

1979

George Rupp, Et Al. v. Grantsville City, Et Al. : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE RUPP, et al.,)	
)	
Plaintiffs-Appellants,)	
)	
vs.)	CASE NO. 16270
)	
GRANTSVILLE CITY, et al.,)	
)	
Defendants-Respondents.)	

BRIEF OF RESPONDENTS

Appeal from the Order of the District Court of
the Third Judicial District in and for
Tooele County, State of Utah
Ernest F. Baldwin, Jr., District Judge
Presiding

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Clerk, Supreme Court, Utah

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* * * * *

BRIEF OF RESPONDENTS

Grantsville City, et al.

STATEMENT OF THE NATURE OF THE CASE

The Appellants filed an action seeking declaratory and injunctive relief to enjoin enforcement of Revised Ordinances of Grantsville City, Chapter 22, Sections 31, 34 and 35 and Chapter 28, Sections 13, 15 and 27. The Appellants alleged that City officials had misrepresented to them and other citizens certain facts with respect to a bond election which approved the issuance of general obligation bonds to help pay the costs of constructing a sewer system in Grantsville. The Appellants alleged that they relied upon these misrepresentations in supporting the bond election and that the enforcement of the cited ordinances was contrary to the representations made and denied them their rights of due process and the opportunity to vote at an election fairly presented and also

constituted a confiscation of their property without compensation.

DISPOSITION IN THE LOWER COURT

This case was tried in the District Court of the Third Judicial District in and for Tooele County with the Honorable Ernest F. Baldwin, Jr., presiding. After all the evidence was presented and having allowed time for counsel to submit memorandums, the Court granted the Respondents' Motion to Dismiss which it had taken under advisement at the conclusion of Appellants' case.

RELIEF SOUGHT ON APPEAL

The Respondents seek to have the findings of the trial court and its order based thereon upheld.

STATEMENT OF FACTS

Prior to November 3, 1970, the elected officials of Grantsville City determined it to be in the best interests of the citizens of Grantsville City to construct a municipal sewer system. Application was made for Federal grants to help defray the costs of construction. As a condition precedent to receiving the Federal grants, it was necessary for the City to adopt a mandatory connection ordinance. This ordinance (Exhibit P-2) was adopted in 1969. The water ordinance (Exhibit P-1) was adopted in 1955. The Federal grants were obtained and the City called a special bond election, which was held on November 3, 1970, in which the voters approved the issuance of the bonds to help fund the

construction and maintenance of the sewer system. Prior to the bond election, the elected officials of Grantsville City circulated a flyer (Exhibit P-3) in support of the bond election. Bids were let and awarded to various contractors, and construction of the sewer system began. After construction was commenced, it was discovered that the consulting engineers who designed the system had made a mistake with respect to the number of lineal feet of sewer laterals for the sewer system. It was discovered that the actual number of lineal feet of sewer laterals needed would be 24,000 feet rather than the 6,000 feet originally anticipated. To solve the problem of paying for the additional footage of sewer laterals, the elected officials of the City determined to increase the connection fee to the sewer system from \$250.00 to \$350.00. Letters were sent from the City advising citizens of the mistake, and a public meeting to discuss the proposed solution was advertised and held. The public meeting was well attended and a vote was taken on the proposed solution, which was approved with only a few objections. The City then increased the connection fee from \$250.00 to \$350.00. Construction of the sewer was completed and the citizens were advised that connection to the system was available on December 4, 1972. Letters were sent to the citizens (Exhibit D-5) relative to the sewer system and payment of the connection fees. Appellants failed to pay the connection fee; and pursuant to the ordinance, water service to their residences was discontinued. Upon

payment of the connection fee, water service was reinstated. Each of the Appellants had made payment of the connection fee, without paying under protest, by May 11, 1976. On September 1, 1977 the Appellants filed suit seeking declaratory injunctive relief enjoining the enforcement of Revised Ordinances of Grantsville, Chapter 22, Sections 31, 34 and 35 and Chapter 28, Sections 13, 15 and 26 and, also, seeking an injunction to prevent the City from raising the connection fee above \$250.00 as against the Appellants. The suit was filed without making a claim against the City for refund of the \$100.00 collected over and above the \$250.00 original connection fee and without complying, in any way, with the Governmental Immunity Act or with Utah Code Annotated, Title 10, Chapter 7, Section 77.

The Appellants alleged that on or about November 4, 1970 the City presented to the citizens a proposal for the funding, construction and maintenance of a sewer system to serve the City. They alleged that the elected representatives of the City made certain specific representations to the Appellants, both orally and written, that the Appellants relied upon the representations in supporting the bond election. They alleged that subsequent to the approval of the bond issue, the City has sought to enforce the above-mentioned ordinances, including the increased connection fee, all of which they alleged was contrary to the representations made to the residents. The Appellants alleged that enforcement

of the ordinances had been arbitrary and discriminatory, violating their rights to equal protection and due process. They alleged that enforcement of the ordinances, which was in direct contradiction to the representations made prior to the bond election, denied them due process, constituted a confiscation of plaintiffs' property without compensation, without notice, without a fair opportunity to be heard, and without the opportunity to vote at a duly called election on issues fairly presented to the residents. They alleged that as a result of their failure to connect to the sewer system, the City caused their water service to be discontinued and that the enforcement of the ordinances would cause the plaintiffs undue hardship and irreparable harm. The defendant, City then filed an answer and the case was brought to trial on December 15, 1978, after having been continued on October 30, 1978. Some evidence was stipulated to and the plaintiffs called one witness and the defendants called two witnesses. On October 30, 1978 and December 15, 1978, the plaintiffs stipulated that the adequacy of the design of the sewer system would not be an issue at the trial and it was not raised as an issue. At the conclusion of the plaintiffs' evidence, the defendant, City moved to dismiss the action on three basis: First, that the thrust of the plaintiffs' action was that the defendant, City had made misrepresentations of certain facts and the plaintiffs' evidence did not show that they relied upon any of the purported misrepresentations.

Second, that the case sounded in tort and deceit and based upon the evidence presented that was in fact the thrust of the action and that the City had not had its governmental immunity waived as to such a case. Third, that the evidence did not establish that the payments made by the plaintiffs were paid under protest.

The Court took the motion under advisement and it gave counsel time to submit memorandums and the defendant, City then presented its case. At the conclusion of all the evidence and after the time had run for the memorandums of counsel to be submitted, the Court entered its Findings of Fact and Order dismissing the case. It is from this Order that the plaintiffs have taken this appeal.

POINT I

THE CITY HAD AUTHORITY TO ENACT AN ORDINANCE MAKING CONNECTION TO THE SEWER SYSTEM MANDATORY

Utah Code Annotated, Section 10-8-15, 1953, as it read when the mandatory hook-up ordinance was adopted, read:

"They may construct, maintain, and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telephone lines or public transportation systems, or authorize the construction, maintenance and operation of the same by others, or purchase or lease such works or systems from any person or corporation, and they may sell and deliver the surplus product or service capacity of any such works, not required by the city or its inhabitants to others beyond the limits of the city."

Utah Code Annotated, Section 10-8-38 read, in pertinent part, when the mandatory hook-up ordinance was adopted:

"Boards of commissioners, city councils and boards of trustees of cities and towns may construct, reconstruct, maintain and operate sewer systems, sewage treatment plants. . . . and all systems, equipment and facilities necessary to the proper drainage, sewage and sanitary sewage disposal requirements of the city or town and regulate the construction and use thereof.

"Any city or town, for the purpose of defraying the cost of construction, reconstruction, maintenance or operation of any sewer system or sewage treatment plant, may make a reasonable charge for the use thereof." . . .

Utah Code Annotated, Section 10-8-84, as in effect when the mandatory hook-up ordinance was adopted, read:

"They may pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and such as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the city and the inhabitants thereof, and for the protection of property therein; and may enforce obedience to such ordinances with such fines or penalties as they may deem proper; provided, that the punishment of any offense shall be by fine in any sum less than \$300.00 or by imprisonment not to exceed six months, or by both such fine and imprisonment."

While it is true that Utah Code Annotated, Section 10-8-38 was amended in 1971 to include language specifically authorizing cities to enact mandatory hook-up ordinances, it does not necessarily follow that cities lacked such authority prior to that time. Appellants cite Salt Lake City v. Towne House Athletic Club, 18 Utah 2d 417, 424 P. 2d 442 (1967), as authority for the proposition that the 1971 amendment of

Section 10-8-38 means that cities did not have the power to adopt mandatory hook-up ordinances prior to that time. It is true that "the enactment of subsequent legislation containing a specific grant of power kindred to that contained in prior legislation containing a general grant of power usually suggests the conclusion that the later specific grant was not included within the former general grant". Salt Lake City v. Towne House Athletic Club, 18 Utah 2d 417, 421, 424 P. 2d 442, 445. But the suggestion of that conclusion does not compel the conclusion. It is also recognized that the passage of a statute expressly conferring power on a municipal corporation does not necessarily preclude the pre-existence of the power. Hopkins v. Richmond, 117 Va. 692, 86 SE 139; overruled on other grounds, Irvine v. Clifton Forge, 124 Va. 78, 97 SE 310. The Supreme Court of this state has recognized on two separate occasions the power of cities and counties to adopt mandatory hook-up ordinances. In Bigler, et al. v. Greenwood, et al., 123 Utah 60, 254 P. 2d 843 (1953), the Salt Lake County Commissioners had set up a sewer district, construction project and a plan for financing the same. The plaintiffs filed in the Supreme Court an original proceeding seeking an extraordinary writ to prohibit the commissioners from going forward with the program. One of the points the plaintiffs attacked the program on was that the method of financing would impose liens upon plaintiffs' property without notice and thus denied them due process of law.

This was the point the Court decided the case on. The Court, in making its determination as to whether the method of financing the project was a non-lien purely revenue bond financing or one which created a lien upon the property, noted that each householder within the district whose property was within 200 feet of the sewer was under mandate of a county ordinance to connect with the sewer. Speaking of this mandatory hook-up provision the Court said, "The ordinance is unquestionably valid and enforceable. The County Commissioners. . .may make and enforce. . .all such local. . .sanitary regulations as are not in conflict with general laws and. . .make such provision for the preservation of health. . . as they may deem necessary. . .Such an ordinance is undeniably proposed to protect the health and welfare and is therefore a valid exercise of authority expressly conferred under the police power." Bigler, supra at 66-67. The statutes which the Court cited as giving the commissioners power to adopt such an ordinance were Utah Code Annotated, Sections 17-5-35 and 49. These statutes are similar in their provisions to Utah Code Annotated, Section 10-8-84, which is commonly known as the "General Welfare Clause" for cities.

In Bair v. Layton City Corporation, 6 Utah 2d 138, 307 P. 2d 895 (1957), the City of Layton enacted an ordinance authorizing and directing the execution of a contract between the City and the North Davis County Sewer District. One provision of the contract required the City to keep in

force, at all times during the term of the contract, an ordinance requiring all buildings and structures in the City used for residential, commercial or industrial purposes and which were within a reasonable distance of an established sewer connection main, to be connected to such main. In speaking of this provision, the Court said, "There might be some difference of opinion on whether some buildings are within a reasonable distance from a sewer main, and a reasonable distance from such main might be different under some circumstances than under others, but it seems clear that the City's governing body should have no difficulty in enacting an ordinance which would fix a reasonable distance from such main within which all the buildings and structures designated in the contract must be connected with such main." Bair, supra at 149.

It should also be noted that Utah Code Annotated, Section 10-8-38, as it existed at the time the city adopted its mandatory hook-up ordinance, granted the city the power to construct and to regulate the construction and use of the sewer system. The mandatory hook-up ordinance is a reasonable regulation which was adopted to help defray the cost of construction and maintenance and also to protect the health and safety and to promote the prosperity of the city and its inhabitants.

In conclusion, the city had authority under the case law of this state and pursuant to its police power and power to

construct and regulate the construction and use of sewers within the city limits, to adopt a mandatory hook-up ordinance prior to the time when Utah Code Annotated, Section 10-8-38 was amended in 1971 to expressly provide such power. The legislature in so amending that section was codifying and clarifying what was already recognized as the state of the law.

POINT II

THE BOND ELECTION WAS VALID IN THAT THERE
WERE NO MISREPRESENTATIONS CALCULATED TO
MISLEAD THE VOTERS

In the case of Ricker, et al. v. Board of Education of Millard County School District, 16 Utah 2d 106, 396 P. 2d 416 (1964), the defendant, School Board, had determined to have a school bond election. The Board published, in a local newspaper, a notice of the school bond election and a copy of the official ballot. In addition, it had printed an explanatory brochure about the election and its purpose. The brochure indicated, among other things, that the funds generated by the bonds would be spent under two main categories: high schools and elementary schools. The brochure indicated the main item in high schools would be a new combined junior and senior high school at Delta, at a cost of about \$1,250,000.00 and, additionally, that about \$155,000.00 would be spent at Millard High School. It also indicated that there were several proposals under consideration for construction and remodeling of grade schools in the district but gave no cost estimates for those projects.

The bond election carried and the School Board proceeded to get a definite estimate as to the cost of the new school at Delta. It was discovered that the preliminary estimate for that project was too low and the actual cost would be \$1,645,000.00 to \$1,786,000.00. The maximum amount of bonds that the Board could issue, based on the 1964 assessed valuation, was \$1,935,000.00. The plaintiffs brought suit to prevent the Board from going forward with a project of building the new school at Delta. The plaintiffs' contention was that the Board should not be allowed to use substantially all of the money for the high school projects, leaving only a small amount to meet the needs of the elementary schools. The plaintiffs contended that to do otherwise would be a violation of the condition upon which the public voted for the bonds and a breach of faith by the Board in performing their duties. The Board's position was that it was bound only by the statutory notice and not by the statements in the explanatory brochure and that if, in order for it to properly discharge its duties, it needed a free hand to spend the funds for the most pressing needs of the district which it felt were the high school projects. The District Court ruled that the Board should allocate the money raised by the bonds for the purposes stated in the brochure. The trial court added the sum of the high school project estimates from the brochure, added 10% and set that as the limit to be spent on those projects. The Supreme Court, on appeal,

identified the question presented as "whether the plaintiffs. . . can compel the defendant, Board, to use the money raised in the bond election only in the amounts stated and for the purposes specified in the brochure". Ricker, supra at 419. In answering this question, the Court said, "We do not disagree with the idea that public officials should not be allowed to make representations or publish materials deliberately calculated to mislead the voters, and then escape responsibility for their commitments with the excuse that such representations were not part of the official notice". Ricker, infra at 418. The Court noted that the District Court concluded that the representations were not made with intent to deceive or mislead and that its publication did not constitute any misrepresentation. The Court further stated on this point: "It is also true that if it were shown that there existed some actual deceit, fraud or corruption; or if the board was acting outside the scope of its authority, or was so completely failing to follow the course of its duties that its actions could be classified as capricious or arbitrary, redress might be had in the courts". The Court concluded that the Board's conduct could not be so classified and that the proposed building could not be properly interfered with and vacated the District Court's order.

In the instant case, the plaintiffs allege that the elected officials of Grantsville City made certain representations, both oral and written, in order to facilitate the

passage of the bond election and that the plaintiffs relied upon said representations in supporting the bond issue. Nowhere is it alleged that the representations were deliberately calculated to mislead or that there existed some actual deceit, fraud or corruption. There is no evidence in the record that there was any intent to deceive the plaintiffs or any other voters with respect to the facts. With respect to the written and oral representations alleged, the only evidence introduced and before the trial court was Exhibit P-3. There is no evidence in the record as to any oral representations by any city official. Plaintiffs have alleged the following representations: "(1) The charge for a resident to hook-up to the system would not exceed \$250.00, (2) Residents with existing and acceptable septic tank systems would not be required to connect to the sewer system, and (3) A monthly service charge would be assessed only to those residents utilizing the sewer system. Residents not connected would not be charged". Complaint, paragraph 5. A reading of Exhibit P-3 reveals the following: (1) With respect to the first allegation, the exhibit reads "Connection Charge at \$250.00. . . \$170,000" indicating the amount anticipated to be raised by the connection charge. Nowhere does it state that the connection charge would not exceed \$250.00. Indeed, the fourth paragraph of the exhibit reads as follows: "It is the best estimates (emphasis added) of the mayor and city council, engineers and financial consultants that the

essential facts of the project are as set out in the following discussion." The representation complained of is included in that following discussion; (2) There is no representation that residents with existing and acceptable septic tank systems would not be required to connect to the sewer system; (3) The brochure did state that a monthly service charge would be charged to all persons using the system and people not connected will not be charged.

The trial court, based upon the evidence produced, made the following findings:

"The plaintiffs did not support the bond election."

"That Exhibit P-3 did not misrepresent the facts related to construction of the sewer system." Findings of Fact, page 4.

In this action the plaintiffs are seeking equitable relief in the form of a permanent injunction enjoining the respondent from enforcing certain sections of the Revised Ordinances of Grantsville City. The rule, as to matters of fact in a case in equity, is that the Supreme Court may review questions of fact as well as questions of law but that the Findings of Fact will not be disturbed unless the clear weight of the evidence is against them. Peterson v. Carter, 579 P. 2d 329; Corbet v. Corbet, 472 P. 2d 430; Merrill v. Bailey and Sons, 99 Utah 323, 106 P. 2d 255. The weight evidence does not preponderate against the findings of the trial judge in this matter. To the contrary, there

is no evidence of any fraud or deceit or publication of material deliberately calculated to mislead the plaintiffs or any other voters. The only evidence as to any conduct on the part of any of the plaintiffs with respect to the representations in Exhibit P-3 is the testimony of Mr. Fidler. Mr. Fidler testified that he received a copy of Exhibit P-3. Transcript, page 16, lines 21-28. He was asked if he relied on the information as being true and replied, "Yes". Transcript, page 18, lines 1-5. He then testified that he did not vote for the bond election. Transcript, page 19, lines 5-7. Mr. Fidler cannot therefore claim to have relied to his detriment in supporting the bond issue, since he did not support it. There is no evidence in the record that any of the other plaintiffs or any other citizens relied upon Exhibit P-3. Further, Exhibit P-3 does not, as has already been pointed out, misrepresent the facts. It states by its own terms that it is the "best estimate" of those involved in planning the sewer project.

One further point must be raised here. The Appellants seek an injunction against increasing the connection fee above \$250.00 as against them. Each of them has paid the \$350.00 connection fee for each of the premises for which they were responsible to pay. The payments were not made under protest, even if their counsel advised them to so pay the fees. The basis for seeking the injunction against charging the Appellants more than \$250.00 for the connection

fee, is that it is contrary to the representations made which Appellants allegedly relied upon. This is in effect an effort to recover \$100.00 from the Respondent, City for each connection fee paid, based upon a theory of misrepresentation. This type of action sounds in tort, specifically the tort of deceit. For this type of action, the city has immunity under Utah Code Annotated, Section 60-30-1, et seq. Rapp v. Salt Lake City, 527 P. 2d 651 (1974). The city raised this defense in a timely manner.

POINT III

THE APPELLANTS' RIGHT TO EQUAL PROTECTION OF THE LAW HAS NOT BEEN VIOLATED

Municipal ordinances adopted under state authority constitute state action and therefore are within the coverage of the Fourteenth Amendment. Lovell v. Griffin, 303 U.S. 44, 82 L.Ed. 949, 48 S.Ct. 666 (1938). This is not a case involving a "suspect class" calling for "strict judicial scrutiny" and a showing of a "compelling state interest". Bolling v. Sharpe, 347 U.S. 497, 98 L.Ed. 884, 74 S.Ct. 693 (1954). Rather the test to be applied here in determining whether the city's conduct violates Appellants' rights to equal protection of the laws is whether the distinctions bear a rational relationship to a legitimate objective sought to be accomplished. Foley v. Connelie, 55 L.Ed. 2d 287, 98 S.Ct. 1067 (1978). In this case, the Appellants only witness, Mr. Fidler, testified that the houses on the South side of Main Street to the Tooele Junction, except

two, are not connected to the sewer. Transcript, page 15. It was proffered and stipulated that Jay Frank Bonell, a professional engineer, whose firm designed the system, would testify that all persons who could connect to the sewer system were connected, except for two. That some residences are not connected because of the cost of running the lines to outlying areas of the city and that some are not connected because the level of the main sewer line is higher than the level of their basement and they could not connect without installing a pump. Transcript, pages 41-42. Not compelling persons to connect and not extending the sewer lines for such reasons is certainly not arbitrary and capricious and does bear a rational relationship to the objective to be accomplished. It is submitted, therefore, that the Appellants' right to equal protection of the law has not been denied.

POINT IV

APPELLANTS' DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED

Appellants claim that their constitutional rights to due process were violated because the city caused their water service to be turned off when they failed to pay their connection fees. The only evidence before the Court is that Mr. Fidler's water service was terminated when he failed to pay the connection fee. That he paid the connection fee without paying it under protest and water service was restored. There is no evidence that any other person's water service

was terminated. The evidence also shows that several letters were sent to those who had not paid the connection fee, including one which notifies the receiver that it is to be deemed a final notice.

Appellants cite Koger v. Guarino, 412 F.Supp. 1375, as authority for the proposition that the city cannot terminate their water service without first having a hearing. The case is not directly on point with the instant case and can be distinguished in several ways. First, that case dealt with terminating water service for non-payment of disputed service charges. This case involves a one time connection fee and not a dispute over periodic service charges. Second, in this case the Appellants did not contend that they had been billed in excess of what the ordinance permitted. Nor did they contend that they had not received credit for what they had paid. The Appellants admit that they did not pay the connection fee. There would have been no purpose in having a hearing to adjust a charge when there was no dispute as to how much the Appellants had paid or as to how much the ordinance provided for the connection fee to be. The only dispute was whether or not the city could enforce the mandatory hook-up provision of the ordinance and collect \$350.00 rather than \$250.00 for the connection fee. These matters could not be resolved in an informal hearing designed to settle disputed service charges because the resolution of those questions involve determination of questions of law

calling for exercise of strictly judicial functions. Shea v. State Tax Commission, 101 Utah 209, 212, 120 P. 2d 274. Payment under protest and following the statutory procedure therefore was Appellants' remedy. Therefore, any hearing would have been nothing more than an exercise in futility.

It should also be noted that Utah Code Annotated, Section 10-8-38, as it existed when the city adopted the mandatory hook-up ordinance, permitted cities to terminate water service for non-payment of charges to the premises served by the water. It was pursuant to this statutory authority and the ordinance that Appellant, Wilton Fidler's water service was terminated.

POINT V

APPELLANTS CANNOT RECOVER THEIR CONNECTION FEES BECAUSE SAID FEES WERE NOT PAID UNDER PROTEST AND THE APPELLANTS DID NOT COMPLY WITH THE PROVISIONS OF THE GOVERNMENTAL IMMUNITY ACT OR UTAH CODE ANNOTATED, SECTION 10-7-77

Appellants claim that they are entitled to a refund of the moneys which they paid for connection fees regardless of whether such fees were paid under protest. As authority for this proposition they cite Wilson v. Weber County, 100 Utah 141, 111 P. 2d 147 (1941).

Utah Code Annotated, Section 59-11-11, as in effect when the Appellants paid their fees read:

"In all cases of levy of taxes, licenses, or other demands for public revenue (emphasis added) which is deemed unlawful by the party whose property is thus taxed, or from whom such tax or license

is demanded or enforced, such party may pay under protest such tax or license, or any part thereof deemed unlawful, to the officers designated and authorized by law to collect the same; and thereupon the party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom said tax or license was paid, or against the state, county, municipality or other taxing unit or whose behalf the same was collected, to recover said tax or license or any portion thereof paid under protest."

The Appellants connection fee was a "demand for public revenue" within the meaning of this statute and to recover the same Appellants must pay under protest. Wilson v. Weber County, which Appellants claim relieves them of the responsibility of paying under protest, was overruled in Shea v. State Tax Commission, 101 Utah 209, 120 P. 2d 274, where this court said, in speaking of the Wilson case, "That case must be considered as overruled to the extent that anything said in that opinion may be said to hold that a tax, license or other exaction for public revenue (emphasis added), not paid under protest, may be recovered because collected under a statute subsequently held invalid." Shea, supra at 213. The Court also stated at page 212 of that opinion, "In cases in which legality or illegality of tax sought to be recovered by taxpayer necessarily involves determination of questions of law calling for exercise of strictly judicial functions, payment under protest and compliance with other provisions of the statutes afford the exclusive remedy".

Further it should be noted that not only did the Appellants not pay the connection fee under protest, but they also failed to comply with the Governmental Immunity Act and Utah Code Annotated, Section 10-7-77 by timely presenting their claim to the city.

CONCLUSION

The case law of this state is clear that the Respondent, City, had authority to adopt a mandatory hook-up ordinance pursuant to its police powers. Such authority is also implied in the power of the city to construct and regulate sewers within the city limits.

The city's enforcement of the challenged ordinances has not been arbitrary and capricious. To the contrary, there is a rational reason for not requiring those few premises not connected to the sewer to connect and for not extending the lines to those areas not presently served by the sewer system.

The Respondent, City and its elected officials did not misrepresent the facts about the sewer system or its cost to the residents of Grantsville. The brochure which Appellants complain of by its own words describes the contents thereof as the "best estimates" of those involved in planning the project. It was a mistake which was not discovered until after construction of the sewer system was well under way which occasioned the increase in the connection fee.

Furthermore, the Appellants' own evidence demonstrates that

they did not rely on the brochure in supporting the bond election. There is no evidence at all of any deceit, fraud or corruption calculated to mislead the voters on the part of any city official.

The Appellants claim that the ordinance is unconstitutional in that it allows for termination of water service without a prior hearing. The case Appellants cite in support of this contention is distinguishable from the facts in the instant case in several respects which have been discussed. Further, such termination is expressly authorized by state law.

The Appellants did not pay this "demand for public revenue" under protest which is a prerequisite to bringing an action to recover the same. Further, the Appellants did not follow the statutory procedure for presenting their claim to the city and did not file this lawsuit in a timely manner.

The decision of the trial court, in this case, is supported by the evidence and the law and should therefore be affirmed.

RESPECTFULLY SUBMITTED this 17th day of July, 1979.


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CERTIFICATE OF HAND DELIVERY

I hereby certify that two (2) copies of this brief were hand delivered to Phil L. Hansen, Hansen and Hansen, Attorney for Plaintiffs-Appellants, 250 East Broadway, Suite 100, Salt Lake City, Utah, on this 19th day of July, 1979.


JUDY PETERSON, Secretary