

1953

The State of Utah v. Spring City et al : Brief of Individual Respondents

Utah Supreme Court

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**In the Supreme Court of the
State of Utah**

FILED

MAR 1 - 1953

THE STATE OF UTAH by and
through its Treasurer,
Plaintiff and Appellant,

Supreme Court, Utah

vs.

SPRING CITY, a municipal corpora-
tion, and HYRUM JENSEN, its
Mayor, CLAUDE ACORD, ROYAL
ALLRED, CUTLER SCHOFIELD,
HENRY SCHOFIELD and VIRGUS
OSBORNE, its Councilmen, and
CHARLES A. THOMPSEN, ROYAL
ALLRED, VIRGUS OSBORNE,
MAX BLAIN, LOWELL HANSEN,
ALLEN BECK and HENRY BLAIN,
Defendants and Respondents.

**CIVIL
NO. 7942**

BRIEF OF INDIVIDUAL RESPONDENTS

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Respondents**

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In the Supreme Court of the State of Utah

THE STATE OF UTAH by and
through its Treasurer,
Plaintiff and Appellant,

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SPRING CITY, a municipal corpora-
tion, and HYRUM JENSEN, its
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**CIVIL
NO. 7942**

BRIEF OF INDIVIDUAL RESPONDENTS

STATEMENT OF POINTS

POINT I

THE INDIVIDUAL DEFENDANTS AND RESPOND-
ENTS ADOPT THE APPELLANT'S STATEMENT OF
FACT AND ARGUMENT WITH RESPECT TO THE VA-

LIDITY OF THE BONDS, SERIES OF JANUARY 15, 1948,
ISSUED BY THE DEFENDANT SPRING CITY.

POINT II

THE INDIVIDUAL DEFENDANTS AND RESPONDENTS ARE NOT LIABLE FOR THE PAYMENT OF THE BONDS, SHOULD THE COURT HOLD THEM VOID, BECAUSE THERE IS NO EVIDENCE TO SHOW ANY NEGLIGENCE, FRAUD OR MISREPRESENTATION ON THE PART OF SAID DEFENDANTS.

ARGUMENT

POINT I

THE INDIVIDUAL DEFENDANTS AND RESPONDENTS ADOPT THE APPELLANT'S STATEMENT OF FACT AND ARGUMENT WITH RESPECT TO THE VALIDITY OF THE BONDS, SERIES OF JANUARY 15, 1948, ISSUED BY DEFENDANT SPRING CITY.

The individual defendants, Charles A. Thompson, Royal Allred, Virgus Osborne, Max Blain, Lowell Hansen, Allen Beck and Henry Blain, adopt the statement of facts and argument of counsel for the plaintiff in their brief filed herein, up to and including page 42 of said brief, except the statement of counsel with respect to the pleadings that the said individual defendants "deny the validity of the bonds." Plaintiff's counsel have inadvertently fallen into error in this respect. The individual defendants in their answer **allege** the **validity** of the bonds of Spring City, series of January 15, 1948, and the attention of the Court is respectfully called thereto.

POINT II

THE INDIVIDUAL DEFENDANTS AND RESPONDENTS ARE NOT LIABLE FOR THE PAYMENT OF THE BONDS, SHOULD THE COURT HOLD THEM VOID, BECAUSE THERE IS NO EVIDENCE TO SHOW ANY NEGLIGENCE, FRAUD OR MISREPRESENTATION ON THE PART OF SAID DEFENDANTS.

The individual defendants adopt the statement of facts and argument of the plaintiff in its brief filed herein, up to and including page 42 of said brief; therefore, the part of the plaintiff's brief which needs attention from these respondents is that part beginning on page 43, under Point IV.

The claim made in plaintiff's Point IV is that the state may recover against these individual defendants if it should turn out that the bonds are void.

The theory of the State is that these five former and two present city officials, the mayor, and members of the city council, and the city recorder, of Spring City when the bonds were issued, were negligent in some manner not pointed out, and that such negligence was the proximate cause of the loss to the State of Utah of the money which it invested in these bonds.

It is not claimed that any city official was guilty of any fraud or wilful misrepresentation which has resulted in a loss to the State. No such claim could be sustained on the record in this case.

On page 44 of his brief the Attorney General points to the affidavit (Plaintiff's Exhibit A) made by Henry Blain, City Recorder, and proceeds with an argument predicated upon four propositions, each of which commences with the word "if" and the burden of each of which is:—if the facts referred to in the affidavit are not true, then, the State is

entitled to recover from the individual defendants. But he does not follow up and show that any fact stated in the affidavit was not true. And, in the first part of his brief, he argues that the facts stated in the affidavit are true.

There was no evidence whatever of negligence introduced touching the action of these officers of Spring City.

The certificate which is printed on the bonds is one which is required by the Statutes. If the Court shall hold that these bonds are void, then it will turn out that there are statements in that certificate which are not true. But those statements relate only to matters of opinion and legal opinion at that. For example, there was no representation that an election had been held, when in fact there had been no election; or, that a majority of the qualified electors voted for these bonds, when in fact there had been no vote. There was no pretense that these bonds were anything else than **tax anticipation notes**. If they turn out to be void it will be because they were not paid out of the 1948 revenues. It will be because of something which happened **after** the bonds had been issued.

These respondents therefore submit that: (1) These bonds are valid, and (2) If the bonds are void, these city officials and former city officials should not be held liable for their payment, simply because they happened to be mistaken or misinformed, as was the Attorney General, also, concerning the law of the State of Utah relative to borrowings of this kind.

Respectfully submitted,

DILWORTH WOOLLEY and
JOHN S. McALLISTER

Attorneys for Individual
Respondents