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Ira Royal L.Tribe, et al. v. Salt Lake City Corporation, et al : Brief of Respondent

Utah Supreme Court

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

BRIEF OF DEFENDANTS AND RESPONDENTS

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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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 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. (R. 98-100).

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

Respondents concur with the Appellants' statement of facts but supplement and amplify them with the following:

The project area in which the proposed parking facility is situated, was in a deteriorating blighted condition when it was selected for improvement under the Redevelopment Agency plan. (R. 127, Exhibits 7 and 8). The area required significantly more expenditure of

city funds than were generated by taxes assessed and levied upon the real property in the area. (R. 152, 180). Almost all of the buildings were non-inhabitable above the ground floor (R. 127, 172) and the assessed valuation decreased steadily from 1969 to 1973 during a period of spiraling inflation (Exhibit 18 found at R. 87). Were it not for the action taken and proposed to be taken by the Respondents, the area was and is doomed to further deterioration with the resulting adverse economic impact upon the City and its taxpayers. (R. 180-181). The blighted neighborhood with its attendant crime, health and economic problems could not attract suitable development by private industry without area-wide rehabilitation and the construction of needed parking facilities. (R. 172-173 and Exhibit 4). Implementation of all aspects of the proposed plan will increase assessed valuations by an estimated 6.4 to 9.8 million dollars by reason of market values of improvements ranging from an estimated 32 million dollars to approximately 49 million dollars. (Exhibit 13). All of this increase will be accomplished without cost to the City, Salt Lake County, or the State of Utah. Sales tax revenues collected by the state will be increased dramatically. Existing facilities such as the civic center may be used more efficiently and other development by private businesses in the state will be facilitated. The state tourism industry will benefit from the convenience of available parking near major tourist attractions and more and bigger conventions can be scheduled with the availability of the facilities to be developed within the

project area. Thus the parking structure to be financed with the tax allocation and parking revenue bond issue will have an economic multiplier effect with statewide impact. (R. 151-152). (Concerning the matters generally set out in this paragraph, see also paragraphs 9 and 10 of the Findings of Fact of the trial court, R. 93-94.)

Revenues from the tax increment portion of the assessed valuation increase may be allocated for use by the Redevelopment Agency only until such time as the loans, advances and indebtedness or any interest thereon incurred by the Agency have been paid. Pursuant to Section 11-19-25(1)(b), all monies thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies in the same manner as taxes on all other property. (See also R. 169). Thus the proposed plan and the underlying enabling legislation contemplate a source of increased tax revenue for taxing entities such as the state, county, school districts, and city. But these entities will not be required to contribute to the cost of improving the project area in accordance with the redevelopment plan.

ARGUMENT

POINT I.

THE TRIAL COURT CORRECTLY HELD THAT THE CREATION AND OPERATION OF THE REDEVELOPMENT AGENCY UNDER THE UTAH NEIGHBORHOOD DE-

VELOPMENT ACT DOES NOT VIOLATE ARTICLE VI, SECTION 28 OF THE UTAH CONSTITUTION WHICH PROHIBITS DELEGATION TO A SPECIAL COMMISSION OF THE POWER TO MAKE, SUPERVISE OR INTERFERE WITH A MUNICIPAL IMPROVEMENT OR TO PERFORM MUNICIAL FUNCTIONS.

The intended purpose of the Section 28 constitutional provision (commonly referred to as the "Ripper Clause") is to preclude the improper imposition of state legislative directives on municipalities. See Porter, "Ripper Clause in State Constitutional Law: An Early Urban Experiment," *Utah Law Review,* (Part I) April, 1969 page 287 and (Part II) June, 1969 page 450. These problems as well as the express constitutional prohibition are avoided by the proposed redevelopment plan.

A. *There is no Legislative Delegation to the Redevelopment Agency Because the Agency was Voluntarily Created by the City.*

The Redevelopment Agency was created by an ordinance adopted by the Board of Commissioners of Salt Lake City—not by a state legislative enactment. The Utah Neighborhood Development Act leaves the formation of a redevelopment agency and the implementation of any redevelopment plans entirely to the discretion of the legislative bodies of communities. By allow-

ing the cities to elect whether or not to take advantage of the state legislation allowing the creation of redevelopment agencies, the legislature has anticipated the local control of such agencies and it has avoided interference with the self-control by municipalities of municipal functions.

This pirnciple was recognized by the Utah Supreme Court in a decision in which Justice Crockett, in speaking for a unanimous court, rejected the argument propounded on behalf of the State Water Pollution Control Board that its interference with municipal functions was analogous to that of a metropolitan water district. The court pointed out the "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". *State Water Pollution Board v. Salt Lake City,* 6 Utah 2d 247, 311 P.2d 370, 376 (1957).

We acknowledge the consistency of this court in striking down legislation under which authority has been delegated to state agencies to perform or interfere directly with municipal functions. But local option legislation avoids this problem. In three of the five cases cited on page 14 of Appellants' brief, this court approved statutes allowing local electors to create public entities for the creation of a metropolitan water district, *Lehi City v. Meiling,* 87 Utah 237, 48 P.2d 530 (1935);

a sewer and water district *Tygesen v. Magna Water Co.*, 119 Utah 274, 226 P.2d 127 (1950); and a special service district for construction of a swimming pool, *Branch v. Salt Lake County Service Area No. 2*, 23 Utah 2d 181, 460 P.2d 814 (1969). The remaining cases are not in point because they were decided on grounds other than improper delegation. Dictum in *Backman v. Salt Lake County*, 13 Utah 2d 412, 375 P.2d 756 (1962) discusses the delegation issue and refers to what is now Article VI, Section 28 of the Constitution, but that case turned on the failure of Salt Lake County to initiate a bond election at the time and in the manner called for under the Act. In a subsequent case this court expressly refused to follow the dictum of the *Backman* case and the majority opinions limited the Backman holding to the bond election issue. *Branch v. Salt Lake County Service Area No. 2, supra.* The majority opinions in the *Branch* case also caution against an unduly broad interpretation of *Carter v. Beaver County Service Area No. 1*, 16 Utah 280, 399 P.2d 440 (1965), in which the objectionable features of the County Service Area Act were its vagueness and the attempted authorization of "an unlimited number of activities". Since the *Carter* and *Backman* cases were decided for reasons other than the local option issue, it was apparent to the trial court that the position of this court as stated in *State Water Pollution Board v. Salt Lake City, supra,* remains unchanged so that there is not an unconstitutional legislative delegation where enabling statutes cannot be implemented without affirmative action of local entities.

Well reasoned opinions from neighboring jurisdictions have also found lack of delegation where local option is granted. The California Supreme Court in *City of Whittier v. Dickson,* 24 Cal.2d 665, 151 P.2d 5 (1944) rejected a challenge that creation of a parking district pursuant to state statutory authorization violated a California constitutional provision prohibiting the delegation of any municipal function to a special commission. In so holding the court noted, "The parking place commissioners, however, are city officers appointed by the legislative body of the city when it elects to acquire parking places under the act, and are removable at the pleasure of that body. It is the local governing body and not the Legislature that confers upon the commission the right to exercise its functions." (151 P.2d at 7). In a similar case the Colorado Supreme Court found absence of imposition of legislative fiat upon the populace affected and compliance to the fullest extent with the principles of local self-government in the creation of a sanitation district by local electors pursuant to enabling legislation. *City of Aurora v. Aurora Sanitation District,* 122 Col. 407, 149 P.2d 662 (1944). See also *Housing Authority v. Dockweiler,* 14 Cal.2d 37, 94 P.2d 794 (1939).

Pennsylvania, which provided the constitutional model for Utah and other states by being the first to amend its constitution to include the so-called "Ripper Clause" has a constitutional provision substantially identical to Article VI, Section 28. In *Belovsky v. Redevelopment Authority,* 357 Pa. 329, 54 A.2d 277

(1947) the Pennsylvania Supreme Court approved an urban development authority because final decisions about the scope and substance of redevelopment projects were reserved to local elected officers. The earlier Pennsylvania case of *Lighton v. Abington Township,* 336 Pa. 345, 9 A.2d 609 (1939), can be distinguished from the *Belovsky* case because *Lighton* dealt with a delegation of municipal authority to a private corporation, an act which was repugnant to both state and municipal law. It is apparent that Pennsylvania is in accord with the California and Colorado Supreme Courts.

B. *There is no Unconstitutional Legislative Delegation Because Members of the Board of Commissioners of the City are the only Members of the Board of Commissioners of the Redevelopment Agency.*

The Utah Legislature also reserved to municipalities control over their redevelopment agencies by providing that if one were formed pursuant to the exercise of local option, the legislative body of the community would designate itself as the legislative body of the agency. It is obvious that there can be no delegation of municipal administrative authority by the legislature through the city to a redevelopment agency where both the agency and the city are managed by the same municipal legislative body. It is equally clear that the possible evils complained of in the *Backman* case, *supra;* i.e., legislative intereference with municipal functions, diminution of local self-control and the imposition of an intermediate level of non-representative government, are entirely avoided where the Board of Commissioners of

the City also administers the Agency. If the practices and policies of the Board of Commissioners of the Redevelopment Agency are unsatisfactory to the city electorate, new commissioners will be elected to replace the incumbents.

C. *The Redevelopment Agency of Salt Lake City is Not A Special Commission, Private Corporation or Association Improperly Managing, Supervising or Interfering With Any Municipal Improvement or Performing any Municipal Functions Within the Meaning of Article VI, Section* 28 *of the Utah Constitution.*

Although the Redevelopment Agency is administered and managed by the legislative body of Salt Lake City, its operations are separate and distinguishable from those of the City. One of the Appellants' alternative arguments is that operational differences and separateness establish the Redevelopment Agency as a special commission. The existence of a legal entity separate from that of a municipality is not by itself determinitive of the status of "special commission", nor is it illegal under the proper circumstances for that separate legal entity to perform certain functions which cities are empowered to perform. See for example, *Branch v. Salt Lake City Service Area No.* 2, *supra,* where this court approved the creation of a special service area for purposes including the construction of a swimming pool in an area where similar facilities were not available despite the inherent authority of the county to construct a swimming pool; *Barlow v. Clearfield City Corp.,* 1

Utah 2d 419, 268 P.2d 682 (1954) wherein a city was not prohibited from contracting with a separate entity, Weber Basin Water Conservancy District, for services which the city was empowered to perform itself; and *Lehi City v. Meiling, supra,* in which the validity of a separate water district was upheld even though the City of Lehi and other cities in the district had authority to establish, operate and maintain a water system. Clearly the holding of this court in the *Lehi City* case, *supra,* that a water district does not come within the constitutional designation "special commission, private corporation or association" (48 P.2d at 535), also applies to the Redevelopment Agency which is merely a "public agency or entity created for beneficial and necessary public purposes". (48 P.2d at 541). See also *Freeman v. Stewart,* 2 Utah 2d 319, 273 P.2d 174 (1954); and *Patterick v. Carbon Water Conservancy District,* 106 Utah 55, 145 P.2d 503 (1944).

It is acknowledged that the holdings of the above cited cases do not justify a position that *any* separate commission may be empowered to perform municipal functions. But in the case at bar there is a total absence of any objectionable impingement upon municipal control and functions. The Redevelopment Agency cannot impose or levy a tax nor can it interfere with the administration of the internal affairs of the City. The allocation of tax increment revenues does not affect the mill levy imposed by taxing units. The City maintains absolute control of the Agency through its Board of Commissioners and coordination of the separate func-

tions of the two entities can be maintained effectively. The City will continue to possess and exercise every municipal function it now has. The Utah Neighborhood Development Act contemplates cooperation between cities and their redevelopment agencies—not interference with municipal functions.

Appellants contend the interruption of street traffic flow which may be experienced during the construction phase of the proposed Redevelopment Agency plan constitutes interference with the municipal functions contemplated by Article VI, Section 28. The essential construction tasks incident to improving, refurbishing and constructing structures in urban areas whether publicly or privately owned will ordinarily cause temporary inconveniences such as detours for pedestrian and vehicular traffic. Such matters are inconsequential when compared with the interference which is prohibited by the constitution as a usurpation of the political power inherent in the electors residing in a municipality. This Court defined the nature and scope of prohibited state interference in the early case of *Logan City v. Public Utilities Commission,* 72 Utah 536, 271 P. 961 (1928) when it said in connection with what is now Article VI, Section 28 of the Utah Constitution, "We think it clear that the undoubted purpose of the constitutional provision is to hold inviolate the right of local self-government of cities and towns with respect to municipal improvements, money, property, effects, the levying of taxes, and the performance of municipal functions . . ." (271 P. at 972).

A final aspect of the delegation issue involves the so-called "state purpose doctrine". In cases involving direct state agency intervention with municipal activities the court has properly looked for a justifiable state interest requiring protection. For example, the attempted regulation of Salt Lake City sewage disposal facilities by the State Water Pollution Control Board would not have been an unlawful interference with a municipal function if there would have been a showing that the city was causing a menace to the health and safety of other state residents. *State Water Pollution Board v. Salt Lake City, supra.* Under this rationale it could be said the state agency must protect a state interest rather than merely perform a municipal function. Appellants argue for the extension of the requirement of state purpose into the local option area of municipal law relying on dictum in *Backman v. Salt Lake County, supra,* and the dissenting opinions in *Branch v. Salt Lake County Service Area No. 2, supra.* The incongruous result is that water, sewer and swimming pools involve overriding state purposes but civic centers and hospitals do not. *Branch v. Salt Lake County Service Area No. 2, supra,* (swimming pool); *Backman v. Salt Lake County, supra,* (civic center); and *Carter v. Beaver County Service Area No. 1, supra,* (hospital). We submit that the interpretation urged upon the court by Appellants is unnecessarily confusing. As was pointed out, both the *Backman* and *Carter* cases were decided on issues which are unrelated to the questions raised in this case. The court decided the *Branch* case by recognizing sig-

nificant public needs without specific reference in the majority opinions to state purposes. David O. Porter summarized and reconciled Utah and other "Ripper Clause" delegation cases without mention of the state purpose doctrine by emphasizing the following basic but not mutually exclusive principles, "(1) the legislature cannot delegate to an elected municipal body; (2) the legislature may not delegate the taxing power except to such an elective body on the ground that "taxation without representation is tyranny"; and (3) local governments are inherently better suited than the state legislature to determine the scope and depth of their activities and services". (Porter, *supra,* at 481). Respondents respectfully submit that the proposed Redevelopment Agency project avoids the constitutional prohibitions enunciated by this court and summarized by Mr. Porter.

If the court elects to apply the state purpose test, it should find, as did the trial court, that the subject Redevelopment Agency plan has significant state-wide impact. "The public evils, social and economic, of conditions of slum areas in large cities are matters of state concern, since they vitally affect the health, safety, and welfare of the public . . ." 26 Am.Jur.2d Eminent Domain, § 42 (1966) and cases therein cited. The record abundantly supports a finding of state purposes. For example, sales tax revenues will be sharply increased, the state tourism industry will be expanded and the project will have a multiplier effect on the economy of the state. (R. 151-152). The problems relating to urban

blight which affect the entire state and nation are proper subjects for state legislative attention. "[S]ubstandard, decadent, or blighted areas . . . constitute a serious and growing menace injurious and inimical to the safety, health, morals, and welfare of the people throughout the United States." Annot. 45 A.L.R. 3d 1096 at 1100 (1972). The proposed parking facility is an essential part of an integrated plan to rehabilitate some of the most blighted slum areas in the state. The court has not been called upon previously to determine whether the objectives of redevelopment involve significant state interest rather than purely local functions. Other states with constitutional provisions comparable to Utah's Article VI, Section 28 have properly held that redevelopment activities are functions justifying state legislation. *In re Bunker Hill Renewal Project 1B*, 37 Cal. Rptr. 74, 389 P.2d 538 (1964); *Fellom v. Redevelopment Agency,* 157 Cal.App.2d 243, 320 P.2d 884 (1958); *Rabinoff v. District Court,* 360 P.2d 114 (Colo. 1961); *People v. Newton,* 101 P.2d 21 (Colo. 1940); *Romano v. Housing Authority of the City of Newark,* 123 N.J.L. 428, 10 A.2d 181 (1939), and the companion case of *Kantor v. City of Perth Amboy,* 123 N.J.L. 504, 10 A.2d 184 (1939). These cases are in point despite semantic differences in the constitutions of the respective states. We cannot agree with the assertion of Appellants that "in California the authority for redevelopment agencies to act is established by a state constitutional provision" (Appellants' Brief p. 20). The section of the California Constitution cited by Appel-

lants, Article XIII, Section 19 which is now Article XVI, Section 16, is a part of an article concerning revenue and taxation. It applies to the allocation of tax revenues generated from redevelopment project areas. In California as in Utah there is no express constitutional provision establishing redevelopment agencies or comparable public entities, but the California Supreme Court has upheld the constitutionality of redevelopment activities as will be set out more fully hereafter.

The argument by Appellants that the City had authority to control the problems which led to the existence of the blighted central city project area does not square with the facts. The use of the traditional city powers of zoning, law enforcement, declaring and abating nuisances, controlling structures under building, fire and sanitation codes and even the existence of the power to acquire and dispose of property did not solve the problems. The obvious legislative intent of the Utah Neighborhood Development Act was to provide appropriate statutory opportunity for cities and counties to create agencies with unique capacity to qualify for federal financing and to coordinate private with public development. (R. 176). By this means different programs have been initiated to achieve solutions in areas where the city historically has been notably unsuccessful. See Sundby, "The Elimination and Prevention of Urban Blight", 1959 *Wis.L.Rev.* 73; and Note, "The Concepts of Urban Renewal", 37 *So. Cal.L.Rev.* 55 (1964) in which a variety of redevelopment devises and sources

of financing are explained and information concerning typical project areas before and after redevelopment is furnished.

POINT II.

THE TRIAL COURT PROPERLY HELD THAT THE PROPOSED REDEVELOPMENT AGENCY BONDS DO NOT CONSTITUTE A DEBT OF THE CITY WITHIN THE MEANING OF UTAH CONSTITUTION ARTICLE XIV, SECTIONS 3 AND 4.

The City would not exceed its debt limit if an additional $15,000,000.00 of bonds were issued as general obligation indebtedness of Salt Lake City (See Exhibit 17). But the trial court's finding that the proposed Redevelopment Bonds cannot constitute a debt of the City should be affirmed so as to avoid the unnecessary reduction of available debt capacity and for the following additional reasons:

A. *The Redevelopment Agency is an independent "quasi-municipal" corporation and/or a "special district" and not the City nor a department, division or subdivision thereof.*

Appellants on appeal continue the inconsistent arguments which were initiated in their amended complaint concerning the status of the Redevelopment Agency. As to the Article VI delegation issue they contend the Agency is a separate entity, but as to the Article XIV debt issue they argue the two have a single

identity so that the agency is merely a department or subdivision of the City. While perpetuation of this inconsistency into the appeal phase of this litigation is procedurally correct, it evidences a critical weakness in Appellants' position. This dilemma was entirely avoided by the trial court when it determined as a matter of both fact and law that the Agency is a separate legal entity administered by the same municipal legislative body. (Findings of Fact, 8, 12, 13 and 14 at R. 93-95 and Conclusions of Law 3 and 4 at R. 98-99).

Contrary to the contention of Appellants, the absence in the Utah Neighborhood Development Act of a preamble-type legislative acknowledgment of the independence of the Agency is not controlling. The essential elements of the separate legal existence of the Agency are set out in the Act making an express legislative finding or declaration superfluous. Section 11-19-23.1 in describing the powers of the public body (the City in this instance) authorizes cooperation in redevelopment projects to which end the City may among other things: "(1) Dedicate, sell, convey or lease any of its property to a redevelopment agency; . . . (8) purchase and buy or otherwise acquire land in a project area from an agency for redevelopment in accordance with the plan . . .". In addition, Section 11-19-23.12 allows the agency to acquire property of the City through eminent domain with the consent of the City. Such authorization would not be necessary if the Redevelopment Agency were a department or subdivision of the City. Furthermore, the Act authorizes the crea-

tion of redevelopment agencies with power to transact business (11-19-3), borrow money, implement project plans (11-19-13), acquire by purchase, lease, option or by other means real and personal property (11-19-23.9(1)) and to acquire real property by eminent domain (11-19-23.9(2)); to sell, convey, lease or otherwise dispose of property (11-19-22) and to issue bonds (11-19-23.2 and 11-19-25). All of the above powers are to be exercised in the name of the respective redevelopment agency.

The operations of the Agency are definitely separate from those of the City and the City has treated and dealt with the Agency as a separate entity. Employees of the Agency are not paid by the City and they do not qualify for tenure or other City employment benefits. (R. 174, 178). The Agency maintains separate offices, and pays its own rent. It keeps separate accounting records and handles its own funds which are maintained in a separate bank account under the sole control of the Agency (R. 178). Its fiscal years have been entirely different than those of the City. It has a separate budget. (See Exhibit 9). The Agency has borrowed funds in its own name by issuing promissory notes which have expressly negated any obligation or liability against the City. (Exhibits 15 and 16). It has obtained million of dollars in loans and grants which would not have been available to the City. (R. 176). The agency retains and pays for its own independent professional advisors. (R. 178).

This court has firmly established the distinction between quasi-municipal corporations or special districts and cities, towns, counties, school districts and other true municipal corporations. *Lehi City v. Meiling, supra,* is much cited for its holding that a metropolitan water district serving five communities was a quasi-municipal corporation to which debt limitation did not apply. But the companion case of *Provo City v. Evans,* 87 Utah 292, 48 P.2d 555 (1935), which was handed down at the same time as the *Lehi City* case is equally important because it adopted the *Lehi City* majority opinion by reference and applied it to a metropolitan water district that was coterminous with the city boundaries of Provo. Other cases upholding the special district concept are *Freeman v. Stewart, supra; Tygesen v. Magna Water Co., supra;* and *Patterick v. Carbon County Water Conservancy District, supra.* Perhaps the rationale of the above cases can best be summarized by a portion of an instructive opinion of this court in the case of *Barlow v. Clearfield City Corp., supra,* involving a water district with the same boundaries as Clearfield City and a contractual arrangement between the City and the district under which the City would distribute the water for the district and collect revenues from water users. In rejecting an argument of identity between the district and the City this court held in part, "The City and the District are two separate and distinct entities organized generally for separate and distinct purposes but whose purposes converge and cover some of the same objectives. Sometimes the purposes

of one dovetail and coordinate with those of the other. . . . So we hold that this is an obligation of the District and not a debt of the city". (268 P.2d at 687).

The possibility of creating an entity with formal appearance of a quasi-municipal corporation but without any substantial purpose is conceded. To such entities the warning of circumvention of debt limits sounded in *Backman v. Salt Lake County, supra,* is appropos. But it should be apparent that the Redevelopment Agency was not created merely to expand the bonding capacity of the City. The Agency has no taxing power It anticipates no revenue from the City in connection with the proposed parking facility (R. 152), but if it received any such revenues they could not be used to repay the proposed $15,000,000.00 bond issue (11-19-25(5)~~23.12~~). Respondents emphasize that Agency purposes and objectives are both substantial and separate from those of the City.

Neither the *Backman* case nor *Carter v. Beaver County Service Area No.* 1, *upra,* should be interpreted as a limitation or restriction of the special district doctrine established and consistently upheld by this court. Fortunately Justice Ellett on behalf of a majority of this court, explained the holdings of both the *Backman* and *Carter* cases. In *Branch v. Salt Lake County Service Area No.* 2, *supra.* While applying again the special district doctrine the court said, "In the Carter case this court thought the services permissible under the act were too many, and the Legislature attempted to

and did correct the defect by its 1967 amendment . . ." (460 P.2d at 815). It also limited *Backman* to a finding of noncompliance with election procedures. The special district concept continues to be a vital, clearly defined part of the common law of the state of Utah. By application of this principal the conclusion is inescapable that even if the Agency were empowered to incur debt by issuing bonds to be repaid by proceeds from a special tax levied upon residents of Salt Lake City, this would not result in "debt" as that word is applied by the Utah Constitution to cities, counties, towns or school districts.

B. *The Redevelopment bonds will not constitute debt of the City because they are to be repaid from a special fund.*

If the Agency is held to be a division of the City rather than a separate quasi-municipal corporation or a special district, then the proposed bonds will not constitute a debt of the City because they are to be repaid from a special fund. A pledge to repay bonded indebtedness together with accrued interest from an identifiable fund separate from the general fund of the municipality does not create debt in the constitutional sense under the special fund doctrine which was established by *Barnes v. Lehi City,* 74 Utah 321, 279 P. 878 (1929). See Note, "Constitutional Restrictions Upon Municipal Indebtedness", 1966 *Utah Law Review,* 462, 471-478.

Appellants concede that the pledge of revenues to be generated by the proposed parking facility comes

within the special fund doctrine. However, as to the tax allocation portion of the revenue sources for repayment of the bonds, Appellants contend a debt is created by reason of a much criticized limitation purportedly arising from the holding of *Fjeldsted v. Ogden City,* 83 Utah 278, 28 P.2d 144 (1933). (For criticism of the *Fjeldsted* type limitation on the special fund exception see Williams and Nehemkis, "Municipal Improvements as Affected by Constitutional Debt Limitations", 37 *Colum. L.Rev.* 177 (1937), which was cited by this court with approval in *Conder v. University of Utah,* 123 Utah 182, 187-88, 257 P.2d 367, 370-71 (1953)). Because it appears Appellants have misinterpreted the *the ruling of Fjeldsted* it may be helpful to outline the facts as well as the decision reached in that case. For a period of six years prior to the filing of a petition by Mr. Fjeldsted the net surplus from operation of the Ogden waterworks system was paid into the general fund. When it became necessary to construct an additional reservoir, build a conduit pipeline from artesian wells in Ogden canyon to the city, install various pipeline replacements and purchase and install water meters, the City proposed to pledge its waterworks revenues as repayment of $645,000.00 water revenue bonds. There was an express finding based on an admission of the City that the "proposed improvements will afford no new source of revenue" (28 P.2d at 149). Reasoning that the proposed pledge of the waterworks surplus as security for the waterworks revenue bonds would eliminate a source of revenue to the general fund

which would have to be replaced by additional real property taxes, a majority of the court held that the *Barnes* v. *Lehi City, supra,* special fund doctrine must be limited in *Fjeldsted* type situations where an actual diversion from the general fund is required thereby increasing the burden on the general taxpayer. Two justices joined in a vigorous dissent pointing out among other things that the majority had departed from the great weight of authority.

By disregarding the actual termination of the payment by Ogden City of surplus waterworks revenues into the general fund and by speculating about increased operation and maintenance costs. Appellants urge the conclusion that the *Fjeldsted* court was dealing merely with the possibility of future diversion from the general fund. We cannot agree with this interpretation and it is respectfully submitted that this court has previously rejected a similar challenge. *Utah Power and Light Company v. Ogden City,* 95 Utah 161, 79 P.2d 61, 67 (1938). The indirect "feeding" of the special fund from the general fund was allowed in *Utah Power and Light Company v. Provo City,* 94 Utah 203, 74 P.2d 1191 (1937) in which Provo City was authorized to pay into the district utility bond special fund the reasonable value of electricity used by the City. Obviously the *Fjeldsted* restriction on the special fund doctrine was more narrow and limited in 1938 than the scope of the restriction now being advocated by Appellants.

It appears that the limited special fund doctrine of the *Fjeldsted* case was overruled in *Conder v. University of Utah, supra,* in which this court upheld the issuance of bonds to be repaid from a special fund consisting of revenues from University of Utah dormitories and land grant funds. Since proceeds from the land grant funds had previously been deposited in the university general fund the pledge constituted a diversion from the general fund. In *Barlow v. Clearfield City Corp., supra,* the court applied the special fund theory in upholding a contract between Clearfield City and the Weber Basin Water Conservancy District and it expressly noted it had refused to apply the *Fjeldsted* restriction in the *Conder* case.

As early as 1937 it was reported that only South Dakota and Utah adhered to the restricted special fund doctrine. If there is anything remaining to the *Fjeldsted* restriction after *Barlow, Conder* and the two *Utah Power and Light Company* cases, the instant case presents a suitable vehicle for the court to clarify this area with an express repudiation of the *Fjeldsted* limitation. Of course many Utah cases upholding the special fund doctrine have not involved any diversion of monies from the general fund. *Freeman v. Stewart, supra; Tygesen v. Magna Water Company, supra;* and *Patterick v. Carbon County Water Conservancy District, supra.* These cases are appropriate and sufficient authority for the determination of the instant case.

If the *Fjeldsted* holding has not been overruled, it is not in point because the instant case involves no

past or future diversion from the general funds of Salt Lake City. Section 11-19-23.2 of the Utah Neighborhood Development Act, avoids the imposition of future liability upon the City by requiring that "the bonds shall be made payable, as to both principle and interest, solely from the income, proceeds, revenues and funds of the Agency . . .". Section 11-19-25(5) (Utah Code Annotated, Interim Supp. 1974) of the Amendment to the Utah Neighborhood Development Act expressly provides that redevelopment agency bonds are not a general obligation or debt of the City.

Consistent with these statutory provisions the proposed bond resolution, an attachment to Exhibit 1, contemplates in Section 11 thereof the establishment of a special fund consisting of tax increment revenues and the net rental receipts from the Parking Facilities. Section 3 of the proposed resolution states that the bonds and the interest thereon are not a debt of the City. To avoid any possible misunderstanding and as an additional safeguard of the City's general fund, the proposed bond form as set out in Section 26 of the Bond Resolution includes a legend notifying the bondholders that the City and State cannot be liable for any debt service relating to the bonds. Salt Lake City in its Ordinance of Ratification, Exhibit 2, protected the credit of the City and avoided any contingent liability by including paragraph 4 which disclaims any responsibility on the part of the City to pay any of the costs incurred by the Agency in connection with the plan including the repayment of any debt.

It is clear that bondholders must look only to the special fund of the Redevelopment Agency for repayment of the principal and interest of the proposed Bonds. There can be no diversion from the general funds of the City for the benefit of the Agency or its creditors. For a general summary of the numerous cases in support of the special fund doctrine, see Annot., 72 A.L.R. 687 (1931); Annot., 96 A.L.R. 1385 (1935); and Annot., 146 A.L.R. 328 (1943).

A discussion of what was the restricted special fund doctrine is not complete without a detailed consideration of *Wadsworth v. Santaquin City,* 83 Utah 321, 28 P.2d 161 (1933) a case which was heard at the same time as the rehearing of *Fjeldsted.* Both the *Fjeldsted* and *Wadsworth* opinions were issued by the court on the same day. The water system in Santaquin had been financed by general obligation bonds and water user revenues. The bond issue had been retired so that all of the net surplus of water revenues was being deposited in the general fund of the City. The wood stave pipes were leaking so badly that the City was losing fifty percent of the water going into the distribution system. It proposed to issue $22,000.00 of water revenue bonds to cover the replacement of the existing distribution lines with cast iron pipes. Pursuant to statutory authorization (the Granger Act) the City attempted to impound and allocate to a special fund only the portion of water revenues that the value of the improvements bore to the old system. It was acknowledged that unless water rates were increased the improvements would

generate no additional income because the system was not being extended to facilitate hookups by new users.

The *Wadsworth* court was properly suspicious of the Santaquin City Council's appraisal based on an engineering report which valued the improvements at $47,950.00 and the existing system at $11,950.00. Without much difficulty the court uncovered two significant errors in the appraisal formula and concluded that the valuations were arbitrary and unreasonable. It gave helpful and specific instructions as to how the appraisals could be corrected (28 P.2d at 174). It then held, "Where improvements or betterments are built into an existing system or project, the revenues earned by such improvements or betterments based on a proper appraisement of the old system and the improvements and betterments, may be pledged to the payment of revenue bonds as provided in the act. . . ." (28 P.2d at 175).

The court in *Wadsworth* seemed to anticipate the concept upon which tax increment allocation is founded. However, the *Wadsworth* case goes beyond the holding of the trial court in the instant case. Unlike the City of Santaquin we do not ask for judicial authorization for a diversion of revenues from the general fund of the City. As of the date of the equalized assessed valuation immediately preceeding the initiation of the redevelopment plan, the City was receiving no tax revenues based on improvements resulting from Agency efforts in the project area. The City, the Appellants, other city taxpayers similarly situated and other taxing enti-

ties had and have no justifiable basis for expectations of increased tax revenues from the blighted project area. It would be proper for the court to take judicial notice that without action as proposed by the agency the project area would continue its decline in assessed valuation despite inflation, improvement of adjoining areas and the influence of otherwise favorable economic conditions, if any.

It should be emphasized that the tax increment allocation will be available to the Agency only until it has repaid loans, advances and any indebtedness or any interest thereon. All monies received thereafter based upon the increased tax increment allocation shall be paid to the City and other taxing entities. Section 11-19-29(1)(b), (Utah Code Annotated, Interim Supp. 1974). Rather than diverting any funds from the City and other taxing entities, the Agency projects will ultimately becomes the sources of increased tax revenues to entities which have not contributed to the cost of the improvements.

Perhaps the basic concept of the special fund aspect of the tax allocation financing was best summarized by the California Court of Appeals for the Third District when, under a specific constitutional provision, it considered the first tax increment appeal and held, "When augmented property values produce taxes in excess of the amount thus payable to taxing agencies, then . . . the excess is to be allocated to a special fund of the re-

development agency to pay principal and interest of bonds. . . . After the bond obligation is paid off, the separate allocation of excess revenues ceases, and all the tax income goes to the taxing agencies". *Redevelopment Agency of the City of Sacramento v. Malachi,* 31 Cal. Rptr. 92, 95 (Cal.Ct.App. 1963).

POINT III.

THE TRIAL COURT PROPERLY DETERMINED THAT THE PROPOSED REDEVELOPMENT AGENCY BONDS WILL NOT INVOLVE LENDING OF CREDIT BY THE CITY, SALT LAKE COUNTY OR THE STATE OF UTAH.

The enabling tax increment statute (Utah Code Annotated, Section 11-19-23.3, 25-35, Interim Supp. 1974), the proposed bond resolution (Exhibit 1), the proposed bond form, and the City Ordinance of Ratification (Exhibit 2), all prohibit the use of credit of the City for the repayment of the bonded indebtedness. In Part B of Point II we have cited points and authorities in support of the determination of the trial court that the proposed bond issue, and and any interest thereon, can be repaid only from a special fund. The entire financial plan involves the allocation of the revenues from identifiable increases in assessed valuation and from parking facility revenues. These are the only revenue sources which will supply the Special Fund. Bondhold-

ers must look solely to the Special Fund for repayment of their bonds and payment of accrued interest. Under these circumstances there is no lending of credit contrary to Article VI, Section 29 of the Utah Constitution. (Findings of Fact 14 and 15, R. 95-96. Conclusions of Law 5, R. 99).

In 1968, this court resolved a lending of credit question involving the issuance of industrial bonds by Tooele County to finance the construction of a magnesium plant near the Great Salt Lake. After quoting pertinent provisions of what is now Article VI, Section 29 of the Constitution, Justice Crockett in the primary majority opinion made the following observation which is also applicable to the proposed Agency project: "It seems evident that the legislature in framing this Act and the defendants in planning this project have been cognizant of the above constitutional interdiction and have exercised care to avoid collision with it by safeguarding against any possibility that Tooele County or its taxpayers will be charged with any obligation from this contract." *Allen v. Tooele County,* 21 Utah 2d 383, 445 P.2d 994, 995 (1968).

Since Article VI, Section 29 prohibits the lending of credit to any railroad, telegraph or other private individual or corporate enterprise or undertaking, the points and authorities concerning the public purposes of the proposed project as set out in Point IV should also be considered in connection with the lending of credit issue.

POINT IV.

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

The primary thrust of Appellants' attack is aimed at the parking facility. Indirectly this challenges the entire plan for the project area because the anticipated commercial development must be serviced by convenient, adequate parking. The trial court finding of public purpose for the project was properly based on consideration of the overall objectives of the proposed integrated plan. Appellants ask that this viewpoint be narrowed to focus on the possible rental of some of the stalls by adjoining businesses which will be benefitted thereby. The trial court approach to this question is consistent with the holdings of the U. S. Supreme Court and the great weight of authority. After warning against the fallacy of evaluating a project one building at a time the U. S. Supreme Court upheld the District of Columbia Redevelopment Act of 1945 and observed, "The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes but also schools, churches, parks, streets and shopping centers. In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented". *Berman v. Parker,* 348 U.S. 26, 34-35, 75 St.Ct. 98, 99 L.Ed. 27 (1954).

The Utah legislature, recognizing the public need to arrest the expansion and infection of blight, enacted similar enabling legislation known as the Utah Neighborhood Development Act. The *Berman* court placed high credence in such legislative determinations of public need. "Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature not the judiciary, is the main guardian of the public needs to be served. . . .". (348 U.S. at 32). For an interesting comparison of the costs of blighted areas with the costs of comparable non-blighted areas see, "Cost of Urban Blight", *Urban Land,* May 1946, as discussed in Brown, "Urban Redevelopment", 29 *Boston Univ.L.Rev.* 318 (1949).

But the sensitivity to conditions detrimental or inimical to the public health, safety or welfare did not stop with the legislature. Pursuant to statutory guidelines both the Agency and the City surveyed and studied the project areas in which the parking facility is to be constructed. Several reports were generated as a result of the studies including Exhibit 7 which indicates the location of every structure in the project area with a determination as to those which were deficient or substandard. The conclusion that the area was blighted is clearly supportable. See, Annot., "What Constitutes 'Blighted Area' Within Urban Renewal and Redevelopment Statutes", 45 A.L.R. 3d 1096 (1972). The project area plan (Exhibit 4) entitled C.B.D. West Neighborhood Development Program, was then prepared de-

scribing the project area and stating eight development objectives all of which involve public purposes.

A public hearing was held February 4, 1971, to review and consider the proposed plan. The minutes of that hearing evidence an awareness of then existing public need (Exhibit 5). The City then adopted the C.B.D. West Neighborhood Development Program by ordinance (Exhibit 3) making specific findings as to the public nature of the purposes of the project plan.

The trial court took into account not only the determination of public purpose by the legislature as evidenced by the passage of the redevelopment legislation, the conclusion of the City Commission after a public hearing and the results of the surveys and studies of the Agency, but also testimony taken at trial. Specific portions of the pertinent testimony are discussed in connection with the "state purpose doctrine" in Section C of Point I and need not be repeated here. (R. 151-152, 180-181). Under similar circumstances courts in other jurisdictions have upheld findings of public purpose. Space will not permit citation of the numerous cases in point, but the carefully written opinion and the authorities referred to in *Redevelopment Agency of City and County of San Francisco v. Hayes,* 122 Cal. App. 2d 777, 266 P.2d 105 (1954) may be helpful to the court. See also the more recent California cases of *Babcock v. Community Redevelopment Agency of the City of Los Angeles,* 306 P.2d 513 (Cal. 1957) and *In re Bunker Hill Urban Renewal Project* 1*B, supra.* The

Idaho Supreme Court recognized the public purposes of a redevelopment project in a condemnation case, *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972). Dozens of cases in point are summarized in Section 4, Annot., "Statutes Upheld As Serving Public Use, Urban Redevelopment Laws", 44 A.L.R.2d 1414, 1420-1426 (1955). This annotation together with the Later Case Service, for volume 44 A.L.R.2d, indicate the Supreme Courts in the following jurisdictions on one or more occasions have found public purpose or public use in challenged redevelopment projects: United States, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Maine, Minnesota, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Puerto Rico, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia and Wisconsin. See also, Mandelker, "Public Purpose in Urban Redevelopment," 28 *Tulane L.Rev.* 96 (1953).

So lopsided is the weight if authority in favor of urban redevelopment laws that the A.L.R. editor could observe as of the time of writing, "In two instances, the purposes permitted to be served by the redevelopment acts in question have been held not to constitute public uses, and the statutes have been held invalid on that ground", Annot., 44 A.L.R. 2d at 1426 (1955). The cases then cited are the only redevelopment cases appearing in Appellants' brief concerning the question of public purpose, *Adams v. Housing Authority,* 60 So.

2d 663 (Fla. 1952) and *Housing Authority v. Johnson,* 209 Ga. 560, 74 S.E. 2d 891 (1953). Both of these cases turned on the use of the power of eminent domain, an issue which is not before this court. In any event neither case presently represents the law of its respective state. After the decision in *Johnson,* Georgia amended the eminent domain article of its constitution. Thereafter the Georgia court has consistently upheld findings by municipalities of public purposes for redevelopment projects. *Bailey v. Housing Authority,* 214 Ga. 790, 107 S.E.2d 812 (1959); *Allen v. City Council of Augusta,* 215 Ga. 778, 113 S.E.2d 621 (1960) and *Freedman v. Housing Authority of the City of Atlanta,* 108 Ga. App. 418, 136 S.E.2d 544 (1963). The holding of the Florida court in the *Adams* case was modified or overruled in *Grubstein v. Urban Renewal Agency of City of Tampa,* 115 So. 2d 745 (Fla. 1959) and definitely overruled in *State v. County of Dade,* 210 So. 2d 200 (Fla. 1968), a case involving issuance of bonds for a parking facility, restaurant and pilot training structure at the municipal airport.

We are unable to see the relevance of the Washington case relied upon so heavily by Appellants, *Hogue v. Port of Seattle,* 54 Wash. 2d 799, 341 P.2d 171 (1959). *Hogue* is an industrial development eminent domain case involving the attempted condemnation of parcels of 720 farms and residential lots involving approximately 2,175 acres all of which were situated outside the limits of the City of Seattle. The purpose of the acquisition by the Port authority was to convert the lands

to industrial sites for resale to private businesses and industries to be serviced by a navigable waterway. From undispuated evidence the court expressly found the "lands are not congested urban lands, nor unoccupied lands, nor tide lands, nor wild, undeveloped lands, rather, they are well-developed agriculture and residential lands situated in King County outside the City limits of Seattle". Three of the *Hogue* court justices dissented primarily on the grounds that it should not be necessary to show the lands were blighted or marginal so long as the ultimate purposes involved a public use.

It should not be inferred from the *Hogue* case that the Washington Supreme Court would be unable to find public purpose in the proposed redevelopment plan now before this court. The cases are factually distinguishable and the Washington court has taken occasion to distinguish the *Hogue* decision from subsequent urban redevelopment cases. *Miller v. City of Tacoma,* 61 Wash. 2d 374, 378 P.2d 464 (1963). The Miller opinion refers to footnotes in an appendix in which thirty-nine (39) "leading" cases from thirty-two (32) states are set out as authority for the proposition that urban renewal laws involve public purposes. *Miller* was then followed by the Washington court in *Edwards v. City Council of City of Seattle,* 3 Wash. App. 665, 479 P.2d 120 (1970) and *Petition of Port of Seattle in re Hove v. Port of Seattle,* 80 Wash. 2d 392, 495 P.2d 327 (1972).

At the trial plaintiffs on direct examination asked

many questions regarding the classification of those who would be using the proposed parking facility. If the purpose of this line of questioning was to demonstrate the predominance of private benefits, it was not successful. Private developers could be expected to furnish no more than the number of parking stalls required by applicable zoning laws for their particular development. This would be hopelessly inadequate to service increasing public need and to replace the parking spaces which previously existed within the area. (R. 147-149). Continuous guaranteed use of some of the proposed 1300 available stalls by adjoining businesses contributes to the economic feasibility of the proposed project. These companies will not receive preferential rates. (R. 169-170). We fail to see any improper private benefit in connection with the proposed project.

POINT V.

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

Section 5 of Article XIII of the Utah Constitution on one hand prohibits the legislature from imposing taxes for the purpose of any county, city, town or

other municipal corporation and on the other hand authorizes the legislature by law to vest in the corporate authorities of county, city, town or other municipal corporations, the power to assess and collect taxes for all purposes of such corporations. The allocation of revenues from the increased increment of assessed valuation resulting after a redevelopment project is initiated does not involve the imposition of any tax. The Redevelopment Agency is not empowered to impose a tax and taxing entities are not required or authorized to increase a tax levy for redevelopment purposes. Use of tax increment financing cannot increase taxes levied by any or all of the taxing entities because the standard mill levy is merely applied to the increment of increased assessed valuation as well as to the base assesed valuation and each taxing entity receives no less than what it would have received were it not for the redevelopment project.

The Utah Neighborheed Development Act merely enables local government entities to create redevelopment agencies in a manner which is entirely compatible with the constitutional authorization of Section 5 under which the legislature may vest in designated corporate authorities the power to assess and collect taxes for proper purposes. This court defined "for all purposes of such corporations" as being synonymous with "public purposes" in *Denver & R. G. R. Co. v. Grand County,* 51 Utah 294, 170, P. 74, 76, 3 A.L.R. 1224 (1917). Suitable public purpose was found to support the con-

stitutionality of a statute requiring Salt Lake County to construct a juvenile detention home. In *Salt Lake County v. Salt Lake City,* 42 Utah 548, 134 P. 560 (1913) this court quoted with approval from a Missouri decision holding . . . "that the legislature, in case of its judgment the public good or welfare requires it, may call upon counties or cities as state agencies to assist the state in paying the expenses incurred for the public good." (134 P. at 563).

State v. Standford, 24 Utah 148, 66 P. 1061 (1901) on which Appellants rely is not in point. That case involved a statute establishing a state board of horticulture and requiring counties to select fruit tree inspectors from names submitted by the state board, to hire the inspectors thus designated at a rate of compensation and for a term set by the state and to pay the inspectors from county funds. A majority of the court found this program to be violative of Section 5 of Article XIII and other constitutional provisions. It rejected an argument that the inspectors were county authorities. In doing so it provided a useful definition by stating, "By the term 'corporate authorities' must be intended those municipal officers who are either directly elected by the population to be taxed or appointed in some mode to which they have given their assent." (66 P. at 1063). In contrast to the facts of *Standford,* the Redevelopment Agency is not supervised by a state agency or board, the state has nothing to do with the hiring and compensation of Agency employees and City

funds canont be used at the direction of the state for redevelopment purposes.

To avoid unnecessary repetition of points and authorities, Respondents refer the court to other pertinent sections of this brief including Section A of Point I concerning the voluntary creation of the Agency by the City; Section B of Point I concerning the administration of the Agency by the Board of Commissioners of the City; Section B of Point II concerning repayment of the redevelopment bonds from a special fund; and Point IV concerning the public purposes of the proposed project.

POINT VI.

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

The Agency is not a city of the first, second or third class as defined in the Uniform Municipal Fiscal Procedures Act, Utah Code Annotated, Sections 10-10-23 to 10-10-75 (1973). Nor is the Agency a county, town or other municipal corporation. Because of its purposes, its legal form, and its method of operation the Agency is a quasi-municipal corporation. Please see Section A of Point II and the authorities therein cited for a more complete discussion of the legal nature of the Agency.

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.

In its Findings of Fact number 16 (R. 96) the trial court determined that the last equalized assessment roll available as of the February 11, 1971, the date of adoption of the Redevelopment Agency plan, utilized valuations assessed for the year 1970. Since there is no attempt under the statutory formula to allocate revenues from past mill levies, the trial court also held in its Conclusions of Law that the allocation of future taxes under the tax increment formula does not constitute a retroactive application of the Utah Neighborhood Development Act. (Conclusions of Law 9, R. 99). The distinction between the mill levy and the arithmetic formula is valid and significant because it is the mill levy which requires affirmative action of the respective taxing entities. Whether the date of adoption of the original plan or the date of adoption of the amendment to the plan is used, in either case the base for tax increment purposes must be the last equalized assessment roll prior to one or the other of those dates. It will not be possible to use some future equalized assessment roll. Thus we fail to see how one date may be

retroactive and the other date not. Since retroactivity is determined by the date of the mill levy it is apparent that neither of the alternatives involves a retroactive application of the statute.

The statutes being challenged do not impose criminal sanctions, so constitutional prohibitions against ex post facto laws do not apply, 16 Am. Jur. 2d, Constitutional Law (Retrospective Legislation), §§ 395-410 (1964). By contrast, civil statutes may be applied retroactively or be retrospective in nature without violating state or federal constitutional provisions unless there is a resulting impairment of vested rights. 16 Am. Jur. 2d, Constitutional Law (Other Retrospective Laws), §§ 413-418 (1964). Appellants acknowledge there is no impairment of property rights or other vested rights. The statutes in question are not retrospective in nature, nor do the proposals involve retroactive application, but even if such were not the case, objections on constitutional grounds should not obtain.

Respondents respectfully suggest that the earlier equalized assessment roll is the appropriate base for the tax increment calculation even though it is to the advantage of the Agency to use the more recent lower assessed valuation base. (See Exhibit 18 and the computations at the top of page 40 of Appellants' brief). This position is supported by a case in point, *Redevelopment Agency of the City and County of San Francisco v. Cooper,* 72 Cal. Rptr. 557 (Cal. Ct. App. 1968). The court there dealt with both the adoption of the plan

and a subsequent amendment to that plan. It determined that the appropriate assessed valuation base was the one immediately prior to the adoption of the plan. Whether or not this learned court agrees with the trial court and the *Cooper* decision as to the date of equalized assessed valuation to be used, it is of utmost importance that the prospective nature of the statutory formula as applied to future levies of taxes be acknowledged.

POINT VIII.

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

There is a presumption of statutory validity and constitutionality and one who questions it has the burden of convincing the court of the unconstitutionality of the statute being challenged. 16 C.J.S., Constitutional Law, § 99 (1956). In *Branch v. Salt Lake County Service Area No. 2, supra,* this court quoted with approval the following:

> "In determining constitutionality, statutes are presumed to be constitutional until the contrary is clearly shown. It is only when statutes manifestly infringe upon some constitutional provision that they can be declared

> void. Every reasonable presumption must be indulged in and every reasonable doubt resolved in favor of constitutionality." Broadbent v. Gibson, 105 Utah 53, 140 P.2d 939 at 943 (1943) and the numerous previous cases therein cited. (460 P.2d at 815).

The trial court viewed extensive documentary evidence and considered the testimony of witnesses before finding for Respondents. The judgment predominantly involved a determination of factual issues on questions of public purpose and state purpose. Factual findings were also required in connection with some of the other issues involved in this case. There is a presumption that the holding of the trial court is valid and correct. . . . "[E]very reasonable intendment ought to be indulged in favor of the validity and correctness of the judgment under review, and it will not be disturbed unless the Appellant meets his burden of affirmatively showing error." *Lawrence v. Bamberger Railroad Company,* 3 Utah 2d 274, 282 P.2d 335, 337 (1955); *McCollum v. Clothier,* 121 Utah 311, 241 P.2d 468, 469 (1952).

CONCLUSION

The proposed project will make possible improvements and developments having market values of an estimated $32,000,000.00 to approximately $49,000,000.00. The resulting increase in assessed valuation will not require any increase in the mill levy nor any increased burden to the taxpayers. The statutory

authorization for this opportunity to meet some urgent public needs is provided in the basic Utah Neighborhood Development Act and its more recent amendments authorizing allocation of taxes imposed in increments of increased assessed valuation. Other states have successfully demonstrated that this method of municipal finance effectively enables a redevelopment project to underwrite on its own the cost of eliminating blight while simultaneously strengthening municipal core areas to the benefit of both city and state.

In summarizing the reply of Respondents to the numerous and sometimes inconsistent positions taken by Appellants, we emphasize that there is no unlawful delegation from the legislature to the Redevelopment Agency because the Agency was created by the voluntary exercise of local option by Salt Lake City. Also the administrative head of the Agency is a Board of Commissioners who serve as the elected members of the Board of Commissioners of the City.

If, contrary to the holding of the trial court and the position of Respondents, some form of delegation is found to be involved in connection with the creation and operation of the Agency, then such delegation is not unconstitutional because the Agency is not a special commission, private corporation or association. It is a quasi-municipal corporation which does not manage, supervise or interfere with any municipal function. The existence of similar quasi-municipal corporations has long been acknowledged by this court. Or, in the alter-

native, the purposes and objectives of the Agency have statewide impact so as to justify the attention of the state legislature. A legislative delegation is not prohibited where there is a showing of state purpose.

The proposed Redevelopment Agency Bonds will not constitute a debt of the City because the Agency is a special district and not a department, division or subdivision of the City. Even if the Agency were deemed to be a department of the City the proposed bonds would not constitute a debt of the City because they are to be repaid from a special fund comprised of revenues to be received from the operation of the proposed parking facility together with those generated by an allocation of the increment of increased assessed valuation experienced in the redevelopment project area after adoption of the project plan for redevelopment. Consistent with the restrictions imposed by law and contractual provisions upon the Agency in connection with the repayment of the proposed bonds, potential bondholders will be put on notice that they can look only to the revenue sources set out above for repayment of the bonds. Under these circumstances the bonds cannot become a general obligation of the City, County or any other taxing entity and the mill levy may not be increased in order to pay principal or interest on the bonds. Thus there is no lending of the credit of the City, County or any other taxing entity to the Agency or any private entity.

The purposes of redevelopment projects similar to the one before the court have been held to involve public purposes rather than private benefits by the U. S. Supreme Court and by the courts of last resort in numerous other jurisdictions. Any private benefit or detriment is inconsequential compared with the overall objectives of the plan. The parking facility is an essential part of the overall development of the two block project area in central Salt Lake City.

The allocation of taxes based on a defined increment of assessed valuation does not amount to the imposition of a tax and Respondents have demonstrated that the proposed project will not result in any direct or indirect tax burden. In fact, after the temporary allocation of the tax increment, the increased assessed valuation will then be available to other taxing entities even though they did not participate by sharing any of the costs of the improvements resulting from the proposed development. In addition it should be clear that the Agency is not a city and therefore it is not subject to budgetary laws regulating cities. It is equally clear that the allocation of a future tax is not a retroactive application of a statute even though it is necessary to use a valuation base which precedes redevelopment activity.

For the foregoing reasons we urge that the decision of the trial court, the validity of the Utah Neigh-

borhood Development Act and the legality of the proposed issue of parking revenue and tax allocation bonds be upheld.

Respectfully submitted,

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