

1950

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

Utah Supreme Court

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Roy F. Tygesen; Attorney for Plaintiff;

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IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

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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.*

DEFENDANTS'  
BRIEF

Case No. 7550

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

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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.

.....  
*Attorney for Plaintiff.*

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*Third Party Defendant.*

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DEFENDANTS'  
BRIEF

Case No. 7550

STATEMENT OF FACTS

Defendant agrees with the statement of facts as they are ably presented in the Brief of the Plaintiff.

PURPOSE OF THE ACT

CHAPTER 24, LAWS OF UTAH 1949

To deal adequately with the problem of the constitutionality of a statute it appears to the writer that the purpose of the act must be carefully con-

sulted. The act provides for the creation of Improvements Districts. The Act itself sets forth its purpose in its first section as follows:

“ . . . . any district so created shall have authority through construction, purchase, gift or condemnation, or any combination thereof, to acquire and operate all or any part of the following or any combination thereof:

“(1) Systems for the supply, treatment and distribution of water; and

“(2) Systems for the collection, treatment and disposition of sewage.”

Behind that terse statement of powers and purposes is a significant story tied in with the development of the population, growth and living conditions of the unincorporated areas of this State.

During the past ten years there has been, in various Counties of Utah, a semi-urbanization of unincorporated areas. The problems attendant to this development have become particularly acute in Salt Lake County. Magna, Hunter, Pleasant Green, Granger, Taylorsville, Granite Park, Union, Chesterfield, East Mill Creek, are examples of the types of communities that were in the minds of the men who drafted the statute being challenged. These are areas in which their leaders saw need for certain services, to-wit: water supply and sewage disposal, that could only be supplied by joint community action. Private enterprise could not or did not meet the problems and people found the necessity of turning to the Government for assistance.



One alternative was for the various areas involved to incorporate and become municipalities, i.e., cities or towns. But there was and is no need for such areas to assume all the burdens and functions of incorporation. Many necessary governmental services are being provided by the County governments.

However, the increased urbanization has created a situation where the County government is inadequate and unable to meet the pressing needs of particular sections of the counties, yet there is no need or desire to assume many of the functions, burdens — taxwise and otherwise — attendant upon the creation of cities and towns.

These areas are a cross between the urban and the rural, in a twilight zone of community development where the County government cannot satisfy and the myriad functions of the municipality are not needed. There has been a compulsion and need for joint community action, but no legal devise or entity available for them to use to meet their needs.

That need for a semi-city set-up gave rise to the creation of the "Improvement District," the creature of the law under discussion in this cause. It is in the mind of the writer a vital, essential tool and devise of community action, a vehicle equipped to negotiate a course of community effort between the anarchy of unincorporatedness and the over-government of a municipality. A course which no available governmental vehicle has been equipped to travel. These



communities are governmental "hitch-hikers." They thumb a ride with the County part way, but the County can't carry them the entire distance. They can't afford and don't need the Cadillac proportions of a municipality, but do need some less ambitious and less complicated vehicle to transport them to satisfactory living conditions. The Improvement District provides that vehicle.

## THE LAW

The writer will attempt to answer Plaintiff's Brief as it is set forth in its various sections.

### PLAINTIFF'S COMPLAINT 8A.

That the Legislature in enacting said statute exceeded its constitutional powers.

This allegation recurs numerous times in a general way in the Plaintiff's Brief in connection with other sections of the brief and with other alleged violations of the Constitution. However, the writer desires to cite the language of Mr. Justice Folland found in the case of *Lehi City vs. Meiling*, 48 Pac. 2d at Page 534 (Utah) 1934 as a general answer to Plaintiff's charge. Judge Folland in his opinion upholding the constitutionality of Utah's Metropolitan Water District Law quoted from the Utah case of *Kimball vs. Grantsville City*, 57 Pac. 1, using these words:

"The State having thus committed its whole lawmaking power to the legislature, ex-

cepting such as is expressly or impliedly withheld by the State or Federal Constitution, it has plenary power for all purposes of Civil government. Therefore, in the absence of any constitutional restraint, express or implied, the legislature may act upon any subject within the sphere of government. It may enact laws affecting the state at large, and all its people; and for the purpose of creating *local jurisdictions it may establish districts*, provide for the incorporation of towns and cities, and enact laws for the government of such *districts* and municipalities.”

The writer contends now and will contend later at greater length that for purposes of treating the constitutional provision regarding powers of the legislature, the Metropolitan Water District Act and the Improvement District Act, here under discussion, are analogous.

### PLAINTIFF'S COMPLAINT 8B.

“That said statute violates the provisions of Article VI, Section 29 . . . in that it delegates to a special commission, private corporation or association power to assume, supervise or interfere with municipal functions . . .

The Constitutional provision involved reads as follows:

“The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in

trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.”

Defendant contends that Chapter 24, Laws of Utah, 1949, does not delegate to the Improvement District or its Board power to assume, supervise or interfere with municipal functions because *the term “Municipal functions” as used in the constitutional provision as interpreted by the Utah Courts means the functions of a given city or town.* In other words, according to the interpretation of that section of the Constitution placed on it by the Supreme Court of Utah in the case of *Logan City vs. Public Utilities Commission*, 271 Pac. 961 (1928). The Constitution means:

“No special commission, private corporation or association shall be delegated power to assume, supervise or interfere with the municipal functions of any particular or given city or town.”

In the *Logan City vs. Public Utilities Commission of Utah* case the facts were that the City of Logan owned and operated its own light and power plant and provided electricity for the inhabitants of the city. A conflict arose between the City and the Utah Power and Light Company and the parties took the matter before the Public Utilities Commission of Utah. Among other things the Commission, in an effort to achieve equity between the parties ordered the City of Logan to sell its electricity at certain rates. The matter was taken to the Supreme Court of Utah and the Court said that the Public

Utilities Commission could not set the city's electric rates because in doing that the Commission was interfering with a function of the municipality and in so doing was violating the Constitution.

In the course of the opinions of members of the Court the purpose and meaning of the constitutional provision involved here was exhaustively analyzed. Mr. Justice Straup said at Page 972:

“We think it clear that the undoubted purpose of the Constitutoinal 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.”

He referred to the contention of the Public Utilities Commission that it was not a “special commission” and therefore could interfere with the functions of the municipality without violating the constitutional provision. In discrediting that argument the Justice said:

“We think such a construction of the section is too narrow, and one which in effect impairs the very essence and purpose of it, deprives *cities and towns* of local self-government, and interferes with their power to levy taxes and in the performance of their municipal corporate affairs with respect to their improvements, property and municipal functions.”

Both of the above quotations clearly reveal that the Court was not thinking of municipal functions in the abstract, but declaring that the writers of the Constitution had in mind the functions of a given, particular municipality, i. e., city or town.

Then the Justice on Page 973 used language which supports our contention very pointedly when he said:

“To say that the power of the Commission notwithstanding the Constitution, to supervise, regulate and control the business and fix rates and charges of a municipally owned and operated plant is the same as that of a privately owned public utility, is to disregard or not give effect to the Constitution, *for a municipality is specifically and exclusively mentioned therein, and the Constitution in such particular expressly and exclusively adopted for the benefit and protection of only municipalities.*”

As indicated earlier in his opinion, the Justice meant *cities* and *towns* when he used the term municipalities.

Judge Gideon in a concurring opinion treated the meaning of the constitutional provision in stating:

“What was intended by the adoption of this section? (Article VI, Section 29) To determine the intent of the Constitution makers the language used by them must be and should be read in the light of the conditions in the

territory of Utah at the time of the adoption of the Constitution, as well as in the light of the history of the people and their institutions at and prior to that time. Local self-government, or what is generally designated as 'home rule', is not an innovation in this country. It is nothing new for municipalities, in Utah or elsewhere in the United States, to enjoy home rule or local self-government. The fact and the right of local self-government existed and was exercised from the earliest settlement of the various territories. The right was enjoyed long prior to the adoption of State Constitutions and the admission of the Territories into the Union as independent States.

"Section 29 of Article VI of the Utah Constitution did not grant to municipalities the power to exercise the right of local self-government, or to own and control property, or to own and operate a public utility for the benefit of the inhabitants of such municipalities. These benefits the municipalities already enjoyed. On the contrary the section is a limitation of the power of the Legislature to delegate to any body, save only regularly elected officers of the municipalities, the right to supervise or interfere with the property of the municipalities, or to perform any municipal functions. The purpose of the constitutional provision quoted was to guarantee to the municipalities local self-government, and to deny to the Legislature any power to delegate to any body other than the local government the right of supervision over or interference with the property of the various municipalities within the state."



“Let it be conceded that in the absence of constitutional inhibition, the Legislature could take the government of the cities from the people residing therein and create new forms of government under the immediate control of the Legislature. That is one thing. The delegation of the right to a commission, not the choice of the inhabitants, is quite another thing. The denial of the latter is what the above-quoted provision of the constitution, as I interpret it in the light of history, means.”

I don't see how our Court could explain any more clearly than two of its Judges have explained in this case that Section 29 of Article VI applies only to cities and towns and that the term “municipal functions” when used in this constitutional provision means the functions being exercised by any given city or town. True the term “municipal functions” is often used to describe functions which are of a nature and type ordinarily and traditionally exercised by cities and towns. But that is using the term “municipal functions” in a sense foreign and different from the simple meaning it has as used in our Constitution.

Plaintiff's theory set forth with much municipalaver, is that the Constitution is using the term “municipal functions” in its abstract, nebulous meaning. Plaintiff believes the Constitution makers conceived of a municipal function as an itinerant ego that could detach itself from a municipality, i. e., city or town, and wander at will to be captured and put to work by other governmental units such as



counties. A sort of “municipal function in the sky” theory. That theory of floating municipal functions is the meaning given to municipal functions by many courts and text writers and Plaintiff is not alone in using it. But according to the Court’s words in the Logan City case, the writers of the Constitution were not using and did not intend to use the term municipal functions in that sense. They identified a municipal function with a given municipality, i. e., city or town.

Plaintiff apparently believes that a municipal function may detach itself from a city or town and wander into the corral of a “County” and be lassoed, branded and used by a “County,” but he doesn’t think the Legislature has the right to allow any corporation, special commission or association or any governmental agency to use “municipal functions.”

The Utah Court, the writer contends, asserts that the Constitution writers were not concerned about who used municipal functions in the abstract. They weren’t concerned about who supplied water or electricity or abated mosquitoes or provided police protection or dug sewers or cleaned streets; they only wanted to make sure that if a particular city or town was engaging in those activities, nobody could come into the city, kick the waterworks superintendent out of his office and take over his job.

To further demonstrate the point that the constitutional provision according to the Utah Court,

was designed to protect given, existing municipalities from interference, and not to prevent the exercise of "municipal functions" in the abstract, let us pursue to a conclusion in the light of the Logan City case, the "Abstract municipal function" or "municipal function in the sky" theory of the Plaintiff. Plaintiff will concede that a Utah city has the right to own and operate its own power system; Plaintiff must further concede that in the Logan City case the Court considered operation of such a system a municipal function. If Plaintiff's theory is that there are types of activity which are "municipal functions" and which are "municipal functions" no matter who performs them and that they can only be legally performed by municipalities (or counties) then the conclusion must follow that the Utah Power and Light Company, or any other private power and light company, is performing "municipal functions" and doing so in violation of Article VI, Section 29 of the Constitution and should be enjoined. Why? Because private power and light companies are chartered and permitted to exist in the state by virtue of certain statutes passed by the Legislature. He must then argue that any statute which implements the establishment, existence and operation of a private power company is unconstitutional because it delegates to a private corporation power to perform "municipal functions."

The foregoing only illustrates the absurdity of the "municipal functions in the sky" theory as far as the interpretation of this section of the Constitution is concerned.

The writer will grant that if Magna were an incorporated town or city and had its own city water system, and the Legislature delegated to an Improvement District the authority to dictate to Magna City the water rates it should charge, or the size of pipe it should use, etc., then admittedly the statute would be delegating to the District power to assume, supervise or interfere with a function of the city of Magna and such a law would be unconstitutional. But this law, of course, does not do that.

To summarize the significance of the Utah Court's interpretation of the meaning of Article VI Section 29 of the Constitution we can say that the Court has rewritten the provision to clarify it and in the light of that court decision the Constitutional provision reads.

“The Legislature shall not delegate to any special Commission, private corporation or association any power to make, supervise or interfere with any *Municipality's, that is city's or town's*, improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site or to perform any *functions of any given city or town.*”

As previously indicated by the writer, Plaintiff enlarges on his doctrine of “municipal functions in the sky” by arguing that the functions of counties are “municipal functions.” Certainly that is not true in contemplation of the meaning of Article VI Sec-

tion 29 as interpreted in the Logan City case. To repeat Mr. Justice Straup's words in reference to the application of the constitutional provision:

“ . . . . for a municipality is *specifically and exclusively* mentioned therein, and the Constitution in such particular *expressly and exclusively* adopted for the benefit and protection of *only municipalities*.”

Other language of the Court quoted above indicates clearly that the Court meant cities and towns when it used the term “municipalities” and thus the Court confines the application of that constitutional provision to cities and towns and that constitutional provision can not be relied upon by counties to prevent the assumption or supervision of or interference with their functions.

Even if we assumed for sake of argument that Article VI Section 29 was designed to spread its cloak of protection over County governments, still this statute does not enable an Improvement District to assume, supervise or interfere with functions of the County if the County does not want it to do so for the statute itself protects the County. An Improvement District is established and created by the Board of County Commissioners under authority of the statute and nothing in the statute requires or constrains the County Commission to establish a District if it does not desire to do so. The words of the first section of the statute, Chapter 24, Session Laws of Utah 1949, reads as follows:

“The Board of County Commissioners of each County in this State *may* hereafter establish in the manner hereinafter provided, one or more improvement districts in such county. . . .”

The machinery for the establishment of the district is operated by the County Commission. Nothing appears in the statute which makes it mandatory on the commission to create a district and the statute provides no other method by which an improvement district can be established.

From the two standpoints set forth above then it is fallacious to argue that the law in question violates Article VI Section 29 of the Constitution as far as counties are concerned.

This Court was faced with an interpretation of this section of the Constitution in adjudicating the constitutionality of the Metropolitan Water District Act in the case of *Lehi City vs. Meiling*, 48 Pac. 2d 530, decided in 1934. As far as the application of this section of the Constitution is concerned the Metropolitan Water District and the Improvement District are analogous. Their functions and purposes generally are the same. They are both created by authorization of State Statutes. They fill a need not satisfied by existing City or County governments. The Titles of the two acts involved indicate their similarity. The Title of the Metropolitan Water District Act reads as follows:



“An Act providing for the Incorporation, Government and Management of Metropolitan Water Districts, Authorizing Such Districts to Incur Bonded Debt and to Acquire, Construct, Operate and Manage Works and Property, providing for the Taxation of Property Therein and the Performance of Certain Functions Relating Thereto by Officers of Counties, Providing for the Addition of Area Thereto and the Exclusion of Area Therefrom and Authorizing Municipal Corporations to Aid and Participate in the Incorporation of Such Districts.”

The Title of the Improvement District Act reads:

“An Act Authorizing the Creation of Improvement Districts in the Various Counties of the State, Providing for the Government and Powers of Such Districts, Authorizing the Acquisition of Improvements by such Districts, and the Issuance of Bonds of the District in Payment Therefor, Providing for the Levy of Taxes to pay such bonds as May be Issued Hereunder Payable From Taxes and for the Levy of Taxes to Carry Out the Purpose for Which Such Bonds as are Not payable for Taxes, Granting the Power of Eminent Domain to such Districts, Providing for Issuance of Refunding Bonds by Such Districts and Making Certain Provisions with Respect to the Foregoing . . . ”

The similarity of purposes of the two Districts is documented by the statements of those purposes in the statute. Section 100-10-3 sets forth the pur-

pose of the Metropolitan Water District in the following words:

“Metropolitan Water District may be organized hereunder for the purpose of acquiring, appropriating, developing, storing, selling, leasing and distributing water for, and devoting water to, municipal and domestic purposes, irrigation, power, milling, manufacturing and any and all other beneficial uses . . . .”

The purpose of the Improvement District is set forth in Chapter 24 Section 1 as follows:

“ . . . any district so created shall have authority through construction, purchase, gift or condemnation, or any combination thereof, to acquire and operate all or any part of the following, or any combination thereof:

- “(1) Systems for the supply, treatment and distribution of water; and
- “(2) Systems for the collection, treatment and disposition of sewage.”

As far as the handling of water is concerned the Improvement District is designed to do the same thing for unincorporated areas that the Metropolitan Water District is designed to do for incorporated areas. Added to the general purposes and powers of the Improvement Districts is the power to handle sewage — a vital, critical consideration in many unincorporated areas in Utah and a natural concomitant of the task of providing water.



In the Meiling case it was contended that the Metropolitan Water District Act violated Article VI Section 29 because the act delegated power to a special commission, private corporation or association to assume, supervise or interfere with a municipal improvement and to perform municipal functions. Striking down that contention Mr. Justice Folland, speaking for the Court, said at page 535:

“The contention cannot be sustained for the reason that the board of directors to whom the management and control of the district has been intrusted, and which is to exercise the powers and perform the functions of the public agency thus created, does not come within the designation ‘special commission, private corporation or association’ to which the inhibitions of the sections apply.”

The justice then cited the case of *City of Pasadena vs. Chamberlain* and proceeded:

“Nor does the act provide for interference with any municipal improvement, money, property or effects. The power of control vested in the board of directors is over the property, improvements, money, and effects of the district, and not that of any of the cities or towns whose territorial boundaries may be coincidental with that of the district or included therein. The powers of the board are limited by the act to the levying of taxes for the public purposes mentioned therein. . . . 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."

The activities of the Magna Water District or any other Improvement District will not interfere with the activities of any municipality and the activities of the Magna Water District do not and will not conflict with any activities of Salt Lake County. The Plaintiff in his Brief indicates that Salt Lake County is considering furnishing water to the entire county. That is not true. Salt Lake County is considering sponsoring of a County Wide Conservancy District to provide the main distribution lines and act as wholesaler of the water to various cities, towns, improvement districts and private water companies. The County is not considering going into the retail water business.

In the opinion of the writer there is less reason to believe an Improvement District will interfere, etc., with municipal functions than there is to believe the same of a Metropolitan Water District, because cities are necessarily located within the boundaries of a metropolitan water district, and in some instances such as in the case of Salt Lake City and Provo the boundaries of the Districts and of the cities are co-terminous. Yet in the case of *Provo City vs. Evans*, 48 Pac. 2d 555, decided in 1935, the Supreme Court of Utah followed its decision in the Lehi City case and upheld the constitutionality of

the law even though the boundaries of the District and the city were identical. In Salt Lake City the same situation exists. The District has power to tax exactly the same people as the City has authority to tax. The District and the City are both engaged in the water business. Yet the excellent and effective manner in which the two have worked together to provide Salt Lake City with a secure source of water supply has vindicated the statement of Justice Folland quoted above to the effect that:

“There need be no friction between the two, but the closest cooperation is contemplated and should result.”

There is every reason to believe that similar cooperation should and will exist between Improvement Districts and County Governments which create them. If the Counties do not want the Districts, if they are afraid of encroachment, interference, etc., the counties do not have to create them.

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## PLAINTIFF'S COMPLAINT 8B.

“That said Statute violates the provisions of . . . . Article XI Section 5. Article XI Section 5 reads: ‘Corporations for municipal purposes shall not be created by special laws. The Legislature by general laws shall provide for the incorporation, organization and classification of cities and towns in proportion to population, which laws may be altered, amended or repealed’.”

Plaintiff alleges in his Complaint that the above section of the Constitution is violated by the law under consideration and in his Brief he joins to this Section Article VI Section 26 which reads in part:

“In all cases where a general law can be applicable, no special law shall be enacted.”

Treating Section 5 of Article XI first. The Improvement District Law does not violate that section because: (1) it does not create a corporation; (2) it does not create districts for “municipal purposes” as that term is used in the Constitution; and (3) the law is not a special law, but a general law applicable to the entire state and potentially of benefit directly or indirectly to all the people of the State whether they live in incorporated or unincorporated areas. For example: Murray residents may be extremely interested in what East Mill Creek or Granite Park do with their sewage.

In the light of the interpretation of this section of our Constitution by our Court the Section should correctly and more accurately read:

“Corporations for municipal purposes shall not be created by special laws. The Legislature by general laws shall provide for the incorporation, organization, and classification of *municipalities, ie: Cities and Towns* in proportion to population, etc.”

This interpretation is borne out by the contents of the remainder of the Section of the Constitution. Those contents deal solely with the creation, government, functions, etc., of *cities and towns*.

If the Constitution had said no public agency or legal entity shall be created by general or special law for the purpose of exercising any functions which are exercised by cities and towns, then the Plaintiff would have something. Plaintiff is trying to contort the language of the section to read that way, but it does not read that way.

It appears to the writer that the Plaintiff does not recognize that the writers of the Constitution in using the words “Municipal,” “municipality,” “municipal purposes” and “municipal functions” had in mind only cities and towns and not municipal functions in the abstract.

The writers of the Constitution in that section were not concerned about preventing the creation of corporations or districts or public agencies to han-

dle water, irrigation, drainage, sewage or mosquito abatement problems, all of which may be considered municipal functions in the abstract. They put that provision in the Constitution to prevent the Legislature from creating cities and towns by special laws.

Proceeding to the treatment of this problem by the Utah Court, the Court in deciding the case cited *supra*, *Lehi City vs. Meiling*, declared that the Metropolitan Water District Act does not violate Article VI Section 26 because, said the Court, the law was not a special law, but a general law. Mr. Justice Folland said on page 536, headnote 4:

“It is urged the act is special and not general, in violation of Article VI Section 26, to the effect that ‘in all cases where a general law can be applicable, no special law shall be enacted.’ The act purports to be a general law applicable to all portions of the State and makes available to the inhabitants of all cities and towns seeking to take advantage of its provisions, the opportunity of organizing Metropolitan Water Districts. The mere fact that its benefits may, under present opportunities and conditions, be availed of by a part of the State only, does not mitigate against its validity as a general law. *City of Pasadena vs. Chamberlain*, *supra*. While only one group of cities or towns may now attempt to organize under its provisions, yet at any future time other cities and towns may do likewise. The act is not limited to any particular cities or towns, or to any particular



locality in the State, but it operates uniformly on every city or town which may choose to take advantage of its provisions. In form as well as in substance, it is a general law and not special."

Similar language could be used with regard to the Improvement District Act. The act is a general law applicable to all portions of the State and makes available to the inhabitants of all unincorporated areas, seeking to take advantage of its provisions, the opportunity of organizing improvement districts. The mere fact that its benefits may, under present opportunities and conditions, be availed of by a part of the State only, does not mitigate against its validity as a general law. While only one unincorporated area may now attempt to organize under its provisions, yet at any future time other unincorporated areas may do likewise. The act is not limited to any particular unincorporated area or to any particular locality in the State, but it operates uniformly on every unincorporated area which may choose to take advantage of its provisions. In form as well as in substance it is a general law and not a special law.

The writer believes the opinion of our Court in the case of *Patterick vs. Carbon County Conservancy District*, 145 Pac. 2d 503 (1944), is in point on this matter as well as with regard to many other matters later treated herein. That case was brought before the Court in an original proceeding to test the constitutionality of the Water Conservancy Act.



For purposes of this constitutional question (general or special law) the conservancy district and the improvement district are closely analogous. The purpose of the conservancy district is stated in its declaration of policy found in Section 100-11-1, Utah Code Annotated, 1943, Paragraph (g) and its subparagraphs:

“(1) To control, make use of and apply to beneficial use all unappropriated waters in this State to a direct and supplemental use of such waters for domestic, manufacturing, irrigation, power and other beneficial uses.

“(2) To obtain from water in Utah the highest duty for domestic uses and irrigation of lands in Utah within the terms of interstate compacts or otherwise.”

The Conservancy District is a legal entity — not a city, not a county — to deal with the use of water. It is conceived for broader application, geographically speaking, than the Improvement District and it may include both incorporated and unincorporated areas and it may transcend the boundaries of one County. However, the general nature of its functions is the same as that of the Improvement District. It is created by authority of a Legislative enactment as is the Improvement District.

The Petitioner in the Conservancy District case contended that the Water Conservancy District Act violated Section 26, Article VI of the Constitution in that it was a “special law.” Attacking that prob-

lem, Mr. Justice Wade said at page 511 of the opinion:

“ . . . . Sec. 100-11-15 does not violate Section 26 Article VI of the Constitution of Utah since a water conservancy district is not organized under a special law and being a quasi-municipal corporation formed for public purposes it is within the discretion of the Legislature to grant it any powers, not expressly inhibited by the Constitution, to further such purposes, including the power of taxation. It is the public purposes for which a water conservancy district is organized that distinguishes it from drainage or irrigation districts. 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.”

The Court cites the Lehi City case in support.

Patterick also contended Section 5, Article XI was violated in that the law created a corporation for municipal purposes by special law. The Court said at Page 511 the allegation that that section of the Constitution was violated had

“no merit - as these Constitutional inhibitions apply only to cities, towns and villages and subdivisions of such cities, towns and villages, and do not apply to water conservancy districts which are not municipalities in contemplation of that term as used in the Constitution.”

We submit that an Improvement District is not a city, town or village or subdivision of the same and that the law authorizing its creation does not violate Article XI Section 5 of the Constitution. The reasoning used by the Court in determining the constitutionality of the Metropolitan Water District Act and the Water Conservancy Act is just as properly applied to the Improvement District Act.

### PLAINTIFF'S COMPLAINT 8C.

“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.”

This allegation appears to the writer to be specious. If every statute were to be declared unconstitutional because some phrases, clauses, sentences or words in it were subject to interpretation in the light of varying factual situations, then all the laws of Utah and every other State should be declared unconstitutional in toto. If all statutes were poured in concrete and subject to no interpretation there would be no need for courts, little need for attorneys, and the West Publishing Company would have to close its doors.

A. Plaintiff claims to be worried about the phrase “and the boundaries of no district shall overlap the boundaries of any other district.” It is ob-

vious from reading the statute that the words “any other district” refer to any other Improvement District. The members of the Legislature presumably know that every square foot of ground in Utah is located in some school district so it is specious to conceive that by using the words “any other district,” the Legislature intended to prevent the borders of an Improvement District from overlapping those of some other type of “district.”

B. In paragraph B, Plaintiff contends the words “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,” are ambiguous. Their meaning seems perfectly clear to the writer. It appears to the writer that the above language is clearer and leaves less to interpretation than the language of the Water Conservancy Act which provides in Section 100-11-7, Utah Code Annotated, 1943:

“A petition may be filed . . . signed by not fewer than twenty-five per cent of the *owners* of irrigated land in said proposed district.”

Yet the Courts of Utah have had no trouble with that particular language in the conservancy district Act in the nine years the law has been in effect.

C. Plaintiff worries about the language “the deed records of the county shall be accepted as final and conclusive evidence of the ownership of the real

property of the district." Plaintiff asks about owners whose deeds are not recorded, equity owners, etc. The requirement in the statute that proof of ownership must be based on deed records, it appears to the writer, reduces confusion as to "ownership" to a minimum. The Conservancy Act in setting up the procedure for signing petitions and protests uses only the word "owner" without providing any further standard for a Court to look to. I think Plaintiff's argument, if lodged against the conservancy act, would be much more credible than directed against the improvement district act, for the latter act is clearer, more explicit, less subject to interpretation than the conservancy district act. Yet the conservancy act has been in operation nine years and though it has been tested by the Supreme Court and amended by the Legislature, no need has been found to interpret or change the word "owner" as used in connection with petitions and protests provided for in the act.

The writer thinks it unnecessary to treat subparagraph D, E and F of Plaintiff's Brief in detail. It should be sufficient to say there is no evidence that this act is any more ambiguous, uncertain or more subject to interpretation than any other act of the Legislature, and if it does contain some ambiguities, it is the function of the Courts to interpret and clarify.

## PLAINTIFF'S COMPLAINT 8D.

“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 provide for adequate review by the Courts, and in fact prohibits or limits review.”

Article I, Section 7, reads:

“No person shall be deprived of life, liberty or property without due process of law.”

Article I, Section 11, reads:

“All Courts shall be open, and every person for an injury done to him in his person, property or reputation shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.”

Great pains were taken by the writers of this statute to protect the property rights of individuals within the district and to provide them with ample opportunity for protests and appeal. The writers of the statute, it appears, bent over backwards to give property owners in the district a chance to present their complaints. Note the procedure required by the statute to be followed:

## 1. HEARING ON ESTABLISHMENT OF DISTRICT.

“County Commission shall give notice of its intention to establish such district, which notice shall define the area to be included therein and the boundaries thereof, shall generally describe the nature and extent of the improvements proposed, with estimated cost, and such notice shall designate one of several different kinds of material or forms of construction.”

All of which was done in the creation of the Magna District. Publication of the notice for five weeks is required of a hearing to be held not less than 45 days after the publication of the first notice

“at which time and place all interested parties may appear before said board of County Commissioners and be heard either in support of or in opposition to the creation of said proposed district.” (Chapter 24, Section 3.)

## 2. WRITTEN PROTEST.

In addition to attending the hearing and protesting in person, Section 3 provides: “Any taxpayer within said district may on or before said date so fixed, protest against the establishment of such district, in writing, signed by the taxpayer, which protest shall be filed with the County Clerk . . . ”

“If, . . . written protest shall be filed signed by owners representing more than one-half of the assessed value of taxable property



within the said proposed district, the district shall not be established . . . ”

### 3. WRIT OF REVIEW.

“Any property owner who shall have filed a written protest . . . and whose property has been included, notwithstanding such protest, may within 30 days after the adoption of the resolution establishing the district, apply to the District Court . . . for a writ of review of the actions of the board . . . but only upon the ground that his property will not be benefited by the proposed improvements, or upon the ground that the proceedings in establishing the district have not been in compliance with the provisions of the statute.” Chapter 24, Section 3, Laws of Utah, 1949.

What more does the property owner want? The law requires the commission to make a finding that his land will be benefited and it requires that the nature and extent of the Improvements be set forth in the notice of hearing; the property owner may file a written protest and he may protest in person before the Board and he has at least 45 days before the hearing to urge others to protest; then he can “appeal” to the district court if he believes his property will not be benefited or if he thinks the procedure required by the law has not been followed.

But that isn’t the end of his right to object and “protect” his property, as will appear below.

### 4. HEARING ON BOND ELECTION.

Before bonds can be issued (Chapter 24, Section 4) fifty real property owners must petition for a bond election and the commission must give notice of a hearing

“Which notice shall inform all persons concerned of the time and place of the hearing and of their right to appear . . . and contend for or protest the ordering of such bond election. Such notice shall state the amount of bonds proposed to be issued . . . ”

The property owner has at least 30 days to think about that and arouse public opinion before the hearing.

## 5. WRITTEN PROTEST.

The property owner has another chance to file a written protest against calling the election and he may appear in person or by attorney at the hearing. The Commission must again determine

“That the proposed improvements would be for the benefit of *all taxable property* situated in the district . . . ” (Chapter 24 Section 5.)

Again if the written protests represent more than fifty per cent in value of the real property in the district

“The board shall not have authority to proceed with the calling of the election.”

## 6. BOND ELECTION.

The property owner has another chance to “protect” his property by voting against the issuance of the bonds and by inducing others to do the same.

The Plaintiff says, “The burden of beating a bond election is an excessive burden on the protestant, the statute provides no recourse to the Courts for review.” Plaintiff is saying in effect “After the property owner has been advised as to the nature and extent of the improvements, after the commission has determined his property will be benefited—after he has had a chance to appeal to a court to force the Commission to prove that it has advised him of the nature and extent of the improvements and to prove that his property will be benefited; after he has had a chance to protest in writing twice, in person twice at hearings and vote in an election, then,” says the Plaintiff, “if he doesn’t like the way the election turned out—the way the people in his community voted, he should be able to appeal to the courts.” In other words, Plaintiff believes one protestant and one judge should be able to out-vote all the remainder of the people in the community.

Many Republicans have felt that way after elections for the last 18 years, but as yet they have not been given the right to appeal the result of an election, unless there was *something irregular in the election*. The property owner in this case, as the Republican, may resort to the Courts by extraor-

dinary writ, to challenge the bond election if he believes it has been conducted irregularly.

The Utah Court, in the case of *Lehi City vs. Meiling*, it seems to the writer, clearly and conclusively answers the argument of the Plaintiff. The writer has already delineated some of the similarities between the Metropolitan Water District Act and the Improvement District Act and pointed out they are analogous from the standpoint of purposes and functions. The Metropolitan Water District Act was upheld in spite of the fact that it provides no means by which landowners assessed could be heard on the question of benefits. The Improvement District Act does provide a writ of review to the District Court allowing the property owner to be heard on the question of benefits. Taxation imposed by the Improvement District is a general ad valorem tax similar to general taxation and not an assessment for benefits conferred or to be conferred on any particular property. It is a tax identical in nature with the tax which a Metropolitan Water District is empowered to impose.

The subject of the nature of the tax, its implications as far as appeal and hearing and due process are concerned are treated by the Utah Court in the Lehi City case at Page 536 of the opinion. The writer desires to quote at length from that case because he believes it conclusively answers the contentions of the Plaintiff as to matters of appeal and due process. Mr. Justice Folland said:

“(5) It is contended the act violates the due process clauses of the State and Federal Constitutions, in that taxing powers conferred on the district are in the nature of assessments for benefits and no provision is made for the landowners assessed to be heard on the question of benefits. The objection is not well taken, because the tax provided to be imposed is a general ad valorem tax similar to general taxation and not an assessment for benefits as such is known in connection with drainage, irrigation, and other special assessment districts. The right of the property owner to be heard before a competent tribunal on the question of benefits is essential to avoid running counter to the constitutional requirements of due process before the imposition of burdens which might result in depriving a landowner of his property by means of special assessments. *Argyle v. Johnson*, 39 Utah 500, 118 P. 487; *State ex rel. Lundberg v. Green River Irrigation District*, 40 Utah 83, 119 P. 1039. The people of the district have opportunity to be heard with respect to the organization of the district, and this carries with it, if adopted and approved by the voters, the power of taxation on all property within the district for the purposes of the district. Provision is made in the act for the imposition of such taxes on the property as assessed and valued for purposes of general taxation so that the property owners have a right to be heard as to the valuation of their property the same as when such property is levied upon for general taxes. This same objection was the strongest and most important one urged against validity of the Metropolitan Water

District Act before the Supreme Court of California in *City of Pasadena vs. Chamberlain*, supra. The Court gave such a satisfactory explanation of the grounds on which it sustained the validity of the legislation in the face of such objection that we can do no better than adopt their reasons and quote fully from that decision:

“ ‘This contention presents precisely the same question which was presented to this court in several recent cases. *Henshaw v. Foster*, 176 Cal. 507, 169 P. 82; *Miller & Lux v. Board of Supervisors*, 189 Cal. (254), 255, 208 P. 304; *In re Orosi Public Utility District*, 196 Cal. 45, 235 P. 1004. An examination of these cases will serve to show that the former distinction sought to be drawn between what are governmental and what are proprietary powers to be exercised by public corporations, in so far as the maintenance of these by general taxation is concerned, is fast fading out of our jurisprudence. The most recent case, above cited, aptly expresses this tendency, wherein it says:

“ ‘We take it to be now a general accepted proposition that, while a municipality, which undertakes to supply those of its inhabitants who will pay therefor with utilities and facilities of urban life, is performing a function not governmental, but more often committed to private corporations . . . with whom it may come into competition, it is, in fact, engaging in business upon municipal capital, and for municipal purposes . . . ’



“ ‘The supplying of water for domestic uses within municipalities has grown of recent years to be one of the most common and well-recognized forms of municipal activities wherein public property is employed and wherein public taxation is imposed and collected upon the inhabitants of the municipalities *regardless of benefits conferred upon particular property*, and by the same method by which taxes are generally levied and collected for the carrying on of the governmental functions of incorporated cities and towns. Municipal corporations, whether organized under special charters or general laws, derive these particular powers from the same legal sources as those which provide for the organization of quasi municipal corporations such as that provided for in this act, and we can perceive no real distinction between the organization of a municipal corporation, strictly so-called, for the carrying forth of the purposes usually committed to such governmental agencies and the organization under legislative sanction of such other governmental agencies as municipal water districts or public utility districts or metropolitan water districts, which, while these may not exercise all of the functions committed to municipal corporations, strictly so-called, are empowered to exercise certain of these functions which have come to be recognized as at least quasi governmental in character. Nor can we perceive any substantial reason why such district when so organized may not be invested with the same powers in the matter of the levying and collection of taxes for the carrying forth of its limited purposes with which municipal corporations are

invested for the carrying forth of similar, though more diversified purposes. Nor can we discover any rational theory upon which in the levy and collection of such taxes the powers of either should be limited in the formation of that class of public agencies wherein the assessments imposed upon a particular property have such direct reference to benefits conferred as to require notice and opportunity for hearing to be given to the owners of the property to be affected by the assessments thus to be imposed. The decision last above cited expressly holds that any tax levied and imposed for the purpose of supplying capital for the foregoing municipal or quasi municipal purposes is not to be regarded as 'a tax or assessment on property directly benefited by the construction of some local improvement, but is a general tax levied just as, and for the same purpose that, any general municipal tax is imposed for carrying on the governmental functions and utilitarian objects of duly incorporated cities or towns.' We are constrained, therefore, to the conclusion that the Legislature in investing metropolitan water districts to be formed under the provisions of the act in question with power, through their properly appointed officials, to collect general taxes within the municipalities uniting in the formation of such districts for the common purpose of supplying each with water for domestic uses has not acted in violation of any provision of the state Constitution to which our attention has been directed'."

For further authority on the subject of whether or not the taxes which can be imposed by action of the Improvement District are special improvement taxes or general taxes, the writer wishes to again refer to the *Patterick vs. Carbon County Conservancy District* case. The writer has already delineated to some extent the similarities in purpose and function of the Conservancy District and the Improvement District. At page 511 of the *Patterick* case the court said:

“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.”

The chief benefits to be received by a community from the improvements authorized by the improvement district act are adequate culinary water, adequate fire protection and adequate sewage treatment and disposal. Those benefits are obviously of such a nature as to benefit every person in the community. The Plaintiff states he will complain if he is taxed and doesn't receive better water or better pressure in his particular home, or better fire protection for his particular house. Plaintiff forgets that earlier in his Brief he made reference to the destruction of the school house in Magna by fire because there was not sufficient water pressure to combat the blaze. Providing facilities which would aid in preventing a recurrence of a school house destruction would certainly benefit the Plaintiff in one way

or another. Perhaps it would assist his child's education, or save his child's life, or save him from an increase in taxation required to build a new school house, etc. The point is, an improved water system in Magna would be of benefit to the Plaintiff even if the Plaintiff refused to connect onto the system and insisted on drilling his own private well.

In the case of *Lundberg vs. Green River Irrigation District*, 119 Pac. 1039, the constitutionality of the Utah Irrigation District law was challenged. Under that law the assessment was based on the benefits given to particular lands included within the district and the Court denominated the assessment as a special assessment and not a general tax. Admittedly where special assessments are involved the landowner must be given an opportunity to be heard before a proper tribunal on the question of benefits to his land — a requirement not imposed on a law which provides for services which benefit the public generally as is the case with the Metropolitan Water, Conservancy and Improvement District laws. Justice Frick wrote the opinion in the case and on page 1040 he stated:

“The Plaintiff bases his application for a permanent writ upon the assertion that Chapter 74 (Irrigation District Act) is violative of certain provisions of our Constitution, and that said chapter is therefore void, and hence the organization of the district and the issuance of said bonds are without authority of law. It is provided in said Chapter 74 that, whenever a majority of the landowners who

own the larger portion of the lands within a proposed irrigation district desire to provide for irrigation, they may present a petition to the Board of County Commissioners of the County in which the larger portion of the lands sought to be incorporated into an irrigation district are situated, asking that such a district be organized. The board of commissioners are required to give notice of the pendency of the petition, and upon a hearing must determine and fix the boundaries of the proposed district. The commissioners are also prohibited from excluding any lands from the proposed district that are susceptible to irrigation by the same system of water works applicable to other lands in said proposed district; nor shall any land which will not in the judgment of the board be benefited by said proposed system be included in such district if the owner thereof shall make application at such hearing to withdraw the same."

After setting forth the provisions of the law the Justice on page 1041 treats the subject of due process as follows:

"The first ground of attack, namely that the Plaintiff is deprived of his property without due process of law by what is contained in said Chapter 74, is fully answered in the negative by the Supreme Court of California in *Irrigation District vs. Williams*, 18 Pac. 379."

Then the Justice cites another case on which the Utah Court is relying. Then referring to the law he states:



“In said chapter the landowner is given an opportunity to be heard, and is provided with a proper tribunal to hear him, as to any objections he may have to urge against including his lands within the boundaries of the proposed irrigation district.”

Even though the irrigation district law involves special assessments, demanding the right to be heard on the question of benefits and the Improvement District law provides for benefits to the public generally and thus requires no hearing as to benefits yet the hearing provided for in the irrigation district law is not as extensive as that provided for in the Improvement District law. The Improvement District law, while not required to go as far as the Irrigation District Act, goes further. It not only provides for hearings before the County Commission and for written protests to the commission, but it provides for a writ of review to the District Court on the question of benefits.

To summarize — the tax authorized by the Improvement District is a general tax. To satisfy the demands of the due process clause of the constitution there was no constitutional need to provide for landowners assessed to be heard on the question of benefits. Yet the writers of the law bent over backwards and provided for the landowner to be heard first before the County Commission. That in itself was enough to satisfy the constitutional demands of an Irrigation District law where special assessments were involved. But this improvement dis-



strict act goes even further in consulting constitutional rights than is required of an irrigation district. It provides for a writ of review of the commission's action by the District Court. There should be no doubt but that the act is constitutional as far as the due process clause is concerned.

## PLAINTIFF'S COMPLAINT 8E.

“That said statute violates Article I Section 4 of the Constitution of the State of Utah in that it requires property 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.”

The part of Article I Section 4 to which Plaintiff refers is the last sentence of the section which reads:

“No property qualifications shall be required of any person to vote, or hold office, except as provided in this constitution.”

Article IV Section 2 reads:

“Every citizen of the United States, of the age of twenty-one years and upwards, who shall have been a citizen for ninety days, and shall have resided in the State or Territory one year, in the county four months, and in the precinct sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided.”

Article IV Section 7 reads:

“Except in elections levying a special tax or creating indebtedness, no property qualifications shall be required for any person to vote or hold office.”

The Section of the Constitution last quoted is the answer to Plaintiff's contention. The Improvement District law provides for property qualifications in connection with the vote of approval of the bonds. Clearly that is an election “creating indebtedness” and comes under the constitutional exception.

#### PLAINTIFF'S COMPLAINT 8F.

“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.”

The writer believes the question of due process has already been adequately treated and that the Plaintiff's contentions have been met.

#### PLAINTIFF'S COMPLAINT 8G.

“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.”

The Constitutional provision involved reads as follows:

“When authorized to create indebtedness as provided in Section 3 of this Article, no county shall become indebted to an amount, including existing indebtedness, exceeding two per centum. No city, town, school district or other municipal corporation, shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein, the value to be ascertained by the last assessment for State and County purposes, previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes; provided, that no part of the indebtedness allowed in this section shall be incurred for other than strictly county, city, town, or school district purposes; provided further, that any city of the first and second class when authorized as provided in Section three of this article, may be allowed to incur a larger indebtedness, not to exceed four per centum and any city of the third class, or town, not to exceed eight per centum additional, for supplying such city or town with water, artificial lights or sewers, when the works for supplying such water, light and sewers, shall be owned and controlled by the municipality.”

It is of particular importance to the Defendant that this issue be decided by this Court. Bonding companies are unwilling to purchase the bonds of

the district until the court has spoken on this specific issue.

The burden of Plaintiff's argument is that the improvement district is a sub-division of the County in which it is established. It is the contention of the Defendant that the improvement district is not the sub-division of a county. In the *Lehi City vs. Meiling* case a question before the court was whether or not a Metropolitan Water District was a sub-division of either a city, town or county. The Court said:

“We are satisfied the Metropolitan Water District is not a subdivision of either a city, town or county within the meaning of the word ‘subdivision’ as used in the Constitution.”

The writer contends that the Improvement District, like the Metropolitan Water District, is a public agency of government deriving its powers directly from the State by means of a general law enacted by the Legislature. There are analogous features of the two districts that should be noted here:

1. Both entities are created by a general law enacted by the State Legislature.
2. The indebtedness of each entity is incurred by action of the governing body of each District and the taxes imposed upon the district are levied and collected in both instances by the county government.

3. With both districts taxes are levied based on the value of all the property within the district, rather than being levied based on benefits to particular parcels of property within the district.

This third observation is of significance because of the following language in the Meiling case :

“In this state, Irrigation, Drainage and Mosquito abatement Districts have heretofore been created by legislative enactment, and the validity of the Drainage and Irrigation Districts has been sustained by this Court. There is a marked distinction between such Districts where assessments may be levied, based on benefits to the property included, and a Metropolitan Water District where taxes may be levied on the basis of value of all of the property within the District.”

In other words, both the Improvement District and the Metropolitan Water District are alike in the above regard, and the Constitutionality of the Metropolitan Water District law was upheld.

The following language of the Court in the Meiling case sets forth eloquently the attitude of the Court with regard to the indebtedness question as it impinges upon “districts”:

“It is true the framers of the Constitution feared debt and wisely attempted to place restrictions on the governmental subdivisions

so that they could not incur indebtedness in such amount as to lead to insolvency. The restrictions were not, however, placed on the people directly, but on the state, counties, cities, towns and schools districts and other municipalities in and through which the people were to be governed. There is no prohibition expressly or by implication, restraining the legislative power from providing other corporations or organizations for public purpose by which the public welfare could be advanced. If the debt limitations are construed so strictly as to prevent the creation of any public corporation with the power to incur debt payable by taxpayers, except those specifically enumerated and to the extent permitted it would seem to follow that the legislative power would not extend to the creation of irrigation, drainage and other districts with limited powers. These have the power to incur debt and to collect money by assessment on property in payment of such debt and for the operating expenses of the district. The creation of such districts has been held within the lawful exercise of power by the legislature."

Later in the opinion the Court points out:

"It is generally recognized that the debts of special improvement or assessment districts are excluded from constitutional limitation with respect to the cities towns, counties, school districts or the state, notwithstanding, they may operate within the same territorial boundaries."



Drainage, irrigation, mosquito districts have not been held by this Court to be sub-divisions of counties. From the standpoint of the relationship between the County and drainage, irrigation and improvement districts there are many features of those districts that make them analogous:

1. They are all created under general statutes enacted by the legislature.
2. They are all created by petition to and action of the Board of County Commissioners.
3. The taxes authorized to be imposed on residents of the districts are levied and collected by the County government.

The writer contends that irrigation and drainage districts are just as much "creatures of the County Commission" as the Improvement District, yet the laws creating them have been upheld as constitutional.

On this subject the action of this Court in the case of *Patterick vs. Carbon Water Conservancy District* should again be consulted. In reference to this indebtedness question the conservancy district and the improvement district are analogous:

1. They are created under authority of general statutes enacted by the legislature.
2. They may each include within their boundaries parts of a single county.

3. They are empowered through their governing boards to create indebtedness.
4. The tax levied by both is a general tax and not a special assessment.
5. Taxes for both are levied and collected by the County government.
6. Their functions and purposes are similar as has already been pointed out.

In the Patterick case the Court upheld the constitutionality of the water conservancy district act when the court was faced with the indebtedness problem. In other words, the Supreme Court made the same decision in connection with the Conservancy District that it made with regard to the Metropolitan Water District in the Meiling case. The Court in the Patterick case held that the Conservancy District was not a municipality and it was not a sub-division of a municipality and that it was not a sub-division of a county. It is interesting to note in this connection that the boundaries of the Carbon Water Conservancy District were co-terminous with the boundaries of Carbon County. The Court said:

“A Water Conservancy District is an arm of the government, separate and distinct from any municipality, with powers and rules of its own and the mere fact that its territorial boundaries may encompass the territorial boundaries of a municipality does not make it a part of the city. Its powers and objects are distinct and separate.”

In the case of *Wicks vs. Salt Lake City*, 208 P. 538, decided in 1922, the Court had this indebtedness problem before it. The Utah Session Laws of 1921 provided for the creation of a special improvement district within a city, and part of that statute read as follows:

“Section 1. Any city or town which has issued, or may hereafter issue, any special improvement bonds or warrants, shall by appropriation from the general fund or by the levy of a tax of not to exceed one mill in any one year, or by the issuance of general obligation bonds, or by appropriation from such other sources as may be determined by the board of commissioners, or city council, or board of town trustees, as the case may be, create a fund for the purpose of guaranteeing, to the extent of such fund, the payment of bonds or warrants and interest thereon, issued against local improvement districts for the payment of local improvements therein.”

The contention was made by the Plaintiff in the case that the statute was unconstitutional due to the fact that it enabled a city to create a debt in excess of that allowed by the constitution. With regard to that matter the Court said:

“Section 4 (of the Constitution) limits the amount of indebtedness that may be created when authorized in the preceding section (by vote of the people, as required in Article 14, Section 3 of the Constitution).

“It must be conceded that these provisions, like every other provision of the Consti-

tution, are the paramount law of the state concerning the subjects to which they relate. Any law enacted by the Legislature in conflict therewith is null and void, but the conflict must first be made to appear. If there is any reasonable doubt about it, the law will not be declared unconstitutional. This is elementary doctrine. Plaintiff does not contend that it manifestly appears that the act of 1921 attempts to authorize the creation of an indebtedness in excess of the limit fixed by the Constitution, but the contention seems to be that there is a vague and remote possibility that a literal compliance with the law may at some time in the future result in the creation of an indebtedness in excess of the constitutional limit. We seriously doubt if there is a sufficient showing on the part of Plaintiff concerning this question to justify an extended discussion. Plaintiff no doubt has presented every argument that can be presented on that side of the question, but his argument is by no means convincing."

Here then the Court allowed the city to provide for the creation of the increased indebtedness even though there was the possibility of thereby creating an indebtedness in excess of that permitted by the Constitution. The Court's opinion went off admittedly chiefly on the argument that due to the large assessed valuation of the city it would be extremely unlikely that the indebtedness created by the improvement district would ever cause the city to create such a large indebtedness as to exceed the limitations of the constitutional provision. The same

argument could be advanced for the creation of the indebtedness by the Magna Improvement District involved here. The assessed valuation of the area included within the boundaries of the Magna Improvement District is so minute, compared with the assessed valuation of the entire County, that it is inconceivable that an indebtedness amounting to twelve per cent of the assessed valuation of the property in that district would ever result in causing the county to exceed its debt limitation.

The editors of A. L. R. in 94 A. L. R. 819 discuss this indebtedness matter and I quote from their conclusions:

“The general rule is that in applying a constitutional or statutory debt limit provision to separate and distinct political units with identical boundaries, exercising different functions, only the indebtedness of the political unit in question can be considered, and the debts of the other independent political units should be excluded.”

On Page 824 of the same volume the editors say:

“In most of the cases involving the question the same rule has been applied in the case of overlapping boundaries as in the case of identical boundaries so that in determining the debt limit of a political unit as prescribed in the constitutional or statutory provisions applicable thereto, the indebtedness of another separate and independent political unit which



embraces part of, or more than the territory of the former unit is not to be taken into consideration."

In the light of the authority cited above and the reasoning set forth in those cases the writer contends that the Improvement District is not a municipality or sub-division thereof and is not a sub-division of a county, but is an independent political unit and its debt should not be included in the debt of any city or county. Accordingly the law authorizing creation of the district is not in violation of the indebtedness provision of the Constitution.

### PLAINTIFF'S COMPLAINT 8H.

"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."

Article I Section 24 of the Constituion of the State of Utah reads as folows:

"All laws of a general nature shall have uniform operation."

The writers of the act in providing that a notice requesting bids for bonds be published in a newspaper of general circulation in Salt Lake City had in mind the fact that all prospective Utah purchasers of such bonds have their offices in Salt Lake City. The sta-



tute is designed to provide publication in a newspaper that would be most likely to give notice to the bond purchasers of the opportunity to bid on the purchase.

It appears to the writer that in so doing the legislature did not create any improper classification which would be violative of Section 24, Article I of the Constitution.

## PLAINTIFF'S COMPLAINT 8I.

“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 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 rate that it desires, whereas the Constitution provides that municipalities must provide water to their inhabitants at reasonable charges.”

Article XI Section 6 reads as follows:

(Municipalities forbidden to sell waterworks or rights.)

“No municipal corporation shall, directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; 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; provided, that nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water rights, or sources of water supply for other water rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants."

The answer to the allegation of the Plaintiff is simply that an improvement district is not a municipality. That issue has been considered earlier in this Brief. The Supreme Court of Utah has stated that metropolitan water districts and water conservancy districts are not municipalities. The Utah Court has not seen fit to declare irrigation districts or drainage districts municipalities. If those public agencies are not considered by the Court to be municipalities, then it appears to the writer there is no basis for adjudicating an improvement district to be a municipality.

Plaintiff contends that the following provision of Section 7 of the Improvement District Act is unconstitutional:

"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."

Syllogestically speaking, Plaintiff's major premise is that it is a violation of the Utah Constitution for a County official to contract with the Board of County Commissioners or to receive any compensation from the County other than that which he is entitled by law to receive as a county official. His minor premise is that in contemplation of the spirit of the Constitution an Improvement District is the same as a County and that a Trustee should not be able to contract with the Board of Trustees or receive any compensation other than that provided for by the law to be given to a Trustee. His conclusion is that the provision in the law allowing a Trustee to receive compensation other than that he is authorized to receive for the performance of his duties as a Trustee is unconstitutional.

The writer contends that according to authority cited by the Plaintiff himself his major premise is fallacious, and therefore his conclusion is incorrect. Plaintiff cites 15 C. J., Paragraph 162 at Pages 497 and 498. That paragraph reads as follows:

“Where the salary or compensation of a County official is definitely fixed by law, it is generally held that such sum is intended to include his entire official remuneration and to preclude extra charges for any services whatsoever, *unless it is clear that the statute contemplated and intended additional compensation for certain extra services.* . . . Compensation may be recovered by a county official for the performance of services entirely outside the scope of the duties of the office where the

services were performed under a lawful contract with the County Commissioners.”

From the language of the statute quoted by the Plaintiff in his Brief it makes it clear that the statute “contemplated and intended additional compensation for certain extra services.” It is also clear from the statute that the services to be performed by the “general manager of the properties of the district” are to be “services entirely outside the scope of the office” of trustee. Consequently, inasmuch as Plaintiff’s major premise is fallacious his conclusion fails.

## PLAINTIFF’S COMPLAINT 8J.

“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.”

It is the contention of the writer that there is nothing about the Improvement District Act which is inconsistent with fundamental principles of constitutional government or which would militate against the security of individual rights and the perpetuity of free government.

The writer believes that the contentions of the Plaintiff have been answered and that this Court should uphold the constitutionality of the Improvement District Act.

*Respectfully submitted,*

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