

1952

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

Utah Supreme Court

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Clinton D. Vernon; J. Lambert Gibson; Allen B. Sorensen; G. Hal Taylor;

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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.

No. 7810

FILE

JUN 12 1952

BRIEF OF AMICUS CURIAE

Clerk, Supreme Court,

CLINTON D. VERNON
Attorney General

J. LAMBERT GIBSON
Deputy Attorney General

ALLEN B. SORENSEN
Asst. Attorney General

G. HAL TAYLOR
Asst. Attorney General

I N D E X

	Page
STATEMENT OF FACTS	3
STATEMENT OF POINTS	8
 ARGUMENT	
Point I:—THE WORD “VALUE” AS USED IN SECTIONS 2 and 3, ARTICLE XIII AND SECTION 4, ARTICLE XIV, UTAH CON- STITUTION, MEANS MARKET VALUE....	9
Point II:—THE CONSTITUTIONAL DEBT LIMIT ESTABLISHED BY SECTION 4, ARTICLE XIV, UTAH CONSTITUTION IS NOT FOUR PER CENT OF ASSESSED VALUE	12
Point III:—IT IS UNNECESSARY IN THIS CASE TO DETERMINE THE CONSTITU- TIONALITY OF EITHER SECTION 80-5-1, AS AMENDED, OR SECTION 75-13-12, AS AMENDED	15
CONCLUSION	16

AUTHORITIES

Ninth Biennial Report of the Tax Commission of Utah for the years 1947-1948 pp 31-32 (3 Pub. Documents 1946-1948)	5
---	---

I N D E X — (Continued)

Page

CASES

Afton Livestock Co. et al v. Peterson et al, 220 P 710, 62 Utah 437	16
City of Chicago et al v. Fishburn, 59 NE 791; 189 111 367	14
Hansen v. City of Hoquiam et al, 163 P 391, 95 Wash. 132	12
N. W. Halsey & Co. v. The City of Belle Plains et al, 104 NW 494; 128 Iowa 467	12
State ex rel Cunningham v. Thomas, 16 Utah 86, 50 P 615	9

STATUTES

Article XIII, Section 2 and 3, Utah Constitution....	7, 9, 15
Article XIV, Section 4, Utah Constitution	
.....	4, 7, 8, 9, 11, 12
75-13-12 Utah Code Annotated 1943, as amended by Chapter 84, Laws of Utah 1951.....	4, 16, 17
80-5-1 Utah Code Annotated 1943.....	5, 15, 16
80-5-1 Utah Code Annotated 1943, as amended by Chapter 102, Laws of Utah 1947.....	4, 8, 17

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.

No. 7810

BRIEF OF AMICUS CURIAE

STATEMENT OF FACTS

This is an original proceeding brought in this court to compel the Clerk of the Board of Education of Rich County School District to sign certain bonds of that school district. The action has been brought to obtain a judicial construction of certain constitutional and statutory provisions relating to the debt limitations of school districts in this state. Upon petition the Attorney Gene-

ral was granted leave to appear and file this brief. We accept plaintiff's Statement of Facts.

We sought leave to appear herein for the reason that this case involves consideration of the constitutional debt limit of school districts and other political subdivisions under Article XIV, Section 4 of the Utah Constitution. Also, there is pending before the District Court of Sanpete County, case No. 4203 civil, *The State of Utah by and through its Treasurer, plaintiff, v. Spring City, a municipal corporation, et al.*, in which the plaintiff bondholder seeks recovery on a bond issue repudiated by defendant. One of the issues in that case is whether for the purpose of computing the debt limitation of Spring City the assessed valuation, or some other figure ascertained therefrom, is to be used under the provisions of Article XIV, Section 4, Utah Constitution. We believe the decision of this case will be determinative of that constitutional issue in the case pending before the district court in Sanpete County.

Plaintiff states in its brief that while it does not contend that Section 80-5-1, UCA 1943, as amended by Chapter 102, Laws of Utah 1947, is unconstitutional "it may nevertheless be unconstitutional." (Plaintiff's brief, page 17.) Defendant in his brief contends that Section 75-13-12, UCA 1943, as amended by Chapter 84, Laws of Utah 1951, is unconstitutional. We believe the validity of the proposed bonds, the only issue in this case, can be determined by this court without specifically ruling upon the constitutionality of either statute.

Until amended in 1947, Section 80-5-1, UCA 1943 provided that all "taxable property must be assessed at its full cash value." It is a matter of common knowledge that property was not assessed at full cash value but was assessed at only some percentage thereof. The Legislature recognized this and in 1947 amended the statute to provide that "all taxable property must be assessed at forty per cent of its *reasonable fair cash value*." We believe that by this amendment the Legislature intended to indicate its approval of the practice which had been followed for many years. In the Ninth Biennial Report of the Tax Commission of Utah for the years 1947-1948, pp. 31-32 (3 Public Documents, 1946-1948), appears the following:

"We come now to a more detailed consideration of activities of this commission with regard to the property tax. Two years ago, the legislature, following constitutional amendments approved by vote of the people, enacted a series of statutes to require all property to be assessed at '40 per cent of its reasonable fair cash value.' Another series of statutes was directed toward more complete equalization of property values throughout the state.

"In order to fulfill its obligations in this matter, the state tax commission has conducted studies of valuations in each county of the state and has conferred with county taxing officials in an attempt to work out plans for more complete equalization. It appeared that the first essential step in this process was to determine just what the legislature meant by the term 'reasonable fair cash value.' No definition was given in any of the

laws passed by the legislature, so the commission and the various county assessors faced the issue of attempting to decide just how this term should be construed and applied.

“The commission discussed the problem with members of the legislature as well as with county assessors and county boards of equalization. It appeared that the legislature was attempting to avoid the difficulties of erratic and high, currently inflated prices and that an attempt was being made to provide for a valuation which would not be based upon inflated values; or upon depreciated values, either. With this in mind, the tax commission concluded that the basic value under the new statute should be set at some point between these two extremes.

“In view of the fact that all buildings in the state had been carefully appraised upon the basis of 1932 construction costs, a large segment of property in the state was provided which was uniformly assessed and which, it appeared, furnished a sound foundation for developing a basis for uniform valuation of other classes of property. Construction costs were very low in 1932, and increased rather consistently up to 1940. After 1940, they skyrocketed in a very abrupt manner. It appeared that if the 1940 costs of buildings should be used as a basis for valuation, this would be a reasonable fair cash value of the property, as provided by law. * * *

“The commission discussed this matter with members of the legislature, with county assessors and county commissioners. At a meeting in Salt Lake City July 23, 1947, which was attended by county assessors, county commissioners and members of the state tax commission, it was unani-

mously voted to appraise buildings on the basis of the 1940 costs and to relate the valuation of all other classes of property as nearly as possible to this valuation basis."

From the foregoing it will be seen that property is being assessed on the basis of forty per cent of 1940 cost. We submit that this court may take judicial notice of the fact that 1940 cost is lower than 1951 full cash value or market value. It will be remembered that the bond issue was voted in June of 1951 and therefore the assessed value as of January 1, 1951, was the last assessment for state and county purposes.

The word "value" as used in Sections 2 and 3 of Article XIII and in Section 4 of Article XIV, Utah Constitution, we think, means full cash value or market value. It is our position that under Article XIII, the assessment of property should be based upon full cash value or market value, and that under Article XIV, Section 4, the constitutional debt limit of cities, towns, school districts, and other municipalities is four per cent of the market value of the taxable property involved in the particular political subdivision.

It has been pointed out in plaintiff's brief, page 5, that the *assessed value* of the taxable property in Rich County School District is \$2,870,761.00 as determined by the 1951 assessment. Two and one-half times this figure gives the reasonable fair cash value as interpreted by the Tax Commission, which represents \$7,176,902.50, the reasonable fair cash value of the property in the Rich County School District based upon 1940 cost. Four per

cent of \$7,176,902.50 is \$287,076.10. The total debt of Rich County School District including the proposed \$185,000.00 bond issue in controversy would amount to \$271,400.00. Assuming this bond issue were made in the year 1940, it is clear that the total indebtedness of Rich County School District would be less than the total permissible bonded indebtedness for that year under Article XIV, Section 4 of the Constitution. In view of the fact that values have increased from 1940 to 1951, a fact of which we think this court can take judicial notice, it is unnecessary in this case to determine the constitutionality of Section 80-5-1, as amended in 1947.

As alleged in paragraph VII of the Complaint, plaintiff is under an immediate and pressing need for the money represented by the bond issue. Other school districts will also be vitally affected by the decision in this case.

STATEMENT OF POINTS

POINT I

THE WORD "VALUE" AS USED IN SECTIONS 2 AND 3, ARTICLE XIII AND SECTION 4, ARTICLE XIV, UTAH CONSTITUTION, MEANS MARKET VALUE.

POINT II

THE CONSTITUTIONAL DEBT LIMIT ESTABLISHED BY SECTION 4, ARTICLE XIV, UTAH CONSTITUTION IS NOT FOUR PER CENT OF ASSESSED VALUE.

POINT III

IT IS UNNECESSARY IN THIS CASE TO DETERMINE THE CONSTITUTIONALITY OF EITHER SECTION 80-5-1, AS AMENDED, OR SECTION 75-13-12, AS AMENDED.

ARGUMENT

POINT I

THE WORD "VALUE" AS USED IN SECTIONS 2 AND 3, ARTICLE XIII AND SECTION 4, ARTICLE XIV, UTAH CONSTITUTION, MEANS MARKET VALUE.

Plaintiff contends that the word "value" as used in the Constitution means "reasonable fair cash value." Plaintiff also contends that the constitutional debt limit established by Article XIV, Section 4 of the Constitution is *not* four per cent of *assessed* value but is four per cent of "full cash value." Apparently, plaintiff proceeds on the theory that "full cash value" and "reasonable fair cash value" are the same. It is our opinion that the word "value" as used in Section 4 of Article XIV, and in Sections 2 and 3 of Article XIII, means market value. It appears that this court in the case of *State ex rel. Cunningham v. Thomas*, 16 Utah 86, 50 Pac. 615, regarded "market value" and "full cash value" as being synonymous. In that case, the court construed Sections 2 and 3 of Article XIII of the Constitution and in doing used the following language:

"The provisions of the constitution, so far as material to the decision of this case, are as fol-

lows: In section 2 of article 13 it is provided that '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.' Under this provision all taxable property must be assessed and taxed 'in proportion to its value.' It will be noticed that 'value' is here referred to in a comparative manner, and is to be 'ascertained as provided by law.' The word 'proportion' doubtless has reference to sameness or likeness in value of property; that is, all property must be taxed at the same relative value. If this provision were to be considered by itself, it might be contended with some force that the legislature had power to provide that all property should be assessed at a basis less than its full value, and this might still be considered as 'in proportion to its value.' The real intent, however, of the framers of the constitution, is made more manifest in section 3 of article 13, which contains this language: '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.' 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. 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."

As we read the foregoing case, property must be assessed and taxed on the basis of its market value. We think decision in the Thomas case does not prohibit the Legislature from providing that the assessment of property may be some percentage of market value or actual cash value. The gist of the decision is that the assessment must be based upon market value. If the assessment is a percentage of market value, it is based on market value.

We think it follows that when the framers of the constitution provided in Section 4 of Article XIV that the debt limit of certain political subdivisions should be "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," they intended that

the debt limit should be four per cent of market value. If the word "value" as used in Section 4 of Article XIV is so construed, there is complete harmony in the constitutional provisions relating to the assessment and taxation of property and the limit of indebtedness of counties, cities, towns and school districts.

POINT II

THE CONSTITUTIONAL DEBT LIMIT ESTABLISHED BY SECTION 4, ARTICLE XIV, UTAH CONSTITUTION IS NOT FOUR PER CENT OF ASSESSED VALUE.

Article XIV, Section 4, of the Utah Constitution, so far as material, provides:

"* * * 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 * * *. (Italics added)

Cases construing the phrase italicized above are cited by plaintiff and defendant. We believe the better reasoning is found in the case of *N. W. Halsey & Co. v. The City of Belle Plains et al.*, 104 NW 494; 128 Iowa 467, and *Hansen v. City of Hoquiam et al.*, 163 P. 391, 95 Wash. 132. We quote from the opinion of the Washington Supreme Court:

“It seems to us that the constitutional limit upon municipal indebtedness does not mean that such debt limit is determinable by taking 5 per cent of the assessed value as determined by the assessing officers for taxation purposes when such value is by such officers themselves, in pursuance of law and as a matter of fact, determined by taking a certain percentage of the actual value. Such process of arriving at the assessed value necessarily involves a determination of the actual value of the property. The words ‘value of the taxable property,’ as used in the constitutional provision above quoted, should we regard them apart from the words ‘to be ascertained by the last assessment,’ in their natural sense and as commonly understood would plainly mean ‘actual value’ or ‘market value.’ Certainly they would mean no less value than this. Do the words ‘to be ascertained by that last assessment’ which follow qualify or change this natural and commonly understood meaning? We think not, in view of the fact that no provision of the Constitution as we have seen, requires property to be assessed at any particular measure of value, but only that it shall be assessed at a uniform rate to the end that taxes shall be in proportion to the value of the property taxed. So, that, when we have a statute which requires the assessing officers to assess property for taxation ‘not to exceed 50 per cent of its true and fair value in money’ and the assessing officers do in fact assess it at 50 per cent of its true value, then by a simple rule of arithmetic its real value is as certainly ascertained by the assessment as it it had actually been assessed at its real value. If there were no statute in our state prescribing that the assessed value shall not exceed 50 per cent of the true value, in the absence of a show-

ing that the assessing officers assessed the property at some percentage of its true value, it would probably be presumed as a matter of law that the assessed value was also the true value, and the municipal debt limit so ascertained. But the conditions of both law and fact attending the **making** of these assessments plainly tell us that 'the value of the taxable property' in the city in each of the years in question was exactly twice the value fixed by the assessing officers for taxation purposes. This we think is ascertaining the value 'by the last assessment.' The Constitution does not say that the assessed value shall be the value for the purposes of measuring the debt limit of municipalities. Indeed there seems to have been deliberate intention on the part of the Constitution framers to avoid saying so, in view of the fact that there is no constitutional requirement that property shall be assessed at its full value for taxation. * * *

The opposite view expressed by the Supreme Court of Illinois in the case of *City of Chicago et al. v. Fishburn*, 59 NE 791; 189 Ill. 367, we believe is not well reasoned. It will be noted that the *Fishburn* case was decided prior to the *Hansen* and the *N. W. Halsey & Co.* cases, and that the courts in these latter cases took cognizance of the *Fishburn* case but repudiated the rule as therein set forth.

It should also be here noted that many constitutions, unlike that of Utah's, limit the indebtedness of their political subdivisions to a percentage of the *assessed valuation*. Several of the cases cited by defendant arise

under such constitutional or statutory provision and for this reason, we believe, are not in point.

We submit that the value which is "to be ascertained by the last assessment" is not the *assessed* value but is the full market value upon which the assessed value must be based.

POINT III

IT IS UNNECESSARY IN THIS CASE TO DETERMINE THE CONSTITUTIONALITY OF EITHER SECTION 80-5-1, AS AMENDED, OR SECTION 75-13-12, AS AMENDED.

In our Statement of Facts, we noted that prior to its amendment in 1947, Section 80-5-1 provided that all "taxable property must be assessed at its full cash value." This statutory provision was in harmony with the interpretation of Sections 2 and 3 of Article XIII by this court in the Thomas case. When the legislature in 1947 amended the statute to provide that "all taxable property must be assessed at forty per cent of its reasonable fair cash value," it was giving its approval to the practice that had been in vogue for many years, namely the assessment of property at only a percentage of its value. The language hereinabove quoted in the Ninth Biennial Report of the Tax Commission shows that the commission has interpreted the words "reasonable fair cash value" as meaning 1940 costs. Two possible objections could be raised to Section 80-5-1: 1—That it is unconstitutional because it provides for the assessment of prop-

erty upon some basis other than market value, namely, reasonable fair cash value; 2—that it is unconstitutional because it provides for the assessment of property on a percentage of value rather than upon the full value.

We think it is unnecessary to determine either of these questions because this court can take judicial notice of the fact that the 1951 market value of the taxable property in question is more than the 1940 cost of such property. *Afton Livestock Co. et al. v. Peterson et al.*, 220 P. 710; 62 U. 437. Inasmuch as the proposed bond issue comes within the constitutional debt limit if the lower figure (reasonable fair cash value) is used, it necessarily follows that the bond issue is well within four per cent of 1951 market value.

As to the second possible objection to the constitutionality of Section 80-5-1, it is sufficient to point out, as we have previously noted, that if the assessment is a percentage of full value, the assessment actually is based upon full value. If the assessment is a percentage of full value, full value may be easily ascertained by a simple arithmetical computation.

CONCLUSION

The record before the Court in this case is inadequate for either a proper briefing of, or a ruling upon, the question of the constitutionality of either Section 80-5-1 or Section 75-13-12. On the facts before this court,

however, we submit that there is no question as to the invalidity of the proposed bond issue. Regardless of whatever infirmities might be found in Section 80-5-1, as amended, there are sufficient facts before this court to conclude that the proposed bond issue is well within the constitutional debt limit of the Rich County School District. Even if it should be argued that Section 75-13-12 provides a statutory debt limit for school districts, lower than the constitutional debt limit, the proposed bond issue is within such statutory debt limit.

We submit, therefore, that regardless of the constitutionality of either Section 80-5-1 or 75-13-12, the proposed bond issue is valid and the Clerk of the school board should be required to sign the bonds.

Respectfully submitted,

CLINTON D. VERNON
Attorney General

J. LAMBERT GIBSON
Deputy Attorney General

ALLEN B. SORENSEN
Asst. Attorney General

G. HAL TAYLOR
Asst. Attorney General