

1979

Scott M. Matheson et al v. Weston E. Hamilton : Brief in Support of Complaint for Writ of Mandamus

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Roger J. McDonough; Ronald J. Ockey; Attorneys for Plaintiffs;

Michael L. Deamer; Attorney for Defendant;

Recommended Citation

Brief of Appellant, *Matheson v. Hamilton*, No. 16545 (Utah Supreme Court, 1979).

https://digitalcommons.law.byu.edu/uofu_sc2/1818

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

SCOTT M. MATHESON, Governor)
of the State of Utah, and)
DAN S. BUSHNELL, Vice-Chair-)
man of the Utah State Building)
Ownership Authority,)

Plaintiffs,)

Case No. 16545

vs.)

WESTON E. HAMILTON, Chairman)
of the Utah State Building)
Ownership Authority,)

Defendant.)

BRIEF IN SUPPORT OF
COMPLAINT FOR WRIT OF MANDAMUS

ROGER J. McDONOUGH
RONALD J. OCKEY
Special Assistant
Attorneys General
800 Walker Bank Building
Salt Lake City, Utah 84111

Attorneys for Plaintiffs

MICHAEL L. DEAMER
Deputy Utah Attorney
General
State Capitol Building
Salt Lake City, Utah 84114

Attorney for Defendant

FILED

AUG 1 1979

IN THE SUPREME COURT
OF THE STATE OF UTAH

SCOTT M. MATHESON, Governor)
of the State of Utah, and)
DAN S. BUSHNELL, Vice-Chair-)
man of the Utah State Building)
Ownership Authority,)

Plaintiffs,)

Case No. 16545

vs.)

WESTON E. HAMILTON, Chairman)
of the Utah State Building)
Ownership Authority,)

Defendant.)

BRIEF IN SUPPORT OF
COMPLAINT FOR WRIT OF MANDAMUS

ROGER J. McDONOUGH
RONALD J. OCKEY
Special Assistant
Attorneys General
800 Walker Bank Building
Salt Lake City, Utah 84111

MICHAEL L. DEAMER
Deputy Utah Attorney
General
State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Plaintiffs

Attorney for Defendant

TABLE OF CONTENTS

	<u>Page</u>
Nature Of The Case.	1
Nature of Relief Sought	1
Facts of the Case	2
Argument.	6

POINT I

THE PROPOSED BONDS WHEN ISSUED WILL NOT BE GENERAL OBLIGATION BONDS OR A CHARGE AGAINST THE GENERAL CREDIT AND TAXING POWER OF THE STATE CONTRARY TO LEGISLATIVE INTENT, NOR DOES THE FACT THAT THE BONDS ARE TO BE PAID FROM RENTALS RECEIVED FROM STATE BODIES FOR THE LEASE OF FACILITIES CREATE SUCH A GENERAL OBLIGATION	6
---	---

POINT II

THE PROPOSED BONDS WHEN ISSUED WILL NOT CREATE AN INDEBTEDNESS IN AN AMOUNT IN EXCESS OF ONE AND ONE-HALF PERCENT OF THE VALUE OF THE TAXABLE PROPERTY OF THE STATE IN VIOLATION OF ARTICLE XIV, SECTION 1, OF THE UTAH CONSTITUTION, AND SECTION 6(2) OF SENATE BILL 238.	25
Conclusion.	27

CONSTITUTIONAL PROVISIONS CITED

Constitution of the State of Utah, Article XIV, Section 1	25, 26, 27, 29
--	----------------

TABLE OF CONTENTS--Continued

STATUTES CITED

	<u>Page</u>
Senate Bill 237	3, 27
Senate Bill 238	2, 3, 4, 12, 13, 14, 25, 26, 27, 29
Senate Bill 321	3, 27

CASES CITED

Application of Oklahoma Capitol Improvement Authority, 355 P.2d 1028 (Okla. 1960)	16
Application of Oklahoma Capitol Improvement Authority, 410 P.2d 46 (Okla. 1966)	16
Book v. State Office Building Commission, 149 N.E.2d 273 (Ind. 1958)	16, 20
Conder v. University of Utah, 257 P.2d 367 (Utah 1953) . .	26
In re Constitutionality of Chapter 280 Oregon Laws, Martin v. Oregon Building Authority, 554 P.2d 126 (Ore. 1976)	23, 25
Opinion to the Governor, 308 Atl. 2d 802 (R.I. 1973) . .	16, 19
In re Request for Advisory Opinion Enrolled Senate Bill 558, 254 N.W.2d 554, 400 Mich. 311 (1977)	16
Spence v. Utah State Agricultural College, 225 P.2d 18, Utah (1950)	8, 11, 12, 26
State ex rel Nevada Building Authority v. Hancock, 468 P.2d 333 (Nev. 1970)	23, 24
State v. Taylor, 178 S.E.2d 48 (W. Va. 1970)	22, 23
State v. Yelle, 289 P.2d 355 (Wash. 1955)	23, 24

TABLE OF CONTENTS--Continued

	<u>Page</u>
Tribe v. Salt Lake City, 540 P.2d 499 (1975).	9, 11
Utah Housing Finance Agency v. Smart, 561 P.2d 1052 (1977)13, 24

IN THE SUPREME COURT
OF THE
STATE OF UTAH

SCOTT M. MATHESON, Governor)
of the State of Utah, and)
DAN S. BUSHNELL, Vice-Chair-)
man of the Utah State Building)
Ownership Authority,)

Plaintiffs,)

vs.)

WESTON E. HAMILTON, Chairman)
of the Utah State Building)
Ownership Authority,)

Defendant.)

BRIEF IN SUPPORT OF
COMPLAINT FOR
WRIT OF MANDAMUS

Case No. 16545

NATURE OF THE CASE

This is an original action in the Utah Supreme Court concerning the validity of certain bonds proposed to be issued by the Utah State Building Ownership Authority (the "Authority") to finance the acquisition and construction of office facilities for use and occupancy by state departments and agencies.

NATURE OF RELIEF SOUGHT

Scott M. Matheson, as Governor of the State of Utah,
and Dan S. Bushnell, as Vice-Chairman of the Utah State Building

Ownership Authority, seek a Writ of Mandamus from the Supreme Court directing Weston E. Hamilton, as Chairman of the Authority, to execute the bonds in the form and manner as approved by a resolution of the Authority adopted June 15, 1979.

FACTS OF THE CASE

The 1979 General Session of the Utah Legislature determined that many state bodies were inadequately provided with necessary office space and related facilities, and that many state bodies were renting space in privately owned buildings with funds that could more efficiently and economically be used toward the acquisition and construction of facilities which would be owned by the state. In order to provide for a fully adequate supply of governmental office facilities at the lowest possible cost, the Legislature created the Authority and adopted the Utah State Building Ownership Act ("S.B. 238"). (Exhibit "A" attached to the Complaint).

S. B. 238 empowers the Authority to borrow money and issue its bonds to finance the acquisition and construction of governmental office facilities to be authorized by further acts of the Legislature. A further act of the 1979

General Session of the Utah Legislature authorized the Authority to issue bonds in an aggregate principal sum of not to exceed \$25,000,000 to pay for the acquisition and construction of a general office facility in Salt Lake City to meet the general office needs of state bodies, (Senate Bill 237, attached to the Complaint as Exhibit "B"). Another act of the 1979 General Session of the Utah Legislature authorized the Authority to issue bonds in an aggregate principal sum of not to exceed \$2,600,000 to pay for the acquisition and construction of an office building in Salt Lake City for the Utah Department of Agriculture (Senate Bill 321, attached to the Complaint as Exhibit "C"). All of the bonds authorized to be issued pursuant to S.B. 237 and S. B. 321 are to be issued under and in accordance with the provisions of S. B. 238.

The Acts provide that the bonds state on their face that they are limited obligations of the Authority to be paid solely from rental and lease payments received from the state bodies utilizing the facilities and that they shall not give rise to a general obligation or liability of, nor a charge against the Authority or the general credit or taxing powers of the State, or any of its political subdivisions. The Acts further provide that the bonds may be secured by a mortgage

or trust deed covering the facilities acquired or constructed with the proceeds of the bonds, provided that no deficiency judgment may be entered against the Authority, the State, or any of its political subdivisions on the foreclosure of any such mortgage or trust deed. Section 8 of S.B. 238 states that nothing in the Act can be construed as requiring the State or any state body or political subdivision to pay the bonds or interest thereon, or to pay rental for the facilities. This section further provides that nothing in the Act may be construed as requiring the Legislature to appropriate any funds to pay the bonds or the rentals. Should any state body fail to pay the rental for the facilities occupied by it, such body will vacate the portion of the facilities occupied by it, and its rental obligation will thereupon cease.

On June 15th, the Authority adopted bond resolutions authorizing the issuance of the bonds covered by the Acts. (Exhibits "D" and "E" attached to the Complaints.) In accordance with the provisions of S.B. 238, the resolutions provided that each bond contain on the face thereof the following statement:

This Bond, and the interest thereon are limited obligations of the Authority to be paid solely from the rentals and lease payments receivable by the Authority from the state bodies utilizing the facilities constructed or acquired with

the proceeds of the Bonds, and said Bonds and the interest thereon shall not constitute nor give rise to a general obligation or liability of, nor a charge against the Authority or general credit or taxing powers of the State of Utah or any of its political subdivisions. The Utah Legislature is not obligated to appropriate any money to pay any rentals for any part of the facilities occupied by a state body. No judgment may be entered against the State of Utah, nor against any state body for failure to pay such rentals. Should any state body fail to pay any such rentals, that body must immediately quit and vacate the portion of the facilities previously occupied by it and the rental obligation of such body shall thereupon cease. Each Bond of this issue is equally and ratably secured by an indenture and deed of trust (the "Indenture") encumbering the property acquired and constructed with the proceeds of such Bonds. The Indenture provides that no deficiency judgment upon foreclosure may be entered against the Authority, the State of Utah, or any of its political subdivisions, and that no breach of any agreement under the Indenture shall impose any general obligation or liability upon or a charge against the Authority or the general credit or taxing power of the State of Utah or any of its political subdivisions.

The form of the bonds adopted by the resolutions contain this statement.

The resolutions authorized and directed the Chairman of the Authority, defendant, Weston E. Hamilton, to execute the bonds on behalf of the Authority. The defendant

has advised the plaintiffs and the other members of the Authority that he will refuse to sign the bonds on the grounds that the proposed bonds are illegal.

POINT I. THE PROPOSED BONDS WHEN ISSUED, WILL NOT BE GENERAL OBLIGATION BONDS OR A CHARGE AGAINST THE GENERAL CREDIT AND TAXING POWER OF THE STATE CONTRARY TO LEGISLATIVE INTENT, NOR DOES THE FACT THAT THE BONDS ARE TO BE PAID FROM RENTALS RECEIVED FROM STATE BODIES FOR THE LEASE OF FACILITIES CREATE SUCH A GENERAL OBLIGATION.

Defendant's principal contention concerning the invalidity of the bonds is set forth in paragraphs 10A and B of the Complaint. It is based upon the fact that the source of funds for repayment of the bonds is the rental which is to be paid to the Authority by state bodies for office space in the facilities acquired with the proceeds of the bonds. His argument proceeds somewhat as follows:

The Legislature declared that the bonds must not be general obligation bonds and must not constitute a charge against the general credit or taxing power of the state or any of its political subdivisions. The only source of revenues for payment of the bonds are the rentals to be paid by state bodies for office space rented to such bodies by the Authority.

Thus, if any revenues are ever going to be obtained to make payment on the bonds, such revenues (the rentals) must be appropriated by the Legislature, and the Legislature must levy a sufficient tax to pay such appropriation. Accordingly, the bonds will, in actuality, be general obligation bonds and a charge against the taxing power of the State contrary to the express intent of the Legislature. The statement in the bonds to the effect that the bonds will be paid only from rentals of the facilities is false because the rentals can only be obtained from Legislative appropriation and taxation.

The foregoing argument of defendant is faulty for one principal reason. There can be no general obligation of a state unless a state undertakes to pay, or guarantees such payment, from its general funds. There can be no charge against the general credit or taxing power of a state unless the state obligates itself to supply the funds to pay the obligation, or obligates itself to levy taxes to pay the obligation. If, as is the case here, a state could not legally be called upon to pay the bonds, or to supply funds from which the bonds would be paid, or to levy a tax for the purpose of paying the bonds, there is no general obligation and no charge against the state's credit or taxing power.

The question as to what constitutes a general obligation of a state or a charge against its general credit or taxing power was discussed by the Utah Supreme Court in the case of Spence v. Utah State Agricultural College, 225 P.2d 18, (Utah, 1950). That case involved the issuance by the college of revenue bonds to finance the construction of a student union building to be repaid solely from the rental and income to be derived from the operation of the building. There, as in the instant case, the bonds stated on their face that they would not give rise to an obligation of the state or the college. In the course of the opinion, the Court stated:

Here, we have a bona fide attempt by the legislature to free the state from liability for repaying the bonds. This act provides the indebtedness shall not be a debt of the state, the Utah State Agricultural College, or the Board of Trustees. The resolution authorizing the issuance of the bonds has the same provisions. The bonds which will be sold to the public show on their face that they shall not become an obligation of the state, the college, or the board; that money necessary for repayment cannot be obtained from sources other than from the revenue and income derived from the operation of the student union building and the student fees paid by students of the college; and that the income and revenue from such sources is all that is pledged to payment of the principal and interest of the bonds. There is no requirement that the state contribute any funds to the project; that it be required to

guarantee the payment of the loan in the event the revenues are insufficient; or that any purchaser of the bonds can in any way hold the state liable for repayment of the sum realized from the sale of the bonds. Furthermore, there is no guarantee on the part of the state that the sources of revenue will be sufficient to meet the bonded indebtedness and that if the funds are insufficient the state will in any way help to make up the deficit.

* * *

The legislative act expressly provides the bonds shall not be or become an obligation of the state and this stipulation is carried on the face of the bond. We are unable to see how the State of Utah could ever be called upon to pay these bonds or the interest thereon or be under any obligation to levy any tax for the purpose of paying any loss that might result to the bondholders. Under the terms of the act, the resolutions and the bonds, no bondholder could legally contend that the state, the college, or the board was obligated to pay the indebtedness represented by the bond.

No "debt" within the meaning of constitutional limitations is created where the statute in question, the bond resolution and the form of the bond all provide that the credit of the governmental entity cannot be looked to for the repayment of the bonds. This was the holding of the Utah Supreme Court in the case of Tribe v. Salt Lake City, 540 P.2d 499 (1975). The Tribe case upheld the validity of bonds to be issued by the Salt Lake Redevelopment Agency for the purpose of constructing a parking facility. The bonds

were to be repaid solely from parking rentals and from incremental property taxes which would result from the increased tax assessment occurring as the result of the improvements constructed with the bond proceeds. The Court held:

The Act specifically provides that the bonds and other obligations of the agency are not a debt or obligation of the community (which is defined in the Act as a city, county or combination of the two), the state, or any of its political subdivisions. In addition, the enabling statute, the proposed bond resolution, the proposed bond form, and the city ordinance of ratification all prohibit the use of credit of the city for the repayment of the bonded indebtedness. The bondholders can look only to revenues from the operation of the facility and the allocated taxes, for retirement of the bond obligation. Under the subject statute, providing for this arrangement, there can be no city debt created contrary to Article XIV, Sections 3 and 4; nor can there be a lending of the city's credit in contravention of Article VI, Section 29.

In the case of the proposed Building Ownership Authority bonds now before this Court, the Legislature declared in the Acts that the bonds would not give rise to a general obligation or liability of, nor a charge against the general credit or taxing power of the State or any of its political subdivisions. This declaration was contained in the June 15 Resolutions of the Authority. The bonds to be issued by the Authority contain this statement on their face. Under these

facts and the holdings of this Court in the cases of Spence v. Utah State Agricultural College and Tribe v. Salt Lake City, supra, the proposed bonds cannot be general obligations of the state or a charge against its taxing powers.

The defendant contends that foregoing holdings are not applicable to the instant case because in this case the only source of funds to pay the bonds are the rentals to be paid to the Authority by state bodies. The only way such state bodies can obtain funds to pay such rentals is by the Legislature appropriating funds to such state bodies to pay them, and the Legislature must then levy a sufficient tax to fund the appropriation. He argues that this makes the bonds, in effect, general obligations of the State payable from the State's general taxing power contrary to the express intent of the Legislature.

The defendant's contention might have some merit if the state bodies were required to enter into leases which would obligate them to pay rentals over an extended period in order to retire the bonds. His argument might also have merit if the Legislature in any manner obligated itself to make appropriations in the future to pay the bonds or the rentals. Such are not the facts in this case, however.

Senate Bill 238 specifically provides that neither the State, nor any state body is required by the Act to pay any bond or any interest thereon or any rental under the terms of any lease. That bill further provides that nothing in the Act shall be construed as requiring the Legislature to appropriate any money to pay any bond or any interest thereon or any rentals. It further provides that should any state body fail to pay its rental for the facilities, that body shall immediately quit and vacate the facilities and the rental obligation of such body will thereupon cease. These declarations were contained in the June 15 Resolutions of the Authority and are stated on the face of the proposed bonds. Thus, the Act, the resolutions and the bonds themselves specifically state that there is no undertaking on the part of the state or any state body or the Legislature that rentals will be provided in order to furnish revenues to pay the bonds.

This distinction appeared to be a matter of prime importance to the Utah Supreme Court in the case of Spence v. Utah Agricultural College, supra. The Court stated that, "there is no guarantee on the part of the state that the source of revenue will be sufficient to meet the bonded

indebtedness and that if the funds are insufficient, the state will in any way help to make up the deficit." The Court then went on to hold that under the Act, the resolution and the bonds, the State could not be legally called upon to pay the bonds or be under any obligation to levy a tax for the purpose of paying them.

Senate Bill 238 does provide that the governor may request the Legislature to appropriate funds for the payment of rentals. That bill also specifically provides that nothing in the Act may be construed as requiring the Legislature to appropriate any funds to pay such rentals. Where legislation permits but does not require future appropriations to pay state agency bonds, no general obligation of the state is created. This was the holding of the Utah Supreme Court in the case of Utah Housing Finance Agency v. Smart, 561 P.2d 1052 (1977) where the Court stated:

If the legislation requires future appropriations to defray the obligations of the Agency it would be invalid as lending the state's credit, but where, as here, it merely allows future appropriations without requiring such, it creates no binding obligation upon the state and therefore does not result in a debt of the state or the lending of the state's credit.

Neither the state, nor any state body, nor any political subdivision is required to pay any bond issued pursuant to the Acts. The bonds are to be paid out of the rentals or lease payments which are received by the Authority from state bodies for facilities acquired or constructed with the proceeds of the bonds. However, neither the state, nor any state body, nor any political subdivision is required to pay any rental. Should a state body fail to pay its rental, its only duty is to quit the leased facilities, whereupon its obligations under the lease shall terminate. The legislature is not required to appropriate any funds to pay any bond, or any interest thereon, or any rentals.

All of the foregoing provisions are contained in S.B. 238, are contained in the June 15 resolutions of the Authority, and are set forth on the face of the bonds. The Utah Supreme Court decisions are clear that where, as here, there is no requirement that the state or any state body pay the bonds or the rentals, or that the legislature appropriate any monies for their payment, there is no charge against the state's taxing power and no general obligation is created.

While the Utah Supreme Court decisions would appear to be dispositive of the question, it may be helpful to the

Court to consider state building ownership authority situations which have arisen in other jurisdictions.

While the Building Ownership Act is new in the state of Utah, it has existed in various forms in other jurisdictions for up to 25 years. The purpose of these acts is to provide a vehicle whereby a state can acquire office buildings and facilities to house departments and agencies of state government and thereby avoid the necessity of having to appropriate monies every year to pay rental to house these departments and agencies in privately owned buildings. The acts vary from state to state with respect to the powers given to the authority, the obligations placed upon state bodies to pay rentals, the form and content of the bonds to be issued and other matters. The basic format of the acts appears uniform, however. An agency or authority with bonding power is created by the legislature. This authority is authorized to issue and sell bonds to obtain money to finance the acquisition and construction of state office buildings. Space in the buildings is then leased or rented to state departments and agencies by the authority. The total amount of rentals to be paid to the authority by the state departments and agencies is designed to be in an amount sufficient to pay the principal and interest on the bonds as they come due. The rental

so received is pledged by the authority to payment of the bonds.

The question as to whether the bonds issued by a building ownership authority are general obligation bonds of a state and are, therefore, violative of constitutional debt limitations has been before the courts of other jurisdictions on several occasions. A split of authority has developed as to whether such bonds constitute general obligations of the state and a charge against its taxing power. A number of cases have held that such bonds do not constitute general obligations and have upheld the validity of the bonds against constitutional attack. E.g. Book v. State Office Building Commission, 149 N.E.2d 273 (Ind. 1958); In Re Request for Advisory Opinion Enrolled Senate Bill 558, 254 N.W.2d 554, 400 Mich. 311 (1977); Opinion To The Governor, 308 Atl.2d 802 (R.I. 1973); Application of Oklahoma Capitol Improvement Authority, 410 P.2d 46 (Okla. 1966); Application of the Oklahoma Capitol Improvement Authority, 355 P.2d 1028, (Okla. 1960). Various reasons have been given by the courts for such holdings based upon the particular statutory provisions and the constitutional limitations in question.

The case of In re Request for Advisory Opinion, supra, involved the Michigan Building Ownership Act which

sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.

created the State Building Authority and authorized it to issue up to \$400,000,000 in revenue bonds to finance the construction of state office buildings. The Act required the state to lease the buildings from the Authority and to pay the Authority the true rental for the facilities for a period of up to 20 years in order to make payments on the bonds. The Michigan Legislature requested an opinion of the Supreme Court as to whether the Act required future legislatures to appropriate amounts each year to pay the periodic rentals to the Authority, and whether the Act created a general obligation of the state in violation of the Michigan Constitution. The Constitution required all debts in excess of \$250,000 to be submitted to a vote of the electorate. No vote was conducted.

The Michigan Supreme Court held that under the Act future legislatures would be contractually obligated to appropriate money each year sufficient to pay the periodic rentals to the Authority. The Court went on to hold, however, that the bonds to be issued pursuant to the Act would not constitute general obligation bonds prohibited by the Michigan Constitution. The Court stated that the Michigan Constitution only prohibited debts incurred for borrowed money. The obligation to pay rentals under a lease was not a borrowing and did not create a

debt as that term was used in the Constitution. Neither were revenue bonds considered by the Court to fall within the Constitutional prohibition. The bonds were declared to be valid revenue bonds since they were payable only from rentals received by the Authority and did not constitute general obligations of the state. The fact that the rentals were to be paid from the state's general fund and that the legislature was contractually obligated to appropriate funds to pay rentals did not alter that result. The Court stated:

[9] Only general obligation bonds are limited by §§12 and 15. Revenue bonds and special obligation bonds are not within the ban of these sections. Schureman v. State Highway Commission, 377 Mich. 609, 141 N.W.2d 62 (1966).

[10] We do not regard the bonds contemplated by The Act as pledging the general obligation of the state to their repayment. They purport to be revenue bonds, payable only from the revenue generated by the payment of "true rental" under the terms of the lease. No undertaking on the part of the state to pay the bonds is authorized and a disclaimer of a pledge of the state's general obligation is required under §8 of The Act.

[11-13] We do not regard the contractual obligation of the state to make lease payments as a promise to pay the bonds. The nature of these bonds as true revenue bonds is not vitiated by the circumstance that the state's rental obligation will be paid from the general tax fund. We have regarded revenue bonds as exempt from the constitutional borrowing limitations not because state tax funds would never provide their repayment but rather because revenue bonds are secured and repaid by the users of the project financed

The case of Opinion to the Governor, supra, involved a situation very similar to one before the Michigan court. The Authority proposed the issuance of revenue bonds to finance the acquisition of an office building. The Authority would then lease the office building to the state under a long-term lease which would provide for rentals in an amount sufficient to retire the bonds. The Governor requested an opinion of the Rhode Island Supreme Court as to whether the payments required to be made by the state under a long-term lease for government facilities would violate the constitution in that such lease payments would constitute a state debt or a pledge of the full faith and credit of the state without the consent of the people.

The Court stated that the majority view of courts considering the question was that statutes were valid which created independent authorities empowered to acquire facilities and lease them to state agencies with the rentals being used in payment of the authority's bonds. The Court adopted the majority rule and went on to hold that the lease payments under a long-term lease did not create a debt of the state within the meaning of the constitution since such payments were for recurring obligations to be paid out of current revenues. No general obligation of the state was created.

The case of Book v. State Office Building Commission, supra, involved a fact situation quite similar to that presented by the Utah Building Ownership Act. The Building Commission was authorized to issue and sell bonds to finance the construction of an office building to house departments and agencies of the Indiana state government. These bonds would be repaid from rentals received by the Commission from state bodies using the facilities. As in the Utah situation, the bonds stated on their face that they were payable solely from the revenues received by the Commission and that they did not constitute a debt of the state. A provision of the Act authorizing the bonds provided that no state agency would be required to continue to occupy the facilities and pay rental therefor if the amount of the rental or the terms of the lease were unjust or unreasonable considering the value of the facilities furnished. As in the Utah situation, the agency's only obligation in such a situation was to quit and vacate the facilities. Under these facts, the Indiana Supreme Court upheld the validity of the bonds. The Court stated:

There is nothing to be found in the entire Act which could be construed as requiring any of the State departments or agencies to continue to rent and occupy any space in the proposed building if, in their opinion, conditions arose which caused the amount being paid for such use

and occupancy to be 'unjust and unreasonable considering the value of the services and facilities thereby afforded.'

The only language which might be considered as a covenant by the State that it will fully and continuously occupy the proposed building is to be found in §60-2115, supra, and is repeated here for emphasis, as follows:

'It is hereby represented that the State of Indiana will have a continuing need for use and occupancy of the facilities to be afforded by said building,
* * *.'

In our opinion this language neither requires the State departments and agencies to rent any space in the proposed building nor binds any future session of the Legislature to appropriate the funds with which to pay the rental due by reason of any use and occupancy agreement which may be consummated by any of the State departments and agencies and the Commission.

The foregoing cases are illustrative of the positions taken by various courts in upholding the validity of various Building Ownership Acts. The Michigan Supreme Court upheld the validity of the Michigan Building Authority Bonds as not creating general obligations of the state in violation of the state constitution. This was done in spite of the fact that, unlike the Utah act, the Michigan statute contractually required future legislatures to appropriate money to pay the periodic rentals to the Authority.

The Rhode Island Supreme Court upheld the validity of the Rhode Island Act as not creating a general obligation of the state even though state bodies would be required to enter into long-term leases with the Authority and pay rentals to retire the bonds.

The Indiana Supreme Court upheld the validity of the proposed bonds in a fact situation quite similar to the one involving the Utah Act. There, as in the Utah situation, the bonds stated on their face that they did not constitute a debt of the state and that the bonds were to be paid solely from the revenues received from the lease of facilities to state bodies. A provision of that act provided that no state body would be required to pay the rentals if the rentals or the terms of a lease were unreasonable. As under the Utah Act, a state body's only obligation in such a situation was to vacate the leased facilities. The Indiana court emphasized this fact in holding that no general obligation of the state was created in violation of the state constitution.

Courts of other jurisdictions have held bonds issued pursuant to a Building Ownership Act do create a general obligation of the state in violation of particular constitutional restrictions. E.g. State v. Taylor, 178 S.E.2d 48

(W. Va. 1970); State ex rel Nevada Building Authority v. Hancock, 468 P.2d 333, (Nev. 1970); State v. Yelle, 289 P.2d 355, (Wash. 1955); In re Constitutionality of Chapter 280 Oregon Laws, Martin v. Oregon Building Authority, 554 P.2d 126 (Ore. 1976). The majority of such cases are clearly distinguishable from the Utah situation, however. In some of the cases, the statutes created either an express or an implied obligation on the part of future legislatures to appropriate funds to make the required rental payments. In others, there was an unqualified obligation on the part of state bodies to pay rent in an amount sufficient to retire the bonds or some peculiar law was in force that does not exist in the state of Utah.

Thus, in the case of State v. Taylor, supra, the Court concluded that the act in question effectually obligated successive West Virginia legislatures over a period of years in the future to appropriate funds to pay rentals at specified rates in order to retire the bonds. This situation is the exact opposite of the Utah Act which specifically states that future legislatures will never be required to appropriate funds to pay either the bonds or the rentals. In the course of its opinion, the West Virginia Court also stated that if

future legislatures were not obligated to make appropriations in the future to pay the rentals, but were only authorized to do so, the result would be the same. The Court stated:

However, the test is not whether a future legislature is required to make such appropriations. The test is the authority to do so. Clearly the only source of income by which the bonds may be liquidated is the rent to be paid by the occupants of the buildings. Therefore, the reason for the invalidity of the statute lies in the authority of the legislature to make such future appropriations.

This interpretation as to what constitutes a state debt has already been rejected by the Utah Supreme Court. In the case of Utah Housing Finance Agency v. Smart, supra, the Utah Court held that it is only where legislation requires future appropriations that a problem is created. Where, however, legislation merely allows future appropriations without requiring them, no general obligation of the state is created and no debt is incurred.

In the cases of State ex rel Nevada Building Building Authority v. Hancock, and State v. Yelle, supra, the courts construed the statutes in question as requiring future legislatures to make appropriations to pay the required rentals. It was for this reason that the courts held the subject acts to create debts in violation of the state constitutions.

In the case of In re Constitutionality of Chapter 280 Oregon Laws, Martin v. Oregon Building Authority, supra, the obligation of the state to make rental payments was unconditional, and this rental obligation was backed by the pledge of the full faith and credit of the state. This is the direct opposite of the Utah situation, where the Act, the bond resolution and the bonds themselves declare that neither the state, nor any state body nor political subdivision will be required to pay any rentals, and that upon a state body's vacation of the leased premises, all rental obligations of that body shall terminate.

It would thus appear that the bonds proposed to be issued by the Utah Building Ownership Authority would not constitute general obligations of the state, even under the most stringent of the rules laid down by other jurisdictions in defining that term.

POINT II. THE PROPOSED BONDS WHEN ISSUED WILL NOT CREATE AN INDEBTEDNESS IN AN AMOUNT IN EXCESS OF ONE AND ONE-HALF PERCENT OF THE VALUE OF THE TAXABLE PROPERTY OF THE STATE IN VIOLATION OF ARTICLE XIV, SECTION 1, OF THE UTAH CONSTITUTION AND SECTION 6(2) OF SENATE BILL 238.

The defendant, Weston E. Hamilton, contended that if the proposed bonds were issued, the total indebtedness

of the state would exceed one and one-half percent of the value of the taxable property of the state in violation of Article XIV, Section 1 of the Utah Constitution and Section 6(2) of Senate Bill 238. The Affidavits of the Utah State Treasurer and the Chairman of the Utah State Tax Commission which have been filed in this case establish that this is not the case.

Article XIV, Section 1 of the Utah Constitution states:

To meet casual deficits or failures in revenue, and for necessary expenditures for public purposes, including the erection of public buildings, and for the payment of all Territorial indebtedness assumed by the State, the State may contract debts, not exceeding in the aggregate at any one time, an amount equal to one and one-half per centum of the value of the taxable property of the State, as shown by the last assessment for State purposes, previous to the incurring of such indebtedness. But the State shall never contract any indebtedness, except as in the next Section provided, in excess of such amount, and all moneys arising from loans herein authorized, shall be applied solely to the purposes for which they were obtained.

The terms "debt" and "indebtedness" in Article XIV, Section 1, mean general obligation indebtedness. Conder v. University of Utah, 257 P.2d 367 (Utah 1953); Spence v. Utah State Agricultural College, supra.

This same basic limitation was placed in Section 6(2) of S.B. 238:

No Authority obligation incurred under this section may be issued in an amount exceeding the difference between the total indebtedness of the State of Utah and an amount equal to 1 1/2% of the value of the taxable property of the state.

The Affidavit of David Duncan, the Chairman of the Utah State Tax Commission, shows that the last assessment for state purposes established the value of the taxable property of the state at \$15,666,666,000.00. The Affidavit of Linn C. Baker, State Treasurer, shows that the total current outstanding principal general obligation indebtedness of the state is \$125,135,000.00.

If the proposed bonds are issued in the full amount authorized by S.B. 237 and S.B. 321, the total indebtedness of the state will be \$152,735,000.00, or less than 1% of the value of the taxable property of the state. The limits imposed by Article XIV, Section 1, of the Constitution and by Section 6(2) of S.B. 238 will not be exceeded.

CONCLUSION

The Acts in question, the June 15th Resolutions of the Authority and the proposed bonds all declare: (1) that the bonds shall not constitute nor give rise to a general

obligation or charge against the taxing powers of the State or any of its political subdivisions; (2) that the bonds are limited obligations of the Authority to be paid solely from rentals which are received by the Authority from state bodies utilizing the acquired facilities; (3) that neither the State nor any state body nor any political subdivision shall be required to pay rentals for the facilities, but that should any state body fail to pay such rentals, it will simply vacate the portion of the facilities occupied by it and its rental obligation will thereupon cease; (4) that the Utah Legislature is not obligated to appropriate any money to pay the bonds or to pay any rental for the facilities. Under these facts, no general obligation of the State is created.

The Affidavits of the State Treasurer and the Chairman of the State Tax Commission establish that the proposed bonds, when issued, will not cause the indebtedness of the State to exceed one and one-half percent (1 1/2%) of the value of the taxable property of the State.

It is respectfully requested that this Court issue its decree:

1. Declaring that the proposed bonds do not constitute a general obligation or liability of, nor a charge

against the general credit or taxing power of the State or any of its political subdivisions.

2. Declaring that the proposed bonds will not create an indebtedness of the State in an amount in excess of one and one-half percent (1 1/2%) of the value of the taxable property of the State in violation of Article XIV, Section 1, of the Utah Constitution and Section 6(2) of S.B. 238.

3. Ordering the defendant, Weston E. Hamilton, as Chairman of the Utah State Building Ownership Authority, to execute the proposed bonds as authorized and directed by the June 15th Resolutions of the Authority.

Such a decree would allow the State to proceed with a program of acquiring office buildings to house the departments and agencies of state government instead of merely acquiring a large stack of rent receipts.

Respectfully submitted.

ROGER J. McDONOUGH
RONALD J. OCKEY
Special Assistant
Attorneys General
800 Walker Bank Building
Salt Lake City, Utah 84111