

1980

Donald M. Stromquist and Janel. Stromquis v.
Clifford Cockayne, James C. Snow, Et al. v. Milton
Yorgason and Arthur L. Monson, Et al. :
Consolidated Brief of Respondents

Utah Supreme Court

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S U P R E M E C O U R T
O F T H E
S T A T E O F U T A H

DONALD M. STROMQUIST and JANE)
L. STROMQUIST,)

Plaintiffs-Appellants,)

vs.)

CLIFFORD COCKAYNE, Salt Lake)
County Assessor, JAMES C. SNOW,)
Salt Lake County Auditor, ARTHUR)
L. MONSON, Salt Lake County)
Treasurer, WILLIAM DUNN, Salt)
Lake County Commissioner, WILLIAM)
HUTCHINSON, Salt Lake County)
Commissioner, and PETE KUTULAS,)
Salt Lake County Commissioner,)

Case No. 16790

Defendants-Respondents.)

DONALD M. STROMQUIST and JANE)
L. STROMQUIST,)

Plaintiffs-Appellants,)

vs.)

MILTON YORGASON, Salt Lake)
County Assessor, ARTHUR L.)
MONSON, Salt Lake County)
Treasurer, WILLIAM DUNN, Salt)
Lake County Commissioner, WILLIAM)
HUTCHINSON, Salt Lake County)
Commissioner, ROBERT SALTER, Salt)
Lake County Commissioner,)

Case No. 16919

Defendants-Respondents.)

CONSOLIDATED BRIEF OF RESPONDENTS

A CONSOLIDATED APPEAL FROM ORDERS OF THE THIRD
JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND
DENYING THE PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

THE HONORABLE CHRISTINE DURHAM AND THE HONORABLE BRYANT
CROFT JUDGES PRESIDING

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FILED

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BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

This consolidated appeal involves two actions brought by plaintiffs-appellants, Donald M. Stromquist and Jane L. Stromquist, against the defendants-respondents, elected officials of Salt Lake County, to obtain mandamus and declaratory relief enforcing a forfeiture of wages and official bond of the Salt Lake County Assessor for a claimed failure to complete the 1978 and 1979 property tax assessment rolls within the time specified by statute.

Both actions raise the same identical questions of law. The first action is directed against the then existing Salt Lake County Assessor, Salt Lake County Auditor, Salt Lake County Treasurer and the three Salt Lake County Commissioners. The second action for the year 1979 is directed against the Salt Lake County Assessor, Salt Lake County Treasurer and the three Salt Lake County Commissioners. The two appeals were consolidated for the purpose of briefs and oral argument pursuant to Stipulation of the parties

and an Order entered by this Court on March 17, 1980.

DISPOSITION IN THE LOWER COURT

Mutual Motions for Summary Judgment concerning the year 1978 were heard on May 17, 1979 before the Honorable Christine Durham, District Court Judge. A Memorandum Opinion was entered on the 17th day of October, 1979, which opinion denied plaintiffs' Motion for Summary Judgment and granted defendants' Motion for Summary Judgment. Judgment was entered accordingly on the 8th day of November, 1979. Mutual Motions for Summary Judgment for the year 1979 were set for hearing on the 21st day of January, 1980, before the Honorable Bryant H. Croft. Pursuant to oral stipulation of counsel, the Court granted defendants' Motion for Summary Judgment. Judgment was accordingly entered on the 13th day of February, 1980. Both Judgments were appealed by plaintiffs-appellants.

RELIEF SOUGHT ON APPEAL

Defendants-respondents seek to have this Court sustain the Judgments of the trial courts in favor of

the defendants-respondents and against the plaintiffs-appellants.

STATEMENT OF FACTS*

The plaintiffs-appellants are residents of Salt Lake County, State of Utah, and own property in the County. The appellants are taxpayers within Salt Lake County and are obligated to pay and did pay taxes for the years 1978 and 1979 upon real property in Salt Lake County.

During each of the years in question, the Salt Lake County Board of Equalization pursuant to authorization by the State Tax Commission sat and heard complaints regarding the valuation of the various properties located within Salt Lake County. These hearings were held at least ten (10) days after the valuation notices were sent to Salt Lake County taxpayers. All such extensions of time within which the Salt Lake County Board of Equalization could sit were granted pursuant to order and direction of the State Tax Commission of Utah. The opportunity for appearances before the Board of Equalization by the

*The Trial Record in Case No. 16790 is cited as T.R.I.;

The Trial Record in Case No. 16919 is cited as T.R.II.

plaintiffs-appellants was afforded during each of the two (2) years here in question. The same opportunity was afforded each and every taxpayer within Salt Lake County.

Appellants filed these actions for declaratory relief against the elected Salt Lake County officials claiming an alleged failure on the part of said officials to invoke certain statutory penalties against the Salt Lake County Assessor for not completing the assessment book by the first Monday in May for the years 1978 and 1979.

The assessment roll for the year 1978 was completed and delivered by the then Salt Lake County Assessor, Clifford Cockayne, on the 6th day of September, 1978. (T.R.I.p-31) During the year 1978, the entire County of Salt Lake was being reappraised pursuant to statutory requirement by the State Tax Commission of Utah. (T.R.I.p-31) Said reappraisal was being conducted pursuant to contract entered into by and between Salt Lake County and the State Tax Commission of Utah in 1976. (T.R.I.pp-109-118)

During the year 1979, the defendant County Assessor, Milton Yorgason, completed and delivered the assessment book to the Salt Lake County Treasurer on or about the 30th day of July, 1979. (T.R.II.pp-31-32)

Because of the large number of separate assessable properties located within Salt Lake County (in excess of Two Hundred Thousand [200,000] separate assessable parcels), the State Tax Commission of Utah was unable to complete the total reappraisal of Salt Lake County within the time specified in the contract of reappraisal. (T.R.I.p-31, T.R.I.pp-109-118) The year 1978 was the first year in which Salt Lake County had been reappraised pursuant to sections 59-5-109, et. seq. The reappraisal of Salt Lake County resulted in numerous substantial increases in property values. These increases resulted in an extraordinarily large number of appeals to the Salt Lake County Board of Equalization and ultimately to the State Tax Commission of Utah.

Because of substantial increases in property values and the numerous appeals occasioned thereby, the delays for the 1978 year had a spill-over effect for

the year 1979, thereby rendering it difficult if not impossible for the Assessor to meet the statutory deadline for the year 1979. (T.R.II.p-28-29)

The facts further indicate that during the period 1972 through 1979, inclusive, the assessment book for Salt Lake County had never been completed in any single year by the first Monday in May. (T.R.II.p-31)

The State Tax Commission of Utah, pursuant to the request of Salt Lake County and in accordance with its statutory powers, granted extensions of time within which the Salt Lake County Board of Equalization could sit and hear protests concerning the value of properties. (T.R.I.pp-66-103) The defendant Cockayne continued to receive his salary from Salt Lake County for his services performed as Salt Lake County Assessor, including salary for the period covered by the first Monday in May, 1978, through September 6, 1978, the date of completion and transfer of the assessment roll. (T.R.I.p-26) None of his salary was forfeited and no action was taken upon his bond. (T.R.I.pp-45-46)

The defendant Assessor, Milton Yorgason, received his salary for services rendered between May 7, 1979 and July 30, 1979, the date upon which the assessment roll was completed and turned over to the Salt Lake County Treasurer. (T.R.II.p-29 and p-33) No action was taken to deduct any sums from his salary, nor was any action upon his official bond instituted. (T.R.II.p-29 and p-34)

Plaintiffs-appellants in their Complaints for Mandamus and Declaratory Relief for the years 1978 and 1979 do not allege that they have been directly or indirectly injured by the actions of the Assessor for the year 1978 and for the year 1979, nor is there any showing of any immediate threat of harm to any interest of the plaintiffs-appellants arising out of the actions of the Salt Lake County Assessors for the years 1978 and 1979. Neither Complaint asserts that the plaintiffs-appellants are without an adequate legal remedy. (T.R.I.p-2-5; T.R.II.p-2-5)

There is nothing to indicate any defect or invalidity with regard to the 1978 and 1979 tax assessment rolls.

ARGUMENT

POINT I

THE ACTIONS OF THE SALT LAKE COUNTY OFFICIALS UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, DID NOT CONSTITUTE A FAILURE TO COMPLY WITH THE STATUTORY REQUIREMENTS, PARTICULARLY WHERE NO INJURY OR HARM WAS SUFFERED OR INCURRED BY THE PLAINTIFFS-APPELLANTS OR ANY OTHER TAXPAYERS LOCATED WITHIN SALT LAKE COUNTY.

The statutes that apply to the completion of the assessment rolls by the Assessor are contained in Article 4 of Title 59, Utah Code Annotated, 1953, as amended. Section 59-5-30 through 59-5-36, Utah Code Annotated, 1953, as amended, contain certain specified responsibilities of the Assessor. Section 59-5-30 deals with the obligation on the part of the Assessor to complete the assessment book and subscribe the Affidavit contained therein. Section 59-5-31 requires the Assessor, when directed by the Board of County Commissioners, to keep a map book of plats. Section 59-5-32 requires the Assessor to furnish certain information to the State Tax Commission of Utah. Section 59-5-33 contains the penalty for the failure on the part of the Assessor to complete and deliver his

assessment book or deliver certain information to the State Tax Commission of Utah. Section 59-5-34 sets forth the liability of the Assessor and his sureties for a willful failure or neglect to perform his duties. Section 59-5-35 relates to actions to be taken by the County Attorney upon the Assessor's bond for any taxes lost through his failure or neglect. Section 59-5-36 relates to the judgment in the amount of taxes that were lost as a result of his failure or neglect.

A general review of the above-cited statutes that comprise Article 4 of Title 59 makes it abundantly clear that the general sense of what the Legislature obviously intended in enacting the statutory scheme was to allow for internal housekeeping and administration in the tax assessment system for the various offices affected by the actions of the Assessor. His work is utilized by the County Commission when it sits as a Board of Equalization and is also used by the State Tax Commission of Utah. If any untimely completion on his part creates problems for either of those offices, they are given appropriate statutory authority with which to compel timely compliance on the part of the Assessor.

Since they are in the best position to judge whether or not his efforts to complete the assessment book constitute neglect or failure sufficient to constitute a reason for acting under Section 59-5-30, 59-5-33, 59-5-34, or 59-5-35, that decision is solely within the judgment and determination of those bodies.

Apparently, in the instant case, for the years 1978 and 1979, neither the County Commission nor the State Tax Commission of Utah, under the facts and circumstances relating to the Assessor's performance of his duties, considered the untimely completion of the assessment roll a basis for concluding failure or neglect on his part. Both bodies were aware of the factual circumstances surrounding the assessment of properties located within Salt Lake County and both bodies apparently concluded that his actions did not constitute a neglect or failure. There is no evidence in the record to show that Salt Lake County lost tax monies which should have been received by it for the year 1978 or for the year 1979. In short, the very entities that are sought to be protected by the statutory scheme set forth in Article 4 of Title 59 lost no revenues nor did they deem the actions of the assessor sufficient to

rise to the level of a failure or neglect on his part and, accordingly, did not institute proceedings under the statutory scheme that affords to them exclusively the right of enforcement for any such failure or neglect. The reasons for their inaction are obvious. First of all, for the year 1978 both bodies were well aware of the fact that Salt Lake County was being reappraised. They were well aware of the fact that over 200,000 separate parcels located within Salt Lake County had to be appraised and assessed. They were well aware of the fact that a significant number of those parcels had not been reappraised for many years and that the values were thereby significantly increased. They were, in fact, aware of the numerous appearances by taxpayers before the Salt Lake County Board of Equalization and the State Tax Commission of Utah. They were also aware of the fact that the information that was being supplied to the Salt Lake County Assessor by the State Tax Commission of Utah pursuant to its duties and responsibilities as the agency conducting the reappraisal was not being received within the time contemplated by both parties, thereby ren-

dering it impossible for the assessor to complete his assessment book by the first Monday in May. These same bodies were aware of the difficulties that arose in 1979 with regard to the numerous appeals that had taken place before the State Tax Commission of Utah late in the year 1978 at a time that is normally utilized by the assessor's office to commence work on the 1979 assessment rolls. They again concluded in 1979 that the failure to complete the assessment roll by the first Monday in May was not an act of neglect or failure on the part of the assessor, but was the result of the facts and circumstances resulting from the reappraisal and the large number of parcels that are located within Salt Lake County. No actions to recover unassessed property or under assessed property were instituted because even though the assessment roll was not completed by the first Monday in May for either year, no actual harm or loss was suffered either by Salt Lake County or by the State Tax Commission.

A review of the allegations of plaintiffs' Complaint will clearly demonstrate that the plaintiffs have not suffered any harm as a result of the assessor

not meeting the deadline. They have claimed no violation of any right peculiar to them. They have not claimed that their property was overassessed. They have not claimed that they were deprived of any opportunity to appear before the Salt Lake County Board of Equalization to contest the valuation placed upon their properties. In fact, they did appear before the County Board of Equalization and the State Tax Commission of Utah and had an opportunity to be heard concerning the valuations placed upon their properties. If they had not agreed with their ultimate assessment, they could have paid their taxes under protest and brought an action for refund. This they did not do. They have not claimed the assessments are invalid. There is nothing in their Complaint to indicate that they had or would suffer irreparable harm by the continued payment of the assessor's salary to him during the periods of time in question, nor is there any indication of harm to any other Salt Lake County Taxpayer or property owner.

A review of the statutes found in Article 4 of Title 59 clearly indicates that the plaintiffs-

appellants are not within the class of persons who are sought to be protected by the statutory scheme found in Article 4 of Title 59. The statutes in question do not afford to them a right or a remedy. The statutes are merely designed to enable the various bodies that must deal with the assessment roll in their own constitutional and statutory areas, to police the actions of the Assessor and give them the tools by which to compel compliance by the Assessor in order to avoid corresponding delays in their respective statutory functions. In these particular cases, for the years in question, both the County Commission and the State Tax Commission of Utah had complete knowledge of all the facts and relevant circumstances surrounding the assessment of properties in Salt Lake County for the years 1978 and 1979. They were aware of the tremendous amount of increased work load that was placed upon the Assessor's office as a result of the reappraisal and the numerous appeals to the County Board of Equalization and the State Tax Commission of Utah. Based upon the knowledge of those facts and circumstances, the County Commission and the State Tax Commission concluded that the manner in which the

Assessor was proceeding to complete the assessment rolls for the years 1978 and 1979 did not justify or merit any action on their part to withhold his salary and, accordingly, no such action was required or taken.

POINT II

THE TRIAL COURT CORRECTLY RULED THAT THE COMPENSATION PENALTY CONTAINED IN SECTION 59-5-30, UTAH CODE ANNOTATED, 1953, AS AMENDED, WAS MOOT, SINCE THE AFFIDAVIT IN QUESTION WITH REGARD TO BOTH ASSESSMENT YEARS WAS MADE AND SUBSCRIBED TO PRIOR TO THE COURT'S DECISIONS ON THE MOTION FOR SUMMARY JUDGMENT AND FURTHER CORRECTLY CONCLUDED THAT THE PENALTY PROVISION OF SECTION 59-5-30, UTAH CODE ANNOTATED, 1953, AS AMENDED, DOES NOT REQUIRE A "FORFEITURE" OF SALARY, BUT MERELY A WITHHOLDING THEREOF UNTIL THE STATUTORY DUTY HAS BEEN COMPLIED WITH.

As the facts in the case indicate, the 1978 Affidavit was completed by the defendant Cockayne on the 6th day of September, 1978. Plaintiffs' Complaint was filed on the 26th day of October, 1978. Therefore, the question of whether or not to withhold salary was moot at the time that the plaintiffs initiated their action in Case No. 16790. (T.R.I.p-5)

For the tax year 1979, the assessment roll was completed on or before the 30th day of July, 1979. (T.R.II.p-29 and 33) Plaintiffs' Complaint was filed on the 31st day of July, 1979. (T.R.II.p-5) Again, the question of the withholding of salary was moot at the time that the action was filed. Therefore, both judgments in favor of the defendants-respondents were proper. Section 59-5-30, Utah Code Annotated, 1953, as amended, reads in its entirety as follows:

"The Assessor shall not be paid or draw any compensation for services after the first Monday in May of each year, until said Affidavit of completion and delivery of the assessment book is made and subscribed. (emphasis supplied)

The plain meaning of the statute above quoted clearly indicates that the Legislature did not intend or require a forfeiture of the salary of the Assessor, but merely a withholding thereof "until said Affidavit is made and subscribed". Since the Affidavit was made and subscribed to on the 6th day of September, 1978 for the tax year 1978 and the 30th day of July, 1979 for the tax year 1979, there was no factual basis upon which the County could or should seek a refund of the

Assessor's salary because, having completed the Affidavit, the Assessor would be entitled to his entire salary. The statute in question merely uses the postponement of his compensation as an inducement for the Assessor to complete the Affidavit within the statutory time, but does not withdraw from him his salary because of an untimely completion.

POINT III

THE STATE TAX COMMISSION OF UTAH, THROUGH ITS CONDUCT OF THE REAPPRAISAL OF SALT LAKE COUNTY, EFFECTIVELY EXTENDED THE TIME WITHIN WHICH THE DEFENDANTS-RESPONDENTS WERE REQUIRED TO PERFORM THEIR VARIOUS TAX ASSESSMENT FUNCTIONS FOR THE YEAR 1978.

It is undisputed that Salt Lake County was being reappraised by the State Tax Commission of Utah during 1978. Its tax assessment process was under the direction and control of the Tax Commission of the State of Utah and pursuant to contract entered into by and between Salt Lake County and the State Tax Commission.

Under Article XIII, Section 2 of the Constitution of Utah, the Tax Commission has broad,

supervisory powers over the administration of the tax laws of this State. It also has such powers as the Legislature may prescribe. Its powers, in part, are found in Section 59-5-46, Utah Code Annotated, 1953, as amended. These powers include, but are not limited to:

"The governing of county boards and officers in the performance of any duty in connection with assessment, equalization and collection of general taxes." (emphasis supplied)

"The preparation and enforcement of the use of forms in relation to the assessment of property."

"To have an exercise general supervision over the administration of the tax laws of the State, over assessors and over county boards." (emphasis supplied)

"To reconvene, whenever the Tax Commission may deem necessary, any County Board of Equalization; and it may in its discretion extend the time for which any County Board of Equalization may sit for the equalization of Assessments." (emphasis supplied)

"To direct proceedings, actions and prosecutions to enforce the laws relating to the penalties, liabilities and punishments of public officers for failure to comply with the provisions of the statute governing the return, assessment and taxation of properties;" (emphasis supplied)

"To require County Attorneys to institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals and punishments for violations of the laws in con-

nection with the assessment and taxation of property in their respective counties and such officers must at once comply."

"To visit each county of the State for the investigation and direction of the work and methods of local Assessors and other officials in the assessment, equalization and taxation of property...."

To perform such further duties as may be imposed upon it by law and to exercise all powers necessary in the performance of its duties." (emphasis supplied)

Additional powers and duties are granted with regard to the reappraisal program that the Tax Commission was performing for Salt Lake County during the year 1978.

Section 59-5-109, Utah Code Annotated, 1953, as amended, gives the Commission the power and the duty of administering the revaluation of the taxable real property in this State. In so doing, it shall enter into such agreements with County Boards and Assessors as they deem advisable to delineate numerous performances, including:

"The dates of commencement and completion of the revaluation."

It is respectfully submitted that the

foregoing constitutional and statutory powers are sufficiently broad to enable the Tax Commission to extend the normal statutory deadline involved with the assessment, equalization and collection of property taxes. The Affidavit of Wendell Hibler, submitted to the Trial Court, clearly demonstrated that the Tax Commission was doing its assessment work in Salt Lake County long after the statutory deadlines. (T.R.I.p-66-103) Most of the assessment work that the plaintiffs-appellants contend must be affirmed by the Assessor in his Affidavit, was still in the possession of the State Tax Commission by the first Monday in May. For this reason, the Salt Lake County Board of Equalization, which by statute must complete its work by June 20 of each year was extended into October.

If the Assessor was deficient in his performance, the Tax Commission of Utah had the statutory authority and obligation to direct his compliance and enforce penalties for noncompliance. It did not, in the instant case, because it was fully aware of the fact that the Assessor could not complete the assessment roll and turn it over to the Treasurer until

the Tax Commission had completed its work and turned the same over to the Assessor. This was not accomplished prior to September 6, 1978. The same reasoning is equally applicable to the duties that were to be performed by the Auditor and the Treasurer of Salt Lake County. Until the Tax Commission got the assessments to the County, no County Officer could perform his assessment duties. The fact that the assessments were delivered to the County after the time prescribed by statute indicates that the State Tax Commission of Utah, under and pursuant to its constitutional and statutory authority, was, in fact, extending the time within which such duties were to be performed. This extension would, therefore, relieve the Assessor of any of the consequences contained in Section 59-5-30 and Section 59-5-33, Utah Code Annotated, 1953, as amended.

POINT IV

THE TRIAL COURT CORRECTLY RULED THAT THE STATUTES RELATING TO THE TIME OF COMPLETION OF THE ASSESSMENT ROLL AND THE PENALTY PROVISIONS CONTAINED THEREIN WERE DIRECTORY RATHER THAN MANDATORY.

This Court, in the case of Kennecott Copper

Corporation v. Salt Lake County, 575 P.2d 705 (1977)

held that the statutory deadlines relating to the assessment and collection of taxes are directory rather than mandatory.

The Kennecott case involved a question of whether or not the Salt Lake County Commission could reset the mill levy for the tax year 1976 after the statutory deadline for adopting and setting said levy had passed. The statute in question in that case, Section 59-9-6.3, Utah Code Annotated, provided in part as follows:

"The Board of County Commissioners of each County must levy a tax on the taxable property of the County between the last Monday in the seventh month of each fiscal year and the second Monday in the eighth month of each fiscal year to provide for County purposes."
(emphasis supplied)

The lower Court in that case ruled that the use of the word must was mandatory and, therefore, the failure to meet the statutory deadline was defective. This Court held that the statute was directory and in so doing made the following significant statements:

"There is no universal rule by which directory provisions may, under all circumstances, be

distinguished from those which are mandatory. The intention of the Legislature, however, should be controlling and no formalistic rule of grammar or word form should stand in the way of carrying out the Legislative intent..."

"...The statute should be construed according to its subject matter and the purpose for which it was enacted."

"Generally, those directions which are not of the essence of the thing to be done, but which are given with a view merely to the proper, orderly and prompt conduct of the business and by the failure to obey no prejudice will occur to those whose rights are protected by the statute, are not commonly considered mandatory. Likewise, if the act is performed but not in the time or in the precise manner directed by the statute, the provisions will not be considered mandatory if the purpose of the statute has been substantially complied with and no substantial rights have been jeopardized. Citing 1-A Southerland Statutory Construction (4th Edition) Section 25.03 pp. 299-300)

In the instant case, the statutes that are in question are clearly enacted to insure the proper, orderly and prompt conduct of the business of the County with regard to the assessment of property taxes. No individual taxpayer was prejudiced by the substantial compliance on the part of the County Assessor. The rights of the County Commission and the State Tax Commission of Utah with regard to strict adherence to the statutory time frame were not prejudiced because if

they were, certainly they could have initiated whatever action they deemed appropriate to eliminate the prejudice to their interests. None was taken, either by the Tax Commission or by the Salt Lake County Board of Equalization. As was further noted by this Court in Kennecott, a statute is directory if its benefits run not to the taxpayer but run instead to the governmental entity. Clearly, the benefit of timely completion and turnover of the assessment roll to the Treasurer is for the benefit of County government, not for the benefit of the taxpayer. This Court then went on to cite the case of Wyoming State Treasurer v. City of Casper, 551 P.2d 687 (1976). That case involved the late assessment by the Wyoming State Treasurer for the purposes of a firemen's pension fund. In attempting to decide whether or not the statute which set the time limit for assessment in Wyoming was mandatory or directory, the Court held that:

"It is a universal holding that a statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory, unless the nature of the act to be performed or the phraseology of the statute, is such that the designation of time must be con-

sidered as a limitation of the power of the officer." (p. 698)

The Court determined that the statute was merely directory unless it contemplated a cutoff of the public official's authority to perform the responsibility if not performed as of the date of the statutory deadline. A reading of the statutes here in question makes it absolutely clear that it is contemplated that the assessor would continue to perform his duty of preparing and completing the assessment roll. As stated by the Legislature in the last sentence of that section,

"A failure to make or subscribe such affidavit, or any affidavit, will not in any manner affect the validity of the assessment."

If the Legislature had intended that the deadline be mandatory, they would have prohibited the assessor from doing anything after the statutory deadline. This it did not do, and as the Wyoming Court said in the City of Casper case,

"Not to permit the State Treasurer to perform his statutory obligation of maintaining the firemen's pension fund...would abort the Legislative purpose."

Thus, the Court found that the Legislature had not intended to cut off the State Treasurer's authority to assess if the work was not performed as of the date of the deadline.

In the case of County of Maricopa v. Garfield, 513 P.2d 932, (1973, Arizona Supreme Court), the Supreme Court of Arizona was confronted with a situation very similar to that confronting this Court in the Kennecott case. In that case the Arizona Supreme Court found a statute is directory if it is not intended for the protection or benefit of a taxpayer. The Court further indicated that a statute that does not provide for the protection or benefit of a taxpayer but rather is to set forth an administrative system and guide for tax officials, is generally construed to be directory in nature.

In the case of Parker v. Krick, 252 AP.2d 648 (1969, Supreme Court of Pennsylvania), the Court was confronted with a Pennsylvania statute that provided that assessments were to be examined and revised by a particular date. The work, however, had not been done within this statutory time limit and, therefore, cer-

tain taxpayers sought to restrain the Board from including assessments after that date in the assessment rolls. The Supreme Court of Pennsylvania found the statute to be directory rather than mandatory and concluded that the time limit set forth in the statute was not intended to afford an escape for property owners from a just taxation because of dilatoriness. The Court went on to say that a statute is not mandatory so long as the rights of property owners to protest their assessments and appeal therefrom are respected. If a taxpayer has an alternative route to protest the tax paid and recover an assessment, no cause of action will lie in terms of a Writ of Mandamus to force the County Assessor to perform his act within the statutory deadline.

In the instant case, the Stromquists have no cause of action to challenge the conduct of the Salt Lake County Assessor and the Salt Lake County Commission. As in the Kennecott, Maricopa and Parker cases, the statutes questioned are not to provide any benefit for the taxpayer. Plaintiffs-appellants were afforded an opportunity to appear before the County

Board of Equalization to protest the valuations placed upon their property for both the years 1978 and 1979. Plaintiffs-appellants were afforded an opportunity to appeal any decision of the Salt Lake County Board of Equalization to the State Tax Commission of Utah. Thereafter, if plaintiffs-appellants so desired, they could have obtained a formal hearing before the State Tax Commission of Utah and from there, appealed directly to the Supreme Court or filed a petition in the Tax Division of the District Court of Salt Lake County. None of these rights and opportunities afforded the plaintiffs-appellants in the instant case were denied or affected by the actions of the two Salt Lake County Assessors for the years 1978 and 1979. In fact, the evidence is uncontroverted that Board of Equalization hearings were held beyond the statutory deadlines pursuant to authorization of the State Tax Commission of Utah for the specific purpose of affording taxpayers an opportunity to be heard if they wished to contest any aspect of their assessment, and, as this Court stated in the Kennecott case,

"Statutes involving the constructive steps incident to taxation are deemed mandatory or

directory, depending on whether or not the directions given an officer are for the benefit of the taxpayer, e.g., to give him notice and an opportunity for a hearing, or for any other purpose important to him. If a statute setting forth the time for fixing the levy, is not for the purpose of giving the taxpayer notice or a hearing, the provision concerning time is of no concern or importance to the taxpayer. The failure of the public officials to make the levy within the time specified in no manner affects the taxpayer under such statute, which is deemed directory. So long as the taxpayer is given a reasonable opportunity to pay his taxes before they become delinquent, his interests are not materially prejudiced." (575 P.2d 705 at 707)

Defendants-respondents assert that based upon the Kennecott case, which is the most recent announcement of this Court on the subject and the additional authority cited above, the conclusion is inescapable that the statutes here in question were directory rather than mandatory. The statutes in no way relate to or benefit a taxpayer. They do not relate to affording him a notice of hearing or an opportunity to be heard. The directions given the County Assessor are not for the benefit of the taxpayer, but are for the benefit of the Salt Lake County Commission and the State Tax Commission of Utah. Both of those bodies apparently concluded that the performance by the

Assessors under the facts and circumstances of these two cases was substantially in compliance with the requirements of the statutes and the intentions of the Legislature, and the Trial Court correctly concluded that since the time limitation contained in the statutes were directory rather than mandatory, that it made no sense to apply the penalty of the bond and the context of a "directory deadline" and a factual circumstance which indicated both the substantial compliance by the Assessor and a de facto extension of the deadline by the actions of the State Tax Commission. This conclusion was based upon the facts and circumstances of the case, which facts and circumstances are totally undisputed and uncontroverted.

CONCLUSION

Defendants-respondents respectfully submit to this Honorable Court:

1. That the actions of the Salt Lake County officials under the facts and circumstances of each case do not constitute a failure to comply with the statutory requirements;

2. That the plaintiffs-appellants suffered no direct or indirect injury or harm nor did any other taxpayer or property owner located within Salt Lake County suffer such harm directly or indirectly;

3. That the Trial Court correctly ruled that the compensation penalty contained in Article 4 of Title 59 was moot in light of the fact that the Affidavit for each year had been made and subscribed to prior to the time that the plaintiffs-appellants initiated action in either case. That the Trial Court correctly ruled that the statutory penalty provision did not require a forfeiture of salary, but a mere withholding thereof until the statutory duty had been complied with, and since the statutory duties had, in fact, been complied with, the payment of salaries to the assessors in each case was proper.

4. That the State Tax Commission of Utah, by reappraising Salt Lake County, pursuant to statute and in accordance with its contract with Salt Lake County, under the facts and circumstances of the reappraisal, extended the time within which the defendants-respondents were required to perform their various tax

assessment functions for the year 1978. That the spill-over effect of the 1978 reappraisal also constituted a factual basis for extending the deadline for the year 1979.

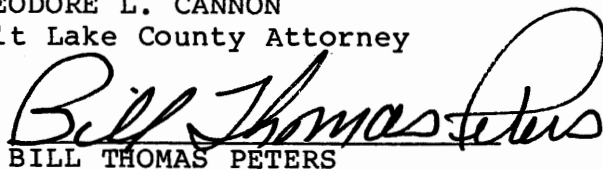
5. That the statutes governing the time of completion of the assessment roll and transfer thereof by the Assessor to the Treasurer are directory rather than mandatory because they were enacted merely with a view towards the proper, orderly and prompt conduct of the business of the County and the failure to meet the deadline in no way prejudiced any right of the plaintiffs-appellants herein.

It is, therefore, respectfully submitted that the decision of both Trial Courts in granting defendants-respondents Motions for Summary Judgment should be affirmed.

DATED this 13th day of June, 1980.

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Salt Lake County Attorney

By



BILL THOMAS PETERS
Special Deputy County Attorney
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CERTIFICATE OF SERVICE

Personally served two copies of the foregoing
brief upon Brian M. Barnard, attorney for
plaintiffs-appellants, this 13th day of June, 1980.

ROB REESE