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Salt Lake City, A Municipal Corporation v. State of Utah : Brief of Defendant-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY, a municipal
corporation, *Plaintiff-Respondent,*

vs.

STATE OF UTAH,

Defendant-Appellant.

Case No.
11141

Brief of Defendant-Appellant in Response to Petition for Rehearing filed Plaintiff-Respondent

Appeal from Declaratory Judgment
of the District Court of Salt Lake County, Utah
Honorable Leonard W. Elton, Judge

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AUTHORITIES CITED

This brief incorporates by specific reference the arguments, research and citations of authority contained in the State's earlier brief on file in this court. Since no new issues have been raised no additional authorities are cited in this brief.

IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE CITY, a municipal
corporation, *Plaintiff-Respondent,*

vs.

STATE OF UTAH,

Defendant-Appellant.

Case No.

11141

Brief of Defendant-Appellant in Response to Petition for Rehearing filed Plaintiff-Respondent

STATEMENT OF THE CASE

This brief is submitted by Defendant-Appellant in response to the petition of Salt Lake City for a rehearing in this matter. The State believes that the statement of facts, arguments and citations to authority contained in its prior brief fully support the rationale and decision of the majority opinion and we will not burden the court by reprinting any of that material here. Rather

we will simply summarize in this brief those portions of our prior arguments that are applicable to points raised by the City and will include references to our earlier brief and the record to sustain such arguments.

ARGUMENT

POINT I

THE FACTS IN THIS CASE CLEARLY DEMONSTRATE THAT SALT LAKE CITY AGREED TO MAKE LAND AND WATER AVAILABLE TO THE STATE AS AN INDUCEMENT TO MOVE THE CAPITOL FROM FILLMORE TO SALT LAKE CITY.

The basic thrust of Salt Lake City's argument in its petition for a rehearing is that there is no factual basis to sustain the majority opinion in this case. This argument is pregnant with misconceptions as to the facts contained in the exhibits and in the stipulation of facts. The City alleges that this court, "... has chronologically juggled the facts as stipulated by the parties in order to find a factual basis for the proposition that the arrangement for free use of city water was a part of the original Capitol Site Package". This is absolutely incorrect. The chronological sequence of the written documents which form the basis of this arrangement are carefully and accurately summarized as items A through I, inclusive, in the majority opinion. See the Stipulation of Facts, specifically paragraphs

1, 2, 3, 4, 5 and 9 and Exhibits A, B and C. These facts clearly support the conclusion reached in the majority opinion that the grant of land and water evolved from the City's inducement to have the Capitol moves from Fillmore to Salt Lake City. It would serve no useful purpose in this brief to reiterate all of these historical facts, however, we will point out the pertinent facts which sustain this conclusion. It must be noted that at no place in its brief does the City point to any facts which were omitted or ignored by the court. In effect the City simply argues that the references to the use of water in these early documents were meaningless. Certainly it cannot be presumed that the parties were discussing the use of water to maintain the Capitol Grounds and furnish water to the buildings without considering who was to supply that water. This would be ignoring the realities of the situation. The use and supply of water was a fundamental and an integral part of the use of the land conveyed by the City. This is why the deed which conveyed the 19.46 acres of land also specifically conveyed to the Territory a one-half interest in an additional five acres of ground for reservoir purposes. It is obvious that the parties were contemplating the use of water under this original deed. The Territorial Legislature in 1888 appropriated \$25,000.00 to improve and beautiful the grounds, and to construct a reservoir in conjunction with the City for the specific purpose of supplying water to the grounds and buildings erected on these grounds (Stipulation of Fact No. 2). This action surely would not

have been taken by the legislature absent some prior understanding about the source of the water supply, and that the City was furnishing the water. The grounds were being maintained as a public park primarily for the City's benefit. Further, the Act of the Legislature in 1890 which appropriated \$10,000.00 for the improvement of the Capitol Grounds contained an express condition that the City was to make water available to the Capitol Grounds and buildings without any future charge to the State (Stipulation of Fact No. 3). This Act certainly reflected the Legislature's understanding that the City was to furnish the water without further obligation on the part of the State. These acts all took place prior to the City's resolution ratifying this arrangement. In the City's own resolution of May 6, 1890, stating that water was granted for use on the Capitol Grounds and in the building erected thereon, was "... in accordance with the specific understanding with the City when arrangements were made to begin work on said grounds," (Exhibit B). We submit that this language could only refer back to the prior understanding and arrangement with the Territory that the City would furnish water when the Territory agreed to relocate the State Capitol on the ground made available by the City, and was not merely a reference to the parking and landscaping of the grounds as alleged in the City's brief. Nor can the explicit language of the 1926 agreement be ignored wherein the City affirmed its prior and existing obligation to furnish water to the State and agreed that this grant extended to

the additional and adjoining land purchased by the State so long as it was maintained as a public park and a part of the Capitol Grounds.

The City has simply taken some isolated phases from the various documents involved in this transaction and incorrectly interpreted them. In order to understand the agreement reached by the parties it is essential to construe all of the documents involved in this arrangement in their entirety. From a consideration of the deed, resolutions, ordinances, legislation, and agreements it is clear that the City offered the land and water as an inducement to move the Capitol from Fillmore to Salt Lake City. This arrangement was legally entered into for ample consideration to the City and the City has not pointed to any facts in its petition for rehearing to show otherwise.

POINT II

SALT LAKE CITY'S AGREEMENT TO FURNISH WATER TO THE STATE IS VALID AND DOES NOT CONTRAVENE THE CONSTITUTION OR LAWS OF THE STATE OF UTAH.

The City argues that the majority decision is contrary to the announced decisions of this court and specifically the constitutional prohibition against a city selling its water rights as discussed in prior decisions of this court. This is not so. As stated in the majority

opinion this constitutional provision has no bearing on this case for two reasons. First, the agreement to furnish water was entered into prior to the adoption of the Utah Constitution, and Article XI, Sec. 6 did not have retroactive application. This section was only prospective in its operation and effect on municipalities. (See authorities cited in brief of defendant-appellant pp. 27-31). None of the decisions referred to by the City in its supporting brief or its earlier brief involved a situation which occurred prior to the adoption of the Utah Constitution.

Secondly, as concluded in the majority opinion there was no sale or transfer of title to the City's water rights or waterworks. The City simply agreed, for good and sufficient consideration, to furnish land and water in return for the benefits which the City has gained by having the Capitol City located here. The benefits to the City have been many (brief of defendant-appellants, pp. 18-24) and have more than offset any expense the City has incurred in furnishing the water to the State. Hence the agreement was not in violation of the Utah Constitutional prohibition against a municipality selling its water rights. In making this arrangement the City was clearly not involved in any governmental process or activity. As noted by the majority opinion the City was acting in its propriety capacity when this agreement was made and the City has shown no grounds upon which it can avoid the consequences of its prior act at this late date, (Brief of defendant-appellants, pp. 8-24).

CONCLUSION

The majority opinion is fully supported by the facts and is in accord with the law of this state as announced in prior decisions of this court, and the petition for a rehearing filed by Salt Lake City should be denied.

Dated this 12th day of January, 1969.

Respectfully submitted,

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