

1981

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 Appellants

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

BRIAN M. BARNARD; Attorneys for Appellants; WILLIAM THOMAS PETERS; Attorney for Respondents;

---

#### Recommended Citation

Brief of Appellant, *Stromquist v. Salt Lake County*, No. 16790 (Utah Supreme Court, 1981).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/2016](https://digitalcommons.law.byu.edu/uofu_sc2/2016)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

I N T H E 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, :  
Defendants-Respondents. :

Case No. 16790

---

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, and ROBERT SALTER, Salt Lake :  
County Commissioner, :  
Defendants-Respondents. :

Case No. 16919

---

C O N S O L I D A T E D B R I E F O F A P P E L L A N T S

---

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

---

BRIAN M. BARNARD  
214 East Fifth South  
Salt Lake City,  
UTAH 84111

Attorney for Appellants

WILLIAM THOMAS PETERS  
Special Deputy Salt Lake  
County Attorney  
220 South Second East  
Salt Lake City, UTAH 84111

Attorney for Respondents

I N T H E 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, and ROBERT SALTER, Salt Lake :  
County Commissioner, :

Case No. 16919

Defendants-Respondents. :

---

CONSOLIDATED 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

---

BRIAN M. BARNARD  
214 East Fifth South  
Salt Lake City,  
UTAH 84111

Attorney for Appellants

WILLIAM THOMAS PETERS  
Special Deputy Salt Lake  
County Attorney  
220 South Second East  
Salt Lake City, UTAH 84111

Attorney for Respondents

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS . . . . .	3
NATURE OF THE CASE. . . . .	6
DISPOSITION IN LOWER COURT. . . . .	7
RELIEF SOUGHT ON APPEAL . . . . .	7
STATEMENT OF THE CASE . . . . .	8
STATEMENT OF THE FACTS. . . . .	10
ARGUMENT. . . . .	14
Point I	
SALT LAKE COUNTY OFFICIALS ARE OBLIGATED TO COMPLY WITH STATUTORY RESPONSIBILITIES . . . . .	14
Point II	
THE FAILURE TO COMPLY WITH THE STATUTORY PROVISIONS OF §59-5-30 OF THE UTAH CODE ANNOTATED CARRIES WITH IT SPECIFIC PENALTIES . . . . .	16
Point III	
THE AGREEMENT TO REAPPRAISE PROPERTY IN SALT LAKE COUNTY DOES NOT JUSTIFY THE FAILURE TO MEET THE STATUTORY DEADLINE IN 1978. . . . .	18
Point IV	
THERE WAS NO EXTENSION GRANTED ALLOWING THE SALT LAKE COUNTY ASSESSOR TO AVOID THE MAY 1, 1978 DEADLINE. . . . .	22

Point V

SUBSTANTIAL COMPLIANCE IS NOT SUFFICIENT UNDER U.C.A. §59-5-30 (1953) . . . . .	25
CONCLUSION . . . . .	30

AUTHORITIES CITED

CASES

<u>Equitable Life &amp; Casualty Ins. Company v. Schoewe, 105 U. 569, 144 P.2d 526 . . . . .</u>	26
<u>K.C.C. v. Salt Lake County, 575 P.2d 705 (1977) . . . . .</u>	25, 26, 27, 28
<u>Petterson v. Ogden City, 111 U. 125, 176 P.2d 599. . . . .</u>	26
<u>Telonis v. Staley, 104 U. 537, 144 P.2d 513. . . . .</u>	26

STATUTES

Utah Code Annotated, (1953)	
Section 17-36-31. . . . .	27
Section 59-5-30 . . . . .	9, 11, 12, 13, 14, 15, 16 17, 22, 25, 26, 28, 31, 32
Section 59-5-33 . . . . .	12, 13, 14, 16, 17, 25, 26, 28 31
Section 59-5-46 . . . . .	22, 23, 24
Section 59-5-109. . . . .	20, 24
Section 59-8-7. . . . .	26
Section 59-9-6.3 . . . . .	27
Section 59-11-7 . . . . .	25, 26

I N T H E 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 :

---

BRIEF OF APPELLANTS

---

I

NATURE OF THE CASE

These actions were filed seeking mandamus and declaratory relief to the effect that certain elected Salt Lake County officials should be penalized, including the forfeiture of wages and official bond, for failure to comply with their statutory duties regarding the preparation and the delivery of the tax assessment book of Salt Lake County property for the years 1978 and 1979.

The Plaintiffs-Appellants commenced the first action in 1978 and the second action in 1979. The actions involve identical questions of law and name as Defendants the holders of the same elected Salt Lake County corporate officers and officials. The question of law is the imposition of penalties against the elected Salt Lake County Assessor, Clifford Cockayne for the year 1978, and Milton Yorgenson for the year 1979, for their failure to comply with statutory deadlines regarding the preparation and delivery of the Salt Lake County Tax Assessment book.

In the interest of judicial economy and justice these 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.

## II

### DISPOSITION IN LOWER COURT

Mutual Motions for Summary Judgment concerning the year 1978 were heard on May 17, 1979. The same mutual Motions concerning the year 1979 was heard on January 21, 1980. The Third Judicial District Court in and for Salt Lake County, State of Utah denied Plaintiffs-Appellants' Motion for Summary Judgment and granted the Defendants-Respondents' Motions for Summary Judgment in both instances. Both Judgments were timely appealed by Plaintiffs-Appellants herein.

## III

### RELIEF SOUGHT ON APPEAL

Plaintiffs-Appellants seek reversal of the Judgments below and a determination that the statutory



penalites be invoked for Defendants' failure to comply with specific statutory deadlines.

#### IV

#### STATEMENT OF THE CASE

These actions were filed in the Third Judicial District Court in and for Salt Lake County seeking a declaration of Defendants-Respondents' failure to comply with specific statutory duties and deadlines; a ruling that the Defendants-Respondents were subject to specific statutory penalties for this failure; and an order requiring county officials to enforce those penalties.

The Defendants-Respondents admit that they failed to comply with statutory deadlines regarding the preparation and delivery of the tax assessment book for Salt Lake County property taxes for the years 1978 and 1979. For the year 1978 the Defendants claim that they could not meet the statutory deadline of the first Monday in May because the Utah State Tax Commission failed to complete the re-appraisal of all of the property in Salt Lake County in a timely manner. For the year 1979 the Defendants claim that they failed

to meet the deadline "due to impossibility" of meeting the statutory deadlines.

Mutual Motions for Summary Judgment were argued to the Court. For the year 1978 the Honorable Christine Durham found that the statutory deadline (U.C.A. §59-5-30, 1953) was "directory" in nature rather than mandatory, that the Defendants had substantially complied with the statutory requirements, that the Utah State Tax Commission had granted a "de facto" extension of time, and that the statutory provision requiring that no compensation be paid the Assessor "until said affidavit [of completion and delivery of the tax assessment book] is made and subscribed", meant that the wages were withheld not forfeited, and could be paid when the Assessor finally complied (in 1978, albeit four months late, with no withholding of wages during the default). For the year 1979 the parties stipulated that the Honorable Bryant Croft could enter a Summary Judgment based upon, and in conformance with, the prior ruling of Judge Durham for the year 1978.

Plaintiffs-Appellants have appealed from both rulings in this consolidated appeal.

STATEMENT OF THE FACTS \*

The Plaintiffs-Appellants are residents of Salt Lake County, State of Utah and own real property in the county. The Appellants are tax payers within Salt Lake County and were obligated to pay and did pay taxes for the years 1978 and 1979 upon real property in Salt Lake County.

The Appellants brought this action for declaratory relief against certain elected Salt Lake County officials regarding the failure of said officials to comply with statutory deadlines regarding the preparation and delivery of the tax assessment book for Salt Lake County property taxes for the years 1978 and 1979.

The Defendants concede that they failed to comply with statutory deadlines.

In responding to Requests for Admission and Interrogatories the Defendant Cockayne admits that he failed to complete his assessment book and deliver the same to the Salt Lake County Treasurer on or before the

\*Footnote

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.

first Monday in May, 1978, as required and set forth in U.C.A. §59-5-30 (1953). (T.R.I p. 26 and p. 33)  
Said assessment book was delivered by the Defendant Cockayne to the Salt Lake County Treasurer on or about September 6, 1978. (T.R.I p. 31)

In responding to Requests for Admission and Interrogatories the Defendant Yorgason admits that he failed to complete his assessment book and deliver the same to the Salt Lake County Treasurer on or before the first Monday in May, 1979, (May 7, 1979) as required and set forth in U.C.A. §59-5-30 (1953). (T.R.II p.28 and p.32)  
Said assessment book was delivered by the Defendant Yorgason to the Salt Lake County Treasurer on or about July 30, 1979. (T.R.II p. 31 and p. 32).

The excuse for the delay for the year 1978 stated that the lateness was "totally the result of the untimely manner in which the State Tax Commission of Utah conducted and implemented the reappraisal program of Salt Lake County". (T.R.I p. 31) There was a contract entered into by Salt Lake County and the Utah State Tax Commission in 1976 to reappraise all property in Salt Lake County with a tentative completion date of June 30, 1978. (T.R.I pp.109-118)

The excuse for the delay for the year 1979 stated that the lateness was "due to impossibility" (T.R.II p. 28) and "difficulties in trying to meet the statutory deadlines and the impossibility thereof". (T.R.II p. 29)

The Respondents indicated in their answers to interrogatories that during the eight year period, 1972 through 1979 inclusive, that the Assessment book had never been completed within the statutory deadline of the first Monday in May. (T.R.II p. 31)

The Respondents commencing at approximately May 17, 1978 and continuing through May 14, 1979 had correspondence with the Utah State Tax Commission discussing the need and seeking permission to have hearings and meetings of the Salt Lake County Board of Equalization after the statutory deadline of June 20, 1978. T.R.I pp. 66-103)

U.C.A. §59-5-33 (1953) provides that if an assessor fails to comply with the first Monday in May deadline as to completion of the assessment book that he shall forfeit \$1,000. from his official bond. U.C.A. §59-5-30 (1953) provides that if an assessor fails to comply with the first Monday in May deadline as to completion of the assessment book that he shall not be

paid or draw any compensation for services until the book is completed.

There are no specific statutory exceptions or excuses or variances provided for the penalties set forth in U.C.A. §59-5-33 or §59-5-30 (1953).

The Respondents admit that the Defendant Cockayne continued to receive his salary from Salt Lake County for services performed as Salt Lake County Assessor from the first Monday in May, 1978, (May 1, 1978) through September 6, 1978 when he finally completed the Assessment book (T.R. I p.26). There has been no forfeiture against the official bond of the Defendant Cockayne as set forth in U.C.A. §59-5-33 (1953). (T.R.I pp. 45-46) None of the Defendants have taken any action to seek forfeiture under the bond or to collect or re-take the salary paid to the Defendant Cockayne for the period between May 1, 1978 and September 6, 1978. (T.R.I pp. 45-46).

The Respondents admit that the Defendant Yorgason continued to receive his salary from Salt Lake County for services performed as Salt Lake County Assessor from the first Monday in May, 1979, (May 7, 1979) through July 30, 1979 when he finally completed the

the Assessment book (T.R.II p.29 and p. 33). There has been no forfeiture against the official bond of the Defendant Yorgason as set forth in U.C.A. §59-5-33 (1953). (T.R.II p.34). None of the Defendants have taken any action to seek forfeiture under the bond or to collect or re-take the salary paid to the Defendant Yorgason for the period between May 7, 1979 and July 30, 1979. (T.R.II p.29).

The Appellants are not seeking any determination or ruling with regard to the validity of the property tax assessments made by the Respondents for the year 1978 or 1979.

## VI

### ARGUMENT

#### Point I

#### SALT LAKE COUNTY OFFICIALS ARE OBLIGATED TO COMPLY WITH STATUTORY RESPONSIBILITIES

The applicable statute in the instant case is U.C.A. §59-5-30 (1953) which provides in pertinent part as follows:

59-5-30. Assessor to complete assessment book and subscribe affidavit.--On or before the first Monday of May in each year the assessor must complete his assessment book and deliver the same to the County Treasurer. He must take and subscribe an affidavit in the assessment book to be substantially as follows:



I,-----, the assessor of -----  
County, do swear that before the first  
Monday in May, 19--, I made diligent  
inquiry and examination, and visited  
and inspected, either personally or by  
deputy, all of the property within the  
county subject to assessment by me; that  
the same has been assessed on the assessment  
book equally and uniformly according to  
the best of my judgment, information and  
belief, at thirty per cent of its reasonable  
fair cash value; that I have faithfully  
complied with all the duties imposed on  
the assessor under the revenue laws; and  
that I have not imposed any unjust or  
double assessments through malice or ill  
will or otherwise, or allowed anyone to  
escape a just and equal assessment through  
favor or reward, or otherwise.

The assessor shall not be paid or draw any  
compensation for services after the first  
Monday in May of each year, until said  
affidavit is made and subscribed. A  
failure to make or subscribe such affidavit,  
or any affidavit, will not in any manner  
affect the validity of the assessment.  
[emphasis added]

The Respondents Cockayne and Yorgason were the  
Salt Lake County Assessors at times pertinent to these  
actions and were charged with certain statutory duties  
as Assessor. The Respondents have failed to comply with  
the statutory duties imposed upon them by U.C.A. §59-5-30  
(1953), as amended; specifically, the respective assessment  
books were not completed and delivered to the Salt Lake  
County Treasurer as required on the first Monday in May  
in 1978 or in 1979.



There are no specific statutory exceptions or variances or excuses provided regarding the non-compliance with U.C.A. §59-5-30 (1953) by a County Assessor.

Point II

THE FAILURE TO COMPLY WITH THE STATUTORY  
PROVISIONS OF §59-5-30 OF THE UTAH CODE  
ANNOTATED CARRIES WITH IT SPECIFIC PENALTIES

U.C.A. §59-5-33 (1953), as amended, provides in pertinent part as follows:

59-5-33. Penalty for neglect to complete assessment book.--Every assessor who fails to complete and deliver his assessment book to the County Treasurer within the time prescribed by law, [U.C.A. 59-5-30 (1953): the first Monday of May in each year]... shall forfeit the sum of \$1,000, to be recovered on his official bond, for the use of the county, or to be deducted from his salary by the Board of County Commissioners.

U.C.A. §59-5-30 (1953) as set forth above provides another penalty for the non-complying Assessor in that he "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."

There are no specific statutory exceptions or variances or excuses provided to avoid the penalties of U.C.A. §59-5-30 or §59-5-33 (1953), loss of salary and forfeiture from the official bond.

The Respondents argued in the Court below and the Court found that the language of U.C.A. §59-5-30 (1953)--

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.

directed a "postponement" of payment of salary rather than a "forfeiture" of salary. If the legislature had desired a postponement clear language to that effect could have been used. Instead the legislature choose to direct that the assessor shall not be paid or draw any compensation during the period of his non-compliance. This provision should be read in conjunction with the clear forfeiture language of U.C.A. §59-5-33 (1953); that statute does not say the forfeiture shall be nullified and the money returned when the assessment book is completed. Logical construction of the two statutes must be to the effect that severe and strict penalties were to be extracted when there was non-compliance by an assessor, forfeiture of salary and from the official bond.

Point IIITHE AGREEMENT TO REAPPRAISE PROPERTY IN SALT  
LAKE COUNTY DOES NOT JUSTIFY THE FAILURE TO  
MEET THE STATUTORY DEADLINE IN 1978

The agreement between the Utah State Tax Commission and Salt Lake County to reappraise all the property in Salt Lake County and the delay in the completion of that contract does not justify the failure of the assessor to meet the statutory deadline in the completion of his assessment book for the year 1978. The contract was entered into on April 1, 1976. Time was not of the essence in the performance of the contract. By its own terms there was no specific deadline for the performance. The parties hoped that the work would be completed in time to include the reappraisals in the 1978 calendar year assessment rolls, but there was no guarantee. Various provisions of the contract make it clear that there was no deadline:

It is contemplated that the reappraisal program hereunder shall be completed in time for use and incorporation into the 1978 calendar year assessment rolls, levy and tax collection; provided, however, that this time may be extended by the written mutual agreement of the parties; . . . (T.R.I, p. 111)

Further, that such reappraised properties shall not be incorporated into the assessment roll until all of the properties located in Salt Lake County. . . have been completely reappraised. . . (T.R.I, p. 110)

The County hereby agrees to incorporate in its calendar year 1978 assessment roll, if [the reappraisal program is] completed, or in such subsequent year as the reappraisal program is finally completed, . . . the assessed valuations arrived at in the reappraisal program. (T.R.I, pp.115-116)

The most telling provision of the contract is the time set for the final payment of money from the County to the State Tax Commission for their services. Appendix I to the contract contemplates that the final payment for services will be on or before June 30, 1978, but goes on to say

In no event will the final payment due from the County to Commission under the reappraisal program be due or payable until the entire reappraisal program for Salt Lake County has been completed in full and incorporated into the tax rolls of Salt Lake County. (T.R.I, p.118)

The deadline for the County Assessor to complete his assessment book was May 1, 1978 and the reappraisal contract had an anticipated completion date of June 30, 1978.

Although the reappraisal contract appears to be a contract for services from the Utah State Tax Commission to be rendered for the County of Salt Lake, the contract

really is a mutual agreement spelling out the responsibilities of the two entities in reappraising the property within Salt Lake County. (See U.C.A. §59-5-109 (2), 1953). The Utah State Tax Commission was to work closely with Salt Lake County officials to reappraise the property. The costs of the reappraisal was to be borne 70% by the State Tax Commission and 30% by Salt Lake County. (T.R.I p.113).

When the reappraisal was not completed by the May 1, 1978 deadline, the Salt Lake County Assessor should have completed his assessment book using the information available to him from the proceeding year. This was contemplated by the reappraisal contract and the law.

The Respondents claim that in 1978 non-compliance was not the result of their failure but was "totally the result of the untimely manner" in which the State Tax Commission conducted and implemented the reappraisal program for Salt Lake County. The Defendants allege that the Commission failed to live up to the terms of the agreement. Even if this were true, that contract does not supercede the statutory duty of the assessor to make his May 1, 1978 deadline. That point was covered in the contract:

The parties to this Agreement recognize that each such party has certain constitutional and statutory powers and duties relating to the assessment of property and do hereby agree that nothing contained in this Agreement shall be construed as having limited, expanded, transferred, abrogated or relinquished any such powers or duties from or by one party to the other. (T.R.I p.115)

The signing of the contract between Salt Lake County and the State Tax Commission in no way could alter the statutory obligations of the assessor.

The fallacy of Respondents argument as to the cause of the delay in 1978 is shown by the Answers to Interrogatories by the Defendant Milton Yorgason regarding the failure to meet the deadline for the year 1979. He said "The assessment roll was not completed by the first Monday in May because it was physically impossible to do so". (T.R.II p. 31) He goes on to tell us:

The record shows that the assessment rolls were completed on the dates as follows in previous years:

1972 - July 28  
 1973 - July 8  
 1974 - July 13  
 1975 - July 11  
 1976 - August 2  
 1977 - July 20  
 1978 - August 29

(T.R.II, p.31)

Even if Salt Lake County had not been in the middle of a reappraisal program in 1978, the track record of the Salt

Lake County Assessors Office shows that it probably would not have completed the assessment book within the statutory deadline.

Point IV

THERE WAS NO EXTENSION GRANTED ALLOWING  
THE SALT LAKE COUNTY ASSESSOR TO AVOID  
THE MAY 1, 1978 DEADLINE

The Respondents claim and the Court below found that for the year 1978 the State Tax Commission had granted a de facto extension of the May 1, 1978 deadline. (T.R.I p. 65)

There is no specific statutory authority that would allow the State Tax Commission to grant such an extension. The State Tax Commission does have broad supervisory powers regarding taxation within the state (U.C.A. §59-5-46, 1953), however, nowhere is the Commission granted the power to repeal legislation. U.C.A. §59-5-30 (1953) provides a specific deadline and was enacted by the legislature; the State Tax Commission is not granted the power to waive compliance with that statutory deadline or to repeal that law. U.C.A §59-5-46 (2) and (3), (1953) prohibit the Tax Commission from adopting rules or regulations in conflict with state law.



There is no mention at all of any extension of the May 1, 1978 deadline in any of the evidence presented to the Court below. The Respondents asked for and received permission to hold Board of Equalization hearings after the statutory deadline of June 20, 1978. The State Tax Commission has specific power to grant such an extension (U.C.A. §59-5-46 (10), 1953) That permission was granted by the State Tax Commission. (T.R.I pp.66-103) Hearings by the Board of Equalization are a distinct stage in assessment and taxation of property which occurs after the Assessor has completed and delivered his assessment book. Between May 17, 1978 and May 14, 1979 there was a series of letters between the Salt Lake Auditor and the State Tax Commission regarding holding the Board of Equalization hearings after the statutory deadline. (T.R.I pp. 66-103) Those letters show that (1) there is a statutory procedure to have Board of Equalization hearings late, (2) the State Tax Commission has the power to allow Board of Equalization hearings to be held late, and (3) the Salt Lake County officials did not bother to correspond with the State Tax Commission about Board of Equalization hearings being late until May 17, 1978, more than two weeks after the Salt Lake County Assessor had missed his May 1, 1978 deadline.



If the State Tax Commission had the power to waive or extend the May 1, 1978 deadline, why did not the County and the Commission specifically do that in writing?

There is no grant of power to the State Tax Commission in general or under the re-evaluation program (U.C.A. §59-5-46 and §59-5-109, 1953) allowing extensions of the statutory May deadline of the Salt Lake County Assessor. The terms of the contract between the County and the Tax Commission as discussed above provided for the distinct probability that the reappraisal work would not be done by May 1, 1978. The terms of the contract clearly stated that the Tax Commission was not taking on or changing any of the statutory obligations of the county officials. (T.R.I p. 115)

There was no evidence of an extension granted to the Salt Lake County Assessor for the year 1978 and the Utah State Tax Commission did not have the power to grant any such extension. The fact of the matter is, based on the record before the Court, there was no discussion or mention of any such extension by the County or the Tax Commission.

Point VSUBSTANTIAL COMPLIANCE IS NOT SUFFICIENT  
UNDER U.C.A. §59-5-30 (1953)

The Respondents allege that this Court has indicated that the time limitations set forth in taxing statutes are directory rather than mandatory and substantial compliance therewith is sufficient. They cite U.C.A. §59-11-7 (1953) and K.C.C. vs Salt Lake County, 575 P. 2d 705 (1977) as authority for their position.

The Respondents reliance upon U.C.A §59-11-7 (1953) is misplaced; that section provides as follows:

No assessment or act relating to assessment or collection of taxes is illegal on account of informality or because the same was not completed within the time required by law.

The Appellants are not seeking a declaration that any Respondent did anything illegal or that the 1978 or 1979 property taxes or the assessment thereof is illegal. The Appellants are seeking a determination that certain specific statutory penalties be invoked for failure to comply with specific statutory deadlines. The specific penalty provisions of §59-5-30 and §59-5-33 (1953) must supercede the general disclaimer of U.C.A §59-11-7 (1953). The Court must interpret statutes in such a way as to

give them meaning rather than to create nonsense of them as the Respondents suggest. U.C.A. §§59-5-30 and 59-5-33 (1953) would be meaningless and of no sense, if U.C.A. §59-11-7 (1953) was interpreted as Respondents suggest.

Furthermore, U.C.A. §59-11-7 (1953) has been construed and a determination made that the failure of an auditor to prepare and sign an affidavit of compliance as required by U.C.A. §59-8-7 (1953) is a fatal defect and is not a mere "informality" of the nature contemplated in §59-11-7 (1953). Telonis vs. Staley, 104 U. 537, 144 P. 2d 513; Equitable Life & Casualty Ins. Company vs. Schoewe, 105 U. 569, 144 P.2d 526; Petterson vs. Ogden City, 111 U. 125, 176 P. 2d 599.

In the case at bar, the Respondent assessors did not submit their required affidavits (U.C.A. §59-5-30, 1953) in timely fashions; they could not do so because of their failure to act within statutory limits. Clearly those delays are not of the type and nature contemplated by U.C.A. §59-11-7 (1953) but were fatally defective errors beyond the protection of that section.

The case of K.C.C. vs. Salt Lake County, 575 P.2d 705 (1977) is relied upon by the Respondents in their assertion that substantial compliance of statutory

deadlines for tax assessment is sufficient. That case involved a statute setting a deadline for a county commission to perform its statutory duty in levying a property tax. The statutes involved were U.C.A. §§59-9-6.3 and 17-36-31 (1953); both of these statutes provide deadlines; however, there are no penalties set forth for the failure of the county officials to comply. Both statutes used the word "shall" in setting the deadlines, which has been construed to mean the same as "must" which is used in the statutes requiring the Respondents Cockayne and Yorgason to act in the case at bar.

K.C.C. vs. Salt Lake County stands for the proposition that a statutory requirement (either must, will or shall), such as the deadline for Respondent Assessors will be considered directory rather than mandatory if:

1. The purpose of the statute has been substantially complied with; and
2. No substantial rights have been jeopardized; and
3. There are no negative words or limits within the statutory scheme regarding non-compliance; and
4. The statute was merely a guide for the conduct of business in an orderly fashion; and
5. The purpose of the statute was not to protect the taxpayer.

The crucial points in the case at bar are

(1) the existence of two penalty provisions against the Respondents, who were the Salt Lake County Assessors, and (2) whether a delay of duration involved here under the statutory scheme may be said to be "substantial compliance".

Why would the Utah State Legislature enact the penalty provisions of U.C.A. §§59-5-30 and 59-5-33 (1953) unless they wanted the County Assessor to act on time or pay a penalty. The doctrine of "substantial compliance" may apply where there is no statutory penalty, but it cannot apply to negate specific legislatively enacted "punishments".

Another reason why the case of K.C.C. vs. Salt Lake County is not applicable to the case at bar is the nature of the relief sought. In that case, Kennecott Copper Corporation was challenging the validity of a tax and seeking a refund of taxes paid. The Appellants in this case, Donald and Jane Stromquist, are only seeking a declaratory judgment that the statutory timetables were not met and that the Respondents are subject to specific statutory penalties; they are not seeking a refund or a ruling as to the validity of the tax or its assessment.

The only two viable defenses that the Respondents have asserted are (1) substantial compliance and (2) the State Tax Commission's delay in 1978. Neither of those defenses can stand in light of the penalties specifically enacted and directed against the Respondent Assessors. An attempt to assert the substantial compliance defense or excuse the delay because of the State Tax Commission's action is an attempt to erase from the law the specific penalties enacted (with good reason) by the Utah State Legislature.

The State Tax Commission does not have the power to excuse non-conformance with the statutory requirement and waive the deadline imposed by law. The fact that the State Tax Commission was late in 1978 (assuming that only for the sake of argument) in their re-appraisal, is not an excuse recognizable by statute or by this Court for non-compliance.

In the Answers to Interrogatories by the Respondent Milton Yorgason the real reason for the delays comes out; "it was physically impossible" to meet the deadline, and no Assessor in Salt Lake County has met the deadline for seven years. (T.R.II p. 31) The attempt to

blame the delay on the Tax Commission for the year 1978 is a sham. The truth is that the Assessor's Office has routinely and annually ignored the law. When challenged the Assessor came up with two excuses: (1) blame the State Tax Commission and (2) "we've substantially complied". Neither excuse is valid nor sufficient in light of the specific statutory penalties to be extracted.

#### CONCLUSION

There is no statutory provision allowing the Respondent Assessors to avoid the statutory deadline to complete their assessment book on or before the first Monday in May of each year. The State Tax Commission does not have the authority to repeal the deadline or waive compliance, and even if they did have that authority, they did not grant an extension or waive compliance for either 1978 or 1979.

Substantial compliance is not sufficient when a statutory deadline is provided and a specific penalty for non-compliance is set forth.

The Summary Judgments granted the Respondents below should be reversed and the matters should be



remanded to the Court below with instructions to enter judgment in favor of the Appellants declaring that:

- 1) the statutory deadlines of U.C.A. §59-5-30 (1953) imposed upon the Respondent Assessors were not met in the year 1978 and 1979;
- 2) there was no recognizable excuse for the Respondent Assessors non-compliance with the statutory deadline of U.C.A. §59-5-30 (1953);
- 3) the Respondent Assessors are subject to the penalty provisions of U.C.A. §59-5-30 and §59-5-33 (1953);
- 4) the Respondent Assessors were wrongfully paid their wages and salaries for the period of their non-compliance with U.C.A. §59-5-30 (1953):
- 5) the respondent County Commissioners should be ordered to institute proceedings against the official bonds of the Respondent Assessors for forfeiture pursuant to the terms of U.C.A §59-5-33 (1953); and
- 6) the Respondent County Commissioners should be ordered to institute proceedings against the Respondent Assessors to recover the wages and



salary wrongfully paid to these Assessors  
for the period of their non-compliance  
with U.C.A. §59-5-30 (1953).

DATED this 21st day of April, 1980.

Respectfully submitted,



---

BRIAN M. BARNARD  
Attorney for Plaintiffs-Appellants

214 East Fifth South  
Salt Lake City, Utah 84111  
Phone: (801) 328-9531

I hereby certify that I mailed two copies of  
the foregoing Consolidated Brief of Appellants to William  
Thomas Peters, Special Deputy County Attorney, Counsel  
for the Defendants-Respondents, 220 South Second East,  
Salt Lake City, Utah 84111, postage prepaid in the United  
States Postal Service on the date written above.



---

Brian M. Barnard