

1953

# Margaret Conover and Lorraine Beach v. Board of Education, Nebo School District, et al : Reply Brief of Amici Curiae

Utah Supreme Court

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# IN THE SUPREME COURT of the STATE OF UTAH

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MARGARET CONOVER AND LORAINÉ  
BEACH,

*Plaintiffs and Appellants,*

— vs. —

BOARD OF EDUCATION, NEBO SCHOOL  
DISTRICT. HAROLD CHRISTENSEN,  
LAVON PAYNE, L. J. CRABB, WILLIAM  
F. BROADBENT, DR. JESSE ELLS-  
WORTH, Board Members and B. L.  
ISAACS, Clerk of said Board,

*Defendants and Respondents.*

---

JOHN F. FITZPATRICK, Publisher of the  
Salt Lake Tribune, a daily newspaper pub-  
lished in Salt Lake City, Utah, CHARLES  
W. CLAYBAUGH, Publisher of Box Elder  
Journal, a weekly newspaper published in  
Brigham City, Utah, HARRISON CON-  
OVER, Publisher of the Springville Herald,  
a weekly newspaper published in Spring-  
ville, Utah and NORMAN J. FULLEN-  
BACH, Publisher of the Richfield Reaper,  
a weekly newspaper published in Richfield,  
Utah,

*Amici Curiae.*

---

## REPLY BRIEF OF AMICI CURIAE

---

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*Plaintiffs and Appellants,*

— vs. —

BOARD OF EDUCATION, NEBO SCHOOL DISTRICT, HAROLD CHRISTENSEN, LAVON PAYNE, L. J. CRABB, WILLIAM F. BROADBENT, DR. JESSE ELLSWORTH, Board Members and B. L. ISAACS, Clerk of said Board,

*Defendants and Respondents.*

---

Case No.

8048

JOHN F. FITZPATRICK, Publisher of the Salt Lake Tribune, a daily newspaper published in Salt Lake City, Utah, CHARLES W. CLAYBAUGH, Publisher of Box Elder Journal, a weekly newspaper published in Brigham City, Utah, HARRISON CONOVER, Publisher of the Springville Herald, a weekly newspaper published in Springville, Utah and NORMAN J. FULLENBACH, Publisher of the Richfield Reaper, a weekly newspaper published in Richfield, Utah,

*Amici Curiae.*

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## REPLY BRIEF OF AMICI CURIAE

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### STATEMENT OF FACT

The writers of the Brief for Respondents have charged Amici Curiae with disregarding a Stipulation of Plaintiffs and Defendants and with having briefed the case on the basis of part only of the facts before the

trial Court, (Respondents' Brief, page 3), and have characterized the said Brief as one begging the question, (Respondents' Brief, page 6), and with being presumptive (Respondents' Brief, page 16). Respondents contend that under certain inferences, the tentative memoranda of the Clerk of the Supreme Court or of the trial Court, could be demanded (Respondents' Brief, page 22), and that demands might be made on other offices, which would result in utter disaster of public administration (Respondents' Brief, page 23). These statements are not rational inferences from the facts and the law in the case before this Court, nor can they be found in the Brief of Amici Curiae.

The first seventy words on page 26 of Respondents' Brief could not have been evoked from anything set forth in the Brief of Amici Curiae and appear to be redundant to the issues.

Respondents, on page 6 of their Brief, make this statement:

“Most of the brief of amici curiae begs the question; more, before a less deliberate body it would involve danger through tyranny of concept without reference to facts of confusing and prejudicing the real merits of the controversy.”

This appears to be a riddle wrapped in an enigma. The Brief of Amici Curiae was addressed to the Supreme Court of this State for its thoughtful consideration.

Amici Curiae submit that the controlling fact in this case and the fact upon which the decision of this Court

must ultimately be based, is purely and simply that the Clerk had prepared his minutes, no matter what they are labeled, and that Respondents claim that neither Amici Curiae, nor the public, is entitled to see such minutes, or to know what transpired at such meetings, unless they were present, until Respondents, at their pleasure, approve said tentative minutes and open them up for public view.

This fact is admitted by the Answer of the Defendants, and is the basis of the District Court's Memorandum Decision and is the foundation of the Findings of Fact, Conclusions of Law and the Decree of the District Court.

#### A. PLEADINGS:

Let us examine the Pleadings of the Plaintiffs and Defendants to ascertain what was alleged and what was admitted:

It is alleged by the Complaint that the Plaintiffs called in person at the offices of the Board of Education, on February 19, 1953 and requested the opportunity to examine and copy the minutes of said meeting of February 18, 1953. (Record 10). This is admitted by the Defendants. (Record 15). But the Defendants allege, in this connection, that said minutes were not available, and that only tentative notes of such minutes, subject to the approval of the Board of Education, were available.

In paragraph V of the Complaint, Plaintiffs allege that they were advised by the Clerk's office that although said minutes had been transcribed by the Clerk, that they were, nevertheless, not available for inspection until after they had been first read and approved at a subsequent meeting of the Board. (Record 11). The Answer of the Defendants states that Plaintiffs were advised by the Clerk's office that the said tentative notes were not available for inspection until after they had been first read and approved at a subsequent meeting of the Board, but deny that any minutes had been transcribed by the reporter or Clerk, and that the Clerk had only *transcribed tentative notes so as to present them to the Board at the next succeeding meeting of the Board, for approval as official minutes*. (Record 15). (Italics added for emphasis by the writer).

It is further alleged in paragraph 6 of the Answer, that such decisions have been arrived at, at such meetings at which the Plaintiffs have been at liberty to attend, or concerning which, they have been at liberty to secure information from anybody in attendance, but that *tentative notes of minutes made by the Clerk, until approved by the Board, do not represent official minutes or records* of said meetings, and that it is the action taken at said meetings, rather than any tentative notes of its proceedings, which are efficacious or controlling. (Record 15). (Italics added for emphasis by the writer).

Defendants deny that the minutes of the meetings of said Board, even though they are approved, are public

writings, within the provisions of Section 78-26-1, Utah Code Annotated, 1953, and allege in this connection, that the tentative notes made by the Clerk, which were demanded by Plaintiffs prior to their approval by said Board, were not, and are not, public writings within the provisions of Section 78-26-1, Utah Code Annotated, 1953, or at all. (Record 15 and 16).

At this point, it may be well to observe that the legal conclusions, which were alleged by the Complaint and asserted in the Answer, cannot be taken as a statement of fact, but are matters for the Court to determine.

It may be well to notice here that the record of the meeting, made by the Clerk, whether it be called minutes, tentative notes or transcriptions, was approved by the Board *some time* before the Answer was filed, and are now the official minutes, (See Fourth Defense, Record 18), viz: March 16, 1953. (Italics added for emphasis by the writer).

Paragraph VIII of the Complaint alleges that the Plaintiffs have a right as citizens and taxpayers to take a copy of said minutes, pursuant to the provisions of Section 78-26-2, Utah Code Annotated, 1953, without being required to await approval of said minutes at a subsequent meeting of the Board. (Record 11). Paragraph 8 of the *Answer admits* that the *Plaintiffs have a right to inspect and make a copy of the official minutes* of the Board of Education meetings, *upon their approval by said Board*, but *deny* that *Plaintiffs have a right*, as citizens and taxpayers, or otherwise, *to inspect and take*

*copies of tentative notes of the Clerk before said notes are made or adopted as minutes of said meeting, or before they are approved by said Board, or before they are included in the official minute book of the said Board of Education.* (Record 16). (Italics added for emphasis by the writer).

Paragraph IX of the Complaint alleges that the refusal of the Clerk's office to permit the inspection of Board minutes, is based, in part at least, upon a written communication from the State Superintendant of Public Instruction, which letter is quoted. (Record 11-12). Paragraph 9 of the Answer admits this. (Record 16).

Paragraph X of the Complaint alleges that Plaintiffs are entitled to current and timely information, with respect to the activities of their School Board. (Record 12). Paragraph 10 of the Answer admits paragraph X of the Complaint and alleges that Plaintiffs are able and have never been prevented from attending meetings of the Board of Education, to observe first-hand as to the action taken by said Board, and that they are at liberty to secure information from anyone else in attendance at said meetings, and are at liberty to examine any official minutes or records of said Board. *But Defendants allege in this connection, that it would be contrary to public policy, to the prerogatives of said Board, and to the interest of taxpayers generally, if tentative notes of proceedings, before they have been approved by the said Board, as representative of its decisions, and before they have been authenticated or confirmed in any way,*

*were released as official records, or as public writings, or as any other official document or action of said Board. (Record 16 and 17).*

Paragraph XI of the Complaint alleges a controversy, and that the Defendants are legally obligated to make the minutes of their meetings immediately available for inspection, by having said minutes promptly transcribed and available. (Record 13). The Defendants admit that a controversy has arisen because of unfounded charges of Plaintiffs, and admit that the Plaintiffs assert that Defendants are legally obligated to make said notes immediately available for inspection, and allege that the Plaintiffs assert the right to dictate to the Board as to the way, and when, its minutes are to be transcribed, approved or otherwise made available, but deny that said charges are reasonable or correct. (Record 17).

The Third Defense alleges that tentative notes of proceedings, made by the Clerk of the Board, prior to their checking by the Board, have involved inaccuracies, and the Board, pursuant to its authority, and in furtherance of the public interest, and to assure accuracy, *has adopted the procedure of having tentative notes of said proceedings submitted to it for checking as to accuracy and approval, before being accepted as minutes of said meetings*; that the Board has in no respect sought to suppress any information, nor to prevent in any way the attendance of the Plaintiffs, or others, to observe firsthand, the action and proceedings taken, or to prevent the Plaintiffs, or other citizens, from examining all of

its minutes or other official records, at the earliest practicable time. (Record 17 and 18). (Italics added for emphasis by the writer).

The Fourth Defense alleges that the public writings involved in proceedings of said Board, as kept by the Clerk thereof, and as required to be kept by said Clerk, pursuant to law, consist of those minutes and proceedings recorded in the official journal of said Board of Education. There are other allegations in said Fourth Defense, among which is the statement that the Plaintiffs have not been prohibited from inspecting the official journal, including all official minutes or public writings concerning said minutes and said journal is always available, as properly kept by the Clerk, but that the writing demanded by Plaintiffs was not a public writing and was not an official matter, and was no part of the official journal of said Board *at the time said writing was demanded by the Plaintiffs*. But that since said time, official minutes of said meeting have, in the regular and proper conduct of the business of said Board, been added to the said journal, which journal, including said minutes, now is available for inspection. (Record 18 and 19). (Italics added for emphasis by the writer.)

In analyzing the Complaint and the Answer in this case, it is contended that the legal conclusions are not statements of fact and are never admitted, so that the statement, referred to in the Fourth Defense, that the record is not a public record, is not admitted under the rule of pleadings.

At page 23 of the Record, it is apparent from the statements therein made, that the matter was submitted on the pleadings.

## B. MEMORANDUM DECISION:

The Memorandum Decision of the Court (Record 34), shows that the pleadings should constitute the fact record, but the Court says that the parties were not in entire agreement as to what facts actually appeared by the pleadings, and therefore, the Court makes a summary statement of fact to show upon what the Court based its decision.

In its Memorandum Decision, the Court makes the statement:

“The following day, February 19th, the Plaintiffs called in person at the office of the ‘Nebo School District’ which presumptively, is the same as the office of the Clerk or Board of Education, and thus where the records of the Board are kept, and asked to be permitted to ‘examine and copy’ the minutes of that meeting and were advised that ‘although said minutes had been transcribed by the reporter’, which transcription was of tentative minutes, or the Clerk’s ‘tentative notes of minutes’, subject to approval by the Board, such transcription was not available for inspection until after they had been ‘read and approved at a subsequent meeting of the Board.’” (Record 35).

The Court also stated that the refusal of the Clerk’s office was based in part upon a letter from the State Superintendant of Public Instruction, advising the

Board that the minutes of the Board are *not official until approved by the Board*, and that the question as to whether tentative copies of minutes should be sent to each Board member immediately following the meeting, or whether the Clerk should not distribute such copies until the next meeting of the Board when they would be read and approved, was an administrative matter, determinable by the Board itself. (Record 35). (Italics added for emphasis by the writer).

At Record 36, it is apparent from the Court's Memorandum Decision that the Court states the factual matter, and that the Board claims the right to reserve their tentative notes of proceedings *until they have been approved by the Board and entered into the journal*, and until they have been entered into the journal, they are not public records. (Italics added for emphasis by the writer).

The Court further states, in the Memorandum Decision, that the minutes of that particular meeting referred to by Plaintiffs, have been, since February 19th, entered in the journal with other pertinent material of the Board, and since then have been available to the Plaintiffs and all other citizens for inspection and copying. (Record 36).

The Court states, (Record 37) :

“Fundamentally, thus, the first question is, have plaintiffs as citizens and taxpayers the right to inspect and take copies of tentative notes or transcriptions thereof made by the Clerk, of proceedings had before the Board of Education *before such notes or transcripts have been approved*

*by the Board and entered into the official journal kept by the Clerk under 53-6-15 U.C.A., 1953?"*  
(Italics added for emphasis by the writer.)

"The second pertinent question is, can the Court order the Clerk of the Board to 'promptly transcribe' the minutes of the meetings of the Board and 'make them immediately available to citizens for inspection and copying?' "

It is quite clear from this Memorandum Decision, and from the pleadings, that the question which was before the Court, was as to whether or not the Clerk could withhold access to the minutes until the Board of Education approved them and entered them in the official journal.

#### C. FINDINGS OF FACT and CONCLUSIONS OF LAW:

In the Court's Findings of Fact, Finding No. 3, (Record 27), the Court finds that the Plaintiffs called in person and asked to examine the minutes of the meeting, a day after the meeting, but that said minutes were not available, and that only tentative notes of said minutes had been transcribed, subject to the approval of the Board of Education, and that Plaintiffs were so advised, and that said tentative notes had not been approved and had not been entered into the journal.

The Court, in Finding No. 5, finds that the refusal was based, in part, upon a letter from the State Superintendent of Public Instruction, advising in part that the minutes were not official until approved by the Board. (Record 27).

Finding No. 6 (Record 28), among other things, finds that the Board claims the right to reserve their tentative notes until they have been approved by the Board and entered into the journal, maintaining that until they have been entered in the journal, they are not public records.

Finding No. 7 points out that the Board has adopted the procedure of having the notes submitted to it for approval, before they are accepted as minutes of the meeting (Record 28), and that the minutes of the particular meeting referred to by Plaintiffs, within a reasonable time after February 18th were approved by the Board and entered in the journal, and since then have been available. (Record 29).

Finding No. 8 is to the effect that the action of the Clerk of the said Board, and of the Board, in not having the said tentative notes entered in the journal as official minutes of said meeting, until approved by the Board, to assure their accuracy, at the following meeting of the Board was, and is, reasonable, and that the demand of the Plaintiffs for a release of said tentative notes, as public writings, the day following said meeting, was not reasonable or timely. Said Finding No. 8 makes another finding to the effect that Plaintiffs have not been refused the right to inspect the official journal and the official minutes. (Record 30).

The Court in the Conclusions of Law, No. 1 thereof, (Record 30), concludes that the tentative notes made by the Clerk, before the approval of said Board and prior

to their entry into the journal of said Clerk, were not public writings within the provisions of Section 78-26-1, Utah Code Annotated, 1953.

Conclusions of Law, No. 2, is to the effect that the notes, or memoranda of the proceedings of the School Board, taken by the Clerk for his own convenience, in the process of keeping or entering an accurate record into the journal, are not public records. (Record 30)).

Conclusions of Law, No. 3, concludes that the Clerk and the School Board have taken reasonable steps to insure the accuracy of the journal. (Record 30).

Conclusions of Law, No. 4, is to the effect that the Plaintiffs cannot demand that the entries in the official journal be made by the School Board immediately following a meeting, but may be made within a reasonable time, and that the demand of the Plaintiffs was not timely made, because no opportunity had been had for the Defendants to determine or establish the accuracy of the Clerk's tentative notes, and to order the accurate entries to be made in the journal. (Record 30 and 31).

Conclusions of Law, No. 5, is to the effect that the notes of the Clerk, before their approval by the Board, or entry in the journal, are not entries in public, or other official books, or records made in the performance of the duties of the Clerk, nor are they entries made by an officer, or board of officers, or under their direction, or in the presence of either in the course of an official duty, as provided in Section 78-25-4, Utah Code Annotated, 1953.

There are other Findings, to which no reference is hereby made.

#### D. DECREE and JUDGMENT

The Decree of the Court, (Record 49), is to the effect that the tentative notes made by the Clerk, before their approval by the said Board, and prior to their entry into the journal, were not public writings, and that the notes, or memoranda of the proceedings of the School Board, taken by the Clerk for his own convenience, in the process of keeping or entering an accurate record into the journal, are not public records, and that the Clerk and the School Board have the right to take reasonable steps in assuring that entries in the official journal, contemplated by the Statutes, are accurate, and that the steps taken by the Defendants, to insure the accuracy of the journal were not, and are not, unreasonable.

The Decree holds that the demand was not timely made, because no opportunity had been had for the Defendants to determine or establish the accuracy of the Clerk's tentative notes, and to order the accurate entries to be made in the journal. (Record 49).

Findings No. 5, 6 and 7 of the Decree, (Record 50), are referred to for the purpose of showing that the decision, in part, rested upon the Board having the right to examine the notes, and that the means were left to the sound discretion of the Defendants to devise such process as insures accuracy. (Record 50).

## ARGUMENT

The Record in this case is short, and the writer of the Brief for Amici Curiae thought that the Brief of Appellants and that of Amici Curiae sufficiently referred to the pleadings and the Findings and Conclusions and Decree, without further elaboration. But in view of the statements of Counsel for Respondents, attention is called to the pertinent parts of the pleadings, Findings and Conclusions.

It becomes quite apparent that throughout the pleadings, and the Memorandum Decision of the Court, and the Findings and Conclusions, there is the fundamental question, as stated by the Court in the Memorandum Decision, as to whether or not the Clerk's tentative notes or transcriptions are to be given to the public before such notes have been approved by the Board and entered into the official journal kept by the Clerk.

The pleadings, Memorandum Decision and Findings show that the Clerk had ready for submission to the Board, his minutes, but that the tentative minutes were not available for inspection until they had been first read and approved at a subsequent meeting of the Board.

Paragraph 8 of the Answer admits that the Plaintiffs did have a right to demand a copy of the official minutes, upon their approval by the Board, but not before they are approved by the Board.

It is admitted also that the refusal is based in part on a letter from the State Superintendant of Public

Instruction, who by law, is the legal adviser of the School Boards. (Section 53-3-4, Utah Code Annotated, 1953).

It is the pleading by Defendants that states the fact that it would be contrary to public policy and to the prerogatives of the said Board to release as official records or public writings, the tentative notes of proceedings, before they had been approved by the Board, as representative of its decisions.

It appears from the Answer that sometime before March 15, 1953, these documents in question had been approved and entered in the journal and were then available for inspection. But it does not appear when the journal was approved by the Board, or when the subsequent meeting of the Board was held. But it is reasonable to believe that said meetings are not held every day, so that there could be an interval of some days, or perhaps weeks between the submission of the journal to the Board and its approval by it. Moreover, the Statute requires the Clerk to keep the record and upon him is enjoined that duty and the duty to keep an accurate journal.

Section 53-6-8, Utah Code Annotated, 1953, provides that the members of the Board of Education in County School Districts, may fix their compensation at a sum not to exceed \$150.00 each, per annum, and for traveling expenses, not to exceed \$100.00 each, per annum, provided that in County School Districts, any member living more than seventy-five miles from the place of meeting, may receive, not to exceed \$200.00 per annum, for travel-

ing expenses. It is reasonable that in a County District, with the traveling expenses fixed as they are, and the salaries as they are, the Court may take judicial notice that the meetings of the Board are certainly not held every day, and that there is an interval of some time between the meetings. Sections 53-20-5 and 53-6-11, Utah Code Annotated, 1953, are persuasive of this point.

Since the Memorandum Decision of the Court states that the fundamental question is as to whether or not the Plaintiffs have the right to inspect and make copies of tentative notes, or transcriptions thereof, made by the Clerk, of proceedings had before the Board of Education, before such notes or transcripts have been approved by the Board and entered into the official journal kept by the Clerk, the rule laid down in the case of *Providence Journal et al. vs. McCoy et al*, 94 Fed. Sup. 186 (DCRI 1950), Affirmed 190 Fed. 2d 760 (1st Cir. 1951) Cert. Den. 342 U. S. 894, 72 S. Ct. 200, 96 L. Ed. 669 (1951) is especially pertinent to the question at issue.

There can be no question but what the position of the Respondents is and was that the transcriptions of the meeting, made by the Clerk, are not to be inspected or given to the public until the Board of Education passes on them, and the pleadings so show and the Memorandum Decision of the Court and its Findings and Conclusions confirm this point. In this case, the record shows that the very documents which the Plaintiffs wished to inspect were later approved by the Board, so that they were something more than mental processes or rough notes,

and were in fact the journal of the Clerk. To hold that they do not become a journal until fastened together in some kind of a container, does not comport with the definition of "journal".

The Utah Statute, Section 78-26-1, Utah Code Annotated, 1953, does not definitively set out public writings, but states that they are divided into four classes, of which one division is "other official documents".

Rule 44(e), of Utah Rules of Civil Procedure, defines an "official record" as follows:

"As used in this Rule, 'official record' shall mean all public writings including laws, judicial notes, all official documents and public records of private writings."

At 67 Corpus Juris Secundum, page 486, the word "official" is defined as an adjective to mean of or pertaining to an office, position, or trust; connected with the holding of office; authoritative; authorized; derived from the proper office or officer or from the proper authority; made or communicated by virtue of authority. And "official act" is therein defined in part as an act done by an officer in his official capacity under color and by virtue of his office; \* \* \*. See also Volume 23 Words and Phrases, Perm. Ed., page 123, and the 1953 Cumulative Annual Pocket Part to Words and Phrases, Vol. 29, under "Official Documents", page 99.

At 27 Corpus Juris Secundum, under the word "Document", page 1311, is a definition of documents, wherein this statement is made:

“The word is of a very comprehensive significance and applies to recorded words, whether written, printed, lithographed, or photographed, the thing in which the words are recorded being immaterial.”

See *Cohn vs. United States*, C.C.A.N.Y., 258 F. 355, 358.

And in the case of *Arnold vs. Pawtuxet Valley Water Co.*, 26 A. 55, 56, 18 R. I. 189, 19 LRA 602, the Court held that:

“A ‘document’ is any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of these means, intended to be used, or which may be used for the purpose of recording that matter.”

In the case of *Hoover vs. Hoover*, Iowa, 26 NW 2d 98, at page 100, the Court made this observation on the meaning of “journal”:

“Plaintiffs cite rule 227, Iowa Rules of Civil Procedure and decisions where we have held it is essential to the validity of a judgment that it be entered in the record book. The rule and decisions are not in point. The statutory requirement of ‘journal entries of all order or other proceedings’ is satisfied by entries that fairly show what the Clerk did. Such a requirement does not command a complete record. The word, ‘journal’ means ‘a diary; an account of daily transactions and events’ and in the field of bookkeeping, a ‘tax-book’.”

While Counsel for Respondents designates the document made by the Clerk, variously, as steps in the mental or ministerial process of a Clerk, or rough notes, or

memoranda, the document was kept by the Clerk by reason of an official duty imposed upon him by Statute and after it was *later approved*, was referred to as the journal or minutes. (Italics added for emphasis by the writer).

Reference is made to Rule 79, Utah Rules of Civil Procedure, which sets out the books to be kept by the Clerk of a Court and the entries therein. At said Rule 79(4), is a provision that the Clerk shall keep a minute book in which shall be kept a record of the daily proceedings of the Court. It is reasonable then to say that the horrendous consequences envisioned by Respondents in the jaunt through pages 22, 23 and part of 24 of the Brief, are not real.

As the pleadings of the Respondent and the admissions therein are read, with relation to the Memorandum Decision of the Court, and the Findings of Fact of the District Court, the words, "ill-advised" (Brief of Respondents, page 27), should not have been projected.

The District Court in its Memorandum Decision, (Record 47), stated:

"It appearing to the Court that the Plaintiffs in good faith sought judicial interpretation of the Statute cited and quoted herein, for the interest of essential administration of public affairs, it is Ordered, under authority of Section 78-33-10, Utah Code Annotated, 1953, that the parties respectively bear their own costs."

The decision of the District Court allows the Board to withhold the record which, by law, the Clerk is required to keep, until the Board has approved it. This approval may take a long time or it may never be forthcoming. Suppose the Board disagrees, then who is to decide if there are to be minutes or journal? Is the Clerk, upon whom the law puts the duty of making and keeping the record, to then have no record or journal to which the public may look for information of the doings of its Board? Of course not; the Clerk keeps the official document which he makes as required by law. Since it is required by law, it is an official document and as such, the public has the right to know of it through newspapers or by inspection at the time it is made and not at some future indefinable time. And, as the District Court said, the Clerk cannot engage in a lengthy hocus-pocus. (Record 38 and 40, Respondents' Brief, page 13).

## CONCLUSION

It is urged that calling a record, which the law requires to be kept, "tentative" until approved by someone, other than one upon whom the law enjoins the duty, does not make it any less an official document.

The law requires the Clerk to make and keep this record of the Board meetings and it is made and kept as part of the official duty of the Clerk.

In this case, the record was made and ready when it was called for inspection by the Plaintiffs, and to argue that it is not official until approved by someone

other than the Clerk is to argue that it could be kept in some sort of coma until the Clerk consulted his friends or the spectators who were present at the Board meeting.

It is contended that it is an official document when the Clerk makes his transcription and that it acquires no stature by reason of a later approval at a reasonable or unreasonable time.

This Court is earnestly entreated to put an end to the maze into which this official document must go before it can emerge as an official document, subject to inspection and declare that it is subject to inspection at the time the public is most interested in the actions of the Board.

This Court, it is submitted, should determine the time when this document, made by the Clerk, must be made available to the public. To leave a large space of time within which the word "reasonable" rattles, renders nugatory the Statute and the Constitution.

Respectfully submitted,

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