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Loye E. Martindale, Darwin W. Larson, Carol W. Clay Logan City Municipal Corporation; and the Municipal Council of Logan City v. Mayor Desmond L. Anderson, City Attorney J. Blaine Zollinger, City Auditor And Budget Director Duane A. Beck : Brief of Amicus Curiae, The Honorable Senators Robert O. Bowen And Karl N. Snow, Jr., and the Honorable Representative Willard Hale Gardner, Members of The 42Nd Legislature of The State of Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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LOYE E. MARTINDALE, DARWIN  
W. LARSON, CAROL W. CLAY;  
LOGAN CITY MUNICIPAL COR-  
PORATION; and THE MUNICIPAL  
COUNCIL OF LOGAN CITY,

Plaintiffs and  
Respondents,

vs.

MAYOR DESMOND L. ANDERSON,  
CITY ATTORNEY J. BLAINE  
ZOLLINGER, CITY AUDITOR  
and BUDGET DIRECTOR DUANE  
A. BECK,

Defendants and  
Appellants.

Supreme Court No. 15498

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BRIEF OF AMICUS CURIAE, THE HONORABLE SENATORS  
ROBERT O. BOWEN AND KARL N. SNOW, JR., AND  
THE HONORABLE REPRESENTATIVE WILLARD HALE GARDNER,  
MEMBERS OF THE 42ND LEGISLATURE OF THE STATE OF UTAH

\* \* \* \* \*

AN APPEAL FROM THE JUDGMENT OF THE FIRST JUDICIAL  
DISTRICT COURT IN AND FOR THE COUNTY OF CACHE, STATE OF UTAH

\* \* \* \* \*

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A. BECK,

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Supreme Court No. 15498

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BRIEF OF AMICUS CURIAE

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NATURE OF THE CASE

This is a declaratory judgment action wherein the Plaintiffs sought an adjudication in regard to the respective powers of the Municipal Council and of the Mayor under the council-mayor optional form of municipal government.

DISPOSITION IN LOWER COURT

The lower court entered a declaratory judgment holding that the mayor has only the powers specifically granted him by statute and that all other powers, including the executive powers not specifically granted to the mayor, are vested in the municipal council.

## NATURE OF RELIEF SOUGHT ON APPEAL

The defendant-appellant seeks an adjudication by this court that under the statutes of the State of Utah in a municipal government organized and established under the optional form known as the council-mayor form, all executive power is vested in the mayor and all legislative power in the municipal council. The appellant also seeks reversal of the trial court's ruling in regard to specific matters where such rulings are based on erroneous decisions as to the scope of the mayor's power.

## STATEMENT OF FACTS

As amicus curiae it would be improper to present a substantive statement of the facts surrounding this matter. However, a brief statement is offered to more precisely state the identity and interest of amicus.

Amicus are members of the 42nd Legislature of the State of Utah. The Honorable Robert O. Bowen and Willard Hale Gardner are co-chairmen of the Joint Intergovernmental Relations Committee of the Legislature. The Honorable Karl N. Snow, Jr., was one of the sponsors of Senate Bill No. 179 (Chapter 33, Laws of Utah 1975) and Senate Bill No. 204 (Chapter 48, Part 12, Laws of Utah 1977), the subject legislation in this controversy.

Amicus have no personal interest in the outcome of this matter, but are interested in it for two reasons:

1. To see, if possible, that the legislative intent is presented to this Court for its consideration so that this intent may be carried out; or

2. If the subject legislation is not presently compatible with the legislature's intent, to obtain a judicial clarification of the legislation's failings so that they might be corrected in accord with this intent.

I

LEGISLATIVE INTENT IS THE  
PRIMARY CONSIDERATION IN  
STATUTORY INTERPRETATION

The individual functions of the legislature and the judiciary are, of course, well established and for the most part separate functions. Separate should not, however, necessarily be construed to mean independent, for in large part, their functions are dependent on one another and, in fact, such interdependency is necessary for a full compliment of our laws. It is to that interdependency that this matter has now arrived. The legislature has endeavored to put its intent into statutory language, but a question has arisen about the meaning of its language.

The Court, in its considerations, must determine the meaning of the statutes in question, but it is not without substantial judicial precedents for guidance in performing its task. This Court has often stated the rule of construction which it applies. In Johnson v. State Tax Commission, 17 Utah 2d 337, 411 P.2d 831 (1966), this Court stated:

"The fundamental consideration which transcends all others in regard to the interpretation and application of a statute is: What was the intent of the legislature?"

See also Young v. Barney, 20 Utah 2d 108, 433 P.2d 846 (1967); Allen v. Board of Education, 120 Utah 556, 236 P.2d 756 (1951); Rogers v. Wagstaff, 120 Utah 136, 232 P.2d 766 (1951); and Taft v. Glade, 144 Utah 435, 201 P.2d 285 (1948).

In determining the legislature's intent, there are certain factors that may justifiably be viewed by the Court for assistance along the way. While such factors are not necessarily dispositive of the issue at hand, they may be of great value in interpreting intent. In that regard, this Court in Parker v. Rampton, 28 Utah 2d 36, 497 P.2d 848 (1972) recently stated:

"...if there is any doubt or uncertainty as to such (legislation), its origin, history and purpose can be examined to determine its correct interpretation and application."

See also Sinclair Refining Co. v. State Tax Commission, 102 Utah 340, 130 P.2d 663 (1942).

Information regarding such fundamental aspects of the subject legislation is sparse at the lower court level and amicus respectfully submits that such information should be considered by the Court in determining the legislation's history, intent and objective. Such practice has commonly been employed by this Court in its efforts to fulfill its judicial function. In Continental Telephone Company v. State Tax Commission, 539 P.2d 447 (1975), this Court stated:

"Where there is doubt or uncertainty concerning the interpretation and application of statutes, they should be viewed in light of conditions and necessities which they are intended to meet and the objects sought to be obtained thereby."

See also Child v. City of Spanish Fork, 538 P.2d 184 (1975); Crist v. Bishop, 520 P.2d 196 (1974); Howe v. Jackson, 18 Utah 2d 269, 421 P.2d 159 (1966); Johnson v. State Tax Commission, 17 Utah 2d 337, 411 P.2d 831 (1966); State Land Board v. State Department of Fish and Game, 17 Utah 2d 237, 408 P.2d 707 (1965); State v. Jones, 17 Utah 2d 190, 407 P.2d 571 (1965); Andrus v. Allred, 17 Utah 2d 106, 404 P.2d 972 (1965); Peay v. Board of Education of Provo City School District, 14 Utah 2d 63, 377 P.2d 490 (1962); State v. Hunt, 13 Utah 2d 32, 368 P.2d 261 (1962); State v. Salt Lake City Public Board of Education, 13 Utah 2d 56, 368 P.2d 468 (1962); Basich v. United States Smelting, Refining and Mining Company, 113 Utah 101, 191 P.2d 612 (1948); and Western Auto Transport v. Reese, 104 Utah 393, 140 P.2d 348 (1943).

## II

### THE LEGISLATURE INTENDED TO PROVIDE A STRONG MAYOR FORM OF GOVERNMENT

Levels of local government have historically been the laboratory for political and governmental experimentation. Such has been the case in Utah. In spite of that opportunity for innovation, certain trends have surfaced. As set forth in one recognized treatise:

"The disposition to increase the powers of the mayor and thus center the responsibility in him has been somewhat prevalent in this country in the development of municipal organization. The fundamental principle is that the mayor should have ample power to control fully the administration of all



municipal affairs. In addition to the veto power, which is his chief agency in legislation, many charters give him the sole right to appoint and virtually unrestricted power to suspend or remove subordinate officials or heads of departments. The tendency seems to be not so much to increase the legislative power of the mayor, but to separate the legislative power from administrative functions, vesting the legislative power in a legislative department and the administrative functions in the executive branch composed of the mayor and such boards or departments as may be deemed advisable." McQuillin Mun. Corp. (3rd Ed.) Section 918.

Such trend seems to have been exhibited in Utah.

Prior to 1959, cities of the first and second class were under legislative direction to be governed by boards of commissioners consisting of a mayor and a stated number of commissioners. The powers and duties of the mayor were, for all intents, identical to those of the commissioners. However, the legislature, in 1959, saw fit to allow cities the opportunity to experiment with a different form of city government, i.e., the Strong Mayor Form of Government. (Chapter 20, Laws of Utah 1959, Sections 10-6-76 et seq. repealed by Chapter 33, Laws of Utah 1975.) The duties of the commission and mayor were set forth in Section 10-6-79, Utah Code Annotated 1953, which read:

"10-6-79. The board of commissioners in cities of the first and second class shall be the legislative bodies of such cities and as such shall pass ordinances, appropriate funds, review city administration and shall perform all duties that may be required of them by law. They shall not, however, exercise any administrative or governing authority conferred upon the mayor. The mayor of a city shall be the chief executive officer and shall see that all laws and ordinances are faithfully executed."

This language echoes effectively the separation of the powers of government in accord with doctrine of the French political philosopher Montesquieu with its accompanying scheme of checks and balances which has been incorporated in the structure of government, both federal and state. Such a distinct division and distribution of power and responsibility in which each officer acts to the full extent within his sphere is the very basis of the checks and balance theory of government.

The trend established by the Strong Mayor Form of Government, *supra*, continued when, in 1975, the legislature enacted the Optional Forms of Municipal Government Act. (Chapter 33, Laws of Utah 1975, Sections 10-6-103, Utah Code Annotated 1953, et seq. repealed by Chapter 48, Laws of Utah 1977). One of those options given by said act was the council-mayor form which provided in Section 10-6-113, Utah Code Annotated 1953:

"10-6-113. The municipal council of a municipality adopting an optional form of government provided for in this act shall be the governing body of that municipality and shall pass ordinances, appropriate funds, review municipal administration, and perform all duties that may be required of them by law."

As can be seen, the council's power is identical to that of the commission's under the Strong Mayor Form of Government, *supra*. On the other hand, the power of the mayor, as set forth in Section 10-6-123, Utah Code Annotated 1953, was as follows:

"10-6-123. In the optional form of government known as the council-mayor form,

the mayor shall be the chief executive and administrative officer of the municipality. He shall have the power and duty to:

(1) Enforce the laws and ordinances of the municipality.

(2) Execute the policies adopted by the council.

(3) Appoint and remove administrative assistants, including a chief administrative officer, as he shall deem necessary; with the advice and consent of the council appoint department heads; remove department heads; and appoint and remove all other officers, commissions, boards, and committees of the municipality, except as may otherwise be specifically limited by law.

(4) Exercise control of all departments, divisions, and bureaus within the municipal government.

(5) Attend all meetings of the council with the right to take part in all discussions and the responsibility to inform the council of the condition and needs of the municipality and make recommendations and freely give advice to the council, except that the mayor shall not have the right to vote in council meetings.

(6) Appoint a budget officer for the purpose of conforming with the requirements of the Uniform Municipal Fiscal Procedures Act (chapter 10 of Title 10) [section 10-10-23 et seq.]; and in all other respects fulfill the requirements of that act.

(7) With the advice and consent of the council appoint a qualified person to each of the offices in cities of recorder, treasurer, engineer, and attorney and, in towns, town treasurer and town clerk; create such other offices as may be deemed necessary for the good government of the municipality, and make appointments to them; and regulate and prescribe the powers and duties of all other officers of the municipality, except as provided by law or by ordinance.

(8) Furnish the municipal council with a report, periodically as determined by ordinance, setting forth the amounts of all budget appropriations, the total disbursements to date from these appropriations, and the amount of indebtedness incurred or contracted against each appropriation (including disbursements and indebtedness incurred and not paid) and the percentage of the appropriations encumbered to date, which reports shall be made available for public inspection.

(9) Perform such other duties as may be prescribed by this act or may be required by ordinance not inconsistent with this act.

Again, in 1977, the legislature ratified the strong mayor concept. In Section 10-3-1209, Utah Code Annotated 1953, it provides for the adoption of a council-mayor form and states:

"10-3-1209. The optional form of government known as the council-mayor form vests the government which adopts this form in two separate, independent, and equal branches of municipal government; the executive branch consisting of a mayor and the administrative departments and officers; and the legislative branch consisting of a municipal council. . ."  
(Emphasis added)

The functions of the municipal council are to be found in Section 10-3-1210, Utah Code Annotated 1953, again a verbatim adoption of earlier law. (See the Optional Forms of Municipal Government Act and the Strong Mayor Form of Government Act, supra.) As with the powers and duties of the council, the powers of the mayor, under this most recent enactment, are identical with earlier law, Section 10-3-1219, Utah Code Annotated 1953. (See Optional Forms of Municipal Government Act, supra.) It cannot be gainsaid that the legislature, over recent years, has unqualifiedly announced its intent to have a

strong mayor type of government available to those cities electing that option. It is equally clear that the strong mayor form envisions ". . . separate, independent and equal branches. . ." not unlike that which operates on a federal and state level.

### III

#### THE STRONG MAYOR FORM OF GOVERNMENT CREATES SEPARATE, INDEPENDENT AND EQUAL BRANCHES OF GOVERNMENT, EACH WITH ITS PARTICULAR POWERS AND RESPONSIBILITIES

The separation of powers doctrine is deed-rooted in American governments. Historically our federal system has adopted this concept and the same has been applied in this state. In Kimball v. City of Grantsville, 19 Utah 368, 57 P.1 (1899), the Court reflected upon the matter and advised:

"The powers of state government were, by organic law, divided into three distinct departments,--the legislative, executive, and judicial,--and no person or persons whose duty it is to exercise the functions of one department can exercise any powers belonging properly to either of the others, except in cases expressly authorized by the constitution. The legislative power was vested exclusively in the legislature, and it is within its sphere to make the laws for the government of the state. The power to execute the laws was referred to the executive department, and the power to declare what are the laws to the judiciary. The departments are all upon the same plane; all are co-ordinate branches of the same government; each absolute within its own sphere, except as limited or controlled by the constitution of this state or of

the United States. The apportionment of distinct power to one department of itself implies an inhibition against its exercise by either of the other departments."

See also Tite v. State Tax Commission, 89 Utah 404, 57 P.2d 734 (1936) and Mulcahy v. Public Service Commission, 101 Utah 245, 117 P.2d 298 (1941).

Unfortunately, the doctrine is not as well documented in municipal government as it is in federal and state law. The recent change from the commission form to the mayor-council form obviates the need for questioning this parcidity of judicial guidance in determining the relative parameters of powers between the executive and legislative branches of municipal government. However, we are given certain guidance by the statutes themselves. In Section 10-6-123, Utah Code Annotated 1953, and its successor, Section 10-3-1219, Utah Code Annotated 1953, we find that the mayor ". . .shall be the chief executive and administrative officer. . .". By virtue of that declaration, the mayor is empowered to perform certain administrative functions and these functions, in accordance with the separation of powers doctrine, are to be performed essentially unencumbered by legislative restraint. The ultimate issue of what is or is not an administrative function, must, of course, be determined. In Keigley v. Bench, 97 Utah 69, 89 P.2d 480 (1939) this Court in citing Whitbeck v. Funk, 140 Or. 70, 12 P.2d 1020 held:

"The general rule has been stated as follows: 'Acts constituting a declaration of public purposes and making provisions of ways and means of accomplishment may

be generally classified as calling for the exercise of legislative power."

The Court continued by citing Monahan v. Funk, 137 Or. 580, 3 P.2d 799:

"In determining whether the ordinance in question was legislative or administrative we notice that the authorities in the books are in accord that actions which relate to subjects of a permanent or general character are considered to be legislative, while those which are temporary in operation and effect are not."

See also 5 Utah L. R. 414 (1957).

As can be seen from the criteria established by this Court, the character of the particular function must be viewed on an individual basis. The powers involved herein are, for the most part, powers of either an inherent nature or those flowing from those stated powers. They cannot be found absolutely in the laws of this state. Amicus submits that appellant has fully treated the particular issues of administrative vis-a-vis legislative prerogatives in a correct and comprehensive manner and accordingly appellant's Points II and IV are adopted by amicus as their own.

#### CONCLUSION

The primary obligation of the Court in matters of this nature is, whenever possible, to preserve the intent of the legislative enactment. The history of our governmental processes has been one of separation of powers, each department of government carrying on its particular function in harmony with, but distinct from, each other department. This concept is the very

basis for the strong mayor form of government. Utah has placed itself in the modern flow of municipal government by permitting the cities to opt for a strong-mayor form. This concept has been continued through three different pieces of legislation. This optional form of municipal government inherently consists of an executive branch, i.e., the mayor who is also the chief administrative officer charged with performing those functions of a transitory nature. The particular issues involved herein are matters within the purview of the administrative department and accordingly are not subject to council interference.

RESPECTFULLY SUBMITTED this 17<sup>TH</sup> day of February, 1978.

/s/  
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/s/  
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#### CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing BRIEF OF AMICUS CURIAE, postage prepaid, this 17<sup>TH</sup> day of February, 1978, upon:

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