

1996

Loni F. DeLand v. Uintah County : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 960801-CA

IN THE UTAH COURT OF APPEALS

LONI F. DeLAND,)	
)	
Plaintiff/Appellant,)	Case No. 960801-CA
)	
vs.)	Priority No. 15
)	
UINTAH COUNTY,)	
)	
Defendant/Appellee.)	

BRIEF OF APPELLANTS

ON APPEAL FROM THE JUDGMENT OF THE EIGHTH JUDICIAL
DISTRICT COURT OF UINTAH COUNTY, STATE OF UTAH
THE HONORABLE JOHN R. ANDERSON, JUDGE

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JAN 13 1997
COURT OF APPEALS

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STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from the Eighth District Court's denial of Appellant's Motion for New Trial pursuant to 59(a)(7) U.R.C.P. on or about September 17, 1996 (R. 252-253) in reference to the District Court's prior August 7, 1996, denial (R. 198-200) of Appellant's Motion for Summary Judgment as to the Issue of Liability and granting Defendant's Motion for Summary Judgment on the issue of Liability as to the issues raised by Appellant's claims based upon § 63-30a-2, U.C.A., as amended. All other claims were dismissed pursuant to stipulation and Order of Dismissal entered October 11, 1996. (R. 256-257) Notice of Appeal was timely filed on or about October 11, 1996. (R. 258-259).

The Supreme Court had original jurisdiction of this appeal under § 78-2-2(3)(j), U.C.A., as amended. On or about December 9, 1996, the Supreme Court poured this appeal over to the Court of Appeals pursuant to Rule 42 Utah R. App. P. The Court of Appeals has jurisdiction pursuant to § 78-2a-3(2)(j), U.C.A., as amended.

STATEMENT OF ISSUES PRESENTED FOR REVIEW AND STANDARD OF APPELLATE REVIEW

A. ISSUE PRESENTED FOR REVIEW

The question presented by this appeal is whether an officer or employee of a public entity, charged with criminal offenses in connection with or arising out of acts or omissions of that officer or employee during the performance of his duties, may recover attorney's fees from the public entity pursuant to § 63-30a-2, U.C.A., as amended, which are incurred in defense of charges dismissed on motion of the defense or upon which the individual is

acquitted, notwithstanding that the officer/employee may plead or be found guilty on remaining counts of a multi-count Information. ("Ruling", R. 198-200; "Ruling", R. 252-253)

B. APPLICABLE STANDARD OF REVIEW

Lower court judgments rendered as a matter of law are subject to appellate review for correctness without giving deference to the lower court's conclusion. Anderson v. Dean Witter Reynolds, Inc., 920 P.2d 575, 578 (Utah App. 1996).

Statutory interpretation is question of law which the Court of Appeals reviews for correctness, granting no deference to the trial court's determinations. Bellonio v. Salt Lake City Corp., 911 P.2d 1294, 1296 (Utah App. 1996).

APPLICABLE STATUTORY PROVISIONS

The statute central to this appeal is § 63-30a-2, U.C.A., as amended, entitled "Indictment or information against officer or employee - Reimbursement of attorneys' fees and court costs incurred in defense", and states in its entirety as follows:

If a state grand jury indicts or if an information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee shall be entitled to recover from the public entity reasonable attorneys' fees and court costs necessarily incurred in the defense of that indictment or information.

Other rules and statutes which may be of central importance to determination of this appeal are the following.

Rule 4 of the *Utah Rules of Criminal Procedure* is set forth in its entirety in the addendum hereto. It states in pertinent part,

(b) " . . . an indictment or information shall charge the offense for which the defendant is being prosecuted . . . "

(d) ". . . after verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar subsequent prosecution . . . "

(e) " . . . when facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged. . . . "

The term "Information" pursuant to § 77-1-3, U.C.A., as amended, is defined as follows:

(3) "Information" means an accusation, in writing charging a person with a public offense which is presented, signed and filed in the office of the clerk where the prosecution is commenced pursuant to § 77-2-1.1.

STATEMENT OF THE CASE

Appellant, Loni DeLand, obtained an assignment of Sheriff Lloyd Meacham's claim for attorney's fees against Uintah County pursuant to § 63-30a-2, U.C.A., as amended, in relation to the defense of criminal charges lodged against Sheriff Meacham arising out of acts or omissions during the performance of his duties, within the scope of his employment or under color of his authority. (R. 89; R. 63)

On or about March 6, 1996, Mr. DeLand brought an action against Uintah County (R. 1-8) for reimbursement of those attorney's fees based upon the assignment, as specifically set

forth in the Second Cause of Action of his Amended Complaint. (R. 19-24)

Mr. DeLand submitted a Motion for Summary Judgment as to the Issues of Liability and Damages as to Plaintiff's Second Cause of action on or about June 21, 1996. (R. 44-133). Uintah County responded on or about July 29, 1996 with a counter-motion entitled Motion for Summary Judgment on the Issue of Liability. (R. 137-197).

The trial court made and entered its "Ruling" denying Appellant's Motion for Summary Judgment on the Issue of Liability and Granting Defendant's Motion for Summary Judgment on the issue of Liability, both in respect to the second cause of action of Appellant's First Amended Complaint on August 7, 1996. (R. 198-200) A copy of the trial court's "Ruling" of August 7, 1996, granting Defendant's Motion for Summary Judgment is appended hereto as "Exhibit A". Mr. DeLand timely filed a Motion for "New Trial" Pursuant to Rule 59(a)(7) U.R.C.P. on or about August 15, 1996, (R. 235-244), to which the County responded (R. 247-251) on or about September 13, 1996. The Trial Court issued its "Ruling" denying Appellant's motion for new trial on or about September 17, 1996 reaffirming its August 7th "Ruling". (R. 252-253). A copy of the trial court's "Ruling" of September 17, 1996 denying Plaintiff's Motion for New Trial is appended hereto as "Exhibit B".

The parties stipulated to dismissal of the Appellant's remaining claims for relief (R. 254-255) and pursuant thereto the Trial Court's Order of Dismissal of Plaintiff's First and Third

Causes of Action Without Prejudice was made and entered on or about October 11, 1996, thus disposing of all remaining claims and issues. (R. 256-257)

Thereafter, from the trial court's "Ruling" of September 17, 1996 the Appellant filed his Notice of Appeal on or about October 11, 1996. (R. 258-259).

STATEMENT OF THE FACTS

As to the sole issue presented herein with respect to liability of Uintah County pursuant to 63-30a-2, U.C.A., as amended, there are no material factual disputes between the parties. As reflected in the Trial Court's August 7, 1996, Ruling (R. 198-200) granting Uintah County's Motion for Summary Judgment on the Issue of Liability,

"The essential facts necessary to decide this case are not in dispute. Those facts are set forth in separate paragraph numbers in Plaintiff's Memorandum and will not be reincorporated in this Ruling. It should be noted that the parties have essentially agreed as to those facts except for the reasonableness or the amount of the fees and the fact the representatives of Uintah County had previously acknowledged that compensation would be appropriate." (R. 200)

Those material undisputed facts before the trial court are set forth as follows.

Lloyd D. Meacham was the Uintah County Sheriff in October of 1993. (R. 91) On or about October 10, 1993, a six count Information was filed in the Eighth District Court by the office of the Attorney General for the State of Utah, Criminal no. 931800490 (hereinafter sometimes referred to as "the criminal case") alleging three third degree felony counts of misuse of public money,

specifically that the defendant, Lloyd D. Meacham, "...while sheriff of Uintah County, a public officer, knowingly made a profit out of public monies and/or used the same for a purpose not authorized by law," in violation of § 76-8-404, and 202, and Article 13, Section 8, of the Utah State Constitution; and three class B misdemeanor counts of falsification or alteration of government documents. (R. 91; Information, Criminal no. 931800490, R. 75-78)

Shortly thereafter Appellant, Loni DeLand, a member in good standing of the Utah State Bar and experienced criminal defense lawyer, undertook the representation of Sheriff Meacham with respect to the charges contained in the Information for the specified retainer amount of \$7,500.00, against which Mr. DeLand agreed he would charge his normal and usual fees and costs and bill Mr. Meacham for the remainder over and above that amount. Mr. Meacham never paid the retainer although he was billed for all services rendered. (R. 91-93)

In his representation of Sheriff Meacham, among various defense functions, Mr. DeLand undertook to conduct interviews; review transcripts of meetings; travel from Salt Lake City to Vernal several times; represent Sheriff Meacham at a preliminary hearing on or about February 10, 1994, from which Sheriff Meacham was bound over to stand trial in the District Court (Docket, Criminal no. 931800490, R. 79-85, at 82); confer with representatives of the Attorney General's office; prepare for anticipated trial; prepare a Motion to Dismiss and Memorandum in

Support of a Motion to Dismiss; argue the Motion to Dismiss before the District Court; *et cetera*. (R. 89-90)

As counsel for Sheriff Meacham, Mr. DeLand moved for the District Court to dismiss the three felony counts as a matter of law based upon the established facts as preserved in the transcript of preliminary hearing. The motion was fully briefed and argued on or about April 11, 1994 by Mr. DeLand, and was likewise fully briefed and argued by Assistant Attorneys General, Michael D. Wimms and Creighton Horton for the prosecution. (R.89-90)

As a consequence of Mr. DeLand's Motion to Dismiss, the District Court dismissed the felony charges. The dismissal was granted upon the sole motion of the defense, over the objection and without the stipulation, approval, agreement or acquiescence of the prosecution. (R. 89-90; Docket, Criminal no. 931800490, Minute Entry of April 11, 1994, R. 79-85 at 81)

Subsequent to dismissal of the felony charges against Sheriff Meacham, a plea bargain was struck whereby Mr. Meacham agreed, *inter alia*, to plead guilty to the three charged class B misdemeanors. The State agreed not to file an amended information seeking additional charges against Mr. Meacham. (R. 89; Affidavit of Defendant Lloyd Meacham in Advance of Guilty Plea and Agreement, Criminal no. 931800490, R. 68-74)

As Sheriff Meacham's counsel Mr. DeLand determined from the outset of his representation that the three misdemeanor charges were essentially well-founded and indefensible. The matters of overriding importance were the felony charges. Therefore Mr.

DeLand concentrated virtually all of his efforts toward defense of the felony charges. Mr. DeLand attributes only a few hours of his over-all representation to defense of the misdemeanor charges. (R. 87)

Mr. DeLand billed Sheriff Meacham in accordance with their prior fee agreement. (R. 87,88) The total amount of the claim is approximately \$36,000, exclusive of any amount which might be attributable to defense of the misdemeanor matters. (R. 87-88) The District Court by its adverse rulings on the issue of the County's liability, (R. 198-200; 252-253), however, precluded inquiry into whether the attorney's fees incurred by Mr. Meacham in defense of the felony charges were fair, reasonable and necessarily incurred. Those issues are therefore not before this Court.

In or about May of 1994 subsequent to conclusion of the criminal case, Sheriff Meacham assigned to Mr. DeLand all right, title and interest to recover all attorney's fees, costs and expenses which he incurred and might be entitled to recover against Uintah County. The original written assignment was lost, misplaced or destroyed, however it was replaced. (R. 89; Assignment of Claims, R. 63)

Pursuant to that assignment Mr. DeLand submitted Sheriff Meacham's claim to Uintah County on or about July 7, 1994 requesting reimbursement of the attorney's fees and costs in regard to defense of the criminal case. (R. 88; 59-61) Mr. DeLand subsequently held numerous discussions with representatives of Uintah County, however no compensation was ever agreed to or paid.

(R. 88)

Accordingly on March 6, 1996, Mr. DeLand brought an action against Uintah County. (R. 1-8) His claim, based upon assignment of Mr. Meacham's claim for reimbursement of attorney's fees pursuant to statute, is specifically set forth in the Second Cause of Action of his Amended Complaint. (R. 19-24)

Mr. DeLand submitted a Motion for Summary Judgment as to the Issues of Liability and Damages as to Plaintiff's Second Cause of action on or about June 21, 1996. (R. 44-133). Uintah County responded on or about July 29, 1996 with a counter-motion entitled Motion for Summary Judgment on the Issue of Liability. (R. 137-197).

The trial court entered its memorandum "Ruling" denying Appellant's Motion for Summary Judgment on the Issue of Liability and Granting Defendant's Motion for Summary Judgment on the issue of Liability, both in respect to the second cause of action of Appellant's First Amended Complaint on August 7, 1996. (R. 198-200; Addendum, Exhibit A)

The District Court's decision adopted Uintah County's position that all six counts of the Information must have been dismissed or result in an acquittal for Sheriff Meacham to entitle him to any reimbursement of his defense costs. The District Court reasoned that inasmuch as, ". . . there was not a complete exoneration of Sheriff Meacham in this case, this Court can not allow attorney fees for defense which did not result in a total but only a partial acquittal." (R. 199)

Mr. DeLand timely filed a Motion for "New Trial" Pursuant to Rule 59(a)(7) U.R.C.P. on or about August 15, 1996, (R. 235-244), to which the County responded (R. 247-251) or about September 13, 1996. The Trial Court issued its memorandum "Ruling" denying Appellant's motion for new trial on or about September 17, 1996 reaffirming its August 7th "Ruling". (R. 252-253; Addendum, Exhibit B)

The parties stipulated to dismissal of the Appellant's remaining claims for relief (R. 254-255) and pursuant thereto the Trial Court's Order of Dismissal of Plaintiff's First and Third Causes of Action Without Prejudice was made and entered on or about October 11, 1996, thus disposing of all remaining claims and issues. (R. 256-257; addendum, Exhibit C) Thereafter, from the trial court's "Ruling" of September 17, 1996 the Appellant filed his Notice of Appeal on or about October 11, 1996. (R. 258-259).

SUMMARY OF ARGUMENT

This is a case of statutory construction. Appellant's argument is that a claimant under § 63-30a-2, U.C.A., as amended, is entitled to recoup his attorney's fees for those Counts of a multi-count Information which were dismissed upon his motion or upon which he has otherwise prevailed upon the merits, irrespective of the fact that on other counts he may have been found or entered a plea of guilty. The statute does not require "complete exoneration" and it is a misconstruction of the statute to require that the "whole" information be dismissed before any recovery of attorney's fees may be had.

ARGUMENT

The District Court's Ruling that in a multi-count information, the entire information must be dismissed in order to qualify a defendant for reimbursement of his attorney's fees under § 63-30a-2, U.C.A., is in error.

The statute in question refers such terms as "indictment" and "information", to the terms "act" or "omission", in the singular:

If a state grand jury indicts or if an information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee shall be entitled to recover from the public entity reasonable attorneys' fees and court costs necessarily incurred in the defense of that indictment or information. (emphasis added)

Section 63-30a-2, U.C.A., as amended.

The plain language of the statute indicates that "an information" is used in reference to a singular event, "any act or omission". The statute does not address multi-count informations. Appellant's position is that a public employee should be entitled to recover for the defense costs of individual counts dismissed from a multi-count information. Such a reading is consistent both internally within itself and with various other provisions of the Utah Code and Rules of Criminal Procedure which speak to the meaning of the term "information".

The District Court held that because there was not "a complete exoneration of Sheriff Meacham in this case, this Court can not allow attorney fees for defense which did not result in a total but only a partial acquittal." (R. 199) The District Court's

reasoning is set forth as follows:

This Court is of the opinion that the statute should be construed narrowly and that its legislative purpose and intent would be to fully compensate a person who held public office from having to defend criminal charges brought as a result of his holding that office where the charges were found to be unfounded and either dismissed or where the defendant obtained a full acquittal. (R. 199)

The District Court's finding of such legislative purpose and intent requiring "full acquittal" is not apparent from reading the plain language of the statute. A more practical yet nonetheless literal reading dictates a contrary conclusion.

In interpreting a legislative enactment it is fundamental that the court looks first to the plain language of the statute. If there is no reason to go beyond the plain language, resort to extrinsic factors is unnecessary:

(O)ur primary objective is to give effect to the legislature's intent. Gohler v. Wood, 919 P.2d 561, 562-63 (Utah 1996) (citing West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982)). We generally look first to the plain language of the statute to discern the legislative intent. Id. " 'Thus, we will interpret a statute according to its plain language, unless such a reading is unreasonably confused, inoperable, or in blatant contravention of the express purpose of the statute.' " Id. (quoting Perrine v. Kennecott Mining Corp., 911 P.2d 1290, 1292 (Utah 1996)). " 'Only when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations.' " Id. (quoting World Peace Movement of Am. v. Newspaper Agency Corp., 879 P.2d 253, 259 (Utah 1994)).

State Farm Mut. Auto. Ins. Co. v. Clyde, 920 P.2d 1183, 1186 (Utah 1996).

"A statute is ambiguous if it can be understood by reasonably well-informed persons to have different meanings." Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602, 606 (Utah App. 1995).

Appellant is not urging this court to find that the statute is ambiguous. The plain language and a common sense reading dictate an interpretation that, since different charges can and perhaps sometimes must be brought in one information (e.g. Rule 9.5 U.R.Cr.P.), and the statute speaks in terms of "an information" for an "act" or "omission", in effect a multi-count information contains more than one information, each count a separate information. However, even if it is deemed to be ambiguous, extrinsic evidence such as other statutes and rules, common usage, policy considerations, and the limited evidence of legislative intent establish that the District Court's narrow interpretation is not warranted.

Assuming arguendo that an ambiguity exists, the limited amount of legislative history which was before the District Court (R. 154-156; R. 94-101), the discussion on the floor of the Senate, seems to lend at least as much if not greater credence to the Appellant's position. The following is excerpted of Senator Haven Barlow's statement on the Senate Floor, March 7, 1977:

Mr. president, Senate Bill 247 relates to the providing for the reimbursement to officers and employees for legal fees and costs incurred in the special defense of a grand jury indictment. Of course, what this means is if they are found innocent and in defending themselves against charges which were not proven, it would simply reimburse them for reasonable attorney fees, for these charges, or for the indictment. . . . (emphasis added)

Transcript of debate, March 7, 1977, Senate Bill 247.

The broader view is supported by the language of other rules and statutes. For example, Rule 4 U.R.Cr.P. states in subsection (b) that "an indictment or information shall charge the offense for

which the defendant is being prosecuted . . . " (emphasis added), and states in subsection (d) that ". . . after verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar subsequent prosecution" (emphasis added), and further states in subsection (e) "when facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged. . . ." (emphasis added).

The underlying implication of these portions of Rule 4 is that "an information" states a single free-standing offense, "an offense". There is no need to further define what effect an information with multiple counts may have on Rule 4. The reason for this is obvious, i.e., each count is treated as a separate information for all intents and purposes within the Rule.

An information is specifically defined as follows:

(3) "Information" means an accusation, in writing charging a person with a public offense which is presented, signed and filed in the office of the clerk where the prosecution is commenced pursuant to § 77-2-1.1. (emphasis added) Section 77-1-3, U.C.A., as amended.

The very essence of this definition is that an information charges a separate, independent and single public offense.

By logical extension an information charging more than one public offense is in effect more than one Information. So in a literal sense what Sheriff Meacham obtained through the efforts of his legal counsel in the criminal case was the dismissal of three felony informations. Joining more than one separate offense in a single information does not alter the separate and distinct nature

and quality of each separate offense so charged. There is no melding together of separate crimes just because they are charged jointly in one document. There is no synergistic effect among separate charges set forth as multiple offenses in a single physical document, which such document has come by common usage to be termed an "information."

On the contrary, each count or charge of an indictment or information is to be considered separately; the State must prove each element of each charged crime by proof beyond a reasonable doubt. Each separate alleged offense must stand and be considered on its own. In jury trials involving multi-count informations, there is a stock jury instruction which is uniformly given to that effect. This Court has approved such an instruction:

A separate crime or offense is charged in each count of the Information. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the accused guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Footnote 5, State v. Lopez, 789 P.2d 39, 46 (Utah App. 1990)

There is no reason to treat separately charged offenses any differently for the purpose of reimbursement pursuant to § 63-30a-2.

Uintah County argued in the District Court that if a public employee were charged with 20 criminal counts, 19 resulting in convictions, while one resulted in an acquittal, it would not be proper to afford the public employee reimbursement for his attorney's fees for the count which was dismissed. This conclusion

merely begs the question. If the particular count dismissed were one wherein the cost of defense could be segregated and determined with reasonable accuracy there is simply no logical reason why such fees should not be reimbursed.

The offense which was dismissed might be the only felony in a 20 count indictment involving unrelated misdemeanors. For example, a defendant might be charged with alteration of a proposed legislative bill or resolution, a third degree felony pursuant to § 76-8-107, and 19 separate class B misdemeanor counts of receiving bribes pursuant to § 76-8-106. Or the Felony Count might be one arising from an act or omission in the course of employment for which defense costs would be reimbursable pursuant to § 63-30a-2, but the misdemeanor counts wholly unrelated to the course and scope of public employment. In either case, while the misdemeanor counts may be readily proved beyond a reasonable doubt, the felony matter might be one of which the public employee is innocent, the charge defensible and by virtue of defense counsel's efforts a dismissal or acquittal results. In such a scenario the overwhelming bulk of the defense effort might be put to the defense of but one out of twenty counts. There is simply no logical reason why § 63-30a-2, U.C.A., would not afford a remedy for reimbursement of attorney's fees for that portion of the defense which was allocated to the felony. Of course, the situation could be reversed and the matter which was dismissed might not be worthy of but a small amount of reimbursement.

The District Court's avowed "narrow" construction overlooks

the fact that there is no qualitative distinction between the acquittal or dismissal of one count encompassing "an act or omission" among many alleged offenses in a multi-count information, and that of a one count information. There are many possible permutations which illustrate the kind of confusion the District Court's ruling engenders. Picture for example two situations, in each of which a public employee is charged with three felonies, each of which would be reimbursable under § 63-30a-2, and three misdemeanors, none of which would. In the first case suppose the defendant is acquitted of all six counts. Given the District Court's "narrow" construction the public employee defendant would be entitled to recover all defense costs. In the second instance the defendant is acquitted of the felonies but convicted of the misdemeanors. By the District Court's reasoning the public employee could not recover defense costs even though the misdemeanor convictions had no relationship whatsoever to the defendant's public employment.

Such a perverse result could not have been intended by the legislature in enacting § 63-30a-2, U.C.A. The District Court's narrow construction renders the statute "unreasonably confused, inoperable, or in blatant contravention of the express purpose of the statute." State Farm Mut. Auto. Ins. Co. v. Clyde, supra, 920 P.2d 1183, 1186.

The problem is in reality not a matter of statutory construction. There is a semantic difference between the definition of information as "an accusation ... (of) a public

offense . . ." § 77-1-3, U.C.A., *supra*, and the physical document which is universally referred to as an "information" regardless of the number of counts which may be joined. The former is precise definition; the latter custom and usage. Section 63-30a-2 itself however does nothing to prevent the courts from recognizing that distinction for what it is, were semantics, and allocating the appropriate amount of attorney's fees to compensate the public employee who has been vindicated on one or more counts. The problem is only a practical one of determining and segregating the attorney's fees for the count(s) dismissed. There is no need to throw out the entire statutory right of reimbursement because of some perceived difficulty in proof.

Even in civil practice, where multiple causes of action are the norm, the rules discuss the charging document as "a pleading which sets forth a claim for relief" (emphasis added) and state that such pleading shall contain "a short and plain statement of the claim . . ." (emphasis added). Rule 8(a) U.R.C.P. So likewise, each civil cause of action might be considered a separate "complaint". In federal civil rights matters for instance it is common practice for court's to segregate out attorney's fees with respect to matters upon which a plaintiff has prevailed from those the plaintiff has lost, and award a reasonable attorney's fee for success on those winning issues in litigation notwithstanding the failure of other claims made. See, Hensley v. Eckerhart, 461 U.S. 424 (1983); Tidewell v. Ft. Howard Corp., 898 F.2d 406, 412 (10th Cir. 1993). The key in such cases is to achieve success on the

merits of a significant issue in the litigation. Once the plaintiff has done this, he "has crossed the threshold to a fee award of some kind." Texas State Teacher's Assoc. v. Garland Independent School Dist., 498 U.S. 782, 791-92 (1989).

By analogy to this case it is clear that Sheriff Meacham crossed the threshold to a fee award by having three significant successes on the merits of three significant issues, specifically three felony charges ("Informations", as it were) which were dismissed. He is not entitled to and no compensation is requested for defense of the misdemeanors. The substantial cost of defense of the felonies, however, should be compensated. It is an unnecessary, inequitable and unjust reading of the statute not to do so.

The District Court states in its Ruling (R. 199), that "when Judge Hyde dismissed the felony charges, it was a result of his interpretation of the exact felony that was charged," apparently attaching some special significance to the particulars of the reasoning by which Judge Hyde arrived at his decision to dismiss the felony charges against sheriff Meacham. Under the type of circumstances presented here, where the court in the criminal case entertains a motion to dismiss based upon an undisputed set of facts, the determination to dismiss is always as a consequence of the judge's "interpretation" of the exact felony that was charged. As a result of Judge Hyde's interpretation and application of the specific facts of the case to the law, he determined that those facts did not constitute the public offense charged.

As to those felony counts which Judge Hyde dismissed, the dismissals amounted to complete exoneration and vindication of the accused. There can be no other conclusion drawn.

The District Court's assertion that the legislative intent was to fully compensate a person who held public office where charges were found to be unfounded (R. 199) is correct. Judge Hyde found just that: the felony charges against Sheriff Meacham were unfounded; they were therefore dismissed. Judge Hyde's ruling meant that reasonable jurors could not differ in their belief that Sheriff Meacham was not guilty of the felony offenses charged. It was a dismissal on motion of the defense which fully satisfied the reimbursement statute. Sheriff Meacham could not have been any more vindicated or exonerated than he was by these dismissals.

The District Court's Ruling (R. 198-200) fosters an *ad hoc* determination in every case a charge is dismissed in a multi-count information as to whether the facts were "close" to the charges dismissed. In assessing the issue of reimbursement of attorney's fees, this would require the court to decide whether the "facts" which gave rise to the dismissed criminal charges were bad or good ones. If the facts are "bad", then the perpetrator shouldn't get attorney's fees, even though the case was dismissed on the merits. This procedure is not provided by § 63-30A-2. Once the charges have been dismissed the reason for the dismissal has no bearing on the right to reimbursement of fees.

If the question is perceived to revolve around whether the facts are "close" to the dismissed charges, the merger doctrine

notwithstanding, Yergensen v. Ford, 16 Ut.2d 397, 402 P.2d 696, 697 (1965); Adams v. Davies, 107 Ut. 597, 156 P.2d 207, 209 (1945), then reimbursement would occur under only the most egregious circumstances, e.g., where criminal charges are filed with reckless disregard as to the merit or truthfulness of the allegations. In most criminal prosecutions, at least where identity is not at issue, the "facts" will often be "close" to the allegations. But "close" is, of course, anathema to finding a person guilty by proof beyond a reasonable doubt.

It is furthermore not unknown for the "wrong" charges to be brought under circumstances where a defendant, while not guilty of the offense charged, might well be found guilty of something if more appropriate charges were brought given the same facts. That does not mean that a vigorous defense was not reasonable and necessary in a case where the "wrong" charges are filed, nor that the defendant is not vindicated and exonerated of those charges when dismissed.

In holding that in order to obtain reimbursement a multi-count Information must always be dismissed in its entirety, the District Court's decision encourages the prosecution to lump a charge such as reckless driving, regardless of its substance or weight, along with a serious charge such as first degree murder by a peace officer in the chance hope of getting a conviction, perhaps a compromise verdict, at least on the less serious but more easily proven offense in order to defeat the officer's right to attorney fees if he is acquitted of the homicide.

This is neither sound statutory construction, nor sensible policy. Each count or cause of action must be considered on its own. Each count must be considered a separate independent free-standing "information". The notion that in order to be entitled to reimbursement, the employee must obtain a dismissal of all the counts, related or unrelated, elevates form over substance to an absurd degree, makes no logical sense, and in fact flies in the face of the definitions and usages provided by existing statutes and rules.

If the public employee prevails on some counts but not others, the problem is a practical one, not a legal one. The same sort of weighing and sifting must take place as prescribed in Dixie State Bank v. Bracken, 764 P.2d 985 (Utah 1988). There although the bank's claim against Bracken was small, the court determined it was entitled to a comparatively large fee based on a number of factors, among them, the difficulty presented by the counterclaim imposed, the tactics used by the defendants, etc. *Id.* at 991. On its face it would not seem fair to award the bank a fee greater than its basic claim. But, despite the ostensibly perverse result and the difficulties of proof with regard to allocating what portion of attorney's fees should be attributed to contract and which to tort, etc., the Supreme Court held that the circumstances warranted such a conclusion. By the same token, the fact that Sheriff Meacham entered a subsequent plea to misdemeanors which were jointly charged with the dismissed felonies is no reason to deny him reimbursement with respect to those separate charges against which

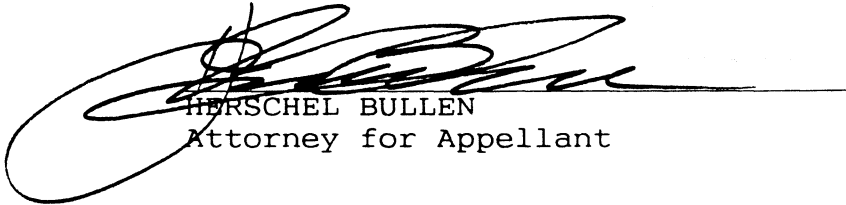
he was required to devote substantial resources to defend and upon which he was completely exonerated.

The District Court's reference to the public employee negotiating for attorney's fees at the time of the "plea bargain" is also unsound. (R. 198) In addition to being inconsistent with § 63-30a-2, U.C.A., which provides for complete reimbursement upon dismissal, it fails to consider the realities of the reimbursement statute whereby the employee is directed to seek payment not from the prosecuting authority, in this case the state attorney general, but from ". . . funds appropriated by the department or division that employed the officer or employee. . ." § 63-30a-3(2)(a), U.C.A. The mention of attorney's fees during plea bargaining, particularly under the instant circumstances where the prosecutor has absolutely no province or authority, is clearly untenable and inappropriate.

CONCLUSION

The District Court's granting of Appellee's motion for Summary Judgment on the issue of Liability should be reversed and this case remanded with directions that the Appellant's Motion for Summary Judgment on the issue of Liability be granted and for the District Court to hold such proceedings as may be necessary to determine the amount of reasonable attorneys' fees and court costs necessarily incurred in the defense of the dismissed felony charges against Sheriff Meacham and to award such amount to Appellant as so determined along with Appellant's reasonable attorney's fees and costs in bringing this appeal.

RESPECTFULLY SUBMITTED this 13 day of January, 1997.


HERSCHEL BULLEN
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 13 day of January, 1997, I caused to be served two (2) true and accurate copies of the foregoing Brief of Appellant by mailing same, postage prepaid, to:

JoAnn B. Stringham
Uintah County Attorney
152 East 100 North
Vernal, Utah 84078

by: 

ADDENDUM 1

63-30a-1. Definitions.

As used in this act:

- (1) "Officer or employee" means any individual who at the time of an event giving rise to a claim under this act is or was elected or appointed to or employed by a public entity, whether or not compensated, but does not include an independent contractor.
- (2) "Public entity" means the state or any political subdivision of it or any office, department, division, board, agency, commission, council, authority, institution, hospital, school, college, university, or other instrumentality of the state or any such political subdivision.

History: L. 1977, ch. 245, § 1.

Meaning of "this act." — The term "this" ch. 245, which enacted this chapter.

act," as used in this section, means Laws 1977,

ch. 245, which enacted this chapter.

63-30a-2. Indictment or information against officer or employee — Reimbursement of attorneys' fees and court costs incurred in defense.

If a state grand jury indicts or if an information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee shall be entitled to recover from the public entity reasonable attorneys' fees and court costs necessarily incurred in the defense of that indictment or information.

History: L. 1977, ch. 245, § 2; 1983, ch. 131, § 7.

63-30a-3. Payment of reimbursement of attorneys' fees and court costs.

- (1) A request for reimbursement of attorneys' fees and court costs shall be filed in the manner provided in Sections 63-30-36 and 63-30-37.
- (2) (a) Any reimbursement of attorneys' fees and court costs filed on behalf of an officer or employee of the state shall be paid from funds appropriated to the department or division that employed the officer or employee at the time of the act or omission that gave rise to the indictment or information.
(b) If those funds are unavailable, the reimbursement shall be paid from the General Fund upon approval by the Board of Examiners and legislative appropriation.

History: C. 1953, 63-30a-3, enacted by L. 1983, ch. 131, § 8; 1986, ch. 194, § 16; 1987, ch. 30, § 3.

Repeals and Reenactments. — Laws 1983, ch. 131, § 8 repealed former § 63-30a-3, as en-

acted by Laws 1977, ch. 245, § 3, relating to application of the 1977 act, and enacted present § 63-30a-3.

Severability Clauses. — Section 9 of Laws 1983, ch. 131 provided: "If any provision of this

IMMUT PERFORMING

Section
63-30b-1. Definitions.
63-30b-2. Voluntary services
from liability -

63-30b-1. Definitio

As used in this act:

- (1) "Public entity," any office, department, authority, institution, or mentality of the state;
- (2) "Compensation," however, whether paid or for the purpose of paid by the person performing the service.

History: C. 1953, 63-30b-1,
1979, ch. 93, § 1.
Meaning of "this act." —

A.L.R. — Construction and
"Good Samaritan" statutes. 68

**63-30b-2. Voluntary
Exception**

Any person performing such services, under the general supervision of a physician, shall be immune from liability in connection with the performance of those services, unless it is shown that he was grossly negligent, not

**History: C. 1953, 63-30b-2
1979, ch. 93, § 2.**

ADDENDUM 2

the rights of any innocent persons. Any exercisable by or transferable for value to the defendant. The defendant or any person on behalf of the defendant is not eligible to any sale ordered by the court. stay the sale or disposition of the property appeal of the criminal case giving rise to the demonstrates that proceeding with the sale or result in irreparable injury, harm, or loss

or other disposition of property forfeited s forfeited may be used first to pay the the sale including expenses of seizure, property pending its disposition, adver-

ted under Subsections (7) through (13) a (6).

sions of this section to the contrary, the en records applicable to the forfeitable ny valid lien against the property has holder did not violate the provisions of erty shall be subject to such lien, and n of the property to the lien holder or secured by the lien.

nder Subsections (7) through (13), the nay:

gation or remission of forfeiture, for victims of a violation of this section or the rights of innocent persons in the ty, in its discretion, grant the petition; nder this section;

is providing information resulting in a

ecessary to safeguard and maintain s section pending its disposition.

where forfeiture is declared, in whole

y the prosecuting agency prosecuting the recipient of forfeited assets from

re proceeding including seizure and individual or individuals whose re, and may assess costs against any roperty as appropriate.

e independent of any other proceed-section or the laws of this state.

Amendment Notes. — The 1996 amend-t, effective July 1, 1996, rewrote Subsection (a).

TITLE 77

UTAH CODE OF CRIMINAL PROCEDURE

Chapter

1. Preliminary Provisions.
- 1a. Peace Officer Designation.
- 2a. Pleas in Abeyance.
3. Security to Keep the Peace.
6. Removal by Judicial Proceedings.
7. Arrest, by Whom, and How Made.
- 16a. Commitment and Treatment of Mentally Ill Persons.
18. The Judgment.
- 18a. The Appeal.
19. The Execution.
20. Bail.
- 20a. Bail Forfeiture Procedure.
22. Subpoena Powers for Aid of Criminal Investigation and Grants of Immunity.
- 23a. Interception of Communications.
24. Disposal of Property Received by Peace Officer.
27. Pardons and Paroles.
30. Extradition.
31. Uniform Reciprocal Enforcement of Support Act.
- 31a. Uniform Interstate Family Support Act.
32. Counsel for Indigent Defendants.
36. Cohabitant Abuse Procedures Act.
37. Victims' Rights.
38. Rights of Crime Victims Act.

CHAPTER 1

PRELIMINARY PROVISIONS

Section

77-1-3. Definitions.

77-1-3. Definitions.

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused, and brought to trial for a public offense.

(2) "Indictment" means an accusation in writing presented by a grand jury to the district court charging a person with a public offense.

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented, signed, and filed in the office of the clerk where the prosecution is commenced pursuant to Section 77-2-1.1.

(4) "Magistrate" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78-3-31, except that the authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial council. The judicial council rules shall not exceed constitutional limitations upon the delegation of judicial authority.

History: C. 1953, 77-1-3, enacted by L. 1980, ch. 15, § 2; 1981, ch. 68, § 1; 1983, ch. 212, § 1; 1985, ch. 174, § 2; 1985, ch. 212, § 16; 1990, ch. 59, § 26; 1991, ch. 268, § 16; 1992, ch. 33, § 1; 1995, ch. 201, § 2.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, added the proviso at the end of the first sentence and added the second sentence in Subsection (4).

77-1-6. Rights of defendant.

NOTES TO DECISIONS

Double jeopardy.

— Sentencing.

Modification of defendant's sentence between the oral announcement of sentence and the later entry of a more severe written sentence did not violate constitutional and statutory protections against double jeopardy. Under

State v. Curry, 814 P.2d 1150 (Utah Ct. App. 1991), a sentence is not entered until it has been reduced to writing and signed by the court and thus defendant was sentenced only once. State v. Wright, 275 Utah Adv. Rep. 31 (Utah Ct. App. 1995).

CHAPTER 1a PEACE OFFICER DESIGNATION

Section 77-1a-2.	Correctional officer.
77-1a-4.	Special function officers.

Section 77-1a-10.	Duties to investigate specified instances of abuse or neglect.
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77-1a-1. Peace officer.

COLLATERAL REFERENCES

A.L.R. — Application of "fireman's rule" to preclude recovery by peace officer for injuries inflicted by defendant in resisting arrest, 25 A.L.R.5th 97.

77-1a-2. Correctional officer.

(1) (a) "Correctional officer" means an officer or employee of the Department of Corrections, youth corrections, any political subdivision of the state, or any private entity which contracts with the state or its political subdivisions to incarcerate inmates, who is charged with the primary duty of providing community protection.

(b) "Correctional officer" includes an individual assigned to carry out any of the following types of functions:

- (i) controlling, transporting, supervising, and taking into custody of persons arrested or convicted of crimes;
- (ii) supervising and preventing the escape of persons in state and local incarceration facilities; and
- (iii) guarding and managing inmates and providing security and enforcement services at a correctional facility.

(2) (a) Correctional officers have authority in the performance of their duties when employed by the Department of Corrections, Chapter 13, Department of Corrections.

(b) Correctional officers may be employed under conditions specified by the Department or the chief law enforcement officer.

(3) (a) An individual may not be employed until the individual has satisfied the requirements for correctional officers and the chief administrator of the Department of Corrections, completion of training to the Department of Corrections Training.

(b) The Department of Corrections shall establish and maintain service training programs and Standards and Training, with Peace Officer Standards and Training of no fewer than 40 hours per year on its own staff or other agencies.

(4) Employees of the Division of Corrections who have a contract with the division are not subject to this section until July 1, 1997.

History: C. 1953, 77-1a-2, enacted by L. 1985, ch. 174, § 3; 1993, ch. 103, § 7; 1995, ch. 163, § 1.

Amendment Notes. — The 1996 amendment added the last sentence.

77-1a-4. Special function officer.

(1) (a) "Special function officer" means an officer or employee of the Department of Corrections, youth corrections, any political subdivision of the state, or any private entity which contracts with the state or its political subdivisions to enforce the provisions of Title 17, Chapter 13, Department of Corrections, school district security officers designated pursuant to Section 17-30-2, Center security officers designated pursuant to Section 17-30-2, fire arson investigators for airports, security officers of any airport, political subdivisions, railroad, or other entity under Section 17-30-2, and having peace officer authority.

(b) "Special function officer" means an officer or employee of the Department of Corrections, youth corrections, any political subdivision of the state, or any private entity which contracts with the state or its political subdivisions to enforce the provisions of Title 17, Chapter 13, Department of Corrections, school district security officers designated pursuant to Section 17-30-2, Center security officers designated pursuant to Section 17-30-2, fire arson investigators for airports, security officers of any airport, political subdivisions, railroad, or other entity under Section 17-30-2, and having peace officer authority.

(c) Ordinance enforcement officers may be special function officers.

(2) (a) Special function officers are engaged in the duties of their position in the general law enforcement. If they are engaged in the duties of their position in the general law enforcement, they are not engaged in the duties of their position in the general law enforcement. If they are engaged in the duties of their position in the general law enforcement, they are not engaged in the duties of their position in the general law enforcement.

(b) Special function officers are engaged in the duties of their position in the general law enforcement. If they are engaged in the duties of their position in the general law enforcement, they are not engaged in the duties of their position in the general law enforcement. If they are engaged in the duties of their position in the general law enforcement, they are not engaged in the duties of their position in the general law enforcement.

ADDENDUM 3

Rule 2. Time.

(a) In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation.

(b) When an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion:

(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period, permit the act to be done if there was a reasonable excuse for the failure to act; but the court may not extend the time for taking any action under the rules applying to a judgment of acquittal, new trial, arrest of judgment and appeal, unless otherwise provided in these rules.

(c) A written motion other than one that may be heard ex parte and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by rule or order of the court. When a motion is supported by affidavit, the affidavit shall be served with the motion and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

Rule 3. Service and filing of papers.

(a) All written motions, notices and pleadings shall be filed with the court and served on all other parties.

(b) Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) The party preparing an order shall, upon execution by the court, mail to each party a copy thereof and certify to the court such mailing.

NOTES TO DECISIONS

Service on attorney.

Notice served upon a party's attorney of

record is sufficient. *State v. Wagstaff*, 772 P.2d 987 (Utah Ct. App. 1989).

Rule 4. Prosecution of public offenses.

(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe the offense has been committed.

(b) An indictment or information shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are generally known or by which they may be identified without setting forth a copy. However, details concerning such things may be obtained through a bill of particulars. Neither presumptions of law nor matters of judicial notice need be stated.

(c) The court may ment or information

(d) The court may any time before verdi substantial rights of t ment or information particularity as to bar same set of facts.

(e) When facts not inform a defendant o enable him to prepare a bill of particulars. 7 days thereafter, or at on its own motion, dir may be amended or s justice may require. T be limited to a statem tial elements of the p

(f) An indictment c name contained there

(g) It shall not be contained in the statu

(h) Words and phra meaning unless they a meaning.

(i) Use of the disjun the indictment or info

(j) The names of wit was based shall be end not affect the validity l cation of the defendan upon a showing of goo poses to call whose na

(k) If the defendant appear before the mag Proceedings against a person.

Cross-References. — Ac copy of accusation, Utah Con Circuit courts, crimin § 78-4-5.

Criminal Code definition § 76-2-201.

Criminal Code not str § 76-1-106.

Criminal responsibility § 76-2-204.

Criminal responsibility of p in name of corporation, § 76-2-204.

Double jeopardy, Utah Cons §§ 76-1-401 to 76-1-405, 77-

General definitions for § 76-1-601.

"Indictment" defined, § 77

ANALYSIS

Bill of particulars.

—In general.

—Contents.

—Discretion of court.

day of the act or event from which shall not be included. The last day, unless it is a Saturday, a Sunday, prescribed or allowed is less than days, and legal holidays shall not be

to be done at or within a specified any time in its discretion: order the period enlarged if re-ation of the period originally pre-der; or

ation of the specified period, per-asonable excuse for the failure to e for taking any action under the al, new trial, arrest of judgment in these rules.

may be heard ex parte and notice er than five days before the time eriod is fixed by rule or order of affidavit, the affidavit shall be its may be served not less than permits them to be served at a

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tted to be made upon a party l be made upon the attorney, d by the court. Service upon the manner provided in civil ac-

execution by the court, mail to court such mailing.

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sufficient. State v. Wagstaff, 772 P.2d Ct. App. 1989).

nses.

hall be prosecuted by indict- g reason to believe the offense

e the offense for which the me given to the offense by se terms the definition of the the charge. An information f facts sufficient to make out ere appropriate. Such things owership need not be al- things as money, securities, ments may be described by ally known or by which they owever, details concerning rticulars. Neither presump- be stated.

(c) The court may strike any surplus or improper language from an indictment or information.

(d) The court may permit an indictment or information to be amended at any time before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

(f) An indictment or information shall not be held invalid because any name contained therein may be incorrectly spelled or stated.

(g) It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.

(i) Use of the disjunctive rather than the conjunctive shall not invalidate the indictment or information.

(j) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses he proposes to call whose names are not so endorsed.

(k) If the defendant is a corporation, a summons shall issue directing it to appear before the magistrate. Appearance may be by an officer or counsel. Proceedings against a corporation shall be the same as against a natural person.

Cross-References. — Accused entitled to copy of accusation, Utah Const., Art. I, Sec. 12.
Circuit courts, criminal jurisdiction, § 78-4-5.
Criminal Code definition of "corporation," § 76-2-201.
Criminal Code not strictly construed, § 76-1-106.
Criminal responsibility of corporation, § 76-2-204.
Criminal responsibility of person for conduct in name of corporation, § 76-2-205.
Double jeopardy, Utah Const., Art. I, Sec. 12; §§ 76-1-401 to 76-1-405, 77-1-6.
General definitions for Criminal Code, § 76-1-601.
"Indictment" defined, § 77-1-3.

"Information" defined, § 77-1-3.
Jurisdiction of military court, § 39-6-16.
Judicial notice, Rules of Evidence, Rule 201.
Justice courts, criminal jurisdiction, § 78-5-104 et seq.
Juveniles, jurisdiction, transfer, §§ 78-3a-16 to 78-3a-19.
Nonmaterial errors and mistakes, Rule 30.
Preliminary examination, Rule 7.
Proof of corporate existence, § 77-17-5.
Prosecution by indictment or information after examination and commitment or waiver thereof, Utah Const., Art. I, Sec. 13.
Removal of officers, Utah Const., Art. VI, Sec. 21; § 77-6-1 et seq.
Statutory construction and definitions in general, §§ 68-3-11, 68-3-12.

NOTES TO DECISIONS

ANALYSIS

Bill of particulars.
—In general.
—Contents.
—Discretion of court.

—Effect on evidence at trial.
—Failure to provide.
—Failure to request.
—Following amendment of information.
—Not required.

EXHIBIT A

IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

LONI F. DELAND,	:	RULING
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
UINTAH COUNTY,	:	Case No.: 960800088
	:	
Defendant.	:	

FILED
DISTRICT COURT
UINTAH COUNTY, UTAH
AUG 07 1996

BY SHARON WITBECK, CLERK
DEPUTY

This matter is before the Court on Plaintiff's Motion for Summary Judgment on the issue of liability and damages and the Defendant's Motion for Summary Judgment on the issue of liability. The Court heard oral argument July 30, 1996 and took the matter under advisement. The Court has carefully read the Memoranda in support of both Motions with the accompanying exhibits.

The essential facts necessary to decide this case are not in dispute. Those facts are set forth in separate paragraph numbers in Plaintiff's Memorandum and will not be reincorporated in this Ruling. It should be noted that the parties have essentially agreed as to those facts except for the reasonableness or the amount of the fees and the fact the representatives of Uintah County had previously acknowledged that compensation would be appropriate.

Reference is made to Plaintiff's Memorandum and the statements of facts contained therein.

The Court is faced with the construction of Utah Code Annotated, Section 63-30a-2.

That statute provides in relevant part:

" If an Information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that Information is quashed or dismissed or results in a Judgment of Acquittal, (unless dismissed by the prosecutor), that officer or employee shall be entitled to recover from the public entity reasonable attorney fees and court costs necessarily incurred in the defense of that Information."

The Defendant urges a strict construction of the statute and argues that reimbursement should not be allowed because the Information was not dismissed nor did it result in acquittal.

The Plaintiff argues that to construe the statute narrowly would result in a complete nullity of the intent of the Legislature and would make the statute meaningless.

It should further be noted that the interpretation of the statute is of first impression. It should be noted in Salmon vs. Davis County, 289 Utah Advanced Reports 3 (Utah 1996), that the issue of liability under the statute was not before the Court.

This Court is of the opinion that the Legislative intent here is to partially encourage qualified persons to run for political office without having to have them be exposed to tremendous legal fees to defend ill founded actions including criminal actions. The statutory scheme provides for prior notice for the defense of civil claims and the statute in question here provides for reimbursement of legal fees in criminal prosecutions.

It would seem to this Court that prior notice would not be necessary under the statutory format and scheme of things where a defense attorney was retained privately to defend a criminal matter. The Court is further of the opinion that the intended legislative purpose here was to provide for defense costs for persons holding public office that are charged with crimes as a result of being in that office which are either dismissed as a matter of law or where there is a complete judgment of acquittal.

In the present case, much is said about the three felony charges being dismissed by the Court, but there only remained the three misdemeanor charges. It would seem to this Court that when Judge Hyde dismissed the felony charges, it was a result of his interpretation of the exact felony that was charged as it involved the activities of Sheriff Meacham. In this case, Sheriff Meacham did some things which were not completely dismissed and the case was not tried to a verdict.

This Court is of the opinion that the statute should be construed narrowly and that its legislative purpose and intent would be to fully compensate a person who held public office from having to defend criminal charges brought as a result of his holding that office where the charges were found to be unfounded and either dismissed or where the defendant obtained a full acquittal.

Because there was not a complete exoneration of Sheriff Meacham in this case, this Court can not allow attorney fees for defense which did not result in a total but only a partial acquittal.

The Court's interpretation of Section 63-30a-2 is consistent with Salmon vs. Davis County. In Salmon, a Deputy Sheriff was found not guilty by two separate juries and separate trials on charges of assault that arose out of actions by Salmon. Justice Zimmerman's comment in the case is worthy of note:

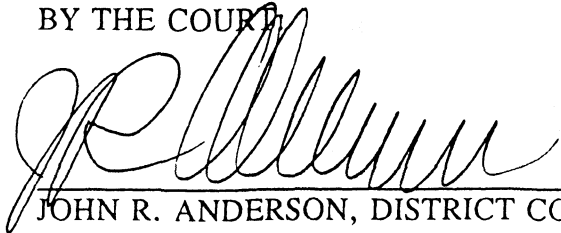
". . . . The purpose of Section 63-30a-2, which is to indemnify a vindicated employee. (Regarding the right to defense fees)."

This Court acknowledges that to interpret the statute thus narrowly will discourage plea agreements involving public officials, but at least part of the factor in the plea arrangement, if any is made, will be whether or not defense fees will be reimbursed.

For the above and foregoing reasons, the Court grants the Defendant's Motion to Dismiss on the issue of liability. The Court will not address the other issues remaining in the case are they were and are rendered moot by the decision herein.

DATED this 7th day of August, 1996.

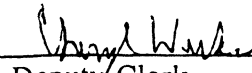
BY THE COURT



JOHN R. ANDERSON, DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that on the 7th day of August, 1996, true and correct copies of the Ruling were mailed, postage prepaid, or hand delivered to: Mr. Herschel Bullen, Attorney for Plaintiff, at 39 Exchange Place, Suite 200, Salt Lake City, UT 84111 and to Ms. JoAnn B. Stringham, Uintah County Attorney, at 152 East 100 North, Vernal, UT 84078.



Deputy Clerk

EXHIBIT B

SEP 17 1996

BY ch DEPUTY

IN THE EIGHTH DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH

LONI DELAND,

Plaintiff,

vs.

UINTAH COUNTY,

Defendant.

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RULING

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Case No. 960800088 CV

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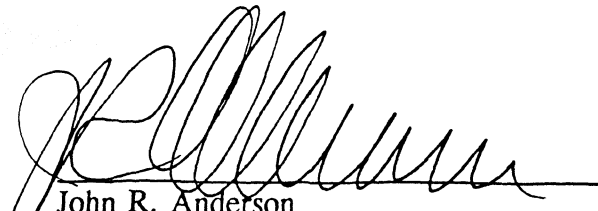
Judge John R. Anderson

The Plaintiff has filed a Motion for New Trial, pursuant to Rule 59 (a)(7) Utah Rules of Civil Procedure. The Court has considered the Supplemental Memorandum, prepared and filed by the Plaintiff as part of and consideration for the Court's review of it's prior Order.

The Court has carefully reviewed the Plaintiff's Supplemental Memorandum and the Response of the Defendant.

The Ruling of the Court will remain the same. That is, the Court will interpret the statute narrowly. In order to award counsel fee's under the statute will require that all charges be dismissed or result in a complete acquittal.

DATED this 17 day of September, 1996.


John R. Anderson
District Court Judge

MAILING CERTIFICATE

I hereby certify that on the 17 day of September, 1996, a true and correct copy of the above Ruling was mailed postage prepaid or hand delivered to Mr. Herschel Bullen, Attorney for the Plaintiff, 39 Exchange Place, Suite 200, Salt Lake City, Utah 84111; and to Ms. JoAnn B. Stringham, Uintah County Attorney, 152 West 100 North, Vernal, Utah 84078.


Deputy Court Clerk