

1979

The Mountain States Telephone & Telegraph Co. v. Salt Lake City : Reply to Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

* * * * *

MOUNTAIN STATES TELEPHONE
& TELEGRAPH COMPANY, a
corporation,

Plaintiff-Appellant,

vs.

SALT LAKE CITY, a body
corporate and politic
under the laws of the
State of Utah,

Defendant-Respondent.

Case No. 16000

REPLY TO
PETITION FOR REHEARING

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FILED

AUG 6 1979

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)	

Plaintiff-appellant Mountain States Telephone and
Telegraph Company hereby replies to defendant-respondent
Salt Lake City's Petition for Rehearing as follows:

I. THE PETITION MERELY RE-ARGUES
MATTERS RAISED BY RESPONDENT IN
THE ORIGINAL APPEAL.

Respondent Salt Lake City argues that this Court
should grant its Petition for Rehearing because the Court
allegedly failed to note or consider the fact that the
Complaint in this matter does not use the words "inten-
tionally" or "systematically" to characterize the City's
failure to collect business utility revenue tax from
appellant's competitors.

This argument was presented to this Court by Salt Lake City both in it's brief (Respondent's Brief at 28-29) and during oral argument. The Court expressly noted its resolution of this issue in its opinion, stating:

"There exists therefore a genuine factual issue which must be tried before the validity of plaintiff's cause of action may be determined. This is so notwithstanding our holding that to recover for the discriminatory application of a taxing statute a complainant must show a systematic and intentional failure to enforce the statute equally." Mountain States Telephone & Telegraph Co. v. Salt Lake City, Case No. 16000.

The grounds advanced in support of the Petition for Rehearing are merely a re-argument of matters raised in the original appeal, and are, therefore, insufficient to support granting a rehearing. Brown v. Pickard, 4 Utah 292, 11 P. 512 (1886); Ducheneau v. House, 4 Utah 483, 11 P. 618 (1886).

II. THOSE MATTERS RAISED BY THE
PETITION FOR REHEARING DO NOT
MATERIALLY AFFECT THE RESULT
REACHED BY THIS COURT.

Petitioner argues that the fact that the complaint in this matter does not contain the words "intentional" or "systematic" means that the complaint should have been dismissed, citing Thiokol v. Peterson, 15 Utah 2d 355, 393 P.2d 391 (1964), as authority for this proposition. Thiokol v.

Peterson was a suit involving the assessment of real property. That case applies the notion, derived from the holding of Lake City Iron v. Wakefield, 247 U.S. 350, 38 S.Ct. 495 (1918), that something referred to as intentional and systematic must occur during the course of the assessment of real property before inequality in that assessment will be held constitutionally defective. The Sunday Lake Iron case involved a mistake made by an inexperienced assessor who applied, without review, an apparently erroneous valuation calculated by his predecessor. This valuation was challenged before the appropriate State Board of Tax Equalization. The State Board of Equalization did not have time or adequate information to make a proper valuation of plaintiff's property in comparison with that of other similar property for the particular tax year in question. The following year, the Board properly equalized plaintiff's assessment in comparison with that of similar properties. The Supreme Court held that under these facts, the disproportionate assessment for a single tax year would not be held unconstitutional. The holding of the Sunday Lake Iron case has consistently been interpreted to mean only that in real property assessment cases, mere errors of judgment committed by taxing officials will not be held to

constitute a denial of the constitutional guarantee of equal protection.

The holding of the Sunday Lake Iron case is merely an application of the more general proposition that reviewing courts are bound to extend some degree of discretion to the actions of officials of other branches of government. In the case of real property assessments, this discretion includes the freedom to make isolated mistakes and to impose assessments which embody some deviation from precise equality. Pleasant v. Missouri-Kansas-Texas R. Co., 66 F.2d 842 (10th Cir. 1933). In any case where taxing officials abuse this discretion, however, the courts are equally bound to invalidate their actions. Actions taken in bad faith or with the intention of singling out one taxpayer for unfavorable treatment are abuses of this discretion. McFarland v. American Sugar Co., 241 U.S. 79, 36 S.Ct. 498 (1916); Pleasant v. Missouri-Kansas-Texas R. Co., supra. When taxing officials apply erroneous principles, or fail to observe statutory mandates of equality, or implement taxes which have significant disparate impact on similarly situated taxpayers, they also abuse their discretion. Southland Mall, Inc. v. Garner, 455 F.2d 887 (6th Cir. 1972); Weissinger v. Boswell, 330 F. Supp.

615 (N.D. Ala. 1971). Utah has a statute, §10-8-80, UTAH CODE ANN., which mandates uniformity in the taxation of similarly situated taxpayers. This Court has properly determined that appellant and its direct competitors must be treated as similarly situated taxpayers; and has properly determined that appellant has alleged that the city has failed to carry out that obligation.

The holding of the Lake City Iron case has been used primarily in the federal courts as a rule of abstention to avoid having to hear large numbers of complaints about individual instances of relatively minor errors and inequalities in state real property assessments. The opinion in Southland Mall, Inc. v. Garner, *supra* at 889 discusses the policy reasons which are served by applying this rule in the federal courts.

The very limited scope of the holding of Sunday Lake Iron is explained in the Harvard Law Review note which is cited in the Thiokol opinion immediately following the citation to Sunday Lake Iron. That note says that the tax inequality at issue in Sunday Lake Iron:

"... was held permissible because it had resulted from mere errors in judgment in following a proper procedure." Note, Inequality in Property Tax Assessments: New Cures for an old Ill, 75 HARV. L. REV. 1374, 1376 (1962).

The limited scope of the Sunday Lake Iron case was emphasized by the Supreme Court in the case of Cumberland Coal Co. v. Board of Revision, 284 U.S. 23, 52 S.Ct. 48 (1931). In Cumberland Coal, four coal owners had challenged the method by which the commissioners of Green County, Pennsylvania had assessed their coal. These owners alleged that the tax valuation placed on their coal was unconstitutionally discriminatory because the commissioners had adopted a system of taxation which assessed all coal in any given township at the same value regardless of its accessibility, its proximity to transportation, or any other factors affecting its actual value. The words "intentional" or "systematic" apparently were not used in the coal owners' complaint. The Supreme Court held that the coal owners had made a sufficient showing to establish a denial of equal protection, stating:

"There is no question that the assessments under review were made pursuant to a deliberately adopted system. The case is not one of mere errors in judgment in following a proper method [citing Sunday Lake

Iron Co. v. Wakefield], but one where the challenged discrimination resulted from a plan of assessment which was nonetheless systematic and intentional because of belief in its validity." 52 S.Ct. at 49 (emphasis added, citations omitted.)

There is significant doubt as to whether, after Cumberland Coal, the dicta in Sunday Lake Iron referring to "systematic" and "intentional" is an essential element of an equal protection claim at all. For example, in Snowden v. Hughes, 321 U.S. 1, 64 S.Ct. 397 (1943), the Supreme Court noted, in an equal protection case not involving property assessments, that if the practical effect of the challenged action was to cause an impermissible discrimination, then such action constituted a denial of equal protection "even though it is neither systematic nor long continued." 64 S.Ct. at 402. See also Southland Mall Inc. v. Garner, supra, where the Sixth Circuit notes that while taxpayers have normally prevailed on equal protection claims in assessment cases only when they were able to demonstrate a systematic pattern of discrimination, "...such a systematic pattern does not appear to be an essential element of the claim." 455 F.2d at 889, citing Snowden v. Hughes, supra.

The issues raised by the Petition for Rehearing do not, however, require this Court to determine the extent to

which the Sunday Lake Iron case has continued validity. The facts of this case do not fall within the holding of the Sunday Lake Iron and Thiokol cases. Those cases are both property assessment cases. The instant case is not a property assessment case. Those cases involved a single instance of mistake by an assessing official. (In the Thiokol case, the Thiokol Company had an unusual contract with the United States which gave Thiokol the use of certain real property, but recited that title to the property remained in the United States. The Box Elder county assessor was alleged to have improperly applied the state's privilege tax statute to the property governed by this contract.) The respondent city does not claim that its failure to tax appellant equally is the result of mistake, and the Thiokol and Sunday Lake Iron cases have no application to the instant facts.

The affidavit of one of the Deputy City Attorneys which appears as an appendix to the petition is both incompetent and immaterial. Objection was made in the District Court to this affidavit on the grounds that it recites matters which are hearsay and on the grounds that it establishes no adequate foundation for the affiant to declare what Salt Lake City intends to do in the future with respect to taxing appellant's competitors. It also

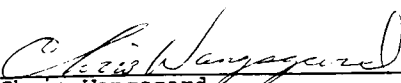
is immaterial, for even if it is construed as expressing some sort of good intention on the part of the city, it recites no collection of the tax in question from appellant's competitors. Under the holdings of the Cumberland Coal, Southland Mall, and Weissinger cases cited above, the intentions of taxing officials are wholly immaterial where the officials have intentionally adopted a tax system which has an impermissibly discriminatory effect.

III. CONCLUSION

The Petition for Rehearing should be dismissed. It merely re-argues matters argued and fully considered in the original appeal. In addition, the purported error which petitioner asserts to justify a re-hearing constitutes no error. Petitioner's authority has no application to the facts of this case and fails to demonstrate any error having a material effect on the original appeal.

RESPECTFULLY submitted this 6th day of
August, 1979.

VAN COTT, BAGLEY, CORNWALL
& MCCARTHY

By 
Chris Wangsgard
Attorneys for Appellant

CERTIFICATE OF MAILING

THIS IS TO CERTIFY that a copy of the foregoing
Reply to Petition for Rehearing was mailed, postage prepaid,
this 6th day of August, 1979, to:

Roger F. Cutler
City Attorney
Attorney for Respondent
101 City & County Building
Salt Lake City, Utah 84111

