

1954

The Denver and Rio Grande Western Railroad Company v. Central Weber Sewer Improvement District et al : Brief of Appellant

Utah Supreme Court

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Wallace, Adams & Peterson; Attorneys for Appellants;

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IN THE
SUPREME COURT
OF THE STATE OF UTAH

THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY, a
corporation, et al,

Respondents,

vs.

CENTRAL WEBER SEWER IMPROVE-
MENT DISTRICT, a municipal corpora-
tion; LYMAN M. HESS, ARTHUR P.
BROWN, ELMER CARVER, constituting
the Board of County Commissioners of
Weber County, a municipal corporation;
and LYMAN M. HESS, ARTHUR P.
BROWN and ELMER CARVER, County
Commissioners of Weber County, a munici-
pal corporation,

Cases Numbered
8171
8172
8173
8174
8175
3176

Appellants.

Appellant's Brief

WALLACE, ADAMS & PETERSON
Attorneys for Appellants

TABLE OF CONTENTS

STATEMENT OF FACTS	4
STATEMENT OF POINTS	23
ARGUMENT	24
POINT 1: REFUSAL OF THE COURT TO GRANT DEFENDANTS' MOTION TO DIS- MISS	29
POINT 2: REFUSAL OF THE COURT TO GRANT DEFENDANTS' MOTION TO STRIKE	41
POINT 3: ERROR OF THE COURT IN OVERRULING DEFENDANTS' OBJEC- TION TO THE INTRODUCTION OF ANY EVIDENCE AND OBJECTION TO INTRO- DUCTION OF EVIDENCE INCLUDED WITHIN STIPULATION OF FACTS	24
POINT 4: ERROR OF THE COURT IN DENYING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS	24
POINT 5: ERROR OF THE COURT IN ENTERING JUDGMENT IN FAVOR OF PLAINTIFFS-AND-PETITIONERS AND AGAINST DEFENDANTS - AND - RE- SPONDENTS	24
POINT 6: INSUFFICIENCY OF THE EVI- DENCE TO JUSTIFY THE JUDGMENT	29
POINT 7: THAT THE JUDGMENT WAS CONTRARY TO LAW	29
POINT 8: ERRORS IN LAW	29
CONCLUSION	43
Authorities Cited:	
English v. Smith, 196 A. 781	30
Higgs vs. Burton, 197 P. 728	28
Lehi City vs. Meiling, 48 P. 2d 537	37

Morton Salt Company vs. City of South Hutchinson, 159 F. 2d 897	39
Tygesen v. Magna Water Works Co., 226 P. 2d 127	28, 29, 31, 37

Statutes Cited:

Laws of Utah, 1947, Chapter 25	41
Laws of Utah, 1949, Chapter 24	9, 31
Laws of Utah, 1951, Chapter 32,	9, 25, 31, 32
Laws of Utah, 1953, Chapter 29	42
Section 104-67-1, Utah Code Annotated, 1943	26
Utah Rules of Civil Procedure, Rule 65 (b)	26

Texts Cited:

Cooley on Taxation, Vol. 1, 4th Edition, page 214	38
Cooley on Taxation, Vol. 1, 4th Edition, page 648	40
Webster's New International Dictionary, 2nd edition	29
Words and Phrases, Vol. 13, Permanent Edition, pages 28 to and including 38	30

In the Supreme Court of the State of Utah

THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY, a
corporation,

Respondent,

vs.

CENTRAL WEBER SEWER IMPROVE-
MENT DISTRICT, a municipal corpora-
tion; LYMAN M. HESS, ARTHUR P.
BROWN, ELMER CARVER, constituting
the Board of County Commissioners of
Weber County, a municipal corporation;
and LYMAN M. HESS, ARTHUR P.
BROWN and ELMER CARVER, County
Commissioners of Weber County, a munic-
ipal corporation,

Case No.
8171

Appellants.

THE MOUNTAIN STATES TELE-
PHONE AND TELEGRAPH COMPANY,
a corporation,

Respondent,

vs.

CENTRAL WEBER SEWER IMPROVE-
MENT DISTRICT, a municipal corpora-
tion; LYMAN M. HESS, ARTHUR P.
BROWN, ELMER CARVER, constituting
the Board of County Commissioners of
Weber County, a municipal corporation;
and LYMAN M. HESS, ARTHUR P.
BROWN and ELMER CARVER, County

Case No.
8172

Commissioners of Weber County, a municipal corporation,

Appellants.

UTAH POWER & LIGHT COMPANY,
a corporation,

Respondent,

vs.

CENTRAL WEBER SEWER IMPROVEMENT DISTRICT, a municipal corporation; LYMAN M. HESS, ARTHUR P. BROWN and ELMER CARVER, constituting the Board of County Commissioners of Weber County, a municipal corporation,

Case No.
8173

Appellants.

BAMBERGER RAILROAD COMPANY,
a Utah corporation, and BAMBERGER
TRANSPORTATION COMPANY, a Utah
corporation,

Respondents,

vs.

CENTRAL WEBER SEWER IMPROVEMENT DISTRICT, a municipal corporation; LYMAN M. HESS, ARTHUR P. BROWN, ELMER CARVER, constituting the Board of County Commissioners of Weber County, a municipal corporation; and LYMAN M. HESS, ARTHUR P. BROWN and ELMER CARVER, County Commissioners of Weber County, a municipal corporation,

Case No.
8174

Appellants.

SOUTHERN PACIFIC COMPANY,
UNION PACIFIC RAILROAD COM-
PANY, OREGON SHORT LINE RAIL-
ROAD COMPANY, and THE OGDEN
UNION RAILWAY AND DEPOT COM-
PANY,

Respondents,
vs.

Case No.
8175

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY, STATE OF
UTAH, CONSISTING OF LYMAN M.
HESS, ARTHUR P. BROWN and ELMER
CARVER, and the CENTRAL WEBER
SEWER IMPROVEMENT DISTRICT,

Appellants.

MOUNTAIN FUEL SUPPLY COMPANY,
a Utah corporation,

Respondent,
vs.

CENTRAL WEBER SEWER IMPROVE-
MENT DISTRICT, a municipal corpora-
tion; LYMAN M. HESS, ARTHUR P.
BROWN, ELMER CARVER, constituting
the Board of County Commissioners of
Weber County, a municipal corporation;
and LYMAN M. HESS, ARTHUR P.
BROWN and ELMER CARVER, County
Commissioners of Weber County, a munic-
ipal corporation.

Case No.
8176

Appellants.

STATEMENT OF FACTS

This is an appeal from the Judgments of the lower court in favor of plaintiffs and against the defendants in the above-entitled cases eliminating and excluding from Central Weber Sewer Improvement District certain properties located within the District. Upon stipulation of counsel this Court ordered all the cases consolidated for purposes of appeal.

Briefly the facts are as follows: On or about March 3, 1953, the Board of County Commissioners of Weber County adopted a resolution creating the Sewer District and defined the boundaries of the District. The resolution was as follows:

“RESOLUTION

“WHEREAS, pursuant to authority made and provided in Chapter 24, Laws of Utah, 1949, as amended by Chapter 32, Laws of Utah, 1951, the Board of Commissioners of Weber County, Utah, has resolved that the public health, convenience, and necessity require the creation of a sewer improvement district for the *area* hereinafter described, and

“WHEREAS, the Board of Commissioners of Weber County has given notice of its intention to establish such a district, which notice, in conformance with the laws of the State of Utah, was duly published in the Ogden Standard-Examiner newspaper, a paper of general circulation in Weber County, once each week for five successive weeks, and

“WHEREAS, in said notice a time and place were designed (sic) at which all interested parties could ap-

pear before said Board of County Commissioners and be heard in support of or in opposition to the creation of said district, and

“WHEREAS, said hearing was had by the Board of Commissioners of Weber County on the 25th day of February, 1953, at the time and place designated in said notice, and all written protests that had been filed as required by law and all that were presented up to the adjournment of said hearing being received, and there having been eleven protests in all presented in opposition to the establishment of the district, and

“WHEREAS, the officials who prepared the last assessment roll for Weber County segregated and certified to this Board the assessed valuation of the real property appearing on the roll which lies within the proposed boundaries of this district, and it being clear that the protests filed represent far less than 25% of the assessed valuation of the real property in the district, and that the written protests filed are signed by far less than 25% in number of the real property owners within the proposed district, according to the last assessment roll for county taxes completed prior to the publishing of the notice of hearing, and

“WHEREAS, the Weber County Surveyor has checked and reported that the boundaries of the proposed district are accurate as set forth below and in the notice of hearing, and it appearing to the Board that all property originally included in the proposed district, as set out in the notice of intention to establish the district, will be directly benefited by the proposed improvements and should be included within said district, and

“WHEREAS, it appears to the Board of Commissioners of Weber County that this district should be established immediately under the name of the Central Weber Sewer Improvement District,

“NOW, THEREFORE, BE IT, AND IT HEREBY IS RESOLVED by the Board of Commissioners of Weber County, Utah, as follows:

“1. That a sewer improvement district, to be known and identified as the ‘Central Weber Sewer Improvement District’, shall be, and it is hereby established and created.

“2. That the boundaries of said district are defined as follows, and all area and property lying within these described bounds is now within and henceforth a part of this sewer district:

(Here follows a description by metes and bounds of the area encompassed within the District.)

“3. That at the hearing held by the Board of Commissioners of Weber County on the 25th day of February, 1953, at the time and place designated in the notice published in conformance with the laws of the State of Utah, setting forth the intention to establish a sewer district, only eleven protests by number against the establishment of said sewer district were filed with the County Clerk and received by the Board of Commissioners of Weber County, and it is hereby determined that the protests filed and presented represent far less than 25% of the assessed valuation of the real property in the district, and the said protests are signed by far less than 25% in number of the real property

owners within the proposed district, according to the last assessment roll for county taxes completed prior to the publication of the notice of hearing.

"4. That the boundaries of the proposed district, as set forth above, are accurate and that all property originally included in the proposed district, as set out in the notice of intention to establish the district, it being the same property as described above, will be directly benefited by the proposed improvements, and all of this property should be included within said district and none should be eliminated.

"5. That it appears that the Board of Trustees of this improvement district should be comprised of approximately seven members, and it is recommended by the Board of Commissioners of Weber County that if the members of the Board of Trustees were appointed in the following manner, it would make an excellent working organization: One each to be designated and appointed by the Mayor, with the consent and approval of the governing body of the municipalities of the City of North Ogden, the City of South Ogden, and the City of Riverdale, and two each to be designated and appointed by the Chairman of the County Commission and the Mayor of Ogden City, with the consent and approval of the governing bodies of said Ogden City and Weber County.

"6. That the public health and safety make it mandatory that this resolution become effective immediately upon signing.

"RESOLVED, ORDERED AND ADOPTED by the Board of Commissioners of Weber County, State of Utah, this 3rd day of March, 1953.

Commissioner Lyman M. Hess voting aye
Commissioner Arthur P. Brown voting aye
Commissioner Elmer Carver voting aye

/s/ Lyman M. Hess
Lyman M. Hess, Chairman of the
Board of County Commissioners
of Weber County, State of Utah.

“ATTEST:

/s/ Lawrence M. Malan
Lawrence M. Malan
Weber County Clerk

“STATE OF UTAH }
County of Weber } ss.

“I, LAWRENCE M. MALAN, County Clerk and
Ex-Officio Clerk of the Board of County Commissioners
of Weber County, State of Utah, do hereby certify that
the above and foregoing resolution was passed by the
Board of County Commissioners of said County at the
regular meeting held March 3, 1953; I further certify
that upon passing of the resolution, Commissioners
Hess, Brown, and Carver voted aye.

“IN WITNESS WHEREOF, I have set my hand
and official seal at my office in the County of Weber,
State of Utah, this 10th day of March, 1953.

(SEAL)

/s/ Lawrence M. Malan
Lawrence M. Malan
County Clerk and Ex-Officio Clerk
of the Board of Commissioners
of Weber County.” (Italics ours.)

All the area and property lying within the described boundaries were declared to be a part of the District. Prior to the adoption of said resolution, each of the respondents herein filed a protest and petition with the Board of Commissioners alleging that certain of the property, real and personal, classified for assessment purposes by the State Tax Commission of Utah would not be directly benefited in any manner by the establishment of the District. A hearing was had by the Board of County Commissioners on February 25, 1953, after notice duly published, for the consideration of protests; and after consideration of the protests the Board found that all the property should be included within said District and none should be eliminated.

The District was created pursuant to Chapter 24, Laws of Utah 1949, as amended by Chapter 32, Laws of Utah, 1951.

Thereafter each of the respondents filed a complaint and petition for review in the District Court of Weber County, and Writs of Review were duly issued by the Court. The complaints and petitions did not attack the regularity of the proceedings of the Board of County Commissioners. Appellants filed Motions to Dismiss (or if said Motions were denied) Demands for More Definite Statement and Motions to Strike. The Motions were denied by the Court. Appellants then filed their Answers and issue was joined thereon. Prior to the trial, appellants filed Motions for Judgment on the Pleadings which Motions were also denied by the Court. Counsel for the respective parties in each case then stipulated in writing certain facts which were made

a part of the record in each case, subject to appellants' reservation of objections as hereinafter appears in the stipulation. Upon the case being called for trial before the Court without a jury, objection was made by appellants to the introduction of any evidence, and objection was made to the introduction of any evidence included within the stipulation of facts. The Court reserved ruling on those objections pending the filing of briefs and the oral arguments of counsel. The cases were then submitted to the Court for decision based solely upon said stipulations, the exhibits and the records. No other testimony was offered or received by the Court. Written briefs were filed by each of the parties and the matter argued.

On or about the 27th day of February, 1954, the Court entered the following:

1. Order overruling objection to the introduction of any evidence and objection to the introduction of evidence included within stipulation of facts;
2. Order denying motion for judgment on the pleadings;
3. Findings of Fact and Conclusions of Law; and
4. Judgment.

The following paragraphs were offered as stipulated facts, if admissible at all, in each of the six cases, and are common to each:

“Between counsel for the parties in the above entitled action, it is hereby stipulated and agreed as follows:

“1. Subject to the provisions of paragraph numbered 2 hereof, the facts set forth in this

stipulation shall be made a part of the record in this case in all respects as though such facts were proved by witnesses sworn and testifying in open court.

"2. This stipulation shall be without prejudice to the right of defendants to object to the materiality of any fact set forth in paragraphs numbers 3, 4 and 5 hereof or the relevancy of any such fact to any issue involved in this case, and defendants expressly reserve the right to interpose any such objection at the time this stipulation is offered and tendered for filing in this case.

"* * *

"4. If the house journal for the Twenty-Ninth Regular Session of the Legislature of the State of Utah (1951 Regular Session) were introduced in this case, such journal would show that when senate bill No. 22 was introduced, said bill provided for the elimination from any district proposed thereunder of property originally included therein, but which the county commissioners should determine would not be benefited by the proposed improvements. Said journal would further show that said senate bill No. 22 was later amended to provide for the elimination from any such district of property included therein, *but which the county commissioner shall determine would not be directly benefited by the proposed improvements.*

"5. If a witness or witnesses were called and sworn by the parties hereto, such witness or witnesses would testify that the nature and extent of the improvements proposed by the defendants and respondents are the construction of a sanitary sewer system consisting of sewage outfall lines,

sewage interceptor and trunk collection lines, sewage treatment plants and related facilities and appurtenances for the collection, treatment and disposition of sewage within the district.

“6. If a witness or witnesses were called by defendants and sworn herein, that such witness or witnesses would testify that the creation of the proposed district and the construction, operation and maintenance of the sewage facilities proposed would be for the general benefit of the area included within the limits of said district.” (Italics ours.)

The only material differences in these stipulations in the various cases were the descriptions of the several properties sought to be excluded by the several respondents and the descriptions of the properties admittedly included within the District.

For the convenience of the Court we are setting out below the several statements of agreed facts, if admissible at all, as they were set forth in the stipulations in each case, to show those differences as between the claims of the several respondents:

No. 8171. The Denver and Rio Grande Western Railroad Co. case:

“3. If W. S. Speckman were called by plaintiff and sworn in this case, he would testify as follows:

“(a) The Denver and Rio Grande Western Railroad Company, plaintiff above named, on the date hereof has, located within the limits of Central Weber Sewer Improvement District, or there is apportioned to said district for assessment and taxation purposes, the following property, to wit:

- “(1) Trackage
3.69 miles first main line, including
100 foot right of way.
13.06 miles yard and industry tracks,
exclusive of any land.
.58 miles sugar works spur, exclusive
of any land.
- “(2) 17.95 miles of telephone, telegraph, and
transmission lines.
- “(3) Rolling stock, consisting of locomotives
and cars, apportioned on a basis of
17.33 miles.
- “(4) Real estate outside right of way con-
sisting of 48.14 acres of land.
- “(5) Improvements and personal property
located upon or affixed to the land des-
ignated in the above sub-paragraph (4).
- “(6) Personal property, consisting of ma-
chinery and tools not located upon or
affixed to the land designated in the
above sub-paragraph (4).

“(b) Plaintiff, The Denver and Rio Grande
Western Railroad Company, does not seek to have
excluded from said district said 48.14 acres of
land nor the improvements or personal property
located thereon. Plaintiff seeks to have excluded
from said district all of the other property above
described.

“(c) None of the property of plaintiff, The
Denver and Rio Grande Western Railroad des-
ignated in sub-paragraphs numbered (1), (2), (3)
and (6) and sought to be excluded from said dis-
trict in this action is presently physically con-
nected to any sewage facilities, and in the con-

duct of plaintiff's railroad operations, it is not desirable or feasible to make a physical connection of any such property to any sewage facilities. In the ordinary and regular operation of the railroad transportation business the rights of way, rolling stock and other equipment are used in connection and in conjunction with the property which plaintiff concedes may remain within the district."

No. 8172. The Mountain States Telephone and Telegraph Co. case:

"3. If W. H. Morton were called by plaintiff and sworn in this case, he would testify as follows:

"(a) The Mountain States Telephone and Telegraph Company, plaintiff above named, on the date hereof has, located within the limits of Central Weber Sewer Improvement District, or there is apportioned to said district for assessment and taxation purposes, the following property, to wit:

"(1) 6224 telephone poles.

"(2) 18 miles of copper wire.
616 miles of iron wire.

"(3) 943,766 feet of cable.
172,707 feet of single duct conduit.

"(4) 3 parcels of land and buildings thereon.

"(5) personal property, consisting of switchboards, materials and supplies, furniture and fixtures, and toll terminal equipment, located within the buildings on the premises designated in sub-paragraph (4) above.

"(6) Personal property, consisting of private branch exchange equipment, teletype-

writers, tools and work equipment and mobile radio telephone equipment located outside the buildings on the premises designated in sub-paragraph (4) above.

“(b) Plaintiff, The Mountain States Telephone and Telegraph Company does not seek to have excluded from said district said three parcels of land and the buildings thereon. Plaintiff seeks to have excluded from said district all of the other property above described.

“(c) None of the property of plaintiff, The Mountain States Telephone and Telegraph Company designated in sub-paragraphs numbered (1), (2), (3), (5) and (6) and sought to be excluded from said district in this action is presently physically connected to any sewage facilities, and in the conduct of plaintiff’s telephone operations, it is not desirable or feasible to make a physical connection of any such property to any sewage facilities. In the ordinary and regular operation of the telephone communication business the poles, wires, cables, switchboards and other equipment are used in connection and in conjunction with the property which plaintiff concedes may remain in the district. The property in sub-paragraph (5) described is located within buildings, which buildings are presently connected with sewage facilities.”

No. 8173. Utah Power & Light Co. Case:

“3. If O. J. Lowe were called by plaintiff and sworn in this case, he would testify as follows:

“(a) The Utah Power & Light Company, plaintiff above named, on the date hereof, has located within the limits of Central Weber Sewer Improvement District the following property, the

inclusion of which in said District it has protested and now protests, as classified for assessment and taxation purposes :

“(1) Transmission lines

Poles and pole structures, together with crossarms, insulators, attachments and appurtenances, sectionalizing switch-racks and overhead conductors and devices carrying voltage of 44,000 volts and over, and the easements therefor.

“(2) Distribution lines

Poles and pole structures, crossarms, insulators, attachments, appurtenances, transformers, protective equipment such as lightning arresters and grounding devices, and overhead conductors and devices such as switches, voltage regulators, capacitors and cutouts carrying voltage under 44,000 volts, and the easements therefor.

“(3) Substation improvements and equipment

Supporting structures, buses, switches (manual and motor operated), protective, control and measuring equipment, insulators, appurtenant attachments, transformers and other recognized substation equipment.

“(4) Power plant equipment and improvements

Electric generating equipment consisting of turbines, generators, buses, switches (manual and motor operated), control equipment, protective equipment and communication equipment.

“(5) Telephone lines

Poles and pole structures, crossarms, insulators, attachments, appurtenances, and conductors for voice and signal transmission, and the easements therefor.

“(b) None of the property of plaintiff, Utah Power & Light Company, designated in sub-paragraphs numbered 1 to 5, inclusive, and sought to be excluded from said District in this action, is presently physically connected to any sewage facility, except that some of the property described in sub-paragraph (4) above is located in buildings which have toilet installations and in the conduct of plaintiff's operations it is not desirable or feasible to make a physical connection of any such property to any sewage facilities. That in the ordinary and regular operation of plaintiff's business, the transmission and distribution lines, substations and other equipment described herein are used in connection and in conjunction with the property which plaintiff concedes may remain in the District.

“7. That the picture attached hereto, marked Exhibit 1 and entitled ‘Roy-Riverdale 130 kv Taps’, shows a part of a typical transmission line such as plaintiff seeks to exclude from the Central Weber Sewer Improvement District; that the picture attached hereto, marked Exhibit 2 and entitled ‘Typical 12.5 kv Distribution Line on Riverdale Road’, shows a part of a distribution line typical of those plaintiff seeks to exclude from said District; that the picture attached hereto, marked Exhibit 3 and entitled ‘South Ogden Substation,’ shows a substation typical of those plaintiff seeks to exclude from said District; that the

pictures attached hereto, marked Exhibits 4, 5, 6, 7 and 8 and entitled 'Riverdale Plant 130 kv Transformer Bank', 'Roy-Riverdale 130 kv Line Terminal Tower and Air Break Switches on Line No. 1', 'Generators—Riverdale Plant', 'Generator—Pioneer Plant' and 'Switchrack—Roy-Riverdale 130 kv Nos. 1 and 2 at Riverdale Plant', show power plant equipment typical of that plaintiff seeks to exclude from the said District."

No. 8174. Bamberger Railroad Company, et al case:

"3. If H. L. Balser, were called by plaintiff, Bamberger Railroad Company, and sworn in this case, he would testify as follows:

"(a) The Bamberger Railroad Company, one of the plaintiffs above named, on the date hereof has located within the limits of Central Weber Sewer Improvement District, or there is apportioned to said District for assessment and taxation purposes, the following property, to-wit:

"(1) Trackage

4.92 miles mainline and appurtenances, including right of way varying between 66 and 100 feet in width, excepting approximatelymiles located within and upon public streets and highways.

2.30 miles yard and industry tracks, exclusive of any land.

"(2) Rolling stock, consisting of locomotives and various types of cars, apportioned on a basis of 7.22 miles.

"(3) Real estate outside of right of way.

"(4) Improvements and personal property located upon or affixed to the land designated in the above subparagraph 3.

“(b) Plaintiff Bamberger Railroad Company does not seek to have excluded from said District said property designated in sub-paragraphs 3 and 4. Plaintiff Bamberger Railroad Company seeks to have excluded from said District all of the other property above described in subparagraphs 1 and 2.

“(c) None of the property of plaintiff, Bamberger Railroad Company designated in subparagraphs 1 and 2, and sought to be excluded from said District in this action is presently physically connected to any sewage facilities, and in the conduct of plaintiff’s railroad operations, it is not desirable or feasible to make a physical connection of any such property to any sewage facilities. That in the ordinary and regular operation of the railroad transportation business the rights of way, rolling stock and other equipment are used in connection and in conjunction with the property which plaintiff concedes may remain within the District.

“4. If Dale W. Barratt were called by plaintiff, Bamberger Transportation Company, and sworn in this case, he would testify as follows:

“(a) That Bamberger Transportation Company, one of the plaintiffs above named, on the date hereof has located within the limits of Central Weber Sewer Improvement District, or there is apportioned to said District for assessment and taxation purposes by the State Tax Commission of Utah, the following property, to-wit:

Motor Coaches.

“(b) Plaintiff, Bamberger Transportation Company seeks to have excluded from said District, all of the property above described in paragraph 4 (a).

“(c) None of the property of plaintiff Bamberger Transportation Company designated in paragraph 4 (a) and sought to be excluded from said District in this action, is presently physically connected to any sewage facilities, and in the conduct of plaintiff Bamberger Transportation Company’s bus transportation operation, it is not desirable or feasible to make a physical connection of such property to any sewage facilities. That in the regular and ordinary operation of the bus transportation business the motor coaches are used in connection and in conjunction with property which is not owned by plaintiff Bamberger Transportation Company, but is leased by the same, but in the opinion only of Bamberger Transportation Company is property of a type which might remain within the District.”

No. 8175. Southern Pacific Co., et al case :

“3. If F. B. Magruder were called by plaintiff, Southern Pacific Company, and sworn in this case he would testify as follows :

“(a) Southern Pacific Company, plaintiff above named, on the date hereof has, located within the limits of Central Weber Sewer Improvement District, or there is apportioned to said district for assessment and taxation purposes, the following property to wit :

“(1) Trackage

1.216 miles first main line including
100 foot right of way.

1.192 miles second main line including
100 foot right of way.

17.226 miles yard and industrial tracks
and sidings.

“(2) 26.978 miles telephone, telegraph and transmission lines.

“(3) Rolling stock consisting of locomotives and cars apportioned on a basis of 19.634 miles.

“(4) Real estate outside of right of way consisting of 99.77 acres of land including jointly owned acres.

“(5) Improvements and personal property located upon or affixed to the land designated in the above subparagraph (4).

“(6) Personal property, consisting of machinery and tools not located upon or affixed to the land designated in the above sub-paragraph (4).

“(b) Plaintiff, the Southern Pacific Company, does not seek to have excluded from said district said 99.77 acres of land nor the improvements or personal property located thereon. Plaintiff, Southern Pacific Company, seeks to have excluded from said district all of the other property above described.

“(c) None of the property of plaintiff, Southern Pacific Company, designated in subparagraphs (1), (2), (3), and (6) and sought to be excluded from said district in this action is presently physically connected to any sewage facilities, and in the conduct of plaintiff's railroad operations, it is not desirable or feasible to make a physical connection of any such property to any sewage facilities. That in the ordinary and regular operation of the railroad transportation business the rights of way, rolling stock and other equipment are used in connection and in conjunction with the property which plaintiff concedes may remain within the district.”

No. 8176. Mountain Fuel Supply Company Case:

"3. If L. C. Peschel were called by the plaintiff and sworn in this case, he would testify as follows:

"(a) That Mountain Fuel Supply Company, plaintiff above named, on the date hereof has, located within the limits of the Central Weber Sewer Improvement District, or there is appor-tioned to said district for assessment and taxation purposes, the following property, to-wit:

"(1) Transmission mains.

"(2) Class I distribution properties.

"(3) Class II distribution properties.

"(4) Class IV distribution properties.

"(5) Real estate.

"(6) Improvements.

"(7) Personal property some of which is located or affixed to the land designated in sub-paragraph (5) and some is not located or affixed to the land designated in said sub-paragraph (5).

"(b) That Class I distribution properties are distribution properties located within said district and within cities or towns other than the city of Ogden, Utah. Class II distribution properties are properties located within said district in county areas outside of cities and towns. Class IV distribution properties are distribution properties located within said district within the corporate limits of Ogden City, Utah.

"(c) That plaintiff, the Mountain Fuel Supply Company, does not seek to have eliminated from said district the property designated in sub-paragraphs numbered (5), (6) and (7). Plain-

tiff does seek to have eliminated by this action from said district all other property above described.

“(d) That none of the property of the plaintiff, the Mountain Fuel Supply Company, designated in sub-paragraphs numbered 3. (a) (1), (2), (3) and (4) and sought to be eliminated from said district in this action is presently physically connected to any sewage facility, and in the conduction of plaintiff's operations it is not desirable or feasible to make a physical connection of any such property to any sewage facilities. That in the ordinary and regular operation of the plaintiff's business the gas transmission mains and gas distribution properties, consisting of gas distribution mains, gas service lines, meters, regulators and accessories and appurtenances thereto and rights of way and easements therefor which are the properties referred to above in sub-paragraph 3 (a) (1), (2), (3), and (4) are used in connection and in conjunction with property which plaintiff concedes may remain in the district.”

STATEMENT OF POINTS

This appeal is made upon the entire record in said cause and upon the following points:

1. Refusal of the Court to grant Defendants' Motion to Dismiss.
2. Refusal of the Court to grant Defendants' Motion to Strike.
3. Error of the Court in overruling Defendants' Objection to the Introduction of any Evidence and Objection to Introduction of Evidence Included Within Stipulation of Facts.

4. Error of the Court in denying Defendants' Motion for Judgment on the Pleadings.
5. Error of the Court in entering Judgment in favor of Plaintiffs-and-Petitioners and against Defendants-and-Respondents.
6. Insufficiency of the evidence to justify the Judgment.
7. That the Judgment was contrary to law.
8. Errors in law.

ARGUMENT

Point 3: ERROR OF THE COURT IN OVERRULING DEFENDANTS' OBJECTION TO THE INTRODUCTION OF ANY EVIDENCE AND OBJECTION TO INTRODUCTION OF EVIDENCE INCLUDED WITHIN STIPULATION OF FACTS.

Point 4: ERROR OF THE COURT IN DENYING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS.

Point 5: ERROR OF THE COURT IN ENTERING JUDGMENT IN FAVOR OF PLAINTIFFS-AND-PETITIONERS AND AGAINST DEFENDANTS-AND-RESPONDENTS.

For clarity of argument we discuss the points set forth in our Statement of Points out of their numerical sequence.

The foregoing points (3, 4 and 5) will be discussed together for the reason that they are so closely related.

The question is whether the proceedings before the lower court was a review of the record made before the Board of County Commissioners at the public hearing at the time the District was created or whether it was a trial de novo.

Appellants contend that the proceedings in the lower court were for review only and that the introduction and admission of new evidence—by stipulation or otherwise—was error. Appellants call attention to paragraph 2 of the stipulation which provided as follows:

“2. This stipulation shall be without prejudice to the right of defendants to object to the materiality of any fact set forth in paragraphs numbered 3, 4 and 5 hereof or the relevancy of any such fact to any issue involved in this case, and defendants expressly reserve the right to interpose any such objection at the time this stipulation is offered and tendered for filing in this case.”

Appellants objected to the introduction of any evidence and objected to the introduction of the evidence included within the stipulation. The objections were overruled by the court and (based in part thereon) judgment was entered against the appellants.

Appellants assigned this as error.

We call the Court's attention to Laws of Utah, 1951, Chapter 32, Section 3, which provides in part as follows:

“* * * In such resolution establishing such District, the Board of County Commissioners shall eliminate from said proposed District any prop-

erty originally incorporated therein but which it shall determine will not be directly benefited by the proposed improvements. Any property owner who shall have filed a written protest, as hereinbefore provided, and whose property has been included, notwithstanding such protest, may within (30) thirty days after the adoption of the resolution establishing such District, apply to the District Court of the Judicial District in which such County is located for a *Writ of Review* of the actions of the Board of County Commissioners in so establishing such District, but only upon the grounds that his property will not be *directly benefited* by the proposed improvements. * * * (Italics ours.)

It will be noted that specific reference is made in the foregoing law to "Writ of Review". We call attention to Section 104-67-1, Utah Code Annotated, 1943, which states as follows:

"The Writ of Certiorari may be designated the Writ of Review."

Subsequently thereto, the Utah Rules of Civil Procedure were adopted to take effect January 1, 1950; and Rule 65B (b) states as follows:

"Grounds For Relief. Appropriate relief may be granted: * * * (2) Where an inferior tribunal, board, or officer exercising judicial functions has exceeded its jurisdictions or abused its discretion; * * *."

Rule 65 B (e), among other things, provides as follows: "The review by the Court issuing the Writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer."

While no formality as to hearing is designated, it would appear that the respondents were afforded an opportunity to appear and be heard upon their protests. They should have introduced before the Board of County Commissioners such evidence as they desired, and could have there requested that the entire proceedings be reported. They did not do so. As a matter of fact, they could likewise have requested that the Board of County Commissioners stipulate the facts in much the same manner as was done in the lower court.

Not having made any such record, there was nothing before the lower court and there is now nothing before this court except the record of proceedings had before the Board of County Commissioners in connection with the creation of the District. This would seem to have been respondents' own theory at the time they filed the proceedings in the lower Court. As an example, the prayer of Southern Pacific Company, et al (Case No. 8175), reads as follows:

“WHEREFORE, applicants pray that this court issue its Writ of Review directed to said defendants, and each of them, requiring said defendants, within the time specified in said Writ, to prepare and certify to this court a complete record of all proceedings had in connection with the creation of said District; that upon the return of said Writ, with said record duly certified and the proceedings had herein, a judgment and decree be entered * * *.”

It occurs to us that that prayer contemplates what the law contemplates, simply a review of whatever

record was made before the Board of County Commissioners. We do not see anywhere in it a request for a trial de novo. The trial de novo seems to have been an afterthought of respondents since the filing of the protests and since the commencement of these actions.

We submit that paragraph 4 of the resolution passed by the Board of County Commissioners as set out herein is a finding which the County Commissioners made and is legally sufficient. The case of

Tygesen v. Magna Water Works Co. 266 P. 2d 127 holds that there is no distinction between the creation of a Metropolitan Water District in the District Court and the creation of an Improvement District by the County Commissioners. Both were the agencies designated by the legislature through which the Districts could be created. It was pointed out that once the initiating agency had acted, its functions ceased and the governing body of the District assumed control. We see no distinction between the action of the court on the one hand and the Board of County Commissioners on the other, as it related to the formality of creating the District. Both, in performing the duties outlined by law, were performing judicial functions in creating said Districts in each instance. We believe that respondents are entitled to a review of the actions of the Board of County Commissioners, but that the review should be limited to the record made before that Board and only to determine "whether the Board has regularly pursued the authority of such board."

It was held in the case of *Higgs vs. Burton*, 197 P. 728 that:

“The courts are entirely unanimous in holding that in certiorari proceedings, the records certified up, by the court, board, or tribunal to whom it is directed, imports absolute verity, and cannot be contradicted or supported by evidence dehors the record.”

That the requirement of due process of law is met, is fully answered in

Tygesen v. Magna Water Works Co., *supra*, beginning with headnote (11) page 132.

On the state of the record before it, the lower Court had no evidence upon which it could do otherwise than affirm and uphold the actions of the Board of County Commissioners; and hence it was error for the lower Court to deny appellants' Motions for Judgment on the Pleadings and to enter judgments in favor of the respondents and against the appellants.

Point 1: REFUSAL OF THE COURT TO GRANT DEFENDANTS' MOTION TO DISMISS.

Point 6: INSUFFICIENCY OF THE EVIDENCE TO JUSTIFY THE JUDGMENT.

Point 7: THAT THE JUDGMENT WAS CONTRARY TO LAW.

Point 8: ERRORS IN LAW.

The legislative enactment under consideration provides for the creation of sewer improvement “districts”. One of the first things to determine, then, is:

What is a “District”?

Webster's New International Dictionary, second edition, unabridged, published by G. & C. Merriam Company, defines a “district” as:

"1. The *territory* under a feudal lord's jurisdiction. Obs.

"2. A division of *territory*; a *defined portion of a state*, county, country, town, or city, etc., made for administrative, electoral, or other purposes; as, a Congressional, federal, judicial, land, militis, magisterial, or school district.

"* * *

"4. Loosely, any portion of *territory*; *region*, *tract*. (Italics ours)

In Words and Phrases, Vol. 13, permanent edition, page 33, we find this:

"Webster defines the word 'district' as a *defined portion of the state*, and it is so used in the definition of a 'town' as a 'district of certain limits.' Chicago & N. W. Ry. Co. v. Town of Oconto, 6 N.W. 607, 50 Wis. 189, 36 Am. Rep. 849."
(Italics ours.)

See numerous other illustrations of the definition of the word "district" in:

Words & Phrases, Vol. 13, permanent edition, pages 28 to and including 38.

In the case of English v. Smith, 196 A. 781, the Supreme Court of Errors of Connecticut, in 1938, distinguishes a Board of Sewer Commissioners of the Town of Milford (held to be employees of the Town) from a "commission of a sewer district organized for municipal purposes," saying (p. 783):

"the complaint, properly construed, shows that the commission was, and remained, both under the special act and the public act, * * * an

official board, instrumentality, and agency of the town of Milford, and *not of a 'sewer district' in the sense of a distinct municipality.*" (Italics ours.)

In the case of *Tygesen v. Magna Water Works Co.*, *Supra*, this Court defines a sewer improvement district in the following language (p. 131):

"Since an improvement district created under Chap. 24, Laws of Utah 1949 is not a corporation but *is a separate arm of the government formed for public purposes*, it does not violate Sec. 5 of Art. XI of the Utah State Constitution forbidding the creation of corporations for municipal purposes, by special laws." (Italics ours.)

District one of "Area".

Consistent with the definition of a district, the legislature of the State of Utah, in the enactment of the statutes under which the Central Weber Sewer Improvement District was created (Chapter 24, Laws of Utah, 1949, p. 43, et seq., as amended by Chapter 32, Laws of Utah, 1951, p. 72, et seq.) defined the *area* of such districts, fixed the method for establishing the boundaries of the districts, and designated the "*property*" to be included therein or excluded therefrom as "*real property*".

The 1951 enactment (Chapter 32, Laws of Utah, 1951) uses the single word "property" in the title to the act in such a manner that there can be no question but that it means *real* property only, because objections can be made only by "real property" owners, and yet those *real* property owners were designated by the single word "property" owners in that title. We quote:

“An Act Amending Section 1, 2, 3, 5, 7, 8 and 11, Chapter 24, Laws of Utah 1949, Enabling Improvement Districts to Include Incorporated Municipalities and *Areas*, Providing for Objections by More Than Twenty-five Per Cent in Number of *Property* Owners, for Appointment of Board of Trustees for Sewer Districts Including a Combination of Two or More Municipalities or Other *Areas*, Time Limit for Maturity of Bonds, and for the Powers of Improvement District.” (Italics ours.)

In analyzing the entire legislation on this subject it is apparent that the real intent of the legislature all the way through was to establish sewer districts as a “defined portion of the state”, with geographical boundaries, encompassing, like a municipality, certain defined areas.

Area.

In quoting the title to the 1951 act, *supra*, we italicized the word “area” as well as the word “property”. In addition to that use of the word “area (which in and of itself would seem to define a sewer district by “area” only) attention is called to the fact that all through the legislation the word “area” or its equivalent is used, and nowhere in the legislation do we observe the words “personal property” used.

For illustration, we quote from *Section 1* of the 1951 law (Chapter 32, Laws of Utah, 1951):

“Section 1. Improvement District—*Area* of.

“ * * * * *

“The *area* of any district created hereunder may include all or part of any county or counties including all or any part of any incorporated munic-

ipalities, other incorporated *areas*, and unincorporated *areas*, as the needs of the inhabitants of the proposed districts may appear. Districts of the same kind shall not overlap.” (Italics ours.)

Section 2 of the same statute, not only uses the word “area” or “areas” but says that the resolution creating the district shall:

“define the *boundaries* thereof * * *.”

and goes on to speak of:

“25% or more of the owners of *real property* included within the proposed district * * *.”

and then speaks of “*parts*” of other counties and *areas* in the following language:

“In the event the proposed district includes any *part* of another county or counties, the above resolution shall further state the name or names of the other county or counties and the *areas* within such other county or counties proposed to be *included* within such district.” (Italics ours.)

Section 3 of that same statute provides for the notice of intention to establish a proposed district:

“* * * which notice shall *define* the *area* to be included therein and the *boundaries* thereof, * * *.” (Italics ours.)

and goes on to provide that if:

“written *protest* shall be filed, signed by more than twenty-five percent (25%) in number of the *real property owners* within said proposed district, according to the last assessment roll for county taxes completed prior to the publishing of the notice, the district shall not be established.” (Italics ours.)

Nowhere in the act is anything said about *including*

personal property in the district. In fact, the only thing that is discussed in the act as being *included* is *real property*. Then when that same statute goes on to say what shall be *eliminated* under certain specified conditions, in the following language:

“In such resolution establishing such district, the board of County Commissioners shall *eliminate* from said proposed district any *property originally included therein*, but which it shall determine will not be directly benefited by the proposed improvements.”

it can only mean what it says, that the property which might be *eliminated*, under the conditions specified, is *any* of the *property* which was *originally included* in the proposed district. And the only *property* which was *included* in the proposed district was *real property*; and hence nothing but *real property* could be *eliminated* from the district or could have been *eliminated* from the proposed district in the first instance on the protest of the respondents.

This is emphasized by the following language from that same Section 3:

“Any *property owner* who shall have filed a written protest, as hereinbefore provided, and *whose property has been included*, notwithstanding such protest, may within (30) thirty days after the adoption of the resolution establishing such district, apply to the district court of the judicial district in which such county is located for a writ of review of the actions of the Board of County Commissioners in so establishing such district, but only upon the ground that his *property* will not be directly benefited by the proposed improvements . . .” (Italics ours.)

In that language the single word "*property*" could only refer to real property, because only real property was included in the district. And, as elsewhere in this brief argued, the provision with respect to direct benefit refers only to real property within the district which lies in such a position that a sewage system could carry away the customary waste products.

Elsewhere in the legislation similar references and usages of terms are found, all, in our opinion, referring to real property and real property only.

A contrary view results in absurdities. A sewage district, organized and bounded as provided by these statutes, being a *defined portion of the State*, encompasses and includes everything within the confines of its boundaries. And once established and bounded it becomes fixed, and everything in it is taxable in like manner to the general taxation of property in any other defined portion of the state. To say that personal property within the district is not within the district is certainly an anomaly of rare complexion.

Differently put, it occurs to us that what respondents are contending for in this case is not that their personal property is not within or a part of the district, but that it should not be taxable by the district. There is a tremendous difference. Respondents have endeavored to get certain of their properties excluded from taxation when they should, perhaps, have been endeavoring to get certain of their real property excluded from the district. Provision is made in the law for getting real property eliminated from the district. But we find no provision for getting personal or other property eliminated (or

- excluded) from taxation, when and if it is within the district.

We contend that respondents, having left all their real property in the district by failing to take the proper steps to get it excluded by delineation of area or boundary from the district itself, still seek to get certain of that real and personal property excluded from taxation while still admitting that it is within the district. Or, in answer to this statement, they may say that they want the court to exclude it from the district by decree, placing it in a state of some type of suspended animation or lifting it up above the district and there suspending it, free from taxation. We submit that this cannot be done. Their properties are within the boundaries of the district, and that being so, they must be taxed generally as all other properties are taxed. No legislative, judicial, tax commission, or other recognized classification exists for freeing properties lying within a sewer district from taxation by the district. Plaintiffs' remedy, if any, was to have the boundaries of the district so fixed (after proper protest to that effect) that those boundaries did not include their properties, if any, not directly benefited by the sewer district.

General Taxation; not special assessment:

On the question of taxation, the distinction between general and special improvement taxes must be made, inasmuch as the benefits which are the basis of special assessments have no place in the consideration of a general tax. The taxes imposed by the Sewer Improvement District are general taxes.

In *Tygesen vs. Magna Water Works Co.*, supra, at page 132, this court said:

“At the outset it should be kept in mind that this act was enacted to provide for the creation of Improvement Districts wherever desired in the State, and that these Districts, when formed, are quasi-municipalities, and the benefits to be obtained from such Districts enure to the public generally. There are no provisions in the act for special assessments or liabilities of individuals for benefits which would enure to them as such, but merely as members of the public. The taxes which the Act empowers the District to levy for the payment of the benefits are general taxes, and not special assessments.”

This distinction is likewise pointed out in *Lehi City vs. Meiling*, 48 P. 2d 537:

“The supplying of water for domestic uses within municipalities has grown of recent years to be one of the most common and well-recognized forms of municipal activities wherein public property is employed and wherein public taxation is imposed and collected upon the inhabitants of the municipalities *regardless of the benefits conferred upon particular property*, and by the same method by which taxes are generally levied and collected for the carrying on of the governmental functions of incorporated cities and towns . . .

“. . . Nor can we discover any rational theory upon which, in the levy and collection of such taxes, the powers of either shall be limited by those rules which have been given application in the formation of that class of public agencies wherein the assessments imposed upon a particular property have such direct reference to

benefits conferred as to require notice and opportunity for hearing to be given to the owners of the property to be affected by the assessments thus to be imposed . . ." (Italics ours.)

As pointed out by Cooley on Taxation, Vol. 1, 4th Edition, page 214:

"Taxes proper, or general taxes, it has been said 'proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution, it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all.' That this is the correct theory is beyond doubt, but nevertheless the contention has often been presented that property receiving no direct benefit from a tax for a particular purpose should not be taxed for such purpose. However, it is almost unanimously held that it is no defense to the collection of a tax for a special purpose that a person liable for the tax is not benefited by the expenditure of the proceeds of the tax or not as much benefited as others. For instance, every citizen is bound to pay his portion of a school tax although he has no children, or is not a resident, and this also applies to corporations; of a police or fire tax, although he has no buildings or personal property; or of a road tax although he never used the road. *In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no bene-*

fits. So property within the limits of a municipality is subject to local taxation although it derives little or no benefit from the municipal government. This rule is often applied to the taxation for special purposes of agricultural lands situated within the corporate limits of cities. If such property was exempted, the provision of the constitution requiring taxes to be *equal and uniform* would be violated.” (Italics ours.)

It has been stipulated by the appellants and respondents that there is a general benefit to all persons situated within the boundaries of the District.

In the case of Morton Salt Company vs. City of South Hutchinson, 159 F. 2d 897 the Tenth Circuit Court of Appeals discussed a situation in which the plaintiff complained that the water works proposed terminated three-quarters of a mile from the plaintiff's property, and that they should be freed from the tax. In that case, it did not appear that the Supreme Court of Kansas had declared the tax from which the plaintiff sought to be excluded, a general tax, but the Federal Court pointed out at page 900 that:

“It is no constitutional defense to a tax that the taxpayer is not *directly benefited thereby*, or is less benefited than others who pay the same or less tax . . .”

The Federal Court in that case cited Cooley, from whom we have just quoted, and said further, at page 901:

“The authorities sometimes draw a distinction between a general ad valorem tax levied for the general welfare of the whole community, and a tax in the form of an assessment to finance special improvements designed to benefit the

property located within a particular taxing jurisdiction.”

The same court at page 902 said:

“We may take judicial notice, even in the face of the complaint, that the proposed waterworks system would redound to the benefit of the whole community, in virtue of its contribution to the health, safety, morals, and general welfare thereof, and that all of the property and people included within the City would be either *directly or indirectly benefited thereby*.” (Italics ours.)

Cooley on Taxation, Vol. 1, 4th Edition, page 648, states:

“In case of specially created taxing districts, the same rule prevails. If the boundaries are designated by the legislature, such designation is final and cannot be reviewed by the courts unless in exceptional cases. One whose property is within the boundaries of the district cannot attack the tax on the ground that his property is not benefited by the tax and should not have been included within the taxing district.”

Since the tax imposed is a general one, where the receipt of benefits is not a factor, the only method of escaping the tax is through an area exclusion. This method is effective, because at the inception the district had only provisional boundaries from which the County Commissioners were obligated to exclude the property not directly benefited. Once the boundaries of the district had been established, all property included within the limits of the district were subject to the general tax, and the respondents' failing to request an area exclusion, and their failing to make a record upon which the County Commissioners could make an area exclusion, they must

be subject to the general tax, whether or not they are directly benefited by the proposed improvements.

The Morton Salt decision, last above cited, expressly holds that any tax levied and imposed for the purpose of supplying capital for municipalities or quasi-municipalities is not to be regarded as a special tax or assessment but is a general tax levied just as, and for the same purpose, that any general municipal tax is imposed, for carrying on the governmental functions or utilitarian objects of any duly incorporated cities or towns.

*Point 2: REFUSAL OF THE COURT TO GRANT
DEFENDANTS' MOTION TO STRIKE.*

Reference is made to paragraph 4 of the stipulation of facts on file applicable to all of the pending cases. It is therein stated that the word "directly" was added to the law for the first time in 1951. While appellants contend that the addition of the word "directly" neither adds to nor detracts from the overall meaning of the law as it relates to a general tax, yet it is interesting to trace the statutory enactments from the very beginning to the present time.

Chapter 25, Laws of Utah, 1947, Section 5, passed March 13, 1947, and in effect May 13, 1947, provided in part as follows:

"At such time the Board of County Commissioners shall hear the petitioner and *all* protests and objections to the same . . . On the final hearing the Board of County Commissioners shall make such changes in the proposed boundaries as may be deemed advisable, and shall define and establish such boundaries . . . " (*Italics ours.*)

No reference was made to any exclusion of property.

Chapter 24, Laws of Utah, 1949, passed March 8, 1949, and in effect May 18, 1949, repealed Chapter 25, Laws of Utah, 1947. *Section 3* of that act provided as follows, in part:

“In such resolution establishing such district, the Board of County Commissioners shall eliminate from said proposed district any property originally included therein, but which it shall determine *will not be benefited* by the proposed improvements . . . ” (Italics ours.)

The law under which the Central Weber Sewer Improvement District was organized is Chapter 32, Laws of Utah, 1951, passed February 13, 1951, and became effective May 8, 1951. *Section 3* provided in part as follows:

“ . . . originally included therein, but which it shall determine will not be *directly benefited* . . . ” (Italics ours.)

The present law, Chapter 29, Laws of Utah, 1953, (Section 17-6-3, Utah Code Annotated, 1953) passed March 12, 1953, and in effect March 24, 1953, provided in part as follows:

“ . . . Originally included therein, but which it shall determine *will not be benefited by the* . . . ” (Italics ours)

What the legislature intended by adding the word “directly” into the law in 1951 was to set up a formula under which the owners of real property in an area which could not be reached by the sewer system in the sewer district, or which might be lower in altitude so as to be impossible of drainage by a proposed sewer system, could protest such of their real property areas out of the boundaries of the proposed district. It evi-

dently was then felt that it would be easier for an owner to protest such portions of his property out of a proposed district if the act used the words "*directly benefited*" rather than the word "benefited." We urge that for such purposes and for such purpose only, the word "directly" has a meaning which is consistent with the intent of the legislature. Otherwise it does violence to the entire act, the provisions of which are not subject to any other reasonable interpretation.

At this point, respondents might inquire as to why, then, the legislature had deleted the word "directly" in subsequent legislation. And we believe the answer is that it recognized its error in changing the 1949 enactment by adding that word in the 1951 legislation, and deleted it in the 1953 legislation, because it was unnecessary to have the word "directly" preceding the word "benefited" if the area sought to be protested out could not in fact be benefited because of its physical position beyond or below the drainage of the proposed sewer system.

CONCLUSION

In conclusion, we submit that in each of the above-entitled actions the judgments of the lower Court should be reversed, and the complaints and petitions of the several plaintiffs for review should be denied; and we submit that the action of the Board of County Commissioners of Weber County in including all of the property involved in these cases within the District, should be upheld and affirmed.

Respectfully submitted,
WALLACE, ADAMS & PETERSON
Attorneys for Appellants