

1978

State of Utah v. Karl J. Stavar : Brief of Amicus Curiae

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

STATE OF UTAH,)
)
Plaintiff-Appellant,)
)
vs.)
)
KARL J. STAVAR,)
)
Defendant-Respondent.)

CASE NO. 15432

* * * * *

BRIEF OF AMICUS CURIAE

* * * * *

APPEAL FROM THE JUDGMENT OF
THE DISTRICT COURT OF
CARBON COUNTY,
HONORABLE EDWARD SHEYA,
JUDGE

* * * * *

JAMES B. LEE and
F. ROBERT REEDER
of and for
PARSONS, BEHLE & LATIMER
79 South State Street
P.O. Box 11898
Salt Lake City, Utah 84147
Attorneys for Amicus Curiae
Albert Passic

Robert B. Hansen
Attorney General
Robert R. Wallace
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Appellant

Phil L. Hansen
Hansen and Hansen
250 East Broadway, Suite 100
Salt Lake City, Utah 84111
Attorneys for Respondent

FILED

FEB 21 1978

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,)
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Plaintiff-Appellant,)
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vs.) CASE NO. 15432
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JAMES B. LEE and
F. ROBERT REEDER
of and for
PARSONS, BEHLE & LATIMER
79 South State Street
P.O. Box 11898
Salt Lake City, Utah 84147
Attorneys for Amicus Curiae
Albert Passic

Robert B. Hansen
Attorney General
Robert R. Wallace
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Appellant

Phil L. Hansen
Hansen and Hansen
250 East Broadway, Suite 100
Salt Lake City, Utah 84111
Attorneys for Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

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| STATE OF UTAH, |) | |
| |) | |
| Plaintiff-Appellant, |) | <u>BRIEF OF AMICUS CURIAE</u> |
| |) | |
| vs. |) | |
| |) | |
| KARL J. STAVAR, |) | CASE NO. 15432 |
| |) | |
| Defendant-Respondent. |) | |

* * * * *

STATEMENT OF THE NATURE OF THE CASE
DISPOSITION IN THE LOWER COURT
RELIEF SOUGHT ON APPEAL
STATEMENT OF FACTS

The presentation of these sections made by respondent are satisfactory.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY RULED THAT THERE MUST BE A CONVICTION PRIOR TO A REMOVAL PROCEEDING UNDER UTAH CODE ANN. §§ 77-7-1 AND 77-7-2.

Prior to 1967, Utah Code Ann. § 77-7-1 provided that the grounds for removal from office of an officer not subject to impeachment were "high crimes, misdemeanors or malfeasance in office." This language was interpreted in State v. Jones, 17 Utah 2d 190, 407 P.2d 571 (1965) as requiring the "high crimes, misdemeanors or malfeasance in office" be in connection with the

officer's performance of official duties. The result was that county auditor serving time in jail for failure to file an income tax return was not subject to removal.

The Jones case acted as an impetus for change, with the 1967 Legislature amending §§ 77-7-1 and -2. As demonstrated by the Legislative debate (cited in respondent's brief at pages 8 and 9 and in the exhibit attached thereto), the thrust of that change was to make conviction of the enumerated offenses the grounds for removal from office, regardless of whether the conviction was related to the official's performance of his duties.

The language of the current § 77-7-1 is explicit in requiring a conviction of one of the included offenses:

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. [Emphasis supplied.]

The correct statutory construction of a disjunctive phrase is that "convicted" applies to each type of offense enumerated. Ringwood v. State, 8 Utah 2d 287, 333 P.2d 943 (1959).

Appellant argues that the Legislature could not have intended to make conviction of "malfeasance in office" a prerequisite to removal as there is no crime of malfeasance and, therefore, such a construction would render "malfeasance in office" as used in § 77-7-1 without meaning. The simple answer to this is that when the 1967 Legislature amended § 77-7-1,

"malfeasance in office" was defined and made punishable as a misdemeanor, 1967 Utah Laws, Chapter 209, S.B. No. 123:

Section 5. "Malfeasance in Office."

"Malfeasance in office" means the wrongful and unjust doing of [sic] official act, which doer has no right to perform, with evil intent or motive or such gross negligence as to be equivalent to fraud.

Section 6. Person Who Commits Malfeasance-- Misdemeanor.

Every person who commits malfeasance in office is guilty of a misdemeanor.

The above sections were later codified as Utah Code Ann. §§ 76-28-79 and -80 respectively. The definition and offense of "malfeasance in office" were later repealed with the general revision of the Criminal Code by the 1973 Utah Legislature. Utah Code Ann. § 76-10-1401 (1953).

The appellant's elaborate arguments about giving effect to the words of § 77-7-1 become untenable given the statutory scheme of the 1967 Legislature. The Legislature amended that section to require a conviction of the enumerated offenses. The Legislative debate, cited in respondent's brief, makes it clear that a conviction was intended to be a prerequisite to removal. The related passage of a definition of "malfeasance in office", as well as making malfeasance in office a misdemeanor, gave effect to all of the language of § 77-7-1 as passed.

The 1973 Legislature repealed the crime of "malfeasance in office." The Legislature has thus chosen to render "malfeasance in office", as used in § 77-7-1, meaningless. Therefore,

removal from office is possible only for "conviction" of a felony or conviction of indictable misdemeanor or conviction of a misdemeanor involving moral turpitude. Absent such a conviction an action for removal will not lie.

CONCLUSION

The trial court's decision dismissing the accusation against respondent should be affirmed. It is clear from the Legislative history, the statutory language and the overall statutory scheme that a conviction of one of the enumerated offenses is a prerequisite to a removal action under § 77-7-1.

Respectfully submitted this 17th day of February, 1974



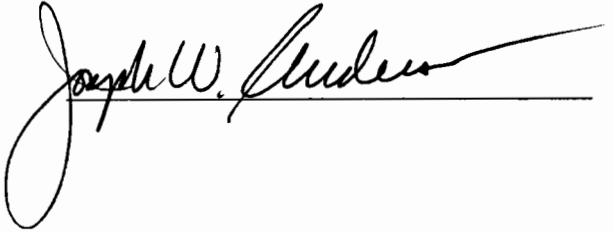
JAMES B. LEE

F. ROBERT REEDER

of and for
PARSONS, BEHLE & LATIMER
Attorneys for Amicus Curiae
Albert Passic
79 South State Street
P.O. Box 11898
Salt Lake City, Utah 84147
Telephone: (801) 532-1234

MAILING CERTIFICATE

I certify that copies of Brief of Amicus Curiae were mailed, postage prepaid and properly addressed, to Robert B. Hansen and Robert R. Wallace, attorneys for Appellant, 236 State Capitol, Salt Lake City, Utah 84114, and Phil L. Hansen, attorney for Respondent, 250 East Broadway, Suite 100, Salt Lake City, Utah 84111 this 21st day of February, 1978.

A handwritten signature in black ink, reading "Joseph W. Anderson", is written over a horizontal line. The signature is cursive and extends to the right of the line.