

1978

State of Utah v. Karl J. Stavar : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Appellant,

-vs-

KARL J. STAVAR,

Defendant.

APPEAL FROM THE
SOUTH DISTRICT
COURT OF
EDMONT, COLORADO

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff-Appellant,	:	
	:	
-vs-	:	Case No.
	:	15432
KARL J. STAVAR,	:	
	:	
Defendant-Respondent.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, the State of Utah, appeals from an order of the District Court granting respondent's motion to dismiss an action to remove respondent from public office for malfeasance in office.

DISPOSITION IN THE LOWER COURT

Respondent's motion to dismiss the action for removal from public office was granted as a matter of law.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the order of dismissal and remand to the District Court for a trial on the merits of the accusation of malfeasance in office.

STATEMENT OF FACTS

The Utah Attorney General accused Karl J. Stavar, the appointed Chief of Police of Helper, Utah, of Malfeasance in Officer under Utah Code Ann. § 77-7-2 (1953), as amended, in that:

"... during his term as Chief of Police said defendant did intentionally and knowingly breach the trust imposed upon him by virtue of his office to a substantial degree and in such way as to offend against the commonly accepted standards of a person in his office." (R.1)

Defendant moved to dismiss the accusation arguing that he had not been convicted of any of the offenses enumerated in Utah Code Ann. § 77-7-1 (1953), as amended, and that only after a conviction on one of the aforementioned offenses can an action for removal be maintained under Utah Code Ann. § 77-7-2 (1953), as amended.

After a hearing, the motion to dismiss was granted without prejudice for the following reasons:

"1. That under § 77-7-1, Utah Code Annotated, 1953, as amended, a conviction must precede the initiation of any action under § 77-7-2, Utah Code Annotated, 1953, as amended; and

2. That the accusation on file herein does not state facts with sufficient particularity to state a cause of action." (R.11)

The State of Utah appeals to the Utah Supreme Court from that dismissal.

ARGUMENT

POINT I

A CONVICTION FOR A CRIME IS NOT A PREREQUISITE TO INITIATION OF AN ACTION TO REMOVE A PUBLIC OFFICIAL, ESPECIALLY WHEN REMOVAL IS BASED UPON MALFEASANCE IN OFFICE.

One of the most fundamental and basic principles of statutory construction is that if at all possible, statutes must be construed to give meaning to all relevant sections, to all paragraphs, to all sentences, and to all words.

An equally basic corollary rule of statutory construction requires that statutes be considered as a whole in context with all other relevant statutes in order to derive meaning consistent with all.

In Totorien v. Thomas, 16 Utah 2d 175, 397 P.2d 984 (1965), this Court was concerned with the interpretation of a statute on liens against property. The Court stated:

"It needs no citation of authorities that whenever possible effect should be given to every part of an Act." Id. at 178.
(Emphasis added.)

In Grant v. Utah State Land Board, 26 Utah 2d 100, 485 P.2d 1035 (1971), the Court considered a statute involved intricately with basic constitutionally protected rights--the

forfeiture of a person's land for default in payments to the State. This Court held that each term of a statute must be given meaning:

"Foundational rules require that we assume that each term of a statute was used advisedly. . . ." Id. at 102. (Emphasis added.)

The above stated principles apply not only in civil cases but also in criminal.

In State v. Gates, 118 Utah 182, 221 P.2d 878 (1950), this Court considered the interpretation of a criminal statute making it a felony to pander, that is, to "induce, persuade, encourage. . . a female person to become a prostitute." Id. at 184. The Court declared the principles to be of the most basic in statutory construction:

". . . [o]ne of the axiomatic rules of construction that every law, if possible, should be construed as to give effect to all of its provisions." Id. at 188. (Emphasis added.)

State v. Jester, 448 P.2d 917 (Wash. 1968), is exemplary of more recent application of the principles to criminal law.

Many of the very recent cases concerning the principles simply refer to the older cases such as those cited above. Because this Court recognizes the principles as "axiomatic" and needing "no citation of authorities," appellant will not belabor the point by citing other of the

The District Court's holding flies directly in the face of the above mentioned fundamentals of statutory construction, and renders several important, related statutes totally meaningless.

For example, the lower court's holding renders the words "malfeasance in office" in Utah Code Ann. § 77-7-1 (1953), as amended (hereinafter 77-7-1), totally void, and assumes that the legislature's present use of those words is inadvised, useless, and without any effect. The lower court position is that action to remove a public official under Utah Code Ann. § 77-7-2 (1953), as amended (hereinafter 77-7-2) must be preceded by a conviction for one of the matters stated in 77-7-1.

77-7-2 states:

"An action for the removal of any officer of a city, county, or other political subdivision of this state on grounds set forth in section 77-7-1, may be commenced by presenting a sworn, written accusation to the district court. Such accusation may be initiated by any taxpayer, grand jury, or county attorney for the county in which the officer was elected or appointed, or by the attorney general."

77-7-1 states:

"All officers of any city, county or other political subdivision of this state not liable to impeachment shall be subject to removal as provided in this chapter upon being convicted of a felony, an indictable misdemeanor, a misdemeanor involving moral turpitude or malfeasance in office."

If the lower court is correct, then the words "malfeasance in office" have no meaning whatsoever; there is no crime of malfeasance in office, so a conviction therefor is impossible. Defendant himself admitted, during argument before the District Court, that there is no crime of malfeasance and that those words "malfeasance in office" apparently have no meaning or effect. (Unfortunately, the District Court did not make record of the arguments and statements of counsel.) Clearly the District Court has disregarded the "axiomatic" principles stated above.

Not only are the words "malfeasance in office" left without meaning, but all of Utah Code Ann. § 77-7-16 (1953), as amended (hereafter 77-7-16) is also rendered void or absurd by the court's interpretation. 77-7-16 states:

"Nothing in this chapter shall be construed to prevent the officers mentioned from being proceeded against by information or indictment for a public offense in the same manner as is provided by law for so proceeding against other persons accused of a public offense."

If a conviction for the offense must necessarily precede an action, as respondent asserts, then 77-7-16 would mean: even though one has obtained a conviction against a public official for an offense, and uses that conviction as a ground for removal, one can still proceed by indictment or information to get another conviction on the same offense. That is absurd. If a conviction is necessary to initiate action to remove, then there is no need for a statute to allow the filing of indictments or informations concerning the same matter. The reading of all of the relevant sections together in order to give meaning to all, logically and inescapably requires an interpretation other than that of the lower court.

Not only are the words "malfeasance in office" and all of Section 77-7-16 rendered meaningless, but other extremely important legislative words are totally emasculated by the position of the respondent in the lower court. 77-7-2 provides for the initiation of removal proceeding by a taxpayer in addition to proceedings by county attorneys, the attorney general, etc. Appellant submits that the legislature allowed

taxpayer actions for removal as a check in the event that the public prosecuting officials, county attorneys and the attorney general, fail to do their duty because they are corrupt or otherwise. However, if the initiation of an action for removal must be preceded by a prosecution and conviction for a crime, then the taxpayer can do nothing if the prosecutors fail to do their duty and refuse to prosecute. The taxpayer check on prosecuting officials becomes a completely illusory remedy, for the taxpayer cannot initiate and prosecute crimes.

Not only are the words "malfeasance in office," all of section 77-7-16, and the right of a taxpayer to initiate action rendered meaningless, but all of Utah Code Ann. § 77-7-4 (1953), as amended (hereafter 77-7-4), becomes absurd. 77-7-4 provides that the grounds for an accusation for removal can be found by a grand jury and presented to the county attorney. If a conviction for a crime is the only ground for removal, as the lower court held, then the grand jury contemplated by 77-7-4 would be convened and would take evidence on the sole issue of whether or not the convicted public official has been convicted. That a grand jury would have to be convened to deliberate on and determine whether the convicted official has been convicted approaches the ridiculous. Contrary to the lower court's holding, 77-7-4 gives the

impression that a grand jury may be called to look into the grounds for removal, that is, the possible commission (not conviction) of a crime, or the commission of malfeasance in office. Grand jury initiation of removal proceedings are also mentioned in 77-7-2.

Not only are the words "malfeasance in office," all of section 77-7-16, the right of a taxpayer to check public officials, and the grand jury action to bring an accusation rendered meaningless, but the lower court's interpretation is in dissonance with the tone and tenor of the entire Chapter 7 of Title 77. The whole chapter provides an orderly mechanism for the removal of office. 77-7-1, et seq. provides for appearance of the accused. He may answer by denying the sufficiency of the accusation, any article therein or the truth of the accusation. Utah Code Ann. §§ 77-7-6 and 77-7-7 (1953), as amended. A plea of guilty may be entered. Utah Code Ann. § 77-7-10 (1953), as amended. If a plea of guilty is not entered a jury trial must be provided and trial proceed as with an indictment or information. Utah Code Ann. § 77-7-11 (1953), as amended. The parties have the right to compulsory attendance of witnesses on their behalf. Utah Code Ann. § 77-7-12 (1953), as amended. "Upon a conviction" the court will pronounce judgment and enter an order removing the defendant from office after entering the causes for removal. Utah Code Ann. § 77-7-13 (1953), as amended.

The Chapter gives the impression of a complete procedure for trial on the substance of charges against an official, and not the introduction of a certified copy of conviction. The holding of the lower court flies in the face of the Chapter as a whole.

Because the lower court's holding is inconsistent, the question becomes: is there a proper interpretation which does not assume that some words of the legislature have no meaning, which does not assume that entire sections were used inadvisedly, which does give effect to every part of the act, and which is consistent with the tenor and logic of the entire Chapter? Appellant submits that the answer is yes, and that the following provides that interpretation:

1) 77-7-2 states that the grounds for removal are those stated in 77-7-1.

2) the grounds stated in 77-7-1 are a felony, one of the mentioned misdemeanors, or malfeasance in office, thus giving meaning to the words "Malfeasance in Office."

3) The "conviction" mentioned in 77-7-1 is that conviction provided for in Utah Code Ann. § 77-7-13 (1953), as amended (hereafter 77-7-13), after the jury trial and all of the safeguards provided in the whole of Chapter 7 of Title 77. 77-7-13 states:

"Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but to warrant a removal a judgment must be entered and the causes of removal must be assigned therein." (Emphasis added.)

4) Consistent with 77-7-1, only after a conviction under 77-7-13, for a felony, one of the mentioned misdemeanors, or malfeasance in office, may a judgment of removal be entered.

5) If a prosecuting official refuses or fails to do his duty, then a taxpayer can bring an action alleging the commission of a felony, one of the stated misdemeanors, or malfeasance in office.

6) A grand jury may be convened and may take evidence concerning the commission of a felony, one of the stated misdemeanors, or malfeasance in office. If the grand jury finds sufficient evidence, an accusation may be presented.

7) If an action under 77-7-2 is filed by a grand jury, a taxpayer or a prosecutor alleging the commission of a felony; then, consistent with 77-7-16, the State may still proceed by indictment or information, to get a criminal conviction upon the same facts.

The above interpretation lends consistent, logical significance to all words and to all relevant sections of the law.

Even if this Court somehow should determine that the word "conviction" in 77-7-1 requires a prior conviction in order for removal on grounds of commission of a crime, the right to remove a public officer for malfeasance in office must be preserved. At the very least the Court should hold that the word "conviction" in 77-7-1 applies only to the criminal matters stated therein, but not to malfeasance in office; that the commission of malfeasance in office is a specific ground for removal which does not require an impossible prior conviction therefor. The words of the legislature must not be declared a nullity.

This Court has long recognized the significance and importance of an action for removal for malfeasance in office. In State v. Gertz, 11 Utah 2d 345, 359 P.2d 12 (1961), this Court specifically considered 77-7-2 after removal of a city commissioner for malfeasance in office. This Court specifically recognized the wise and important legislative purpose in the use of the words "malfeasance in office." In speaking specifically about malfeasance, the Court stated:

"From a survey of the chapter (77-7 UCA 1953) it appears that the legislature thought the interests of the public in combating corruption in public office require an expeditious procedure for the removal of public officers who betray their trusts." Id. at 350. (Emphasis added.)

The Court held that malfeasance in office was not a criminal proceeding, but "quasi-criminal." Id. at 350.

The Court recognized that malfeasance in office was a specific ground for removal from office under 77-7-2, and defined malfeasance as follows:

"On the contrary, by usage the phrase 'malfeasance in office' has acquired a commonly understood meaning: It requires an intentional act or omission relating to the duties of a public office, which amounts to a crime, or which involves a substantial breach of the trust imposed upon the official by the nature of his office, and which conduct is of such a character as to offend against the commonly accepted standards of honesty and morality." Id. at 348. (Emphasis added.)

Appellant submits that the legislature used the words "malfeasance in office" for a specific wise purpose and that to declare those words meaningless, as the lower court has, would be not only improper according to principles of

construction, but also against the public welfare.

If the prior interpretation of 77-7-1 et seq. by appellant is somehow deemed improper, appellant submits that at least the following would be consistent with the public interest and principles of construction:

1) 77-7-2 states grounds for removal are those stated in 77-7-1.

2) The grounds stated in 77-7-1 are: a conviction for a felony or one of the stated misdemeanors or (the commission of) malfeasance in office as defined by State v. Gertz, supra.

3) A taxpayer may bring an action for malfeasance if prosecuting officials fail to act.

4) A grand jury may look at allegations and evidence of malfeasance in office.

5) Consistent with 77-7-16, if an accusation for removal on the grounds of malfeasance in office is brought, prosecutors may also proceed by indictment or information upon related facts.

Again, all sections are given meaning, nothing is rendered a nullity, and the public policy of protection against corruption is preserved.

POINT II

THE DISTRICT COURT ERRED IN FINDING THE ACCUSATION FATALLY DEFECTIVE FOR FAILING TO SET FORTH FACTS WITH SUFFICIENT PARTICULARITY TO STATE A CAUSE OF ACTION.

The lower court also granted defendant's Motion to Dismiss on the ground that "the accusation on file herein does not state facts with sufficient particularity to state a cause of action." (R.11).

77-7-2 provides that the accusatory pleading in an action for removal is an "accusation:"

"An accusation is writing against any district, county, precinct or municipal officer. . . ."

77-7-4 again talks in terms of an accusation:

"When found by the grand jury, the accusation must be presented by the foreman. . . ."

The accusation in the present case conforms in every respect to the Utah statutory pleading requirements. The most general statute relevant to this issue is Utah Code Ann. § 77-11-1 (1953), as amended, which details necessary elements in complaints before magistrates. The last paragraph of Section 77-11-1 reads as follows:

"However, in cases of public offenses triable upon information, indictment or accusation, the complaint, the right to a bill of particulars, and all proceedings and matters in relation

thereto, shall conform to and be governed by the provisions of the New Chapters 21 and 23 of Title 77, Utah Code Annotated 1953, as enacted by chapter 118, Laws of Utah, 1935." (Emphasis added.)

Turning to Utah Code Ann. § 77-21-8 (1953), as amended (hereafter 77-21-8), made applicable to accusation pleading through the above quoted section 77-11-1, the offense may be charged in one or more of the following ways:

"(a) By using the name given to the offense by the common law or by a statute.

(b) By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense or in terms of substantially the same meaning, as is sufficient to give the court and the defendant notice of what offense is intended to be charged." (Emphasis added.)

The accusation in the instant case need only conform to subsection (a) or to subsection (b) of the above statute. The accusation herein conforms to both subsection (a) and subsection (b).

The accusation was phrased in the following terms:

"COMES NOW the State of Utah and by and through Robert R. Wallace, Assistant Attorney General, pursuant to Title 77, Chapter 7, Section 2, Utah Code Annotated (1953), as amended, accuses Karl J. Stavar, duly appointed Chief of Police for the City of Helper, County of Carbon, State of Utah, of

committing Malfeasance in Office, in that during his term as Chief of Police said defendant did intentionally and knowingly breach the trust imposed upon him by virtue of his office to a substantial degree and in such a way as to offend against the commonly accepted standards of a person in his office." (R. 1).

The accusation uses the "name of the offense" in accordance with subsection (a) of 77-21-8. At that point the law is satisfied. However, appellant also included the definition in "terms of substantially the same meaning" in accordance with subsection (b) of 77-21-8. This definition in terms of substantially the same meaning was taken almost word for word from the definition of malfeasance used by this Court in State v. Gertz, supra at 13. The court stated the following about that definition:

"It is our opinion that the phrase is sufficiently definite to enable people of ordinary intelligence and understanding to know what conduct is required or prohibited and that it is, therefore, not so vague or uncertain as to be invalid." Id. at 348.

However, if the defendant was unaware by the face of the pleading of what he was accused, a very detailed bill of particulars could have been provided. The right to a bill of particulars is specifically made applicable to an accusation in 77-11-1 quoted above, and bills of particulars are provided for in Utah Code Ann. §§ 77-21-6 and

Appellant offered to provide a bill of particulars to the defense during arguments to the court. The arguments were not recorded, however, the record only states that arguments were made (Tr.9).

CONCLUSION

A conviction for a crime is not the only grounds for bringing an action to remove public officers. Officers may also be removed by following the detailed procedures of Chapter 7 of Title 77 upon an accusation that the public official has committed malfeasance in office. To hold that a conviction must precede a removal action violates axiomatic principles of statutory construction, violates sound reasoning, and violates public policy to stop corruption in public office.

The accusation on file conforms to two requirements of the law concerning the specificity of accusations, when either one of the two would have sufficed.

Respectfully submitted,

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