

1952

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

Utah Supreme Court

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Grant C. Aadnesen; Attorney for Defendant;

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7810

Case No. 7810

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

**THE BOARD OF EDUCATION, RICH  
COUNTY SCHOOL DISTRICT,**

*Plaintiff*

— vs. —

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

*Defendant.*

**FILE**

APR 18 1952

Clerk, Supreme Court

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**DEFENDANT'S BRIEF**

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# TABLE OF CONTENTS

	Page
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	1
ARGUMENT .....	2
POINTS ARGUED :	
Section 75-13-12, Utah Code Annotated, 1943 as amended, insofar as the same purports to empower and authorize a board of education to issue and sell bonds in excess of four per cent of the value of the taxable property other than as ascertained by the last assessment for State and county purposes contravenes and is in violation of Article XIV, Section 4, of the Constitution of the State of Utah .....	2
The provision "of the value of the taxable property therein the value to be ascertained by the last assessment for State and county purposes" in Article XIV, Section 4, of the Constitution of the State of Utah refers to the assessment roll as valued under section 80-5-1, Utah Code Annotated, 1943, as amended.....	2
CONCLUSION .....	15

## CASES CITED

City of Chicago v. Fishburn, 189 Ill. 367.....	11
Cutler v. Board of Education of Beaver County School Dist., 57 Utah 73, 192 Pac. 621.....	7, 9, 11
Doon Township v. Cummins, 35 L. Ed. 1044, 142 U.S. 366, 12 S. Ct. 220.....	8
Phelps v. City of Minneapolis, 219 N.W. 872.....	15
Scott County Auditor v. Salt Lake County et al., 58 Utah 25, 196 Pac. 1022.....	7
Smith v. Austin, 76 So. 404.....	13
State v. Tolly, 16 S.E. 195.....	12
State v. Clausen, 199 Pac. 752.....	14

## TABLE OF CONTENTS—(*Continued*)

	Page
State ex rel. Board of Education of Town of Salina v. Williamson, Atty. Gen., 76 Pac. 2d 384.....	3, 11
State ex rel. Cunningham et al. v. Thomas et al., 16 Utah 86, 50 Pac. 615.....	7
State of Utah v. Francis Armstrong et al., 19 Utah 117, 56 Pac. 951.....	7, 8

### STATUTE AND CONSTITUTION CITATIONS

Article XIII, Section 3, Constitution of Utah.....	7
Article XIV, Section 4, Constitution of Utah.....	2, 6, 15
Section 75-13-12, Utah Code Annotated, 1943 as Amended .....	1, 2, 10, 16
Section 80-5-1, Utah Code Annotated, 1943 as Amended.....	2

IN THE SUPREME COURT  
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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,  
*Defendant.*

Case No. 7810

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DEFENDANT'S BRIEF

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STATEMENT OF FACTS

Defendant accepts plaintiff's statement of facts in this case.

STATEMENT OF POINTS

1. Section 75-13-12, Utah Code Annotated, 1943, as amended, insofar as the same purports to empower and authorize a board of education to issue and sell bonds in excess of four per cent of the value of the taxable property other than as ascertained by the

last assessment for State and county purposes contravenes and is in violation of Article XIV, Section 4, of the Constitution of the State of Utah.

2. The indebtedness represented by said bonds in the amount of \$162,000.00 would create an indebtedness in excess of the legal indebtedness permissible under Article XIV, Section 4, of the Constitution of the State of Utah.
3. The provision "of the value of the taxable property therein, the value to be ascertained by the last assessment for State and county purposes" in Article XIV, Section 4, of the Constitution of the State of Utah refers to the assessment roll valued under section 80-5-1, Utah Code Annotated 1943, as amended.

## ARGUMENT

Defendant alleges that Section 75-13-12, Utah Code Annotated, 1943, as amended, insofar as the same purports to empower and authorize a board of education to issue and sell bonds in excess of four per cent of the value of the taxable property in a school district other than as ascertained by the last assessment for state and county purposes, contravenes and is in violation of Article XIV, Section 4 of the Constitution of the State of Utah. Section 4 of Article XIV 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 seems clearly to mean that what is commonly known as the assessed value, the value upon which taxes are levied, is to be used for computing the debt limit.

Defendant recognizes the fact that other jurisdictions have differed as to the meaning of such a provision. We submit, however, that plaintiff has ignored certain fundamental principles of interpretation and plaintiff's contentions result in inconsistencies.

In the case of *State ex rel. Board of Education of Town of Salina v. Williamson, Atty. Gen.*, 76 Pac. 2d 384, (Oklahoma, 1938) the Attorney General had declined to approve an issue of bonds voted by the school district of the town of Salina, giving as his reason therefor that the issue violated section 26 of article 10 of the Constitution in that the proposed bonds would, with existing indebtedness, be in excess of “five per centum of the valuation of the taxable property therein, to be ascertained from the last assessment for State and county purposes previous to the incurring of such indebtedness.” The Attorney General construed the quoted clause to refer to the valuation of the taxable property against which taxes can be levied for general county purposes

thereby excluding from the valuation the amounts deducted for homestead exemptions.

In holding that the Attorney General's view was correct the court quoted from *Thornburg v. School Dist. No. 3*, 175 Mo. 12, 75 S.W. 81, 85:

“The clause of the Constitution under discussion is not aimed at school districts alone, but its language is: ‘No county, city, town, township, school district or other political corporation or subdivision of the state shall be allowed to become indebted,’ etc. No distinction is made between any of these political corporations named, in respect of the subject. The same ratio between the value of the taxable property and the tax to be levied is prescribed for all alike, in one group. If we should give to the words ‘assessment for state and county purposes,’ in this clause, the meaning that appellant’s counsel think they should have, then we should have a school district empowered to become indebted to a greater degree than 5 per cent of the property liable to be taxed for its payment, while a county, city, town, or township had no such power. The plain purpose of the Constitution is to forbid the incurring of a public debt beyond *a certain per centum of the value of the property taxable for its payment*. That purpose must not be lost sight of in interpreting any doubtful words in the clause. The language is not that the corporation shall not incur indebtedness exceeding 5 per centum of the value of property within its territorial limits subject to taxation for state and county purposes, but it is that it shall not incur such indebtedness ‘exceeding five per centum on the value of the taxable property therein.’ *Then it specifies the*



*source from which information as to that value is to be obtained; that is, the official assessment for state and county purposes.* If the clause under discussion had simply forbidden the school district to incur indebtedness ‘exceeding five per centum on the value of the taxable property therein,’ without further demonstration, it would have left open the question of how that value was to be ascertained, and in that event the board of directors could have ordered an assessment for that purpose. But the lawmakers were unwilling to leave it in that condition, and therefore they pointed out the standard by which the valuation was to be ascertained, to wit, *the official assessment for state and county taxation.* The words ‘for state and county purposes,’ in that clause, are merely descriptive of the official document to which reference is made.’ (Emphasis ours.)”

The court then discussed other cases dealing with the subject and stated:

“While the framers of the Constitution in adopting section 26 of article 10 probably did not have the exemption of homesteads in view, they evidently realized that valuations would fluctuate from year to year, hence fixed a standard or mathematical formula to be used in all cases looking towards a proposed indebtedness. The sum of existing indebtedness and the proposed bonded indebtedness must not aggregate more than 5 per centum of the valuation of the *taxable* property in the political subdivision seeking to become indebted. This valuation is to be ascertained from the last assessment for *state and county purposes.*

“In the Missouri case first hereinabove referred to (Thornburg v. School Dist. No. 3), it will

be noted that the court, by excluding the value of the railroad property, confined the multiplicand to the valuations of property *against which taxes could be levied for the particular indebtedness to be incurred*. No good reason is urged why the same sort of rule should not be applied here. Furthermore, we do not believe that it can be said that an assessed valuation to be used only for a part of sinking fund levy purposes can be said to fulfill the constitutional requirement 'for State and county purposes.' This phrase must mean not merely the valuation for some state or county purpose, but must include for any county purpose; i.e., the valuation must be one that can be used in levying taxes, not for one, but for any of the various county purposes.

\* \* \*

"Since, in this state, cities, school districts, and other subdivisions have not been given the right to make their own assessments, the list made for county and state purposes is the valuation for city and school districts, also, and is the governing assessment, 'the standard by which the valuation was to be ascertained.' In such a situation the South Carolina Supreme Court declared: 'Under the law as it now exists in this state governing the assessment of property for city taxes, no other assessment of such property for such taxation than the assessment of such property for the *purpose of levying taxes* for state and county purposes can exist.' Todd v. City of Laurens, 48 S.C. 395, 26 S.E. 682, 684."

Defendant submits, that in adopting Section 4 of Article XIV of the Utah Constitution, the people meant by the "value to be ascertained by the last assessment

for State and county purposes" to be the assessment upon which was based the levy for general or current government expenses for the State or county.

Plaintiff has stated in its brief (page 9) that there is no reported Utah decision on this question. Plaintiff cites the case of *State ex rel. Cunningham et al. v. Thomas et al.*, 16 Utah 86, 50 Pac. 615 (1897) wherein the court quoted Article 13, Section 3 of the Constitution of Utah which provides:

"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."

Plaintiff states that plaintiff's position, if accepted by the court, will not violate the constitutional requirement that taxes and assessments be uniform. The very uniformity required by the constitution is the use of an accepted value for purposes of indebtedness and for purposes of taxation.

The following Utah cases consider the value of "taxable property" as it is assessed for purposes of taxation. *Cutler v. Board of Education of Beaver County School Dist.*, 57 Utah 73, 192 Pac. 621 (1920); *Scott County Auditor v. Salt Lake County et al.*, 58 Utah 25, 196 Pac. 1022 (1921); *State of Utah v. Francis Armstrong et al.*, 19 Utah 117, 56 Pac. 951 (1899); *State ex*

*rel. Cunningham v. Thomas, supra.* See also *Doon Township v. Cummins*, 35 L. Ed. 1044, 142 U.S. 366, 12 S. Ct. 220 (1891).

In the case of *State of Utah v. Francis Armstrong et al.*, *supra*, the court, considering the powers of a board of equalization stated:

“It is admitted by the pleadings, and because of the demurrer, that at the time when the resolution in question was adopted, the defendants were sitting as the county board of equalization, and that the board, after carefully examining the assessments of real estate in Salt Lake City, as made by the assessor, and hearing evidence with regard to the valuations, decided that changes in the valuations were necessary to correct errors made by him in valuing portions of real estate, and to make the assessments conform to the value of the property in money. The resolution, or order complained of, relates to certain portions or districts of the city, and under its terms, the assessment on all real estate in such districts was raised by adding a certain percentum to the valuation placed upon it by the assessor. The real estate of the relator was included within those districts, and the order was made without service of notice on each owner of property affected by the change in valuation. Counsel for the relator contend that the order, having been made without such notice, is unauthorized by law and beyond the jurisdiction of the board, and is, therefore, void. The defendants maintain that, when sitting as a board of equalization, they have power to raise or lower the assessment in any district in the county when necessary to make the valuations of property conform to its true value

in money, and that the general notice of their sitting as such board is sufficient. Respecting the subject of taxation, it is provided in Section 2, Article 13 of the constitution of this State, as follows: 'All property in the State, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law.'

"Section 3 of the same article, so far as material here, reads: '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.'

"Commenting on these provisions of the constitution, this court in *State v. Thomas*, 16 Utah 86, observed: 'The manifest intention is that all taxable property shall bear its just proportion of the burdens of taxation. These two sections of the constitution harmonize with each other; and, by reading and considering them together, it becomes clear that all taxable property within this State must be assessed and taxed on a valuation fixed at its actual cash value, or as near such value as is reasonably practicable.' "

In *Cutler v. Board of Education of Beaver County School Dist.*, *supra*, this court considered Article 14, Sections 3 and 4, and held it was proper to deduct from the present indebtedness of the county school district the amount of sinking fund available for reducing indebtedness, and the amount assessed and levied for sinking

fund purposes and for funds to apply on present bond indebtedness, but that it was not proper to deduct from such present indebtedness the amount of taxes levied and assessed for general school purposes, since proceeds of such levy would not be used to reduce the assessed indebtedness, but would be applied to the payment of debts incurred during the year. This case was decided prior to the 1951 amendment to section 75-13-12, Utah Code Annotated, 1943, and the present issue was not before the court. The court spoke of "taxable property" and considered it for its purposes according to its assessed value:

"The special levy of \$39,166.37 for general school purposes for the year 1920, claimed by defendant as an offset to the existing indebtedness of the district, however, presents much greater difficulties. While the levy has been legally made and the collection of the tax may be regarded as a certainty, it is difficult to conceive any theory upon which these taxes may be legally applied for the reduction of the bonded indebtedness complained of by petitioner. Presumably the district, if not already, will be during the year 1920, under contractual obligations to the amount of this tax for the proper support and maintenance of its public schools. If in theory these taxes may be legally applied in the reduction of the existing bonded indebtedness of the district, then necessarily, to that extent, the district, when said item is so applied, instantaneously becomes indebted in the same amount for general school purposes. We do not think the application of this levy to the existing bonded indebtedness, nor the treating

of this item as an offset in determining the legal debt limit of the district, would be in keeping with the spirit of our state Constitution and would be a direct violation of the purposes for which the fund was created and intended to be applied. In our judgment, this item claimed by defendant as an offset to the existing bonded indebtedness of the district should be, for the purpose of arriving at the debt limit of the district, excluded."

It would seem that the reasoning in the *Cutler* case is consistent with the Oklahoma case of *State ex rel. Board of Education, supra*. Section 4 of Article 14 of the Utah constitution should be held to refer to the assessed valuation as shown on the assessment rolls of the county.

As stated before, this question has arisen in various other states, and it has been decided by the supreme courts of Illinois, South Carolina, Alabama, Minnesota and Washington that the assessed value is the one that should be used in determining the constitutional limits under similar provisions of the applicable state constitutions.

In *City of Chicago v. Fishburn*, 189 Ill. 367, (1901) plaintiff taxpayers sought to enjoin the defendant city and its officers from issuing a bridge bond, contending that the city had reached and passed its constitutional and statutory debt limit. The issue in the case was whether the debt limit should be ascertained on the basis of the full value as determined by the assessor or upon the assessed value, which is one-fifth of the full value. The constitutional debt limit provision, section 12 of article 9 read as follows:

“No county, city, township, school district or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on 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.”

The statute in force when the constitution was adopted required an assessment of property at its actual value and continued to so require until the Act of 1898 which governed at the time of this case, but it was common knowledge that under the prior statute property was not assessed at its full value. The court stated as follows :

“We do not think that the requirement that the assessors shall set down the full value and take a fixed share thereof as the assessed value can be held to change the meaning of the constitution that the limit is to be determined by the assessed value. We think the constitution means that the limit of municipal indebtedness shall be computed upon and shall not exceed five per cent of the official estimate of the assessors for the preceding year as a basis for the apportionment of State and county taxes. That is the amount which is set down in the column under the head of ‘assessed value.’ ”

In *State v. Tolly*, 16 S.E. 195 (1892), the Supreme Court of South Carolina had a similar question when the city council of the City of Anderson attempted to



use as a basis for computing constitutional debt limit a figure which included the value of all property assessed for taxation as per city tax books, plus the value of certain other property which would have been taxable by the city had it not been exempted temporarily from taxation by ordinance. Without this additional value, the proposed issue would have caused the constitutional debt limit to be exceeded. The pertinent constitutional provision read as follows:

“Any bonded debt hereafter incurred by any county, municipal corporation, or political division of this state shall never exceed eight per centum of the assessed value of all the taxable property therein.”

The court dismissed the petition for mandamus to compel the mayor to sign the bonds saying:

“Accordingly we find that the language used in the constitutional provision is not ‘eight per centum’ of the actual or real market value of the taxable property, but the language is, ‘of the assessed value of all the taxable property therein.’ The word ‘assessed’ has, and had at the time of the adoption of the constitutional provision now under consideration, a well-defined meaning when applied to taxable property and the framers of that provision must be assumed to have used it in the same sense in which it was used in the various acts of the legislature relating to the subject of taxation.”

The Supreme Court of Alabama reached a similar conclusion in *Smith v. Austin*, 76 So. 404 (1917). This

was a bill to enjoin defendants as the Commissioners Court of Elmore County from borrowing \$30,000. Section 224 of the constitution then in force read :

“No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein.”

The statute governing assessments, Section 36A of the Revenue Act (Gen. Acts 1911, page 185) provided that all :

“\* \* \* taxable property within this state shall be assessed, for the purpose of taxation, at sixty per cent of its fair and reasonable cash value.”

The assessed valuation of the property was \$5,917,635 and existing county indebtedness was \$240,000 which the court said was more than  $3\frac{1}{2}\%$  of the total assessed value. It was held that the basis for computing constitutional debt limit was the “value of the property as assessed for taxation and not its actual or cash value.”

In *State v. Clausen*, 199 Pac. 752 (1921), the Supreme Court of the State of Washington likewise held that where a statutory debt limit provided :

“No taxing district shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the last assessed valuation of the taxable property in such taxing district, 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 of the last assessed valuation of the taxable property in such taxing district."

A school district could not incur debt in excess of five per cent of the assessed valuation; and that the basis of computation was not the full value of the property within the district.

Similarly in *Phelps v. City of Minneapolis*, 219 N.W. 872 (1928), the Minnesota Supreme Court held that the assessed value is the determining factor in computing debt limit rather than the full cash value of the property where a statute specifically provided that property was to be assessed at specified percentages of full value.

Defendant urges in the case at bar that the language of the Utah Constitution which sets the basis for ascertaining the debt limit refers to the figure shown on the assessment rolls. The reason for this lies in the need for certainty in the determination of what that value is. Were there no fixed standards readily ascertainable and a matter of public record, it would give birth to much confusion and discord when one tried to determine the precise basis for computing the aforesaid limit. There is no allegation in the complaint that any assessments were made fraudulently or that in any way those assessments are below the figure provided by law.

## CONCLUSION

Article XIV, Section 4, of the Utah Constitution is not aimed at school districts alone, but its language is

“no city, town, school district or municipal corporation.” To give the words “assessment for State and county purposes” the meaning plaintiff requests would empower a school district to become indebted to a greater degree than cities, towns or other municipal corporations. The official assessment is specified, and since the official assessment provision states “all taxable property must be assessed at forty per cent of its reasonable cash value,” section 75-13-12, Utah Code Annotated, 1943, as amended must be in violation of the constitution and void.

Defendant respectfully submits that the complaint and the alternative extraordinary writ should be dismissed. Further, section 75-13-12, Utah Code Annotated 1943, as amended, should be declared unconstitutional, null, void and of no effect.

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Received two copies this ..... day of

....., 1952.

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