

2001

Ira Royal L. Tribe et al. v. Salt Lake City Corporation : Amicus Brief

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

IRA ROYAL L. TRIBE, et al.,
Plaintiffs and Appellants,

vs.

SALT LAKE CITY CORPORATION,
et al.,
Defendants and Respondents.

Case No.
13856

AMICUS CURIAE BRIEF OF:
OGDEN CITY, BRIGHAM CITY, PROVO CITY
AND CITY OF ST. GEORGE

Appeal from Judgment in Favor of
Defendants-Respondents by the
District Court of Salt Lake County
The Honorable Joseph G. Jeppson, presiding

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Utah Supreme Court, Utah

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

IRA ROYAL L. TRIBE, et al.,
Plaintiffs and Appellants,

vs.

SALT LAKE CITY CORPORATION,
et al.,

Defendants and Respondents.

Case No.

13856

AMICUS CURIAE BRIEF OF:
OGDEN CITY, BRIGHAM CITY, PROVO CITY
AND CITY OF ST. GEORGE

NATURE OF THE CASE

This is an action for a declaratory judgment to determine constitutionality of the Utah Neighborhood Development Act, Utah Code Annotated, Section 11-19-1, et seq. (1973), and of actions taken and proposed to be taken by the Defendants and Respondents pursuant to to such act and to determine the proper interpretation of certain provisions of such act.

DISPOSITION IN THE LOWER COURT

The trial court, sitting without a jury, was presented documentary and testimonial evidence and entered declaratory judgment as prayed in the counterclaim of Defendants and Respondents holding that the Utah Neighborhood Development Act (hereinafter referred to as "The Act") is constitutional and that certain resolutions of certain of the Defendants are lawful and valid, including resolutions approving a plan for the issuance of bonds by the Salt Lake City Redevelopment Agency ("Redevelopment Agency or Agency") for the payment of which certain parking revenues and "tax increments" are pledged.

RELIEF SOUGHT BY APPELLANTS

Appellants seek reversal of the judgment of the trial court and a declaration that the Act and the activities undertaken and proposed by the Respondents pursuant thereto are violative of both state and federal law.

STATEMENT OF FACTS

We concur with Appellant's statement of facts as supplemented and amplified by the Respondent.

ARGUMENT

POINT I.

THE UTAH NEIGHBORHOOD DEVELOPMENT ACT, PROVIDING ENABLING LEGISLATION FOR THE CREATION OF THE

REDEVELOPMENT AGENCY DOES NOT VIOLATE ARTICLE VI, SECTION 28 OF THE UTAH CONSTITUTION WHICH PROHIBITS THE LEGISLATURE FROM DELEGATING TO A SPECIAL COMMISSION THE POWER TO MAKE, SUPERVISE OR INTERFERE WITH A MUNICIPAL IMPROVEMENT OR TO PERFORM MUNICIPAL FUNCTIONS.

Article VI, Section 28 of the Utah Constitution was seemingly adopted to an effort to seek relief from state legislative control over municipal corporations. Section 28 (referred to as the Ripper clause) expressly withdraws from the legislature the power to create special commissions to deal with municipal functions. These commissions are prohibited because they take the functions of local government from elected municipal officials and placed them in the hands of appointed commissioners over whom the local taxpayers have no control.

Under the Utah Neighborhood Development Act the municipal corporation together with the legislature are put in a position that through a joint concerted effort the far reaching impact of deteriorating central city areas can and will be rehabilitated, refurbished, or remodeled without the necessity of expenditure from city, county or state.

A. THERE IS NO LEGISLATURE DELEGATION TO THE REDEVELOPMENT AGENCY.

The Utah Neighborhood Development Act, Title 11, Chapter 19, Utah Code Annotated, 1953, provides in Section 11-19-3 that each community by enactment of an ordinance by its legislative body *may* organize a redevelopment agency designating the legislative body of the community as the redevelopment agency.

There is simply no delegation by the state legislature inasmuch as the acceptance and desire to use the act is completely discretionary upon the acceptance by the legislative body of the municipality and if accepted, the same people are the legislative body of the city and the redevelopment agency. This then provides the municipal voters not only a direct voice and control over the initiation of the act but also control over the functioning of the agency and lastly if necessary the termination of the entire program.

Appellant cited this court decision in *Carter v. Beaver County Service Area No. 1*, 16 Utah 2d 280, 399 P. 2d 440 (1965), as authority for the invalidation of an act even though there was a provision for initiation of the district by the county. In *Carter* a taxpayer challenged a county service area act with regard to bonding and building a hospital to serve a district near Beaver. In invalidating the entire law without specific discussion of the challenged service area, the Court found:

“The County Service Area Act authorizes the performance of an unlimited number of activities; some of these might qualify as a function appropriately performed by a state agency, while

others are exclusively municipal functions, the performance of which is constitutionally limited to the units of local government." 399 P. 2d at 441.

This case was decided on the issue of vagueness of the statute in being overly broad. The issue of local legislative consent was not discussed and appellant's contention that it was implicit that the consent of the county was not sufficient to avoid the prohibition of Article VI, Section 28 is unfounded.

Appellant cites the case of *Backman v. Salt Lake County*, 13 Utah 2d 412, 275 P. 2d 756 (1962), wherein the legislature passed an act providing for a special election which if approved would incorporate a civic auditorium district. The court found the county failed to follow the procedure in timing set out by the Act and on that particular point the court held there was an invalidation. After the court's holding in the *Backman* case, there was a certain amount of dictum with regard to the constitutionality of delegation to a commission under municipal functions, however, even in the dictum there was no direct discussion on the local municipal consent doctrine. This court in subsequent decisions has expressly limited the *Backman* case to the issue of failure to comply with procedural timing of the bond election, *Branch v. Salt Lake County Service Area No. 2*, 23 Utah 2d 181, 460 P. 2d 814 (1969).

In at least two cases, this court has focused on the importance of local consent and initiation of a particular

act, thereby eliminating the direct delegation violation found in the constitutional provision. In *Lehi City v. Meiling*, 87 Utah 237, 48 P. 2d 530 (1935), this court sustained the creation of a Metropolitan Water District which, pursuant to statute would be approved by the majority of voters within the district boundaries. The court in its discussion of the constitutional provision, the same provision in issue in the instant case, remarked, "If it be objected that the legislature in this manner is usurping some of the power of local self-government, the answer is that before a metropolitan water district can be organized it must have a majority vote of the electors within the district in support thereof and such vote carries with it an approval of the method by which the officers of the district shall be selected." 48 P. 2d at 536.

The court in *Lehi* relied on the California case of *City of Pasadena v. Chamberlain*, 204 Cal. 653, 269 P. 630 (1928). California has essentially the same constitutional provisions as Utah and in holding that California Metropolitan Water District did not violate the "Ripper clause" the California court reasoned that the people themselves, not the legislature, had consummated the formation of the district. Later in *State Water Pollution Board v. Salt Lake City*, 6 Utah 2d 247, 311 P. 2d 370 (1951), this court again acknowledged that there was no direct delegation in cases of local consent and initiation. The Court said: "However, that and similar cases, are clearly distinguishable in that the metropolitan water district was initiated by the cities desiring the

district and there was no direct delegation by the legislature to a board or agency which would allow it to interfere with any municipal improvement, property, or function." 311 P. 2d at 376.

We would conclude that the ruling in *Lehi and Water Pollution Board* providing for the approval by the people of the particular municipality is still in effect as well it should be. Such a finding is consistent with the high courts of other jurisdictions as consented by the appellant in his brief. In *City of Whittier v. Dickson*, 24 Cal. 2d 665, 151 P. 2d 5 (1944). *Housing Authority v. Dockweiler*, 14 Cal. 2d 37, 94 P. 2d 794 (1939); the California court has held that there is no delegation in violation of the constitutional provisions when a local option is provided. The Colorado Court has reached the same conclusion in a variety of decisions including *City of Aurora v. Aurora Sanitation District*, 122 Colo. 407, 149 P. 2d 662 (1944) and *City of Denver v. Londer*, 33 Colo. 104, 80 P. 117 (1905).

Finally the appellant submits that there is unconstitutional delegation inasmuch as the legislature is the source of the powers of cities and if the legislature cannot act because of constitutional limitations then the legislature cannot delegation to its agents, the cities and counties, the power to so act. Such an argument is not consistent with the intent or Article VI, Section 28. The evil to be prevented by Section 28 is total domination by the legislature upon the municipalities and to prevent a separation of the power to incur debt and the responsi-

bility for payment. Section 28 was drafted and adopted to protect the municipality from the legislature, not from the will of the municipal voters.

B. A REDEVELOPMENT AGENCY ESTABLISHED PURSUANT TO THE UTAH NEIGHBORHOOD ACT IS NOT A SPECIAL COMMISSION, PRIVATE CORPORATION OR ASSOCIATION.

The appellant correctly points out that the functions of a redevelopment agency may be somewhat separate from the functioning of the local municipality inasmuch as the agency may employ its own officers and employees, maintain separate offices; separate accounting records, separate payrolls and separate budget. The act in 11-19-3 also provides: "... which agency shall be authorized to enter into contracts generally and shall have power to transact the business and exercise all the powers provided for in this act."

Although the agency maintains separation from the city structure, this is not the fear the framers of our State Constitution had as pointed out in the *Backman* case by Justice Henroid, "We are convinced that the framers of our constitution wisely anticipated the inroads that might be cut in the structure of local, representative government, which fundamentally is composed of officials elected by those closest to government, the electors, when they judiciously insisted on Article VI, Section 29 as a

must in our constitution." This court's concern as expressed by Justice Henroid appeared to have far reaching effect on the legislature in the drafting of this particular act inasmuch as not only must the agency be organized through an ordinance by the city's legislative body but the legislative body of the community becomes the redevelopment agency of said community. The electors of the community then have a direct voice in the affairs of the agency because they in fact can remove a member of the agency board at the ballot box. We submit to the court that the agency is subject to the governing body of the local district and therefore cannot be classified as a private corporation or association, or a special commission. Again we emphasize to the court that Article VI, Section 29 was drafted to protect the local area government from the legislature but not from the will of the local voter.

C. THE AGENCY WILL NOT INTERFERE
WITH MUNICIPAL IMPROVEMENT
AND THE PERFORMANCE OF MUNI-
CIPAL FUNCTIONS.

In *Backman v. Salt Lake County*, supra, the court, after deciding that case on a procedural defect provided that in order to violate Article VI, Section 29 of the Utah Constitution three conditions are necessary. 1) Delegation to a private commission of power; 2) To interfere with municipal property, or 3) to perform a municipal function. If the court holds that in fact there is no dele-

gation to a private commission of power then determination of a breach the latter two conditions would be moot.

Although the appellant contends that there will be direct interference with municipal improvements in as-much as there would be traffic rerouting together with some changes in water and sewer lines, certainly, this type of temporary construction interference was not contemplated by those responsible for putting Article VI, Section 29 into our Constitution.

The trial court found after the presentation of evidence, in Finding of Fact No. 10, which is uncontested by the appellants, as follows:

"10. The problems relating to urban blight affect the entire state. The negative economic drain of central city areas which should be highly productive, the law enforcement problems effecting visitors and residents alike, the health problems which spread their infectious consequences rapidly over enormous areas inhabited by a mobile population, the fire hazards of a congested dilapidated center of population, and inadequate parking accommodations, the limited access to recreation center, convention facilities and tourist attractions are matters of primary concern for the entire state rather than problems involving purely local functions. Thus, the Redevelopment Agency Plan of which the \$15,000,000 bond issue is an integral part is a proposal which will have state wide impact."

The higher court in California and Colorado reached the same conclusion as our local trial court, that rede-

velopment is a function that affects the entire state and is a state function and not just a municipal function because of the far reaching impact of crime, health and economic drain. *Fellom v. Redevelopment Agency*, 157 Cal. App. 2d 243, 320 P. 2d 884 (1958); *In re Bunker Hill Urban Renewal Project*, 1B, 37 Cal. Rep. 74, 389 P. 2d 538 (1964); *Rabinaff v. District Court*, 360 P. 2d 114 (Colo. 1961; *People v. Newton*, 101 P. 2d 21 (Colo. 1940).

The court in ruling on the issue presented in light of Article VI, Section 29, could dispose of the matter disregarding any acceptance or rejection of what has been termed the State Purpose Doctrine by concluding that there was no delegation to a special commission in the case at bar.

POINT II.

REDEVELOPMENT AGENCY BONDS ISSUED PURSUANT TO THE UTAH NEIGHBORHOOD DEVELOPMENT ACT DO NOT CONSTITUTE A DEBT OF THE CITY WITHIN THE MEANING OF ARTICLE XIV SECTION 3 AND 4 OF THE UTAH CONSTITUTION.

Section 3, of Article XIV provides that no county, school district, city, town, village, or any subdivision thereof will incur a debt which cannot be paid during the current year from revenues of that year unless that debt is submitted and authorized by a vote of the majority of qualified electors who vote in the election. Section 4

of Article XIV then provides the limit of indebtedness that can be incurred pursuant to Section 3.

A. THE REDEVELOPMENT AGENCY
BONDS ARE NOT TO BE CONSIDERED
AN OBLIGATION OF THE CITY BE-
CAUSE THE AGENCY IS NOT A SUB-
DIVISION OF THE CITY.

The appellant contends that the Utah Neighborhood Development Act does not create a redevelopment agency that is a separate body, politic and corporate, or as a separate political subdivision of the State in express language. Appellant then characterizes the non-existence of such a statement as being of great significance for the application of the Constitution debt limits and election requirements.

An evaluation and study of the act itself leaves no questions as to the intent of the legislature in setting up an agency separate from the affairs of the city when compared to a department or subdivision of the said city. The act is so implicit as to the separation from the city that direct expressions of intent would become redundant. In the same section of the Act that provides for initiation by the legislative body of the community, it sets out some of the powers of the agency. "... which agency may accept financial or other assistance from any public or private source for the agency's activities, powers, and duties, and expend any funds so received for any of the purposes of this act. The agency may borrow money or

accept financial or other assistance from the state or the federal government for any redevelopment project within [its area of] operation and comply with any conditions of such loan or grant." 11-9-3. A pursual of other sections of the act, including but not limited to 11-19-12, 11-19-20, 11-19-23.1, 11-19-23.9, 11-19-23.2 and 11-19-25 should be sufficient to summarily dismiss appellant's contention for the necessity of an express statement that the agency is separate from the municipality.

There being no question as to the intent of the act in setting up a separate entity one must focus on the judiciary as to the validation of such a special entity. In the leading case, in this area, of *Lehi City v. Meiling*, 87 Utah 237, 48 P. 2d 530 (1935), the court ruled on the contention that the metropolitan water district act violated Article XIV Section 3 and 4 of the Constitution limiting debt on municipal corporations. The district provided for in the act could include the area of a number of local governments. The court held the district was quasi-municipal meeting some of the powers and attributes of a municipality. The concept of quasi-municipal districts is reiterated in a variety of cases including *Freeman v. Stewart*, 2 Utah 2d 319, 273 P. 2d 174 (1954), wherein the court referred to the principle set out in *Lehi City* as one which the people have relied on and should not be taken away by the court. In *Provo City v. Evans*, 87 Utah 292, 48 P. 2d 555 (1935), decided at the same time as *Lehi*, and *Barlow v. Clearfield*, 1 Utah 2d 419, 268 P. 2d 682 (1954), the court did not impose debt limitation on quasi-municipalities which had the

same geographic boundaries as the city, thereby discrediting any argument the quasi-municipality concept applies only to special district encompassing more than one local government.

Again it should be emphasized that the legislature appears to have followed the guidelines as set out by this court's decision, in drafting an act enabling local cities to initiate a redevelopment agency without direct delegation or interference with the municipality and providing the local elector to have control over the agency board; and at the same time make certain that the agency is a quasi-municipality, separate and distinct from the local city and in no way a subdivision or a department of that city. The organization of the agency as set out by the act is a reflection of this Court's decisions.

B. REDEVELOPMENT BONDS DO NOT CONSTITUTE A DEBT OF THE CITY.

If this court finds that an agency established under the Utah Neighborhood Development Act does qualify as a division of the city then we would strongly contend that agency bonds do not constitute a debt within the scope of Article XIV of our Constitution, because the bonds together with all interest will be paid from a special fund.

This Court adopted the doctrine of the special fund in *Barnes v. Lehi City*, 74 Utah 321, 279 Pac. 878 (1929), which doctrine is adhered to in the majority of jurisdictions, 96 A. L. R. 1385 (1953), 72 A. L. R. 687 (1931).

The doctrine allows municipalities to construct or renew needed utilities, to keep up with the needed urbanization without placing an additional burden on the taxpayer. In *Barnes* the City of Lehi contracted to purchase generating equipment to increase the capacity of an electric plant, financed by the issuance of pledge orders. The only source of payment was to be a special fund generated by the revenues produced from the electric plant. This court held the obligation was not a debt of the city as set out in Article XIV of the Utah Constitution.

Fjeldsted v. Ogden City, 83 Utah 278, 28 P. 2d 144 (1933), placed some limitation on the special fund doctrine here the special fund would create a drain on the general fund. In *Fjeldsted* the city owned and maintained an existing waterworks supply and distribution system. The revenues thereby derived were to be put in the general fund after necessary expenditures. The city sought to improve and repair the waterworks system by issuing bonds. The revenues from the waterworks system would then be placed in a special fund to retire the bonds where formerly the revenue would pour into the general fund. The court in *Fjeldsted* distinguished *Barnes* pointing out that in the *Barnes* case the electric plant was so dilapidated that it was bringing no revenues into the city and general fund and the city would lose nothing when the revenues from the new plant would be placed in the general fund. In *Fjeldsted* the court pointed out that "...

in this case a large income from an existing waterworks system owned by the city is pledged to pay the principal and interest on the bonds; the greater part of the property to be purchased or improvements made will be incorporated or built into the existing waterworks in such a manner that it could not be thereafter segregated or withdrawn without destruction of the new property and destructive impairment of the entire system." 28 Pac. at 28.

The court's apparent concern in *Fjeldsted* in distinguishing from *Barnes* was that Ogden City could not segregate revenue resulting from the proposed repairs and modifications. In fact Ogden City conceded that there would be no new source of revenue. The court concluded in *Fjeldsted* that an additional burden would be placed upon the taxpayers inasmuch as they would be forced to make up the deficit in the general fund that would result from diversion of revenue from the existing waterworks system.

The facts in *Fjeldsted* are distinguishable from the tax increment concept of the Utah Neighborhood Development Act. In tax increment no existing revenues going into the general fund will be diverted into a special fund. The revenues from the existing valuations will continue to be used as they now exist and revenues which come about because of the improvements will be put in a special fund to pay off the bonds. This concept is clearly within guidelines of the *Barnes* case and just as

clearly exempt from the holding in *Fjeldsted* inasmuch as only the revenue generated by the improvement will flow into the special fund and there will be no diversion of the revenues now going into the general fund. This court's language in *Wadsworth v. Santaquin City*, 83 Utah 321, 28 P. 2d 161 (1933), a companion case to *Fjeldsted* seems to go right to the heart of the issue in the instant case. The court held "Where improvements or betterments are built into an existing system or project, the revenues earned by such improvements or betterments, based on proper appraisalment of the old system and the improvements and betterments may be pledged to the payment of revenue bonds as provided in the Act without vote of the qualified taxpaying electors . . ." 28 P. 2d at 175.

It appears that a discussion of *Fjeldsted* may be unnecessary in light of the court's decision in *Conder v. University of Utah*, 123 Utah 182, 257 P. 2d 367 (1953), where the court would not apply the *Fjeldsted* restriction in allowing the bonds to be repaid from a special fund revenue of which part had previously been put in a general fund. It appears that *Fjeldsted* may in fact be overruled or at least limited to the isolated facts of that particular case. If overruled, Utah would then be brought into conformity with the majority of jurisdictions.

POINT III.

THE PROPOSED REDEVELOPMENT

AGENCY BONDS WILL NOT INVOLVE LENDING OF CREDIT BY THE CITY, SALT LAKE COUNTY OR THE STATE OF UTAH.

The Utah Neighborhood Act in Section 11-19-23.3 et seq. prohibits any lending of credit by the city. Further, we would reiterate our argument we have provided in Point II of this brief dealing with a special fund concept, as being determinative of this issue.

POINT IV.

THE TRIAL COURT CORRECTLY HELD THAT THE CONSTRUCTION AND OPERATION OF THE PROPOSED PARKING FACILITY INVOLVES PUBLIC PURPOSES.

We would affirm the arguments as set forth in Respondent's Brief.

POINT V.

THE TRIAL COURT PROPERLY HELD THAT THE ALLOCATION OF TAXES FOR REDEVELOPMENT PURPOSES AND THE USE OF THESE AND OTHER FUND IN CONNECTION WITH THE REDEVELOPMENT PROJECT DOES NOT VIOLATE ARTICLE XIII, SECTION 5 OF THE UTAH CONSTITUTION.

Article XII, Section 5 of the Utah Constitution provides:

“The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.”

There is nothing in this section of our Constitution which is violated by the Utah Neighborhood Development Act. The legislature in this act does not impose taxes for the purpose of the cities but vests in the local governmental body the right to initiate the tax increment concept and in so doing allocate increased revenues from higher assessed valuation resulting from redevelopment.

The enabling provisions of the Development Act follows the provisions and requirements of Section 5.

We would further concur with the additional arguments on this point as set forth by respondent.

POINT VI.

THE TRIAL COURT WAS CORRECT IN ITS DETERMINATION THAT BUDGETARY LAWS REGULATING CITIES ARE NOT APPLICABLE TO THE REDEVELOPMENT AGENCY.

We would affirm the arguments as set forth in Respondent's Brief.

POINT VII.

THE PROPOSED ALLOCATION OF TAXES USING AN ASSESSED VALUATION BASE DETERMINED IN 1970 IS NOT AN UNCONSTITUTIONAL RETROACTIVE APPLICATION OF A STATUTE WHERE THE MILL LEVY TO BE APPLIED TO THE VALUATION BASE IS PROSPECTIVE.

We would affirm the arguments as set forth in Respondent's Brief.

POINT VIII.

APELLANTS HAVE FAILED TO MEET THE BURDEN OF OVERCOMING A PRESUMPTION OF THE VALIDITY AND CONSTITUTION OF THE UTAH NEIGHBORHOOD DEVELOPMENT ACT AND THE VALIDITY AND CORRECTNESS OF THE TRIAL COURT HOLDING.

We would affirm the arguments as set forth in Respondent's Brief.

CONCLUSION

The cities of Ogden, Brigham, Provo and St. George respectfully submit to this honorable court that the Utah Neighborhood Development Act does not violate the letter or spirit of the Utah Constitution but in fact follows

the guide lines of both the Constitution and the interpretation given the Constitution by this Court.

That Act including the bonding provisions thereof provide the cities of this state a feasible method to redevelop and rehabilitate their central city of their blighted conditions. Through rehabilitation, made possible by the tax increment concept, Utah cities can look for the reduction of crime, health and economic problems. The Act also provides for an agency which can act as a conduit for federal monies coming into Utah cities for redevelopment.

We submit there is no delegation by the legislature to a special commission inasmuch as the local governmental body initiates the program and the voter through the ballot box can control the actions of the agency.

The agency bonds will not constitute a debt of the city because the legislature has made it very clear that the agency is not a subdivision or department of the city. If this court rules the agency is simply a department of the city the bonds should not be considered a debt of the city as a result of this Court's adopting the special fund doctrine.

The Redevelopment Agency bonds will not involve lending of credit by the city and the allocation of taxes for redevelopment does not violate the constitution because it is not an imposition upon the cities by the legislature but rather an enabling power given to them in conformity with the Constitution.

We, therefore, urge this Court to uphold the trial court's decision in declaring the Utah Neighborhood Development Act constitutional.

Respectfully submitted,

PARLEY R. BALDWIN

Attorney for Amicus Curiae

Ogden City
Brigham City
Provo City
City of St. George