

1952

# The Board of Education, Rich County School District v. Earl F. Passey, Clerk, Board of Education, Rich County School District : Brief of Plaintiff

Utah Supreme Court

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Romney, Boyer & Bertoch; Attorneys for Plaintiff;

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

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THE BOARD OF EDUCATION,  
RICH COUNTY SCHOOL  
DISTRICT,

*Plaintiff*

VS

EARL F. PASSEY, *CLERK*,  
BOARD OF EDUCATION,  
RICH COUNTY SCHOOL  
DISTRICT

*Defendent*

PLAINTIFF'S  
BRIEF

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..... 1952.

**FILED**

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STATEMENT OF POINTS

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VS

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RICH COUNTY SCHOOL  
DISTRICT

*Defendent*

PLAINTIFF'S  
BRIEF

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STATEMENT OF FACTS

This is an action for a writ of mandamus to be issued by this court in the exercise of its original jurisdiction under Section 4 of Article 8 of the Utah Constitution as shown by the complaint filed in this cause. Plaintiff Board of Education has duly and legally performed all acts required by Chapter 13 of Title 75 of the Utah Code Annotated, 1943, to be done prior to the issuance of \$185,000 School Building Bonds by said Board (including the holding of an election on May 15, 1951, and the passing of a resolution authorizing the issuance of bonds). Defen-

dant, the Clerk of said Board, failed and refused to sign said bonds to the amount of \$162,000 and as a result plaintiff board is unable to sell them. The purpose of this action is to obtain an order of the court requiring defendant to sign said bonds.

Defendants' reason for failing and refusing to sign the aforementioned bonds is his belief that they represent an excess of indebtedness on the part of the school district above and beyond its legal limitation. The assessed value of the taxable property in Rich County School District is (\$2,870,761,) as determined by the last (the 1951) assessment. This figure is 40% of \$7,176,902.50, that being the amount determined by the Assessor to be the reasonable fair cash value thereof. Four per cent of the first figure is \$114,830.44, whereas four per cent of the second is \$287,076.10. The total outstanding debt, exclusive of the issue here in question is \$86,400, which added to the \$185,000 issue in controversy amounts to \$271,400.

## STATEMENT OF POINTS

1. Utah Statute as amended provides the debt limitation of a school district shall be four per cent of one hundred per cent (100%) of the reasonable fair cash value of taxable property within the school district.
2. The Utah statute as amended does not violate the constitution of Utah for the word "value" as used in the constitution means the reasonable fair cash value.



3. The total debt of the district, including, the aforesaid bonds, will not exceed the statutory limit of four per cent of the reasonable fair cash value of the property in the district.

## ARGUMENT

The applicable statutory provision is section 75-13-12 of the Utah Code Annotated, 1943, the pertinent part of which, as amended by Chapter 84 of the Laws of Utah, 1951, reads as follows:

“The board shall also file with said clerk a statement showing the approximate number of inhabitants and the value of taxable property in the district, that the amount of bonds proposed to be issued, including existing indebtedness, does not exceed four per cent of one hundred per cent (100%) of the reasonable fair cash value of taxable property in school districts of cities of the first class or four per cent of one hundred per cent (100%) of the reasonable fair cash value of taxable property in all other school districts, that the election at which the question of issuing bonds was submitted was lawfully called and held, that all proceedings in relation to the proposed issue of bonds in said district were lawfully conducted, and that such bonds may be lawfully issued.” (Emphasis supplied)

Prior to the 1951 amendment, this part of the statute read:

“The board shall also file with said clerk a statement showing the approximate number of

inhabitants and the value of taxable property in the district, that the amount of bonds proposed to be issued, including existing indebtedness, does not exceed three per cent of the value of taxable property in school districts of cities of the first class or four per cent of the value of taxable property in all other school districts, that the election at which the question of issuing bonds was submitted was lawfully called and held, that all proceedings in relation to the proposed issue of bonds in said district were lawfully conducted, and that such bonds may be lawfully issued.” (Emphasis supplied)

Defendent does not deny that the bonds sought to be issued by plaintiff board will fall within the limit prescribed by the statute as amended, but he asserts that the amendment violates the Constitution of Utah in establishing as a basis for computing the four per cent debt limit, “one hundred per cent (100%) of the reasonable fair cash value” rather than the assessed valuation as shown on the assessment rolls. The issue presented to the court is the determination of the exact limit to which the plaintiff may incur indebtedness under the Utah Constitution.

Article 14, Section 4 of the Utah Constitution reads in part 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;”

This provision was in said section at the time of the adoption of the constitution in 1895 and has been included therein ever since. The problem involved here is the determination of the meaning of the words “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.” It is contended by the defendant that this language means the assessed valuation as shown on the assessment rolls of the County. Plaintiff, however, believes that this language should be given the meaning intended by the framers of the constitution: that the word “value” means full cash value and that the assessment referred to is merely a guide to minimize discord in the determination of that value.

Until 1947 this question could not have arisen because the law, now Section 80-5-1 of the Utah Code Annotated 1943, required that all taxable property be assessed at its full cash value. However, in 1947 this statute was amended to require that all taxable property “be assessed at 40% of its reasonable fair cash value.” Plaintiff’s position is that this amendment to the statutory law of Utah does not change the substance of the constitutional debt limit of the School District.

There is no reported Utah decision on this question but the matter has been decided by the supreme courts of various other states. In N. W. Halsey & Co. v. City of Belle Plaine, 104 N.W. 494 (Iowa Supreme Court, 1905), the plaintiff was the successful bidder for an issue of bonds of the defendant city and brought suit to recover his earnest money on the theory that the bonds for which he bid were void. The plaintiff contended that the issuance of said bonds would cause the debt limit of the city to be exceeded. Section 3 of Article 11 of the Iowa Constitution read:

“No minicipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such \* \* \* corporation - - to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness.” (Emphasis supplied)

The applicable statute read:

“All property subject to taxation shall be valued at its actual value \* \* \* and shall be assessed at twenty-five per cent of such value. Such assessed value shall be taken and considered as the taxable value of such property, upon which the levy shall be made. Actual value of property as used in this chapter shall mean its value in the market in the ordinary course of trade.”

at the time the bonds were sought to be issued and at the time of the case. If the assessed valuation were

accepted as the "value of taxable property" referred to in the constitution, the bonds in question would have caused an excess of indebtedness. If, however, the actual value of the taxable property which was assessed legally at only twenty-five per cent of that actual value were used as the debt basis, then there would have been adequate constitutional authority for the issuance.

At the time the Iowa Constitution was adopted, the law making property assessments for the purposes of taxation recognized no other basis than that of full value. Consequently the court determined that it was this full value which the constitution intended as the basis for the determination of the debt limit. Therefore, it was held that the bonds could be legally issued.

It should be noted that the case of C. B. Nash Co. v. City of Council Bluffs, 174 Fed 182 (U. S. Circuit Court S. D. Iowa, 1909) throws some doubt on the figures but not the holding of the Belle Plaine case. This was an equity suit to enjoin the defendant Iowa City and officers from issuing "bonds or other obligations" in the amount of \$600,00 for the purpose of raising money to buy or construct a system of water-works. The court was called upon to decide whether the constitutional five per cent limitation was based on the full value or the assessed value of the property in the city, and brought out in its opinion that the Supreme Court of Iowa was mistaken in its figure regarding the existing indebtedness aside from the proposed issue in the Belle Plaine case. The case

as reported in 104 N.W. 495 recited \$8,000, and the report of the case in 128 Iowa 467 recited \$80,000. Apparently the case was determined on an agreed statement of facts without other testimony wherein the existing indebtedness was agreed to be \$8,000. Subsequent to the time it was typed, the opinion was changed so that it read \$80,000 in the official files, but the Federal Court held in the Nash case that no matter what was the actual indebtedness of the city in the Belle Plaine case, what the state court decided was that the indebtedness should be determined according to the full valuation and, therefore, the Federal Court so held in this case.

The Belle Plaine case was followed by the Iowa Supreme Court in Reed v. the City of Cedar Rapids, 113 N.W. 773 (1907) and in Miller v. City of Glenwood, 176 N.W. 373 (1920).

In Hansen v. City of Hoquiam, 163 Pac. 391 (1917) a similar question was before the Washington Supreme Court. Section 6 of Article 8 of the State Constitution read:

“No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of three fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum on the value of the tax-

able property therein to be ascertained be 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. \* \* \* (Emphasis supplied)

and the assessments at the time involved in this case were made in harmony with Remington's Code, Section 9112, which required that "all property shall be assessed at not to exceed fifty per cent of its true and fair value in money." The court found that:

"The conditions of our problem are such that if the assessed value so fixed upon which taxes were to be computed is the amount which is to become the basis for computation of the constitutional debt limit, then it may be conceded that the 5 per cent debt limit was exceeded in the incurring of a considerable portion of the debts here involved. On the other hand, it is plain from the record before us that if the real value of the property within the city as determined by the assessing officers for the years in question is to become the basis for computation of the 5 per cent debt limit, then such debt limit was not exceeded in the incurring of any of the indebtedness here involved."

The court determined that the meaning of the constitutional limitation was that the full value be used as the basis of calculations.

The Montana Supreme Court likewise decided the issue in State v. Board of Commissioners of Hill County, 185 Pac. 456 (1919). Section 5 of Article 13 of the State Constitution provided:

“No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five (5) per centum of the (value of the) taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.” (Emphasis supplied)

The court said :

“At the time the Constitution was drafted, the statute provided that all taxable property should be assessed at its full cash value (section 1673, Fifth Div. Comp. Stat. 1887), and the same statute has been in force continuously since (section 2502, Rev. Codes). In view of this declaration of the public policy of the state, the language of the Constitution above must be construed to mean that the limit of county indebtedness is 5 per cent of the value of the taxable property as that value is disclosed by the assessment roll; and since the only value which appears on the assessment roll is the value fixed by the county assessor as equalized by the county and state boards of equalization — that is, the full cash value — the expressions ‘value of taxable property’ and ‘assessed valuation’ mean the same thing.

“Chapter 51, Laws of 1919, has nothing whatever to do with the assessment of property or the determination of the assessed valuation. It deals only with the imposition of taxes after the assessment roll is completed and in the hands of the county clerk. Its provisions are directed to the clerk, and the extension of the taxes by him



involves only a matter of mathematical calculation — a mere ministerial duty. *Hilger v. Moore*, 56 Mont. — 182 Pac. 477.

“Under the provisions of the constitution above, the limit of indebtedness is computed upon the assessed valuation as disclosed by the last assessment roll, and not upon the percentage of value upon which taxes are computed. The language is too plain to admit or doubt or to require the citation of authorities to support the conclusion; but, under like constitutional provisions, the same rule of construction has been applied in other states. *Halsey & Co. v. Belle Plaine*, 128 Iowa 467, 104 N.W. 494; *Hansen v. Hoquiam*, 95 Wash. 132, 163 Pac. 391.” (Emphasis supplied)

In a similar situation the Supreme Court of Louisiana in *Flanigan v. Police Jury of Jackson Parish*, 82 So. 722, (1919) held on original hearing that since the proposed indebtedness exceeded the constitutional debt limit of 10% (“one-tenth of assessed valuation of the property within such minicipal, parish, or drainage district, as shown by the last assessment.”) bonds could not be issued. On rehearing the court reversed this position and held:

“In the present case we believe that by ‘assessed valuation’ the framers of the Constitution meant only the listing and valuing of the property as a basis upon which taxes were to be collected, and that they did not intend to include in that term the further process of the calculation of the amount to be paid by the taxpayers. In other words, the value written into the roll

by the assessor to represent the property, and the one factor in the process of taxation which remains constant for all purposes, save to the extent that it may be modified by the police jury as a board of reviewers, or by the board of state affairs, in the exercise of its powers of review, is the actual value fixed by the board. The proceedings from the assessor to the board are but steps in the reaching or fixing of that assessed valuation. When the roll and valuation is thus completed, each subdivision sits down to calculate its alimony according to its needs. The actual value used is the same for all, and, we think, the true assessed value within the meaning of article 281 of the Constitution. *Halsey v. Belle Plaine*, 128 Iowa 467, 104 N.W. 494."

The plaintiff does not deny that certain other jurisdictions have held that debt limits are to be computed on the basis of the assessed value of the property in the district. However, plaintiff believes that these cases should be distinguished on the ground that the language there being interpreted used the words "assessed value" rather than "value as ascertained by the last previous assessment." Such was the fact in *State v. Tolly*, 16 S.E. 195 (South Carolina, 1892), *Smith v. Austin*, 76 So. 404 (Alabama, 1917), and *Phelps v. City of Minneapolis*, 219 N.W. 872 (Minnesota, 1928). In *State v. Clausen*, 199 Pac. 752 (1921), the Supreme Court of Washington held that where the statutory language said "assessed valuation," that figure was to be used in determining the debt limit in view of the fact that the legislature had inserted the word "assessed" with the apparent intention of changing the law to make it include said

basis rather than the full value basis which it had included as determined by Hansen v. Hoquiam, supra. In the cases which plaintiff has cited in favor of the proposition that full value should govern, it should be noted that the phrase which set the basis was the same as, or similar to, the language in the Utah Constitution and that the word "assessed" did not precede the word "value" except in the Louisiana case where, even then, the court held that the full value should govern.

In these cases upholding the "full value" theory the courts relied heavily on the fact that at the time the state constitutions were adopted, the law required assessments to be at full cash value. Indeed, until such time as a state had been in existence for many years it could not be expected that assessments would be substantially lower than that amount. It has been common to the history of a large number of states that as a matter of practice assessments gradually become lower than the actual value of property assessed over a period of years. So, at the time of the adoption of a constitution it is hardly likely that the framers thereof would anticipate a situation in which assessments would be less than full value. This indeed was the case in Utah where the territorial law explicitly required full value assessments. See Compiled Laws of Utah 1888, page 720, Section 2010:

"Property other than money shall be assessed at a fair cash valuation . . ."

Page 724, Section 2024, Compiled Laws of Utah 1888 requires that the assessor ascertain all property in

the county, "real and personal, subject to taxation . . . and (he) shall determine the fair cash value of such property, and shall so list and assess the same to the person, firm, corporation, association or company owning or having the possession, charge, or control thereof, and make returns to the county court." Such a requirement was carried into the Revised Statutes of 1898, Section 2506, which provides: "all taxable property must be assessed at its full cash value." This language appeared in the Compiled Laws of 1907, Section 2506, in the Compiled Laws of 1917, Section 5866 and, until 1947, in the Utah Code Annotated 1943, Section 80-5-1. Thus, it is shown that at the time of the adoption of the Utah Constitution in 1895 and for many years thereafter the full cash value was the standard upon which assessments were made, and consequently it was this value which was used as a basis for determining the constitutional debt limit. The effect of the 1947 amendment reducing assessed valuations by sixty per cent was soon found to have had the effect of reducing the debt incurring powers of school districts by the same percentage and to make impossible the carrying out of necessary school construction programs. The Legislature in amending Section 75-13-12 in 1951 was merely endeavoring to restore to school districts the full debt incurring power granted them by the constitution.

While it is not plaintiff's contention that the 1947 amendment to Section 80-5-1 of the Utah Code Annotated, 1943, is unconstitutional, it may nevertheless be unconstitutional. Two years after the

adoption of the present constitution the Utah Supreme Court in State ex rel Cunningham v. Thomas, 16 U. 86, 50 Pac. 615 (1897) indicated that there might be a constitutional requirement that assessments be at full value. The case concerned the right of the State Board of Equalization so to raise the total valuation of the property of any county in the state as to increase the aggregate valuation of all the counties in the state. In determining that the Board had this power, the court considered Article 13, Section 2 of the Constitution, which required that all tangible property in the state not exempt under the laws of the United States or of the Utah Constitution "be taxed in proportion to its value to be extended as provided by law," and Section 3, which said:

"The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property."

The court said:

"This provision is closely related to the one in section 2, and directs the legislature not only to provide a uniform and equal rate of assessment and taxation, so that every subject owning property shall pay the same rate of tax as every other such subject, but also declares that all property shall be assessed at a basis which shall be 'according to its value in money.' It is evident

that the term 'according to its value in money' means that all property shall be valued, for the purposes of assessment, as near as is reasonably practicable, at its full cash value; in other words, that the valuation for assessment and taxation shall be, as near as reasonably practicable, equal to the cash price for which the property valued would sell in open market, for this is doubtless the correct test of the value of property." (Emphasis supplied)

The court also said:

" 'All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.' As will be observed, there is nothing in either of these sections of the statute which conflicts with the provisions of sections 2 and 3 of the constitution. Under Section 5, all taxable property must be assessed at its full cash value; but, as we have seen, this is so under the constitution, and, as to assessing land and improvements separately, there is nothing in the constitution to prevent it."

It should be noted that plaintiff's position, if accepted by the court, will not violate the constitutional requirement that taxes and assessments be uniform. Uniformity in assessments and taxes will not be affected whether assessments be made at full cash value or at 40% thereof so long as made equally throughout the state.

It is not necessary that the constitutionality of the 1947 amendment to Section 80-5-1 of the Utah

Code Annotated, 1943, be decided here, because the question in issue has to do with the determination of the meaning of the constitutional debt limit provision, and this meaning should be determined without reference to subsequent acts of the Legislature which concern only the mechanics of determining the amount of taxes to be paid on property of a given value.

Plaintiff contends that in changing these mechanics by providing for a 40% assessment the Legislature did not intend to change the substantive limit to which political subdivisions may incur debt so as to put it out of the Legislature's power to restore that full limit to the aforesaid political subdivisions. It may be that the Legislature could reduce this limit by statute if it so desired, but plaintiff urges that no such result should be implied here in the absence of a statutory provision so requiring. Indeed, the 1951 amendment to Section 75-13-12 is a clear expression of legislative intent that the debt limit not be so reduced.

## CONCLUSION

Therefore, plaintiff argues that his prayer for a writ of mandamus compelling defendant clerk to sign the bonds in question should be granted for the following reasons: (1) The total debt of the district, including the aforesaid bonds, will not exceed the statutory limit of four per cent of the reasonable fair cash value of the property in the district as provided in Section 75-13-12 of the Utah Code Annotated,



1943, as amended. (2) This statute as amended is not unconstitutional in fixing the fair cash value rather than the assessed value as the basis for computing debt limit. (3) The constitution, Article 8, Section 4, requires only that school district indebtedness not exceed four per cent of the reasonable fair cash value of the taxable property therein; to interpret it otherwise would cause the constitutional debt limit to vary with the statutory assessment rate and would violate the substantive intent of the Constitution of Utah as framed and as adopted by the people.

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