

2001

M. L. Sears, Joseph Behling, William S. Heitz, Frank  
A. Salimeno, Robert G. Hartman, and James L.  
Lavender v. Odgen City : Unknown

Utah Supreme Court

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N/A.

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

**FILED**

APR 17 1975

Clerk, Supreme Court, Utah

M. L. SEARS, JOSEPH BEHLING,  
WILLIAM S. HEITZ, FRANK A.  
SALIMENO, 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, and DONNA  
ADAM, OGDEN CITY RECORDER,

/

/

Defendants and  
Respondents.

/

Case No. 13647

OBJECTION TO GRANTING A PETITION FOR REHEARING

The Defendants and Respondents have filed a Petition for Rehearing before this Honorable Court, alleging as issues as a basis for the request for a rehearing allegations that this Honorable Court did not understand the issues before it, and in affect alleging the failure of this Honorable Court to read the Briefs submitted by the parties to this action and the record on file, and in general, advising the Court that it had a duty to decide each and every issue presented to the Court by the Briefs of the parties. The Appellants do not join in these allegations.

The Respondents in their allegations under this issue allege that the Court failed to make a ruling on the rights of owners of property in a dedicated plat as to streets dedicated in perpetuity upon the authority of Ogden City to vacate a street where it was determined that the "benefit to the public would be enhanced".

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Ogden, Utah 84401

The Appellants respond, that this Court has nowhere refuted the unanimous decision in Boskovich, et al, vs. Midvale City Corporation, 243 P.2d 435, wherein the Court held that eminent domain was the proper procedure for the taking of property, and which case further sets forth the manner of vacating or abandoning streets, even in a subdivision, and that the decision of this Court previously rendered and in the matter now before the Court in no way impinges upon or impugns any of the principles set forth in the Boskovich case (page 7, Respondents' Petition for a Rehearing).

Appellants contend that this Court did cite Section 10-8-2, Utah Code Annotated, 1953, and alleges that in the Briefs of both the Appellants and Respondents there was no such claim, that such was the issue. (Respondents' Petition for Rehearing, page 8)

Appellants respond that the issue of the giving of property by the City to the Board of Education without payment of consideration constitutes the taking of property without Due Process of Law, as set forth on page 2 and 3 in Appellants' Statement of the Kind of Case; and set forth under Relief Sought on Appeal, page 3 of Appellants' Brief; on page 6 of the Statement of Facts of Appellants; and set forth in Point I on page 12 of Appellants' Brief, and is a specific part of Appellants' Point II of its original Brief, which set forth the issue "Appellants were deprived of property rights without Due Process of Law" as stated on page 20 of Appellants' Brief, and is further set forth in the Conclusion of the Appellants on page 26 of Appellants' Brief.


#### CONCLUSION

It is submitted by the Appellants, that this Court, in both its majority decision and in its dissent, evidenced the full

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consideration of the important issues before the Court and that the decision of the Court in its interpretation of the Statutes of the State of Utah, and specifically Section 10-8-8.1, Utah Code Annotated, 1953, and 10-8-2, Utah Code Annotated, 1953, has not in any way made inoperable previous Utah Supreme Court decisions as to the specific Statutes set forth nor as to rights under eminent domain, and that the findings of this Court in its decision which it has rendered was a just and equitable decision and should not be overturned or reversed.

Respectfully submitted this 16 day of April, 1975.

  
PETE N. VLAHOS  
Attorney for Appellants  
Legal Forum Building  
2447 Kiesel Avenue  
Ogden, Utah 84401

CERTIFICATE OF MAILING

A copy of the above and foregoing Objection was posted in the U.S. mail postage prepaid and addressed to the Attorney for the Respondents, L. Kent Bachman, Chief Assistant Corporate Counsel, 527 Municipal Building, P. O. Box 1639, Ogden, Utah 84402, on this 16 day of April, 1975.

  
Jeannine Stowell, Secretary

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STATE OF UTAH

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Clerk, Supreme Court, Utah

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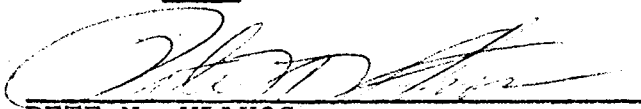
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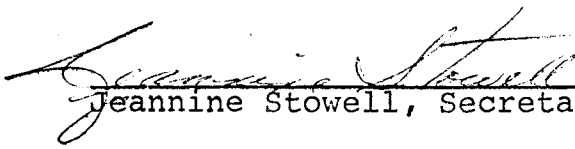
consideration of the important issues before the Court and that the decision of the Court in its interpretation of the Statutes of the State of Utah, and specifically Section 10-8-8.1, Utah Code Annotated, 1953, and 10-8-2, Utah Code Annotated, 1953, has not in any way made inoperable previous Utah Supreme Court decisions as to the specific Statutes set forth nor as to rights under eminent domain, and that the findings of this Court in its decision which it has rendered was a just and equitable decision and should not be overturned or reversed.

Respectfully submitted this 16 day of April, 1975.

  
PETE N. VLAHOS  
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