

1997

# Mesa Development Company, Inc. v. Sandy City Corporation : Brief of Appellee

Utah Court of Appeals

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## Recommended Citation

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UTAH COURT OF APPEALS  
BRIEF

UTAH

DOCKET

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DOCKET NO. 970029CA

IN THE UTAH COURT OF APPEALS

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MESA DEVELOPMENT COMPANY, )  
INC., )

Plaintiff/Appellant, )

vs. )

SANDY CITY CORPORATION, )

Defendant/Appellee. )

Case No. 970029CA

Priority 15

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APPELLEE'S BRIEF

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Appeal from final judgment of the Third District Court,  
Homer F. Wilkinson, District Judge, Presiding

---

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**FILED**

**MAR 27 1997**

COURT OF APPEALS

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## **JURISDICTION**

This appeal was poured-over from the Supreme Court on January 2, 1997. The Court of Appeals has review jurisdiction over cases transferred from the Supreme Court pursuant to Utah Code Ann § 78-2a-3(j).

## **ISSUES AND REVIEW STANDARD**

Sandy disagrees with Appellant Mesa Development's description of issues presented on appeal. Sandy believes there are two issues on appeal, namely

1. Whether the District Court erred in concluding that Mesa lacks standing to attack annexation procedures since it petitioned for the annexation and is not a resident of the annexed area.
2. Whether the district court erred in concluding that Mesa had sufficient notice of annexation proceedings.

This court reviews the district court's determination of substantial compliance with the annexation statute for correctness. However, "because of the broad discretion provided in the [annexation] statute and the varying factual situations relevant to a determination of substantial compliance, this court gives some deference to the trial court's determination."<sup>1</sup>

## **DETERMINATIVE STATUTES AND RULES**

The interpretation of the following enactments, set forth in addenda to this brief, is determinative in this appeal.

Utah Code Ann § 10-2-401,

Utah Code Ann § 10-2-414,

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<sup>1</sup> *Szatkowski v Bountiful City*, 906 P 2d 902 (Utah App 1995)

Utah Code Ann. § 10-2-423; and

Utah Code Ann. § 10-2-501 through 510.

### **STATEMENT OF THE CASE**

#### **Nature of the Case**

Mesa Development, a corporate land developer, filed a complaint in district court seeking to remove a residential neighborhood from the boundaries of Sandy City. Mesa based its action on an alleged defect in a notice of hearing on annexation of the area. Mesa does not claim that it was actually unaware of annexation proceedings. In fact, Mesa petitioned for the annexation and participated at all stages of those proceedings in support of annexation. Mesa did not name affected property owners or residents of its action to remove their homes and property from Sandy.<sup>2</sup>

#### **Course of Proceedings**

Mesa filed a motion for summary judgment on January 8, 1996.<sup>3</sup> Sandy City filed a cross-motion for summary judgment on February 21, 1996.<sup>4</sup> Both parties' motions were heard by the court on June 21, 1996. The court took both motions under advisement.<sup>5</sup>

#### **Disposition Below**

On September 16, 1996, the court entered its order (including Findings of Fact and Conclusions of Law) granting Sandy's Motion for Summary Judgment and denying Mesa's

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<sup>2</sup> R-1 through 5.

<sup>3</sup> R-16.

<sup>4</sup> R-191.

<sup>5</sup> R-223.



motion.<sup>6</sup> On October 8, 1996, Mesa filed its Notice of Appeal to the Utah Supreme Court.<sup>7</sup> On January 2, 1997, the Supreme Court poured-over this case to the Court of Appeals.<sup>8</sup>

## **STATEMENT OF FACTS**

### **Parties**

1. Mesa Development, Inc. Mesa is a Utah corporation engaged in the business of land development.<sup>9</sup> In 1993, Nathan Coulter, Mesa's president,<sup>10</sup> petitioned on behalf of Mesa to annex about four acres of undeveloped property into Sandy City.<sup>11</sup> Mesa corporation has never resided in the area proposed for annexation nor does it claim to represent residential interests.<sup>12</sup>

2. Sandy City. Sandy is a municipal corporation.<sup>13</sup> Its city council has been delegated authority from the Legislature to annex territory into its boundaries. In 1979, Sandy City duly adopted an Annexation Policy Declaration which declared the City's willingness to annex certain unincorporated areas. That Declaration was unanimously approved by the Salt Lake County Boundary Commission on February 15, 1980.<sup>14</sup>

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<sup>6</sup> R-226, 227.

<sup>7</sup> R-230.

<sup>8</sup> R-234.

<sup>9</sup> R-73. Of course, the very term "inc." indicates a corporate entity. Utah Code Ann. 16-10a-401(1)(a).

<sup>10</sup> R-19.

<sup>11</sup> R-20.

<sup>12</sup> R-131.

<sup>13</sup> R-1.

<sup>14</sup> R-42.

## **The Property**

3. *The Mesa Site*. In 1993, Mesa appeared as owner of record of approximately four acres of property located at about 1700 East and 11000 South in Salt Lake County. The property then formed part of a “peninsula” of unincorporated territory nearly surrounded by Sandy City boundaries. Mesa subsequently sold about three acres of that site to the Church of Jesus Christ of Latter-Day Saints (LDS Church) so that Mesa’s total remaining ownership is about one acre.<sup>15</sup>

4. *The Annexation Petition*. In August 1993, the LDS Church proposed to build a chapel on the site and petitioned to annex the property into Sandy City.<sup>16</sup> The Church explained the purpose of the annexation as simply “because the L.D.S. Church prefers developing a church site in Sandy City.”<sup>17</sup> Mesa’s president also petitioned to annex the site because Mesa was then technically the record owner.<sup>18</sup>

## **Planning Commission Review**

5. *Initial Review*. On September 2, 1993, the Sandy City Planning Commission met to consider the annexation proposal.<sup>19</sup> The planning staff noted that there were “other annexation petitions circulating at that time that could help square up the annexation and possibly eliminate the entire peninsula.”<sup>20</sup> Accordingly, the annexation was continued to coordinate review of the

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<sup>15</sup> R-122 and R-130-131. The parcel has been split into three separate tax numbers.

<sup>16</sup> R-94.

<sup>17</sup> R-98.

<sup>18</sup> R-19, 61.

<sup>19</sup> R-94-96.

<sup>20</sup> R-94.

LDS Church proposal with forthcoming petitions from adjacent property owners.<sup>21</sup>

6. Commission Hearing. On October 21, 1993, the Planning Commission held a hearing to consider the four-acre annexation request. Representatives of both the LDS Church and Mesa Development spoke in favor of the annexation.<sup>22</sup> Eleven area residents testified at the hearing. No one expressed to the planning commission any opposition to the annexation orally or in writing.<sup>23</sup> Thereafter, the Planning Commission recommended that the annexation be approved, finding the property was an unincorporated island within the City's annexation declaration area and that the City is capable of serving the area.<sup>24</sup>

#### **City Council Review**

7. Hearing Notices. The following notices were given of a City Council annexation to be held on December 7, 1993:

- On November 4, 1993, a notice was published in the Green Sheet, a weekly newspaper of general circulation in Sandy City.<sup>25</sup>
- On November 16, 1993, notice was mailed to the Salt Lake County Boundary Commission and to all potentially "affected entities," namely, Salt Lake County and the Sandy Suburban Improvement District. Each such mailed notice include a copy of a proposed policy declaration for the area.<sup>26</sup>

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<sup>21</sup> R-96.

<sup>22</sup> R-98 and 99. Nathan Coulter represented Mesa having petitioned for annexation on its behalf. R-61.

<sup>23</sup> R-98-100.

<sup>24</sup> R-100.

<sup>25</sup> R-62.

<sup>26</sup> R-60.

- Notices were mailed to 184 property owners and persons residing in and around the proposed annexation area.<sup>27</sup>

8. Initial Council Hearing. On December 7, 1993, the Sandy City Council held a public hearing to consider the Planning Commission recommendation. The City Council had received a total of five annexation petitions by that time.<sup>28</sup> A proposed supplement to the City's annexation policy declaration specific to the area was presented to the City Council and discussed at hearing.<sup>29</sup> A representative of the LDS Church spoke urging annexation. Mesa's representative also spoke concerning lot sizes and a trail system.<sup>30</sup> Eight area residents spoke. Neither Mesa nor the residents opposed annexation.<sup>31</sup> The City Council continued the hearing until December 14, 1993, for more input and possible additional annexation petitions.<sup>32</sup>

9. Second Council Hearing. On December 14, 1993, the City Council continued its public hearing on the annexation petitions.<sup>33</sup> Prior to hearing, owners filed two additional petitions for annexation of properties adjacent to the site of the proposed chapel.<sup>34</sup> Nine citizens spoke at this hearing. None opposed the annexation.

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<sup>27</sup> R-60.

<sup>28</sup> R-72.

<sup>29</sup> R-93 and 101. Utah Code Ann. §10-2-414 requires adoption of a specific amendment to the City's policy declaration for annexations over five acres in size.

<sup>30</sup> R-73.

<sup>31</sup> R-73-74.

<sup>32</sup> R-75.

<sup>33</sup> R-72 through 78.

<sup>34</sup> R-77, 89.

10. Ordinance Adopted. On December 14, 1993, the Sandy City Council adopted Ordinance #93-60 accepting all the annexation petitions and establishing a zone for the annexed territory.<sup>35</sup> Because of its sale to the LDS Church, Mesa then owned only about one<sup>36</sup> of the total ten and one-half acres annexed under all petitions accepted by the City Council.<sup>37</sup>

11. Ordinance Ratified. On May 16, 1995, by Resolution #95-46C, the Sandy City Council ratified its prior annexation action.<sup>38</sup>

### **Protest to Annexation**

12. Mesa Development's Lawsuit. On December 13, 1994, Mesa filed this action to invalidate the annexation it had requested by alleging that notice of the hearings it had attended was inadequate.<sup>39</sup> The Complaint did not claim that Mesa was a resident of the area or that it represent residents interests. Nor did the complaint name affected property owners or residents or allege that the State had been notified of the action.

13. No Resident Protests. All residents of the annexed territory have paid their property taxes since the annexation.<sup>40</sup> No resident of any of the territories annexed has contested the annexation in court or otherwise.<sup>41</sup>

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<sup>35</sup> R-79.

<sup>36</sup> *Id.*

<sup>37</sup> R-81, 122, 130, 131.

<sup>38</sup> R-85.

<sup>39</sup> R-1, 4.

<sup>40</sup> R-103 to 189.

<sup>41</sup> Judicial notice may be taken of the absence of court action. Rule 201, Utah Rules of Evidence.

## **SUMMARY OF ARGUMENTS**

A corporate developer's lawsuit cannot take a whole neighborhood out of a city without following statutory procedures and telling the residents and property owners about it. The State Disconnection Statute doesn't allow it. But Mesa says it has found a way around that statute. It claims that a technical defect in an annexation notice invalidated the original annexation of the neighborhood.

Mesa's legal theory is invalid for several reasons. First, there was no notice defect. In fact, the annexation notices in this case far exceeded statutory minima. Second, Mesa had specific actual notice of all proceedings and participated without objection. Third, in the years since annexation, residents of the annexed area have paid their property taxes without protest and have not asked to withdraw their property from the City. Utah law precludes legal attacks on annexations under each of these circumstances.

## **ARGUMENT**

### **POINT I**

#### **THIS ACTION IS MISCHARACTERIZED**

##### **A. Mesa is Trying to Circumvent Disconnection Standards and Procedures.**

Mesa wants to disconnect its property and that of many unsuspecting residents. Utah statutes permit disconnections, but only under strict procedures established to inform and protect the public. First, the majority of property owners must file a request for disconnection with the city.<sup>42</sup> Upon filing this request, the petitioners must publish notice of their petition in a newspaper.

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<sup>42</sup> Utah Code Ann. § 10-2-501(2)

of general circulation once a week for three consecutive weeks.<sup>43</sup>

If the city doesn't approve the request, the owners may petition to the district court.<sup>44</sup>

The court makes findings to assure that the majority of owners agree with the proposal, then appoints three commissioners to determine the viability of the disconnection proposal.<sup>45</sup>

The commissioners hold a public hearing on the petition, notifying the public in advance by newspaper publication.<sup>46</sup> In the public hearing, any person may speak and submit documents regarding the disconnection proposal.<sup>47</sup> Following the hearing, the commissioners report to the court their findings regarding compliance with the criteria for disconnection and the respective rights and liabilities of the city and the territory to be disconnected.<sup>48</sup>

Upon receiving the commission report, the court may hold further hearings.<sup>49</sup> After considering the evidence, the court issues an order either accepting or rejecting the disconnection.<sup>50</sup>

Mesa's objective is to disconnect its own property and the surrounding neighborhood from Sandy without following statutory procedures. It hopes to do so without alerting the affected neighborhood by attacking the formalities of the original annexation.

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<sup>43</sup> Utah Code Ann. § 10-2-501(3).

<sup>44</sup> Utah Code Ann. § 10-2-501(5).

<sup>45</sup> Utah Code Ann. § 10-2-502.

<sup>46</sup> Utah Code Ann. § 10-2-504(1) and (2).

<sup>47</sup> Utah Code Ann § 10-2-504(3).

<sup>48</sup> Utah Code Ann. § 10-2-504(4).

<sup>49</sup> Utah Code Ann. § 10-2-505(1).

<sup>50</sup> Utah Code Ann. § 10-2-505.

Mesa's specific claim is that Sandy's notice of annexation hearings didn't mention that a policy declaration for the area would be considered. Mesa can't say it lacked any notice or knowledge of annexation hearings. It began the process by petitioning for annexation. It fully participated, without objection, in all stages of the annexation proceedings, urging the City to annex its property throughout the process.

Mesa's claim that it lacked notice is a fiction used to avoid facing the procedures for disconnection established by the Legislature. The district court ended Mesa's end-run around the disconnection statute by granting summary judgment to the City. In so doing, it assured that the criteria the Legislature has established for disconnection would apply.

**B. Mesa Wants to Disenfranchise Sandy Residents Without Their Notice or Consent.**

The Utah Legislature has declared its policy to "secure to residents within the areas a voice in the selection of their government."<sup>51</sup> Legislative policy also says that decisions with respect to municipal boundaries need to be made with adequate consideration of the effect of the proposed actions on service delivery and the interests of others<sup>52</sup>

These policies have been implemented by in the disconnection statute which allows judicial disconnection from a city only on the following conditions: (1) that a majority of property owners apply for disconnection;<sup>53</sup> (2) that notice has been previously given to the public;<sup>54</sup> and (3) criteria

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<sup>51</sup> Utah Code Ann. § 10-2-401(5).

<sup>52</sup> Utah Code Ann. § 10-2-401(6).

<sup>53</sup> Utah Code Ann. § 10-2-501 *et. seq.*

<sup>54</sup> Utah Code Ann. § 10-2-501(3).



be established which consider the interests of those affected.<sup>55</sup>

Mesa has not named other property owners or any of the actual residents of the annexed neighborhood in its action. Mesa's action assumes that they won't care if their municipal services suddenly terminate or if their rights to vote in elections for municipal candidates and on local community issues are extinguished.

City services may not mean much to Mesa's own small undeveloped parcel. As a corporation, it would not miss the loss of voting rights either. But its action would disconnect a whole developed neighborhood, including a church and the homes of those who do live there, who do need those services, and whose rights incident to residing in the City will be lost, all without their notice or consent.

**C. Mesa is Trying to Graft Its Own Notice Requirements into the Annexation Statute.**

In 1979 Sandy City duly adopted a general Annexation Policy Declaration which stated the City's willingness to annex certain unincorporated areas. That declaration was unanimously approved by the Salt Lake County Boundary Commission in 1980.

Mesa doesn't claim that adoption of this policy declaration was deficient. Instead, it argues that hearing notices on its annexation did not specifically mention amendment of the City's general policy declaration.

It is true that Sandy periodically amends or supplements its general policy declaration to address specific annexations. This, however, is not a statutory requirement unless the annexation is over five acres in size. The annexation act so states in part:

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<sup>55</sup> Utah Code Ann. §§ 10-2-502 and 503.

Before annexing unincorporated territory having *more than five acres*, a municipality shall, on its own initiative, on recommendation of its planning commission, or in response to an initiated petition by real property owners as provided by law, and after requesting comments from county government, other affected entities within the area and the local boundary commission, adopt a policy declaration with regard to annexation.<sup>56</sup>

Mesa admits that the property it petitioned to annex was less than five-acres.<sup>57</sup> So to make its case, Mesa has tried to transform its four-acre annexation into a five-acre one. It argues that other annexation petitions were accepted by the City at the same time as Mesa's. Mesa posits that because the boundaries of these petitions of touch the property it petitioned to annex, all petitions should be composited. If this is done, the total acreage will exceed five acres and thus require amendment of the policy declaration.

The problem with this theory is that Mesa didn't join in petitions for any properties other than its own. Its four-acre annexation isn't transformed into a five acre one just because it touches another annexation proposal or existing boundary. If that were the case, every annexation would be over five acres since each annexation must be contiguous to another.<sup>58</sup>

Utah courts are reluctant to fashion new theories like Mesa's to restrict annexation procedures. The Utah Supreme Court so states as follows:

Certain principles are applicable in considering the plaintiff's contentions. The first is that a determination of city boundaries is a legislative function which is to be performed by the governing body. The second logically follows therefrom: that in carrying out that duty the city council is endowed with broad discretion to make decisions and determine policies which it thinks will best fulfill its responsibilities. Consequently, as in all legislative matters, courts are reluctant to interfere therewith; and do so only when the decisions or actions taken are clearly outside

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<sup>56</sup> Utah Code Ann. § 10-2-414 [emphasis added].

<sup>57</sup> R-19 and 20. *See also*, R-61.

<sup>58</sup> Utah Code Ann. § 10-2-417(1)(a).

the authority of the governing body, or are so wholly unreasonable and unjust that they must be deemed capricious and arbitrary in adversely affecting someone's rights.<sup>59</sup>

The notice issue raised by Mesa ignores the fact that Sandy gave many more notices and held many more hearings than any law requires. Sandy did adopt a supplement to its policy declaration although it was not legally required for the four-acre Mesa petition. Mesa's representative participated in at least one hearing where this supplement was considered.<sup>60</sup>

It is ironic that Mesa would try to fashion a technical notice deficiency by merging its own distinct annexation petition with petitions by different property owners. If Mesa is successful in attacking that ordinance, such could invalidate not just the annexation Mesa requested, but everyone's annexation petitions accepted under the ordinance.

Mesa has not named other property owners in its action and has no right to speak on their behalf. Mesa's claim should be determined by its own petition, not those petitions for annexation which contradict its action. Alone, Mesa's petition falls short of the five-acre requirement needed to require adoption of a policy declaration.

### **POINT III**

#### **THE DISTRICT COURT DID NOT ERR**

##### **A. Mesa Lacks Standing.**

The district court granted summary judgment to the City in part because Mesa lacked standing "to bring this action since it was a petitioner in the annexation proceedings and does not

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<sup>59</sup> *Child v. City of Spanish Fork*, 538 P.2d 184, 186 (1975) [Emphasis added].

<sup>60</sup> R-73, 101.

actually reside within the annexed area”<sup>61</sup> This decision was based in part on a statute of repose contained in the annexation act It states

**Annexation deemed conclusive** Whenever the *residents* of any territory annexed to any municipality pay property taxes levied by the municipality for one or more years following the annexation and no *residents* of the territory contest the annexation in a court of proper jurisdiction during the year following the annexation, the territory shall be *conclusively presumed to be properly annexed* to the annexing municipality<sup>62</sup>

This statute creates a conclusive presumption of annexation validity if “residents” pay taxes and don’t sue within one year In fact, residents have paid their property taxes and no court action has been filed by a resident contesting this annexation<sup>63</sup> Accordingly, the statute has run and the territory is conclusively presumed to be properly annexed

Mesa seeks to avoid application of this statute by arguing that it is really a resident of the annexed area To make this case, Mesa had to convince the district court that a corporate entity, whose business address is outside the annexed area, resides on an undeveloped parcel in that area In other words, Mesa had to demonstrate that a corporate property owner is a resident of each of its undeveloped properties

Of course, residence is usually held to be synonymous with inhabitancy or domicile, denoting a permanent dwelling place to which the person when absent intends to return.<sup>64</sup> The

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<sup>61</sup> R 227

<sup>62</sup> Utah Code Ann §10-2-423 [emphasis added]

<sup>63</sup> R-103 to 189 See also Utah Code Ann §10-2-415(2) which states “The territory is annexed when the resolution or ordinance is adopted ”

<sup>64</sup>McQuillin, *The Law of Municipal Corporations*, § 12 59 (Residence) See also § 12 06 (Citizenship and residence) which states that “Residence for voting purposes is generally held to mean the fixed place of abode, that is, his or her domicile, ”

Utah Supreme Court has used similar language to define the term resident as follows

Resident One who resides in a place, one who dwells in a place for a period of more or less duration Resident usually implies more or less permanence of abode, but is often distinguished from inhabitant as not employing as great fixity or permanency of abode <sup>65</sup>

On city boundary issues, the Utah Supreme Court has been unwilling to redefine the ordinary meaning of terms simply to give standing to property owners For instance, in *South Jordan City v. Sandy City* (Utah 1994), the Court considered a statute which required a petition to disconnect territory from a city to be filed by “registered voters” in the district court <sup>66</sup> The Court found that a complaint signed by a “property owner” could not replace a voter complaint In affirming dismissal of the property owner’s petition, the Court concluded that “[b]ecause the petition to disconnect was not signed by any registered voters, it was facially defective ”

The district court correctly concluded an absentee corporate landowner is not a resident under the ordinary definition of that term Mesa Development Corporation’s ownership of a small undeveloped parcel is not a substitute for residency

**B. Mesa’s Notice of Annexation Proceedings Was Actual and Complete.**

Generally, a party who has received actual notice of administrative proceedings lacks standing to attack irregularities in general constructive notices Justice Hall has applied this principle specifically to Utah annexation proceedings His concurring opinion in *Freeman v. Centerville City* (Utah 1979) states as follows

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<sup>65</sup> *Geico v. Dennis*, 645 P 2d 672 (Utah 1982)

<sup>66</sup> 870 P 2d 273

Inasmuch as plaintiff admits he had actual notice of the [annexation] hearing and was in attendance, he has no standing to challenge whether or not the notice provisions were complied with. The complaint therefore fails to state a cause of action and was properly dismissed.<sup>67</sup>

Although Mesa claims to have found an irregularity in constructive notice of an annexation hearing, it has never contended that it lacked actual notice of the proceedings. Through its agents, Mesa participated in all stages of the annexation process, including filing of its petition and appearing at planning commission and city council hearings. Such actual participation deprives it of the claim that it lacked constructive notice of annexation proceedings.

#### **POINT IV**

#### **MESA'S CLAIM VIOLATES LEGISLATIVE POLICY**

##### **A. Respect for Legislative Prerogatives**

Historically, actions challenging the validity of an annexation ordinance could be prosecuted only by the state acting through one of its proper officers. The reason for the rule limiting actions by individuals has been stated by the Kansas Supreme Court:

Throughout the history of the jurisprudence of this state, this court has never permitted a private individual to bring an action attacking the legality of the corporate existence of a city, where the plaintiff's right to bring the action was properly challenged. Likewise, it has been uniformly held that the extension of corporate limits to include new territory, under statutory authority, is, in effect, a reorganization of the city, and an action attacking the legality of such reorganization attacks the corporate integrity of the city in the same manner as if the city's original organization were attacked. Moreover, the legality of the organization or reorganization of a city cannot be questioned in a collateral proceeding or at the suit of a private individual but must be prosecuted by the state acting through its proper officers.<sup>68</sup>

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<sup>67</sup> 600 P 2d 1003

<sup>68</sup> *Babcock v Kansas City*, 197 Kan. 610, 419 P 2d 882, at 884 (1966)

The Kansas court described the dangers involved in permitting private litigation challenging the validity of municipal annexations

It would be dangerous and wrong to permit the existence of municipalities to depend on the result of private litigation. Irregularities are common and unavoidable in the organization of such bodies, and both law and policy require that they shall not be disturbed except by some direct process authorized by law, and then only for very grave reasons.<sup>69</sup>

Mesa is a private corporation and does not represent State interests. Thus, it cannot qualify as *parens patriae* for a whole residential neighborhood. With respect to municipal boundaries, that right is reserved to the state through its attorney general.<sup>70</sup> But neither the Legislature nor the attorney general would ever try to do what Mesa wants to accomplish, namely, to use the public's notice rights as a weapon against their own interests. Neither should Mesa be allowed to do so.

#### **B. Support for Orderly Boundary Procedures**

Courts favor orderly procedures whose proper purpose is the final settlement of controversies.<sup>71</sup> State statutes provide a means whereby property can be disconnected from a city. Through the judicial disconnection process, public hearings are held, residents are heard, service delivery is assured, and competing interests are accommodated. All issues raised in this brief would be avoided if Mesa would simply honor this process.

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<sup>69</sup> *Id.*, at 884

<sup>70</sup> Utah's own Third District is among those courts which have historically required such actions to be brought in the name of the state by the attorney general. *Summary of Utah Law: Land Use, Zoning and Eminent Domain*, Brigham Young University Legal Studies, J. Reuben Clark Law School, 1979, at 234-237.

<sup>71</sup> *Bandy v. Century Equipment Co., Inc.*, 692 P.2d 754 (Utah 1984).

The Utah Supreme Court has ruled that city government is also an appropriate forum for balancing interests and resolving disputes.<sup>72</sup> Mesa, along with many others, petitioned for annexation and actually participated in each of the several annexation hearings. This court should not extinguish the many voices and interests which have relied on the annexation without their notice or consent. Rather, it should require Mesa to follow the statutory disconnection process in order that these policies may be effectuated.

**C. Protection of Public Rights and Safety**

Mesa is a corporate developer apparently intent on profiting from subdivision of its raw land. Its interests don't parallel those of resident voters who would be disenfranchised as a result of this action. Neither does Mesa share interest with those resident families who would lose their public safety and other municipal services if annexation were voided. Even the LDS chapel, constructed in reliance on annexation, may be rendered illegal if the annexation is voided.<sup>73</sup>

Despite these interests, Mesa has named only itself and Sandy in its action. Mesa does not allege that it even notified residents and property owners of the lawsuit. If Mesa wants to deprive its own property of municipal services, it should bring a disconnection action under the applicable statute.<sup>74</sup> It should not try to strip numerous other persons of their voting franchise and critical public safety services without representation.

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<sup>72</sup> *Loveland v. Orem City*, 746 P 2d 763 (Utah 1987).

<sup>73</sup> Utah Code Ann. §10-2-418, prohibits urban development within one-half mile of city boundaries in most cases.

<sup>74</sup> Utah Code Ann. §10-2-501 (Disconnection by Petition to District Court).



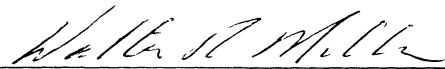
## CONCLUSION

The state disconnection statute would allow Mesa to bring an action to disconnect its own property from Sandy.<sup>75</sup> But Mesa has taken a different course. It doesn't just want its own property out of the City, it wants to take the whole neighborhood along with it.

Mesa's only legal theory is one which uses notice statutes, designed protect the public, as tools against the public's interest. Mesa would deprive residents of the entire neighborhood of their voting rights and public services all without the notice guarantees of the disconnection statute.

Mesa's action in the district court was unique in that it presented so many grounds for dismissal. The district court wisely selected two; namely, Mesa's lack of standing and its actual notice of and participation in annexation proceedings. To reverse the district court would be to embrace fictions which contravene established law, principles of fairness, and public policy. The district court's grant of summary judgment to Sandy City should be upheld.

DATED this 27<sup>th</sup> day of March, 1997.

  
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WALTER R. MILLER  
Sandy City Attorney

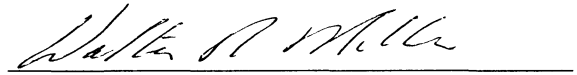
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<sup>75</sup> Utah Code Ann. §§10-2-501 through 10-2-509, describe disconnection procedures.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, postage prepaid, on the 27<sup>th</sup> day of January, 1997, to the following:

Keith W. Meade (2218)  
Cohne, Rappaport & Segal  
525 East First South, Suite 500  
Salt Lake City, Utah 84102



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## ADDENDUM

## **EXTENSION OF CORPORATE LIMITS — LOCAL BOUNDARY COMMISSIONS**

### **10-2-401. Legislative policy.**

The Legislature hereby declares that it is legislative policy that:

(1) Sound urban development is essential to the continued economic development of this state;

(2) Municipalities are created to provide urban governmental services essential for sound urban development and for the protection of public health, safety and welfare in residential, commercial and industrial areas, and in areas undergoing development;

(3) Municipal boundaries should be extended, in accordance with specific standards, to include areas where a high quality of urban governmental services is needed and can be provided for the protection of public health, safety and welfare and to avoid the inequities of double taxation and the proliferation of special service districts;

(4) Areas annexed to municipalities in accordance with appropriate standards should receive the services provided by the annexing municipality, subject to Section 10-2-424, as soon as possible following the annexation;

(5) Areas annexed to municipalities should include all of the urbanized unincorporated areas contiguous to municipalities, securing to residents within the areas a voice in the selection of their government;

(6) Decisions with respect to municipal boundaries and urban development need to be made with adequate consideration of the effect of the proposed actions on adjacent areas and on the interests of other government entities, on the need for and cost of local government services and the ability to deliver the services under the proposed actions, and on factors related to population growth and density and the geography of the area; and

(7) Problems related to municipal boundaries are of concern to citizens in all parts of the state and must therefore be considered a state responsibility.

#### **10-2-414. Policy declaration — Contents — Hearing — Notice — Amendment — Costs of preparation.**

Before annexing unincorporated territory having more than five acres, a municipality shall, on its own initiative, on recommendation of its planning commission, or in response to an initiated petition by real property owners as provided by law, and after requesting comments from county government, other affected entities within the area and the local boundary commission, adopt a policy declaration with regard to annexation. Such policy declaration shall include:

(1) a map or legal description of the unincorporated territory into which the municipality anticipates or favors expansion of its boundaries. Where feasible and practicable areas projected for municipal expansion shall be drawn along the boundary lines of existing sewer, water, improvement, or special service districts or of other existing taxing jurisdictions to: (a) eliminate islands and peninsulas of unincorporated territory; (b) facilitate the consolidation of overlapping functions of local government; (c) promote service delivery efficiencies; and (d) encourage the equitable distribution of community resources and obligations; and

(2) a statement of the specific criteria pursuant to which a municipality will favor or not favor a petition for annexation. Such statement shall include and address the annexation standards set forth in this chapter, the character of the community, the need for municipal services in developed and developing unincorporated areas, the plans and timeframe of the municipality for extension of municipal services, how the services will be financed, an estimate of the tax consequences to residents in both new and old territory of the municipality, and the interests of all affected entities.

Before adopting the policy declaration the governing body shall hold a public hearing thereon. At least 30 days prior to any hearing, notice of the time and place of such hearing and the location where the draft policy declaration is available for review shall be published in a newspaper of general circulation in the area proposed for expansion except that when there are 25 or fewer residents or property owners within the affected territory, mailed notice may be given to each affected resident or owner. In addition, at least 20 days prior to the hearing, mailed notice and a full copy of the proposal shall be given to the governing body of each affected entity and to the local boundary commission. The policy declaration, including maps, may be amended from time to time by the governing body after at least 20 days' notice and public hearing. When a policy declaration is prepared in response to a petition, the municipality may require the petitioners to pay all or part of the costs of its preparation.

#### **10-2-423. Annexation deemed conclusive.**

Whenever the residents of any territory annexed to any municipality pay property taxes levied by the municipality for one or more years following the annexation and no residents of the territory contest the annexation in a court of proper jurisdiction during the year following the annexation, the territory shall be conclusively presumed to be properly annexed to the annexing municipality.

## RESTRICTION OF MUNICIPAL LIMITS

### 10-2-501. Municipal disconnection — Definitions — Request to municipality — Petition to district court.

- (1) As used in this part
  - (a) "County" means the county containing the municipality from which territory is proposed to be disconnected
  - (b) "Municipality" means the municipality containing the territory proposed for disconnection
  - (c) "Petitioners" means persons owning property within the territory within a municipality who propose to disconnect that territory from a municipality
  - (d) "Territory" means that property within a municipality that is proposed for disconnection
- (2) Petitioners proposing to disconnect any territory within and lying on the borders of any incorporated municipality shall file with that municipality's legislative body a "Request for Disconnection." The Request for Disconnection shall
  - (a) contain the names and signatures of more than 50% of the real property owners in the territory proposed for disconnection,
  - (b) give reasons for the proposed disconnection,
  - (c) include a map or plat of the territory proposed for disconnection, and
  - (d) designate between one and five persons with authority to act on the petitioners' behalf in the proceedings
- (3) Upon filing the Request for Disconnection, petitioners shall cause notice of the petition to be published once a week for three consecutive weeks in a newspaper of general circulation within the municipality
- (4) The municipal legislative body may respond to petitioners within 20 calendar days after the expiration of the notice period under Subsection (3)
- (5) (a) After the 20-day response period, petitioners may file a petition against the municipality in district court.
  - (b) The petition shall include a copy of the Request for Disconnection

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### 10-2-502. Court appointment of commissioners.

- (1) Upon receiving the petition, the court shall make and enter findings as to whether the petition complies with the requirements of Subsection 10-2-501(2)
- (2) If the court enters a finding under Subsection (1) that the petition complies with the requirements of Subsection 10-2-501(2), the court shall, within 30 calendar days after entry of that finding, appoint three disinterested persons as commissioners to make findings regarding the viability of the disconnection proposal, applying the criteria provided in Section 10-2-503

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### 10-2-503. Criteria for disconnection.

- (1) The commissioners shall determine whether or not disconnection will leave the municipality with a residual area within its boundaries for which the cost, requirements, or other burdens of municipal services would materially increase over previous years or for which it would become economically or practically unreasonable to administer as a municipality
- (2) In making that determination, the commissioners shall consider all relevant factors including the effect of the disconnection on
  - (a) the city or community as a whole,
  - (b) adjoining property owners,
  - (c) existing or projected streets or public ways,
  - (d) water mains and water services,
  - (e) sewer mains and sewer services,
  - (f) law enforcement,
  - (g) zoning,
  - (h) other municipal services, and
  - (i) whether or not islands or unreasonably large or varied-shaped peninsular land masses result within or project into the boundaries of the municipality from which the territory is to be disconnected

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### 10-2-504. Commissioners' hearing and report.

- (1) Within 30 calendar days of their appointment, the commissioners shall hold a public hearing
- (2) At least seven calendar days before the hearing date, the commissioners shall notify the parties and the public of the public hearing by publishing a notice in a newspaper of general circulation within the municipality or if there is none, then by posting notice of the hearing in at least three public places within the municipality
- (3) In the public hearing, any person may speak and submit documents regarding the disconnection proposal
- (4) Within 45 calendar days of the hearing, the commissioners shall report to the court their findings and reasons regarding
  - (a) the criteria and factors provided in Section 10-2-503,
  - (b) the liabilities of the municipality and territory to be disconnected that have accrued during the time in which the territory was part of the municipality, and
  - (c) the mutual property rights of the municipality and the territory to be disconnected

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### 10-2-505. Court action.

- (1) Upon receiving the commissioners' report, the court may, upon request of a party or upon its own motion, conduct a court hearing
- (2) At the hearing, the court shall hear evidence presented by petitioners and the municipality regarding the viability of the disconnection proposal
- (3) The burden of proof is on petitioners who must prove the viability of the disconnection and that justice and equity require that the territory be disconnected from the municipality by a preponderance of the evidence
- (4) Considering all the evidence and the commissioners' report, the court shall order disconnection if the proposed disconnection satisfies the criteria in Section 10-2-503
- (5) The court's order either ordering or rejecting disconnection shall be in writing with findings and reasons

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### 10-2-506. Taxes to meet municipal obligations.

- (1) If the court orders a disconnection of territory from a municipality, the court shall also order the county legislative body to levy taxes on the property within the disconnected territory that may be required to pay the territory's proportionate share of the municipal obligations accrued while the territory was part of the municipality
- (2) Any tax levy ordered by the court under Subsection (1) shall be collected by the county treasurer in the same manner as though the disconnected territory were a municipality
- (3) The county treasurer shall pay to those entities named by the court the revenue received from that tax levy

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### 10-2-507. Decree — Filing of documents.

- (1) Upon entering a disconnection order, the court shall file a certified copy of the order and a transparent reproducible copy of the map or plat in the county recorder's office
- (2) Within 30 calendar days of the court's disconnection order, the municipality shall file amended articles of incorporation in the lieutenant governor's and county recorder's offices
- (3) The amended articles of incorporation shall
  - (a) describe the postdisconnection geography of the municipality, and
  - (b) specify the postdisconnection population of the municipality
- (4) Any cost incurred by the municipality in complying with this section may be charged against the disconnected territory

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### 10-2-508. Disconnection completed.

Disconnection is complete when the municipality files an amendment to its articles of incorporation as required by Section 10-2-507

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### 10-2-509. Costs.

Each party to the court action for disconnection shall pay its own witnesses and petitioners shall pay all other costs

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### 10-2-510. Boundary adjustment procedure not affected.

This part shall not be construed to abrogate, modify, or replace the boundary adjustment procedure provided in Section 10-2-421

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