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Richard B, Jensen as State Auditor of the State of Utah v. William K, Dinehart, as the Director of the Division of State Lands of the State of Utah : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD B. JENSEN, as State Auditor of the State of Utah,

Plaintiff-Appellant,

-v-

WILLIAM K. DINEHART, as the Director of the Division of State Lands of the State of Utah,

Defendant-Respondent.

Case No. 16832

BRIEF OF RESPONDENT

APPEAL FROM THE ORDER OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE CHRISTINE M. DURHAM, JUDGE.

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TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS CONTINUED

TABLE OF CONTENTS CONTINUED PAGE

STATUTES CITED

CONSTITUTIONAL PROVISIONS CITED

OTHER AUTHORITIES CITED

IN THE SUPREME COURT

OF THE STATE OF UTAH

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NATURE OF CASE

Appellant filed an action in the Third Judicial District Court seeking declaratory relief regarding the disposition of mineral royalties from State school section lands. The principal question is whether the mineral royalties should be placed in a permanent school fund or the uniform school fund. The Third Judicial District Court granted respondent's Motion for Summary Judgment on all issues, holding that the royalties must be placed in the permanent school fund.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the decision of the Third Judicial District Court, declaring that mineral royalties from State

school section lands must be deposited in the permanent school fund.

STATEMENT OF FACTS

In 1894, the United States Congress adopted an Enabling Act (Act of July 16, 1894, Chapter 138, 28 Stat. 107) to allow the people of the Utah territory to form a State government and adopt a Constitution. Section 6 of said Enabling Act provided that, upon the admission of the State into the union, Section Nos. 2, 16, 32, and 36 of every township of said proposed State, or other lands equivalent thereto, would be granted to the State for the support of common schools. The school land grants received by the State totaled 7,501,737 acres. If the lands found in said sections were already reserved for an Indian or military reservation, or for other national purposes, the State could select "in lieu" lands. Section 8 of said Enabling Act reserved certain lands to the University of Utah and, additionally to an agricultural college. Section 9 of said Act provided that five percent of the proceeds of sales of public lands lying within the State sold by the United States subsequent to the admission of Utah into the union should be paid to the State to be used as "permanent funds." Section 10 provided that the "proceeds of land" granted for public school purposes within the Enabling Act should constitute a "permanent school fund,"--the interest only of which should be expended for the support of said schools, with the principal remaining in tact.

Section 12 also granted to the State lands for various purposes, i.e., reservoirs, normal school, death/dumb and blind schools, reform school, insane asylum, school of mines, miners' hospital and penitentiary, etc.

Under the above Enabling Act, the people in Utah formed a State and adopted a Constitution, effective on January 4, 1896. The United States Congress recognized and accepted the Utah Constitution of 1896. (See, Act of January 4, 1896, No. 9, 29 Stat. 876.) The lands set forth in the Enabling Act were subsequently conveyed to the State of Utah, once an official survey was completed.

In the original Utah Constitution of 1896, Art. X, Section 3, provided:

> "The proceeds of all lands that have been, or may be granted by the United States to this State, for the support of the common schools; the proceeds of all property that may accrue to the State by escheat or forfeiture; all unclaimed shares and dividends of any corporation incorporated under the laws of this State; the proceeds of the sale of timber, minerals or other property from school and State lands, other than those granted for specific purposes; and the five per centum of the net proceeds of the sales of public lands lying within the State, which shall be sold by the United States, subsequent to the admission of this State into the union, shall be and remain a perpetual fund, to be called the State School Fund, the interest of which only, together with such other means as the Legislature may provide, shall be distributed among the several school districts according to the school population residing therein." (Emphasis added.)

The original Art. X of the Utah Constitution of 1896, Sections 5 and 10, provided:

> "Section 5. The proceeds of the sale of lands reserved by an Act of Congress, approved February 21st, 1855, for the establishment of the University of Utah, and of all the lands granted by an Act of Congress approved July 16th 1874, shall constitute permanent funds, to be safely invested and held by the State; and the income thereof shall be used exclusively for the support and maintenance of the different institutions and colleges, respectively, in accordance with the requirements and conditions of said Acts of Congress." (Emphasis added.)
>
> * * *
>
> "Section 10. Institutions for the Deaf and Dumb, and for the Blind, are hereby established... . All the proceeds of the lands granted by the United States, for the support of a Deaf and Dumb Asylum, and for an Institution for the Blind, shall be a perpetual fund for the maintenance of said institutions. It shall be a trust fund, the principal of which shall remain inviolate, guaranteed by the State against loss or diversion." (Emphasis added.)

Originally, the Utah Constitution in Art. X, Section 3 of the Constitution, referred to the "perpetual" or "permanent" school fund as only the "State school fund" and did follow the express mandates regarding the nondisposition of the funds set forth in the Enabling Act of 1894.

On or about 1937, the Utah Legislature amended its Constitution, which amendment became effective January 1, 1939, and provided, in part:

> "... And the proceeds of the sale or other disposition of minerals or other property from school and State lands, other than those granted for specific purposes ... shall constitute a fund to be known as the uniform school fund, which uniform school fund shall be maintained and

used for the support of the common and public schools of the State and apportioned in such manner as the Legislature shall provide." (Emphasis added.)

Thereafter, Utah Code Ann., Section 65-1-64, originally adopted in 1899, was amended several times, until, in 1974, the Utah Legislature substituted "uniform school fund" for "State school fund." The uniform school fund was designed to receive the proceeds from the sale of State lands and minerals therein to be expended entirely within the year of receipt, if necessary. The permanent school fund by contrast would have received the proceeds from the sale of land and minerals as a corpus in a trust arrangement, with the interest on said corpus being distributed to the uniform school fund for expenditure on a yearly basis.

Respondent, William K. Dinehart, as the Director of the Division of Utah State Lands, administers thirteen land-grant trust funds. The principal in said trust funds, being the proceeds held permanently for the beneficial use of the common schools and other specifically designated institutions in the State of Utah, comes almost entirely from public school lands. Said proceeds may be: (1) proceeds from the actual sale or disposition of any lands; (2) rentals for the mineral development and mineral use of said lands; (3) bonus fees which private companies have pai at auctions for the privilege of receiving a mineral lease to said State lands; or, (4) royalties from minerals extracted from said lands being either fixed royalties or minimum royalties for production. Therefore,

the permanent school fund consists of land, mineral value and dollars all arising out of the original land grants to the State of Utah. This legal action deals only with the narrow question of "whether proceeds from the mineral value of school land grants should go to the permanent school fund or the uniform school fund."

ARGUMENT

POINT I

THE UNITED STATES CONGRESS ADOPTED THE MINERAL LEASING ACT OF 1927 TO ALLEVIATE CONFUSION OVER MINERAL GRANTS IN STATE ENABLING ACTS AND TO REAFFIRM ITS INTENTION THAT MINERAL PROCEEDS FROM SCHOOL SECTION LANDS BE PLACED IN PERMANENT SCHOOL FUNDS.

Shortly after the territory of Utah became a State on January 4, 1896, decisions by the United States Supreme Court clouded the title of property granted in trust for State school section lands and the disposition of mineral royalties. In the Utah Enabling Act, no specific reservation was made of the minerals by the United States Congress. (Appellant, in fact, admits that it was possible Utah received title to some minerals under the Enabling Act. Appellant's Brief, Pages 19, 20.) The decisions of the Supreme Court basically undid the work of Congress by claiming that lands known to be valuable for minerals were not included in the grants made to the States, since no mention was made of the reserved minerals. See, generally, United States

v. Sweet, 245 U.S. 563, 38 S.Ct. 193, 62 L.Ed. 473 (1918), wherein the United States Supreme Court held that lands known to be valuable for coal mineral at the date title would vest, were not intended by Congress to be included in the grant of school section lands in Utah's Enabling Act. The words "lands known to be valuable for mineral" are words of art and have a specific meaning, namely, (1) location (2) filing claim (3) annual assessment work and that if a claim is staked out and assessment work is done, then the land is known to be valuable for mineral. There is no question that title to the school section lands passed to the State and there is no dispute that those minerals which were not "known to be valuable for mineral," as those terms are used in the mining laws, passed to the State of Utah at statehood (or at the official survey date a few years thereafter). In fact, Utah has "presumptive title" to mineral royalties under the Enabling Act if not known to be mineral at the time of the official government survey (said survey being circa 1902). See generally Work v. Braffet, 276 U.S. 560, 48 S.Ct. 363, 72 L.Ed. 700 (1928). See, also, Deffeback v. Hawke, 115 U.S. 392, 6 S.Ct. 95, 29 L.Ed. 423 (1888).

Following the decision of the U. S. Supreme Court in Sweet, supra, it appeared as if a great injustice was placed upon the citizens of the State of Utah who in good faith made purchases of State school section lands. The State would transfer its title in good faith. In later years, subsequent development of the surrounding territory would

show promise of being mineral in character, and this often, after extensive and expensive exploration work, would indicate the presence of a mineral. From this developed the doctrine of "geological inference," by which, if it could be reasonably inferred that somewhere beneath the surface there was a mineral in any of these lands, the title was clouded because it may have been known to be valuable at the date of statehood.

In 1926, the United States Congress, as a result of the confusion and uncertainty that had been created regarding the titles to so many State school section lands in Utah and in other public land States, considered the adoption of certain mineral leasing acts upon which appellant relies to demonstrate--incorrectly--that the Utah Enabling Act in 1894 did not contemplate placing mineral royalties from State school section lands in a permanent trust fund for the support of the common schools. Appellant alleged in his Complaint that the United States Congress had consented to placing proceeds from the sale of mineral royalties on land elsewhere than in the permanent school fund by enactment of various and sundry acts of Congress. In particular, appellant relies heavily upon an Act of Congress approved January 25, 1927, (44 Stat. 1026).

A closer examination of the legislative history surrounding the adoption of the Act of Congress of 1927 discloses that the United States

Congress had every intention of maintaining the requirement that the proceeds from the disposition of State school section lands and their mineral royalties be placed in permanent funds for the benefit of the common schools. Some States were required by their Enabling Acts to place mineral proceeds in permanent funds, while others, like Utah's Act, were simply silent as to the disposition of mineral royalties. But Congress clearly intended that the newly adopted Mineral Leasing Act of 1927 relate back to the respective Enabling Acts on an equal and uniform basis and said Act would have a similar impact on all States alike. In the United States Congressional Record, Vol. 68, Part 2, of the 69th Congress, Second Session, January 17, 1927, is recorded the following comments regarding the Senate Bill 564 (Act of Congress, January 25, 1927, 44 Stat. 1026), which had just been passed. The comments attributed to Mr. Colton, the representative from the State of Utah, are as follows:

> "The law just passed relinquishes to the various states the title of the United States to all lands designated in the grant, including the mineral therein found in aid of common or public schools... . I want to note also that this bill is a conservation measure; the bill also requires the states to reserve and withhold unto themselves all minerals of whatsoever character in any and all lands which they might transfer or sell, giving to them, however, the right to lease the minerals in the lands and to utilize the proceeds received as royalties or rentals 'for the attainment of the purposes for which the lands were granted as the case may be.'" (At page 1817) (Emphasis added.)

* * *

"I think we are especially indebted to him for the proviso retaining in the states the mineral which we hope will build in the future a great school fund." (At page 1817)

The Congressional Record of the House also went on to record the comments of Representative Morrow from the State of New Mexico regarding the Senate Bill 564 which had just passed:

"Mr. Speaker, in the passage of Senate Bill 564 introduced in the Senate by Senator Jones of New Mexico and amended in the House, an important step has been accomplished in the securing of title to the school lands which have been granted to twelve of these western states. The placing of the mineral rights in charge of the states will bring to each state an immense school fund if each state will in turn use business judgment.

"The mineral being reserved to the state in the Act just passed for the use of schools is very proper and timely.

"History presents to us examples of the failure of nearly all the states receiving the earlier grants for its public schools to save and invest the revenue in a permanent fund... .

"The securing title by the states to the lands granted in aid of the public schools and the lands granted to state institutions has been a long struggle for the western states admitted into the union since the year 1845.

"By the passage of this Act, the State of New Mexico should secure title in fee to 8,711,952 acres of land; the twelve states involved, a total of 54,587,647 acres. What a vast heritage this will be for our public schools; also, what an immense burden in taxation will be lifted from the taxpayer if this vast estate is handled honestly, faithfully, and economically.

"It is up to the states to see that their future state officers in charge of this vast empire of wealth possess the ability, integrity and judgment to carry forward in the manner indicated in the Act of Congress. Some will fail unless future state legislation is so enacted as a complete safeguard for the trust that its officers will be required to manage and carry out.

"This land will not be disposed of in a few years; but should be sold so as to create a permanent fund. This fund, if handled properly, will continue to grow and accumlate for a century to come." (At page 1820) (Emphasis added.)

And further enlightenment that the intention of Congress that the Enabling Acts regarding the disposition of minerals be not altered by the Act of Congress of 1927 is supported by an official House of Representative's Report No. 1617 of the 69th Congress, Second Session, filed with the Committee of the Whole House on the State of Union from the Committee on Public Lands dated December 9th, 1926, by Representative Colton of Utah. This report was to accompany Senate Bill 564 and notes:

"The proposed legislation deals only with those lands which were granted to the states by Congress in their Enabling Acts for the benefit of their common and public schools and other state institutions, which grants comprise but a very small fraction of the entire area in the state ... .

"It should also be borne in mind that only the interest from the funds which a state receives from the sale, lease, or rental of these lands, or the minerals therein, can be expended--that is to say, the principal cannot be used. This, for the reason that Congress saw fit in passing the Enabling Acts of the various states provided therein, that the funds

> derived from the sale, lease, or rental of these school lands, should be invested to form a principal, permanent fund--the interest only of which might be used for the benefit of the common and public schools or other state institutions as the case may be. Thus, it will seem that the principal can never be depleted or dissipated. It will be noted that, under this plan, it is necessary for a state to accumulate a principal fund of some considerable amount in order to realize sufficient interest to be of benefit to its common school system and to result in the reduction of taxation for school purposes. Having this in mind, your committee fully realizes the difficulties under which these states are forced to labor and, therefore, reach the conclusion that their cause was a meritorious one, and that Congress could well afford to adopt a beneficent attitude toward them in view of the end desire to be accomplished. It also prevents valuable mineral lands from falling into the hands of third parties, thereby insuring the proper return and full measure of support to the particular institution to which the lands were granted.
>
> "Some states have already enacted laws reserving under themselves all minerals found in state lands which are sold. Those that do not have such provisions upon their statute books, of course, must comply with the terms of the act in order to realize its benefits." (At pages 3 and 4)

The above-cited House Committee report, even though suggesting an amendment to the statute not relevant herein, demonstrates that the United States Congress, in adopting the Act of 1927, clearly intended that the mineral proceeds from State school section lands would be treated in exactly the same manner as set forth originally in the respective Enabling Acts of the various public land States affected thereby. In fact, the Act itself, in Chapter 57, subparagraph (b) provides, inter alia:

"The coal and other mineral deposits in such lands shall be subject to lease by the state as the state legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support and in the aid of the common or public schools; ... ." (Emphasis added.)

The Act of Congress of 1927 further provides, in section two:

"... That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of states under grants other than for the support of common or public schools by numbered school sections in place, and this act shall not apply to indemnity or lieu selections, or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the state under the provisions of this or other acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect." Act of Congress, January 25th, 1927, 44 Stat. Chapter 57, Pages 1026, 1027. (Emphasis added.)

The above-cited provisions of the statute reenforces the conclusion that Congress intended to remove the confusion regarding the grant of minerals and expected and mandated that the mineral royalties be treated in the same manner as originally contemplated in the Enabling Acts. If the proceeds of the sale of school section lands must go to a permanent fund, then the proceeds of the mineral value must go to the permanent fund. The Utah Constitution of 1896, as originally adopted which was approved by the Unite States Congress, contained in Art. X, Section 3, the following language:

"The proceeds of all lands that have been or may be granted by the United States to this state for the support of the common schools; the proceeds of all properties that may

> accrue to the state by escheat or forfeiture; all unclaimed shares and dividends of any corporation incorporated under the laws of this state; the proceeds of the sale of timber, minerals or other properties from school and state lands, other than those granted for specific purposes; and the five per centum of the net proceeds of the sales of public lands lying within the state, which shall be sold by the United States, subsequent to the admission of this state into the union, shall be and remain a perpetual fund to be called the state school fund, the interest of which only, together with such other means as the Legislature may provide, shall be distributed among the several school districts according to the school population residing therein." Utah Constitution, Jan. 4th, 1896, Art. X, Section 3. (Emphasis added.)

Art. X, Section 3 of the Utah Constitution, cited above, from the date of the admission of Utah into the union until some forty years later, was recognized by the Legislature and the people of Utah to include as part of land grant trusts for common schools created by Congress, the sale and use of minerals, rentals, and royalties from State school section lands, as more fully set forth in paragraph 14(a) of appellant's Complaint which this respondent admits and relies upon.

Appellant also relies upon the Mineral Leasing Act (Act of Congress, February 25, 1920--41 Stat. 450) of 1920, which does not provide support for appellant's position, nor do the so-called Dawson Acts adopted August 27, 1958, 72 Stat. 928, September 14, 1960--74 Stat. 1027, 43 U.S. Code Ann., Section 852, by their own terms and wording. The overriding congressional intent in 1927 was to grant the maximum amount of

economic benefit to support public education and common schools by removing the confusion regarding the disposition of minerals.

In conclusion, respondent submits that both classes of minerals ((1) those minerals that were not known to be valuable at statehood which did pass to Utah under the Enabling Act; and (2) those minerals which were granted by the 1927 Mineral Leasing Act) were specifically intended by Congress to be governed by the Utah Enabling Act, which requires that proceeds from the mineral value of the land, be held inviolate in the permanent school fund.

Appellant's arguments regarding the proper interpretation of the Act of Congress of 1927 are without merit in light of: (1) the above-cited Congressional Record and Congressional Reports; (2) the language of the Act of Congress of 1927, and (3) the early Utah Constitution.

POINT II

"PROCEEDS" FROM PUBLIC SCHOOL LANDS INCLUDE MINERAL SALES AND LEASE REVENUE, MINERAL BONUSES, FEES, AND MINERAL ROYALTIES, ALL OF WHICH ARE WITHIN THE MEANING AND SCOPE OF SECTION 10 OF THE ENABLING ACT.

Section 10 of the Enabling Act (Act of July 16, 1894, Chapter 138, 28 Stat. 107), provides:

> "That the proceeds of lands herein granted for educational purposes, except as otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to preemption, homestead

entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only." (Emphasis added.)

The Utah Supreme Court in 1959 in Chase v. Morgan, 9 Utah 2d 125, 339 P.2d 1019, held that "minerals in place constitute real estate." The Court stated, at page 129:

"Undetached minerals are part of the earth and, therefore, realty."

The words "proceeds of lands herein granted" should include mineral sales and rentals, bonus payments, fees and royalties from the extraction or use of minerals derived from said lands. Possibly the best case in determining the proper interpretation to be placed on the word "proceeds" as used in a State Enabling Act is found in School District No. 23 (Mountain Grove School District) of Okfuskee Co. v. Commissioners of Land Office of Oklahoma, et al., 27 P.2d 149, wherein the Oklahoma Supreme Court held that funds arising from oil and gas leases on State school section lands must be paid into the permanent school fund, the interest of which only may be expended in the support of schools. The Court gives a detailed history of other court decisions that have reached similar conclusions in holding that all funds arising from bonuses, royalties, and rentals for oil and gas leases from State school section lands should be placed in permanent funds. The Court particularly relies on the case of Hubert Work v. U.S. ex rel. William T. Mosier, 261

U.S. 352, 43 S.Ct. 389, 67 L.Ed.693, and Wright v. Carter Oil Co., 97 Okla. 46, 223 P.835, which held that bonuses, rentals, and royalties are income from the use of mineral resources of the land. The Oklahoma Supreme Court also relied upon the decision in Wyoming of State ex rel. School District No. 1 in Weston Co. v. Snyder, State Treasurer, 29 Wyo. 163, 212 P. 758, and Commission of Appeals of Texas in State ex rel. Attorney General v. Hatcher, State Treasurer, 115 Tex. 332, 281 S.W. 192, which decisions also applied a broad definition to the term "proceeds" in connection with mineral resources in State school section lands. The Oklahoma Supreme Court concluded its opinion by noting:

> "We think it clear that it was the intention of Congress in passing the Enabling Act and the framers of the Constitution of the State of Oklahoma and the people in adopting the same that all funds arising from bonuses, royalties, and rentals for oil and gas leases contemplated a diminution of the corpus of the school lands, and that the same shall be carried into and credited to the permanent funds for the uses and purposes designated in the grant of such lands by Congress to the State of Oklahoma... ." (At page 153)

In Hunt v. Williams, 26 N.E. 177, 126 Ind. 493 (1891), the Indiana Supreme Court held that a devise of one-half of the proceeds of a farm under a will gave the devisee an interest in the land itself. The Court noted:

> "The word 'proceeds' is one of equivocal import and of great generality. It does not necessarily mean money, its meaning in each case depending very much upon the connection in which it is employed and the subject matter

to which it is applied. (Citations omitted.) Strictly speaking, it implies something that arises or leads out of or from another thing, and in its ordinary acceptation, when applied to income to be derived from real estate, it embraces the idea of issues, rents, profits, or produce." (At page 177)

Respondent submits that the broadest definition of "proceeds," which should include any economic value, whether in dollars or otherwise, and whether directly or indirectly extending from the beneficial use of State school section lands, is the appropriate definition. That is--sums received for delay rentals, bonuses, fees and various forms of mineral royalties and the land itself--all constitute the total "economic value" to be derived from State school section lands. Currently, the permanent school fund is comprised of school lands and proceeds in dollars from the sale, use, rental, etc., of the lands and minerals, as well as interest on the actual dollars held. Therefore, the trust is comprised of land, minerals and dollars and combinations thereof. Furthermore, placing the broadest definition on "proceeds" provides greater safeguards as the State carries out the constitutional mandate in Art. X, Section 7, which requires that:

> "All public school funds shall be guaranteed by the State against loss or diversion."

Section 10 of the Enabling Act cited above refers to "proceeds of lands" which should be contrasted with Section 8 of the Enabling Act that discusses "proceeds of the sale of said lands." This difference

in usage within the same Enabling Act would compel one to believe that Congress intended a different meaning to attach to Section 10 in discussing "proceeds of lands."

Section 8 of the Enabling Act also provides inter alia:

> "That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds." (Emphasis added.)

which reenforces the conclusion that proceeds include all mineral derivative revenue.

Utah Code Ann., Section 68-3-1, provides:

> "Words and phrases are to be construed according to the context and approved usage of the language... ."

"Where there is doubt respecting true meaning of certain words, then words should be read in light of conditions and necessities which they are intended to meet and objects sought to be attained thereby." United States Smelting Refining & Milling Co. v. Utah Power & Light Co., 58 Utah 168, 197 P. 902.

Appellant (Appellant's Brief, pages 18-19) argues the diminution of land value is required and a sorted analogy is offered (page 18) that rentals from school lands are similar to interest earned from the permanent fund. The analogy fails when considered further. Do the rentals remain in the fund to generate compounded interest? No. Is the benefit to school children thereby compounded if the rentals are spent annually? No. There is no permanent benefit to school children. The permanent school fund

can be increased but cannot be diminished, by definition of a "perpetual fund" and by the express language of the Enabling Act and the subsequent Utah constitutional enactments. Respondent submits that mineral sales and lease revenue, bonuses, rentals, and royalties--all constitute "proceeds of lands" within the meaning of Section 10 of the Enabling Act.

POINT III

THE UTAH LEGISLATURE CANNOT UNILATERALLY CHANGE ITS CONTRACT OR TRUST ARRANGEMENT WITH THE UNITED STATES CONGRESS SET FORTH IN THE ENABLING ACT BY AMENDING ITS CONSTITUTION.

Respondent submits that the State of Utah cannot amend its Constitution to provide that mineral proceeds from State public school lands shall go to the uniform school fund, as such would constitute a unilateral breach of a contractural or trust agreement[1] between the people of the territory of the State of Utah and the United States Congress which enabled Utah to become a State. The leading case in this area is Oklahoma ex rel Mac O. Williamson, Attorney General v. Commissioners of Land Office, 301 P.2d 655 (1956), wherein the Oklahoma Supreme Court unanimously held that the Oklahoma Legislature violated the conditions of its Enabling Act which reserved mineral royalties to a permanent school fund on the basis that the Enabling Act controlled by virtue of the Supremacy

[1] Duchesne County v. State Tax Commission of Utah, 104 Utah 365, 140 P.2d 335 (1943)

Clause of the United States Constitution. The Court stated:

> "Herein, there are involved conditions affixed by Congress in the Enabling Act which pertain to proprietary rights of the United States and the placing of restrictions upon the disposition of the property of the United States being placed in trust with the State as distinct from conditions qualifying political rights of the new State. We do not perceive a limitation or restriction on the State in the exercise of its sovereign powers in the advancement of education or schools in the terms of an Enabling Act. We see therein only regulations touching the care and disposition of properties granted in trust to the State by the federal government.
>
> "It has been held by the highest authority that congressional regulations in an Enabling Act remain in force after admission of the State into the union, if the subject is one within the regulating power of Congress. United States v. Sandoval, 231 U.S. 28, 34 S.Ct. 1, 58 L.Ed. 107." (At page 659)

The Court found that said regulations by the United States Congress in the Enabling Act exist as valid laws of the United States, and under the Supremacy Clause of the United States Constitution, Art. VI, Section 2, said laws may not be modified or changed by an act of the Oklahoma Legislature or the people of Oklahoma in amending their Constitution.

The Court in the above Oklahoma v. Commissioners, supra, distinguished the case of Coyle v. Smith, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed 853, (1911), which struck down a provision of the Oklahoma Enabling Act, requiring the City of Guthrie to be maintained as the capital city of the new State of Oklahoma until 1913, as an invasion by Congress into the

reserved sovereignty of the State of Oklahoma, since Oklahoma was entitled to come into the union on equal footing with other states. The Oklahoma Supreme Court noted that the Coyle case was significantly different than the above Oklahoma v. Commissioners, supra, because the latter dealt with the care and disposition of federally granted lands within the regulating power of Congress.

Although the Oklahoma Court did not rely upon Art. IV, Section 3 of the United States Constitution, respondent would submit that there is also reserved to the United States Congress the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. Based upon the Supremacy Clause of the United States Constitution and the provision cited, a State cannot unilaterally change a provision of its Enabling Act regarding the disposition of the proceeds from the sale of public school lands previously held by the United States government and subsequently conveyed to the State of Utah upon its admission into the union.

In Coyle v. Smith, supra, referred to above regarding the capital city of Guthrie, Oklahoma, the United States Supreme Court provided a third legal basis for upholding the conditions in an Enabling Act dealing with public lands. The Court stated that Congress has the power to make conditions in an Enabling Act and "require the State to assent thereto" as to such subjects as are within the regulatory power of Congress. (At

221 U.S. 559, 574 This would seem to recognize the existence of a binding contract between the United States Congress and people in a territory seeking statehood.

In 10 Columbia L.Rev. 591, 599-600, dealing with State violations of the Enabling Acts, it was noted:

> "Certainly a State may enter into binding contracts. That it can do so is one of the best evidences that it is free and sovereign. Undoubtedly, any binding contract by the State lessens the State's power to act in a manner as shall impair that contract. Compacts and agreements by the State, whether made by law, ordinance, or constitutional provision with any person, corporation, State, United States or other entity, are contracts which cannot be by the State later impaired, but every such contract and in whatever form is enforceable by the other party to it only provided the action which the State contracts to take or not to take is of such a nature as not to involve an essential interference with the fundamental attributes has never been attempted. Mr. Greenleaf, in a note to his edition of Cruise on Real Property says:
>
> "'An important distinction should be observed between those powers of government which are essential attributes of sovereignty, indispensable to be always preserved in full vigor, such as the power to create revenues for public purposes, to provide for the common defense, to provide safe and convenient ways for the public's necessity and convenience, and to take private property for public uses and the like; and those powers which are not thus essential, such as the power to alienate the lands and other property of the State and to make contracts of service or of purchase and sale or the like. Powers in the former class are essential to the constitution of society as without them no political community can well exist; and necessity requires that they should continue unimpaired.'"

The Public Land Law Review Commission noted the bilateral nature

of the federal school land grant program:

> "Commencing with Ohio, the traditional requirement has been that the new public land States must adopt an 'irrevocable ordinance' preliminary to admission to the union in which they recognize the property rights of the United States in the public lands, and that all federal property shall be immune from State taxation. In addition, the States have agreed not to tax transferees of federal lands for a stated period and to tax nonresident ownerships the same as those of residents.
>
> "In this sense, public land grants to States have not been strictly unilateral bounties, but rather important elements of bilateral compacts." (One-Third of the Nation's Land, A Report to the President and to the Congress by the Public Land Law Review Commission, p. 244 (1970))

The foregoing quotation is bottomed on sound judicial authority. In Cooper v. Roberts, 18 How. 173 (1855), the Supreme Court characterized a school land grant to Michigan as a "compact" between Michigan and the United States. And, in United States v. Aikens, 84 F.Supp. 260, 266 (1949), aff'd. sub. nom., 83 F.2d 192 (9th Circ. 1950), the Court reviewed a considerable number of cases, and concluded that railroad grants should be strictly construed, but that school land grants should be liberally construed because such grants:

> "... are grants from one sovereign, the United States, to another sovereign, the State, for public, and not private purposes of profit, and are not subject to such narrow construction."

The United States Supreme Court underscored the solemnity of the school trust obligation in 1967 when it decided Lassen v. Arizona, 385 U.S.

458 (1967). In that case, the land commissioner of Arizona assumed that he could grant rights-of-way and material sites on school trust lands to the Arizona Highway Department without cash compensation to the school trust fund, if the highway would enhance the value of the adjoining school lands by a measure equaling or exceeding the value of the rights-of-way and material sites granted. The Court held that the nature of the federal trust as created by the school land grants to the State prevented such action, and said that:

> "... Arizona must actually compensate the trust in money for the full appraised value of any material sites or rights-of-way which it obtains on or over trust lands." (385 U.S. at 469)

The Court further explained that:

> "... The lands at issue here are among some 10,790,000 acres granted by the United States to Arizona in trust for the use and benefit of designated public activities within the State. The Federal Government since the Northwest Ordinance of 1787 has made such grants to States newly admitted to the union. Although the terms of these grants differ, at least the most recent commonly made clear that the United States has a continuing interest in the administration of both the lands and the funds which derive from them. The grant involved here thus expressly requires the Attorney General of the United States to maintain whatever proceedings may be necessary to enforce its terms. We brought this case here because of the importance of the issues presented both to the United States and to the States which have received such lands." (385 U.S. at 460-61)

The importance of this public trust has never been questioned by the courts. See Alamo Land & Cattle Co., Inc., v. State of Arizona, 47 L.Ed. 2d 1 (1976).

Respondent submits that the Enabling Act between United States Congress and the people of the territory of Utah was a binding contract and a trust arrangement which the people of the State of Utah cannot unilaterlly change by acts of the Legislature or by amending their Constitution on the basis of: (1) United States Constitution Supremacy Clause; (2) because the lands in question were within the express regulatory power of Congress; (3) the State by its own Constitution (Art. I, Section 18) cannot impair obligations of contracts, and (4) because of the State's trust obligations.

CONCLUSION

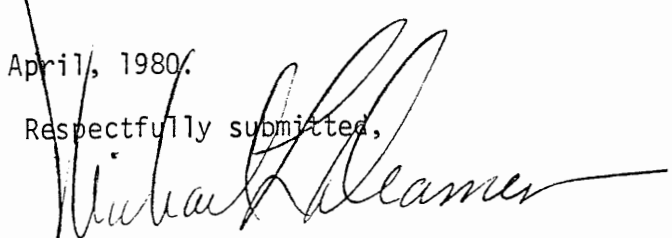
Arguments are made by appellant on page 22 regarding the loss of "270,000 square feet of badly needed school space" and Appendix A to appellant's Brief, which is a self-serving letter from the Utah State Auditor dated February 28, 1980, indicates that approximately 1,000 elementary school children will be affected by this Court's decision. Respondent is sure that the 1,000 children include "crippled children from broken and destitute homes whose thinly-clad bodies have been bruised and battered by the misfortunes of war and pestilence and those who would misappropriate school money." This issue should be

resolved on the relevant law and not emotionalism and certainly not irrelevant facts not before the Court.

In conclusion, respondent submits that the mineral derivative revenue from State school section lands received either from (1) the Enabling Act at statehood, or (2) the subsequent 1927 Mineral Leasing Act, must be maintained in the permanent school fund. The proceeds in said permanent school fund should include all rentals, bonuses, fees, and royalties arising from the mineral value of school section land. The Enabling Act is a binding compact, and, under the Supremacy Clause of the United States Constitution, the people of Utah cannot unilaterally change that compact. The District Court decision should be affirmed, requiring all proceeds from minerals on State school section lands to be placed in the permanent school fund--the interest only of which may be distributed to the schools annually.

DATED this 1st day of April, 1980.

Respectfully submitted,



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