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Utah Supreme Court

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

DONALD M. STROMQUIST and JANE L. STROMQUIST, :

Plaintiffs-Appellants, :

vs.

:

CLIFFORD COCKAYNE, Salt Lake County Assessor,
JAMES C. SNOW, Salt Lake County Auditor, : Case No. 16790
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,

:

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,: Case No. 16919
WILLIAM DUNN, Salt Lake County Commissioner,
WILLIAM HUTCHINSON, Salt Lake County :
Commissioner, and ROBERT SALTER, Salt Lake
County Commissioner, :

Defendants-Respondents. :

FILED

MAR 6 1981

Clerk, Supreme Court, Utah

SUPPLEMENTAL BRIEF OF APPELLANTS

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 CHIRSTINE DURHAM AND THE HONORABLE BRYANT CROFT
JUDGES PRESIDING

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SUPPLEMENTAL BRIEF OF APPELLANTS

The Plaintiffs-Appellants submit the following Supplemental Brief as requested by the Court regarding the standing of the Plaintiffs-Appellants to seek the relief prayed for in their Complaints filed in the Court below. The issue of standing was not considered by the Court below in either of the two cases consolidated in this appeal. The question of standing was raised substantially for the first time on appeal.

I.

A CITIZEN OR TAXPAYER HAS STANDING TO BRING A PRIVATE SUIT COMPELLING A PUBLIC OFFICIAL TO PERFORM A STATUTORY PUBLIC DUTY

The Appellants filed suits in 1978 and 1979 in part to force the Salt Lake County Commissioners to enforce a penalty provision against the Salt Lake County Assessor. Utah statutes require the county assessor to complete his assessment books on or before the first Monday in May of each year and if he fails to do so, the statutes provide for a forfeiture against his official bond in the amount of one thousand dollars

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and further provide that he shall not be paid his salary until he completes the assessment books. The last year that the assessment books were completed on time in Salt Lake County was 1927. There has never been a forfeiture against the Assessor's bond and the Assessor's wages have never been withheld as a result of the Assessor's failure to comply with his statutory duty.

The Appellants were real property owners and taxpayers living in Salt Lake County in 1978 and 1979. Taxpayers, are the beneficiaries of a property tax assessment and payment plan and program. Taxpayers benefit from the orderly assessment and billing of property taxes in several ways. In 1978 if the statutory deadlines had been complied with by the Respondents, the property tax notices for that year would have been in the taxpayers hands before the November, 1978 election. The voters and taxpayers could have then voted with the knowledge of the Salt Lake County Commissioners tax program. That information is vital for an informed electorate. As a result of the Respondents delays and violation of the taxing calendar the Appellants and all of the taxpayers of Salt Lake County were deprived of

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that information until after the election. Most taxpayers must plan toward the payment of their annual property tax assessments; they set aside money over a period of time to make that payment each year. The timely and orderly assessment process by the Respondents allows taxpayers to plan toward that payment. By failing to meet the deadlines the Respondents prevented the taxpayers financial planning.

The majority rule in the state courts is that:

"[M]andamus may be issued to enforce the performance of a public duty by public officers, upon application of any citizen whose rights are affected in common with those of the public." State ex rel. v. Board of Commissioners, 161 P.2d 212, 213 (N.M. 1945). Where the object of the mandamus is to procure performance of a public duty by a public official, the private citizen need not show "any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question eforced." Board of Social Welfare v. Los Angeles County, et al., 162 P.2d 627, 628 (Cal. 1945).

In Crockett v. Board of Education, 58 Utah 303,

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199 P.2d 148 (1921), Utah applied the above rule and allowed a private citizen-taxpayer to maintain a mandamus action to compel public officials to comply with a statutorily mandated public duty. Crockett was an action commenced by a resident, taxpayer, and citizen of Carbon County against the Carbon County Board of Education, to compel them to publish an annual statement of receipts and disbursements of money during the year ending June 30, 1920, as provided for by Utah law.

The Defendants in Crockett claimed that a mere citizen-taxpayer did not have standing to bring the action, but the Utah Supreme Court disagreed:

> In the present case it is shown that the plaintiff is a citizen and resident taxpayer of Carbon county school district. As such, we are not prepared to say that within the meaning of our statute he is not a party beneficially interested in having a statement prepared and published in the manner in which the law expressly and clearly enjoins. True it is plaintiff seeks the performance of a duty that does not concern himself alone, but one that inures to the benefit of all citizens and taxpayers of the district alike; yet at the same time he himself as a citizen and a taxpayer necessarily had sufficient interest and the right to maintain the action.

Id., 203 P.2d at 161.

Another Utah case decided in the same year as Crockett also dealt with the right of a private citizen

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to bring a mandamus action compelling a public official to perform a statutory duty, Startup v. Harmon, 59 Utah 329, 203 P. 637 (1921). Although the issue was decided in the negative, the Startup case is distinquishable from both the case at bar and Crockett.

In Startup, the plaintiff sought a mandamus action commanding the board of county commissioners to provide annual funds, not exceeding $10,000 in any one year, to be expended for the partial support of widowed mothers who are dependent upon their own efforts for the maintenance of their children, as provided for by Utah law.

In refusing to grant standing to the plaintiff, the court made the following observations concerning the statute in question:

> It is made for the direct benefit of a particular class, while the benefit to the entire community is only incidental. Plaintiff does not come within the class directly benefited, and therefore his interest appears to be even more remote than it would be if the law was general in its application.

Startup, Id., 203 P.2d at 640.

In the case at hand, the statutory duty sought to be enforced by the plaintiffs is not intended for the benefit of a particular class of person. Rather the duty is public in nature; and under Crockett v. Board

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of Education, the plaintiffs can maintain an action compelling the defendants, as public officials, to perform their public duty. As taxpayers, the plaintiffs share the same interests as other taxpayers in the county in having public duties regarding the taxing process performed by public officials.

The present case is therefore, governed by the majority rule that a private citizen or taxpayer can bring an action to compel a public official to perform a public duty, regardless of whether the plaintiff, citizen or taxpayer has an interest different or more substantial than the right of the public in general. In addition to the cases cited above, see also, City of Tacoma v. O'Brien, 534 P.2d 114 (Wash. 1975); Armer v. Superior Court of Arizona In and For the City of Pima, 543 P.2d 1107 (Ariz. 1975); Moran v. Secretary of the Commonwealth, 198 N.E. 2d 640 (Mass. 1964); Hadden v. Pierce, 90 S.E. 2d 405 (Ga. 1955); State ex rel. Zickefoose v. West, 116 S.E. 2d 398 (W.Va. 1960).

An important distinction must be made between a case where a citizen or taxpayer brings a mandamus action commanding a state official to perform a clearly established duty, as in the present action, and a case

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where a citizen or taxpayer brings an action challenging the constitutionality of a statute or other governmental action. Baird v. State, 574 P.2d 713 (Utah 1978) falls into the latter category.

In Baird, the plaintiff challenged the constitutionality of the Utah Occupational Safety and Health Act, but failed to allege facts showing that he had been harmed by enforcement of the act. The Utah Supreme Court held that a party having only such interest as the public generally cannot maintain an action challenging the constitutionality of a state statute. Baird, 574 P.2d at 716.

In the constitutional context, courts are reluctant to determine important constitutional questions in a void. That is, the courts will not give advisory opinions concerning the scope of constitutional rights. In order to guarantee the best presentation of the issues, the courts require a true adversarial confrontation, and the plaintiff must be injured directly by the unconstitutional conduct.

But different considerations are present where a private citizen seeks performance of an undisputed public duty by a public officer. As in the present case,

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there is a clearly defined public interest in having state laws enforced and state duties performed. In such cases, a court would not be rendering an advisory opinion. That is, a judicial determination will settle the controversy whether or not the public official must perform a given duty. And, as was decided in Crockett v. Board of Education, supra, a private citizen or taxpayer as such has a sufficient interest to maintain an action the benefit of which runs to the general public. If this were not the rule, then many public duties would go unperformed by public officials.

The above distinction is illustrated by two cases from the state of Washington. In Tabor v. Moore, 503 P.2d 736 (Wash. 1972), the Supreme Court of Washington ruled that the plaintiffs, as mere taxpayers, lacked standing to challenge a city and county policy of holding persons arrested without warrants on open charges or suspicion for unreasonable periods of time. The court said that in such cases the plaintiff taxpayers must allege a direct, special or pecuniary interest in the outcome of the suit.

But in City of Tacoma v. O'Brien, 534 P.2d 114 (Wash. 1975), the same Washington court held that tax-

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payors had standing to bring a mandamus action prohibiting the state treasurer from making disbursements that were contrary to a statute, regardless of whether the taxpayors allege a direct, special, pecuniary interest in the outcome of the case, provided the Attorney General first declined to institute the suit.

Even if the present case were governed by Baird vs. State, supra, the Plaintiffs would still have standing. In Jenkins vs. State of Utah, 585 P.2d 442 (Utah 1978), the Utah Supreme Court noted the general rule in Baird, but went to say, "While this is true, it is also true this Court may grant standing where matters of great public interest and societal impact are concerned." Jenkins, 585 P.2d at 443.

The nonperformance of public duties by public officals falls within the Jenkins, caveat. Again, the problem is that if private citizens do not have standing because the only harm is to the interests of the general public, then certain public officials can ignore public duties with impunity. Surely this is a matter of great public interest, and Baird vs. State does not overrule Crockett vs. Board of Education, either directly or impliedly.

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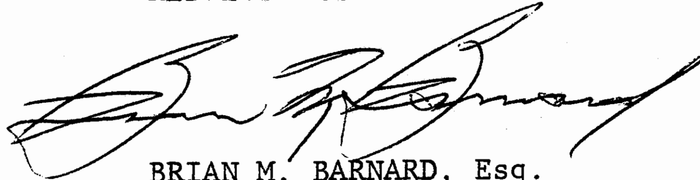
II.

CONCLUSION

Under Utah law, a private citizen or taxpayor has a substantial interest in having statutory public duties enforced by public officials. Crockett vs. Board of Education. This case falls within the above category, and in no way raises the constitutional rights of third parties or the public at large. Therefore, the Plaintiff taxpayors have standing to raise the issues in this case.

DATED this 6th day of March, 1981.

RESPECTFULLY SUBMITTED



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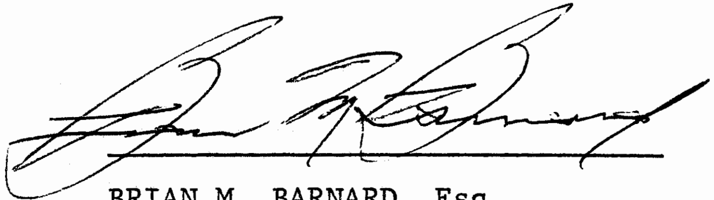
CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing to Bill Thomas Peters, Attorney at Law, at 220 South 2nd East, Salt Lake City, Utah 84111, postage prepaid in the United States Postal Service this 6th day of March, 1981.



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