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Utah Supreme Court

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N/A.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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M.L. SEARS, JOSEPH BEHLING, WILLIAM S. HEITZ, FRANK A. SALIMENTO, ROBERT G. HARTMANN, and JAMES L. LAVENDER, on behalf of themselves and all other taxpayers similarly situated,

Plaintiffs and Appellants,

vs.

OGDEN CITY, a body politic, MAYOR A. STEPHEN DIRKS, COUNCIL OF OGDEN CITY and DONNA ADAMS OGDEN CITY RECORDER,

Defendants and Respondents.

Case no. 13647

AMICUS CURIAE BRIEF

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The major issue insofar as determining whether a city has a right to vacate a street is whether it is in the interest of the public generally to so vacate the street. In this case, where is appears that the flow of traffic will be improved, that the safety of vehicles and children will also be improved and the interference of a street through the middle of school property would

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be removed, it would seem to me entirely logical and a good legislative decision for the city to go ahead and vacate the property.

Apart from arbitrary action or a clear abuse of discretion, or fraud or collusion, the propriety or necessity of vacating a street are matters within the discretion of the municipal authorities and should not be interferred with by the courts. (See McQuillin, "Streets and Alleys," Section 30.187, page 127 and 128, with cases quoted therein.)

While it is true that a street or alley cannot be vacated purely for private purposes, it certainly can be argued with telling effect, that the elimination of a street which bisects the school property is truly a public purpose and not a private one. (See McQuillin, "Streets and Alleys", Section 30.186 and 186a.) I agree wholeheartedly with the opinion expressed by Judge Ellett in the dissenting opinion that the question of title to the property is secondary and not primary. In the first place, if the city has the power to vacate the street, then only a person contesting ownership of the fee title upon vacating by the street would have the standing to sue in Court. The plaintiffs herein appear to not have such an interest as would entitle them to be heard and I'm sure that was the basis for the lower court ruling.

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There are some courts which have held that part of the proof that there was a public interest served by the vacation was the fact that no consideration was paid (See Ray vs. Chicago, 19 Illinois 2(d) 593, 169 NE 2(d), 73 and Rockhill vs. Cothran, 209 SC 357, 70 SE 2(d) 239.) I think it could also be argued rather forcefully that the school is certainly a public agency on equal footing with which was done after full public hearing and with all technical observance of the requirements of the vacating ordinance ought to be given full credence by the Court. (See also footnotes 77,78,and 79 on page 123 of McQuillin, Volume 11.) The cases there basically hold that merely because a vacated street is placed in private control, this factor is not sufficient grounds to enjoin a vacation. The real legal question to be answered in a case of this kind is whether or not the vacation itself is for a valid reason and that valid public reason may be brought to the attention of the city by an interested adjoining property owner or anyone else. The fact that the private owner would profit from the vacation of the street is not grounds for enjoining the vacation of the street if the city was motivated to do the vacating on a "public good" decision rather than to benefit some private person. It would require some showing of collusion,

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fraud, or abuse or discretion in order for the court to justly set aside the decision to vacate the street under these circumstances. Absent such proof by the protestants, I think the court certainly has erred in enjoining the action of the City.

Respectfully submitted this 29th day of April, 1975.

Provo City Corporation

By

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