

1980

John Call and Clark Jenkins v. City of West Jordan, Utah : Reply To Brief In Answer To Substitute Petition For Rehearing

Utah Supreme Court

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Recommended Citation

Reply Brief, *Call v. West Jordan*, No. 15908 (Utah Supreme Court, 1980).
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IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN CALL and CLARK JENKINS,)

Plaintiffs-)
Appellants,)

vs.)

Case No. 15908)

CITY OF WEST JORDAN, UTAH,)

Defendant-)
Respondent.)

REPLY TO BRIEF IN ANSWER TO
SUBSTITUTE PETITION FOR REHEARING

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FILED

APR -9 1980

Clerk, Supreme Court, Utah

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ARGUMENT

West Jordan admits there must be "a reasonable relationship between the needs created by the subdivision and the burden placed upon subdivider". ^{1/}

Next, West Jordan cites a string of subdivision cases. (Respondent's brief at p. 9.) These cases variously hold the following fees to be reasonable:

- A. 1/9 to 1/12 of the plat.
- B. 2 1/2 acres for each 1,000 new residents.
- C. \$250 per lot.
- D. \$60 per living unit.
- E. 10% of the plat.
- F. \$200 per apartment unit.
- G. \$150 per apartment unit.
- H. 5 1/2 acres for each 1,000 new residents

West Jordan points out that its ordinance (7%) amounts to less than \$200 per lot. West Jordan concludes that its ordinance must be valid because 7% is more or less the same amount which was approved in the other cases.

^{1/} West Jordan suggests two different tests to determine whether there is such a "reasonable relationship":

- A. Specific relation test.
- B. Rational nexus test.

(Respondent's brief at p. 7-8.) We think that distinction is of no value here. We suggest that the West Jordan ordinance fails by either standard.

We respectfully suggest that West Jordan's analysis is wide of the mark. The issue is not the amount of the fee. The issue is how the fee is (or may be) used by the city.

Here is an example. Suppose the mayor of West Jordan decides he wants a jet airplane. Suppose the city council decides to finance that purchase by assessing a 7% fee on all new subdivisions. The issue is not whether 7% is a reasonable amount. The issue is whether the mayor can use that 7% for jet airplanes.

Here, there is no requirement that the 7% fee be used in or even close to the subdivision. Indeed, there is no requirement that the 7% be spent for needs created by the subdivision. The ordinance simply gives the city an extra source of income (7% on all subdivisions). The money goes into the general fund. The city has almost unbridled power to spend the money anywhere and anytime it wishes. The only restriction is that the money be spent generally on "flood control and/or parks and recreation". Under the language of that ordinance, the city can build a new playground ten miles from the new subdivision.

For example, West Jordan's latest brief relies on the case of Home Builders Association of Greater Kansas City v. City of Kansas City, 555 S.W.2d 832 (Mo. 1977). However, the ordinance at issue there involved some very specific restrictions not present in this case:

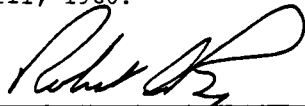
Such funds shall be used for the acquisition, development or improvement of a public park generally, within one half-mile of the periphery of the subdivision [Emphasis added.]
555 S.W.2d at 833.

Obviously, that language is much more restrictive than the West Jordan ordinance. The Missouri Supreme Court only held that the ordinance was not unconstitutional on its face. ^{2/} The court remanded to determine "the fairness of the specific exactions".

CONCLUSION

The West Jordan ordinance is facially unconstitutional in that it takes property from a subdivider without requiring the city to spend that money on needs created by the subdivision.

DATED this 9th day of April, 1980.



ROBERT J. DEBRY
Attorney for Plaintiffs-Appellants

^{2/} Both issues are present here: i.e., Is the ordinance constitutional as drafted? Is the ordinance constitutional as applied?

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Reply to Brief in Answer to Substitute Petition for Rehearing was served upon Lynn W. Mitton, Attorney for Defendant-Respondent, 1850 West 7800 South, West Jordan, Utah 84084, by U.S. mail, postage prepaid, this 9th day of April, 1980.

Sharon Gustafson