

1954

County Water System, Inc. et al v. Salt Lake City et al : Brief of Defendant and Respondent  
Metropolitan Water District of Salt Lake City

Utah Supreme Court

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Fisher harris; Attorney for Defendant and Respondent;

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#### Recommended Citation

Brief of Respondent, *County Water System, Inc. v. Salt Lake City*, No. 8206 (Utah Supreme Court, 1954).  
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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

RECEIVED

COUNTY WATER SYSTEM, INC., a corporation, ALMA H. COTTAM, MEEKS WIRTHLIN and ADRIAN WRIGHT, a partnership, doing business as Wright-Wirthlin Company, JOHN O. SPECK, McDONALD BROS., INC., a corporation; JOSEPH McDONALD; and KEITH L. KNIGHT, doing business as Knight Realty Company,

*Plaintiffs and Appellants,*

— vs. —

SALT LAKE CITY, a Municipal corporation; METROPOLITAN WATER DISTRICT OF SALT LAKE CITY, a body politic; the PUBLIC SERVICE COMMISSION OF UTAH, a commission of Utah; ALEXANDER BUILDING CORPORATION OF UTAH, a corporation; SHAW INC., a corporation; SOUTHEAST INC., a corporation; SALT LAKE COUNTY CONSERVANCY DISTRICT, a body politic; BERTHA SHEPHERD; BERNARD P. BROCKBANK, doing business as the Brockbank Realty and Construction Company; GEORGE H. SMEATH, MARY H. SMEATH and J. K. THAYN,

*Defendants and Respondents.*

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**FILED**  
AUG 30 1954  
Clerk, Supreme Court, Utah

**BRIEF OF DEFENDANT AND RESPONDENT  
METROPOLITAN WATER DISTRICT  
OF SALT LAKE CITY**

Appealed from Third District Court of Salt Lake County  
HON. CLARENCE C. BAKER, Judge.

FISHER HARRIS  
703 Tribune Building  
Salt Lake City, Utah

*Attorney for Defendant and Respondent*  
Metropolitan Water District of Salt  
Lake City.

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# IN THE SUPREME COURT of the STATE OF UTAH

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COUNTY WATER SYSTEM, INC., a corporation, ALMA H. COTTAM, MEEKS WIRTHLIN and ADRIAN WRIGHT, a partnership, doing business as Wright-Wirthlin Company, JOHN O. SPECK, McDONALD BROS., INC., a corporation; JOSEPH McDONALD; and KEITH L. KNIGHT, doing business as Knight Realty Company,

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*Defendants and Respondents.*

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Case No.  
8206

## BRIEF OF DEFENDANT AND RESPONDENT METROPOLITAN WATER DISTRICT OF SALT LAKE CITY

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(All italics or other indications of emphasis are ours)

## STATEMENT OF THE CASE

Plaintiffs-Appellants' "Statement of Case" appears at pages 1 to 12, both inclusive, of their Brief. We accept it as the case on appeal.

STATEMENT OF THE ISSUE ON APPEAL  
AS TO THE METROPOLITAN WATER  
DISTRICT OF SALT LAKE CITY

The only issue on this appeal as to this Defendant-Respondent is this: Is the Metropolitan Water District of Salt Lake City a necessary party to the proceeding brought by Plaintiffs under the Declaratory Judgment Act. If not, then Plaintiffs' Petition was, as to it, properly dismissed and the Judgment appealed from should be affirmed. If so, it should, of course, be reversed.

## POINT ONE

PLAINTIFFS-APPELLANTS' PETITION WAS PROPERLY DISMISSED AS TO THIS DEFENDANT.

## ARGUMENT

The case on appeal as made by Plaintiffs' Brief is one against the Municipal Corporation of Salt Lake City—such case as should result, as they say, in the several judgments enumerated on pages 10 and 11 of their Brief, viz:

“WHEREFORE, plaintiffs pray judgment:

“I. That the court construe the provisions of U.C.A. 1953, 10-8-4 and U.C.A. 1953, 54-2-1, subsection 28, to the end that the defendant, Salt Lake City, is without authority to sell or deliver any water within the area described in paragraph 1 of this petition, except as to the plaintiff, County Water System, Inc.

“II. That the defendant City is without authority to operate a water system for the delivery of water outside of its limits.

“III. That the defendant City be enjoined from constructing or aiding in the construction or repair of a water system for the distribution of culinary water to inhabitants outside of its limits.

“IV. That the defendant City be enjoined from engaging in the control and operation of a water system outside of its limits.

“V. That such other and further judgment and decree be entered in this cause as may appear to the court proper and that plaintiffs be awarded their costs.”

Plaintiffs’ occasion for making the Metropolitan Water District of Salt Lake City a party to proceedings of such purposes as to another is stated at page 13 of their Brief, in these words:

“So also does it seem that plaintiff is, by the statute, required to make the Metropolitan Water District of Salt Lake City a party to this proceeding. Indeed the interests of such water district is so intimately interwoven with the interest of Salt Lake City that any decree that may be entered

curtailing the powers of Salt Lake City is certain to affect the Metropolitan Water District of Salt Lake City.”

The “statute” referred to is U.C.A. 78-33-11, which provides:

“When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration.”

Plaintiffs’ argument in support of the statement just quoted begins with this (Brief page 14): “At the outset of this proceeding, it may be well to dispose of the case as it may affect the rights of the parties against which no affirmative relief is sought.” It continues to page 18.

It is based upon certain isolated provisions of U.C.A. 1953, Title 73, Chapter 8, the law under which Plaintiffs assume the Metropolitan Water District was organized and by which it is governed. It would have been more appropriate, we think, to have so alleged; but let that pass.

The isolated provisions relied upon are, we suggest, utterly frivolous as to the point to which they are offered.

They say (Brief page 14) that Metropolitan Water Districts are created “at the instance of the legislative body of any municipality.” Under the Metropolitan Water District Act the legislative body of any municipality may submit the proposal for the creation of a

District to the electors. Some one had to. But, as said by this Court, one would come into being, if at all, and become vested with the powers enumerated in the Act, *by the will of the people.*

“If the people choose not to set it up, no powers come into being. The people themselves in the last analysis have control of the situation.”  
*Lehi City v. Meiling*, 87 Utah 237, at 277-8.

It is true, as said, that the City has a preferential right to purchase a part of the District’s water supply for “*beneficial uses within such City.*” As to uses elsewhere it has no such or any preference, and the District is under no obligation whatever to deliver water to Salt Lake City for use outside of its limits.

The District *itself*, however, is *expressly* empowered to “lease, sell . . . or otherwise dispose of water . . . within and without the district” and to operate generally without restriction “both within and without and within or without the district and within and without the state.” U.C.A. 1953, 73-8-18.

The District is required to give preference to the requirements of its own area and upon one year’s notice and *upon a finding of its Board of Directors* as to the necessity therefor may cancel contracts for the delivery of water elsewhere.



The number of the District's Directors is fixed by the City when the District's area includes that of only one municipality. We thought this to be as good a way as any and so provided.

When the area of a District includes that of only one municipality the Attorney and Engineer of that municipality shall be ex-officio the Attorney and Engineer of the District. This is an amendment of the 1940 Legislature made for the avowed purpose of punishing the writer for activity against the successful candidate for high public office. Its legal effect is questionable. What of it anyway! The District also may have and has other Counsel and Engineers.

Concluding, (Plaintiffs' Brief page 15) they say:

"If these and other provisions of the Act do not make the defendant, Metropolitan Water District, interested in the kind of a declaratory judgment that shall be rendered against the defendant City, then indeed is it difficult to conceive of a state of facts or of the law that would constitute such an interest as that which requires one bringing an action under the declaratory judgment Act to bring in the parties 'who have or claim any interest which would be affected by the declaration.' U.C.A. 1953, 78-33-11."

We suggest, as before, that so far from impelling Plaintiffs' conclusion, the provisions of the Metropolitan Water District Act to which they refer, are not relevant to any extent or degree whatever.

They say "these and other provisions of the Act."

Here following are some others.

"Each such district when so incorporated shall be a separate and independent political corporate entity." U.C.A. 1953, 73-8-3.

"All powers, privileges and duties vested in or imposed upon any district incorporated hereunder shall be exercised and performed by and through a board of directors; provided, however, that the exercise of any and all executive, administrative and ministerial powers may be by said board of directors delegated and redelegated to any of the offices created hereby or by the board of directors acting hereunder." U.C.A. 1953, 78-8-20.

"The board of directors shall fix such rate or rates for water furnished as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by such district, pay the interest on any bonded or other debt, and, so far as practicable, provide a sinking or other fund for the payment of the principal of such debt as the same may become due," etc., etc. U.C.A. 1953, 73-8-31.

"The water district is not a true municipal corporation having powers of local government, but is an agency of the State vested with some of the powers and attributes of a municipality." *Lehi City vs. Meiling*, 87 Utah 237, at 261.

It is perfectly obvious that the Metropolitan Water District of Salt Lake City is, as the Metropolitan Water District Act expressly declares, "a separate and inde-

pendent political corporate entity,” as separate and distinct from the municipal corporation of Salt Lake City as is, for example, the Salt Lake City School District; and we suggest again that to urge the Metropolitan Water District Act as the ground for making this defendant a party to an action or proceeding against the City of Salt Lake City is utterly frivolous.

But Plaintiffs go on to say (their Brief page 16):

“It would seem to us that it is of vital concern to the District to know what area in Utah may be served by Salt Lake City with culinary water and whether or not the City is subject to the control of the defendant Commission over water sold and delivered outside the limits of the city. These matters cannot help but affect the amount of water that the city will purchase from the District.”

By what process of reasoning “It would seem” so to Plaintiffs we cannot imagine unless possibly as appears from the last sentence just quoted: “These matters cannot help but affect the amount of water that the city will purchase from the District.” But that cannot be affected by control or not of the City’s operations by the Public Service Commission.

Certainly, we suppose, if this proceeding were to result in a judicial declaration that Salt Lake City may not dispose of water outside of its corporate limits, we will be unable to supply it with any *whether we are or are not a party to an action so resulting*. If the City can’t

buy, why naturally we can't sell to it; and neither can anyone else. There are dozens of others who in such event would be precluded from selling water to or buying water from Salt Lake City.

Is it an "interest" of that nature of which the statute speaks: "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration." If that were the interest of which the statute speaks, "which would be affected", then Plaintiffs, seeking to have it adjudged that Salt Lake City may not construct, operate or maintain water systems outside of its limits, ought to join as parties all persons who might sell the City the necessary pipes, valves, meters, etc. Nonsense, of course, though all such have an "interest" which would be "affected".

Certainly Metropolitan Water District, so far as it may be thought of as a personality, is "interested" in the outcome of this action as to the municipal corporation of Salt Lake City. The writer of this has an "interest" in the continuance of the business of a certain clothing store conveniently near his office, and the clothing store is "interested" in the prosperity of the writer, but the interest of neither is such as to justify or require the joining of either one as a party defendant in an action of any nature against the other.

So here: the Metropolitan Water District, though it may be "interested" in the affairs and actions of the municipal corporation of Salt Lake City, is not legally

concerned with them; and whether as to some of them the City is or is not subject to the jurisdiction of the Public Service Commission or may or may not do what Plaintiffs-Appellants seek to have prohibited is just none of the District's business.

Plaintiffs-Appellants say (their brief page 16):

“But suppose we are wrong in our contention that the defendant, Metropolitan Water District, is without any interest in the kind of declaratory judgment that may be rendered against the defendant City, it has a simple way of getting out of this litigation by disclaiming any interest in the subject matter of this litigation. Plaintiffs have alleged that they have or claim to have such an interest.”

But they have also designated us as one as to whom no relief is sought.

Surely “it has a simple way of getting out of this litigation” and it has already availed itself of it.

Plaintiffs-Appellants (their Brief page 17) liken this proceeding to an action to quiet title.

Plaintiff in an action to quiet title asks relief against all parties defendant. His object and purpose is a decree that none of them has any interest in the property the subject of the action adverse to that asserted by himself. This he obtains, if at all, by proof of superior right or by waiver of proof as to defaulting or disclaiming parties.

But neither in such nor any action can there continue to be a defendant as to whom plaintiff may say, as here, "At the outset of this proceeding, it may be well to dispose of the case as it may affect the rights of the parties against which no affirmative relief is sought;" for at once (and however and whenever it may be made to appear) it is made known that no relief is sought against any particular defendant, a motion to dismiss as to that defendant must be granted.

But it may be said, and is, that we have an "interest that may be affected". As to such interest, the Plaintiffs-Appellants case on appeal states nothing whatever. The argument is that the Metropolitan Water District Act states it!

Plaintiffs-Appellants' Petition was properly dismissed as to the Metropolitan Water District of Salt Lake City.

Respectfully submitted,

FISHER HARRIS,

*Attorney for Metropolitan Water  
District of Salt Lake City.*