

1953

L. Burt Bigler and Herbert K. Sloane v. Ray P. Greenwood et al : Plaintiff's Reply Brief

Utah Supreme Court

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

L. BURT BIGLER and HERBERT
K. SLOANE,

Plaintiffs,

— vs. —

Clerk, Supreme Court, Utah

RAY P. GREENWOOD, GEORGE W.
MORGAN and LAWRENCE A.
JONES, as Commissioners of Salt
Lake County, and as Directors of
the Salt Lake City Suburban Sewer
District,

Defendants,

and

SALT LAKE COUNTY SUBURBAN
IMPROVEMENT ASSOCIATION,
INC., a corporation,

Involuntary Party Plaintiff.

Case No. 7915

FILED

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PLAINTIFF'S REPLY BRIEF

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PLAINTIFF'S REPLY BRIEF

STATEMENT OF FACTS

Just as defendants take issue with our Statement of Facts, we dispute certain conclusions and statement of the facts contained in defendants' brief. While we do agree with the conclusion of defendants on Page 3 that we could not now successfully challenge "the sufficiency of the steps taken under the statute to create a district," we only make this concession because the validating act was passed to correct any irregularities in connection

with the creation of the district. As will be demonstrated hereafter, that was the only intent and effect of the validation act.

Even if we admit the one part of the statement on Page 4 that "the district has been valid and subsisting at all times since September 9, 1946," we maintain that we are correct and we again repeat that from April 5, 1948 to October 6, 1952 "the acquisition of a sewer system in the Salt Lake City Suburban Sewer District as provided in the resolution of March 18, 1947 and any amendments thereto, (was) abandoned." Although the district itself was not legally dissolved or rescinded, it was abandoned in the full sense of the word abandoned. It was deserted, forsaken, given up as a lost cause. Without going into semantics we repeat — it was abandoned. The original resolution of September 9, 1946 merely created "a special improvement district within the area hereinafter described which is located at Salt Lake County, State of Utah." We, therefore, restate that prior to October 6, 1952 there was no resolution, ordinance, or order implementing the skeleton district, no provision for the acquisition of a sewer system, nor a determination whether the district was created pursuant to the provisions of Section 2 to 7 of Chapter 6 (a) (a special assessment district) or pursuant to the provisions of Section 8 of Chapter 6 (a) (a revenue bond district).

Until the commission passed a resolution similar to the resolution of March 18, 1947 (subsequently rescinded April 5, 1948) signifying that the district was no longer abandoned, we repeat, the district was to all intents and

purposes defunct and abandoned. The minutes of the County Commission, the record in this case, leads to no other conclusion.

On Page 7 of defendant's brief, the implication is given that 6,424 owners filed without protest. We admit that applications for service from this number were filed but we claim, and if evidence was taken we would prove, that a majority of the 2,645 persons who signed the Holladay protest, because of coercion, are among the 6,424. Furthermore, the Court should bear in mind, that defendants did not make available to the citizens a form for filing under protest.

We take serious exception to the statement of the first paragraph on Page 8. The presentation at the mass meetings were not detailed, presented only the affirmative side of the picture, and the plans presented were not based on a feasibility report, nor did they conform completely to what was finally incorporated in the bonding resolution. The suggestions and objections were not met. To cite Exhibits S as support for this is false. The exhibit, which is only minutes of a meeting, states: "Different phases of the sewer plan were discussed. The oral agreements reached at this meeting are to be put in writing and approved * * *." The record fails to show what the agreements were, and the minutes fail to show that the commission approved anything suggested. On the contrary, three of those persons representing the opposition at this meeting are now members of the plaintiff's association and, as officers, are still attempting through the association's efforts to have the objections of

2,645 protestants met. Further, the deadline for applications, extended to September 2, 1952, had passed prior to this meeting; in order to coerce more people into signing applications, the deadline was thereafter "graciously" extended to those who had signed the Holladay protest. As to defendants' challenge, the association's members are prepared to stand and be counted. The issue is not, however, how many members we have or how many applications were filed or how many protest signatures were received. The issue is, has the County Commission act validity or, on the contrary, as any property owner been deprived of his rights by the misapplication of an unconstitutional statute and by the defendants' arbitrary and unreasonable acts.

Defendants lay great emphasis throughout their brief on the number of types of applications. Although five methods of applying for service might have been finally available, only two exhibits—one and four were publicized originally. It is admitted by the defendants that of those owning existing houses not a single person paid cash under the contract known as Exhibit 5 and only six posted the \$54.00 bond under the application known as Exhibit 4; the remainder signed Exhibit 1, the publicized application thus subjecting their property to a lien. On numerous occasions defendants state that only one of the five methods of applying for service provided for a lien if the bill became 90 days delinquent. We refer the court to these exhibits and submit that four of the five exhibits have the lien provision and only Exhibit 4 omits this lien provision.

Finally we submit that defendant's emphasis on the percentage who have filed applications completely ignores the admissions made in their pleadings. In order to secure this percentage of applications, a penalty was threatened, which according to defendants' own admission in Paragraph 6 of their Answer was "coersive in nature."

ARGUMENT

POINT I

LACK OF STATUTORY AUTHORITY.

(a) CHAPTER 23 B, LAWS OF UTAH, 1947, DOES NOT VALIDATE THE COMMISSION'S POWER TO ISSUE REVENUE BONDS.

Defendants' first point in its brief is that the validation act, Chapter 23 B, Laws of Utah 1947, is all the statutory authority needed. Although it was originally claimed that this act ratified all acts taken prior to May 13, 1947, the gist of defendants' main affirmative defense is that this validation act gives legislative sanction to everything that has been done.

In reply to this argument, we believe that the act itself should be paraphrased in order to determine its true meaning. Because the act is all one sentence, it appears more involved than it really is. We submit that the act states the following: If a Board of County Commissioners purporting to act under the authority of Chapter 6 (a) had theretofore purported to create a sanitary district and had theretofore provided for the issuance of revenue bonds, all proceedings in connection with the project were validated, ratified, and confirmed despite

any irregularities, and despite any failure to observe statutory requirements as to filing of petitions. The provisions of all prior proceedings were declared to be valid and enforceable and the Board was authorized to proceed with the issuance of bonds and to make changes in the details of the bonds thereafter. When the bonds were delivered and paid for, they were declared to be valid and binding and fully negotiable.

We do not dispute defendants' citations but we do claim that there are limitations on the curative power of the legislature.

Where there is no law authorizing the commission's actions or where there is no power to act because of lack of jurisdiction, the legislature cannot retroactively grant the power. See *Daggett v. Lynch*, 18 Utah 45, 54 P. 1095 and in *re Christensen's Estate*, 17 Utah 412, 53 P. 1003. Chapter 23 B was not enacted as a retroactive grant of power nor was it meant to serve as retrospective authority, but it was enacted only for the purpose of curing irregularities or failures to comply with existing statutory requirements. To construe this deliberate corrective legislation to be retroactive enabling legislation would be attributing more to the act than the legislature ever intended.

We submit that the sole purpose of this act was to cure any irregularities which may have occurred in the creation of the district prior to March 13, 1947 and to validate, ratify, and confirm any actions taken prior to March 13 to issue revenue bonds, regardless of whether or not the statutory requirements had been complied

with. To impute more to this act requires going beyond the terms of the act itself, and requires presuming that a prospective effect rather than the retroactive validation was intended by the legislature.

The legislature may validate actions taken prior to the time of the passage of an act. It cannot and certainly did not intend to validate, ratify, and confirm actions to be taken by a Board of County Commissioners without knowing what such actions would be. As stated by defendants, Chapter 23 B, Laws of Utah 1947 was passed March 13, 1947. On this date, the Board of County Commissioners of Salt Lake County had by a resolution and an order dated September 9, 1946, created a special improvement district. The County Commission and the Fiscal Agent was justifiably concerned whether the statutory requirements that a petition of "10% of the people" be filed had been met. To avoid this question, the validation act was passed. After it was passed the first resolution, the ordinance, and the bonding resolution of March 18, 1947, was passed by the Board of County Commissioners of Salt Lake County. How can the defendants claim that the act of March 13, 1947, expressly validated the proceedings thereafter taken by the Board on March 18, 1947, particularly when the act contains the word "heretofore"?

While it is true that the validation act was not approved until March 19, 1947 and did not become effective until May 13, 1947, curative legislation should not be given prospective effect.

We are acquainted with the rules of law that a stat-

ute should be construed in relation to its effective date, however, we have been able to find a case which interprets a curative act such as the one under discussion. Rather than to adopt an unreasonable interpretation that the legislature intended to validate proceedings taken subsequent to the passage of the legislation but prior to the effective date of the legislation, it is more logical to determine that the legislature intended to validate only those proceedings that had been taken prior to the enactment. See *Snidow v. Montana Home for the Aged*, 292 P. 722 where the Supreme Court of Montana held that a curative act "operates only on conditions already existing, and, in a sense can have no prospective operation * * *. It goes without saying that the curative provision of the 1927 amendment was designed to cure defects in past transactions."

(b) CHAPTER 6 (a), TITLE 19, DOES NOT CONFER THE NECESSARY POWERS.

In attempting to answer our contention (original brief, pp. 11, *et seq.*) that Section 8 of Chapter 6a, Title 19, U. C. A., 1943, confers no authority upon Boards of County Commissioners to engage in revenue bond financing except in connection with projects and special improvements appropriate and possible under the laws of the United States relating thereto, the defendants arrive somehow at the conclusion that the language of the first sentence of Section 8 authorizes such financing for any type of project or special improvement created as provided by Section 1 of Chapter 6a, *supra*, (defendants' brief, pp. 16 and 17). The least that can be said of this

conclusion is that it ignores the express and unambiguous language and the grammatical construction of the first sentence of Section 8, *supra*, particularly the words "such of said projects and special improvements." The first sentence of Section 8, *supra*, must be analyzed as follows:

"The board of county commissioners of any county creating special improvements as hereinbefore described (as described in Section 1 of Chapter 6a) is hereby authorized to create and operate *such* of said projects and special improvements (such of the projects and special improvements described in Section 1 of Chapter 6a) as may be appropriate and possible under the laws of the United States relating thereto (under Acts of Congress), as self-liquidating projects, *and in connection therewith* (in connection with such of the projects and special improvements described in Section 1 as are appropriate and possible under Acts of Congress relating thereto) to enter into the necessary contracts with the Reconstruction Finance Corporation of the United States, or with any other private or public agency, person, corporation, or individual, for the purpose of providing funds with which to finance the proposed project or improvement (one of those described in Section 1 which is appropriate and possible under Acts of Congress." (Italics and bracketed interpolation supplied.)

Clearly there is nothing in the foregoing sentence that justifies the conclusion that the financing authorized is for "both types of projects and special improvements" (defendants' brief, p. 17). The authorization is expressly limited by the words *such of said projects* (projects authorized to be created by Section 1) *as may be appropriate or possible under Acts of Congress* and by the words

"in connection therewith" which can refer only to the preceding words "such of said projects," etc. There is no conjunctive or disjunctive in the pertinent language and nothing else that suggests an "either or both" meaning. Nor is there anything that is susceptible of the *"also"* construction urged by the defendants in their argument on p. 17 of their brief.

The construction which we urge is a reasonable one, the defendants to the contrary notwithstanding. In our main brief (p. 12, *et seq.*) we discuss the federal statute (the Emergency Relief and Construction Act of 1932) to which Section 8, *supra*, was so obviously geared and which most certainly prompted the addition of Section 8 to the measure in committee. The defendants voice no disagreement with this construction except to say that Section 8 was merely supplementary to Section 1 and authorizes the borrowing of money on revenue bond issues from private sources in connection with projects created and operated as authorized under Section 1 of the Act as well as in connection with projects "operated under appropriate laws of the United States" (Defendants' brief, page 16). As we have demonstrated above, there is no basis for this construction because Section 8 clearly limits the authority therein contained to financing in connection with "such of said projects" (those described in Section 1) as may be appropriate and possible under the laws of the United States relating thereto. This is enabling legislation. The Legislature had no way of knowing precisely what projects or special improvements might be financed with Federal assistance then, or in the

future, because the Federal Statute (Section 605b of the Emergency Relief and Construction Act of 1932) referred only to aid in the financing of projects "authorized under Federal, State, or municipal law which are self-liquidating in character" and the determination as to what specific type of projects might be so financed was left to the rule-making power of the Reconstruction Finance Corporation. This explains the use of the language "such of said projects and special improvements as may be appropriate and possible under the laws of the United States relating thereto," as it appears in Section 8.

In effect, the defendants argue in the alternative that the addition of Section 8 was unnecessary because "Section 1 was itself broad enough" to permit revenue bond financing (defendants' brief, p. 16) and that the addition of Section 8 was merely supplementary to such authority. This is mere tautology. Section 1 does not authorize revenue bond financing. It authorizes boards of County Commissioners

"to provide for the cost of such special improvements *by levying assessments* against the property benefited by such special improvements, *or by imposing fees, tolls, rents or other charges for the use of such improvements* or both." (Italics supplied.)

The defendants would have the Court hold that the foregoing authorization necessarily carries with it the authority to engage in revenue bond financing from private sources because the County Commissioners could not otherwise carry out the purposes of the Act (defendants' brief, p. 17). On p. 15 of their brief they argue to the

same effect by stating that districts have no current funds when created and that laborers and material men could not be made to wait for payment until a system is completed and tolls return the cost; that special assessments could not be payable by everyone on an expensive sewer project in one payment at the beginning of construction. In other words, the defendants would supply by implication a power which is not expressly conferred, on the theory that legislative intent would be thwarted if current funds could not be made available at the outset of the construction of a project. For present purposes it is unnecessary to debate the question whether current funds for district purposes could not, if necessary, be supplied by other means, such as the issuance of revenue anticipation warrants, for example. The issue before the court is whether the cost of the project or funds for special improvements could be supplied by revenue bond financing from private sources. This authority for special financing must be found in Section 8 or in Section 1 of Chapter 6 (a), if at all, because other Utah statutes confer no general authority upon Boards of County Commissioners for such financing and it certainly is not an inherent power of such Boards to issue revenue bonds. Section 8 of Chapter 6 (a) confers only a limited authority for revenue bond financing which does not include revenue bond financing from private sources and Section 1 in no way relates solely to providing the cost of special improvements by levying assessments or by imposing charges for the use of the improvements. From the power to provide the cost of a special

improvement by enumerated methods there may not be implied the power to provide such cost by other means, however, unsatisfactory the enumerated methods may be. *Mark-Nasfell v. City of Ogden*, decided by this court August 27, 1952. In this case the court clearly laid down the rule that grants of power to a municipality are to be strictly construed, and Mr. Justice Henroid, speaking for the majority of the court, quoted with approval the statement in its previous decision, in the case of *Salt Lake City v. Ravene*, 124 P. 2nd 537 that, "any fair, reasonable, substantial doubt concerning the evidence of power is resolved by the courts against the corporation and the power denied." Contrary to defendants' bold assurance that "there can be little doubt that the County Commission had the power to borrow money" by revenue bond financing through private sources, we respectfully submit that the County Commission was totaling lacking in such authority.

(c) THE DEFENDANTS' CONSTRUCTION IS NOT A CONSISTENT ADMINISTRATIVE INTERPRETATION.

Defendants' argument (defendants' brief, p. 18) that the Boards' interpretation of Section 8, *supra*, is entitled to judicial respect because it has been consistent over the years is without merit, because we do not have here a long-standing administrative interpretation of the type contemplated by the line of cases which established the legal principle relied upon by defendants. So far as we know, the project in controversy is the only instance of action under the statute involving revenue bond financing, and the defendants apparently know of no other

instance because they refer only to the "board's construction in 1947 and again in 1952" (defendants' brief, p. 18). Two wrongs five years apart do not make a right as "consistent administrative interpretation" within the principal of the decisions relied upon.

If we are to rely on this single administrative construction by one County Board, we would be delegating this Court's right of interpreting the law to the unjudicial judgment of an executive body.

(d) THE LEGISLATURE IS NOT PRESUMED TO HAVE ADOPTED THE DEFENDANTS' CONSTRUCTION IN PASSING THE VALIDATING ACT.

For similar reasons, the argument by defendants (defendants' brief, p. 19) that the validation act of 1947 approved the construction placed upon the act by the board of County Commissioners, is without merit. The validating act by its title and by its text relates to the curing of "errors and irregularities" in proceedings for the creation of sanitary districts and the authorization of the issuance of revenue bonds. It does not purport to validate proceedings or bond authorizations which were originally unauthorized. A usurpation of power can hardly be termed an "error or irregularity." It is clear that someone went to the Legislature and represented that a sanitary district had been created and that some time in the future revenue bonds were to be issued pursuant to the authority conferred by Chapter 6(a), Title 19, *supra*, but that a validating act was desirable because of possible errors and irregularities in the proceedings for the creation of such district, and that legislative action

was needed if the revenue bonds were to be negotiable when issued. The Legislature, acting upon this representation, enacted the validating act which does nothing more than cure any errors or irregularities in proceedings for the creation of projects and special improvements appropriate and possible under the laws of the United States relating thereto and financing authorization in connection therewith. It does not validate errors and irregularities in connection with any other type of project or any other type of financing and it does not cure any original lack of authority.

How could the legislature expressly recognize and then ratify the construction placed upon the act by the Salt Lake County Commission prior to the time the commission had construed the statute? When the validation act was passed by the legislature the only action taken by the Commission was to create the district and define its boundaries. Legislative recognition of the prior construction by the County Commission is not entitled to be given any weight by the court when there was no official construction by the County Commission prior to the passage of the validating act.

POINT II

THE DEFENDANTS' ACTION UNDER CHAPTER 6 (a) IS UNCONSTITUTIONAL.

Defendants in their brief have succinctly stated their position in respect to constitutional guarantees of due process. On page 41, the last sentence of the second paragraph, they state:

“Because in the sale of revenue bonds, the

district does not pledge the private property in the districts nor obligate itself to assess or tax the property of the district nor create a burden on the property in the district, it is not the taking property, and the due process clauses simply do not apply."

As pointed out in our main brief, we cannot agree with this conclusion. Furthermore, as discussed in our brief, we contend that the rules of the "special fund" doctrine, that is revenue bond financing, have been so breached under defendants' sewer plan, that the rules of the "special fund" doctrine simply do not apply in this case.

On Pages 8 and 40 defendants state there were four payment methods available without lien provisions. The Court's attention is directed to the five application forms submitted as exhibits with defendants' answer.

Exhibit 1, the application for individual user, carries the lien provisions.

Exhibit 2, the multiple user application, carries the lien provision.

Exhibit 3, the application for the owner of three or more vacant lots, carries the lien provision.

Exhibit 4, the individual application form which does not carry the lien provision but requires 18 months advance payment deposit.

Exhibit 5, the provision for the payment of \$750.00 in full and right to convert from time payment to full payment within a two-year period, carries the lien provision.

Exhibits 3 and 5, to the best of our knowledge, were not provided for or available until after September 2,

1952, after the Holladay petition was filed and protest made to the Commission. Hence for practical purposes they were not available to the public.

The leaflets (referred to page 6, defendants' brief) printed and distributed by the Commission had the following to say with respect to liens on property:

"16. Will the Application Place a lien on My Property? No. But the application will provide for a lien taking effect if owner becomes delinquent in payments to the district. Any user who objects to this lien feature can pay his connection fee in full, \$150 or \$250 as stated above, at the time he applies for service. Since it has been paid, no provision need be made for its collection. On the monthly service charge any person can post a bond or cash in the amount of \$54 to assure payment for 18 months service and the application card will make no reference to a lien.

"17. Can I avoid a lien on My Property if I am Not Able to Pay Cash and Post the \$54? Yes. There will never be a lien on your property if you pay your own bill as agreed. The lien becomes effective only when you are 90 days or more delinquent. The lien can be placed on record only where your account is 6 months past due. The lien is released when your bill is paid. For example, after you have paid the connection fee and your house service line charge, the bill for 6 months service will be only \$18. This would be the extent of the lien and it could be released by paying the \$18 and collection charges, if any.

"18. Will There be a Lien on My Property to Secure the unpaid Bills of Others? No. The

lien attaches only for your own delinquent bills.

- “19. What if I refuse to Sign Application or Connect with the Sewer? As in other communities where a sanitary sewer system is installed, a County Ordinance will require property owners to connect after sewer service is available and that all other methods of disposal is abandoned, with penalties for non-compliance.”

Defendants attempt to persuade the Court that the signing of applications carrying the lien provision was entirely voluntary—a voluntary contract free from any coercion. The Court’s attention is directed to “Exhibit U,” the first resolution adopted March 18, 1947; page 4, Section 4 of the resolution reads:

“That it being the intention to finance the installation of said sanitary sewer system and treatment and disposal plant under the issuance of revenue bonds which will be payable from the revenues to be derived from the operation of the system, *and since it is contemplated that the charges to be made to the users of the system will constitute liens against the property in said district*, enforceable in the event of a default in the payment of such charges, based either upon the provisions of a service application agreement to be signed by the owners of said property *or otherwise*, this resolution shall be filed for recording in the office of the County Recorder of Salt Lake County *and when so recorded shall constitute notice to all persons of the existence, either present or future, of such liens on the property in said district.*” (Italics ours.)

(Because of this provision, every abstract on property in the district notes this possible lien.)

The people were led to believe that they might as well sign the application, even though it had a lien provision, since a lien would result in any event, and by signing the application they could at least save the \$100.00 listed as a penalty for late signing. This is the \$100.00 penalty which in their brief, defendants call an inducement (page 48) but which in their pleading, (paragraph 6 (e) they admit was "coercive in nature." On page 50 of defendants' brief with respect to our allegation that the County would shut off the culinary water if the service bill were not paid, defendants state:

"The sewer district does not own nor control the water supply going to the residents of the sewer district. The most it can do is request cooperation of a water company in this regard; and this request could hardly render the proceeds void."

Have the defendants conveniently forgotten the provisions of Section XII, paragraph 13, found on page 37 of "Exhibit U"? It reads:

"The Board will require the occupant of any premises, the owner of which shall be delinquent for more than six months in the payment of the sewer charges imposed hereunder to cease to dispose of sewage or industrial or commercial wastes originating from or on such premises by discharge thereof into the system until such delinquent charges with all penalties for delinquencies shall have been paid, and, *in order to enforce the provisions of this paragraph* and to prevent the creation of a health hazard, it is agreed that if any

such occupant shall not cease such disposal at the expiration of a period of 30 days running from the giving of the notice to cease such disposal, it shall be the duty of any private or public board, body or person supplying water to or selling water for use on such premises to cease supplying water to or selling water for use on such premises within five days after the receipt of notice of such delinquencies from the board, and if such public or private corporation, board, body or person shall not at the expiration of such five day period cease supplying water to or selling for use on such premises, then *the Board shall be entitled to enter upon such premises, and it shall through an agent or employee so enter and shall shut off the supply of water to such premises.*" (Italics ours.)

We submit that the number who signed Exhibit 1 (6,170, according to defendants' answer) as compared to the number who signed Exhibit 4 (6, according to defendants' answer) adequately shows the effectiveness of this plan of "voluntary" subscription.

Defendants in proposing the sewer plan, and now in their brief have used revenue bond finance measures where and when revenue bond financing suited their purpose. They have used police power arguments, where and when police powers suited their purpose. They have used the features of assessment financing, where and when it suited their purpose. The rules of law relating to each are clear when each is confined to its appropriate sphere. Defendants have wrapped all of these features into a plan which they call "revenue bond financing" and attempt to justify the plan by segregating the plan into compact units and quoting law to support it within its unit sphere.

As pointed out in our main brief, the plan considered as a whole, contains so many elements of police power regulations, assessment financing, and revenue bond financing, as to remove the plan from the protection and rules of the "special fund" doctrine, and subjects the entire plan to the usual constitutional protections—including that of due process.

We submit that the above quoted provisions of the resolutions and contracts, disregarding what may have been said at mass meetings, or "hearings" are, sufficient, we believe, to warrant the Court in holding that the present plan is outside the scope of the "special fund" doctrine and that the due process clauses certainly do apply in the present cast. We believe that the above quoted provisions of the resolutions and contracts are sufficient to warrant the Court in holding that coercive means inherent in the proposed sewer system plan were sufficient to vitiate the voluntary features required under the "special fund" doctrine.

POINT III

THE EFFECT OF THE REPEALING RESOLUTION OF OCTOBER 6, 1952.

We cannot agree that ever since October 6, 1952 the status of proceedings in the district is exactly as it was on April 4, 1948. Affirmatively some \$90,000 in advance payments was returned by the trustee; the public was led to believe that the Board intended to take no further action through the district to furnish sewer facilities; negatively the Board took no official action to revive an abandoned project or to formally revive the commission's

authority to act for the district.

Defendants have ignored or brushed aside the issues raised under Point 3 of our main brief. We believe that these illegal, arbitrary, and capricious acts of the defendants cannot be justified on the broad ground that once a district is organized, its officers may run rough-shod over the rights of the people. Granted that the end is meritorious—the furnishing of a badly needed sewer project—this does not justify using any means, no matter how dictatorial they may be.

POINT IV

THE OCTOBER 6, 1952 RESOLUTIONS SHOULD BE DECLARED ILLEGAL AND VOID.

A considerable part of Point 4 of our main brief detailed and discussed the so-called “amendments.” Our purpose was to refute Paragraph 11 of defendants’ answer which reads as follows: “That the amendments to the proceedings which were validated, as is alleged in Paragraph 10 hereof, were relative to formal matters, which have in no way affected or diminished the effect of the validation act of 1947.”

This allegation, we believe, has in no way been supported in their brief, but on the contrary their defense has been changed. Thus on Page 59 of their brief, it is stated, “Defendants do not rely on the validating act for authority to make the amendments which petitioners detail on Page 60 of their brief; they rely on Chapter 6 (a), Title 19, Utah Code Annotated 1943.”

In other words, we must now conclude that the two bond resolutions of October 6, 1952 were not passed to

accomplish "changes in the details of said bonds" but were new resolutions enacted to acquire and finance an entirely different project than originally contemplated by the original signers of the petition. No longer do defendants claim legislative ratification of the proceedings under review but assert that acts "have statutory authorization invigorated by Chapter 23 B."

With this concession in mind, we insist that it was mandatory on the defendants to answer our pleadings in our brief wherein we raised specific illegal affirmative and negative acts. Instead of meeting these issues squarely, the present position of the defendants is: Chapter 6 (a) gives the Commission broad and unlimited authority to create a sewer district and to finance the cost by revenue bonds from private sources; constitutional guarantees do not apply, and specific objections should not be examined or passed upon now by this court because no one's property has been confiscated and the illegal phase of the plan may not be put into effect. The position of the plaintiff, on the contrary, is that this suit has for one of its main purposes the testing of the legality of the October 6, 1952 resolutions wherein the defendants have adopted the final steps of the sewer plan. All that remains to be done is letting the construction contracts and selling and issuing the revenue bonds. Certainly it is opportune to adjudicate the issues now before third party rights intervene. Specifically, the following provisions of the resolutions, alleged as illegal acts in our pleading and demonstrated to be arbitrary and unreasonable in our main brief, have not been answered:

1. The validity of the rescinding resolutions (Page 59-61).
2. The ultra vires act of permitting the Fiscal Agent to fix the interest rate to be paid (Page 62).
3. The indefiniteness of the resolutions (Page 63).
4. Proceeding without a feasibility report (Pages 64-65).
5. Authorizing bonds in excess of estimated cost (Pages 64-65).
6. Reservation of the right to determine options and maturities of one fourth of the authorized issue (Pages 65-66).
7. Lack of hearings on the final plan prior to adoption (Pages 66-69).

We believe that the people of the district can look to this court to prevent such arbitrary acts jeopardizing their property and welfare and need not, as defendants argue, depend solely on the judgment of officials over whom they have no control.

Therefore, it is respectfully submitted that our prayer be granted and that the defendants be prohibited from proceeding under the present plan.

Respectfully submitted,

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