lemley. I've known Mr. Lemley for a long time and have known him to be an honorable servant of the people. And I agree with Mr. Gaisford, that in all fairness, that Mr. Lemley ought to be called and asked to be here because I'm satisfied that he would not be a part of any sinister, backroom, miserable politics. And, I think it would only be fair for Mr. Lemley that an apology be directed to him, and that he be invited to attend and make his position clear in reference to this.

Mayor Rasmussen: That matter will be taken care of Dr. Herrmann. I agree with you that Mr. Lemley is an honorable person.

Mr. Zatkovich: I might add, I believe I requested his presence and that someone contact him just a couple of weeks ago. Is that not right, Mr. Rowlands.

Mr. Rowlands: Yes, that is correct.

Mr. Zatkovich: Did you try to contact him, or is he available, or what.

Mr. Rowlands: Mr. Mayor and Council members. I didn't contact Lyle. Basically, we felt it would be better not to have him cross-examined, like some other people have been cross-examined. Since it has come up like it has tonight, I think that Lyle would be very happy to come down. He has written a letter as you know. He has written a letter notifying what he indicated on that letter of 1951.

Mr. Zatkovich: Well, it was agreed that someone would try to contact him. You said you didn't want to but under the circumstances he probably would.

Mr. Rowlands: I agree, now he probably would, at least call him and ask him if he wants to come.

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Mayor Rasmussen: Well, Mr. Rowlands, while you are on your feet. On what date were you first aware that the non-profit corporations were operating in violation of the City Tax & License Code.

Mr. Rowlands: Mr. Mayor and Council members, I've known this for a number of years.

Mayor Rasmussen: A number of years.

Mr. Rowlands: That's right.

Mayor Rasmussen: How many years.

Mr. Rowlands: I would say, I've probably known this from back in 1959 and 60. This has been going on for a number of years --

Mayor Rasmussen: Would this be the reason in your budget message of 1959 you instructed the staff to make every effort to collect the B & O tax.

Mr. Rowlands: Mr. Mayor, since you brought this up and with the consent of the City Council, I would like to answer that. I'm glad you asked that again Mr. Mayor. Mr. Schuster, can we pass this out, please.

Mayor Rasmussen: Mr. Rowlands you have the budget instructions.

Mr. Rowlands: Let me answer the question. Will you pass these out to the Council members, please, Mr. Schuster. There has been some implication here tonight that the Tax & License Dept. has not been performing its duties very effectively. I think it has been brought out very clearly, unmistakably clearly, throughout this discussion tonight by many members of the City Council that we've had a policy since 1951 and we're not casting discredit on anybody. The policy has been in effect since 1951.

Dr. Herrmann made it very clear to you, Mr. Mayor, that you have been a legislator for some 23 years in Olympia, that the same policy of toleration has been undertaken and has been permitted by the State. The City of Seattle has also permitted this procedure, and I don't know how many other cities, so it is nothing unusual or peculiar to Tacoma.

Now, following your suggestion of what happened in 1959, I'll show you exactly what this excellent department has done by looking at this report. On the Audit activities, checking for these refunds & credits, the total amount recovered, take a look on that sheet, and in a matter of eight years, \$435,000 has been recovered -

Mayor Rasmussen: Mr. Rowlands, is this Charitable organizations.

Mr. Rowlands: This is overall, you're asking about my Director of this Department, to operate effectively, to go back and audit these accounts throughout the City, and he has done outstandingly. Now, if you will permit me, Mr. Mayor -

Mayor Rasmussen: Mr. Rowlands -

Mr. Rowlands: Am I going to have a chance to make a statement.

Mayor Rasmussen: I think Mr. Rowlands that you are here under testimony, do you want to be put under oath.

Mr. Rowlands: I care not what you do, Mr. Mayor. Let me say, you raised the question, I didn't.

Mayor Rasmussen: I asked you a specific question, Mr. Rowlands.

Mr. Rowlands: I'm answering it.

Mayor Rasmussen: If you want to generally tell us about the finances of the City, yes, we are in pretty poor shape.

Mr. Rowlands: You asked the question, what I did since the 1959 budget message. These are the results of it.

Mayor Rasmussen: Number one, you stated that you did know in 1959 that certain organizations were not paying the taxes. Is this correct.

Mr. Rowlands: That's correct, and I'm -- You asked a question about the budget message and you are not letting me answer --

Mayor Rasmussen: Mr. Rowlands, was this matter brought to the attention of the City of Tacoma's City Council.

Mr. Rowlands: The Tacoma City Council -- that matter was not, to my knowledge brought to the attention directly, where the Council members ---

Mayor Rasmussen: Was it ever brought to their attention.

Mr. Rowlands: It was never, to my knowledge, discussed, but I couldn't say whether or not there was a general cognizance of that situation.

Mayor Rasmussen: But you knew it and you had discussions about it with the staff.

Mr. Rowlands: I knew about it. Now can I answer your question.

Mr. Zatkovich: I believe this is going to be a long disertation or argument or whatever else you want to call it, and I would suggest we have a little recess.

Mr. Rowlands: Can I just make my one final statement so we'll have it in the record. I want to take my hat off to Dave McLennan, his Department and the staff of that Department, and to Mr. Lemley, the Director of Finance and others, because during the last eight years you are referring to, actually nine years, the total audit recovery accumulates \$887,000; almost a million dollars. You are talking about \$27,000 for all these organizations going back to 1951.

In the meantime we have directed our attention to good staff work, good auditing procedures, to recover this much amount of money for the City, and I think that this is something that is very noteworthy, and I thought you would like to know about it.

Mayor Rasmussen: Mr. Rowlands, you recall the State Auditor saying that, in our study session, that if you spent a dollar wrongfully, you can also spend a million dollars wrongfully. If you allow certain persons to escape paying the taxes you may allow other people to escape paying taxes. It is more than a dollar amount, Mr. Rowlands.

Mr. Rowlands: We understand that.

Mayor Rasmussen: What we're trying to arrive at; and we're not taking any sides on the issue at all; these people are here to represent their side. And

I find it very strange to have our City officials making so many excuses when a tax is passed legally by past Council members, it is expected to be enforced. Is this is the reason for --- From whom did you receive that information, Mr. Rowlands, that these organizations were not paying the tax. Your statement too.

Mr. Rowlands: I think this has been discussed and I think Mr. McLennan has answered the question. It has been discussed from time to time. And when the matter was discussed here last week, most recently 1967.

Mayor Rasmussen: From whom did you receive the information, Mr. Rowlands.

Mr. Rowlands: Mr. McLennan.

Mayor Rasmussen: From the Tax & License Director, Mr. McLennan. Have you ever discussed the matter with Mr. McLennan and a third person, not a City official.

Mr. Rowlands: To my knowledge the only time that we ever discussed this matter in some detail, it was a matter of courtesy to Mr. Patterson, as Mr. Patterson has already testified. He and Mr. McLennan and myself spent about an hour and one-half in my office going over this matter several months ago. To my knowledge that's the only other --

Mayor Rasmussen: Where did the conference take place.

Mr. Rowlands: In my office.

Mayor Rasmussen: Your office. Was this discussion prior to the initial hearing on the matter before the Council.

Mr. Rowlands: You mean the study session. No, it was after the study session. This happened, I'd say, a couple of months ago.

Mayor Rasmussen: It was prior to the initial hearing, before the Council, at the time they asked for a postponement.

Mr. Rowlands: Oh, yes.

Mayor Rasmussen: The statement in the News Tribune, said that you had no prior knowledge.

Mr. Rowlands: I don't recall saying I had no prior knowledge.

Mayor Rasmussen: "Rowlands said he could not recall anyone coming to see him in the past and saying that the laws were not properly administered." The News Tribune.

Mr. Rowlands: I don't know what date you are referring to, I'm talking about any individual outside of Mr. Patterson coming into my office, over all the years, between 1962,3,4,5. I have never been approached by any individual concerning these particular organizations; Y. M. C. A., Goodwill and the others.

Mayor Rasmussen: Will you tell the Mayor why a serious policy matter such as this was not brought to the attention of the then, Council and Mayor, or was it.

Mr. Rowlands: I don't recall. I can't recall, that it was ever discussed at a former study session even, or at a former Council meeting. Whether the Council members knew about the policy or not, I can't say. What I'm saying, the policy, I repeat, since 1951, that was the policy. And since the question did come rather pointedly by Mr. Patterson, it has been discussed. I know Mr. McLennan wanted the

matter discussed by Knight, Vale & Gregory, and they came in with the recommendation. So I might say Mr. Mayor, in connection with the recommendation, we have had many over the past twelve years both from Knight, Vale & Gregory and Lyebrand, Ross and Montgomery. And if we get a chance for the staff to get back into some of these activities, I am sure you'll get answers to these questions. You have in the past made investigations and for the most part we comply with the requests. So, all of these recommendations are not necessarily agreed to by the City Council, or the staff when they come back. We do try to comply insofar as possible with the recommendations of the consulting firms.

Mayor Rasmussen: When the Council had the study session with the Knight, Vale and Gregory auditors, and the report had then been out for six months, you had evidently become aware of the report. Do you look over all audit reports.

Mr. Rowlands: Yes, we read the reports. Right.

Mayor Rasmussen: You do that personally.

Mr. Rowlands: I read the reports personally and the staff, the Department Director's particularly read them. I read the reports in detail, and I might, just as an example, three or four days ago, I read a report and directed a little memo to the Director of Finance and Public Works to be sure they checked carefully the recent report on sewer utility, and if there were any suggestions made there that they investigate and comply with it. All I'm saying we have had an awful lot of other reports to prepare during the last year, staff wise, it has taken time from the staff to complete some of these other ones.

Mayor Rasmussen: It would seem to me, Mr. Rowlands, that the office of the City Manager was probably deficient in knowing of this matter in 1959 and not bringing it to the attention of the Council, and then the Council members themselves passed the ordinance, the charitable ordinance solicitations; that you have never brought this to the attention of the Council after the Knight, Vale and Gregory audit report, which specifically, Mr. McLennan made the recommendation to the auditors that it be included in the report; because it was quite apparent to any man that taxes were not being collected properly.

Mr. Rowlands: Mr. Mayor, that wasn't---

Mayor Rasmussen: You never took any action at all to ---

Mr. Rowlands: Wasn't that in the report, Mr. Mayor. It was in the report. The important matter has been discussed hasn't been discussed, is that what you are suggesting. It has certainly been discussed thoroughly the last, since you---

Mayor Rasmussen: From 1959 until the early part of 1968 or the last part of 1967 when the auditor's made the report. No action was taken until a blind man comes to your office and said, don't you think it is proper to collect taxes as the law provides.

Mr. Rowlands: The matter did come to Mr. McLennan's attention and mine, and there has been this furor raised over it; it is being discussed and that's why the matter is before you. You haven't had a chance to hear from the people who want to testify here.

Mayor Rasmussen: We'll take them up after the recess. And I am sure they can produce the necessary records to substantiate their positions.

Mr. Rowlands: Right.

Mayor Rasmussen: The Council will have a ten minute recess. Sorry we can't invite you all back but we just don't have the room.

The Council meeting reconvened at 6:35 p.m. and roll call was taken, resulting as follows: Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen. Absent 0.

Mayor Rasmussen: We have a request from the Attorney representing the Salvation Army, that it is necessary that they get their people back to the Airport. Is there any objection of taking the Salvation Army first. Is there any objection from the other people. O. K. Mr. Langlie.

Mr. Langlie: Honorable Mayor and members of the City Council. I previously filed with the Clerk an Appeal, and statement which I understand has been distributed to you. The report and statement summarizes and sets forth both the law and the facts and I believe, if you study that you pretty well have my research in a nutshell.

Because of the lateness of the hour and because I know you have a very crowded agenda which you have yet to hear, my comments will be sharply limited and I hope I can answer any questions you may have.

I'm Arthur S. Langlie, representing The Salvation Army, and a member of the Advisory Board of the Salvation Army. Briefly, apparently, a subject which has already been gone into, in 1951 there was some communication to these several organizations involved here and The Salvation Army out of Mr. Lemley's office, indicating to them that they were exempt from the B & O tax. At least The Salvation Army has always believed it was, and has operated the past eighteen years, or seventeen years on that theory.

The Army is a combination organization, it is both religious and charitable as a service organization. It is a Christian organization and its basic function is to rehabilitate unemployables in this Community. Unemployables who are in some way handicapped or restricted either mentally or by physical condition. Many of them are alcoholics and derelicts at the the time the Army commences their rehabilitation.

Now, the point that is brought up here relates to the retail store which The Salvation Army operates and that is the point at which the B & O tax is involved, because articles which are collected from the public generally, old articles, are rehabilitated by the men in this program as part of their work therapy. And those articles are sold, the proceeds from those sales, are in turn plowed back into the program to sustain the men. The Army, itself, does not take anything from this, but the support of the men is from the sale of these articles.

Now, I have set forth in this little letter and I want to call it specifically to your attention, that The Salvation Army is a tax exempt organization by a letter of the United States Treasury; the State of Washington has never levied against the Army any business or occupation tax or any property tax, for that matter, of course that is not an issue here, but it is important that neither one of those taxes have been issued. And there is an Attorney General's opinion to Bertil E. Johnson who was then, this was 1934, who was then Prosecuting Attorney for Pierce County, which I found; and I think it is of interest, because it relates to a request by now, Judge Johnson, then Prosecuting Attorney, with regard to the application of the B & O tax to churches and similar organizations. I set that out in the letter. The Attorney General at that time in 1934, determined that the B & O tax did not apply to churches and similar organizations.

Now, with respect to the City of Seattle, and this has come up this evening, and I want to alert you to it. There is a general exemption provision in the Seattle City Code; I set this out on Page 4 of my letter and it refers to organizations such as The Salvation Army. It says, "The gross income received by any religious society, association or corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care or healing of human being shall be exempt." So Seattle does have a specific exemption

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provision in their code, and Seattle has never undertaken to place the B & O tax on the Army.

I won't unduly lengthen the situation by going into a discussion or consideration of what The Army does, except it is a rehabilitational operation, attempting to restore these men, spiritually, physically in every way. It provides this work therapy and in turn these goods are sold which bring about these proceeds which are plowed back into the support of the men. Last year, and these figures are set out in the letter, 267 men in Tacoma were on this program and 55,385 meals were served to them and rendered 17,181 days of service were provided to them. The program, however, does operate at a deficit. It is not profit making and it is currently subsidized out of Salvation Army General Headquarter's fund, because it cannot carry itself at this point.

Now, one argument which I think should be very seriously considered by the Council, and this is my closing point and I'll not unduly take more of your time, in this; the work done here by The Salvation Army is essentially a privately sponsored work, that is, The Salvation Army does not receive any governmental funds for what it does, and yet, the service that it provides is essentially a public or quasi public service of meeting the needs of a number of individuals who have dropped out of the Tacoma community life. They are people who, in effect, in many instances are derelicts, and The Army takes them, attempts to restore them, rehabilitate them and this, in effect, is a public function.

I would submit to each of you for your consideration, this significant point. If The Salvation Army were not doing this work, it would fall upon the taxpayers of the City of Tacoma to undertake the care and maintenance of these men. The Army is providing this public service and it is doing it tax free. I do believe that if you should impose a tax on The Army here, you'll simply cut into this program, reduce it by that much so that, in effect, you will be casting the burden back onto the taxpayers here in Tacoma. You'll be achieving, virtually, in my judgement, nothing at all. You may be getting some tax, but you'll be cutting out this program, and the burden will be back on the citizens.

I would therefore, ask, although the amount is relatively small, it is important to the Salvation Army and I would urge you very strongly, not to revoke the exempt status of The Army, but in fact, to continue it.

Mayor Rasmussen: Were you able to locate a letter giving these exemptions to the organization.

Mr. Langlie: No, Your Honor, I was not. I did take the opportunity to go through the file that is here with the City and I have searched The Army records. In checking on this I asked Brigadier Murray, who has been advising me on this, and he indicates that all Salvation Army records are kept only seven years then after that they are routinely destroyed. We don't have anything going back into 1951 and none of the headquarters can indicate, either here locally or in San Francisco, which is the Headquarters for this region, any such letter.

There is the, I think Your Honor has the copy of the letter which I obtained from the City Clerk, the letter of Mr. Lemley and subsequently his ---

Mayor Rasmussen: The penciled notation on it.

Mr. Langlie: Yes, Sir. That's correct. You are aware of that.

Mayor Rasmussen: Yes. Were you able to research the State Statute which specifically exempted your organization.

Mr. Langlie: Not by name, Your Honor, No.

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Mayor Rasmussen: Was it by law.

Mr. Langlie: I suppose only a court could decide that question, I don't feel I'm competent to answer it. The Attorney General's opinion I have and it does indicate exemption, the State has never undertaken to tax The Army and I checked with the Dept. of Revenue on that, and they simply said they have had a long standing policy not to make an assessment against such organizations.

Mayor Rasmussen: I note in your brief that it states "It is an occupation tax, imposing taxes on the privilege of engaging in business activities".

Mr. Langlie: Yes.

Mayor Rasmussen: Does The Salvation Army engage in business activities.

Mr. Langlie: Not within the concept of that opinion, Your Honor. A business activity normally, can also profit motive. The Army makes no profit.

Mayor Rasmussen: Then a business that makes no profit, any business would be exempted then from the B & O tax.

Mr. Langlie: All I can speak for would be The Salvation Army, Your Honor, everything that is gained by way of a surplus in the retail store is simply plowed back into the program for these men. And no one receives anything.

Mayor Rasmussen: Everything received and made by business activity in this Tacoma store goes back exclusively to the Tacoma store.

Mr. Langlie: That's correct, Your Honor.

Mayor Rasmussen: There is no money from this area goes out.

Mr. Langlie: No, as a practical matter, it is the other way around. Money from San Francisco comes in because there is a deficit.

Mayor Rasmussen: Now, in this opinion, it states, "It is therefore our opinion that because the provision exempting such institutions was omitted from the amendment, it does not require a construction that the legislature intended to levy a tax on same". This was a 1934 opinion.

Mr. Langlie: Yes.

Mayor Rasmussen: Have you reviewed, action by the Legislature since that date, 1934.

Mr. Langlie: Yes, I have Your Honor. There is no later opinion, that's the only thing I have.

Mayor Rasmussen: There is no later opinion, but I mean the law.

Mr. Langlie: There is no later law, that I know of, Your Honor.

Mayor Rasmussen: On B & O tax practices.

Mr. Langlie: No, none whatsoever that make reference to this situation.

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Mayor Rasmussen: Well, I, the reason I was asking was that I think St. Vincent dePaul and the Y. M. C. A. pay the business and occupation tax to the State Dept. of Revenue, and I was wondering under what law they were paying the tax, if The Salvation Army wasn't paying it.

Mr. Langlie: I'm sorry to say, I do not know Your Honor. We have never had occasion, when I say, we, The Salvation Army, has never had occasion to either file or be required to pay the tax, or have they in any way been held responsible for it.

Mayor Rasmussen: You say, The Salvation Army rents quarters.

Mr. Langlie: I'm sorry, I didn't hear you.

Mayor Rasmussen: Do you rent other quarters in the building that you own.

Mr. Langlie: Well, there are a number of buildings here in Tacoma operated by The Salvation Army for the same general purposes, that's correct. Now I don't know the real estate status of those, I assume The Army normally pays its own way entirely and constructs its own buildings.

Mayor Rasmussen: Does the Army collect Sales tax on their business operations.

Mr. Langlie: I don't know from my own personal knowledge Sir, I just really don't.

Mayor Rasmussen: Do you pay the Gas tax, gasoline consumed in itself.

Mr. Langlie: I'm sure they probably do because they purchase it at a station like anybody else and the tax is right in.

Mayor Rasmussen: You don't pay any tax on materials that are donated to you, and then in turn donated to someone in the community.

Mr. Langlie: I don't know enough of the operation of the Army to know specifically whether that is the case. I don't believe there're any taxes paid on those particular things. Most of these donations are discards that come to the Army, and there is no money transaction. All these discards are refurbished and reconditioned and then they are sold in the retail store and the proceeds of those sales plowed back into the rehabilitation program.

Mayor Rasmussen: Now, in the City of Seattle, and you quote a portion of their ordinance, "The gross income received by any religious society, association or corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care or healing of human beings, shall be exempt". Do you know if this relates also to an institution or a clinic that discards.

Mr. Langlie: I don't know how the City of Seattle has interpreted it, other than with respect to The Salvation Army, when I did make inquiry, and they hold The Army to be exempt. I don't know how they treat other organizations.

Mayor Rasmussen: Now, you refer to the tax base by the Y. M. C. A., in which the court setting en banc in 1960, 1963 and they had a petition for a rehearing, the original judgment was, the tax was due and payable, and then the court recites the tax under RCW 82.04.030, which defines a taxable person or company for the purpose of business and occupation tax. The definition of a Person or Company

is broad enough to include a charitable institution, such as the Young Men's Christian Association; whether such institution is incorporated or not. Are you aware of this portion.

Mr. Langlie: Yes, I looked at that, your Honor, and my view of that would be this. First of all The Salvation Army is a church or an association of churches and has been so held by the Internal Revenue Service, and on that basis, it is even in a category distinct from that one. That refers largely to non-profit organizations, The Army is non-profit that is true, but it is also a church, as well, and I think that is the distinguishing feature and that is why that decision is inapplicable to The Salvation Army.

Mayor Rasmussen: In your opinion, then, you would say the Young Men's Christian Association is not a church related institution.

Mr. Langlie: I don't know whether it has been so held by the Internal Revenue Service or not. I would refer you to this language and I excerpted it on page 2 of this letter that I provided to the Council; it says, this is about the, well, it is the indented paragraph, fourth one down. "Based upon the evidence submitted it is the opinion of this office" that's the Treasury Dept., "that the National headquarters of The Salvation Army and its various components throughout the United States constitute a church or a convention or association of churches as that term is used in the Internal Code."

That's a clear cut holding and I believe that attitude is generally sustained and held by most local organizations. The Army is a christian church.

Mayor Rasmussen: Further questions from the Council.

Dr. Herrmann: Do you know, Mr. Langlie, whether, I was reading the excerpt of the Internal Revenue Code, the last sentence states "and contributions made thereto are deductible by individual doner."

Mr. Langlie: That's correct.

Dr. Herrmann: Is this the test of a tax exempt organization.

Mr. Langlie: No, that was only part of the letter, and the next paragraph which I set out in parenthesis, Dr. Herrmann. It says, "The letter also stated that The Salvation Army and its state and regional organizations and local posts were exempted from federal income tax as well under Section 101 (6) of the Internal Revenue Code of 1939.

I presume that the exemption from federal income tax was probably granted during the operation of the 1939 code. The donor exemption was authorized after the enactment of the 1954 code.

Dr. Herrmann: I was just curious about whether, if an organization, if you made a contribution to an organization, a tax deductible contribution, would that be ipso facto evidence that this organization because you made a donation, was a tax exempt organization, a non-profit organization.

Mr. Langlie: Yes, I think I get the germane of your question. My understanding of the practice on this and I don't deal that much with the Internal Revenue Service, is that they, in the case of an exempt organization, they will normally issue a letter. And they will not, a letter ruling is required, and I have a copy in my file of the Internal Revenue Service letter, that was issued in this case. And every tax exempt organization must apply for and seek this type of ruling.

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Dr. Herrmann: Would the reverse be true. If I made a contribution to a profit organization, that would not be tax deductible.

Mr. Langlie: In most cases, I would assume it would not, although it could be tax deductible under another section of the code as an ordinary and necessary business expense. But you're talking about a charitable deduction.

Dr. Herrmann: Right.

Mr. Langlie: Yes, Sir. I don't think that that would be the sole test but the letter I have does spell out the exemption of The Army.

Dr. Herrmann: It may not be the sole test, but would it be evidence enough that this organization was, in fact, a non-profit or a charitable non-profit organization here. Maybe you're not able to answer it.

Mr. Langlie: I'm not sure, I'm qualified to answer that and I hesitate to give an opinion to you. I don't think I have the knowledge to say; the Internal Revenue Service, I believe, does issue exemption letters, and those letters are what you rely upon as to whether you can claim an exempt status.

Dr. Herrmann: But in reading this excerpt the Internal Revenue Service made these findings about the organization.

Mr. Langlie: Correct.

Dr. Herrmann: Then after making these findings, they then said, having made these findings, if any donations to the organization, your specific organization, will be tax exempt. But you don't know whether that is a general test or whether this just applies specifically to --

Mr. Langlie: I think they have to make that determination in each and every case and that is how it applies here.

Mayor Rasmussen: Further questions from the Council. Mr. Langlie, in reading the ordinance of the City of Tacoma, it is your opinion that your organization is exempt from paying the B & O tax.

Mr. Langlie: I read over the ordinance very carefully and there is admittedly no expressed statement that The Salvation Army, per se, is exempt. I believe that the ordinance of Tacoma, however, does pattern after the State Law. I believe that was the basis upon which it was drafted and would be so construed.

Mayor Rasmussen: Then, in your considered opinion the Tax & License Dept. was acting in a proper manner in attempting to collect the tax as provided for in the laws of the City of Tacoma.

Mr. Langlie: I'm not sure I understand Your Honor. I have felt all along ---

Mayor Rasmussen: Is there anything improper in the action of the Director of Tax and License in attempting to collect the taxes due under our ordinance.

Mr. Langlie: Administratively, I know he has the right to assert his position. We're contesting it your Honor, because we believe that it is not proper under

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the existing state of the Law, that is all I can say to you. I think The Army is acknowledged world-wide in the work it carries on and it is exempt world-wide by all levels of government. That is why we feel that Tacoma should also exempt us.

Mayor Rasmussen: Well.

Mr. Langlie: We believe that it did in the past and we are somewhat at a loss to find out why it is not now.

Mayor Rasmussen: Well, Mr. Langlie, you said, you could not in examining the ordinance, you could not find any exemption for The Salvation Army.

Mr. Langlie: Not by name, Your Honor, no.

Mayor Rasmussen: Whereby designation, other than name.

Mr. Langlie: There is no specific authorization in there, but as the State Law provides, I believe an authorization and I believe that the Tacoma ordinance is in accordance with the State Law. I would have to believe that.

Mayor Rasmussen: You believe that the State---you haven't examined the State Law, then.

Mr. Langlie: Oh yes, fully.

Mayor Rasmussen: You find an exemption in the State Law for your organization that you're representing.

Mr. Langlie: Not by name, Your Honor, No.

Mayor Rasmussen: Or by this designation.

Mr. Langlie: I have only the fact that church organizations are not includable and the fact that the opinion of the Attorney General; there is no recited case in respect to The Army. And I also have the opinion of the Dept. of Revenue that it does not levy the tax on this organization. I have nothing further than that, it is a negative, rather than an affirmative.

Mayor Rasmussen: Mr. McLennan, Is our Law a copy of the State Law.

Mr. McLennan: Mr. Mayor and members of the Council, it is. It is the same law that was in effect Jan. 1, 1958.

Mayor Rasmussen: Further questions of Mr. Langlie.

Mr. Langlie: I appreciate the opportunity to appear before you, Your Honor and members of the Council.

Mayor Rasmussen: St. Vincent dePaul. Mr. Roller, are you representing St. Vincent dePaul.

Mr. Roller: Mr. Mayor and Ladies & Gentlemen of the City Council. St. Vincent dePaul is purposely not trying to present a great factual situation, we hope to present at this time a question of law. Explaining our position and appeal. The appellant is not engaged in business as the same is determined by the ordinance of the City of Tacoma. Having been aware of the interpretation by the Dept. of Revenue, the former tax commission of the State of Washington, also having been aware of the Attorney General's opinion, this ordinance was adopted from the State Law. It is a common interpretation, universally held by all courts, that when one statute is adopted from another, the latter parties adopting the statute, adopt with it all the interpretations of the former. So, that the former interpretation by the State of Washington concerning the St. Vincent dePaul Society, this type of society and its operation, was in fact, engaged in charitable or benevolent and religious purposes and the exemption should, I think, come over into the ordinance.

We present ourselves to the City Council primarily in a judicial capacity, to the Council we are asking for an adjudication, as a judicial body, that St. Vincent dePaul is not in fact taxable under the meaning of the ordinance as interpreted by the City Council.

This letter in question of March 12th, 1951 was addressed to Mr. McLaughlin of St. Vincent dePaul. The notation of the exempt status, later on notated on the copy which is in possession of the City of Tacoma, shows that it was the intention of the Controller of the City at that time to exempt by allowance following the procedure of the City of Seattle.

Under the rulings of our State Supreme Court, while it was not cited by name by your Counsel in the case of Gleason versus Owens in '53 Washington, it was obviously what he was quoting from, and the St. Vincent dePaul Society was in the same position, having relied upon an executive officer, not necessarily a judicial or legislative officer, but having relied in good faith on the executive officer, they are not in a position to be penalized at this time.

Certainly on the question of a judicial situation, on the statute of limitations while the ordinance has a four-year statute of limitations, I think it is in conflict with the State Code of RCW 4.16.130 and 4.16.160, and there should be a two-year statute of limitations. This is as yet a judicial function of the Council and, of course, the Council can make a judicial ruling and if we do not agree, it is obviously going up for review.

The argument addressed to the Council in a legislative function would just be interpreted as that as stated by the other members here of the other organizations as stated by the attorney for the Salvation Army, is that as a legislative body, we would believe it would be to the best purpose of the people in the City of Tacoma that St. Vincent dePaul, in the type of work its done, would be allowed to entertain the greatest tax advantage possible. For the reason it has maintained through many years to the community, services not available through the City or County without additional burdens. And by the charging of tax and by giving of these services by the government or any subdivision, thereof, we are surely not going to see as much use of the dollar as we will by allowing St. Vincent dePaul and similar organisations to continue their activities.

Primarily tonight, we are asking for an adjudication. I think at a later time if the Council wishes to take it up as a legislative and qualify this matter, they can. But at the present time, we say, we are not under this ordinance for the reason that the prior State statute has been interpreted

by the Tax Commission, now the Dept. of Revenue, and by the Attorney General to be, we are exempt, has been adopted by the City of Tacoma. Secondly, the statute of limitations, if there is a tax penalty involved, the statute of limitations is two years.

My other arguments would just be repeated.

Mayor Rasmussen: Any questions by the Council of Mr. Roller.

Mr. Murtland: Mr. Roller, on that two year, would you name the RCW on that. That two year limitations.

Mr. Roller: It's 4.16.130 is the two-year statute, which is over everything not otherwise specifically limited and 4.16.160, I believe is the municipal corporation's Statute of limitations. The two of them should be read together.

Mr. Murtland: One is 4.16.130 and what was the last one.

Mr. Roller: It's 4.16.160 and 130, was the other one.

Mr. Murtland: And 130 was the other one.

Mr. Roller: Right.

Mayor Rasmussen: Mr. Roller, in your opinion is the Tax & License Dept. proceeding in the proper manner, according to the law set down by the City of Tacoma.

Mr. Roller: No, I think the City of Tacoma, they want this to be kicked around a bit. In reading the law verbatim, yes. If the layman was reading the law and read the statute, they would think the obligation, they should be doing what they're doing. But I believe that the predecessors in interest were much more aware and grew up at the beginning of the B & O Tax, it started in the thirties. They were aware of not only the start of the State B & O tax, but also the interpretation.

When you take the body of law in this prior group, I don't think its appropriate to impose a tax at this time. If you take the City ordinance individually, then I think they're proper in their approach. It is a question of fact, and that is why we are asking for a judicial determination, because we're saying their interpretation of the statute is proper on the face of it, and a layman would be prone to think that this is the proper approach to take, but I do not believe it is, when you study everything altogether in one package.

Mayor Rasmussen: What you are saying then, Mr. Roller, is, that rather than have the Council rule on this, you prefer a judicial opinion which is a matter of the court.

Mr. Roller: No. I prefer to have the Council rule as you are sitting here in a judicial capacity. You have two hats to wear and I'm asking the Council at this time, I'm not petitioning for the Council to wear their legislative hat, I'm asking you to wear you're judicial hat and determine judicially, as judges of the law in question, if this, in fact, is not a tax that should be imposed on the activity in question.

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Mayor Rasmussen: Were you present when Mr. Hamilton read the law.

Mr. Roller: This evening I was present when everything has been stated.

Mayor Rasmussen: You're aware, of course, that any Director of a Department, including the Manager and the Council, looks to the Legal Department for advice, in a legal manner in legal matters.

Mr. Roller: The Legal Department states an opinion of the law, but the opinion in this particular case, is for the Council to make the decision, not the Legal Department.

If this Council is sitting as a legislative body and if the Council as a legislative body inquired of its legal staff an opinion as to the constitutionality or validity of this particular ordinance, then I think it is derogative of the legislative body to rely upon its legal counsel.

But when this body sits here as a judicial body, then the decision is theirs and theirs alone. While it may be persuasive of the City Council, and I realize that you people are in an odd situation, and wish you were elected as the Council stated, primarily as a legislative body, but in this one particular function you have to set as a judicial functioning body.

Mayor Rasmussen: Mr. Roller, have you ever been elected to office.

Mr. Roller: No, I haven't tried it.

Mayor Rasmussen: I wasn't raising that question particularly. Are you aware of the oath of office.

Mr. Roller: Yes.

Mayor Rasmussen: How does the oath of office read, can you recite it for us.

Mr. Roller: I don't know, but I'm familiar with the general character of all oaths of office, but I am unaware of the one for the City of Tacoma because I'm a resident of the great unincorporated municipality of Rosedale. As far as the City of Tacoma, all oaths of Office are primarily the same, they uphold the Constitution, the statutes and laws in effect.

Mayor Rasmussen: Does it say anything about upholding the laws of the City of Tacoma and the State of Washington, the United States and the Constitution of ---

Mr. Roller: Oh indeed it does. But this is the situation, as a Judge taking the oath of office; I am asking you to take the oath of office as a Judge; I am asking you to determine as a Judge whether this is, in fact, governing. The words as written, can often be taken out of context. We're not asking for a specific isolated case, but we're asking that you take the entire circumstance, take the entire law and interpret it. That's why we have three branches of government. Unfortunately, the Council will have to sit in the third branch as a judge.

Mayor Rasmussen: The Council does not interpret the law.

Mr. Roller: Yes it does. This particular concept, that is specifically what you are doing, you are interpreting the law.

Mayor Rasmussen: No, we're making a determination on your appeal and so far no attorney has shown me that there were any exemptions in the law where if they can find any exemptions or that the department, and this is what I'm searching for, I'm trying to get some information on that. Now the Tax and License Department has enforced the law, as it has been interpreted by the Legal Department, and we don't have any legal basis to evade the law, you see, so, this is what I'm searching for, for one of you attorneys to give me that basis.

Now, we have before us information that investigation discloses that St. Vincent dePaul and the Y. M. C. A. pay the Business and Occupation Tax to the Department of Revenue. Now, Mr. McLennan has stated that our law is identical with the Department of Revenue's law, passed by the Legislature, and evidently the two organizations are paying this tax. Could you advise us where we would have any legal basis for exempting your organization when ---

Mr. Roller: In the present situation, the fact this tax is paid or not paid under protest, at the present time---

Mayor Rasmussen: I'm not speaking of the City tax, I'm speaking that they are paying the State tax, B & O.

Mr. Roller: Not to my knowledge. We're not paying the State B & O tax.

Mayor Rasmussen: Investigation discloses that St. Vincent dePaul and the Y.M.C.A. pay the Business and Occupation Tax for the State Department of Revenue.

Mr. Roller: We pay Sales tax.

Mayor Rasmussen: This was explicitly a question that we asked to be investigated so that we would have enough information to work on. And, you say they are not paying it.

Mr. Roller: That's my understanding, as of last week, we weren't paying any B & O but the Sales tax.

Mayor Rasmussen: It is your presentation here, that in the event we find that the law is properly being imposed and that the tax is due, that you feel it would only be due for two years back. On what basis do you go back that two years; the statute of limitations as recited by our attorney, says four years.

Mr. Roller: The statute of limitation in the ordinance is four years, but I think the State code, the City is a creature of the State, and the State may establish a four year or two year or whatever they may set.

In this particular case, it is our argument, that under the statute which I cited to you.

Mayor Rasmussen: In a Charter City.

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Mr. Roller: That's right. I don't think they can get around it, the City is a creature of the State. Certain exemptions I explained which are provided in the Constitution which I don't believe---

Mayor Rasmussen: This is a question as to how far back it started, perhaps, they have been misled about the payment of taxes. Further questions from the Council.

Mr. Roller: Thank you.

Mayor Rasmussen: We will now have Mr. Gierke -- Goodwill.

Mr. Gierke: Mr. Mayor, Ladies and Gentlemen of the Council, for the record, my name is Bradford Gierke, I represent and retained as Counsel for the Tacoma Goodwill Industries Rehabilitation Center, Inc.

The record of the Goodwill Industries and what it has been forced to perform in the community is well known to all citizens, both listening on the radio, and members of the Council and citizens attending this Council meeting. Very briefly, what we intend to do, pardon me, and attempt to do, is to provide a work evaluation and training program for handicapped persons who are referred to us by the various States, divisions of the vocational rehabilitation, for Washington, Alaska, Montana and I believe, Idaho. We also provide a sheltered opportunity employment situation for a number of persons. We do this under express exemption from the State of Washington, and also from the Federal Government, regarding minimum wage legislation.

The program at Goodwill, I believe has been established in this community since 1921 and they were incorporated in 1922. At all times it has been Goodwill's position that we are a non-profit corporation and incorporated under that portion of the State's statutes. We have never been requested nor required to register or pay a B & O tax, with the exception of commencing the second quarter of 1968.

Directing your attention now to the information which you have in your file, regarding the total assessment passed taxes, penalties and interest, you will note that if you add them together, Goodwill Industries in Tacoma is assessed a grand total of \$15,221.33. This is composed of total taxes of \$13,026.36 and total penalties and interest of \$2,194.97. It appears, as Mr. Rowlands, City Manager pointed out, there's apparently approximately \$27,000 in dispute in this entire case involving all four agencies and Goodwill has the lion's share of the assessments.

Now, directing your attention to our legal position, I think you are well aware of the factual allocation, but it won't hurt just for a moment to briefly review them. On March 12, 1951 a letter that was mailed from Mr. Lemley to Mr. McLaughlin of St. Vincent DePaul. This letter advised in its formal content that a tax was due these organizations and the four organizations in question today were named that is the Business and Occupation Tax. However, a photocopy, pardon me, I don't believe photocopying machines were available then, Mr. Mayor, but an office copy of the letter showed a hand written note with Lyle Lemley's initial, indicating that the procedure followed in Seattle was also to be applied in Tacoma; and the B & O tax would not be applied; the taxes to these agencies would be exempt. This has always been the understanding of the Tacoma Goodwill Board of Directors, without exception, since the alleged imposition of this tax.

When we were notified by letter on December 3rd, 1968 that we would be subject to an assessment and they requested that we have our books audited by Mr. McGowan of the Business & Occupation Tax Office in the Department of Tax & Licenses, we were, of course, flabbergasted, but most cooperative with him. The books were made completely available to Mr. McGowan for his inspection and his audit.

Shortly, thereafter, a supplemental audit was entered into and, in fact, as a result of the information from the Council last week, a second supplemental audit was entered into. And the second supplemental audit based upon certain service income received from the Department's of Vocational Rehabilitation indicated a total tax of \$1,362 and some cents should be imposed, together with 20 percent penalties.

Now, it is our position legally, Gentlemen, pardon me, Gentlemen and Madam, that we are, that the City is estopped to deny the grant of an exemption because of the administrative action of an elected City official at the time Mr. Lemley was elected, and this action has been ratified, indirectly perhaps, has been ratified by a conclusive practice of the Tax and License Department since 1951. This practice has continued without interruption through two forms of Government and numerous municipal elections. I believe it is a matter of record that several members of the Council were present when the ordinances were re-passed in a re-enacted form in 1965, March 14th, I believe, and again these taxes were re-imposed in general on the business community.

Now, November 21, 1968, after this matter had been apparently brought to a head, before we were aware we were to be taxes retroactively, Mr. Lyle Lemley wrote a letter to Mr. Rowlands from a request for information concerning the origin of the tax. And Mr. Lemley, wrote the letter, which I believe you have in your file and it would do an injustice for me to read or further refer to the letter except that Mr. Lemley confirmed that the grant of the exemption had occurred many years ago and this exemption had been following the Seattle practice. By the way, this Seattle practice is still in effect. There is no Business and Occupation tax levied against the Goodwill Industries in the City of Seattle, even though similar statutes are operated under.

It is our position, further that pursuant to the case of Gleason versus Owens, which Mr. Roller, Counsel for St. Vincent DePaul just mentioned to you, the taxpayer has a right to rely upon governmental agencies' officers, regarding a policy, which is in effect for a number of years. Gleason versus Owens is found in 53 Washington, 483. It's the 1909 decision which I have sherardized that's a method of legal research to see if it has been overruled, and it has not been overruled, in fact it has been confirmed in a number of occasions. I would also point out to Mr. Mayor and to the Council that I would be making the same argument regarding the retro-activity of the Business and Occupation tax in the inequity of assessing penalties and interest if I represented a Physician, a Mortician, a professional person, a home owner, St. Regis or Weyerhaeuser, it makes no difference, from this point, regarding the retro-activity.

It is my position that any taxpayer in the City of Tacoma, I care not what his occupation is, I care not what his income is, has the right to rely upon the distinct and continuous policy of the City of Tacoma and its elected and administrative officials. When this policy is simply made available over a period of years, we were never once required to register; it was never suggested that we register, not once, and of course, we didn't.

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Of course, the other argument is, why should we be required to register for a tax for which we are not liable or responsible, as held by the City officials. Now, I would further point out, legally we do this as a State Claim under the adoption of the Statutes of Limitations. There will be a dispute between attorneys representing the independent agencies and the City Attorney's office regarding the applicable statute of limitations. It is the result of our research that, we believe the paramount statute of limitations which is in control is the two year statute of limitations, not the four year as suggested earlier by Mr. Hamilton. This is something I suppose the lawyers would chew over and bore everyone to death, but in this case it involves quite a bit of money, and we believe we have the statute which supports us, and as cited earlier, 4.16.130 RCW, a two year Statute of Limitations, and specifically RCW 4.16.160, states that, "The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi-municipality of the State, in the same manner as to actions brought by private parties." There is some further language which we don't deem relevant. This statute of limitation does apply. We believe it is controlling in any event if you believe the tax should be retroactively assessed.

Let me discuss just for a moment, the retroactivity of the tax, itself, and the applicability of interest and penalties. It is our position, Mr. Mayor and members of the Council, the interest and penalties are designed as a punishment, they are designed as a statutory punishment. As most of you know, penalties are not favored in the law on civil action. But in this civil case, and civil cases of a similar nature, involving taxpayers who should be paying a tax and who know they should be paying a tax, and who are advised they should pay a tax, certain penalties and interest is allowed to be imposed, and it is a 20 percent interest penalty. It is our position that this penalty is imposed for knowing and willful non-compliance of an imposed obligation. It is our position further that, to allow any interest or any penalties over the past eighteen years, when we were operating a policy which was acknowledged by the City officials who have spoken, that this was the policy that was being operated under, to allow the City now to collect interest and penalties from these four agencies, I'm speaking in general for all four of us now, is simply most inequitable. I view it simply absurd and if I were a businessman I would stand here, fume and fly out the door. If I were a Mortician or Physician, I suppose my situation would be the same.

This simply cannot be allowed to stand, this cannot be allowed to stand. Just as if they presuppose that we are knowingly cheating you, the City of Tacoma, and all fellow taxpayers out of any and all taxes due the City of Tacoma for eighteen years.

This is not the case, we were operating in perfect good faith. Anyone who casually peruses the names on the Board of Directors of Goodwill Industries over the last eighteen years, will be well aware that these people are people of considerable repute in this community and they are all, most of them are rather substantial taxpayers, and they are dedicated people, helping our cause. And these people, I am certain, would have no part to any kind of a falsification or a fabrication or a fraud upon the City of Tacoma or its leaders, elected officials or administrative officials. This is simply not the case. We believe, then, that there is no misconduct whatever, which would merit the position of these taxes and penalties.

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Now, I should say that we do pay taxes, and we have paid for quite a long time to the Tax and License Department, taxes on a boiler, one elevator, our kitchen and our fumigator. We have always paid these taxes, these items are dangerous, they must be inspected and certain taxes paid when the inspection is completed and we are given a certificate of payment of this tax. We have always cooperated and the City officials have been most cooperative in regularly visiting our premises to make these inspections.

Now, discussing very briefly the taxes themselves, I'm going to try Mr. Mayor, to be absolutely as brief as possible as I realize the agenda is long.

Mayor Rasmussen: The Council needs all the information they can get.

Mr. Gierke: Regarding the retailing or business and occupation tax, and the service occupation tax, in other words, it was a tax just imposed for funds received from the Division of Vocational Rehabilitation of the various States in question. Regarding these business and occupation taxes, and it is our two-fold contention, first taxes barred because of an estoppel, in other words the City has estopped to deny the grant of an exemption; secondly it is barred as to any and all penalties and interest; thirdly it is barred as to any time prior to two years ago, prior to two years preceeding the exemption of the tax. And, finally we believe under our interpretation of the, I should say my interpretation of the ordinance, that there is a very good legal question as to whether or not the Business and Occupation tax, as such, applies to Goodwill Industries. You will note, and I believe you are familiar enough with the language of the tax, as referred to in Chapter 6.68 of the miscellaneous provisions, occupation tax; the taxes imposed upon businesses, on business functions are hereby levied upon and there shall be collected from every person, and no doubt person would include, a corporation, as hereinafter provided for the act or the privilege of engaging in business activities within the City a certain tax.

Now, it is the position of Goodwill Industries, first, we are not a business and secondly, we are not engaging in business activities within the City limits of the City of Tacoma. Business as defined by your own regulations which are very similar, almost word for word with the State B & O tax. The word business, states as follows: Business includes all activities engaged in with the object of gain, benefit or advantage to the taxpayer or to another person or class, directly or indirectly. Gain, benefit or advantage to the taxpayer. We are not a taxpayer in terms of a business and occupation tax to the State of Washington. We are not a federal taxpayer. I have letters in my possession which I can show you. We are expressly exempt from federal income tax as a charitable organization. Any contribution to Goodwill Industries is a tax exempt contribution. Furthermore, we are a non-profit corporation and have been since 1922. Furthermore, the only change in our provisions is an amendment in 1964 regarding our name. But we have been tax exempt since our inception, under various internal revenue statutes.

We believe that there is a very good question and, I believe, it is my interpretation that as far as the business and occupation tax goes, we are exempt from it. The tax does not apply to us in any event. Secondly, regarding tuition fees; now we were just assessed a tax one week ago, pardon me, I'm sorry, I'm in error. The tax was applied on Friday or Saturday afternoon

when the mail came in at my law office. I saw the tax and saw the amount assessed. The tax was applied as a services business and occupation tax. Based upon tuition fees referred to or received by Goodwill Industries. Of these tuition fees, in the last, roughly ten years, neighbored in the area of \$555,000., something right in that area. The tax was imposed plus a 20 percent penalty. The tax was imposed expressly upon, I believe, Mr. McLennan can correct me if I'm wrong, but I believe it is because of the tuition fees, definition of 6.68.150. It is our contention that this language is extremely generally drafted, and I believe, as such, that the language while not absolutely ambiguous, I believe it clearly includes educational functions under vocational rehabilitation for individuals who are clients or participants whom we receive from various states in the northwest. That is our contention there, and I believe, lawyers, of course, can argue about the 'angels at the head of a pin' but it is my position and, I believe, it is sound but wouldn't make it that we are exempt under the words 'tuition fees', expressly under the business and occupation tax service function, Mr. Mayor.

Now, dealing for a few minutes with the charitable solicitation tax. For the four agencies before you today appealing to your judicial capacity, and I'd like to say one word, Mr. Mayor. Mr. Roller is absolutely correct, we are appealing, there is no question about it legally. We are appealing to you in your judicial capacity, and in that capacity to review action by one of your departments, you have an opportunity, in fact, a duty to fairly interpret the statutes of the City of Tacoma, the ordinances. In that capacity, we are before you pursuant to the ordinance read earlier by Mr. Hamilton.

Now, discussing just for a few moments; I hope it will be relatively brief, our charity solicitation license assessment. Several years ago, in 1962 in the fall, it was decided the Goodwill would have to have a fund raising drive in order to build the facility we now enjoy. The City, some years later, just recently, investigated this activity and decided that during the four months period that the fund raiser adviser was here, that we should have had for each of those four months a \$1,000 tax, paid to the City for a charity solicitation license. This was decided, I believe, incorrectly.

If you will read with me just for a minute the actual contract between---

Mayor Razwussen: What page are you on this charitable solicitations---

Mr. Gierke: I'm not there yet, Mr. Mayor, I will be there in just a minute, in fact I'm going to read two sentences from the agreement between Goodwill Industries of Tacoma and the National Fund Raising Services Incorporated. The party of the second part, the National Fund Raisers, agree to provide counsel, guidance and direction during both the preparation and planning and the intensive campaign phases. The key word, Mr. Mayor and members of the Council - the key words are counsel, guidance and direction.

In the following paragraph those three words appear again. There is not one word about solicitations; actual solicitation of funds. This is critical because we're talking about a precise application of the taxing statutes, and it seems to me, of course, these taxing statutes must be construed properly. Now, later in the contract which we can make available to you, on page 4, it says the party of the First Part, which is Goodwill Industries, shall enlist the support and cooperation of its constituency together with the necessary leadership in the furtherance of the campaign in the solicitation of funds. And otherwise agrees to do everything reasonable and proper to

advance the best interest of the campaign.

There is not one word in that contract about these three things. About these national fund raiser representatives either soliciting, collecting, receiving any funds. Not one word in that contract; in fact, they didn't do it. And it's the burden of the City to show that they did.

Now, referring to Chapter 6.15, first paragraph, 6.15.010, License required. "It shall be unlawful for any person, either as principal, managing agent or supervisor, or as a solicitor, collector or salesman, to solicit, collect or receive contributions in the City of Tacoma" that's 6.15.010, "without having a license."

Now, it is our position, categorically, and I have even asked the people at Goodwill to investigate this to be certain, but I'm advised this is the case. Not one request for funds was directly made by a representative of National Fund Raiser Inc., not one. Not one dime was received; not one dime was collected nor solicited for by these people or their representatives. The only persons to engage in solicitations in the City of Tacoma, during the relevant period for which you have assessed the taxes. And by the way, we believe, of course, you are bound, this tax in any event, out, because of the two year statute of limitations.

We believe that clearly. The only people who collected any tax were the unpaid volunteers of Goodwill Industries. Many people in this community, I'm sure sitting here and listening, many people participated in this fund raising drive as solicitors. No one was paid anything.

Now, if you refer to 6.15.090, License fees; it says, there is a provision, a proviso, fourth line down, "provided however, that where the individuals engaged in the solicitation of contributions receive or are to receive no compensation or reward therefor, the license fee for each "Charity Solicitation License: shall be and is hereby fixed in the sum of five dollars and no "Charity Solicitor's License" shall be required." It is our position, if Mr. Mayor, you and the Council decide that we are subject to a retroactive tax, that is the only tax we are subject to. The five dollar tax with penalties thereon. No other taxes are we required to pay under Charitable Solicitations, Chapter 6.15.

We believe, further, that the remainder of the taxes, I believe there is one other dealing with Secondhand Licenses, is similarly exempt because of the statute of limitations. And, secondly, should be expressly exempt also to the interest and penalties.

Again, I apologize to the Council and Mr. Mayor, for taking so long to present this important information. But we feel it is important that the activity of the Goodwill be fully and fairly scrutinized. I will state to you expressly, that we are perfectly willing to pay any and all tax which we validly owe. This has always been our position. But, we sincerely believe we do not validly owe these retroactive taxes at all, nor do we validly owe the interest and penalties thereon. And we earnestly request your consideration in reversing the Tax & License Department's audit and in granting the exemptions.

Mayor Rasmussen: Have you concluded, Mr. Gierke.

Mr. Gierke: Mr. Mayor, I'll be pleased to answer questions if you desire.

Mr. Bott: Mr. Gierke, did I understand you to say that you were just recently, within the last week or so, assessed for services that were caused by tuition.

Mr. Gierke: We were assessed on Saturday, the letter was received from the Tax and License Dept. this Saturday, and the request came to the City Council and to the Department of Tax & License, I understand. But, in any event, I received a letter, a copy of a letter received by Mr. Gentry, our Executive Director, which

announced a business and occupation tax on services incomes, was assessed. And, this tax was in the amount of \$1,382.22. That tax was not before us, when I appeared just momentarily, I understand, just a week ago, just momentarily and when Mr. Gentry appeared on Jan. 21st, that tax was not available, it was not assessed. We also were assessed penalties on the tax to make the grand total, latest assessment in the last week of \$1,658.66.

Mr. Bott: That was based on contributions from this State or other States---

Mr. Gierke: That was based upon income---

Mr. Bott: Regarding rehabilitation.

Mr. Gierke: That's correct, Mr. Bott. It was based on income received from the various divisions of vocational rehabilitations from several states who send people here. The taxing authorities went back to 1958 to pick up this amount.

Mr. Bott: Was it putting you then, in the same category as, may be a business college or something of that sort, or---

Mr. Gierke: I haven't the vaguest. I think that, I can't account for a tax at this late date. This is the second supplemental audit we have had since November, and, pardon me, since Dec. 3rd, the second one since December; and they have announced now that we are now responsible for a tax on all services income, and we believe these are on the nature of tuition fees within the perview and spirit of the statutes; and, as such, these tuition fees are exempt from business and occupation taxes.

This was a bomb shell, but Mr. McLennan was kind enough, he informed me that, to let me know this tax was forthcoming, and I said, thank you. And, then I thought some more about it. But, be that as it may, we sincerely believe this tax is inappropriate; it's improperly imposed. We are not responsible for it. And, it came again, simply out of the blue.

Mr. Bott: Would you put that in the same category then, as a college education or vocational school education.

Mr. Gierke: That's correct. I might state, this also, Mr. Mayor and members of the Council and Mr. Bott, that we have a classroom at Goodwill, it's rather large. We have a classroom there where people are taught certain courses which they are deficient in. They are taught by teachers in the City of Tacoma Public School System. We, also have adding machines. We have people who teach these girls, some of them aren't able to make beds and hygiene. We have these things which we teach these people, and I'm absolutely certain within my own mind, that within any definition of the word, educational, we perform an educational function. We're trying to get these people off the welfare rolls and get them back out producing, and taking care of themselves and making a contribution to society; which I might add, if they make enough of a contribution, they can be taxed on it too. And that's what they want, I suppose. They want to be respected members of the community. And, this is right Sir, this is exactly right, Mr. Bott.

Mr. Bott: Mr. McLennan, do we charge church schools for educating the children; schools that receive governmental subsidies.

Mr. McLennan: Mr. Mayor and members of the Council, I'd like to ask you a question, but I'd like---

Mr. Bott : Would you do it directly, please.

Mr. McLennan: Yes, Sir. I'd like to refer back to Chapter 6.15, if I may, and then I'll get to your question.

Mr. Bott: Will you just answer my question, do we do it or don't we.

Mr. McLennan: If it is recognized by the State, we don't. And, I have already checked on this matter and the State Dept. of Revenue would tax this transaction in the same method in which we've taxed it. And, I've set forth in my letter of communication to Mr. Gentry, the reason why.

Mr. Bott: Maybe that would then be cause for some of these Legislators to make exceptions to rehabilitation, and act within the limits of the laws; I can see there should be justification for reconsideration.

Mr. McLennan: That's right. The reason why we missed this, and the reason for the supplemental audit; it was brought to our attention after the original was made, and after it was explained what this account was all about, why naturally we had to go back and pick it up.

And the other matter concerned the Charitable Solicitations here. Mr. Gierke read your license requirement, but wouldn't get down to the definition. And when we get into the definition, it will clarify this. Solicit and solicitation shall mean the request, directly or indirectly, money, credit, property, etc. And so this agreement that they had with the National Fund Raising Corporation, sets them right in the \$1,000 a month contribution.

Mr. Gierke: We absolutely disagree, Your Honor, Mr. Mayor.

Mayor Rasmussen: This is your privilege to disagree.

Mr. Gierke: That's fine, Thank you.

Mayor Rasmussen: We're not debating your point of disagreement.

Mr. Gierke: Thank you.

Mayor Rasmussen: Naturally, a lawyer wouldn't come up here and agree with everything because he wouldn't be of any use to his client. In fact, it is a little bit unfair to the Council to have all you learned lawyers here, asking the Council to make a judicial decision. It is quite obvious from our behavior we have little knowledge of law, and I think that you're suggesting too, that all the organizations would much rather go to court and get a final determination, as to the wording of the law.

Mr. Gierke: I never said that--I'm sorry, Mr. Mayor, I never said that.

Mayor Rasmussen: This is the impression I got.

Mr. Gierke: No, not at all.

Mayor Rasmussen: It would take a load off of the Council.

Mr. Gierke: Pardon me, Mr. Mayor, I wouldn't want to take a load off of the Council in this respect, because the Council, you see, Mr. Mayor, is given this duty by the City's own ordinances, and this is the first step, and I hope the last step. I certainly hope there will be no appeal by Goodwill Industries, no appeal whatsoever, except to the Council. The Council has this function, it has been known for many, many times. You talk about these things, Sir. We respectfully urge you to review the action of the Tax & License Dept. and read these ordinances

and the methods of myself and other Counselors are suggesting, we believe we are exempt.

Mayor Rasmussen: Mr. Gierke, you have the ordinances with you. You have been served properly, you will agree. Do you find any exemptions in the ordinance for your organization.

Mr. Gierke: Any express exemption by name, is that what you are referring to Mr. Mayor.

Mayor Rasmussen: Or designation.

Mr. Gierke: Addressing, Mr. Mayor to Section 6.68.270, which is exemptions from the business and occupation tax. Mind you, Mr. Mayor, we're speaking of the past two years only, as far as I'm concerned.

Mayor Rasmussen: You are speaking now, about the Tacoma ordinances.

Mr. Gierke: The Tacoma ordinance, I believe that under exemption 6.68.270 and deductions, to look at those you will see how broadly worded they are.

Mayor Rasmussen: I don't have that--

Mr. Gierke: Well, I do Mr. Mayor, and again I hesitate to bore you, really.

Mayor Rasmussen: Go right ahead.

Mr. Gierke: This is critical to my clients. Under deductions, this point, 6.68.280 under deductions, the expressed word of Section (b) Amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees. Now, you must then refer back, Mr. Mayor to the definition of tuition fees, found earlier in the Chapter.

Mayor Rasmussen: You are speaking now of services; you're not speaking about B & O.

Mr. Gierke: Services are under B & O.

Mayor Rasmussen: I think you should separate the question. Service is under B & O and the retailing business under B & O. You're speaking specifically of service.

Mr. Gierke: I'm speaking at this point, Mr. Mayor about services. I believe that under the definition of tuition fees found earlier in Chapter 6.68, we are exempt. Now, dealing with the standard B & O tax, which we are all conversant, subsection (f) says, this is under deductions 6.68.280, subsection (f) says, "Amount derived as compensation for services rendered to patients by a hospital or other institution which is organized as a non-profit corporation devoted to the care of human beings with respect to the prevention or treatment of disease, sickness or suffering."

This is the language, Mr. Mayor, which you are familiar with from the Legislature which is designed to cover eleemosynary organizations. We believe that within the language of this section, subsection (f) we are entitled to an absolute deduction, which, if you agree Mr. Mayor, would include all our income which is subject to the B & O tax. We are entitled to deduct that income which specifically, Mr. Mayor, is from our Goodwill Store, under that Subsection (f) and I believe, Mr. Mayor, we are correct in this. These are broad languages. The language must be interpreted within the meaning and spirit of the ordinance, and as this language

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as Mr. McLennan has, of course, probably pointed out, this language is taken from the State statutes. And we would make the same argument, the same reference with regard to the State Government. I might add also, Mr. Mayor, we do pay State Sales Tax; we remit quarterly to the Department of Revenue in Olympia, on the sales from Goodwill Industries.

Mayor Rasmussen: Do you pay the State B & O tax.

Mr. Gierke: We do not pay a State B & O tax. We have never been assessed a B & O tax, either, Mr. Mayor.

Mayor Rasmussen: Mr. Hamilton, do you follow that; Mr. McLennan, we'd like some information. You first, Mr. McLennan.

Mr. McLennan: Well, I want to get back into this 6.68.280-Deduction. What we have under deductions. Again Mr. Gierke hasn't read far enough, under subsection (f); "In no event shall any such deduction be allowed, unless the hospital building is entitled to exemption from taxation under the property tax laws of the State of Washington, and unless the Superintendent or other proper office of the institution under oath, makes annual reports to the State of Washington Department of Health, of its receipts and disbursement during the preceding calendar year."

Mayor Rasmussen: Does that clear the matter up, Mr. Gierke.

Mr. Gierke: No.

Mayor Rasmussen: Mr. Hamilton, do you find any exemptions in our ordinance.

Mr. Hamilton: Mayor and members of the City Council. (micorphone not on)

Mr. Gierke: I will agree Mr. Mayor, there is no specific exemption by words, naming Goodwill Industries of Tacoma. There is exemption we consider, Yes.

Mayor Rasmussen: You stated that you had a letter, you recognized Lyle Lemley's signature.

Mr. Gierke: No, I sorry, I don't have a --

Mayor Rasmussen: Were you serving when Lyle Lemly made this pencilled notation.

Mr. Gierke: In 1951, the letter of March 12th, 1951, you're referring to, Mr. Mayor.

Mayor Rasmussen: Yes.

Mr. Gierke: That is correct. That is my understanding. Of course, in 1951 I was in the 7th grade. I will rely---

Mayor Rasmussen: What word would be permissable in court, that this was Mr. Lemley's signature.

Mr. Gierke: You have to suthenticate it, that initial is, there must be thousands of his initials through this building in our archieves.

Mayor Rasmussen: Agreed.

Mr. Gierke: That would be admissible if it were authenticated and demonstrated to be his initial, I believe.

Mayor Rasmussen: You stated also in your speech here, that the Council and past Councils knew that this tax wasn't being paid.

Mr. Gierke: No, I didn't say---

Mayor Rasmussen: That this Council knew the tax wasn't being paid.

Mr. Gierke: No, I said that members, I believe, some members of the Council were probably aware of the tax exempt status of Goodwill over the past years. We had no objection regarding past Councils, Mr. Mayor, under the Council form of Government. I have no idea what went on in 1951 to '55 of personal knowledge in Tacoma, I simply couldn't say.

Mayor Rasmussen: I wanted that cleared up. This Council didn't know this tax wasn't being paid. We assumed that all our taxes are levied equally on all people that are subject to the tax.

To get back to the type of business engaged in by Goodwill. We're in agreement that all of these organizations are doing a real good service for the City, but if I were to go to the Goodwill and say, I need rehabilitation---

Mr. Gierke: I don't think you would qualify, Mr. Mayor and I understand it's hypothetical.

Mayor Rasmussen: You take Mr. Murtland.

Mr. Gierke: I wouldn't want Mr. Murtland.

Mayor Rasmussen: Then they would accept me and I would immediately go into the class.

Mr. Gierke: No, Mr. Mayor, you might not be accepted initially. First, there are several steps you would have to go through. Now, this is important.

Mayor Rasmussen: This is important, right.

Mr. Gierke: This is important, and I don't want to make light of it and I know ---. Let me say this. There is for every person who applies to Goodwill Industries for vocational rehabilitation under a grant and sponsorship from the State or from the appropriate agency which is sponsoring him, that person is first given a six hour pre-intake assessment evaluation.

Mayor Rasmussen: By whom.

Mr. Gierke: By our staff, our psychiatrist, our psychologist, our evaluator. We have on our staff, Mr. Mayor (46) persons at this time; some are serving part-time, some are serving full-time. These persons, Mr. Mayor, are evaluating these people over a six-hour period. Not all persons are found to be properly acceptable under the situation we have there, because their handicap may be too great. There may be some people who cannot absorb the training because of certain problems with groups; they can't sit still long enough to follow instructions. But, they are given a six hour test and it is completed in one day. If the person is then accepted, then the person is fitted into a training program, however, before he is then trained he is further evaluated to determine which type of training he is best suited for. And we have a number of occupations and skills.

Mayor Rasmussen: What I mean, what I was arriving at Mr. Gierke, if I were to come there and I had no money and I said that I wished to go into your training, you

would take me then, without making any charge to anybody for this service.

Mr. Gierke: I frankly, don't know. I think that there would be a charge made through the Division of Vocational Rehabilitation.

Mayor Rasmussen: There would be a charge.

Mr. Gierke: No, either a charge or a receipt. We receive these tuition fees, make no mistake about it, we don't disagree with that at all. We have received these fees over ten years--

Mayor Rasmussen: But, I think you know what I'm aiming at; I would not be accepted as a charity patient.

Mr. Gierke: If you were indigent, not sponsored.

Mayor Rasmussen: There is a charge made to somebody for these services.

Mr. Gierke: May I refer to Mr. Gentry and ask him, I simply don't know. Mr. Gentry what's the answer.

Mayor Rasmussen: I think the crux of what the billing was made by the Department on, do you accept charity patients or is there a charge made for the services of rehabilitation.

Mr. Gentry: We do accept charity patients, Mr. Mayor and Council members. We have two distinct programs at the Tacoma Goodwill Industries. The program that Mr. Gierke was referring to, where we receive fees from the Division of Vocational Rehabilitation, are for clients they do sponsor. But at Goodwill we do have our own program of rehabilitation through work therapy. We have people who are referred to us by, Doctors, Ministers, Priests, Rabbi's, the public Schools, friends and we even put small ads in the newspapers at times on certain jobs, in order to reach these people that might need our services. Then these people would be brought in and evaluated. They are given a psychological testing and a medical examination. They are assigned to a supervisor who then will take this person through basic parts of training and work. It is not what happens basically and on part of this we give a great deal of professional help, like, reports, diagnostic reports. On the other person, the charity patient, you are referring to; they first would come in and our personnel department would handle the reports to the best of our ability for that person, and there is no charge.

Mayor Rasmussen: And this service you are giving, are you giving to other States. How many other States are you serving.

Mr. Gentry: That particular service we are not giving to other States. We are giving it to the residents normally in the City of Tacoma. The Rehab would be from Alaska and Montana.

Mayor Rasmussen: Who pays for this.

Mr. Gentry: Those States would obtain the special diagnostic services which we are capable of giving because of this professional staff that we do have.

Mayor Rasmussen: Those States, then would have by reason of your attorney's opinion, that you shouldn't pay the tax. Those States then would be receiving benefits of the services that the City of Tacoma provides, such as Police protection, Fire protection etc.

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Mr. Gentry: The person would be receiving the services.

Mayor Rasmussen: No portion of that would come for these services that would be provided, I see.

Mr. Gierke: That's correct, Mr. Mayor, the same as any student visiting or going to school at the University of Puget Sound, P L U from some other State. The University of Puget Sound is a good example, or T. C. C., they also receive tax benefits in the form of Fire protection, Police protection, Transit, and most of them are not property owners, they don't pay a transit tax on the utility bill, directly. These people all receive benefits, Mr. Mayor, the benefits that we are referring to.

Mayor Rasmussen: That is good information. Now, in regards to purchase of articles. Are they in a retail business.

Mr. Gierke: Purchase or sale. Are you speaking of a purchase.

Mayor Rasmussen: They receive donations and then sell the articles that are donated.

Mr. Gierke: We sell the articles that are donated through our Goodwill Store.

Mayor Rasmussen: You pay a sales tax on that.

Mr. Gierke: We pay a sales tax and we remit monthly, I believe, Mr. Mayor, to the Department of Revenue in Olympia.

Mayor Rasmussen: Do you have a letter from the Department of Revenue exempting you from paying the B & O tax.

Mr. Gierke: No, there is no letter in our file exempting us directly from B & O tax. No B & O tax has been levied to us.

Mayor Rasmussen: Have you advised your clients that they may be, have a back tax assessment.

Mr. Gierke: My clients, are perfectly aware after the last two months, Mr. Mayor, that they may have some taxes assessed. But, however, it is my opinion, and I will tell you now, and I will advise them also in writing, it is my opinion, that they are not responsible as far as the retro-active assessment goes. Absolutely not.

Mayor Rasmussen: Let's touch briefly on that, solicitor, what firm was that, that came into the City, and you say they were here only for counseling once.

Mr. Gierke: That is correct, Mr. Mayor. That is the, let me get the exact words for you. The National Fund Raising Inc, I believe, this is the correct title. I may be in error. Pardon me, National Fund Raising Services, Inc., that is correct.

Mayor Rasmussen: They only came into the State to advice and counsel; or did they do this by letter.

Mr. Gierke: I don't know, what they do regarding other communities or agencies.

I know that they are specialists in this regard, and we have, of course, signed a contract with them to provide supervision only. No direct solicitation or collection or receipt of funds were made by these people.

Mayor Rasmussen: Would you advise the Council, would this include a service or would they make a charge.

Mr. Gierke: A fee was paid. There is no question about that.

Mayor Rasmussen: A fee was paid. Do you have any knowledge of the size of the fee or how it was based.

Mr. Gentry: It's in the audit.

Mr. Gierke: I have it, an agreed fee, I don't know the exact amount that was paid. I know there was a provision in the contract for an evaluation or a determination of the exact fee. I don't know what the exact amount was paid. Frankly, I would say this also, we are not in the position of hiding things.

Mayor Rasmussen: This is public information.

Mr. Gierke: But as far as we are concerned, however, the contents, Mr. Mayor, as you realize, of course, the contents of our audit and all material supplied Mr. McLennan is, of course, information for the Council and for Mr. Mayor and the City officials. It as such is not public information, in terms of general use.

Mayor Rasmussen: Mr. Gierke, if a judge would ask you for this information, would you tell him it was privileged information.

Mr. Gierke: I'm not saying privileged. I'm saying, I'm just quoting you, your own ordinance, the ordinance itself says so. We are cooperating fully with Mr. McLennan in supplying information.

Mayor Rasmussen: You just said we're sitting in a judicial capacity, and ---

Mr. Gierke: Oh, yes, you are Mr. Mayor, and you got the material.

Mayor Rasmussen: I find it impossible if we've got to leave the Chambers to get some information.

Mr. Gierke: You don't have to go anywhere, Mr. Mayor. We have it right here.

Mayor Rasmussen: The dollar amount is immaterial.

Mr. Gierke: I don't know exactly, I just don't know exactly the amount.

Mayor Rasmussen: Could you tell me, Mr. Gierke, this Counsel, did come into the State.

Mr. Gierke: Pardon me, the fund raising counsel.

Mayor Rasmussen: Yes.

Mr. Gierke: From San Francisco.

Mayor Rasmussen: Yes.

Mr. Gierke: They journeyed up and they came right here.

Mayor Rasmussen: At that time did they register with our Tax & License Dept. in this City as an out of State Corporation doing business in this State.

Mr. Gierke: No.

Mayor Rasmussen: Did they register here with the Secretary of State, as an out of State Corporation doing business.

Mr. Gierke: They are not required to register with the City. I can't say. I don't know about them registering with the Secretary of State. I simply don't know. It could be, because it was, perhaps, in a period of transaction, may be then they didn't. Frankly, whether or not they did register with the State as a Corporation, I don't know.

Mayor Rasmussen: Are you aware that the law requires them to register.

Mr. Gierke: I am aware there is a law regarding the registration of foreign corporations who are doing business on a consistent basis, however, there is-- I haven't got Title 23 with me Mr. Mayor, but I believe there may be some exemption. I can't tell you.

Mayor Rasmussen: You find nothing then, improper as far as the tax and license from our legal department's interpretation from it, the law.

Mr. Gierke: Well, I disagree.

Mayor Rasmussen: It relates especially, in fact it is, the duplicate of the State law.

Mr. Gierke: I disagree with their interpretation emphatically, or I wouldn't be here for forty-five minutes.

Mayor Rasmussen: Does our ordinance duplicate the State law.

Mr. Gierke: I believe, Mr. McLennan or you stated, Sir, that our business tax license ordinance is the same as the 1955 State law. I believe that is correct.

Mayor Rasmussen: Mr. Gierke: Depending on-----If you were sitting here in the Council and these were the questions they would ask you if you were appearing before the Supreme Court--you were sitting here in the Council and you could find that, in no way the Tax & License Department acted improperly, and you could find in no way that the Legal Dept. advised us improperly, would you say, then, that the Council should forgive all taxes and penalties.

Mr. Gierke: Mr. Mayor, that I suppose would be a question that, perhaps, no one would ask. Let me say this, Sir. I was a law clerk down there and I know very well the questions they ask. I was there a year.

I would say this, I disagree emphatically in the interpretation of the ordinances by the Tax & License Dept., and also by the City Attorney's office, my former employers, I might add. I disagree with the interpretation emphatically. I cannot concede they have interpreted the law properly at all within the spirit or expressed language. I cannot, and I will not concede that.

I will say this, that you Sir, sitting as a chief judge of a court of benign jurists, in this case, have the right and the duty to interpret this statute. There are problems with this statute in determining its application. I believe the problems are, and should be resolved certainly in favor of the defense status of

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the four agencies who are petitioning before you. I believe it certainly should for the reasons I have enumerated in some detail. I've tried to be absolutely accurate in these, and very sincere, I might add.

Mayor Rasmussen: You're willing to pay the tax and the penalties back to two years, but you don't think it should go beyond that.

Mr. Gierke: No, I don't think we are obligated to---

Mayor Rasmussen: The newspaper---

Mr. Gierke: No, I hope I can correct the newspaper before they--or the people at home. This is not true. We believe, if you decide that we are responsible for a tax, which should be retro-active; if in that event that tax should not go back further than two years, and we should, under no circumstances be responsible for any penalties or any interest during the interim. This is my position, four-square.

Mayor Rasmussen: In the Attorney General's office have you ever found any indication in the Legislature that they were going to modify this.

Mr. Gierke: Mr. Mayor, I haven't had a chance to go down to the Legislature this session, I'm sorry. I haven't talked to my friends down there, and I simply don't know what the general drift of the situation is. I do understand that the Senate and Legislature is still in somewhat of a state of flux down there. I don't know if these issues are even introduced. I simply don't know, but I think not, as I think we would have heard of them today from some of the attorneys or some member of the Council. But I have no direct knowledge of the plans of the Legislature. I don't think anyone else does.

Mayor Rasmussen: Each session has been typing them up more and more as they search for money.

Mr. Gierke: That's my understanding and I---

Mayor Rasmussen: Further questions of Mr. Gierke.

Mrs. Banfield: Don't you feel that we're kind of opening Pandora's box if we let you get away with this. Every taxpayer in the City of Tacoma could come in and say, well, they didn't pay their taxes, we don't know why we should have to pay ours.

Mr. Gierke: I don't think, Mrs. Banfield, that our situation is at all analogous to what you're suggesting. However, you are certainly right in raising the question because it is a fair question and it should be dealt with.

Let me say this, the other taxpayers in the City of Tacoma are not in the same position as these four, in their relationships with the business and occupation department. For example, suppose a firm of attorneys or a firm of physicians, to be perfectly honest about it, suppose this were the case and we were told, and we were aware of an existence of a letter, and we were never levied, never received a thing in the mail, saying that we should register.

Suppose you have an attorney who comes in from out of State and doesn't know anything about our local tax situation; this can happen sometimes, or a physician, or a mortician. Mrs. Banfield, in that case, that would be a situation on all fours; we are certainly not encouraging on a full scale or even small scale, the

violation of tax laws; not at all. I would be violating my oath of office as an attorney, before you; in fact, I would be insulting the Council. I'm not here to insult the Council, I'm here simply to present a case fairly.

We are interested in seeing to it that we aren't as you say, pulling something, and are interested honestly, that nothing is pulled on us. We really are shocked, we had no idea, Mrs. Banfield whatever, that we would be responsible for these taxes, and when the taxes arrived, some of our people lost a few hairs and a few pounds when they saw the amount. In fact, you might say, a considerable shock. So, we are trying to be, as I say, in perfect good faith. I'm not interpreting ordinances and reading only half of them as Mr. McLennan, might suggest; I'm trying to be perfectly fair with the Council and give them my opinion.

Mrs. Banfield: I think you must appreciate the fact that we are up here, under oath of office, to uphold the ordinances that have been passed in the City and as far as I'm concerned, it is all there, in black and white, with no exemption whatsoever. I'd like to ask you another question. Why was the name changed on the Goodwill.

Mr. Gierke: Frankly, I don't know. I simply don't know. Wait a minute, I think I do know, but I could refer to Mr. Gentry for a precise explanation. (Mr. Gierke conversed with Mr. Gentry who gave him the following information)

The Goodwill facility was planned to be built about that time, the new plant, and now it says, Rehabilitation Center Inc.; and that is now what we have. We have now evaluation and training and we have our workshop and we have our sales facility, all under one very large roof. And this is what we've got now, and I think this name more fairly reflects, Mrs. Banfield, what we are trying to accomplish.

Mrs. Banfield: It wasn't for tax purposes.

Mr. Gierke: No, no, absolutely not. I can assure you of that Mrs. Banfield. We're not interested, in fact, to be honest with you, I don't know of any business man any where, Mr. Mayor, who can evade taxes by changing his name for the fun of it. You just can't do it. If you could, I think I'd change my name, but I'm certain we can't do that.

Mrs. Banfield: We never did establish how much you paid this fund raiser.

Mr. Gierke: To be honest with you, Mrs. Banfield, I don't know, the exact amount paid the fund raiser for his function, I don't know. Bear with me just one moment, the expenses were paid in varying amounts depending upon the amount raised. In other words, it would depend upon the amount raised, the amount paid. I don't have those figures with me. I believe, Mr. McLennan has those as part of his audit. Mr. Mayor, I might say this, Sir, the questions you have asked I believe are fair and they are good questions regarding the operations of Goodwill. We would like to invite the Council to have a study session at the Goodwill facility any Monday you desire. Give us notice and we would be pleased to take you on a tour of our facility, so you can observe our evaluation program and our shelter workshop program. See the people we deal with and then you will fully understand and appreciate what we are doing.

Mayor Rasmussen: Mr. Gierke, I have received an invitation to your annual----

Mr. Gierke: Next week is the 25th, and you are certainly--

Mayor Rasmussen: We could get there, but it isn't the question; we know what good work you do. But the past Council passed this ordinance and our department has said it should be enforced, our legal staff say it is enforceable. It isn't the question

of hard working dollars, it is the question of past Councils; I think some of the members have said they were sitting here in these chairs when the ordinance was passed.

Mr. Gierke: May I point out one thing, Mr. Mayor.

Mayor Rasmussen: As Mrs. Banfield has said, we're duty bound and faced, probably with a taxpayer's suit for malfeasance or misfeasance in office.

Mr. Gierke: I would certainly like to repond to that to show you, you actually have a right, and you do not violate your oath, Mrs. Banfield, you certainly do not violate your oath of office if you find that these taxes should not be retroactively assessed, and you find that penalties and interest should not be imposed. There is some question, Mr. Mayor, and you raised that earlier, and I would like to respond to it just for a moment.

Mayor Rasmussen: Yes. While you're responding, but you do agree that the taxes, that you are legally liable for the tax, because you have been paying it since April, May and June.

Mr. Gierke: No, Sir. I do not---

Mayor Rasmussen: You are challenging that---

Mr. Gierke: Mr. Mayor, I've tried to answer your questions fairly.

Mayor Rasmussen: This is what it means, if you are challenging the tax that you are now paying willingly.

Mr. Gierke: Well, that, we aren't appealing on that at the moment at all. That is, we have paid the taxes since the middle of 1968; we have registered with the Tax & License Dept. and we have cooperated with them entirely on the audit of the books. We have some question in my mind, some considerable question, Mr. Mayor concerning, whether or not we are responsible for these taxes, in sny event. But I'm not addressing myself, certainly I'm not wasting the Council's time---

Mayor Rasmussen: You mean, this is not part of your appeal. The current taxes.

Mr. Gierke: No and that--

Mayor Rasmussen: It's only the past taxes and penalties.

Mr. Gierke: The current taxes, itself is not an issue before the appeal, at all. It is not an issue before you. May I respond to one thing that Mrs. Banfield questioned on the oath.

Mrs. Banfield when you sit in this capacity, you do have an oath of office. You certainly do, and I sympathize with the problem you have, but as you live up to the oath of office, this requires a certain discretion on the part of all Councilmen and the Mayor, in interpreting and applying the statutes and ordinances of the City of Tacoma, as well as of the Charter. I pointed out that, I believe, that we are by virtue of the actual operation, actual operation of your language and your ordinances, we are not exempt and where we are exempt, we are not taxable. I pointed this out in numerous ways and in numerous provisions. I also pointed out how the State statute takes precedent over an inconsistent ordinance, allows only a two year retroactive statute of limitations. I have also pointed out where I believe penalites and interest would not by any stretch of the imagination, be

sustained by any court and certainly should not be sustained by you.

And I would like to point out also, as Mr. Langlie pointed out and as the other attorney pointed out, Mr. Roller, if Goodwill didn't perform these functions in your community, then who would. Then, where would the City of Tacoma be and we would have to do it ourselves. We would have to do it ourselves, this is the thing that concerns me.

Mayor Rasmussen: Mr. Gierke, that is not the point of issue.

Mr. Gierke: Well, the other attorneys made it, and I thought I would pass on it too.

Mayor Rasmussen: The point of issue is, we probably should have a judicial determination.

Mr. Gierke: No.

Mayor Rasmussen: It could well be that the Council decides to throw it over into the court, and we'd lose half of our staff.

Mr. Gierke: If the Council did that, your Honor, the Council would be abdicating its responsibility under the Charter and also its oath of office. The Council has an oath of office to uphold. Simply by throwing up your hands, and saying by golly, somebody may bring a taxpayer's suit in the form of a mandamus to force us to levy and collect the tax, therefore, we'll let the courts take care of it, that's not the benefit and that's not the intent of your own ordinance.

Mr. Bott: Mr. McLennan, does the University of Puget Sound pay a tax on their tuition and their grants.

Mr. McLennan: No, Sir.

Mr. Bott: They don't come under this then.

Mr. McLennan: No, Sir.

Mr. Bott: Did you tell me that the hospitals and their rehabilitation departments do not pay any B & O tax.

Mr. McLennan: Hospitals, only on their restaurants.

Mr. Bott: Mr. Mayor, I would strongly request that the Chairman of our Legislative Committee, ask our Legislators to institute legislation exempting tuition fees and grants from rehabilitation training from any assistance of the B & O and service. I think that this would be a very good recommendation for the Council to make.

Mayor Rasmussen: Mr. Bott, we can take that up later, it has no place in this hearing.

Mr. Bott: May be this is another--

Mayor Rasmussen: Why did you pass the ordinance.

Mr. Bott: Pardon me.

Mayor Rasmussen: You were on the Council that passed the ordinance.

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Mr. Bott: You're right, we're learning things I see. Now, Mr. Mayor, without being out of order, may I make a motion at this time.

Mayor Rasmussen: No. This is a hearing.

Mr. Bott: I mean, relative to our action. You mean this does not conclude the hearing.

Mayor Rasmussen: No. You have a hearing going on and there are several people yet to be heard.

Mr. Bott: Then, you are going, this is a point of information, to hear the other hearing.

Mayor Rasmussen: Yes.

Mr. Cvitanich: Mr. Gierke, I don't think you can bring out any more than we've already heard, I'd rather hear the next gentlemen on this thing, so we can conclude the public hearing.

Mr. Gierke: Mr. Mayor, I would be glad to answer any further questions of you or any members of the Council, which you might have. Thank you for the opportunity of making this presentation.

Mayor Rasmussen: Mr. Lynch, representing the Y. M. C. A.

Mr. Lynch: Comes now, the fourth attorney, Your Honor, and the third attorney is a very difficult act to follow.

Since four o'clock this afternoon I've seemed to have picked up a cold and something of a beard. If you'll pardon my appearance and my voice, Your Honor; also in the interim, I've probably forgotten every salient, crucial important fact that I was going to bring out for your consideration.

My remarks, will, in fact, be brief. The first three attorneys, having covered most of these important legal issues involved in this matter, Your Honor, I will probably be well advised to state 'me too' and be seated or hold myself open for questions from the City Council.

I am Gerry Lynch; I am an attorney retained in this instance by the Tacoma and Pierce County Young Men's Christian Association. I am also a member of the Board of Directors of the Tacoma Branch of the Tacoma-Pierce County Y. M. C. A. I so testify because of the fact that sometime during 1968 the Tacoma Y. M. C. A. which was at that time a separate legal entity, merged with the Puyallup Y. M. C. A. to form a new corporate entity under the charitable and non-profit sections of the Statutes of the State of Washington.

We were first notified of this matter from the information I have in December of 1968. It was primarily my fault that the Jeopardy Assessment was eventually levied against the Y. M. C. A. I do not criticize this method of bringing this issue to a head. It is rather well spelled out in the ordinance as a legitimate method in forcing the issue, as it were, due to certain commitments I had out at McChord Air Force Base, and some other problems that arose, I was not able to get together with the Tax office.

A jeopardy assessment was served on the Tacoma-Pierce County Y. M. C. A. dated Dec. 31, 1968. The total due and owing under that jeopardy assessment was \$6,490.00. Immediate notice of appeal was given to the Council, Mr. Mayor, and on the 21st day of January, 1969, the date scheduled for the first hearing on this matter, I submitted to the Council members, I think sufficient copies of a brief resume of the position being taken by the Tacoma-Pierce County Y. M. C. A., together with certain attachments to that document; one being an audit assessment notice, the other being a copy of our notice of appeal. The last two documents

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being our own self audit, which in the meantime had been conducted. That audit, for your information, Your Honor, is broken down into two segments, one of which covers the period of time from the enactment of the revised or new ordinances, which applied a different rate in several categories; the other being an audit based on our figures for the entire seventeen year period.

Since that time the records of the Y. M. C. A., having been made completely available to the City of Tacoma, a new audit assessment has been levied. This time it is not a jeopardy assessment, that is the Audit Assessment Notice-A D 236. In this instance, the total amount alleged due and owing to the City of Tacoma in the form of taxes, penalties assessed on charitable solicitation licenses, etc. is in the amount of \$2,694.16.

I, probably will not do justice to the other three attorneys who have already made a presentation to Your Honor. And, perhaps, to some degree, Your Honor, to the detriment of my own client, however, it is the position concurred in by the Tacoma-Pierce County Y. M. C. A., and that's that the practical approach should be taken on this matter. The all prevailing issue that this Council is confronted with, is the written word of certain city ordinances. I am not at this time going to take great issue with the strict, liberal, ambiguous or any other multitude of interpretations of the written word.

It is my opinion at this time, and it was my opinion upon conducting what I felt to be a reasonable amount of research into the issue, at least as it relates to those functions carried on by the Tacoma Branch of the Young Men's Christian Association, that the written word, as I interpret it, does apply to those functions which we would normally contemplate to be business functions. Please keep in mind that I am here, strictly on behalf of the Y. M. C. A., not the other organizations. And, I feel that this is most important. The other organizations are formed differently. Perhaps, they are formed under a different section of the State Code, perhaps, as a religious or a fraternal organization. Although the Y. M. C. A. has certainly Christian ideals which it attempts to apply and perpetuate, we are not as such a church affiliated organization. I point this out only, so I don't undercut the position of any of the other organizations.

I also, at this time adopt as already has been said before you, and I will not repeat it, those remarks which relate themselves to the statute of limitations, and the theory which has been bantered about to some degree tonight of an equitable estoppel. A sum of money is either due and owing from the Y. M. C. A. to the City of Tacoma in accordance with an interpretation of the ordinances in question, or a sum of money is not due and owing. If a sum of money is due and owing, then the next question will have to be, how much is due and owing.

I would submit for your consideration that the third or practical issue is, what is done from that point forward.

It would be fruitless to state that we have not at any time in the past, attempted to avoid any just obligation imposed by the ordinances of the City of Tacoma. I don't think there has been any indication or implication of this.

By the same token, we don't want to pay anything more to the City of Tacoma than is required by a judicial determination of the wording in question. Several major areas seemed to have been stressed tonight, in particular, Your Honor, has requested it of each organization whether or not a search of their records has revealed any affirmative indication in writing through letter, memo or anything of this nature, of any expressed directive or authorization or comment from any prior City administration with regard to the particular organization being an exempt organization by the terms of the statute. We have absolutely nothing in our file to that effect.

I would submit for your consideration, though, that it may be a logical conclusion, when I state that the Y. M. C. A. has been paying B & O taxes to the State of Washington since the inception of the Y. M. C. A., or the inception of the B & O taxes in the State of Washington, but it doesn't really logically follow that we would have affirmatively attempted to avoid an obligation justly due and owing to the City of Tacoma. We dispute the currently alleged figure due and owing to the City.

But, even for the purpose of argument, even accepting those figures, we're talking about seventeen years and a total obligation of \$2,694.16. I respectfully urge, that is not a staggering amount when considered that way, and if the tax had been paid during the period in time. We're talking about approximately \$125.00 per year, which is not a great impact, on an organization as large as the Y. M. C.A. if in fact, that amount of money is due and owing. I point this out as being probably the only piece of evidence that I can submit to you that, perhaps, whether it has been a justified determination by somebody in the prior City administration that the Y. M. C. A. were either, in fact, an exempt organization under the strict wording of the ordinances in question, or whether or not somebody was just going to let us off the hook, I don't know; the fact remains we have been paying taxes to the State of Washington and no, doubt, would have been paying taxes to the City of Tacoma if the requisite knowledge had been there, or if some impression had not been gained sometime during this seventeen year period of time, that these taxes were assessable, based on the activities of the Y. M. C. A.

The written material which I submitted to you runs approximately fifteen pages. I will not go over that written material. I hold myself available to answer any questions that you may have at this time. The legal issues, I believe, Your Honor, have been hashed and re-hashed this evening. I don't think that it will serve any beneficial purpose to reiterate those questions, and the answers given.

But, if you feel for some sake of continuity, the same questions which were posed to the prior attorneys, should be posed to myself, representing the Y. M. C.A. I'll be most happy to give you whatever knowledge I have, the research I have conducted in regard to the assessments in question.

I would only point out one other item, Your Honor, that relates to the rates applied and the method of application of certain of the items contained now in the new assessment. This, now giving rise to the difference in figures which are submitted under our own independent audit, not an independent audit, our own audit, as compared with the audit run by the City of Tacoma. We take issue with the fact that an assessment has been levied on all programs, tuition and camp fees regardless of whether or not the individual paying fees is a member of the Y. M. C. A. or a member of the general public.

It has always been the interpretation of this Y. M. C. A., with other organizations throughout the country, that with the membership goes certain other rights, and the amount paid in that instance, is really not a taxable item. The second one, relates itself to an interpretation of what is a transient, under the appropriate section in the ordinances of the City of Tacoma and specifically, Your Honor, I make reference to 6.68.055, and under that section the wording under (c) which reads as follows: "for the furnishing of lodging and related services to transients in or by a hotel, rooming house, " etc. and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same."

From a practical standpoint, what we're talking about is the difference between an individual who comes in and rents a room at the Y. M. C. A. for one night, who is truly in a transient situation, and those individuals who apparently are in that never, never land of two nights to thirty nights, as to whether or not that individual is under a continuous lease under the terms of the ordinance. I point

this out, for two purposes, number one, to submit our consideration or our interpretation of this particular section, is a correct one. That anybody in attendance for in excess of one evening is not a transient, and as such, the income from that form of rental is not a taxable transaction. Number two, to high light, perhaps, minimally perhaps, the fact that these ordinances are subject to some interpretation. This City Council will certainly have to take certain interpretations into consideration. I assume the questions will be given to Mr. Hamilton or somebody in the City Attorney's office. The written word can be interpreted.

I would only point out for your consideration again, that we are not requesting the City Council to do something that it cannot lawfully do, under its own ordinances. We do respectfully suggest and submit for your consideration tonight, that there is a wide area of latitude which would allow this City Council to not only uphold its Oath of office to enforce the ordinances of the City of Tacoma, but to correct on an equitable basis a situation which has not really been percipient by the organizations in question, but has arisen out of, at the least, some statements, impressions, whatever it happens to have been, which carried over for the last seventeen years, that the particular organizations in question were exempt organizations.

I don't feel it necessary to continue with any further formal presentation. I'll be happy to answer, as best I can, any questions you would have in regard to what my interpretation is, of the ordinances in question.

Mayor Rasmussen: Mr. Lynch, you are aware of the case held en banc in Olympia before the Supreme Court where the respondents, and this was the Y. M. C. A., the court is speaking of, paid business and occupation taxes levied upon it for engaging in activities defined under RCW so & so, had retailing and activity defined as service, under a further RCW number. In addition, it was required to collect and pay retail sales tax under the provision of RCW Chapter 82.08. They petitioned the Tax Commission for a refund of these taxes and when the petition was denied, they appealed to the Superior Court and it was held that the respondent was taxable under these provisions, Revenue Tax Laws of 1935 Chapter 180, Page 706, was unconstitutional. That case was held en banc and the Court ruled that it was not constitutional. They also were petitioned for a rehearing and the court denied the rehearing. You are aware of that case.

Mr. Lynch: Oh, Yes, Your Honor.

Mayor Rasmussen: This is why you're paying the State B & O tax.

Mr. Lynch: That's correct. Let me take that one step further, I hope there is no misunderstanding as to what my interpretation is of the City ordinances of the City of Tacoma. And once again, I'm speaking on behalf of the Y. M. C. A. as their particular attorney, and what other attorneys have reached before, conclusions on the meaning of those words, that's their own interpretation. The Y. M. C. A. carries on certain retailing functions which are encompassed by what I consider to be a constitutional ordinance and/or statute. I can't reach any other conclusion, and I would be dishonest with this group if I tried to impress another position. The written word applies, I can't dispute that.

Mayor Rasmussen: Inasmuch as the Y. M. C. A. pays the State B & O tax, they should be paying the City B & O tax, then.

Mr. Lynch: I would point out, to Your Honor----

Mayor Rasmussen: Do you accept the figure of the State B & O tax as being an accurate reflection of the B & O tax due the City.

Mr. Lynch: While I might not accept it, I think it would have great weight, both in my mind and in the mind of the Board of Directors of the Y. M. C. A. with regard to what we have to accept from a practical standpoint.

Mayor Rasmussen: Thank you, you're very fair minded. Now, the counselor, the person who would come in to handle the solicitations on a counsel basis for the Y. M. C. A., did they take out a solicitation license.

Mr. Lynch: I would refer that question to Mr. Taylor, if I may.

Mayor Rasmussen: You haven't touched on that in regards to the---

Mr. Lynch: The charitable solicitation license.

Mayor Rasmussen: And, ---

Mr. Lynch: I would have to state to my knowledge that we did not.

Mayor Rasmussen: There was no firm fee received for advice or consultation. Would you receive a fee for advice or consultation, Counselor, and let's assume you get \$250 for appearing before a judicial body, such as this.

Mr. Lynch: I should hope so, Your Honor.

Mayor Rasmussen: And, then when you filled out your B & O tax, you're registered with the State Revenue.

Mr. Lynch: Yes, that's correct.

Mayor Rasmussen: And then you pay your B & O tax on a 1% for services.

Mr. Lynch: Correct.

Mayor Rasmussen: And we had the information previously, that there was a counselor brought into the City and hired for a purpose and received a fee, who had never registered for, either with the State as an out of state Corporation, or with the State Revenue Dept. and didn't pay a B & O tax on his fee. It is a question I don't know, would he be legally liable for that.

Mr. Lynch: I suspect he would be if the ordinance is applicable. I would respectfully suggest, or at least pose the question, of the amount of responsibility of the organization bringing the individual into the State for the acts of that individual in, either intentionally or through neglect, avoiding any obligation due under the taxing or licensing ordinances of a particular City or the State of Washington. I don't know to what extent we would have the authority to completely, pardon me, duty affirmatively, to fill in such a soliciting agency or adviser, counselor, as relates to his responsibilities in taking care of his own obligations, for his own business.

Mayor Rasmussen: As an agent or employee of this particular corporation, would the corporation be liable for the acts of his agent.

Mr. Lynch: Well, there is only one way I can answer your question. Most principals are liable for the acts of their agents or their employees.

Mayor Rasmussen: And then--

Mr. Lynch: My question would be, would such an organization be in a position of an agent or employee, or to the contrary, be an independent contractor, as most of these individuals are. They come in for that purpose. They take over the entire campaign. The organization pays the fees for the individual to come in who apparently has the experts that the hiring organization does not have. In that context, such an individual or corporation would probably be an independent contractor, and the parent organization, or the hiring organization would have absolutely no legal responsibility.

Mayor Rasmussen: That as an independent contractor, they would be subject to B & O.

Mr. Lynch: I suspect, they probably would be to some degree, to the extent that the ordinances or the statutes are applicable to that individual, yes.

Mayor Rasmussen: It would have to be decided, either that they were acting as an agent of the corporation and, of course, the corporation is liable, or if they were an independent contractor, then they themselves are liable for the B & O. Is this correct.

Mr. Lynch: Assuming the B & O is applicable, yes.

Mr. Zatkovich: Well, Mr. Mayor, if I might; Mr. Lynch, first you make it a lot easier than the others here, it is a real remarkable job.

The question in my mind is just about how far we go back. Now, I would like to ask you what your interpretation of the law is with reference to the statute of limitations.

Mr. Lynch: I think the two-year statute of limitations supersedes any other statute of limitations enacted by the City of Tacoma. The two year statute.

Mr. Zatkovich: You, and your organization would be happy if we just went back two years, is that it.

Mr. Lynch: We would be tickled to death.

Mr. Zatkovich: Well, then, there is no question about it, the legality, then as you apply to it, with reference to the Y. M. C. A., etc. There is no question about it in your mind, as it applies to the Y. M. C. A.

Mr. Lynch: It applies to those, as far as I'm concerned. Yes, it applies to those business functions carried on by the Y. M. C. A. as a general statement.

Mr. Zatkovich: I probably should have asked this of the others. But Mr. Gierke was on his feet for quite a long period of time, and I felt that he needed a rest.

But we're talking about, pro and con here, etc., of course, we have to depend upon our legal staff. We do, and they say that we have the knowledge and know how, etc. for doing this, but there again, we do have to refer to our legal staff and to give us a sense of direction.

So, in this particular case, as it now stands, the other attorneys are arguing as to whether or not it would be legal. Wouldn't you say that the burden of proof is not on the City, it is on the others at this point, with reference to this particular matter.

Mr. Lynch: Well, if I might answer that this way, Mr. Zatkovich. I really can't talk in terms of burden of proof without having some explanation of what burden of proof is.

Whatever laymen's context you would put this in, you're probably suggesting it is up to us to come to you and prove to your satisfaction and overwhelm the evidence, or interpretation given by Mr. Hamilton, who normally is correct in his interpretation, up until tonight.

From a practical standpoint, we are on the outside, looking in. The City has run the audit. The City Attorney's office has given an interpretation, and will probably give additional interpretations. The City Attorney, I don't care whether he is sitting there with one or two hats on, you're still Councilmen and you still must have the best interests of the City of Tacoma at heart. From a practical standpoint as opposed to a legal standpoint, we've probably got the burden, certainly to satisfy you that ours is the better position, certainly.

Mr. Bott: Mr. Lynch you have been very helpful in some of your advice to us, and I wonder if you would be gracious enough in following up what the Mayor was talking about as to his concern about these consultants that come to the various organizations. And he said, possibly if I remember rightly, the principal is responsible for anyone that is working with him. Now, would you care to give your opinion, as to whether the City of Tacoma would be responsible if we had the Associations of the Chief of Police come in here and give us consultation service, would we be responsible then to see that they file with this particular department and pay their B & O tax, and all those other consultant we've had over the years.

Mr. Lynch: If you could each individually give me what answer you want, I could probably try to strike some ambiguous answer, that would satisfy anybody. But, you do point out something of a problem. How does the City function, how does the City make its ordinances known. How does it make any of its positions known with regard to its liabilities and the burden it places on the public. I can only assume this is through its agent.

Now, I'm not speaking in this particular instance; if, in fact, certain statements were made with regard to these organizations being exempt organizations, I don't think anybody is in any position at this stage to determine whether or not those statements were made with any authority, lack of authority, with the tacit permission of the entire Commission, or the Mayor or whoever was in charge at that time. But, it does point up the problem that, here, apparently something happened back in 1951 that created an impression, on at least four organizations that they were exempt organization; and I high light this again by pointing out that we've been paying B & O taxes to the State of Washington and I assume that if somebody had come to us from the State of Washington back in 1951 and said, forget the taxes, you're off the hook, nobody would have paid another cent. They would have been out of their minds to have paid it, but that is the reason for the proceedings.

Now, what precise position any prior Council conduct by the agents or employees of this City have placed this particular government in at this time, in regard to pursuing this matter from a technical or a legal standpoint, is a questionable area.

I do submit for your consideration, that truly, if I must reiterate something

that each of the attorneys has stated tonight, this body does sit as a judicial body; a judicial body must interpret, and a judicial body has a right to apply equitable principles where it feels those equitable principles will serve, not only the interests of the City but the organizations involved.

Mr. Bott: You say, you wonder how the people know when they come to town, maybe we should take the position of our neighboring City of Ruston, as you go through the town, you'll see a sign that says, "We enforce the Green River Ordinance." Maybe we should put these signs up outside our town.

Mayor Rasmussen: Well, Mr. Bott, when the question was raised, how do they find out, we have Mr. McLennan and his inspectors that are making these surveys all the time, and there is a bill in the legislature at the present time too, to allow the prospective information with the State Department of Revenue, which I'm sure will be passed, the City's Association ----

Mr. Lynch: I would only point out one additional item Your Honor. As you know, from your experience in the Legislature, my experience has been representing judges down there, occasionally a number of bills come in to each legislative session, for relief to which to some degree is either contrary to the express word of the Statutes of the State of Washington, or certainly, by implication. I think there is some help for some legislative relief in a situation as this case. Whether we talk in terms of applying legal principles or equitable principles, and still upholding your oaths to the City of Tacoma and the populous in the City.

Mayor Rasmussen: Further questions from the Council. And to summarize, you're asking release from the back assessments but would be perfectly willing to pay for the two years and---

Mr. Lynch: I think I can state, yes, we would be glad to pay the last two years, certainly.

Mayor Rasmussen: That concludes, unless there is somebody that wishes to speak on this hearing. Those who are here to speak, since it is a public hearing, give your name and address, please.

Mr. Leo Gallagher: I am Leo Gallagher, a member of the Board of St. Ann's Home. We are going to be faced very soon with paying the City of Tacoma a license fee of \$1,000, which I feel is completely unjustified, so that we can have a new home for the children at St. Ann's.

St. Ann's was established here in Tacoma in 1917. The Sisters of St. Francis have been operating it all during this time. At the present time, seven of the Sisters are dedicating their time completely to taking care of the children that are at the home. St. Ann's is supported by only three groups, U. G. N., The State itself, which send children to St. Ann's Home, and a few families who can assist in the care of the children. They have about twenty-four to twenty-eight children there.

They are made up of Catholics and Protestants, roughly, about 60% Catholics and 40% Protestants. St. Ann's is operated on the basis of a stop-gap at the present time. Years ago, it used to be called a Children's Home, but now, it operates on the basis of keeping children there until they can get into a foster home; as a rule they don't stay over six months, and nine months is a long time.

We have been told by the Fire Dept.; we have been told by the State; we've been told by almost every agency that has anything to do with the inspection of the home, that we will have to either sprinkle part of the building where the children live, or build a new home. We've been in the present location for forty years;

the buildings, one of them is over seventy-five years old, and the other one is roughly, forty years old. We don't think that we should try to fix up those buildings. We think we should build something new, but we don't feel that we should have to go to the citizens of the City of Tacoma or to you people here on the Council to ask you to help raise an additional thousand dollars so it can be paid to the City so that we can go out and then raise the necessary funds to build this home.

My appeal to you here tonight is very simple, and I think you can do it without all the talk we've had tonight. All you've got to do is to amend the two City ordinances that affect the B & O and the license fees, and eliminate them for charitable organizations, such as the groups that have been talking here to you tonight.

I'm no lawyer, and I don't know, but I would imagine you have the authority to either, amend that ordinance or cancel it and come up with a new one. But, I hope by the time you get through with this, that you will have eliminated this \$1,000 fee that we are faced with at the present time. We would like to get started right now, we've got our work pretty well started but we are waiting on the decision on this thousand dollars. We don't think we should have to pay it.

The other groups that have put on fund raising drives have not paid it. If we have to pay it, we will pay it under protest. Maybe we'll have to borrow it from someone to do it, because we don't have any money, but we'll hope though, that you folks will change these ordinances so that we can take care of the necessary requirements at St. Ann's to take care of the children who are waiting to be taken into foster homes.

Be glad to answer any questions.

Mayor Rasmussen: Mr. Gallagher, you have a fine church out there at St. Ann's.

Mr. Gallagher: This home is on 66th and Alaska and it is not connected with the church you're speaking about.

Mayor Rasmussen: We are certainly very much in favor of what you're doing. How much money are you going to have to raise here.

Mr. Gallagher: We have to raise \$300,000.

Mayor Rasmussen: Could you tell us what; you're not going to have a group in the neighborhood go around and solicit; you're going to hire----

Mr. Gallagher: It will be handled somewhat like St. Joseph's Hospital, we have hired the same people to assist us in this work, because we're not qualified to do the job that they will do for us.

Mayor Rasmussen: You, of course, are in the process of negotiating now; this is not in the hands of the tax body, is it.

Mr. Gallagher: No.

Mayor Rasmussen: Could you tell us what the fee would be for this fund raising project.

Mr. Gallagher: Roughly, about seven to eight percent of what we raise.

Mayor Rasmussen: However, I think that the ordinance is on, that the license fee is on the organization that comes in.

Mr. Gallagher: I've heard that half a dozen times, and I don't get that idea at all.

Mayor Rasmussen: Let me inquire of our Tax & License Division Director. Mr. McLennan, is the license fee going to be charged against St. Ann's or going to be charged against the organization that comes in.

Mr. McLennan: Mr. Mayor and members of the Council, it can be applicable to either one.

Mayor Rasmussen: If one didn't pay it, the other one would.

Mr. McLennan: The principal, the managing agent or a supervisor.

Mayor Rasmussen: So, they would be responsible. Do we have any provision in there that the B & O tax can't be passed on to the fund raiser.

Mr. McLennan: This is a general license. We're trying to get that other matter resolved about the fund raiser at the present time.

Mayor Rasmussen: That wasn't clear to me, Mr. McLennan.

Mr. McLennan: I said, we're trying to resolve another first.

Mayor Rasmussen: It's simply the license; the fund raiser would take the license out for the privilege of doing business in the City.

Mr. McLennan: This is correct, Sir. Whether St. Ann's would take it out or whether the fund raising management firm would take it out, would be immaterial, as long as they are in compliance with the regulation.

Mayor Rasmussen: Would you rotate possibly, \$30,000 out.

Mr. Gallagher: We'll have to pay them that, if they take it out, he's got people---

Mayor Rasmussen: This is his fee.

Mr. Gallagher: That's right.

Mayor Rasmussen: But, if we would hire Mr. Lynch here, and pay him \$30,000, he would then have to pay a fee for the privilege of doing business in the City.

Mr. Gallagher: That's up to the City to decide.

Mayor Rasmussen: This was the question. It isn't on St. Ann's or any other charitable organization. It's only if they desire to bring any of these professional fund raisers, then they are expected to contribute a little bit for the privilege of doing business in the City.

Mr. Gallagher: As I read the ordinance, whether it is a fund raiser or not, I don't think that our organization should have to pay for it and Mr. McLennan thinks differently.

Mayor Rasmussen: I think the solicitors should have to pay it as long as it is under the ordinance.

Mr. Gallagher: I think the solicitor would have to pay a B & O tax, but I don't think he would have to pay the thousand dollar fee, in our case.

Mr. McLennan: The solicitor could be liable for both.

Mr. Gallagher: I'm not asking you to decide this point right now. I am appealing to you to try to amend this ordinance to eliminate charitable organizations in both these categories, B & O and raising funds for their own needs and for the building of whatever facilities they need.

Mr. Murtland: I was going to raise a point of order, but he has now concluded. I don't think this was a part of the appeal, and I would like to get on with it.

Mr. Bott: Mr. Mayor, have you determined the hearing is at an end.

Mayor Rasmussen: Mr. Gallagher came up when I asked him to Anyone else wishing to speak at this hearing. Come up to the microphone, please.

Mr. Tony Vlahovich: My name is Tony Vlahovich, I live at 2516 No. McCarver. I happened to have dropped in to hear the proceedings, and when they touched on the matter of the charitable organizations, I was reminded that I am a member of the St. Vincent DePaul Society, and as a member of the Society, I'd like to appeal to you to have a little heart. I wonder if you realize how many thousands of people in the City of Tacoma are helped through this organization, whereby alleviating the burden of the City, of the State and partly of all the citizens, by the charitable actions of all citizenry through the efforts of these volunteer workers.

I have been a member for thirty years of St. Vincent DePaul. I can point out to you, about two weeks ago, during the cold spell, when if this individual who lives directly across the street from me, had come before the City Council and asked for a load of wood, considering how long it takes to decide matters here, I imagine he would have frozen to death. But you know, what we did, one simple phone call and the next Sunday at the Church door, I stood with a Doctor and I got the \$18 that it took to buy this wood. And that's putting the heart before the law.

If we are going to uphold the law and simply stand here, simply because we want to uphold the law; does it mean that you have to live under the century old laws. Do we do today, as fathers and mothers, what our grandfathers did, I don't think so. I think that the present generation, generates a new spirit, living according to the times, whether we like it or not. And, this is the time, I mean we have problems here, Ladies and Gentlemen, in the City, and you know it.

We have many people who are needy, lot's of us don't realize it, unless we are in contact with these people. What I'm asking for, and what I feel is my obligation to ask you, after having worked so many years for nothing, as far as money is concerned, but I've had many rewards, especially seeing these people helped. It is my duty to ask you to try to be a little easy on these back taxes, as far as penalties. You have to uphold the law but, perhaps, you can find it in your hearts to donate your little bit. I mean, use your conscience in this besides the letter of the law. The letter of the law is an old code and people today that live only by the letter of the law, aren't enjoying life in its fullest. That's all I want to say.

Mayor Rasmussen: That was a very good presentation.

Mr. Vlahovich: For one thing, I do not know of one case in the district that I've happened to be working in these many years, where we have turned down one person. If we didn't have the money, we went from door to door and solicited before we would turn down a case. This is the spirit the people work in, I mean, you must keep up your community.

Are we going to give a deaf ear to these people that are in need. These are the people that are down and out and have nothing, they have children who are starving or freezing. And, these organizations that are presented to you here tonight are the people that are doing this kind of work. They are not in business for

money, and I don't think the City of Tacoma should try to survive on the little money these people would submit.

This money is the money given from the heart for those people, not to be spent for any other purpose. Everyone in the organizations is donating their time, the City ought to donate a little bit.

Mayor Rasmussen: You may be right Sir, and this is what the Council is trying to arrive at. While we appear hard-hearted, we are only trying to arrive at a just decision, and it goes a little deeper than that.

Mr. Vlahovich: I'm sure it does.

Mayor Rasmussen: Because, if we were to say that the Tax & License Department is wrong in enforcing the laws the Council has passed; on the other hand we can just as well say, that the Police Dept. is wrong in enforcing an ordinance that the Council has passed. So, it is a little bit bigger than heart and hardship.

Mr. Vlahovich: I'm positive that you will give this close consideration. Don't get me wrong.

Mayor Rasmussen: We do appreciate you bringing this to our attention.

Mr. Patterson: I wish to speak to the Council for a brief moment in regard to arguments that have been advanced by some of the highly qualified attorneys.

I'm Clay Patterson, 729 St. Helens. I would like to make mention and refresh your minds as to certain remarks made by the gentlemen representing the Goodwill Corp., when he interpreted the payment of services and the new supplemental assessment that was levied against them, in which he indicated great surprise. His interpretation was that it was tuition. I think there were a couple of questions from several of the Councilmen as to what constituted tuition.

I would like to call your attention directly and specifically to a letter that I handed you last week from Mr. Socolofsky of the Department of Vocational Rehabilitation and especially to the last paragraph of that letter, or to any of the paragraphs contained in that letter. In each instance, as you noticed if you read it, in your agenda, it stated that the State Dept. of Vocational Rehabilitation placed x-number of clients with the Goodwill, Tacoma Goodwill Industries, for services. Nothing was said about tuition, for which Goodwill was paid x-number of thousands of dollars in the years '63, '64 and then it went on.

At the termination of that letter, in its final paragraph, it said, the above payments are made by a contractual agreement between the Dept. of Vocational Rehabilitation and the Tacoma Goodwill Industries for services rendered the clients. Nothing about tuition whatsoever, so I would like to have you remember that, and keep it uppermost in your minds during your deliberations when and if you get around to resolving this question.

I would like to touch briefly for just a moment in conclusion. I realize that another item was injected by Mr. Gallagher. Mr. Gallagher has been a visitor in my office and we discussed this matter and he invited me out to a meeting of a certain fund raising organization at the Boy Scout Headquarters. I took my accountant, Mr. Lyle Tibbits, with me and we went out. And, I left in indignation because there, Mr. Gallagher again reiterated, what he said here tonight, that the tax as he interpreted it under 6.15, would impose a penalty of \$1,000 for a charitable solicitation license on St. Ann's. That is not the case.

Mr. Murtland: I wish to raise a point of order.

Mayor Rasmussen: Just holler out, point of order against, Mr. Murtland.

Mr. Murtland: My point of order, is that I do not believe this is a proper

matter coming before us on appeal. And the fact that Mr. Gallagher spoke of it; I don't believe it is before us on appeal at this time, as we're not amending any ordinance, resolution or otherwise.

Mayor Rasmussen: Your point is well taken. A point of order was not raised on Mr. Gallagher so Mr. Patterson may conclude.

Mr. Patterson: I realize this is quite right. And in conclusion, may I say that I would again employ you to adhere strictly to the code as you interpret it in your adjudication of the matters that have been brought before you, irrespective of the pleas of the good that is being done, etc.

Our organization finds no difficulty in living with any of the City Tax Codes, either 6.15, Charitable Solicitation Code or of 6.68, the B & O Code for both the State and the Cities. We find no objection to it whatsoever and it works no imposition on us and I'm sure that there are members of the City Council and the Directors of the City staff, who can attest to the quality of the workmen and persons that we have sent out from our unit; Mr. Gaisford has one working in his department and I'm sure he would attest to the fact he is highly pleased. Mr. Bud Bond had one, and we have now placed her with the Weyerhaeuser Timber Co., a very efficient young stenographer, worked here for a couple of weeks in the City Hall. So, we too are accomplishing things, and we are not tax subsidized in any way, either by State, Federal or the City.

I would like to say, mention has been made here tonight, not by one, but by many, that if they don't, if the appellant corporations are assessed with this tax and the delinquent penalties, it would work an extreme hardship and if it weren't for these organizations the people would have to be supported by the citizens of Tacoma.

Let me say this, in conclusion, Mr. Mayor and members of the City Council, one of these organizations who receives thousands of dollars each year from the State for the clients of that organization, 87% of them are being supported on welfare. They are certainly not earning a living in this particular organization. You can call that rehabilitation if you want to, I have a different name for it. And I would like to have you remember that in your deliberations, Thank you.

Mayor Rasmussen: We have one more person that wants to be heard, would read that letter please Mrs. Ursich.

Mrs. Ursich: This is addressed to the Honorable Mayor and the City Council, written Feb. 16, 1969, from Frances X. Koban. "It was with some considerable distress that I learned of an impending tax on some organizations now existing in this City. I beg of you, if it is at all possible, to postpone argument on this proposal, until the next meeting of the Human Relations Commission, next Thursday, Feb. 20th, 1969 at 4 P. M., at which time I would like to offer a few words on the subject. Be it understood that I'm not a spokesman for any organization, nor do I pretend to be. I only want to explain to the members of the Commission and the City Councilmen present at that meeting, just how one of the organizations operates, and prove the harm the tax in question could do.

Many of the poverty stricken in the City of Tacoma would go to bed hungry, as would their children. Many homes would be without a stick of furniture; children would be without clothing; oldsters would skimp on food for their meals; those in need of sickroom equipment such as beds, walkers, bed pans, bed trays, canes, crutches, etc., would find their burdens too heavy to carry without the assistance of the St. Vincent DePaul Society.

Poverty knows no creed, color or age; it is not an inter-racial problem. The men of the St. Vincent DePaul Society have the but one question to ask themselves when they go out on a call, that is, what is the need.

Please, if it be possible, postpone the question once more because I must go out of town for a few days for my employer and won't be back in town until Wed. evening. I cannot explain to the Council the modus operandi of the one organization of which I am thoroughly familiar.

I am certain, if others were made acquainted with all of the facts, they would reconsider the stand on the issue.

This is not a question of politics, nor is it an inter-racial problem; it is a question of whether an organization, dedicated to serving the poverty stricken will be able to survive under oppressive taxes, just for the sake of revenue.

Please give me a chance to tell the other side of the story.

Thanking you I remain, your obedient servant, Frances X. Hoban.

Mayor Rasmussen: This gentlemen could not appear tonight, so he submitted the letter and it was apparently not possible to postpone the hearing. Mr. Hoban is a member of St. Vincent DePaul Society and the Tacoma Human Relations Commission.

Mr. Bott: Mr. Mayor, I move that each of the appellant agencies, St. Vincent DePaul, Y. M. C. A., Goodwill, The Salvation Army be assessed B & O tax from the period starting Jan. 1st, 1967, and that they be relieved of all penalties and interest assessed against them to date, and then that they continue to pay under our B & O schedule.

Mr. Johnson. Second that motion.

Mr. Bott: That will give them two years.

Mayor Rasmussen: It has been moved by Councilman Bott, seconded by Councilman Johnson that all four of the organizations, Goodwill, Salvation Army, St. Vincent DePaul and the Y. M. C. A. be assessed the B & O tax for a period starting from Jan. 1st, 1967 and that they be relieved of all penalties and interest assessed against them to date and that they continue to pay our B & O tax as assessed by the schedule. Mr. Hamilton, you've heard the motion, Is this the proper way of handling this.

Mr. Hamilton: Mr. Mayor, if the Council sees fit to adopt this motion, it should be supplemented under the ordinance by resolution setting, our resolutions actually, setting before it the individual tax by motion.

Mayor Rasmussen: At the present time the only motion that would be in order is that resolution be prepared and----

Mr. Hamilton: And then it would be a question of mathematical computation.

Mayor Rasmussen: Determined by the Department.

Mr. Bott: Mr. Mayor, I make the aforementioned motion and add to it about the resolution.

Mayor Rasmussen: Your motion is quite out of order, Mr. Bott.

Mr. Bott: I don't think so.

Mayor Rasmussen: In respect to the----

Mr. Bott: He didn't rule that.

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Mayor Rasmussen: The City Attorney does not rule, it is the Mayor that rules. In this respect that there may be, in the first place, the resolutions should be drawn up and the amount determined, but in relation to our ordinance, there is more than B & O tax involved and I don't think we should just cover it in an offhand motion like this, Mr. Bott.

Mr. Bott: Mr. Mayor, it said, the B & O tax and any penalties and interest that had been assessed against any to date.

Mayor Rasmussen: Well, I'm not saying the penalties and the assessments; apparently you haven't been listening to the conversations.

Mr. Bott: Oh, I have.

Mayor Rasmussen: There is a question in our service category also, if you limit it to the B & O tax, why you're----

Mr. Bott: It's all under services in our schedules.

Mayor Rasmussen: Yes, but you're not relating it to the services.

Mr. Bott: I said, under the B & O tax and that would include any and all classifications under the B & O tax schedules.

Mayor Rasmussen: Would you want to simplify your motion and say, that the legal staff prepare the appropriate resolutions for the taxes due, less penalties and interest from Jan. 1st, 1967 and leave it up to the department to bring them in.

Mr. Bott: How simplified do you want it to be;-- from then, remove them from all penalties and assessments to date.

Mr. Hamilton: Mr. Mayor, I think the way that it was restated, it would probably suffice for the B & O tax portion of the appeals; and I would suggest that the Council make a separate determination with reference to the charitable solicitations portion.

Dr. Herrmann: Mr. Mayor.

Mayor Rasmussen: We don't have a motion before us, but just a motion we are trying to perfect; is this on the motion.

Dr. Herrmann: Yes, I think it will be on the motion. I wish to ask Mr. Hamilton whether, in listening to the testimony with my judicial hat on, when Mr. Roller mentioned that our ordinance was lifted from the State statute, and that in so doing that the exemptions which were in the State statutes were automatically or were carried along in spite of the fact that they were not mentioned by reference or by name here in our ordinance, do you hold to that position. What I'm trying to do is to determine whether the presentations made by the first three groups, seemed to me to be a convincing recital of the fact that they have no tax liabilities.

How, the Y. M. C. A. has the tax liability from the things they perform, the rooms, the restaurant service, the towel charge, or whatever is properly paid as B & O taxes; but after hearing all the testimony from the three attorneys who represented the first three organizations, and if this is true, that the State statute exempts them, that they pay no B & O tax, that our ordinance as lifted from the State statute, and that the forgiveness as it were, actually follows. Do you see the point I'm trying to raise.

Mr. Hamilton: Mr. Mayor, Dr. Herrmann and member of the Council, you have several statutory rules in this construction which are relied upon to help people sitting in a judicial position to adequately construe effectively. And one of those rules is that, if the statute is on the books, if it received a construction by court, then if the legislative body has an opportunity to change it and doesn't do so at its next session, or something like that, then that ruling is engrafted upon the statute itself.

I don't think, off hand, and I would rather check this more thoroughly, but it is my off-the-cuff opinion, that the rulings of the Attorney General wouldn't have the compelling influence as a decision of a court might have, to the extent that it does exist, it might be considered by the Council. I don't think it demands that construction, whereas if you have a court decision, right on all fours, that would be much more persuasive.

Dr. Herrmann: But, without anything to the contrary, and if the Attorney General has rendered an opinion, that's never been tested in Court; certainly, we as Councilmen with judicial hats on, would have to respect the Attorney General's opinion, wouldn't we.

Mr. Hamilton: Technically, you are not bound by the Attorney General's opinion. State officers and departments are, unless over-ruled, but the Attorney General's opinion essentially covers only the activities of only the State officials and are not controlling over any other private citizens or other governmental agencies.

Dr. Herrmann: The reason I'm asking these questions, is that I felt Mr. Bott's motion could be amended to accept the appeal from the first three organizations and not assess any tax, and then assess the tax to the Y. M. C. A. according to what they---

Mayor Rasmussen: Mr. Hamilton, I have in my hand; Dr. Herrmann apparently hasn't, it's in your agenda; the Court case in which the Supreme Court has ruled, and they ruled on July 11th, 1963, sitting en banc, this was a court case, so, I'm not concerned with that at the present time.

Mayor Rasmussen: Under our ordinance, City of Tacoma, Department of License, 6.68.390, under Appeal to the City Council--and it states, I'm not quoting all of it, "At such further hearing the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The City Council shall thereupon ascertain the correct amount of the fee or tax by resolution and the City Clerk shall immediately notify the appellant thereof by mail, which amount, together with the costs of the appeal if the appellant is unsuccessful therein, must be paid within three days after such notice is given".

My question is, under this section of the City ordinance, we have the right to determine the tax. If we do determine if there is a tax due, do we have the right to forgive the penalties and assessments.

Mr. Hamilton: I think you do.

Mayor Rasmussen: Then my next question would be, would it be proper at the conclusion of this hearing to give an appropriate time for the legal staff and the Tax Director to simulate this information and meet with the Council for further discussion, in order to make a determination.

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Mr. Hamilton: Certainly, as far as our staff is concerned and what Mr. McLennan is sending to us, we would be more than happy to meet with the Council to further evaluate the thing---

Mayor Rasmussen: It would be my opinion that, for the Council's consideration, that a decision on this hearing is not necessary at this time and that it would be wise to take an appropriate amount of time to deliberate with our legal counsel and then make our determination.

Today we have had a lot of information presented by the organizations, we additionally have it, but to make an off hand decision, is not proper at this time.

Mr. Murtland: Mr. Mayor, I move a substitute motion, that no tax, interest or penalties be assessed or collected and no licenses be required or penalties collected in connection therewith, against the St. Vincent DePaul, The Salvation Army, Goodwill Industries Rehabilitation Center, Y. M. C. A. as such taxes and licenses were determined in the Department of Tax & License amended summary of audited assessment liability dated Feb. 14, 1969 for the period Jan. 1st, 1951 to March 31, 1968, and that the City Attorney be directed to bring in the proper resolution thereby.

Mr. Finnigan: I'll second it.

Mayor Rasmussen: It has been moved by Councilman Murtland, seconded by Councilman Finnigan, that Mr. Murtland would you restate the motion, do you have it written.

Mr. Murtland: Yes, Sir. I move a substitute motion, that no tax, interest or penalties be assessed or collected and no licenses be required or penalties collected in connection therewith, against the St. Vincent DePaul, The Salvation Army, Goodwill Industries Rehabilitation Center, Y. M. C. A., as such taxes and licenses were determined in the Department of Tax & License amended summary of audited assessment liability, dated Feb. 14, 1969 for the period of Jan. 1, 1951 to March 31, 1968, and that the City Attorney be directed to bring in the proper resolution to reflect this motion.

Mayor Rasmussen: You have a question before you, and the Chair has already in his mind wondered whether this is a proper motion. You may discuss it, go ahead, Mr. Bott.

Mr. Bott: Mr. Murtland, now, do I take it by your motion, there would be no assessment then from March 31st to date.

Mr. Murtland: No. No. I am basing the motion on the fact, when the ordinances were directed.

Mr. Bott: I meant, from 1951 to March 31st, 1968. Well, of course, there is almost a year now that has gone by since that, and that there would be assessments and penalties against that, do you want to relieve them of those penalties from that period of time, too.

Mr. Murtland: I understand that they have been paying since April 1st, 1968.

Mr. Bott: All of them.

Mr. Murtland: I understood that three of them are.

Mayor Rasmussen: Would you enlighten us, please.

Mr. McLennan: Mr. Murtland, if you are going to use your motion, why this would pick up the Y. M. C. A. automatically beginning April 1, 1968. In other words, what you're talking about these of forgiveness features for the years, for the period of Jan. 1, 1951 to March 31, 1968.

Mr. Murtland: Yes, That's what I had in mind. Mr. Mayor and Mr. Bott, explaining that, on the basis, from what I understood had been told us; that upon the notice being given to three of these four organizations, they commenced making payments, is that correct, on their B & O and they have made them for the quarters since that time.

Mr. McLennan: This is correct, except that due to the time element, we only have three auditors down there, and we can't cover situations as quickly as we should, so the Y. M. C. A. was slated---

Mr. Murtland: Mr. McLennan, then what period is on review at this time.

Mr. McLennan: The period on review as far as the Y. M. C. A.

Mr. Murtland: No, I mean of all of the. Are they all individually different.

Mr. McLennan: They are all individually different.

Mr. Murtland: I see, because the notice, I noticed, was from Jan. 1951 to Sept. 30, 1968; did you send out an additional one.

Mr. McLennan: Yes, that is correct.

Mr. Murtland: The purpose of my motion, Mr. Mayor, was this, on the basis of this exemption that had been continued from year to year for a period of seventeen years or whatever period that is, that when notice was given, and they were made aware they might be subject to it, that they commenced doing so. The Y. M. C. A., I understand, they didn't do it, but they had the opportunity to do it. And, if they didn't do it, they are subject to some penalty, maybe they are subject to the penalties from April 1st.

So I say, the basis of my motion is that I think that these three, and all four of them actually, showed good faith in the fact that they had no notice, they had not been assessed, they had been acting in good faith during that period in not paying u these taxes. Now, I think we should issue a bye to these last two years as well.

The two-year statute of limitation may actually be the one that would be enforced if we were to consider it that way, if we are using the principle up to two years ago, it should apply to the last two years also.

Mayor Rasmussen: Mr. Murtland, might I inquire, are you proposing to repeal Chapter 6.02, general provisions of the tax and license.

Mr. Murtland: I'm no proposing to appeal anything, I made a motion and it speaks for itself.

Mayor Rasmussen: Your motion was that they bring in the appropriate resolution. I might point out, Mr. Murtland, and I'm going to rule that your motion is out of order, that you cannot and this is provided in the Charter, that you cannot amend an ordinance by resolution.

Mr. Murtland: Mr. Mayor, I'm not amending an ordinance by resolution. This is a motion merely on the basis on what the Council would determine if there is a majority vote on it.

I have urged that it be the judicial decision, after this hearing. We can't do it tonight anyway, it still has to be done by resolution, I am advised. But this is merely a directive that might be given to the legal department.

Mayor Rasmussen: Let me receive a little clarification, Mr. Murtland. This points out the difficulty dealing with a matter, a subject matter, as grave as this, in handling it in a haphazard manner. As I understood your motion, it provided for the relieving of licenses, taxes and penalties which are provided under our ordinance of Chapter, 6.02. Now, it would be my ruling that you could not amend this ordinance by this resolution you are asking for. Now, Mr. Hamilton, is this possible, to amend the ordinance by resolution.

Mr. Hamilton: Mr. Mayor, as I understand the motion, it is a motion aimed at complying with Section 6.68.390 of the business and occupation tax section of the licensing code, relating to the appellate procedure in the remedy that the Council has at the conclusion of a hearing.

Now, the ordinance itself, provides for the fixing of that amount once the Council has made its determination, based upon such facts and theories as is deemed proper by resolution.

So, insofar as the business and occupation tax is concerned, there is certainly no amendment of an ordinance by resolution, rather this merely supplements it.

We have another problem, Mr. Mayor and members of the Council, when we get into the licensing field, because I have searched this thing through and I don't find, technically, any appellate procedure for licenses, as such. This section relates only to the imposition of the B & O tax. Have I missed something some place, Mr. McLennan.

Mr. Cvitanich: I would move for a two week's postponement of these hearings.

Mr. Zatkovich: I'll second it.

Mayor Rasmussen: It has been moved and seconded that we postpone further action on this hearing for two weeks.

Mr. Bott: Point of order, Mr. Mayor.

Mayor Rasmussen: State your point.

Mr. Bott: A motion to postpone for a time is not debatable.

Mayor Rasmussen: Your point is well taken.

Mr. Cvitanich: Roll call.

Mayor Rasmussen: The question is on the motion that further consideration of the hearing be postponed for a period of two weeks. Roll call has been asked for. Call the roll, please. Ayes 4: Cvitanich, Finnigan, Zatkovich and Mayor Rasmussen. Nays 5: Baufield, Bott, Herrmann, Johnson and Murtland. Motion Lost.

Mayor Rasmussen: Five Nays, the motion is lost. The question before the house, before the Council, Mr. Cvitanich.

Mr. Cvitanich: If any member of the Council can tell me what action we're going to take in the next hour or two as we sit here, I would be glad to retire to the backroom, and when you're ready, let me know. Number one, I don't think it is going to be resolved within the next two hours. The whole intent of the postponement was to let the legal department and the department of Tax & License to come out with something that was reasonable, understandable, if the law is wrong as written may be the Council should consider some changes. But to sit here and go about it in this fashion, is utterly ridiculous.

Mr. Zatkovich: I have to concur with Mr. Cvitanich. We've been here all night on the same subject, practically; we'll be here the rest of tonight without any further business, I can assure you. Everyone is convinced, including the people in the audience, out of the audience and everywhere else, that we are not going to resolve this thing tonight. Even our own staff has to have the time and the opportunity to get it in the proper order, so two weeks, I would think at that time, we could get together, otherwise we are going to have to sit here all night.

I think, if we get through the other way, we would get something much better than we would here, even after all this deliberation, arguments, etc. I'm still for letting them go ahead with it, after about two weeks, why we can bring it up again. After all it has only been seventeen years.

Mr. Bott: I think to the contrary. We can accomplish something right now. There is a motion on the floor and I'm prepared to act on the motion, and I don't see going through this all over again for the same thing. I think most of us have decided what we think is fair and what should be done, and I am willing to put to a vote and vote right now, and I call for the question.

Mr. Murtland: Mr. Mayor, my question was, as to Councilman Zatkovich's point, was in trying, to somewhere give some direction to the departments. What are we going to do, just postpone it for two weeks, where do they go from here. They've heard this hearing, I mean, what are they going to do, come in with twenty-five alternatives.

Mr. Zatkovich: It would be the recommendation of the Council after we got together, within that period of time, that's what I meant. This would give a direction to the Legal Department and they would come in with the proper material for us to vote on.

Mr. Murtland: Of course, that's what my resolution says to do; I don't imagine it would probably come back in the same form as I stated it. Mr. Hamilton is probably going to dress it up some way that it will meet what he wants to do and just put together at this time---

Mr. Johnson: Call for the question, Mr. Mayor.

Mayor Rasmussen: Mr. Hamilton when he receives this vote will have to bring the ordinance out on that basis in which you made your motion.

Mrs. Banfield: I question at this point whether Mr. Murtland would be able to make a motion due to a conflict of interest. Mr. Hamilton, may I have an opinion.

Mr. Bott: What conflict.

Mrs. Banfield: Being on the Board of the Goodwill Industries./

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Mayor Rasmussen: I think your point is well taken. Mr. Hamilton, do you wish to give us the legal stand, I think there was a discussion at the previous Council meeting.

Mr. Hamilton: Mr. Mayor and members of the Council, it is my recollection that this matter came up once before, and I think I indicated at that time that, the conflict, if there is a conflict, is one which is not within the purview of either the Charter or the State Statute inasmuch as they both relate to contractual interests. As you recall the Charter read, "No officer or employe of the City shall be beneficially interested directly or indirectly, in any contract, sale, lease or purchase with or for the use of the city" or words to that effect. The question, in the Council, as I indicated a week or so ago, has not adopted the rule covering when a member is acting in an area where there may arise any sort of a conflict of interest. So, I think it is pretty much a determination of the Councilman himself, and the other Councilmen, as to whether or not he feels justified--

Mrs. Banfield: Do you not feel that we are now dealing with figures, dollars and cents, and that he would be directly in a conflict of interest.

Mr. Hamilton: What I feel, is of little importance, I think. I don't think that's my decision to make. Again, as I have indicated, if he had an actual pecuniary interest in a contract for sale involving the City, then clearly under this Charter he would be precluded. Although, under the State statute, where he is a non-salaried officer of a non-profit corporation, any interest would be so remote that he could act.

Mr. Bott: Point of order; I would just like to know what this conflict of interest is that the Lady has reference to.

Mayor Rasmussen: Mr. Murtland are you, I think you should state what your position is regarding Goodwill Industries.

Mr. Murtland: I have no position at the Goodwill Industries, as such; I am a member of the Board of Directors.

Mayor Rasmussen: Do you handle the legal affairs for the Goodwill Industries.

Mr. Murtland: I do at times.

Mayor Rasmussen: Have you filed papers for them.

Mr. Murtland: I have not.

Mayor Rasmussen: Did you change the name.

Mr. Murtland: I cannot recall. I'll say that I did if it will help--

Mayor Rasmussen: Mr. Murtland, have you or have you not filed cases for the Goodwill.

Mr. Murtland: I have already said, No, Sir.

Mayor Rasmussen: In regard to change of name.

Mr. Murtland: Mr. Mayor, I believe that is a matter for me to be concerned, unless the Council wishes to take some action on it.

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Mr. Bott: In view of the fact that the City Attorney said it was up to the Councilman, may I ask his opinion on this matter, whether he feels it is a conflict or not.

Mr. Murtland: I do not.

Mr. Bott: Thank you, Mr. Murtland.

Mr. Murtland: And, I would like to answer that further, that under the State Act, it provides, that a non-salaried, I am reading from the RCW, a non-salaried officer of a non-profit corporation, shall not be deemed to be interested in a contract, as the interest would be too remote.

Mr. Cvitanich: Now, we're reading from an RCW. Doesn't the code say something about what we're supposed to do as members of the Council. We've quoted chapter and verse, and what we're supposed to do, and now, all of a sudden we're not going to follow it, but in this instance we are. I still say the staff should have adequate time to research this thing. We sit here as a judicial group, as the good lawyers said many times, consider it on the judicial merits of the thing, and forget how we feel personally.

How can they prepare a rebuttal in terms of providing us with information when we don't know all the facts, either, nor the ramification involved.

Mr. Finnigan: I move that we defer action on this for two weeks.

Mr. Cvitanich: Second the motion.

Mayor Rasmussen: It has been moved and seconded that we--moved by Councilman Finnigan and seconded by Councilman Cvitanich that we defer action for two weeks. Roll call is called for: Ayes 6: Banfield, Cvitanich, Finnigan, Herrmann, Zatkovich and Mayor Rasmussen. Nays 3: Bott, Johnson and Murtland.

The action is deferred for two weeks.

END OF VERBATIM

e. This is the date set for hearing on the Sidewalk construction or reconstruction Fund #68 for 1537 Broadway.

Mr. Schuster, Director of Public Works, explained this is the hearing on the assessment roll. Originally, five owners had been on the initial resolution, but the other owners repaired their sidewalks at their own expense.

Mr. Murtland moved that a recommendation be made to the City Council that the assessment roll for Sidewalk Construction Fund No. 68, be approved and confirmed and that an ordinance be drafted confirming the roll. Seconded by Mr. Bott. Voice vote taken. Motion carried.

f. This is the date set for hearing on the Revision of the 6-Year Comprehensive Street Program.

Mr. Schuster, explained that last August the Six-Year Comprehensive Street Program was passed by the Council in conjunction with the Urban Arterial program. This program is required by State law which must be submitted to the Urban Arterial Board.

Mr. Schuster further explained, this hearing is for an addition to the Six-Year Program to include Warner Street from So. 38th St. to So. 47th St. This is presented to the Council for approval by the Urban Arterial Board for funds so the project can be constructed during the year of 1969 through 1970.

Mayor Rasmussen mentioned that the Post Office Department has taken an option on land in the vicinity of Pine St. from So. 39th to 42nd Streets. He wondered if the traffic pattern which is now planned will be sufficient.

Mr. Schuster explained that traffic signals have recently been installed at Pine and 38th Streets and it is felt they will be more acceptable than in the past.

Mayor Rasmussen wondered why traffic lights have been installed on both Warner and Lawrence Streets at 38th Street.

Mr. Schuster said, these lights would operate as a unit for these two intersections.

Dr. Herrmann moved to concur in the recommendation of the Public Works Dept. to approve the revision of the Six-Year Comprehensive Street Program, and that a resolution be drawn, approving same. Seconded by Mr. Zatkovich. Voice vote was taken. Ayes 8: Banfield, Bott, Cvitanich, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen. Nays 1: Finnigan. Absent 0. Motion carried.

g. This is the date set for hearing on the vacation of East 35th from East D St. to approximately 125 feet west submitted by Schwinkendorf-Souza.

Mr. Buehler, Director of Planning, explained that this vacation will eliminate a dead end street as the right of way is not needed nor anticipated to be developed. The petitioners intend to utilize the proposed vacation for additional yard space and driveways.

No one appearing and no protests being made, Mr. Finnigan moved to concur in the recommendation of the Planning Commission to vacate the above property and that an ordinance be drafted approving same. Seconded by Dr. Herrmann. Voice vote taken. Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen. Nays 0: Absent 0; Motion carried.

h. The City Planning Commission recommending denial of the request submitted by John Prins, Jr. for rezoning of the east side of Pearl St. between No. 33rd and No. 35th St. from an "R-2" to an "R-4-L-PRD" District.

An appeal was filed by Mr. Prins.

Mr. Cvitanich felt that the Planning Commission has not been consistent in its recommendations of rezones in this area. The Planning Commission took the position that No. 33rd St. should be the present limiting line for any additional multiple family zoning and in the future, as apartment needs warrant, possibly the site in question should be considered for a higher density than an "R-2" single family district. They have also expressed that the amount of land recently zoned for apartment developments in the outlying areas has reached a capacity and that expected growth is amply provided for in the foreseeable future.

Mr. Finnigan noted that only five Commission members were present at the hearing of this particular rezone and he wondered if this constituted a legal decision by the Commission.

Mr. Hamilton, City Attorney, felt as long as a quorum was present the vote would be valid.

Mr. Buehler, explained that the Commission is a recommending body only and according to the rules the majority of a quorum present can recommend decisions to the Council.

Mrs. Banfield moved to set April 1st, 1969 as the date of hearing on the above denial of John Prins Jr.'s request for a rezone. Seconded by Dr. Herrmann. Voice vote was taken. Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen: Nays 0: Absent 0. Motion carried.

PETITION:

Receipt of an annexation petition from William D. Brown, et al, for property on both sides of So. 96th between Hosmer and #5 (Freeway) representing in excess of 75% of the property owners.

Referred to the Planning Commission.

COMMUNICATION:

A communication received from Mr. Honeywell attorney for W. H. & W. T. Ostruske, on the appeal filed from the decision of the City Planning Commission denying the rezoning of the easterly side of No. 11 and the north and south side of D St. vacated, from an "R-2" to an "R-4" District, which was set for hearing for March 18th.

Mr. Honeywell has requested that the hearing on the appeal be postponed from March 18th to March 25th, 1969.

Mr. Johnson moved that the date for hearing on the appeal on the above rezone be postponed from March 18th to March 25th, 1969. Seconded by Mr. Cvitanich. Voice vote taken. Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen. Nays 0: Absent 0: Motion carried.

RESOLUTIONS:

Resolution No. 20042 (postponed from the meeting of Feb. 4th, 1969)

Transferring the sum of \$5,518.00 from M & O to salaries and wages in the Airport Budget for the year 1969.

Mr. Gaisford, Director of Finance, explained this request is to employ a watchman on the City's payroll under the Airport Budget. This particular position had been under the control of TideAir, he added.

Roll call was taken on the resolution, resulting as follows:

Ayes 6: Bott, Finnigan, Herrmann, Johnson, Murtland and Zatkovich.
Nays 3: Banfield, Cvitanich and Mayor Rasmussen. Absent 0.
The Resolution was declared passed by the Chairman.

Resolution No. 20053

Fixing Monday March 10, 1969 at 4 P. M. as the date for hearing for L I D 5477 for water mains on East 65th from East I to a point approximately 400 feet west of East L Street.

Mrs. Banfield moved that the resolution be adopted. Seconded by Mr. Cvitanich.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20054

Fixing Monday, March 10, 1969 at 4 P. M. as the date for hearing on L I D 4883 for paving on Fawcett from So. 84th to 88th; Grove Place from Verde to Ferdinand and other nearby streets.

Mrs. Banfield moved that the resolution be adopted. Seconded by Mr. Cvitanich.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20055

Fixing Tuesday March 4, 1969 at 4 P. M. as the date for hearing for rezoning of the southwest corner of No. 45th & Pearl Sts. from an "R-2" to an "R-2-T" District. (petition of J. F. Crocker).

Mrs. Banfield moved that the resolution be adopted. Seconded by Mr. Cvitanich.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20056

Fixing Tuesday, March 18, 1969 at 4 P. M. as the date for hearing for the vacation of property in the vicinity of East 71st and McKinley Ave. (petition of Chicago, Milwaukee, St. Paul & Pacific R/R.)

Mrs. Banfield moved that the resolution be adopted. Seconded by Mr. Cvitanich.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20057

Awarding contract to Eagle Signal Division of E. W. Bliss Co., on its bid of \$13,171.76 for the furnishing of Traffic Control Equipment.

Dr. Herrmann moved that the resolution be adopted. Seconded by Mr. Johnson. Mr. Schuster, Director of Public Works, explained this equipment will be in use at two intersections; one at Center and Tyler St. and the other at So. 19th St. and Sprague Avenue.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20058

Declaring the intent of the Council to effectuate a moratorium on any and all petitions filed for the rezoning of property within the City of Tacoma from residential to either commercial or multiple family dwellings for a period of six months.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Mr. Cvitanich asked what criteria has been established by the Planning Commission that the City has reached an abundance of apartments at No. 30th and Pearl Streets.

Mr. Johnston, Chairman of the Planning Commission, explained he would rather not discuss Mr. Prins' rezoning denial at this time, but he would discuss it at the time of the appeal hearing.

Mr. Cvitanich felt that that the City's planning problems have to be resolved quickly to achieve orderly development as over the years the Planning Commission members had not proposed proper planning.

Mr. Johnston explained he was directed by the Planning Commission to appear at this meeting to express the Commission's sentiments that they did not endorse this particular resolution. He explained that the Planning Commission will soon be presenting a proposal for a design review board, bonus incentives and other policy changes, to encourage quality construction and discourage speculative zoning; the Commission also felt that a moratorium would place an unfair burden on obvious and legitimate rezones. If this six month's moratorium is approved, an impossible backlog of applications would be created. He added, the Planning Commission is very much concerned about proper planning for the City of Tacoma..

Mrs. Banfield was excused at this time, 10:30 P. M.

Mr. Cvitanich moved to postpone the resolution for six months, until Aug. 19, 1969. Seconded by Mayor Rasmussen. Roll call was taken, resulting as follows:

Ayes 4: Bott, Cvitanich, Johnson and Mayor Rasmussen. Nays 3: Finnigan, Herrmann and Murtland. Absent 2: Banfield, Zatkovich (temporarily). Motion carried.

Resolution No. 20059

Authorizing the execution of an agreement for and on behalf of the City of Tacoma with owners of property on the north side of No. 12th between Villard and Orchard Street.

Mr. Finnigan moved that the resolution be adopted. Seconded by Mr. Murtland.

Voice vote was taken on the resolution, resulting as follows:

Ayes 8: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 1: Banfield.

The Resolution was declared passed by the Chairman.

Resolution No. 20060

Authorizing the sale of old City Hall to R. M. Hunts and Nancy L. Hunts and to the Trans-Pacific Enterprises, Inc. for the sum of \$17,400.00 cash.

Mr. Finnigan moved that the resolution be adopted. Seconded by Mr. Johnson.

Mr. R. M. Hunts, the developer, was present and explained that he had agreed to all conditions imposed by the City, including the requirement to undertake interior repair of the old City Hall within ninety days after possession. He also agreed that the work would be completed within two years and improvements to preserve the exterior within one year.

Mr. Bott asked if he had agreed to let the civic groups use one floor of the building without any rental fee.

Mr. Hunts explained they would set up one floor of the building as a theater under the direction of local civic groups. The planning of that particular area would be submitted to a local civic group for their recommendations, he added.

Mr. Turlis, representing Mr. Hunts reiterated the procedures that had been followed since Mr. Hunts' inquiry of July 1968 to purchase the building, and when the Allied Arts Commission of Tacoma-Pierce County had unanimously accepted the recommendation that the old City Hall be sold.

Mr. Robert W. Evans, Architect, explained he had previously submitted plans for the building with the support of a local group of investors. At that time there was a complete lack of local participation within the community. However, if the building is to be sold, he felt sealed bids should be called for on the sale of old City Hall so everyone who wished would have the opportunity to bid.

Mr. Nelson B. Nelson, Jr., attorney representing a local investment group headed by William Gazecki, explained that this local group had decided to withdraw their proposal for the building as it was determined that the cost of repairing the interior would far exceed the City's estimate.

Mayor Rasmussen urged that Mr. Hunts get together with the local people for their ideas so they could be incorporated in the development.

Mr. Hunts said he would be willing to sit down and discuss such ideas with local talent and residents.

The Council members praised Mr. Evans for his dedication on a campaign over the years for retention of the old City Hall.

Roll call was taken on the resolution, resulting as follows:

Ayes 8: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Murtland, Zatkovich and Mayor Rasmussen.

Nays 0: Absent 1: Banfield.

The Resolution was declared passed by the Chairman.

Resolution No. 20061

Authorizing the proper officers of the City to advertise the sale of the old City Hall site by sealed bids to all persons interested.

Mayor Rasmussen moved that Resolution No. 20061 be removed from the agenda. Seconded by Mr. Johnson. Voice vote taken, resulting as follows: Ayes 6: Bott, Finnigan, Herrmann, Johnson, Murtland and Mayor Rasmussen. Nays 2: Cvitanich and Zatkovich. Absent 1: Banfield. Motion carried.

The Resolution was removed from the agenda.

Resolution No. 20062

Authorizing the sale of Street & Bridges Bond property to Dean Witter & Co. Inc. for \$50,400.00.

Mr. Finnigan moved that the resolution be adopted. Seconded by Mr. Johnson.

Mr. James Wright, Urban Renewal Director, explained that Dean Witter & Co., Inc. will purchase two parcels of Street Bond Fund property, including the ten-foot vacation of air rights over Commerce St. and Pacific Ave. for \$50,400.00, which sum will be returned to the Street and Bridges Bond Fund. They have asked that the City remove the present escalade and Dean Witter will in turn provide for a new escalator on the southerly 12 feet of Lot 14 which will be constructed within an essement to be given to the City at the time of the sale.

Mayor Rasmussen asked why would this purchase price of the property be returned to the Street and Bridges Bond Fund instead of to Urban Renewal.

Mr. Schuster, Public Works, Director, explained that in 1958 a bond fund was passed by the voters and the money was used to purchase property and install the escalades in various locations of downtown. This \$50,400.00 would go back into the bond fund for use on other street projects.

Mr. Gaisford, Director of Finance, explained that the particular bond fund that was created in 1958, was quite specific in setting up how the money could be used and, at the end of the project, was specified that any moneys held in the bond fund should be used for other projects, namely, for future street and bridge purposes.

Mr. Bott asked if this money could be used to relocate the City's present escalade.

Mr. Hamilton, Acting City Attorney, felt this money could not be used for the demolition of the escalade, but it could be used for the installation of the same escalade at some other location.

Voice vote was taken on the resolution, resulting as follows:

Ayes 6: Bott, Finnigan, Herrmann, Johnson, Murtland and Mayor Rasmussen.

Nays 1: Cvitanich; Absent 2: Banfield. Zatkovich (temporarily).

The Resolution was declared passed by the Chairman.

FIRST READING OF ORDINANCES:

Ordinance No. 18754

Amending Chaper 13.06 of the official code to add two new sections 13.06.045-9 and 120-55 to include property on the N. W. corner of Ea. 72nd & Portland Ave. in an "R-2-T" and "C-1" District. (petition of Puget Sound National Bank)

The ordinance was placed in order of final reading.

Ordinance No. 18755

Appropriating the sum of \$23,000 or so much thereof as may be necessary from the General Fund to Non-departmental Expenditures Fund No. 101-691 Contractural Services Account 62099 for the cost of demolition and removal of an Escalade structure located on the property purchased by Dean Witter & Company.

Mr. Schuster, Director of Public Works, explained that the specifications for the call for bids for removal of this escalade is being prepared at this time.

Mr. Jones, Vice President of Dean Witter & Co., Inc. explained that the plan for their eleven story building had been changed several times, and he wished to thank the City staff and the Council members for their help in assisting their company, and they hope to justify the Council's faith in them.

The ordinance was placed in order of final reading.

Ordinance No. 18756

Amending the 1969 Budget to provide for additional personnel necessitated for Public Works projects contemplated under the Urban Arterial Construction program and an L I D improvement program made possible by the passage of a four million dollar bond issue subsequent to the adoption of the 1969 budget.

The ordinance was placed in order of final reading.

FINAL READING OF ORDINANCES:

Ordinance No. 18744 (postponed from the meeting of Feb. 4, 1969)

Appropriating the sum of \$110,598.26 from the General Fund of the City for and as an additional subsidy for the fiscal year 1968 in order that the Tacoma Transit System fund, may meet obligations which have become due and payable during the operation of the System during the calendar year 1968.

Mayor Rasmussen felt the transfers of funds such as requested in this ordinance without prior Council approval had violated State law.

Mr. Gaisford explained, he had simply followed past procedures approved by the Councils over the years, including the year of 1968. If the rules now are being changed, he would adhere to them.

He further stated if the expenditures were not authorized to meet salaries and maintenance operations for the needs of the Transit System, it would have had to close operations. He added, perhaps he should have come to the Council in November calling their attention to the need for an additional subsidy. The Finance Department is allowed twenty days to close out the prior year and resolutions and ordinances are presented to the Council usually in February.

Mayor Rasmussen said he felt that the 1968 Transit budget has been over-expended and the State law has not been followed by the Finance Department.

Roll call was taken on the ordinance, resulting as follows:

Ayes 6: Bott, Finnigan, Herrmann, Johnson, Murtland and Zatkovich.

Nays 2: Cvitanich and Mayor Rasmussen. Absent 1: Banfield.

The Ordinance was declared passed by the Chairman.

Ordinance No. 18746

Amending Sec. 1.12.430 of the official code to add a new subsection 1122 and amending subsection 5020 of Sec. 1.12.570 to change the classification to Truck Driver.

Mr. Cvitanich explained he would vote against this ordinance as he felt a Trainee Corps Coordinator should not be redesignated as a permanent appointee when such a position could be carried up to five years on a temporary basis. He also felt there was no justification for such a change and this would be an erosion of the civil service practices.

Mr. Zatkovich moved that Ordinance No. 18746 be redrafted into two ordinances, one for the Truck Driver and the other for a Trainee Corps Coordinator. Seconded by Mr. Cvitanich. Voice vote taken. Motion Lost.

Mr. Cvitanich moved to amend the ordinance by striking all of Section 1 from the Ordinance and renumbering Section 2 to read Section 1. Seconded by Mr. Zatkovich.

Mr. Rowlands, City Manager, urged the Council to retain the position of the Trainee Corps Coordinator since the Civil Service Board has agreed on this position. He also added that a list is being established and felt that the position is extremely important.

Mr. Finnigan moved that Ordinance No. 18746 be postponed for one week. Seconded by Dr. Herrmann. Roll call was taken, resulting as follows: Ayes 3: Finnigan, Herrmann and Johnson. Nays 4: Bott, Cvitanich, Zatkovich and Mayor Rasmussen. Absent 2: Banfield and Murtland. Motion Lost.

Mr. Bott suggested that Mr. Hutchine who has been the Personnel Technician I be appointed as the temporary Trainee Corps Coordinator.

Mr. Rowlands explained that the Civil Service Board made the recommendation that Mr. Hutchine be placed as the Trainee Corps Coordinator without an examination.

Mr. Johnson felt that no one could be appointed to a position that does not exist and that is the purpose of this ordinance, to establish the Trainee Corps Coordinator position.

Roll call was taken on Mr. Cvitanich's motion to strike all of Section 1 from Ordinance No. 18746 and renumber Section 2 to read Section 1. Ayes 4: Bott, Cvitanich, Zatkovich and Mayor Rasmussen. Nays 3: Finnigan, Herrmann and Johnson. Absent 2: Banfield and Murtland. Motion carried.

Roll call was taken on the ordinance, as amended, resulting as follows:

Ayes 7: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen. Nays 0: Absent 2: Banfield and Murtland.

The Ordinance was declared passed by the Chairman.

Mr. Murtland asked to be excused.

Dr. Herrmann moved that Mr. Murtland be excused. Seconded by Mr. Johnson. Voice vote was taken. Motion carried.

Ordinance No. 18747

Amending Chapter 13.06 of the official code to add the north side of So. 12th between Villard & Orchard Sts. in an "R-4-L" District. (petition of William Bell)

Roll call was taken on the ordinance, resulting as follows:

Ayes 6: Bott, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen.
Nays 1: Cvitanich. Absent 2: Banfield and Murtland.
The Ordinance was declared passed by the Chairman.

Ordinance No. 18748

Vacating Kellogg St. between Villard and Orchard Sts. (petition of Don McGoldrick et al)

Roll call was taken on the ordinance, resulting as follows:

Ayes 7: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen.
Nays 0: Absent 2: Banfield and Murtland.
The Ordinance was declared passed by the Chairman.

Ordinance No. 18749

Providing for the improvement of L I D 5464 for water mains in the area bounded by South 80th St., Pacific Ave., South 94th St. and Park Ave.

Mr. Bott said he would abstain from voting as he is a property owner in the area.

Roll call was taken on the ordinance, resulting as follows:

Ayes 6: Cvitanich, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen:
Nays 0: Abstain 1: Bott Absent 2: Banfield and Murtland.
The Ordinance was declared passed by the Chairman.

Ordinance No. 18750

Providing for the improvement of L I D 5472 for water mains within the Plat of Prairie Ridge No. 4 undertaken by the Cedarview Development Co.

Roll call was taken on the ordinance, resulting as follows:

Ayes 7: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen.
Nays 0: Absent 2; Banfield and Murtland.
The Ordinance was declared passed by the Chairman.

Ordinance No. 18751

Approving and confirming the assessment roll for L I D 3658 for sanitary sewers in alleys between East 61st and 62nd Sts. from Portland Ave. to Q St. and other nearby streets.

Mr. Dave DeForrest, residing at 1115 East 44th St. explained he was speaking for the property owners in the area of East 44th St. He stated the assessment for this improvement is far more than the proposed costs quoted a number of years ago.

Mr. Cvitanich explained that between the time the opinion survey was made and the residents were notified of their assessment, costs per front footage had increased.

Mr. Rowlands, City Manager, said that it was his understanding that if an L I D was in the process before a certain cut-off date, the old rate would be honored.

After some discussion, Mr. Cvitanich moved to continue Conference No. 107 for

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one week, until Feb. 25th, 1969 for further information. Seconded by Mr. Bott. Voice vote taken. Motion carried.

The Ordinance was postponed until Feb. 25th, 1969.

Ordinance No. 18752

Approving and confirming the assessment roll for L I D 4808 for paving on No. Highland from No. 30th, 550 feet north and other northend streets.

Roll call was taken on the ordinance, resulting as follows:

Ayes 7: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen.
Nays 0; Absent 2: Banfield and Murtland.
The Ordinance was declared passed by the Chairman.

Ordinance No. 18753

Approving and confirming the assessment roll for L I D 6887 for street lights between So. 56th and 66th Sts. and between Oakes and Alder Street.

Roll call was taken on the ordinance, resulting as follows:

Ayes 7: Bott, Cvitanich, Finnigan, Herrmann, Johnson, Zatkovich and Mayor Rasmussen.
Nays 0; Absent 2: Banfield and Murtland.
The Ordinance was declared passed by the Chairman.

UNFINISHED BUSINESS:

The Director of Public Works presents the assessment roll for the cost of L I D 3669 for storm drains on Sherwood from East 88th to East 92nd Sts.

Mr. Johnson moved to set April 14, 1969 at 4 P. M. as the date for hearing on the above assessment roll. Seconded by Mr. Finnigan. Voice vote taken. Motion carried.

Mr. Johnson moved to appropriate sufficient funds to bring the two remaining candidates for the Model Cities Director to Tacoma. Seconded by Dr. Herrmann.

Mr. Rowlands, City Manager, explained this month, if allocated, will be reimbursed out of Model Cities funds.

Mr. Zatkovich felt, if the candidates were truly interested they would pay their own way.

Mr. Johnson felt it was the City's responsibility to obtain the best qualified person for the position. It has been a standard practice to pay such expenses.

Mr. Gaisford felt, a simple authorization to invite the men here would be sufficient with formal action to be taken next week.

Mr. Hamilton, Acting City Attorney, explained that normally there are sufficient funds budgeted in the recruitment section of the Personnel Dept. for this purpose. It is understood that it will be repaid by federal monies.

Mayor Rasmussen said the Council has requested copies of all the applications and to date the complete files have not been submitted.

Roll call was taken on the motion to appropriate sufficient funds to bring candidates from their homes to interview for the Model Cities Director. Ayes 4: Bott, Finnigan, Herrmann and Johnson. Nays 3: Cvitanich, Zatkovich and Mayor Rasmussen. Absent 2: Banfield and Murtland.

Mayor Rasmussen ruled that the motion Lost because five affirmative votes were required.

Dr. Herrmann said he thought it was for the best interest of the Model Cities program and the City of Tacoma to have an opportunity for the Advisory Committee to interview these applicants personally.

Mayor Rasmussen requested that Mr. Hamilton, Acting City Attorney, prepare an appropriate resolution for next week's agenda authorizing the travel expenses.

Mr. Finnigan moved to authorize the Personnel Dept. to bring two candidates to Tacoma for interviews for the Model Cities Director. Seconded by Mr. Johnson.

Mayor Rasmussen ruled this motion out of order.

Mr. Cvitanich asked that the Council study Bulletin No. 3, dated Feb. 17, 1969 on Page 3, relative to S. B. #1. He felt that the Council had intimated in Bulletin No. 2, they were opposed to such an exemption.

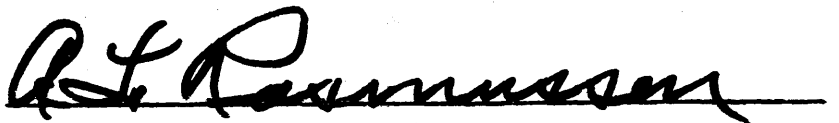
Mayor Rasmussen moved to delete the Council's opposition to S. B. #1 from the Legislative Bulletin, relative to increasing real property taxes exemption from \$50 to \$150 for qualified senior citizens. Seconded by Mr. Zatkovich. Roll call was taken, resulting as follows: Ayes 4: Bott, Cvitanich, Zatkovich and Mayor Rasmussen. Nays 3: Finnigan, Herrmann and Johnson. Absent 2: Banfield and Murtland. Motion carried.

Mr. Bott moved to suspend any further procedure on the agenda and file the communications. Seconded by Mr. Johnson. Voice vote taken. Motion carried.

ITEMS FILED IN THE OFFICE OF THE CITY CLERK:

- a. City Planning Commission minutes for February 3, 1969.
- b. Tacoma Board of Adjustment minutes for Jan. 9, 1969.
- c. City Council Study Session minutes for Feb. 10, 1969.
- d. Personnel Report for December 1968.
- e. Traffic Violations and Court Cases during the month of Jan. 1968 and 1969. Placed on file.

Mr. Bott moved that the meeting be adjourned. Seconded by Mr. Zatkovich. Voice vote was taken and the meeting was adjourned at 1:35 A. M., Feb. 19th, 1969.



E. L. RASMUSSEN, MAYOR

ATTEST: 
JOSEPHINE MELTON, CITY CLERK