

1950

Roy F. Tygesen v. Magna Water Co., P. W. Seay, B. L. Casey, Howard Ridge, Clinton D. Vernon : Brief of Plaintiff

Utah Supreme Court

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Roy F. Tygesen; Attorney for Plaintiff;

ROmney, Boyer and Bertoch; Attorneys for Defendants;

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

ROY F. TYGESEN,

Plaintiff,

vs.

MAGNA WATER COMPANY,
an Improvement District, and
P. W. SEAY, B. L. CASEY
and HOWARD RIDGE, its
Board of Trustees,

Defendants.

CLINTON D. VERNON,
Attorney General of the
State of Utah,

Third Party Defendant.

PLAINTIFF'S
BRIEF

Case No. 7550

ROY F. TYGESEN, Plaintiff, appearing as his own
attorney.

ROMNEY, BOYER, and BERTOCH, 1409 Walker
Bank Building, Salt Lake City, Utah, appearing
as attorneys for Defendants.

CLINTON D. VERNON, Attorney General of the
State of Utah, appearing as attorney for Third
Party Defendant.

Received two copies this day of, 1950.

.....
Attorneys for Defendant.

.....
Attorney for Third Party Defendant.

IN THE
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Case No. 7550

ROY F. TYGESEN, Plaintiff, appearing as his own attorney.

ROMNEY, BOYER, and BERTOCH, 1409 Walker Bank Building, Salt Lake City, Utah, appearing as attorneys for Defendants.

CLINTON D. VERNON, Attorney General of the State of Utah, appearing at attorney for Third Party Defendant.

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6. LEHI CITY VS. MEILING, 48 Pacific 2nd 530.
7. Volume 1 - MCQUILLAN MUNICIPAL CORPORATION, Second Edition.
8. NEBRASKA MIDSTATE RECLAMATION DISTRICT VS. HALL COUNTY, 41 Northwestern 2nd 397.
9. PATERICK VS. CARBON WATER CONSERVANCY DISTRICT, 145 Pacific 2nd 503.
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13. WHITCHER VS. BONNEVILLE IRRIGATION DISTRICT, 256 Pacific 785.

(References to Utah Constitution and State laws not listed.)

IN THE
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ROY F. TYGESEN,
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vs.

MAGNA WATER COMPANY,
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and HOWARD RIDGE, its
Board of Trustees,
Defendants.

CLINTON D. VERNON,
Attorney General of the
State of Utah,
Third Party Defendant.

COMPLAINT

Plaintiff for cause of action against the Defendants alleges as follows:

I

That the Plaintiff is a taxpayer, real property owner, a domestic water user and a prospective customer of the Defendant Company, residing within the boundaries of an Improvement District known as the Magna Water Company, located in Salt Lake County, State of Utah.

II

That the Defendant, Magna Water Company, is an Improvement District located entirely within the boundaries of Salt Lake County, State of Utah, duly and regularly created and existing by virtue of the action of the Board of County Commissioners of Salt Lake County, State of Utah, taken under authority of Chapter 24, Laws of Utah, 1949.

III

That the Board of Trustees is the legally constituted governing body of the Magna Water Company; that P. W. Seay, B. L. Casey and Howard Ridge are the duly elected, qualified and acting members of the Board of Trustees of the Magna Water Company; that the Defendant, Clinton D. Vernon, is made a party to this action due to the fact that he is the Attorney General of the State of Utah and that one of the purposes of this action is to attack the constitutionality of a statute of the State of Utah, by authority of which a governmental unit is established.

IV

That pursuant to and in accordance with the provisions of Chapter 24, Laws of Utah, 1949, a bond election was duly and regularly conducted in the District on March 7, 1950, and as the result of said election the Board of Trustees of the Magna Water Company was and is duly and legally authorized under the provisions of the aforesaid statute to issue general obligation bonds of the District in the amount of \$75,-

000.00 and to issue revenue bonds of the District in the amount of \$175,000.00 for the purpose of purchasing the private water system now inadequately serving the Magna area and for the purpose of making necessary improvements to the system.

V

That the above named Defendants, Magna Water Company, and its Board of Trustees, are now proceeding with the preliminary steps looking toward the immediate issuance of the aforesaid bonds.

VI

That the purpose of this Complaint is to challenge the constitutionality of a Utah statute, to-wit: Chapter 24, Laws of Utah, 1949, by the use of this extraordinary writ, as provided for in Rule 65 B (4), Utah Rules of Civil Procedure; that this extraordinary writ is an appropriate remedy to be used by the Plaintiff to contest the constitutionality of a statute of the State of Utah, or portions thereof, and to arrest and prohibit the issuance of bonds in the District in order to prevent irreparable damage to the Plaintiff on the grounds that such proceedings on the part of said Defendants are without, or in excess of, the jurisdiction of the said Magna Water Company and its Board of Trustees, due to the fact that Chapter 24, Laws of Utah, 1949, by authority of which the Defendants, Magna Water Company and its Board of Trustees, exist and operate, is in violation of the Constitution of the State of Utah.

VII

That no other plain, speedy and adequate remedy exists or is available to the Plaintiff to provide the relief sought herein. That no other remedy provides a sufficiently speedy relief to meet the emergency confronting the Plaintiff and his fellow residents of the Magna area for the following reasons:

A. The facilities in the Magna area for the supply of water to the Plaintiff and his fellow residents are perilously inadequate.

(1) Construction of new homes desperately needed to house the rapidly expanding population of the area is arrested by the lack of adequate water supply; the Federal Housing Administration has refused to guarantee loans on projected home construction in the area, and the Board of Health of the State of Utah has halted the further construction of homes all on the grounds that the water supply and reserves are inadequate to support further housing.

(2) Recent failures in the water supply system of the area have caused numerous homes this summer to be without water for periods of several hours at a time, and the condition of the system threatens a serious health menace to the Plaintiff and to other residents of the community.

(3) Lack of reserve water supply and the defective undependable nature of the present water facilities subject the Plaintiff and the residents of the community to the danger of serious fire hazards.

B. The making of necessary improvements in the Magna water system and the acquisition of additional water sources for the benefit of the Plaintiff and his fellow residents must await the decision of this Court relative to the constitutionality of Chapter 24, Laws of Utah 1949, and the decision of this Court as to the authority of the Magna Water Company to issue its bonds.

VIII

That said statute is in violation of the law and the Constitution of the State of Utah in this:

A. That the legislature in enacting said statute exceeded its constitutional powers.

B. That said statute violates the provisions of Article VI, Section 29, and Article XI, Section 5 of the Constitution of the State of Utah in that it delegates to a special commission, private corporation or association power to assume, supervise or interfere with municipal functions, and has by special law created a corporation for municipal purposes.

C. That said statute is in violation of Article V of the Constitution of the State of Utah in that said statute is so vague and indefinite that were the courts to interpret the same the courts would be required to act in a legislative rather than a judicial capacity.

D. That said statute violates the provisions of Article I, Sections 7 and 11 of the Constitution of the State of Utah, in this, that the statute does not pro-

vide for adequate review by the Courts, and in fact prohibits or limits review.

E. That said statute violates Article I, Section 4 of the Constitution of the State of Utah in that it requires qualifications to vote, and further that it violates Article IV, Sections 2 and 7 by requiring more qualifications to vote in an election than are specified in the Constitution of the State of Utah.

F. That said statute is in violation of Article I, Section 7, and Article XIV, Section 3 of the Constitution of the State of Utah in that it deprives a man of his property without due process of law.

G. That said statute violates Article XIV, Section 4 of the Constitution of the State of Utah in that it enables a city, county, town, school district or other municipal corporation to exceed the debt limits imposed by the Constitution.

H. That the provisions of Section 8 of said statute under subheading "Proceedings on Bond Issue" relative to advertising bonds for sale only in Salt Lake City papers, is in violation of Article I, Section 24 of the Constitution of the State of Utah.

I. That Section 12 of said statute, relative to the sale of water outside the District, is in violation of the spirit and intent of the constitutional prohibition set forth in Article XI, Section 6 of the Constitution of the State of Utah. Said statute also violates Article XI, Section 6 of the Constitution of the State of Utah in that Sections 11 and 14 of said statute authorize the Board of Trustees to establish any water rates that it desires, whereas the Constitution provides that municipalities must provide water to their inhabitants at reasonable charges.

J. That Article I, Sections 1, 2 and 27 of the Constitution of the State of Utah remind the citizens of Utah that every citizen has certain inherent and inalienable rights; that all political power is in the people and that frequent recurrence to these fundamental principles is essential to the security of individual rights and the perpetuity of free government; that Chapter 24, Laws of Utah, 1949, is in violation of these provisions of the Constitution.

WHEREFORE: Plaintiff prays that the Court issue a Writ arresting and prohibiting the Defendants, Magna Water Company, its Board of Trustees and P. W. Seay, B. L. Casey and Howard Ridge, individually and as a board, from issuing any and all bonds of the District of any nature whatsoever, and for such other and further relief as to the Court shall seem proper.

Dated this 23rd day of June, 1950.

ROY F. TYGESEN
Plaintiff

Received copy of foregoing Complaint this 23rd day of June, 1950.

MARVIN J. BERTOCH
OF ROMNEY, BOYER & BERTOCH
Attorneys for Defendants,
1409 Walker Bank Building
Salt Lake City, Utah

CLINTON D. VERNON
Attorney General of the
State of Utah, Third Party Defendant

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

ROY F. TYGESEN,
Plaintiff,

vs.

MAGNA WATER COMPANY,
an Improvement District, and
P. W. SEAY, B. L. CASEY
and HOWARD RIDGE, its
Board of Trustees,
Defendants.

CLINTON D. VERNON,
Attorney General of the
State of Utah,
Third Party Defendant.

ANSWER
Case No. 7550

Defendants, Magna Water Company and P. W. Seay, B. L. Casey and Howard Ridge, its Board of Trustees, for answer to Plaintiff's Complaint on file herein, admit, deny and allege as follows:

I

Defendants admit each and every allegation of Paragraphs I, II, III, IV and V and VII of Plaintiff's Complaint on file herein.

II

Defendants admit the allegations in Paragraph VI of Plaintiff's Complaint to the effect that the pur-

pose of the Complaint is to challenge the constitutionality of Chapter 24, Laws of Utah, 1949, and admit that the extraordinary writ provided for in Rule 65 B (4) Utah Rules of Civil Procedure, the issuance of which Plaintiff seeks in this case, provides the appropriate method to contest the constitutionality of a statute of the State of Utah, or portions thereof, and that it is the appropriate method by which the Court should arrest and prohibit the issuance of the bonds of the District should the Court determine that Chapter 24, Laws of Utah 1949, is unconstitutional, but Defendants deny that Chapter 24, Laws of Utah, 1949, or any part thereof, is in violation of the Constitution of the State of Utah.

III

Defendants deny each and every allegation of Paragraph VIII and each and every subparagraph thereof.

WHEREFORE: Defendants pray that the writ sought by Plaintiff's Complaint be denied.

MARVIN J. BERTOCH
OF ROMNEY, BOYER & BERTOCH
Attorneys for Defendants
1409 Walker Bank Building
Salt Lake City, Utah

Received copy of foregoing Answer this 24th day of June 1950.

ROY F. TYGESEN
Plaintiff
Magna, Utah

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

ROY F. TYGESEN,

Plaintiff,

vs.

MAGNA WATER COMPANY,
an Improvement District, and
P. W. SEAY, B. L. CASEY
and HOWARD RIDGE, its
Board of Trustees,

Defendants.

CLINTON D. VERNON,
Attorney General of the
State of Utah,

Third Party Defendant.

ALTERNATIVE
WRIT

Case No. 7550

WHEREAS, the Plaintiff filed a Complaint in this Court on the 24th day of June, 1950, asking the Court for an extraordinary writ arresting and prohibiting the Defendant, MAGNA WATER COMPANY, an Improvement District, its Board of Trustees, P. W. Seay, B. L. Casey and Howard Ridge, individually and as a Board, from issuing any and all bonds of the Magna Water Company, an Improvement District, and

WHEREAS, Defendants have filed an Answer herein rendering the cause at issue, and

WHEREAS, on the 26th day of June, 1950, the Plaintiff, Roy F. Tygesen; the Defendants, Magna Water Company, an Improvement District, and its Board of Trustees, by and through their attorneys, Romney, Boyer and Bertoch; and the Attorney General of the State of Utah, by and through John Brennan, Deputy Attorney General; appeared before this Court and they having made oral representations as to the purpose and scope of the cause, and having asked the court to assume jurisdiction of the cause, and all parties having agreed to the issuance of an alternative writ, and having agreed to submit the matter on Briefs without further oral argument;

IT IS THEREFORE ORDERED that the Defendant, Magna Water Company, an Improvement District, and P. W. Seay, B. L. Casey and Howard Ridge, its Board of Trustees, individually and as a Board, be, and hereby are restrained and prohibited, until further order of this Court, from issuing any and all bonds of the District of any nature whatsoever.

IT IS FURTHER ORDERED that Plaintiff and Defendants prepare and present Briefs on the cause for the consideration of the Court. The Court thereupon shall determine whether or not a peremptory writ shall be issued or denied; provided, however, that the Court may in its discretion require further oral argument or the filing of supplemental briefs before deciding the cause.

IT IS FURTHER ORDERED that the Attorney General may join Defendants in the preparation and submission of Defendants' Brief.

Done in Open Court this 26th day of June, 1950.

Witness the Honorable Supreme Court of the State of Utah and the Justices thereof.

LELAND M. CUMMINGS
Clerk

Received copy of foregoing Alternative Writ this 27th day of June, 1950.

MARVIN J. BERTOCH
OF ROMNEY, BOYER & BERTOCH
Attorneys for Defendants
1409 Walker Bank Building
Salt Lake City, Utah

CLINTON D. VERNON
Attorney General

IN THE
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Attorney General of the
State of Utah,
Third Party Defendant.

PLAINTIFF'S
BRIEF

Case No. 7550

STATEMENT OF FACTS

In preparing the brief in support of Plaintiff's complaint, a summary of the admitted facts should be helpful in arriving at a determination of the issues involved:

The town of Magna, located in the Southwest portion of Salt Lake County, is not incorporated. It is the fourth largest community in Salt Lake County, only

being exceeded in population by Salt Lake City, Murray, and South Salt Lake. Magna is reported to be the largest unincorporated densely populated area in the United States; certainly it is the largest in Utah. Within an approximate one square mile area is contained about 3,500 people, some 1,000 homes, and 100 places of business. In addition about two to three hundred homes, will be, or are now being, built.

Magna has a sewer system and disposal plant, garbage collection, street lights, street maintenance, fire and police protection, Justice of Peace court, a county recreation program, all furnished by Salt Lake County. In addition to these services, the Granite School District maintain, operate, and manage the schools, the Magna Mosquito Abatement District have the responsibility of insect control. Public utilities furnish gas, light, phone, passenger, and freight services, and culinary water. In fact, Magna has practically all services furnished under city government except self rule. Magna is governed by the Salt Lake County Board of County Commissioners.

The Pleasant Green Water Company, a private corporation regulated by the Public Service Commission, now furnishes culinary water to the community for its domestic needs. Plaintiff agrees that this company does not furnish adequate service to the community in the form of pressure or fire protection. To indicate the status of the present supply, Plaintiff points out that a fire occurred in Magna two years ago which burned down the Junior High School. Granite School District spent nearly a million dollars replacing this

structure. It was contended at the time that the lack of fire hydrants and water pressure contributed to this loss. In any event, Plaintiff agrees that the lack of water pressure and fire hydrants in the present system constitute a fire hazard.

Magna is in need of a large number of new homes to house present employees of the copper mills and smelters. In addition, the copper industry is spending millions of dollars on a copper refinery plant which is nearing completion. They will employ from 1,000 to 1,500 additional men. Homes in this area will be needed for these new employees.

On the other hand, the building of new homes is now being curtailed for the reason that the Pleasant Green Water Company cannot supply the present needs of the community, let alone supplying new homes. Permits for new construction have been limited to 54, and 300 or more are needed.

Plaintiff agrees that the need for an improved water system is urgent, and the program of the defendants in that regard is commendable. However, Plaintiff contends that defendants' method of accomplishing the same is in violation of law, and that sooner or later the courts will determine that Chapter 24, Laws of Utah 1949, is unconstitutional. To do so at a later date will cause Plaintiff and all the residents of Magna irreparable damage. Further, that a determination by this court at this time that this act is unconstitutional will permit the Pleasant Green Water Company to make needed improvements, or

justify other private or public groups to proceed with a program that will meet the needs of Magna for an adequate water system.

It is Plaintiff's position that the present trend is away from incorporating into cities and towns, and vesting more and more power in county governments, commissions, and boards, to furnish needed facilities to unincorporated areas. Plaintiff concedes that the very purpose of the law now being considered in this proceedings was to permit unincorporated areas of the state to obtain adequate water and sewer facilities for their communities without being required to incorporate. Plaintiff makes no arguments against the advisability of such a trend. Plaintiff's only contention in bringing this action is to have the court determine how far the legislature might go along this line, and still remain within constitutional limitations.

So far as the present case is concerned, Plaintiff concedes that the Magna Water Company, an improvement district, was set up in accordance with the requirements of Chapter 24, Laws of Utah 1949. Further that the above named defendants are the duly elected, qualified, and acting Board of Trustees of the MAGNA WATER COMPANY, an improvement district. That all steps taken up to the present time are in accordance with that law, and if Chapter 24, Laws of Utah 1949, is constitutional, then the above named defendants should proceed with their program of selling bonds and improving the Magna Water System to a point where an adequate water supply and

distribution system is furnished the people of this area.

Plaintiff also admits that there is a dire need for this improvement from the standpoint of health, comfort, fire protection, and the economic growth of the community. It is Plaintiff's understanding that there is no dispute as to issues of fact, and defendants in their brief will so indicate.

Plaintiff is his own attorney in this matter, not so much from a matter of choice, as expediency. He feels that the court should know that as a resident of the community of Magna and as an attorney, he has for years worked with civic groups and other attorneys on legislation that would permit the community of Magna to own its own water system without incorporation. In this connection Plaintiff has actively participated in preparing this law and the law it replaced and lobbied for the passage of both laws. After this law was passed, Plaintiff actively participated in the necessary steps leading up to the creation of the defendant Water Company, and the bond election. In fact, Plaintiff anticipates a substantial legal fee for services rendered, conditioned on this court holding this law constitutional. Plaintiff feels that the court is entitled to know these facts.

On the other hand, Plaintiff is extremely anxious that the court pass on the validity of this act, and if it violates the constitution in any regard, to have this court now determine that matter. A decision so hold-

ing, at a later date, would result in costly delay and irreparable damage to Plaintiff and residents of Magna.

In preparing this brief, Plaintiff has kept in mind his responsibility to the court to submit all matters that might be helpful in a determination of the issues. Plaintiff has endeavored, with the able assistance of a number of other interested attorneys and parties, to so do. Any deficiencies of Plaintiff's brief in this regard should be charged to his lack of ability, rather than to his sincere effort to submit a brief that would assist the court in determining the issues here involved.

In reading this court's recent decision relative to the constitutionality of similar laws, Plaintiff feels that it would be presumptuous on his part to seriously contend that these decisions should not be sustained. In view of the enormous amounts of monies spent by various districts and the benefits resulting to the people of the state in such programs in reliance on this court's decision, Plaintiff can only agree that the trend of the courts and the legislature toward vesting more and more authority in these "Quasi-municipal corporations" is salutary.

To indicate this trend toward vesting more and more rights and duties in "Boards", and "Quasi-municipal corporations", see 43 Corpus Juris 12-13 page 73; and Volume 1 McQuillan Municipal Corporations, second edition, paragraphs 134-135 at page 399. It appears these quasi-municipal corporations have been

created for almost every conceivable purpose and held to be constitutional by the courts.

Unfortunately the courts have made a liberal interpretation of the various state constitutions so as to hold these laws creating special "districts" constitutional, but have failed to be as liberal in determining that constitutional limitations on cities, towns, and counties should apply to "districts".

McQuillan (cited above) gives a long treatise on the origin of city and town government and traces their history to the present trend of vesting more and more powers, duties, and rights in "Quasi-municipal corporations".

It is Plaintiff's position that if the court continues to sustain the present trend toward vesting more and more authority in "Boards" and "Special Districts", or "Quasi-municipal corporations", then the court should establish some standards as to how far the legislature might go in these matters and still remain within constitutional limitations. In the present case, Plaintiff contends that the legislature far exceeded its authority and constitutional limitations in enacting Chapter 24, Laws of Utah 1949.

Plaintiff in his brief will attempt to follow the objections as set out in his complaint under paragraph 8 page 3 thereof and refer to them under the caption as contained therein. (Pages 8-9-10 of this brief.)

LEGISLATURE EXCEEDED ITS CONSTITUTIONAL POWERS

(8A) This of course is all inclusive and the contentions of Plaintiff as to unconstitutionality will be set out in more detail later.

DELEGATION OF POWERS TO SPECIAL COMMISSIONS

(8B) The question of delegation of powers to special "Boards" such as in this law "Chapter 24, Laws of Utah 1949" has been sustained by this court. The makers of Utah's constitution went to great length in setting up the powers of cities and towns, as well as limiting the power of the legislature to interfere with these powers. Little is said in our constitution on the powers of county government. It is apparent that in 1895 the makers of the constitution never anticipated that the activities of County Commissioners would expand to their present status. To illustrate, in 1895 activities of County Commissioners was minute. Compare that to today's condition. In Magna, the Board of County Commissioners control and regulate police and fire protection, light the streets, collect garbage, surface streets, clear streets and sidewalks of snow in winter, put in curb, gutters, and sidewalks, operate the sewer and tell users how, where, when, and at what price they can use the sewer. They select the men who run the Mosquito District and collect the taxes to operate the district. They pass regulations as to buildings, license and control business. They even number the houses. In fact, the powers of the Board of

County Commissioners over the community of Magna are almost identical with that of cities and town fathers over their communities.

In the law before the court, at Section 1 (2), it is provided that a district cannot include cities or towns. Accordingly the question under consideration must be limited to whether or not this is a delegation of powers to "Boards" that should properly vest in County Commissioners.

Utah's constitution is not expansive as to powers, duties, and limitations of county government. Article VI Section 26 lists a number of limitations on the legislature. (3), (8), (11), (16) particularly apply to counties. Section 29 of the same article prohibits the delegation of "municipal functions". If the word "municipal" is limited to cities and towns, then the law before the court is not affected. Plaintiff contends the word "municipal" includes normal county functions considered in the light of present conditions. Article XI Sections 1-2-3-4 and 5 relate to county government. Again the word "municipal" is used. Section 5 says no "corporation for municipal purposes" shall be created. The next line specifies that the legislature *shall provide for* incorporation of cities and towns. The only conclusion that can be reached is that the makers of our constitution intended to distinguish between "cities and towns", and "municipal corporations".

Again at Section 6 of the same article "municipal corporations" is used. Article XIII Section 5 vests in

the county power to levy taxes for its own purpose, and prohibits the legislature from so doing. Article XIV Section 3-4-5-6-7 sets up debt limitations on counties.

Does the present law violate these provisions of the constitution by delegating powers of the county in "Boards"? Plaintiff contends that it does.

At the present time Salt Lake County is actively engaged in vestigating the advisability of creating a county distribution system for culinary water and sewer systems. In view of the many expanded activities of County Commissions, Plaintiff believes that the courts would consider furnishing water a part of their "municipal function". Now can the legislature delegate to a "District" this municipal function? Certainly the courts would not approve a "District" for the purpose of operating the Salt Lake County Hospital, taking care of roads and bridges, making county surveys, or the many, many duties now carried on by the Salt Lake County Commissioners.

The legislature went into detail in delegating powers to counties. In Utah Code Annotated 1943 the following is shown: 19-4-1 says counties are bodies corporate and politic and have powers vested and necessarily implied. 19-4-2 says county commissioners shall govern the county. 19-5-17 authorizes the county commission to divide the county into precincts and into road, sanitary, and other districts. 19-5-19 says counties may supervise officials and officers of districts and other subdivisions of the county. 19-5-27 says they

may license, regulate, tax, and control all activities in the county, pass ordinances and enforce them by fine and imprisonment. 19-5-28 to 50 inclusive list additional rights, duties, and powers of county commissioners. 19-5-35 says that they can regulate sanitation. 19-5-43 provides they may buy, sell, control, and construct reservoirs, dams, canals, and fix the price for water. 19-5-50 says they can perform all acts necessary to discharge their duties as county commissioners. In fact the reading of Chapter 19 of Utah Code Annotated 1943, and subsequent legislation, clearly establishes that the legislature intended to vest in county commissioners almost the same powers as are vested in cities.

Plaintiff concedes that the courts have repeatedly held the legislature has the power to grant or take away powers, subject to limitations of the state constitution. The problem that is presented here is, does the limitation imposed by Article XI Section 5 of our constitution apply to counties insofar as a water district is concerned. Article VI Section 26, at the end thereof says, "In all cases where a general law can be applicable, no special law shall be enacted". Certainly Title 19 is a general law and can be applicable.

If this law is constitutional, then what powers of the County Commissioners are taken away as set out in Title 19 Utah Code Annotated 1943. Are conflicting statutes repealed? To illustrate: suppose the county wanted to buy the same water supply that the defendants wanted to buy. Who would have priority? Suppose the county decided to establish the price of

water in the county; then what happens to the provision of Chapter 24 Laws of Utah 1949 which says the Trustees shall set water rates?

Plaintiff admits that he is at a loss to define the meaning of the word "municipal" or "municipal function" as used in our constitution, nor has he been able to find much aid in the cases read. 43 Corpus Juris, paragraph 1, page 65; paragraph 3, page 68; and paragraph 12, pages 73 and 74 deal with the problem. McQuillan Municipal Corporation, second edition, Vol. I, page 383, paragraph 128 deals with this matter.

43 Corpus Juris paragraph 6, page 70 says a municipality is designed to preserve its own type of life, rules, and regulations. When it furnishes utilities it becomes a quasi-public corporation.

15 Corpus Juris paragraph 43, page 417 says counties are "Quasi-corporations for municipal purposes, and the organizing of a county is the vesting in the people of such territory, such corporate rights and powers". On the other hand, 15 Corpus Juris paragraph 103, page 457 indicates the legislature has full power to enlarge or delete the powers of counties.

15 Corpus Juris paragraph 277, page 573 indicates that counties have only such powers as are expressly granted them by the legislature.

In the case of *Lehi City vs. Meiling, City Recorder* (Utah case decided July 16, 1935) 48 Pac. 2nd 530, the court said, at page 535, "None of the municipal functions of the component cities or towns is conferred

on or delegated to the Metropolitan Water District. Each of such cities and towns will possess and may continue to exercise every municipal function it now has. There need be no friction between the two, but the closest cooperation is contemplated and should result."

In the same case at pages 540-541 the court after discussing the classifications says "a metropolitan water district is *not* a municipal corporation." Later the court says "The characterization 'Quasi-municipal' we think accurate".

Judge Wolfe in a concurring opinion in the same case at pages 545-49 discusses at length this problem of encroachment by special boards on municipal functions. At page 546 Judge Wolfe says "A study of this and like provisions in other constitutions reveal the fact that it appears in those other constitutions in connection with other sections which give it more distinctly the content of purpose to prevent interference by the legislature with local self government, especially in the matter of such local units handling their property, improvements, and money. *We believe the fundamental purpose of this whole section (Article VI Section 29) was to prevent interference with local self government*".

At page 548 Judge Wolfe suggests that no public agency could be given power by the legislature to tax people for purposes of performing municipal functions which a municipality is doing or could do.

In the same case Judge Moffat in a dissenting opinion classifies these "Boards" or "Districts" as a "*hybrid* entity". He contends they are merely an indirect method of violating the constitutional limitation on delegation of municipal power, debt limitations, and other such limitations. He said "The courts should carefully scrutinize this '*hybrid* entity' and rather than determine everything in favor of constitutionality, should require strict compliance with constitutional limitations imposed on 'municipal corporations'".

In the case of *Upper Blue Bench Irrigation District vs. Continental National Bank and Trust Company*, (Utah case decided October 25, 1937) 72 Pac. 2nd 1048, the court says an irrigation district is a department of state government and exempt from attachment or garnishment. Again in the case of *Beard vs. Board of Education of North Summit School District*, (Utah case decided December 10, 1932) 16 Pac. 2nd 900, the court held that the powers of a district are almost unlimited and the courts will not interfere with discretionary action of boards. To the same effect is *Salt Lake County vs. Salt Lake City*, (Utah case decided April 30, 1913) 134 Pac. 560. It appears there is no limitation on what the legislature can do in delegation of power to "Districts", "Boards", and "Commissions". Judge Straup in an opinion of his own on the matter indicated that our state constitution was being broken down and its limitations disregarded.

In the case of *Pattereck vs. Carbon Water Conservancy District*, (Utah case decided January 26, 1944) 145 Pac. 2nd 503, 106 Utah 55, the court said at page 511, "Should a board act in a manner which would be unconstitutional there is nothing in the act itself which would preclude a person aggrieved from resorting to the courts to have his rights protected." At page 511 and 512 the court says statutory limitations as to corporations for "municipal purposes", sale of water, debt limitations, limit on yearly taxation "apply only to cities, towns, and villages — and do not apply to water conservancy districts which are not municipalities within the contemplation of that term used in the constitution". In the same case this statement is made "The legislature had the power to create a water conservancy district by its own fiat. It need not have given any individual or group the right to petition for the creation of a district. It was within its discretion to determine what qualifications, if any, a petitioner for the creation of a district must have, since the petition for the formation of the district itself do not effect any property rights. Had the legislature created the district it could have provided for a tax on all property within the district to pay for the costs and maintenance of the project".

Judge Wolfe in a concurring opinion at page 513 says "The Plaintiff has assumed that due process of law requires that landowners whose lands are likely to be embraced by the district, be given a chance to determine whether or not they want such a district. *This however is not the law*".

In the case last cited an aggrieved person is assured he can resort to the courts to have his rights protected. In view of the present trend of decisions relative to these "Districts", a person aggrieved has no rights for the court to protect.

Plaintiff strongly urges that the courts should follow the suggestions of Judge Straup and Judge Moffat, and clearly set out the limitations of said districts, and determine that the word municipal and the term "municipal functions" as used in our constitution should be clearly defined. Further that no special law creating districts should be approved where a general law vests that power in counties or cities and towns; unless the legislature by express and explicit direction repeal the general law on the statute books. Unless the courts do step in and clarify this matter, our statutes will so conflict that no one will know how he is governed or by whom.

Plaintiff seriously contends that Chapter 24 Laws of Utah 1949 is unconstitutional as being an improper delegation of power, the creation of districts without limitations, and in conflict with general laws already established.

REQUIRES THIS COURT TO ACT IN A LEGISLATIVE CAPACITY.

(Plaintiff's complaint 8 C) Article V of our constitution prohibits the courts from making laws. It is the position of Plaintiff that Chapter 24 Laws of Utah 1949, is so vague and uncertain that the courts

will from time to time be required to interpret most of the statute and in so doing will defeat the intent and purpose of the legislature. Plaintiff draws to the court's attention a few of these matters that would require interpretation by the courts:—

A. Section 1 provides “and the boundaries of no district shall overlap the boundaries of any other district”. Magna has its own sewer district, with about the same area as included in the Magna Water Company District. The Magna Mosquito Abatement District, the Granite School District, the proposed Salt Lake County Water Conservancy District, all include the area covered by the Magna Water Company. Does the wording “any other district” refer to these districts? Why did the legislature make this limitation—to avoid overlapping? Dual taxation? Dual regulations? Dual control?

B. Section 3 provides “where title to any real property in the district is held in the name of more than one person, all the persons holding title thereto must join in the signing of the written protest. Plaintiff knows of one piece of property in the district owned by five brothers and sisters, and the brothers' wives do not appear on the deed. Suppose one of the five refused to sign? Suppose a wife refused to sign?

C. Sections 3 and 5 provide “The deed records of the county shall be accepted as final and conclusive evidence of the ownership of the real property of the district”. Suppose the owner fails to record his deed? (This actually occurred.) Suppose the owner is dead.

Can his administrator, executor, or heir vote? Suppose a man is buying under contract and owns 99% of the equity? These provisions may be constitutional, but certainly are inequitable and discriminatory.

D. Section 6 provides "The election shall be held—in the manner at such time provided by the laws of Utah for the holding of elections on the issuance of 'Court House Bonds by counties' ". Plaintiff (and a number of other attorneys including Mr. Bertoch, attorney for defendants) has been unable to find any constitutional or legislative provisions in Utah relative to *court house bonds*.

E. Section 7, "Qualification of voters", prescribes who may vote on the bond election and for trustees. Does "pay a property tax" mean real property - personal property - auto - income and/or sales tax? Does "in the year next preceding the election" eliminate veterans exempt from paying real property from voting?

F. Section 7, "Powers of Trustees", is so general in its nature that neither the trustees nor the courts could determine the intent and purpose of the legislature. The same applies to Sections 11 and 14.

The foregoing are set out for the purpose of indicating to the court a few of the issues that could be raised under this law. If the court should determine these issues, would the law still carry out the original intent and purpose of the Legislature?

Plaintiff is aware of this court repeatedly holding that matters not properly before the court will not be determined. He should like to impress upon the court the fact that if the Trustees of the Magna Water Company obtain \$250,000.00 from the sale of bonds, spend the money, incur obligations, etc., and then these matters are brought to the attention of the court, it is too late to remedy them, and Plaintiff and residents of Magna will have suffered irreparable damage.

Plaintiff seriously contends that if the legislature has power to create "Quasi-municipal corporations" as is done here, the court should insist that these laws should be definite and certain. The constitution is explicit in what cities and towns can and cannot do. Should not the same be required by "Districts"?

LIMITS OR PROHIBITS REVIEW BY THE COURTS.

(Plaintiff's complaint 8 D) Article I Section 7 and 11 guarantee to every person his day in court. However, this law not only fails to provide for review, but prohibits or limits the same. Keeping in mind the court's ruling in the Carbon Conservancy District case, and the Metropolitan Water District case, Plaintiff contends that Chapter 24, Laws of Utah 1949 is unconstitutional in this:—

Generally speaking this entire law vests extensive rights in the County Commission and "Trustees" but is silent as to any right to review these actions.

Specifically, Section 3 provides that a protestant has only thirty days to file his protest in the district court, and limits the grounds for said review. It precludes the right to object or go into court after the thirty days; even then the district court can only determine whether the property is benefited, and whether the district was created in compliance with this statute.

Plaintiff draws to the court's attention this fact: the only thing the protestant had before him at that time was (a) the boundaries of the district, and (b) a general statement as to purpose. The last portion of Section 3 provides "The provision of the petition shall be not considered to be a limitation on the right of the Board to submit a bond issue in whatever amount and for whatever improvement may be found desirable *after* the District has been organized".

Let us assume this hypothetical case. Protestant wants a new water supply and favors the general purpose and boundaries. In the resolution the commission estimates the costs to be fifty thousand dollars. Protestant thinks that's fine, and endorses the creation of the district. Thirty-one days after the district is created, fifty property owners present a petition for a bond election calling for a bond issue of \$250,000.00. What happens to protestant's rights to object? Thirty days have passed. His "failure to apply for such writ of review within said time shall foreclose all owners of property within said district as so established from the right to further object thereto".

Suppose protestant does not agree with the many matters the commission may do in calling a bond election, such as whether the signers of the petition are property owners, sufficiency of notice, is the improvement beneficial, is the extent of proposed improvements excessive, are the boundaries or assessed valuation correct, whether written protests represent half the assessed valuation. What can protestant do? "File a written protest". The County Commission says by resolution, the written "protests so filed represent less than half of the assessed valuation of the real property in the district". The County Commission do not even have to have a definite determination of the assessed valuation of the district. The statute says "The board may require" such a report. Now the legislature steps in and in the final portion of Section 5 says "If any written protests are filed, and the board shall determine that the protests so filed represent less than half of the assessed valuation of the real property in the district, the resolution or order of the Board calling the election shall contain a recital to that effect", and such recital *shall be binding and conclusive for all purposes*. Is that conclusive as to review by the courts?

Protestants' only recourse is to vote down the bond issue. It seems that up to this point three county commissioners and fifty property owners decide the fate of a community consisting of 3,500 people or more. The burden of defeating the bond election is an excessive burden on protestant. The statute provides no recourse to the courts for review.

Now the bond issue carries, the protestant is lulled into a sense of security by a representation by the trustees to the effect "that they will not issue bonds for the full amount voted—\$250,000.00—and points out to the protestant the portion of Section 8 under "proceedings on bond issue" to the effect "May _____ issue such bonds or *such amount thereof* as it may determine". The "Trustees" proceed to advertise and sell the bonds, and in selling them, "shall recite in their resolution that they are issued under the authority of this Chapter" (24). The legislature then says in Chapter 24, Section 10, "Such recital shall conclusively import full compliance with all of the provisions of this Chapter, and all bonds issued containing such recital shall be *incontestable for any cause whatsoever* after their delivery for value".

Section 8 under "proceedings on bond issue" provides "all bonds not issued payable solely from such revenues shall be the general obligations of the district and the full faith, credit and resources of the district shall be pledged for the payment thereof". Section 9 says the County Commission *must* levy taxes to pay this obligation. Section 7 under "annual budget" provides "such taxes shall be extended and collected in the manner provided by law for the collection of general county taxes . . . " "All laws applicable to the imposition, collection, and enforcement of general county taxes, including those pertaining to the allowance of collection fees, to the imposition of penalties for delinquencies and to the *sale of property for non-payment of taxes*, shall be applicable to the taxes so levied for the district".

Section 14 provides that the Board *may* adopt a resolution for publication as to what the board has done. Protestant has thirty days to contest the legality of the Board's action, and thereafter "no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever". Suppose they do not publish the resolution? Merely adopt it?

Plaintiff seriously contends that Chapter 24 Laws of Utah 1949 is in direct violation of Article I Section 7 and 11 of our constitution, in that it not only fails to provide for adequate review, but in fact directly prohibits review, or makes possible residents of the community being lulled into a sense of security until the time to exercise their right to review have passed.

In reading cases on this matter Plaintiff found these citations that might be helpful:

15 Corpus Juris paragraph 125 at page 473-474 says "appeals from decisions of county boards are not a matter of right, and are allowable only in cases provided by statute". At page 474 it is indicated that no recourse can be had to courts where statute provides the determination shall be conclusive. Paragraph 127 page 475 indicates that a limitation on time to appeal a decision of a "District" or county board controls and unless recourse to the courts is taken within the time specified, the protestant has lost his right.

On the other hand, this court in the case of *Argyle vs. Johnson*, 118 Pac. 487, seriously criticized

the “act” there involved for its failure to provide for and its limitations on right to review by the courts. At page 492 the court said, “When, however, a drain is proposed or constructed and an assessment made and a tax levied upon such lands, upon the grounds they are improved or benefited by such drain, and such tax is declared a lien upon the land, to discharge which the land may be sold, then the landowner is being affected in his property rights and is entitled to be heard *before* the tax and lien are irrevocably established”.

In the same case the court said at page 493 “Such laws are salutary and should be reasonably construed, and unless violative of some fundamental or constitutional right, should be upheld. In adopting such laws, however, the rights of all interested persons must be recognized and protected, and an opportunity to be heard must be given”. At page 493 the court suggests that “hearings” be before some disinterested parties, not before the one whose acts are being reviewed.

In the case of *Lehi City vs. Meiling*, already cited, this court at page 536 said, “The right to be heard before a competent tribunal on the question of benefits is essential to avoid running counter to the constitutional requirement of due process before the imposition of burdens which might result in depriving a land owner of his property by means of special assessments”. The court cites the *Argyle* case as authority.

In the case of *State ex Rel Ferry vs. Corrine Drainage District of Box Elder County*, (Utah case decided March 27, 1916) 156 Pac. 921, at page 923 the court upheld the amended law as to a right for a hearing and notice being adequate, and in so doing the court said, the affected persons were given notice of "the starting point or points, route or routes, terminal or termini and general description of the proposed work . . . " relative to the drainage canal for which he would be taxed. In other words, this court said that when a person within the district knew where the drains would run, he then would be in a position to appear before the commission and be heard as to benefits.

In the matter now before the court, the District has been created, the boundaries set, the Trustees elected and qualified, and a bond election held wherein these Trustees are authorized to sell general obligation bonds in the sum of \$75,000.00 for which Plaintiff can be taxed, as well as \$175,000.00 revenue bonds which Plaintiff will help to pay for in the form of a water bill. However, up to the present time Plaintiff is not advised as to whether the defendants will run a new main in front of Plaintiff's home, or if he will receive better pressure, or a different water supply. No plans are drawn of the proposed improvements. No one, including the defendants, know how much they will pay to the Pleasant Green Water Company for their system; in fact, no one knows whether the Pleasant Green Water Company will even sell. About one-third or two-fifths of the "District" is farm lands. No one knows if these farms will ever be improved

so as to benefit by the proposed new culinary water system. In short, the County Commission held a hearing on the question of whether the district should be created. At that hearing they determined *all* the property in the district will be benefited. Since they do not have a plan of improvement before them how can they know Plaintiff's property will be benefited? How do they know farm land will be benefited? Plaintiff can make no protest since he knows nothing about the proposed improvements. Such a hearing is a farce.

In the above case cited the statute went to great lengths to protect the property owners affected. Appeals from *all* orders of the commission could be had any time within six months after made. The Commission's orders must be definite and certain. Before any taxes can be levied the taxpayer knows the amount of tax and the purpose for which it will be used. Taxpayers are even mailed notices of the amount of each assessment, and a right to be heard as well as a right to appeal to the courts for review. Plaintiff here does not know the amount of his taxes that will be assessed, the water rate he will pay or what the money will be used for.

The same arguments apply to the provisions of the Metropolitan Water District Act and the Water Conservancy Act. It is understandable that the court would hold them constitutional. The constitution, Article XI Section 5 under (A) says " . . . to levy and collect special assessments for benefits conferred".

A distinction is made in the cases read by Plaintiff between the levy of a general over-all tax or ad valorem tax, and a special assessment tax.

In the *Argyle vs. Johnson* case the court apparently considered the levy to be imposed as a special assessment tax and required notice, hearing, and right of review by the courts. The court stressed the point that where a tax is levied for the improvement or benefit of land, the owner is entitled to be heard as to benefit *before* the tax is levied.

In the case of *Whitcher vs. Bonneville Irrigation District*, (Utah case decided May 2, 1927) 256 Pac. 785, the irrigation district expanded the district but never furnished water. The court said that this was a special improvement tax or assessment. At page 788 this court said "Special taxes are levied on the theory that the landowner receives benefits for the taxes which he is required to pay".

In the case of *Lehi City vs. Meiling*, the court considered the act for Metropolitan Water Districts. At page 536 the court indicated that taxes levied are not assessments for benefits, but is an ad valorem tax similar to general taxes and is "not an assessment for benefits as such is known in connection with drainage, irrigation, and other special assessment districts". Again at page 536 the court refers to the distinction as to "special assessments". Again at page 536-537 the court cites with approval a California case that held a tax to obtain a source of water was a general tax and not a special improvement tax.

At page 540 in the same case the court said "There is a marked distinction between such districts (irrigation, drainage, and mosquito) where assessments may be levied based on the benefits to the property included, and a metropolitan water district where taxes may be levied on the value of all the property within the district".

In the case of *Patterick vs. Carbon Water Conservancy District* the court apparently considered this act two-fold, part of the taxes were general and part special. The court held the act met the requirement of due process, and at page 511 said, "It is the public purposes for which a water conservancy district is organized that distinguishes it from a drainage or irrigation district. The public purposes for which a water conservancy district is organized inures to the benefit of the public generally and therefore the public can be charged for such benefits through general taxation".

Again at page 511 the court said, "Classes B, C, and D refer to taxes to be imposed for special benefits. Sections 100-11-17, 100-11-18, and 100-11-19 provide for the voluntary application of municipalities, irrigation districts or individuals for the special benefits they wish to obtain. These sections contain provision for notice to all persons interested and for hearing before the Board. Section 100-11-21 provides for hearing of objections to assessments to be levied and for notice by publication to all persons interested. It also contains a provision for appeal to the District Court from the findings of the Board. These sections fully provide for all the safeguards of a party's rights".

In that case the court held unconstitutional that portion of the act (100-11-7) denying a right of appeal.

Judge Wolfe in a concurring opinion at page 513 said "that no constitutional rights would be violated so long as notice and hearing were given on the amount of the assessments". Again at page 514 he said, "A district could be organized without notice or hearing so long as each landowner *was* given a hearing on the question of whether his lands *have* been benefited and should be assessed to pay for the said improvement". I wonder if Judge Wolfe used the words "*was*" and "*have*" intentionally? At least the party being assessed should know the particulars of the benefits before the hearing has been had.

The above case is cited with approval in the case of *In Re Arch Hurley Conservancy District*, 191 Pac. 2nd 338 (New Mexico case decided January 2, 1948). That court cites Carbon Water Conservancy District case with approval, but in so doing, at pages 343-344, they refer to the act itself to substantiate the court's holding, that is "That property within the proposed district *shall* be benefited" "It is apparent therefore that the act makes provision for a hearing as to whether or not lands included in the proposed boundaries will be benefited". In the same case at page 344 the court emphasizes these words " . . . includes the findings of benefits to each and every tract included in the project".

The Carbon Water Conservancy District case was again cited with approval in the case of *Nebraska Mid-*

state Reclamation District vs. Hall County, (Nebraska case decided February 24, 1950) 41 N. W. 2nd 397. Here the court at page 407 point out their legislature adopted a water conservancy act similar to that of Colorado and Utah and cite the Utah decision with approval only after pointing out the detailed protection given the property owner affected by the act itself.

If this matter of right of notice, hearing, and appeal is only given in case of special improvement taxes for benefits, then the question arises, is the taxes provided by Chapter 24 Laws of Utah 1949 a special improvement tax, or a general or ad valorem tax? Plaintiff contends the tax can only be interpreted as being a special improvement tax.

Plaintiff can assure this court that if he is going to be taxed without receiving direct benefits in the form of better water, better pressure, and fire protection for his home (not his neighbor or the people in other parts of the town) then he certainly would object to the creation of the district, or at least being included in the district. Unfortunately even the defendants have no idea whether such direct benefits will ever be furnished Plaintiff or any other particular individual piece of property in Magna. On the other hand, the District was created in December of 1949 or January of 1950. The law said Plaintiff must file his objections then or appeal the matter to the District Court within thirty days. (Section 3 of the Act.) Plaintiff can raise no objection now. His thirty days have passed. On the other hand Plaintiff even now

(July 1950) has no idea as to what direct benefits he will receive, or when they will be received, if ever. He can be quite sure that the \$250,000.00 will be paid by him and his fellow residents in the form of taxes or increased water bills.

In this same connection as to whether the tax is special or general, the act itself says: "The title is *Improvement District* — the word *Improvement* appears twice in the caption. Section 1 provides for the creation of *Improvement Districts*. Section 3 says "describe the nature and extent of the *improvements proposed*". The same section provides "In such resolution establishing such district, the Board of County Commissioners shall eliminate from said proposed district any property originally included therein, but which it shall determine will not be *benefited* by the proposed improvement". The writ of review to the district court can be based only on the grounds of "no benefits" or failure to follow the provisions of the law. Through the entire act, the matter of benefits predominates.

Section 5 of the act provides that the resolution adopted by the County Commission, among other things must contain a finding "that the proposed improvement would be for the *benefit of all* taxable property situate in the district".

Plaintiff contends that Chapter 24 Laws of Utah 1949 places these taxes in the category of a special assessment. The act itself so describes it. If that be true then this act is unconstitutional for the reason it pro-

vides no right of appeal and in fact prohibits it in some cases, and where the right to review is provided for, the protestant does not know what the program of the Trustees call for and so cannot determine whether to protest or favor their actions.

LIMITATION ON RIGHT TO VOTE.

(Plaintiff's complaint 8 E) Our Utah constitution provides at Article I Section 4, in the last line "no property qualification shall be required of any person to vote, or hold office, except as provided in this constitution. Article IV sets up additional rights. Section 7 of this article places limitations on this right when it involves special taxes or the question of creating indebtedness.

Plaintiff appreciates that limitations on the voters' rights to vote on these issues of special taxes or indebtedness have been repeatedly sustained by our courts. However, he contends Chapter 24 Laws of Utah 1949 exceeds all these limitations and is in violation of these constitutional provisions.

Section 7 under "qualification of voters" is discriminatory in this, that a person who owns property in the district, but resides outside can vote on the bond issue.

Only those who have "paid a property tax in the district in the year next preceding the election shall be permitted to vote" on the proposed bonds. If property tax is interpreted to mean "real property" then the

limitation is certainly discriminatory. If it means personal property and auto taxes, then it is more comprehensive. If it includes sales tax or income tax, then it would permit almost everyone to vote.

Plaintiff points out to the court this fact. The bond issue already approved by the people of Magna calls for \$175,000.00 revenue bonds and \$75,000.00 general obligation bonds. Who pays the revenue? The water user? Can he vote on the issuance of bonds if he has not paid a property tax? In addition to this, the Magna Water Company has already outlined its plan to realize enough money from sale of water to meet its obligations and no tax levy is anticipated. This is a common occurrence with water companies. So the man who does not pay "a property tax in the district" and uses water, pays the bill but cannot vote on the bond issue. If this bill provided that the bond issue would be paid in whole by taxes, it probably would not be in violation of the constitution. On the contrary, this bill specifically provides at Section 9 "payments from revenue" ". . . the bonds may be issued in such manner as not to be payable from taxes but to be payable solely from the revenues . . .". Even though the resolution calling for a bond election included the above provision, the law still limits the voters to those who "paid a property tax". If the consumer of the water is going to pay for the bonds, he should have the right to vote at the bond election.

NO DUE PROCESS OF LAW.

(Plaintiff's complaint 8 F) The matters heretofore set out and particularly those relative to 8D support Plaintiff's position that Chapter 24 Laws of Utah 1949 are unconstitutional in that a resident of the area is deprived of his property without due process of law.

All cases read by Plaintiff support the proposition that "due process of law" is a vested and precious right that should be safeguarded. In the *Whitcher* case at page 789 this court said, "To uphold taxes against appellants lands complained of in this proceeding would result in taking property without any consideration or benefit received whatsoever. A mere statement of this proposition convinces that it is repugnant to every equitable consideration and falls little short of confiscation. As we understand the authorities, taxes under facts such as here appear have never been upheld." In that case the court held the taxes already assessed to be null and void. Unfortunately for the people of Magna such a procedure would be of little help. If these Trustees are permitted to sell bonds and spend the money, the damage is done.

AUTHORIZES COUNTIES TO EXCEED DEBT LIMITATION

(Plaintiff's complaint 8 G) So far as Plaintiff can determine no Utah case on this problem has directly determined the question of debt limitation as applied to "Quasi-municipal corporations". Utah's

constitution is explicit in setting up debt limitations on town, city, county governments as well as school boards. It is generally accepted that the framers of our constitution were anxious to limit the power to tax, and the power to incur bonded indebtedness on the part of all governmental agencies.

In the water conservancy act 100-11-16 Utah code annotated, the legislature limited the taxing power of the district to $\frac{1}{2}$ mill before water was delivered and 1 mill afterwards.

In the case of irrigation districts the legislature at 100-9-26 sets a debt limit and any obligation incurred in excess is void.

Under the Metropolitan Water District Act at 100-10-18-g Utah code annotated 1949 the legislature prohibits any indebtedness of the district to exceed ten per cent of the assessed valuation.

Under the Mosquito Abatement District Act, no provision is made for bonded indebtedness of any kind, and the legislature at 56-0-9 Utah code annotated 1943 specifies the tax rate, "and in no event shall such tax exceed ten cents on each one hundred dollars of taxable property in such district".

Article XIII Section 7 and 9 limits rate of taxation. Article XIV determines public debt limit.

Plaintiff can find no direct limitation imposed by our constitution as to debts incurred by "Quasi-municipal corporations". However, it seems unthink-

able that the makers of the constitution even considered the possibility of creating districts without some limit as to their taxing power or amount of indebtedness they could incur.

It appears that so far as Utah is concerned the legislature has set up debt or tax limitation or both on these "Districts" when created. Presumably there is no constitutional limitation on the taxing power or debt limitations of districts other than that imposed by the spirit rather than the letter of the constitution.

15 Corpus Juris paragraph 277 page 573-574 deals with the problem of debt limitation. In the case of *Lehi City vs. Meiling*, already cited, this court at page 538 said, "The total sum to which a district may obligate itself to pay must be within the limits fixed by statute". In other words, the direct obligation and conditional or surety obligation should be computed together as a debt of the district and the total amount should not exceed the statutory limitation".

At pages 540 to 544 inclusive, the court extensively discusses the matter of debt limitation, and holds that the debts of the district are not a part of city or county debts. At page 542 the court said, "It is true the framers of the constitution feared debt and wisely attempted to place restrictions on the governmental subdivisions so they could not incur indebtedness in such amount as to lead to insolvency".

Judge Moffat and Judge Hansen in the *Lehi City vs. Meiling* case contend that the creation of these "hybrid entity" districts are merely an indirect

method of violating constitutional limitations on debt. In the Carbon Water Conservancy District case, Judge Moffat reiterated this position, and said, "Flexibility, adaptability, development, and stability of law are desirable. The paths of growth and adaptability are often devious, but should not be used to evade constitutional provisions".

The question of debt liability and the maximum amount of taxes that can be levied are of paramount interest to the water user or resident of the district. The Trustees under Section 11 have "the power to cause to be levied as above provided, taxes on all taxable property in the district for the carrying out of the purposes for which the district is created; provided, however, that the taxes so levied for any district, *other than those levied for the payment of principal of and interest on the bonds of the district*, shall not in any year exceed 4 mills on each dollar . . ."

In other words the Trustees can levy up to 4 mills for the carrying out of the purpose of the district or operation costs. No limitation of any kind is shown as to the amount of taxes the Trustees can impose to meet the payment of general obligation bonds and interest.

Let's assume a concrete example. Assume the assessed valuation of the Magna Water Company is one million dollars. The Trustees have already been authorized at the recent bond election, to issue general obligation bonds for \$75,000.00. They can use their own judgment as to when they will repay interest and

principal (see Section 9). Assume further they issue all these bonds payable annually over a ten year period with interest at five per cent or interest for the ten year priod of about one-fourth the bond issue or \$15,-750.00, a total of \$93,750.00. The Trustees could agree to pay back general obligation bonds and interest in ten years at the rate of \$9,375.00 per year. On a one million dollar assessed valuation, this would mean aboue nine and one-third mills per year. Under this same statute the Trustees could levy an additional four mills per year for operation costs, or a total annual levy of 13 1/3 mills.

In examining Plaintiff's last year's tax notice, I find I am taxed under six different categories on my real property. This does not include personal property tax, auto, licenses, livestock, etc., nor does it include the tax referred to above for taxes imposed by the Magna Water Company. Incidentally, all of the taxes referred to are collected by Salt Lake County.

The makers of our constitution in 1895 were concerned about taxes and debts. Plaintiff is vitally concerned, especially around November of each year. In fact the matter of taxation is a serious one in our nation today. On the other hand this court has approved drainage districts, irrigation districts, water conservancy districts, and metropolitan water districts. Under this court's rulings to date, the power of the legislature to pass laws permitting additional districts, or even creating them of their own volition, seems to have

no limitation. If this trend continues, the county will not have to take Plaintiff's home for taxes — he will give it to them.

Under the provisions of Chapter 24 Laws of Utah 1949 the Trustees must set Plaintiff's water rate at a figure that will pay off \$175,000.00 worth of revenue bonds plus interest for some twenty years. The Trustees have already indicated my water rate would be twice that now charged by the Pleasant Green Water Company. When the water rate reaches a figure Plaintiff cannot afford to pay, the Trustees shut off his water. Plaintiff is not so sure this statute does not vest power in the Trustees to deprive Plaintiff of a vested right without due process, since the Trustees set the water rate without being required to have a hearing on the matter, nor is the right for court review provided by this law.

Plaintiff appreciates that this court in the Carbon Water Conservancy District case held that the debts of the district could not be considered the debts of the participating cities and towns. However, in almost all of these districts and particularly in the act now before the court, the "district" is a creature of the County Commission. They declare their intention to create a district, set the boundaries and purpose, hold the election, collect the taxes, and the County Clerk and County Treasurer can act in that capacity for the district. The district merely acts for and in behalf of the County Commission to carry out a right and duty of the county. Plaintiff seriously contends that the court should hold that the Magna Water Com-

pany is merely a department of County government, subject to county debt limitations and all other limitations expressed or implied in our constitution applicable to municipal corporations.

IS A SPECIAL LAW

(Plaintiff's complaint 8 H) The last line of Section 8 provides that notice of the bond sale shall be in a paper published in Salt Lake City. This in direct violation of Article I Section 24 of our constitution, and Article VI Section 26.

AUTHORIZES SALE OF WATER OUTSIDE DISTRICT

(Plaintiff's complaint 8 I) Section 11-12 is in conflict with the spirit and letter of the constitution permitting sale of water of the district outside its own boundaries without limitation, and is in violation of Article XI Section 6 of the constitution. It will be noted that the constitution uses the words "No municipal corporation". They do not use the words "cities or towns". Section 5 of the same article refers to "Corporation for municipal purposes". In the same section they specify "cities and towns", indicating their intention to make a distinction. Again Section 6 Article XI of the constitution provides "But all such waterworks, water rights, and sources of water supply now owned or hereafter to be acquired by any *Municipal Corporation*, shall be preserved, maintained and operated by it for supplying its inhabitants with water at *reasonable charges*. Is it not a fair interpretation that

this wording “municipal corporation” was intended to refer to a district or “Quasi-municipal corporation” of the type under consideration? The Magna Water Company is created for the sole purpose of supplying its residents with an adequate water supply and system, the same as a city or town. Chapter 24 Laws of Utah 1949 specifically authorizes sale of water outside the district.

In this same connection, relative to express powers vested in the Trustees by this statute, Section 7 under the sub-head of “Powers of Trustees” provides for compensation of Trustees and then provides “A Trustee may be employed as general manager of the properties of the district at such additional compensation as may be fixed by the other two trustees, and when so employed he shall continue to perform the duties of Trustee”. This provision is in violation of the spirit and letter of the constitution and laws of Utah.

Our constitution, Article VI Section 26 (18), and Section 30 prohibits this type of legislation. 15 Corpus Juris paragraph 162, 163 page 497 and 498 deals with this matter and at 15 Corpus Juris paragraph 131 page 477 this appears: “On the ground of public policy, and because of express statutory prohibition in some states, a county board cannot contract directly or indirectly with one of its own members. A contract so made is void”.

DEPRIVES CITIZENS OF INALIENABLE RIGHTS

(Plaintiff's complaint 8 J) "To secure and perpetuate the principles of free government", "frequent recurrence to fundamental principles is essential."

In conclusion, Plaintiff strongly contends that Chapter 24 Laws of Utah 1949 should be construed by this court to be "in violation of the intent of the constitution and is inconsistent with the spirit and true intent of the same." (The quoted words are Judge Wolfe's, not Plaintiff's.) Further that the matters pointed out in 8B-8D-8F-8G-8H- and 8I of Plaintiff's brief are in direct violation of express limitations contained in the constitution.

Plaintiff realizes that this court has heretofore ruled on most matters raised herein by Plaintiff. However, a comparison of the statutes relating to drainage, irrigation, water conservancy, and the metropolitan water district, with Chapter 24 Laws of Utah 1949 will clearly show a marked difference as to matters raised by Plaintiff in his brief. Plaintiff's position is that the decisions of this court relative to these various districts can be easily reconciled so as to hold this act, now before the court, unconstitutional, without materially affecting the decisions referred to.

Respectfully submitted,

ROY F. TYGESEN

Plaintiff.