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Quayle Cannon, Jr., And Sheldon R. Brewster, On
Behalf of Themselves And Other Parties Similarly
Situated v. Leonard W. McDonald, In His Original
Capacity As Executive Director of The Utah State
Retirement Board, Andd The Utah State
Retirement Board : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

QUAYLE CANNON, JR. and SHELDON :
R. BREWSTER, on behalf of themselves :
and other parties similarly situated :

Plaintiffs and Respondents, :

vs. :

LEONARD W. McDONALD, in his original :
capacity as Executive Director of the :
Utah State Retirement Board, and the :
Utah State Retirement Board :

Case No. 16586

Defendants and Appellants. :

BRIEF OF RESPONDENTS

QUAYLE CANNON, JR. and SHELDON R. BREWSTER

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY, STATE OF UTAH,

THE HONORABLE JAMES S. SAWAYA, JUDGE PRESIDING

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Defendants and Appellants. :

BRIEF OF RESPONDENTS

NATURE OF THE CASE

This is an action requiring defendants to grant legislative pensions to plaintiffs.

DISPOSITION IN LOWER COURT

The Court granted judgment to the plaintiffs awarding them a legislative pension based upon the stipulated facts and the state's retirement laws.

RELIEF SOUGHT ON APPEAL

Respondents seek affirmation of the judgment below.

STATEMENT OF FACTS

The parties stipulated to certain facts before the trial judge. They are essentially as follows:

1. The action is not being pursued as a class action, but only on behalf of the named plaintiffs, Quayle Cannon, Jr. and Sheldon Brewster (R. 73).

2. Both Mr. Brewster and Mr. Cannon claimed benefits under the retirement act. and those benefits were denied by the defendants (R. 73-74).

3. The claims of the plaintiffs are for legislative service rendered prior to 1961. Both plaintiffs served in the legislature for at least four years. Mr. Cannon served from 1941 to 1945 (2 sessions of 2 years each). Mr. Brewster served from 1937 through 1943 and from 1957 through 1960 (4 sessions of 2 years each) (R. 74).

4. Other former legislators are receiving a legislative pension for service in the legislature prior to the 1961. The reason that such individuals are receiving legislative pensions for years of service prior to 1961 is that they were employed by the state on July 1 1961 and had rendered service to the state for a 90-day period between June 30 1960 and July 1, 1961. The plaintiffs were not given pensions because they failed to meet these two requirements (R. 74).

5. The plaintiffs were refused benefits on the ground that formal service credit is a prerequisite to eligibility under

section 49-10-36 and that the plaintiffs did not have that formal credit for having served in the legislature prior to 1961 (R. 74).

ARGUMENT

POINT ONE THE TRIAL COURT CORRECTLY CONCLUDED THAT FORMER LEGISLATORS WHO HAVE SERVED FOUR OR MORE YEARS IN THE UTAH LEGISLATURE UPON REACHING THE AGE OF 65 ARE ENTITLED TO RECEIVE A LEGISLATIVE PENSION WITHOUT REGARD TO THE FORMAL CONCEPTS OF SERVICE CREDIT.

Background

In 1971 the Utah State Retirement Act [1971 Act] was enacted. Laws of Utah, 1971 Session Chapter 111. It repealed the Utah Public Employees' Retirement Act which provided retirement, disability and death benefits to many of the officers and employees of the state, counties, cities, and other political subdivisions. See Laws of Utah, 1961 Session, Chapter 100, Section 2. The 1971 Act also (1) created a Governor's and Legislative Service Pension Division, (2) provided that the funding of benefits for the governor's and legislative pensions would come from annual appropriations from the general fund (as opposed to individual trust accounts from contributions) and (3) allowed a legislative pension to any member who has credit for four or more years of service as a legislator in the Utah legislature in an amount of only \$10.00 per month for each year of service as a member of the legislature. Laws of Utah, 1971 Session, Chapter 111, Section 6.

A 1975 amendment to the 1971 Act (1) added an open-ended funding provision authorizing the state director of finance

to "actuarially fund the cost of the pensions and benefits authorized and being paid" through the governor's and legislators pension division "during the forthcoming year", and (2) added a hospital and medical payment plan for members of the legislature, and retired and inactive members with four or more years of legislative service credit. Laws of Utah, 1975 Session. Chapter 146, Section 6.

In summary the 1971 Act created a separate "governor's and legislative service pension division of the Utah State employment system . . . with the funding of benefits . . . being underwritten by annual appropriations from the general fund." Utah Code Ann. § 49-10-36 (Supp. 1979). The legislative service pension is separate from and in addition to normal employee retirement benefits. Unlike the normal retirement benefits which are funded by employee/employer contributions to individual trust accounts (Utah Code Ann. §§ 49-10-20 and 49-10-21 (1970 and Supp. 1979)), the legislative pension is funded by "annual appropriations from the general fund."

Defendants' Argument and Issue

Defendants' justification for the denial of legislative pensions to plaintiffs is founded on the following line of arguments: (1) the language in section 49-14-36(2) which speaks of "credit for four or more years of service as a legislator" refers to the formal, technical "service credit" defined by section 49-10-16 ("current service credit") and section 49-10-17 ("prior service credit"); (2) since plaintiffs' service was rendered

prior to 1961, they had "prior service credit" under the current 1971 Act only to the extent they had "creditable service" under the predecessor 1961 Act (see Utah Code Ann. § 49-10-17(a)(1)); and (3) the plaintiffs had no "creditable service" under the predecessor Act for the pre-1961 service in the legislature because former section 49-1-49 of the 1961 Act allowed credit for service rendered prior to 1961 only if an employee were engaged in covered employment as of July 1, 1961, and neither plaintiff was so employed as of July 1 1961. See Laws of Utah 1961 Session, Chapter 100, Section 18(1) [hereafter and heretofore "1961 Act"].

The first leg of defendants' justification argument and the controlling issue in this case, is whether the language of section 39-10-36 referring to "credit for four or more years of service" means formal, technical "service credit" as defined in sections 49-10-16 and 49-10-17. This is purely a question of statutory construction, and it is ultimately the Court's province and duty to construe laws enacted by the legislature.

Broad Construction Needed

In construing a statute the fundamental judicial concern is to effectuate the intent of the legislature. Johnson v. State Tax Commission, 17 Utah 2d 337, 411 P.2d 831, 832 (1966). This includes judicial deference to the legislative intent regarding the breadth of statutory construction. The legislature has expressed a general intent that statutory provisions "are to be liberally construed with a view to effect the objects of the

statutes and to promote justice." Utah Code Ann. § 68-3-2
(1978). Moreover the legislature has expressed its specific
intent with regard to construction of the 1971 Act:

It is hereby declared to be the policy of the
legislature that this act be liberally con-
strued so that the benefits and protections
as herein provided shall be extended as
broadly as reasonably possible.

Utah Code Ann. § 49-10-7 (1970). Plaintiffs urge the Court to
respect these legislative expressions of intent by construing
section 49-10-36 so that the benefits of the legislative pension
"shall be extended as broadly as reasonably possible."

It is "the well-established rule that statutes will not
be severed and considered piecemeal, but must be given effect in
their entirety whenever possible." Peay v. Board of Education,
14 Utah 2d 63 377 P.2d 490, 492 (1962). And "where there is
doubt or uncertainty as to the meaning of terms, they should be
analyzed in the light of the total context" of the statute.
Crist v. Bishop, 520 P.2d 196, 198 (Utah 1974). The legislative
pension provisions, therefore, must be analyzed in light of the
total 1971 Act.

It is equally well settled that the plain and literal
wording of a statute is the foundational intrinsic evidence of
legislative intent:

[A] statute should not be . . . applied other
than in accordance with its literal wording
unless it is so unclear or confused as to be
wholly beyond reason or inoperable, or it
contravenes some basic constitutional right.

Gord v. Salt Lake City 20 Utah 2d 138, 434 P.2d 449, 451 (1967).
When the construction involves "technical words and phrases"

which "are defined by statute, [they] are to be construed according to such peculiar and appropriate meaning or definition." Utah Code Ann. § 68-3-11 (1978).

"Service Credit"

Plaintiffs contend that according to the plain and literal terms of the statute the technical term of "service credit" cannot apply to section 49-10-36. The 1971 Act differentiates between "service credit," which is required of regular employees covered under the Act, and "credit for years of service" as applied to legislators.

Sections 49-10-16 and 49-10-17 of the 1971 Act define "service credit" in terms of "service" and "covered service".

Section 49-10-6(16) defines "service" and "covered service" as "service rendered to an employer for compensation which is included in computations relating to membership status or benefit rights under this act." (Emphasis added.) Also, "years of service" and "service years" are defined by section 49-10-6(19) as designated periods "during which an employee performed services for an employer or employers." (Emphasis added.)

It is more than noteworthy that the statutory definitions of "service " "covered service," "years of service " and "service years" all refer only to services performed to or for an "employer". Section 49-10-6(5) defines an "employer" as "any department, educational institution or political subdivision for which any employee or member performs services subject to the provisions of this act."

"Employer"

The state legislature does not come within the definition of "department" under section 49-10-6(2), or the definition of "educational institution" under section 49-10-6(3), or the definition of "political subdivision" under section 49-10-6(4). Consequently the term "employer" does not include the state legislature.

"Employee"

The fact that the statutory definition of "employer" does not include the state legislature was recognized by the legislature in its enactment of the 1971 Act. That is why the legislature included a twofold definition of "employee" under section 49-10-6(6). This section first defines "employees" as those engaged in a "term of employment for an employer". (Emphasis added.) Secondly, this section expands the definition of "employee" to include "an officer, elective or appointive." This second definition specifically allows members of the Utah legislature to exclude themselves from coverage under the 1971 Act. Thus, there can be no question that they are covered as "officers" under the second definition. Hence, the very existence of the second definition conclusively shows that members of the Utah legislature are not covered by the first definition which refers to "employer" or "employers". (If the legislature were an "employer" there would be no need for an additional definition of "employee" in this section.)

Since the legislature is not considered an "employer", the technical "service credit" requirements cannot be applicable to legislators. According to the literal wording of the statute legislators cannot perform "service" "covered service" "years of service", or "service years", in the statutory technical sense, because they do not work for an "employer". Being incapable of rendering "service" or "covered service" as defined in the 1971 Act, legislators therefore cannot acquire any current or prior "service credit". Consequently, if "service credit" is a prerequisite to legislative pension benefits under section 49-10-36, no legislator would ever be eligible to receive a legislative pension. Surely the legislature could not have intended this absurd result when it enacted the 1971 Act.

If the legislature had meant to require four or more years of "service credit", it could easily and clearly have used such words. That it was capable of doing so is clearly manifested by a concluding paragraph of the same section that created the legislative pension. It is stated that retired members of the legislature may participate in a hospital and medical plan developed by the state retirement office if they have "four or more years of legislative service credit". Utah Code Ann. § 49-10-36(3)(para. 4)(Supp.1979) (Emphasis added). Because similar language was not used concerning the monthly legislative pension, the legislature evidenced its intent that formal "service credit" not be required for legislative pensions.

In summary defendants' theory that "credit for four or more years of service" should be construed to mean four or more technical "service years" of "service credit" is obviously not supported by the literal wording of the statute. The acceptance of defendants' argument would create internal contradictions in the plain wording of the 1971 Act. This inconsistency would not have been the intent of the legislature which unequivocally intended to provide benefits for former legislators in as broad a scope as reasonably possible.

Plaintiffs suggest instead that "credit for four or more years of service" should be construed to mean that credit will be granted for all past legislative service and that if a former legislator has four or more years legislative service, at age 65 he is eligible for a pension of \$10.00 per month for each year of legislative service. This construction avoids the judicial creation of internal contradiction in the statute and extends benefits to former legislators "as broadly as reasonably possible." Utah Code Ann. § 49-10-7 (1970).

Plaintiffs' construction of the statute is not only required by a logical literal, straightforward reading of the statute itself, but it also guarantees a reasonable, practicable, uniform application of statutory benefits. Since the number of former legislators over age 65 is necessarily limited, and because the legislative pension is funded almost exclusively by special appropriation from the general fund, and because the pension itself is nominal in amount, this construction of the

statute would not result in uncontrollable, unlimited pension claims or jeopardize the public fisc.

No Intent to Discriminate Unjustly

Plaintiffs' construction is also required in order to avoid the unjust and discriminatory consequences that flow from defendants' interpretation of the statute. Assuming arguendo that the technical "service credit" requirements apply to legislative pensions, the statute would unjustly discriminate between pre-1961 legislators who were employed under "covered services" of the 1961 Act as of July 1, 1961 and pre-1961 legislators who were not. Former section 49-1-49 of the 1961 Act allowed credit for pre-1961 service only if the employee were employed by a covered employer as of July 1, 1961. Thus, if a pre-1961 legislator were in any way a covered employee -- legislative or non-legislative -- as of July 1, 1961 and had rendered at least 90 days service between June 30, 1960, and July 1, 1961, all his former legislative service could be claimed as prior service credit under the 1961 Act. His prior legislative service could be bootstrapped to his then current employment even if totally unrelated to legislative service. In contrast, a pre-1961 legislator who happened to be in private employment not covered by the 1961 Act as of July 1, 1961 could not acquire any credit for his prior years of legislative service.

In short, under defendants' theory, credit for pre-1961 legislative service depends upon a factor completely extraneous and totally unrelated to such prior service, namely, whether the

former legislator happened to be covered under the 1961 Act in some capacity as of July 1 1961. A legislature which enacted a special provision to benefit "as broadly as reasonably possible" its former members cannot have intended an unequal, discriminatory result based on the unsubstantial distinction of place of employment as of July 1, 1961.

An intent to discriminate unjustly between different cases of the same kind or to produce incongruous results is not to be ascribed to the legislature. Snyder v. Clune, 15 Utah 2d 254, 390 P.2d 915 916 (1964). Kellum v. Johnson 237 Miss. 580, 115 So. 2d 147 (1959). And where the statute is ambiguous, "courts will strive to avoid an interpretation imputing a design to distinguish between cases upon a course of reasoning too unsubstantial and too finely drawn for regulation of human action, or producing arbitrary or incongruous results, or an anomolous, capricious, or senseless distinction or discrimination or an unequal operation generally." 73 Am. Jur. 2d Statutes § 261 (1974).

This unjust and unreasonable dichotomy produced by defendants' interpretation exists not only in theory but in the actual practice of the Utah State Retirement Board. Defendants stipulated that former legislators, some of whom served concurrently with plaintiffs, and all of whom served prior to 1961, have received and are now receiving legislative pension benefits pursuant to section 49-10-36, merely because they were employed by an employer covered by the 1961 Act as of July 1, 1961. This stipulation alone is evidence that defendants' interpretation of

the statute is erroneous in that it ascribes to the legislature an intent to discriminate on the basis of an unsubstantial distinction.

Other Plans Not Affected

Defendants suggest incorrectly that the trial court's reasoning will apply with equal force to all public employees. Such is not the case. Section 49-10-36 provides retirement benefits for the elected officials -- legislators and governors. For all other public employees (those whose existence in state government does not depend upon the will of the electorate), the concepts of service credit come into play, as demonstrated by the following provisions:

1. Section 49-10-24 covers the options of an employee who ceases to be employed in "covered services" for an employer for reasons other than retirement, permanent or temporary disability or death.

2. Section 49-10-31 specifies the requirements for a service retirement which depend upon age and the number of years of "service", which is service rendered to an employer for compensation. Utah Code Ann. § 49-10-6(16)(Supp. 1979). The various plans for service retirement provide pensions based upon "prior service" and "current service", which again relate to services provided to employers. See Utah Code Ann. §§ 49-10-32, 16, 17, 6(16) (1970 & Supp. 1979).

Hence, these general benefit sections apply expressly to all "employees" of "employers", thus including the workers of the following:

1. Any "department" which means any "department, office, board, commission, instrumentality or other agency of the state of Utah." Utah Code Ann. § 49-10-6(5), (2) (1970).

2. Any "educational institution" which means a "political subdivision or instrumentality of the state or of a political subdivision . . . primarily engaged in educational activities or the administration or servicing thereof" Utah Code Ann. § 49-10-6(5), (3) (1970).

3. Any "political subdivision" which includes "educational institutions, cities, towns, counties, leagues or associations thereof or associations of the Utah public employees . . . mosquito abatement districts, sewer or water districts, water associations and companies, libraries, and any consolidation" Utah Code Ann. § 49-10-6(5), (4) (1970 & Supp. 1979).

The employees of such entities would not be affected in any way by the court's ruling in this case. By the plain meaning of the statute the technical concepts involving "service credit" apply to such employees.

Moreover the ruling has no apparent effect upon the other retirement systems referred to by the defendants.

1. The Utah Public Safety Retirement Act (Utah Code Ann. §§ 49-11-1 et seq.) provides retirement benefits for all employees engaged full time in public safety work. Utah Code Ann. § 49-11-1 (1970). An employee in public safety work qualifies for a service retirement if he meets certain criteria, which relate to the employee's age and years of "service". Utah Code Ann. § 49-11-34 (1970). "Service" is defined to mean "public safety service" rendered to an "employer" for compensation. Utah Code Ann. § 49-11-8(15) (1970). "Public safety

service" means service relating to hazardous duty, including duties performed by "municipal policemen, county sheriffs and deputies, state highway patrolmen, law enforcement officers in the public safety department" and the like. Utah Code Ann. § 49-11-8(14) (1970). An "employer" is "any department or division of the state or political subdivision for which any employee or member performs services subject to this act." Utah Code Ann. § 49-11-8(5) (1970). Clearly, there is no question that public service employees can perform the covered "service" necessary for their retirement benefits. There is nothing that prevents application of the concepts of "service credit" found in sections 49-11-18 through 49-11-20.

2. The Utah Firemen's Retirement Act (Utah Code Ann. §§ 49-6a-1 et seq.) is similarly not affected by the court's ruling. A fireman or volunteer fireman qualifies for the retirement benefits of this Act if he has attained the requisite age and accumulated the specified years of "service". Utah Code Ann. § 49-6a-27 (1970). "Service" is defined to mean "fireman service" rendered an "employer" for compensation. Utah Code Ann. § 49-6a-4(11) (1970). "Fireman service" means service rendered to a regularly constituted fire department. Utah Code Ann. § 49-6a-4(10) (1970). An "employer" is "any regularly constituted fire department for which any employee or member performs services subject to this act." Utah Code Ann. § 49-6a-4(5) (1970). Again there is not question that a fireman is capable of performing "service" for which he accumulates credit toward retirement benefits. The concepts of "service credit" (Utah Code

Ann. §§ 49-6a-11, -12 (1970)) will apply to him, unaffected by the court's ruling.

3. The Utah Judges' Retirement Act (Utah Code Ann. §§ 49-7a-1 et seq.) is constructed in essentially the same manner. A judge qualifies for a service retirement at age 70 or 65 if he or she has at least 6 or 10 years of "service" respectively. Utah Code Ann. § 49-7a-25 (1970). "Service" in this Act is defined as "service rendered to the employer for compensation" Utah Code Ann. § 49-7a-7(9) (1970). The word "employer" means the State of Utah. Utah Code Ann. § 49-7a-7(2) (1970). Once again it is clear that the covered employee, in this case a judge, can perform the "service" for which he or she accumulates credit toward retirement benefits, and the concepts of "service credit" (Utah Code Ann. §§ 49-7a-12 to -14 (1970)) apply. The ruling in this case will have no effect upon these qualifications.

In the case of judges (section 49-7a-26), firemen (section 49-6a-28), public service employees (section 49-11-35), and employees of "employers" under the Utah State Retirement Act (section 49-10-32), the retirement allowance for a service retirement is a function of a final average monthly salary and the number of years of service credit. In the case of a state legislator who is covered by a special division under provisions dissimilar to those above, the pension provided is \$10.00 per month of service as a member of the legislature. Utah Code Ann. § 49-10-36(2) (Supp. 1979). No mention is made of "service credit". Nor should the typical pattern of final average monthly

salary times the years of service credit be expected in the case of a legislator, who is elected for a relatively short term, whose "salary" does not progress as it does for a career employee, and whom the state cannot entice to stay in his "position" for future credit years by the promise of a large retirement allowance.

The defendants' prophecy of financial doom for the many retirement systems operated by the state is clearly unfounded. The holding in the case is limited to legislators. The monthly allowance is very small. The number of former legislators having served four or more years, and the number of years that they have served is not difficult to determine, thereby creating no difficulty in fund administration. It is believed that the number of living, former legislators who qualify for a legislative pension is quite small. The public fisc is not endangered.

POINT II: DOCTRINES OF STATUTORY CONSTRUCTION THAT INVOLVE
EXTRANEIOUS MATTERS HAVE NO APPLICATION WHERE THE
MEANING OF THE STATUTE UNDER CONSIDERATION IS
NOT AMBIGUOUS.

The defendants contend that the Court should give some consideration to the fact that the Executive Director of the Utah State Retirement Board decided in 1973 that the plaintiffs are not entitled to a legislative pension because they do not have enough "service credit" to qualify. The claim is that the legislature has acquiesced in this administrative construction of the law by failing to amend the language of the legislator's pension legislation. These arguments should fail to effect the court's contrary construction for several reasons.

First it is not clear at all from defendants' brief (p. 11) what the terms were of the proposed amendatory legislation governing pensions for legislators. Defendants desire the Court to take judicial notice of two bills and one "bill" that was never introduced without providing complete specifications of their terms. From the limited exposition on these bills, it would appear that their purpose was to clarify the existing law rather than to change its intended meaning. Attempting to clarify an unambiguous statute for the benefit of an intransigent administrator so as to say "Yes, we really mean it" does not express a message other than that the statute means exactly what it says.

Second, there is no need to revert to an administrative construction because the statute speaks unambiguously for itself.

Indeed giving any weight to an administrative hunch as to the meaning of an unambiguous statute is not proper. An administrative construction can never go against the plain meaning of the statute. E.C. Olsen Co. v. State Tax Commission, 109 Utah 563, 168 P.2d 324, 332, (1946). Where a statute is not uncertain in its meaning there is no need to consider an administrative construction, even if it is a correct interpretation. Lockhead Aircraft Corp. v. State Tax Commission, 566 P.2d 1249 (Utah 1977).

In other words, an error in the construction of a statute by an administrator will not bind a court to his erroneous view. Lewis v. Utah State Tax Commission, 118 Utah 7218 P.2d 1074, 1078 (1950) (members of commission erroneously stated exemption applied); Utah Hotel Co. v. Industrial Commission, 107 Utah 24, 151 P.2d 467, 470-71 (1944) (Commission erroneously concluded "name bands" not covered by unemployment compensation).

A case of great importance in this regard is McPhie v. Industrial Commission, 567 P.2d 153 (Utah 1977), where this Court held that the Industrial Commission erroneously denied certain lifetime benefits to an injured workman based upon its improper construction of the pertinent sections of the compensation statutes. The Court recognized its "duty" to correct a misconstruction or misapplication of a statute by administrators. 56 P.2d at 155. The Court also recognized a rule of construction applicable to workers' compensation benefit statutes:

A further equally recognized rule of construction resolves any doubt respecting

the right of compensation in favor of the injured employee or his dependents, as the case may be, and the compensation statutes should be liberally construed in favor of recovery.

567 P.2d at 155 (Emphasis added). The Court found that the Commission failed to properly consider this rule of construction. The matter was remanded for the purpose of making the appropriate award.

In the case of Mr. Cannon and Mr. Brewster, the Court should follow the same course of reasoning. The legislature created a benefit statute for the protection of the aged and infirm, not unlike the protection provided for injured workers, and in so doing expressly declared its policy that:

This act be liberally construed so that the benefits and protections as herein provided shall be extended as broadly as reasonably possible.

Utah Code Ann. § 49-10-7 (1970). (Emphasis added). It is this policy that the Retirement Board failed to recognize, and the trial court correctly remedied the error.

A case of similar import is Utah Hotel Co. v. Industrial Commission, 107 Utah 24 151 P.2d 467 (1944), where the Court found that the "so-called regulation" under consideration was nothing more than an "initial guess" as to what the statute means. According to the Court:

"Thus although as a practical or procedural matter an administrative agency must venture a decision upon such a question of law, such questions are always open for independent judgment of an appropriate court acting judicially * * *. And a binding decision on a simple judicial question, such as a question of statutory construction, may only

be made by an appropriate court acting judicially."

151 P.2d at 470. The Court further stated that it would not allow an erroneous construction to stand because its effect would be to amend the statute 151 P.2d at 472.

Third it makes no difference how long a legislature may be said to have acquiesced in an administrative construction if such construction is not in conformity with the plain meaning of the statute. For example, in Union Pacific R.R. v. State Tax Commission, 19 Utah 2d 92 426 P.2d 231 (1967), it appeared that for 22 years the Commission had interpreted a statute so as to exempt railroads from paying a sales and use tax on its fuel oil. The Court refused to consider the administrative construction and the "acquiescence" of the legislature because it found no ambiguity in the statute involved. According to the Court:

[N]o matter how long the usage has been established or how general the acquiescence in the customary construction, it will not be permitted to override the plain meaning of a statute

426 P.2d at 233.

To the same effect is Alexander v. Bennett 5 Utah 2d 163, 298 P.2d 823 (1956), where from 1939 to 1956 there had been Attorney General opinions which had been followed by the Department of Registration to the effect that naturopathic physicians could use drugs and perform minor surgery. The Court refused to consider these opinions, stating that the interpretations have not been long acquiesced in and that the statutes in question are not ambiguous.

The plaintiffs assert that the language of the legisla-

tive pension statute is unambiguous in requiring that the plaintiffs receive a pension and that it is not proper to consider the alleged construction placed upon the statute by the administrator for only six years. If any doubt in meaning is perceived, we submit that such doubt should be resolved in favor of the plaintiffs to effect the policy of the legislature that the act be liberally construed so that benefits be extended as broadly as reasonably possible.

CONCLUSION

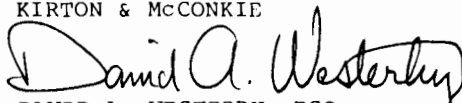
Plaintiffs ask the Court to affirm the court below in ruling that the phrase "credit for four or more years of service in the legislature" contemplates the awarding of credit for all past legislative service and provides a legislative pension for all former legislators having the requisite "four or more years of service." Plaintiffs submit that defendants' attempt to equate "credit for four or more years of service" with the technical terms of "service credit" and "service years" is unwarranted by the plain and literal wording of the statute and produces internal contradictions within the statutory scheme. Moreover defendants' interpretation inevitably leads to unjustly discriminatory and incongruous results, as evidenced by the stipulated current practices of defendants.

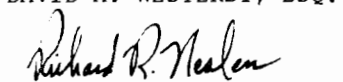
The unequivocal legislative intent was to establish a special "governor's and legislative service pension division of the Utah State employment system . . . underwritten by annual appropriations from the general fund." Utah Code Ann. § 49-10-36. Furthermore, the legislature clearly intended that the 1971 Act "be liberally construed so that the benefits and protections [therein] provided shall be extended as broadly as reasonably possible." Id. § 49-10-7. Extending the legislative pension benefits to all former legislators regardless of their place of

employment on July 1 1961. is, without doubt, reasonably possible, both financially and administratively.

DATED this 31st day of October. 1979.

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CERTIFICATE OF DELIVERY

I hereby certify that on the 1st day of November, 1979
I hand delivered two copies of the foregoing Brief of Respondents
to Mark A. Madsen, Assistant Attorney General at 540 East 2nd
South, Salt Lake City, Utah.
