

1988

Mountain States Telephone and Telegraph Co. v. Garfield County : Brief of Respondent

Utah Supreme Court

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BRIEF

IN THE SUPREME COURT OF UTAH

880435

MOUNTAIN STATES TELEPHONE
AND TELEGRAPH CO.,

Appellant/Plaintiff,

-vs-

GARFIELD COUNTY; THE
GARFIELD COUNTY BOARD OF
COUNTY COMMISSIONERS; THOMAS
HATCH, SHERRELL OTT, AND
LOUISE LISTON, COUNTY
COMMISSIONERS; JUDY HENRIE,
COUNTY TREASURER: TOM
SIMKINS, COUNTY ASSESSOR:
THE UTAH STATE TAX
COMMISSION; R.H. "HAL"
HANSEN, ROGER O. TEW,
G. BLAINE DAVIS AND JOE B.
PACHECO, UTAH STATE TAX
COMMISSIONERS; TOM L. ALLEN,
UTAH STATE AUDITOR; EDWARD T.
ALTER, UTAH STATE TREASURER,

Respondents/Defendants.

Case No. 88-0435

Priority Cat. 14B

ON APPEAL FROM THE SIXTH JUDICIAL DISTRICT
COURT FOR GARFIELD COUNTY, STATE OF UTAH

BRIEF OF GARFIELD COUNTY RESPONDENTS

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JURISDICTION

Respondents, Garfield County Defendants, agree with the statement of jurisdiction contained in Petitioner's brief. Respondents will not in this brief restate the jurisdiction of the Court to hear this appeal.

STATEMENT OF NATURE OF PROCEEDINGS BELOW

This appeal by Appellant, Mountain States Telephone and Telegraph Co., is from a Decision and Summary Judgment upholding the constitutionality of Utah Code Annotated §17-19-15. Said Decision was premised upon the Court's conclusion that Utah Code Annotated, 17-19-15 was a state-wide tax enacted by the Utah Legislature to fund the state-wide purpose of achieving uniformity and equality of assessment of property taxes by establishing a funding mechanism to provide for the uniform state-wide administration of the assessment, collection and distribution of property taxes. The Court further ruled that since the state-wide uniform levy was a tax, and Appellant had conceded in the trial court that it was a tax, Appellants' 4th, 5th, 6th, 7th and 8th claims for relief, which were premised upon the assertion that the taxes were in fact a regulatory fee rather than a tax, were also dismissed.

The Decision and Summary Judgment were issued by the Honorable Don v. Tibbs, Judge of the Sixth Judicial District Court, and were duly entered on the 14th day of October, 1988. (R-238-247.) Appellants filed their Notice of Appeal on November 10, 1988. (R248-249.)

STATEMENT OF ISSUES PRESENTED FOR APPEAL

1. Whether or not it is constitutionally permissible for

the Utah State Legislature to pass a law to address the state-wide concern of achieving equality and uniformity of property taxation in the State of Utah.

2. Whether or not a legislatively established uniform, equalized statewide tax levy to fund property tax administration in each of the 29 counties of Utah is a valid exercise of legislative authority in pursuit of a remedy for a state-wide problem.

3. Whether or not the uniform state-wide tax levy is a violation of Appellant's right of due process because the revenues derived from the levy exceed the cost of collecting its particular taxes.

4. Whether or not the Plaintiff has standing to challenge the effect of the Uniform State-wide Tax Levy upon Garfield County.

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

CONSTITUTIONAL PROVISIONS: (See Exhibit 1.)

STATUTORY PROVISIONS: (See Exhibit 1.)

STATEMENT OF THE CASE

In 1986, the general legislative session of the Utah State Legislature, in response to representatives of local governmental entities as well as the state and local school boards, enacted into law Section 17-19-15, Utah Code Annotated. The statute was passed to address the concern for compliance with the constitutional requirement that all tangible property be taxed at a uniform and equal rate. Section 17-19-15 established an equalized statewide levy to pay for the cost of

assessing, collecting and distributing ad valorem property tax revenues.

The statute was first applied in 1987 and again in 1988.

Appellant paid its 1988 property taxes under protest and thereafter filed a complaint for refund in the district court of Garfield County claiming the statute to be unconstitutional. The county defendants (Respondents herein) filed an answer and moved for summary judgment. Plaintiff (Appellant herein) filed a cross-motion for summary judgment. The district court determined that the statute was constitutional in all respects and granted summary judgment to the Defendants. Plaintiff appealed to this Court.

STATEMENT OF FACTS

Respondents object to the "Statements of Facts" set forth in Appellant's Brief. Said statement contains argument, conclusions and assumptions. It also contains erroneous factual assertions and conclusions which are not supported by the record before the trial court or this Court on Appeal. For example: at page 5, Appellant made the unsupported conclusionary statement that the "Act promotes inefficient and costly tax collection procedures." There are no facts to support this conclusion in the record, and indeed Appellants have cited no portion of the record as support for this bald assertion. Appellant further asserts that "Every conceivable expense that can be denominated a "collection cost" has been so labelled in order to obtain the largest possible slice of the Section 17-19-15 pie." There are no facts in the record to support this statement. It

is nothing more than unsupported argument paraded as a fact by the Appellant without any evidence cited to support such a conclusion.

Appellant in its purported fact statement states "Assessment and collection costs have increased nearly five fold in Davis County--from \$329,695 in 1985 to \$1,540,923 in 1987." There is no evidence in the record to support this statement. Appellant's complaint, at Exhibit D (R-40) contained a schedule. However, Respondents denied the validity of the schedule and Appellants never produced or identified the source of the schedule. The uncontroverted affidavit of Brent Gardner (R-202-210) shows that for 1985 Davis County, in fact, budgeted \$1,293,996, in 1985 as the costs of assessing and collecting. Rather than the \$329,695. claimed by Appellant. Therefore, the uncontroverted evidence established that the increase between 1985 and 1987 in Davis County was not "five fold" as erroneously stated by Appellant but, in fact, increased by only 16% over the two year period or an average of less than 8% per year rather than the 500% asserted by Appellant. On page 8 of Appellants' opening brief the following representations are made concerning the Attorney General's position on the challenged statute. Appellant, in part, states: "...an Attorney General's opinion dated February 11, 1988, which found that the Act was unconstitutional...."

The original letter is on the inside cover of the record, unnumbered but dated August 26, 1988. It is also identified as Exhibit "A" in Appellant's brief. The last sentence of the last complete paragraph on page 1 reads as follows: "The opinion is an analysis that does not purport to bind the Court and is not an unequivocal declaration of

constitutionality or unconstitutionality." (Emphasis supplied.)

It should be noted that the letter is signed by the same person who wrote the opinion. Again, Appellant has made a misstatement to the Court.

RESPONDENTS' STATEMENT OF FACTS

Except for the limited role of the State Tax Commission in assessing certain multi-county or specifically described properties, valuation for ad valorem taxation is accomplished in the State of Utah through local county officials in each of the twenty-nine counties.

Historically, the State Legislature and the State Tax Commission have played a significant role in all local assessment issues.

S.B. 151 (Codified into Utah Code Annotated, 17-19-15), was passed in the 1986 general session by the Utah State Legislature. (R-36-38.)

The purpose of the legislation was to provide a funding mechanism to address a matter of state-wide concern in each of the individual counties to wit: the accurate, equitable and fair assessment of locally assessed residential, commercial and industrial properties as well as the effective and efficient collection of ad valorem property tax revenues. (R-96.)

Prior to the passage of the challenged statute there had been seven consecutive years of litigation by railroads claiming that local commercial and industrial properties were under-assessed. (R-96.)

In each of the previous four years the Utah State Tax Commission had issued orders directing certain counties in Utah

to increase assessment levels and at least five lawsuits had been filed by the Utah State Tax Commission against local county assessors claiming under-assessment of locally assessed properties within their respective counties. (R-96.)

While the statute required the State Auditor to set forth categories of costs uniform throughout the State to be utilized by county commissions or councils in budgeting for the cost of assessing, collecting and distributing ad valorem tax revenues, the final tax rate was to be determined by the Utah State Tax Commission from the aggregated budget total for all counties established by the State Auditor. However, the setting of the county budget, the controlling of costs through the budget process and the expenditure of funds was intended to and did remain the responsibility of the Board of County Commissioners or council. (R-97.)

The Utah Association of Counties, by formal resolution in November of 1987, expressed its support for the provisions of S.B. 151 and opposed any attempt to amend or repeal its provisions. In January of 1988 all 29 counties of the State of Utah unanimously expressed their support for the provisions of S.B. 151 including the revenue sharing provisions contained in the Act and again opposed any attempts to repeal or amend its provisions. (97.)

The Utah State Office of Education, the Utah Association of Counties, the Utah School Boards Association as well as the Utah League of Cities and Towns, determined that the equalized levy contained in S.B. 151 was a positive solution to

the problem of payment for assessing and collecting taxes.
(R-99.)

The undisputed facts show that the cost of assessing and collecting all ad valorem taxes in the State of Utah after the passage of S.B. 151 increased by approximately 14% between 1985 and 1987 or an average of only 7% per year. In Davis County for example, the increase over the two year period between 1985 and 1987 was an approximate total of 16% for an average increase of less than 8% per year for the two years in question. (R-202-208.)

In 1986 and again in 1987 Respondent, Garfield County fully noticed and held public hearings concerning its proposed budgets for the years 1987 and 1988. Public inspection of each proposed budget during normal working hours was invited. The official records of the public hearings indicate that neither Mountain States Telephone and Telegraph Company nor any person identifying themselves as a representative of said company appeared at the public hearings on the 1987 and 1988 budget.
(R-217-233.)

The Garfield County Commission adopted its budget for 1987 and 1988. Each budget separately accounted for and included all costs associated with the assessing, collecting and distributing of taxes. The Garfield County Commission voluntarily consented to and approved the revenue sharing between and among the several counties of the State for 1987 and 1988.
(R-224.225.)

On May 20, 1988, Appellant filed a complaint against Garfield County seeking a refund of taxes paid under protest and

a declaration that Utah Code Annotated Sections 17-19-15 was unconstitutional. (R-1-17.)

The Garfield County Defendants filed an answer and thereafter Appellant and Respondent both sought summary judgment. After allowing appropriate time for briefing by both parties, the Court heard argument and on the 14th of October, 1988, the Court issued its decision that Utah Code Annotated Section 17-19-15 was constitutional in all respects. Judgment of no cause of action was entered in favor of Respondents and against Appellant. (R-238-247.)

SUMMARY OF ARGUMENT

Section 17-19-15, Utah Code Annotated was the result of several years of efforts on the part of local government, local school boards, the Tax Commission and the Utah legislature to resolve the statewide concern for equal and uniform valuation of property for all ad valorem property taxation. To provide the necessary funding to address that statewide concern, the legislature adopted a funding mechanism similar to the one employed for the State Uniform School Fund. That mechanism was a separate equalized statewide tax levy based upon the actual budgeted costs of assessing, collecting and distributing property tax revenues within each of the 29 counties of the State. The funding mechanism employed was a valid exercise of legislative authority in pursuit of a remedy for a statewide problem. The procedures established by Section 17-19-15, Utah Code Annotated are consistent with the authority set forth in the Utah Constitution for the legislature and the Utah State Tax Commission. The procedures set forth in the challenged statute

are also in keeping with the interpretative decisions of the Utah Supreme Court and do not violate any provisions of the United States or the State of Utah.

Appellant and Respondents both submitted that matter to the trial court for summary judgment. The overarching issue presented by both motions was the constitutionality of Section 17-19-15, Utah Code Annotated. Since Appellant and Respondents had each filed motions for summary judgment, each had concluded that the legal issue of the constitutionality of Section 17-19-15 was ripe for final determination. This Court's decision on that issue will be a final disposition of the entire case.

ARGUMENT

POINT I

SENATE BILL NO. 151, (CODIFIED AT UTAH CODE ANN. §17-19-15) DULY ENACTED BY THE 1986 LEGISLATURE, IS PRESUMED CONSTITUTIONAL AS A VALID LEGISLATIVE ENACTMENT DESIGNED TO PROMOTE EFFICIENT STATEWIDE PROPERTY TAX ASSESSMENT, COLLECTION AND DISTRIBUTION.

The Appellant seeks to have this Court find the Act violative of various provisions of the United States and Utah Constitutions. The Utah Supreme Court has repeatedly stressed judicial restraint in finding any duly enacted legislative decision unconstitutional. Enactments must be read in a light favoring constitutionality with an effort made to resolve any doubts in favor of the statute. This principle was clearly stated in some detail in Thomas v. Daughters of Utah Pioneers, 197 P.2d 477, 499 (Utah, 1948).

It is well settled in this state, as elsewhere, that the courts will not declare a statute unconstitutional unless it clearly and manifestly violates some provision of the

Constitution of the state or of the United States. Every presumption must be indulged in favor of the constitutionality of an act, and every reasonable doubt resolved in favor of its validity. The whole burden lies on him who denies the constitutionality of a legislative enactment. If by any fair interpretation of the statute the legislation can be upheld, it is the duty of this court to sustain it, even though judges may view the act as inopportune or unwise; and it is not within the province of the judiciary to question the wisdom of the motives of the Legislature in the enactment of the statute. The provision in question was regularly passed by the Legislature and approved by the governor. The presumption should be and is in favor of validity. It must be assumed that the legislative department, whose members pledge themselves by oath to support the Constitution, has not lightly disregarded that pledge.

The Court elaborated upon this theme of presumptive constitutionality in Baker v. Matheson, 607 P.2d 233, 236 (Utah 1979), emphatically stating that legislative enactments were presumed constitutional and that particular deference should be accorded enactments that were primarily economic in nature. In a 1984 case the Court affirmed its previous decisions and also stated that "the presumption of constitutionality applies with particular force to tax statutes." Rio Algom Corp. v. San Juan County, 681 P.2d 184, 190-191, (Utah, 1984). It is also presumed that all legislative enactments are the result of the considered opinions of the state's duly elected and representative lawmakers. To find any statute unconstitutional, the court must find that no reasonable reading of the statute permits a finding of constitutionality. The Best Foods, Inc. v. Christensen, 285 P.1001, 1004 (Utah, 1930). If any fair reading of the statute permits a constitutional interpretation, the Court must uphold

it. It is against this strong presumption that the statutory scheme discussed below must be analyzed.

POINT II

A. THE BACKGROUND TO THE ACT AND THE EXTENSIVE HISTORY OF STATE INVOLVEMENT IN AND CONTROL OVER THE AD VALOREM PROPERTY TAX SYSTEM ESTABLISH A STATE PURPOSE IN FUNDING AND OPERATION OF THE SYSTEM.

Except for the limited role of the State Tax Commission in assessing certain multi-county or specifically designated properties, valuation for ad valorem taxation is accomplished in the State of Utah through local county officials in each of the twenty-nine counties. To suggest, however, that because functions are reposed within the statutory portfolios of locally elected officials and financed partially or totally by county general fund revenues they are purely local functions, ignores the significant historical role which the State Legislature and State Tax Commission have played in all local assessment issues. Article XIII, Section 11, Constitution of Utah, establishes a State Tax Commission and provides specifically that:

"under such regulations in such cases and within such limitations as the Legislature may prescribe it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties."
(Emphasis added.)

The same constitutional provision gives the State Tax Commission power to regulate and control local County Boards of Equalization and local elected officials with respect to taxation matters. Utah Code Ann. §59-1-210, 1953, as amended, grants sweeping control to the Tax Commission over local county taxing matters. Specifically, it may "adopt rules and

policies...to govern county boards and officers in the performance of any duty relating to assessment, equalization and collection of taxes" [§59-1-210(3)], "prescribe the use of forms relating to the assessment of property and the equalization of those assessments" [§59-1-210(4)], and "administer and supervise the tax laws of the state" [§59-1-210(5)]. Additionally it may:

"exercise general supervision over assessors and county boards of equalization and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination" [§59-1-210(7)].

It may "confer with, advise and direct county treasurers, assessors and other county officers in matters relating to the assessment and equalization of property for taxation and the collection of taxes" [§59-1-210(9)]. As part of its investigative responsibility the Commission is charged with the power to:

"investigate and direct the work and methods of local assessors and other officials in the assessment, equalization, and taxation of property, and to ascertain whether the law requiring the assessment of all property not exempt from taxation, and the collection of taxes, have been properly administered and enforced." [§59-1-210(19)].

Finally, to enforce its complete supervisory control over the local property tax process it may "cause complaints to be made in the proper court seeking removal from office of assessors, auditors, members of county boards and other assessing, taxing, or disbursing officers who are guilty of official misconduct or neglect of duty" [§59-1-210(12)].

This comprehensive grant of regulatory authority and state control over all assessment and collection practices within the counties of the State is also evidenced by several specific statutory enactments relating to the performance of those duties. Chapter 2 of Title 59, Utah Code Ann. (1953, as amended) provides a comprehensive statutory framework with regard to time frames, procedures, standards and methods under which local assessors, treasurers, auditors, and County Boards of Equalization must function. The Legislature and Tax Commission have, to a large degree, completely assumed control of the local administration of the property tax system.

Consistent with the Constitutional requirement for the fair, equitable and accurate assessment of all property in the State (Utah Const. Art. XIII §3), the Tax Commission has been constitutionally and statutorily mandated to equalize the valuations of the various counties for purposes of guaranteeing equitable assessment levels in financing the Uniform School Fund. The revenues of that fund are derived to a large degree from a uniform statewide tax levy imposed by local school districts. To further state equalization and uniformity of assessment, the Utah State Legislature, in 1969, established comprehensive programs of assessor certification and examination and a statewide re-appraisal program with costs to be shared between counties and the State Tax Commission. This program was designed to provide for re-appraisal of all taxable property in each county every five years on a county-by-county basis. The Legislature also implemented a program of personal property auditing conducted by the State Tax Commission with cost sharing

by the counties. See generally, Laws of Utah 1969, Chapter 179, Section 1 through 6, [Codified as Utah Code Ann. §59-5-106 through 111 (1953, as amended)].

In 1981, the re-appraisal program created in 1969 was repealed by the Utah State Legislature, (Laws of Utah 1981, Chapter 233, Section 2.) In its place was substituted a comprehensive program of sales-assessment ratio studies to be conducted by the State Tax Commission. The provisions relating to certification of county assessors, education and training programs conducted by the Tax Commission, personal property audits and assessment-sales ratio studies are currently codified at Utah Code Ann. §59-2-701 through 705 (1953, as amended.) With respect to the assessment-sales ratio responsibility of the State Tax Commission, Utah Code Ann. §59-2-704(2) (1953, as amended) provides, in pertinent part, that upon completion of the study by the Tax Commission:

(2) "The commission shall, on or before the 4th Tuesday of November of each even-numbered year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in Section 59-2-103. The adjustment or factoring may include an entire county, geographical areas within a county, and separate classes of properties. Where significant value deviations occur, the commission shall also order corrective action."

Accordingly as part of the comprehensive State policy with respect to equal and uniform assessments, the Tax Commission has been given authority to order adjustments to values and even order corrective action (re-appraisal) when significant value deviations occur.

Finally, as part of its effort to guarantee accuracy of assessment for purposes of equality within the equalized tax levy supporting the Uniform School Fund, the Legislature in 1977 (Laws of Utah, 1977, Chapter 22, Sections 1 through 4) provided that uniform minimum standards for real property plat maps used by counties for property tax assessments would be established by a separate committee chaired by a member of the State Tax Commission. The statutes provide that all plat maps prepared by local elected county recorders and assessors must conform to those standards and that the counties would be reimbursed for the cost of correcting existing plats. The importance of this activity and its relevance to the support of the Uniform School Fund were deemed sufficient to justify the enactment of Utah Code Ann. §59-5-114, now codified at Utah Code Ann. §59-2-318 (1952, as amended), which stated:

Cost of preparation of revised plats are to be borne by the Commission and appropriated from the Uniform School Fund to the Property Tax Division of the Commission for distribution to the various counties...(Emphasis added.)

Thus, the Legislature clearly established that equality of assessment between counties was of such statewide concern that an equalized statewide levy should be used to pay for the services. This financing mechanism is identical to that challenged by the plaintiffs in the instant case.

The Act presented for the court's review is the culmination of five years of concerted legislative activity and litigation by cities, school districts and counties. See generally Board of Education v. Salt Lake County, 659 P.2d 1030 (Utah 1983), and Boards of Education of Granite, Murray and Salt

Lake School Districts v. Salt Lake County Commission, et al., 749 P.2d 1264 (Utah, 1988.) In an attempt to resolve and/or eliminate continuing litigation over the apportionment of the costs of assessing, collecting and distributing property taxes, the statewide financing mechanism currently under attack in the instant case was duly enacted by the 1986 Utah State Legislature as S.B. 151. The method of financing an effective and economic statewide system of property tax assessment, collection and distribution was closely modeled on the financing mechanism for the State supported minimum school program (Uniform School Fund). See Utah Code Ann. §53-7-1 et seq. (1953, as amended.)

Under the uniform statewide tax administration levy, local county governing bodies establish budgets for assessing, collecting and distributing property taxes, categorize those costs in the uniform budgeting categories adopted by rule by the State Auditor, and impose as a local levy a uniform statewide tax rate sufficient to finance the aggregated budgets submitted by the 29 counties. If, in any county, the levy for tax administration purposes generates an amount in excess of the amount budgeted by the Board of County Commissioners for that county, the excess funds transmitted to the State Treasurer for re-distribution to counties like Garfield County where the tax rate was insufficient to generate the amount required for the tax administration system. County commissions are free to budget and expend whatever funds they deem necessary to accomplish the operation of the property tax administration system. In the event the expenditures are not within one of the uniform categories adopted and approved by the State Auditor, the County

governing body retains the authority to provide for the expenditure from other county revenues.

The utilization of an equalized statewide levy approved during the 1986 general legislative session was a deviation from the previous authority of each county to levy a separate tax for the cost of assessing, collecting and distributing property taxes. The equalized levy was in specific recognition of the significant differences in property tax valuation throughout the 29 counties. Many counties such as Garfield County, possess insufficient tax base to fully fund the cost of property tax assessment, collection and distribution with the tax rate authorized by the Legislature for that purpose. The utilization of an equalized tax rate was an attempt to minimize the negative impact of this disparity in taxing capability. As a solution it received the unanimous support of the cities, counties and school districts which are the three major groups previously been involved in litigation over these same issues. (See Affidavit attached hereto of Brent Gardner, R 94-99.)

It is against this background that the present Act, codified as Utah Code Ann. §17-19-15 (1953, as amended), must be analyzed. The present Act is the Legislature's considered solution to the need for an equalized, efficient mechanism to pay for the costs of a statewide property tax assessment, collection and distribution system.

B. THE ACT AND THE TAX LEVY IMPOSED THEREUNDER ARE IN FURTHERANCE OF A STATEWIDE PUBLIC PURPOSE AND THUS DO NOT VIOLATE UTAH CONSTITUTION ARTICLE XIII, §5.

Appellants claim the Act violates Utah Const. Art. XIII, §5 by allowing the Legislature to impose taxes for County purposes, by granting the State Auditor excessive control over local budgetary decisions and by forcing Counties to share property tax revenues with each other. In construing the statute it must be read so as to give effect to the Legislative purpose utilizing the plain meaning of the statutory language. The statute under attack is a funding mechanism designed, after many years and several attempts, to achieve a reasonable, efficient and equalized system of paying for the costs of assessing, collecting and distributing property taxes. The Act unequivocally provides that "to promote appraisal and equalization...and effective collection and distribution of property tax proceeds," proper officials, based upon reasonable economic data and assumptions, must levy a tax uniformly statewide. As has been previously set forth for this Court's consideration, the mechanism employed by this Act is not an aberration. Other statutes resolve similar statewide concerns through funding mechanisms that reallocate revenues between local entities. As an example, the statewide Uniform School Fund levy also appears as a local levy on property tax notices. Utah Code Ann. §53-7-17, §53-7-18, and §59-2-904 (1953, as amended).

Appellant's challenges to the Act rely extensively on several Utah Supreme Court decisions issued between 1901 and 1936. State v. Stanford, 24 Utah 148, 66).1061 (1901); State v. Eldredge, 27 Utah 477, 76 P.337 (1904); Bailey v. VanDyke, 66 Utah 184, 240 P.242 (1925); The Best Foods v. Christensen, 285 P.1001 (Utah 1930); Smith v. Carbon County, 63 P.2d 259 (Utah

1936). These early cases are distinguishable from the case at bar both factually and legally. Additionally, several recent cases have significantly diminished the relevance of the earlier authority in assessing the constitutionality of funding mechanisms authorized by the Legislature as in the public interest--especially where matters of statewide concern are involved. Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975); Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979); U.T.F.C. V. Wilkinson, 723 P.2d 406 (Utah 1986); City of West Jordan, et al. v. Utah State Retirement Board, et al, 98 Utah Adv. Rep. 37 (Utah, 1988). See also A. Lynn Jr., "Financing Modernized and Unmodernized Local Government in the Age of Aquarius," 1971 UTAH L.REV.30. Under this latter line of cases, the funding mechanism established by the Act is clearly constitutional. Finally, the clear distinctions between the statutory mechanism set out in the Act and those described as defective in earlier cases support validation even under the earlier strict construction of Utah Const. Art. XIII, §5.

In State v. Stanford, 24 Utah 148, 66 P.1061 (1901) the Legislature imposed upon counties the requirement of hiring and paying a pre-selected fruit tree inspector. This employee performed duties under the direction of the state board of horticulture and had the unrestricted authority to hire deputies. In striking down the Act, the Court held that it impermissibly usurped county administrative authority, created county debt without county consent, violated the constitutional prohibition against imposing a local tax for the solely local purpose, lacked uniformity of operation, and lacked a state

purpose. There was no statement of state purpose in the act under review. The Court recognized the state possessed clear authority to impose taxes for state purposes. Id. at 1062.

Substantial differences exist between the current Act and the scheme addressed by the Standford court. In the instant case, county employees, subject to the control of county officials, continue to perform their statutorily imposed responsibilities. Budgets and expenditures remain under county control. Tax rates are applied uniformly statewide, and the funding mechanism furthers a comprehensive statewide public purpose. Uniform and efficient property tax assessment and collection were the same goals sought by the earlier state funded reappraisal and assessment plat review programs and are the precise public policy objectives articulated by the legislature in the body of the current act.

Three years later, the Court again considered the application of Article XIII Section 5 to a legislative act. In State v. Eldredge, 76 P.337 (Utah 1904), the Legislature authorized the State Board of Equalization to assess or value certain property situated wholly within one county. This duty was constitutionally vested in county officials. That portion of the statute authorizing state assessment or valuation of property situated or operated wholly within one county was severed and voided. No fair reading permitted upholding that portion in light of the specific Constitutional limitation of Utah Const. Art. XIII, §11. It should be noted that the constitutional provision relied upon by the Court has been amended three times since the 1904 decision. The constitutional

separation of state and local functions has been abolished and the clear supervisory control of the State Tax Commission has been reinforced. In fact, much of the litany of potential abuse cited by the Eldredge Court (and by the Appellant) is now constitutionally sanctioned by express language. Eldredge thus provides little guidance to this Court in determining questions of state purpose and state taxation. In the case at hand, the Act can be read fairly without finding clear violations of Article XIII, Section 5 or Article XIII, Section 11. The duties and functions of each public official set forth in the Act come within and are consistent with the respective statutorily permitted duties for each such public position. (See, Utah Code Ann. §59-1-210, general powers and duties of State Tax Commission; Utah Code Ann. §17-5-52, -53, -54, duties of Board of County Commissioners; Utah Code Ann. §67-3-1, general functions and duties of State Auditor; Utah Code Ann. §67-4-1, general duties of State Treasurer.)

In 1925 the Court again considered an Article XIII Section 5 challenge to a law providing for agricultural extension services throughout the state. In Bailey v. Van Dyke, 240 P.454 (Utah 1925), the Court upheld a law authorizing county commissions to enter contracts for state agricultural extension services with local taxes.

Certain distinctions between Bailey and the present case should be noted for proper understanding of the real issues. In Bailey, local governments could, at their option enter into contracts for agricultural extension services. A local decision supported by a local tax would result; no section

of the Constitution was violated. The Appellant contends that Bailey would prohibit requiring that taxes be imposed to fund the administration of the property tax system. Such a contention ignores the statewide public purpose addressed by the Act. In the present case, a legislatively defined statewide concern required a statewide remedy and it is well settled that the Legislature in furtherance of a statewide purpose may require the imposition of local tax levies. Such is the case with the analogous Uniform School Fund levy described above.

Appellant also seeks support in Smith v. Carbon County, 63 P.2d 259 (Utah 1936.) The Act under review by the Smith Court involved the imposition by county clerks of probate fees graduated according to the size of the estate. At the outset it must be noted that Smith was not an Article XIII, §5 case. The only reference to that provision is a passing one--in dicta. The case largely revolved around whether the probate charge was a "fee" or a "tax." The Court concluded that it was a "tax" which, because of its graduated nature, violated the uniform and equal provisions. As the Article XIII §5 issues were not briefed the Court didn't address them. Thus the case is of little support to the Appellant since there is clear authority for sustaining the power of the State to impose burdens on local government and require the imposition of taxes to pay for them. The Best Foods, Inc. v. Christensen, 285 P.1001-1004 (Utah 1930.)

Finally, Appellant relies on The Best Foods, Inc. v. Christensen, 285 P.1001 (Utah 1930) for the proposition that the current Act intrudes impermissibly into the right of local

self-government. In Best Foods, a legislative requirement that local officials grant and sell permits prior to allowing commercial trade of oleomargarine was upheld even though the local governments were directed to charge and keep the administrative fees allowed. While the Court stated that the "very essence of local self-government," was the power of municipalities to collect and control revenues, Id. at 1003. it upheld the act first stating clearly the rule that a statute must be found constitutional if susceptible to a valid interpretation. Second, the Court found that the Legislature acted well within its power in imposing a duty on local governments to assist the state in enforcing the Act and furthering a statewide purpose. Id. at 1004. The Court also noted that the Legislature may, under settled authority, impose on counties the duty to impose taxes other than for its own purposes. Id. at 1004. This reasoning applies with equal force in the instant case where property tax administration has been the subject of extensive legislative control and state financial and administrative involvement.

While these early decisions by this Court strictly construed the constitutional restriction on the Legislature vis-a-vis local governments' sovereignty, the Court has taken a far more pragmatic approach in later years. These later cases stress the importance of granting deference to legislative enactments responding to statewide concerns, even when the concerns may initially appear as localized issues.

In Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975) the Court considered the Article XIII Section 5 challenge

to the Utah Neighborhood Development Act. Plaintiffs had alleged that the state's diversion of locally assessed and collected property taxes to a local redevelopment agency's use was unconstitutional. Finding the act to have a statewide purpose, the facial appearance of local benefits accruing to an agency controlled by a Board of Directors composed of the Salt Lake City Council occurring at the instance of a legislative act was not controlling. To respond to a statewide concern, blighted areas, "the law is well settled that in exercising the powers of the state the Legislature may require the revenue of a municipality, raised by taxation, to be applied to uses other than that for which the taxes were levied." Id. at 504.

The holding in Tribe is important to the present case because it properly recognizes the Legislature's authority to recognize a legitimate statewide purpose (i.e., respectively, to rid localities on a statewide basis of blighted areas, Tribe; and create an efficient statewide property tax assessment , collection and distribution mechanism, and the concomitant authority to require imposition of a tax for or the diversion of local revenue to that identified specific statewide purpose.

Following Tribe, in Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979), this Court again upheld the Utah Neighborhood Redevelopment Act and found the diversion of locally assessed taxes to the Murray City project's use as a proper exercise of the state's power to tax for the benefit of the public at large. The Salt Lake County Court took the opportunity to reaffirm its earlier conclusions in Tribe. The Legislature is empowered to redirect the tax revenues of

local governments for purposes it has concluded are statewide concerns. Additionally, the Court pointed out that the Plaintiff Salt Lake County was not deprived of its taxes to the sole benefit of Murray City. The County's "power to assess and collect taxes for all purposes of such corporation" remained intact. Id. at 1343.

These two recent cases clearly demonstrate the Court's approval of taxing mechanisms created by the Legislature to resolve identified statewide concerns such as that faced in the present case. Even earlier cases relied on by the plaintiffs reference the principle of state purpose as justification for legislatively imposed taxes or diversions of locally assessed taxes. These later cases clearly note the overriding state purpose and uphold the legislative acts satisfying that definition. There is no intimation by the earlier courts that if in fact a statewide purpose were at issue the acts would not have been upheld.

The Utah Supreme Court has recently and succinctly stated the roles of the judiciary and the Legislature relative to public purpose enactments.

Due respect for the legislative prerogative in law making requires that the judiciary not interfere with enactments of the Legislature where disagreement is founded only on policy considerations and the legislative scheme employs reasonable means to effectuate a legitimate objective.

Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406, 412 (Utah 1986), citing Baker v. Matheson, 607 P.2d 233 (Utah 1979). Continuing in this narrative, the UTFC Court, citing with favor

its opinion in Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984) states:

[A]cts of the Legislature are presumed constitutional, especially when dealing with economic matters based on factual assumptions. It is only when a legislative determination of public purpose is so clearly in error as to be capricious and arbitrary that the judiciary should upset it. Allen v. Tooele, supra. Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406, 412-413 (Utah 1986).

And finally, the Court described the nature of public purpose.

What is public purpose varies and changes with the times. In 1890, it was held that the purchasing and operating of an electrical distribution system to supply electricity to homes was not a public purpose. Maudlin v. City Council of Greenville, 33 S.C. 1, 11 S.E. 434 (1890). In contrast, in the past twelve years we have found public purpose in industrial development by a county, Allen v. Tooele County, supra; eradication of urban blight by a quasi-municipal corporation, Tribe v. Salt Lake City; and the providing of funds for low- and moderate-income housing by a state agency. Utah Housing Finance v. Smart, supra. We cannot say in the face of those precedents that the stimulation of Utah's economy and the creation of employment is not a legitimate public purpose. It is closely related to industrial development and not different in kind. Whatever our private views on the matter might be, we must concede that the Legislature's determination that a public benefit would result was within its latitude. Id. at 413.

The Appellants, at great length, reiterate that the uniform levy to defray the costs of collecting and assessing property taxes created pursuant to Utah Code Ann. §17-19-15 (Supp. 1988) constitutes a legislative imposition of a local tax for purely local purposes in violation of Utah Const. Art. XIII, §5. Ignoring the long history of State involvement and supervision over the property tax assessment and collection process,

it based its argument almost exclusively upon the fact that assessment and collection functions are performed by County elected officials. The argument is simply that if County officials perform these services, they must be County purposes and accordingly Utah Constitution, Article XIII, §5 must be violated. Such an argument ignores the historical development of counties, the relationship of counties to the State and the dual obligations of County officials in performing both State and purely local functions. In Utah, counties are legal subdivisions of the State. Utah Const. Art. XI, §1. They are organized and created by general law. Utah Const. Art. XI, §4. They are not municipal corporations of purely local character as defined in Utah Const. Art. XI, §5. This distinction is important in the instant case since the Utah Supreme Court in Salt Lake County v. Salt Lake City, 134 P. 560, 564 (Utah 1913) defined a "state purpose" for Article XIII §5 analysis as one "for the general public good, and not for a private purpose; that such purpose is not one which pertains to the corporate powers or interests of Salt Lake City." The critical question is then whether purely local self-government is affected. There, as in the instant case, "the state, ...simply calls upon its agencies, the counties, and the cities to assist in discharging a public duty which in no way affects local self-government." Id. at 564. Counties, as legal subdivisions of the State act as instrumentalities of the State in effecting State purposes. The State uses the County as its agent in the discharge of the State's functions and duties. Specific examples of this role are found throughout Title 17, Utah Code

Annotated. Sheriffs must serve all process when the State is a party. §17-22-26, Utah Code Anno. (1953 as amended.) County Attorneys must conduct on behalf of the State all prosecutions for public offenses within counties. They must attend to all legal business required by the Attorney General, without charge, when the interests of the State are involved. §17-17-1, Utah Code Ann. (1953 as amended.) County Assessors, in cooperation with and under the supervision of the State Tax Commission, must perform all the duties mandated by Tax Commission Rule, the Legislature or the Constitution. Utah Const., Art. XIII, §11, and §17-17-1, Utah Code Ann. (1953 as amended.) Based upon this mix of delegated State responsibility and the County quasi-municipal police powers over purely local matters, Appellants err in suggesting an interpretation of Utah Const. Art. XIII, §5 that ignores these differences. The State of Utah has a long history of involvement in and supervision over property tax assessment and collection matters. (See Point II(A) of Respondents' Brief). The State has paid for many of the local assessment functions. As early as 1917 the State, with State general fund revenues, was obligated to pay a proportionate share of the costs of collecting and assessing property taxes. Compiled Laws of Utah, 1917, §1561, Revised Statutes of Utah 1933, §19-16-16, and §19-16-16 Utah Code Ann. 1943. Specifically, those statutes provided "the sum (of the assessing and collection costs) so apportioned to the state and the state school funds shall be borne and paid by the state..." Clearly, the state could not legally expend state funds unless the expenditures were for state purposes.

Finally, this Court has recently addressed the standards that must be applied in determining whether a function is a "municipal function" or a "State function." In City of West Jordan v. Utah State Retirement Board, 98 Utah Rpt. 37, (Utah, 1988), this Court addressed whether the provision of retirement benefits was a municipal function, whether the Utah State Retirement Board was a special commission, and whether the legislative grant of authority over retirement benefits to the State Retirement Board constituted a delegation of municipal functions to a special commission in violation of Utah Const. Art. VI §28. In defining "municipal function" the Court rejected the sort of strict categorization which the appellant would urge upon it and adopted a balancing approach. The Court, Id. at 40, enumerated some of the specific factors as:

"[The] relative abilities of the state and municipal governments to perform the function, the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality, and the extent to which the legislation under attack will intrude upon the ability of the people within the municipality to control through their elected officials the substantive policies that affect them uniquely."

In the present case, the funding mechanism adopted by the Legislature specifically recognized and addressed the disparity in tax base between the various counties of the state. Just as with public education and the Uniform School Fund, many of the counties of the state lack the ability to fund wholly from their own revenues efficient and modernized property tax assessment and collection systems. By providing a uniform state-wide tax rate the ability to perform the constitutionally

mandated responsibilities was extended to all counties, not just those with rich tax bases. Failure of counties to perform those functions affects not just taxpayers within the non-performing county, but all other taxpayers in the state through their contribution to the Uniform School Fund and the equalized funding of public education. Little is served in terms of meeting the constitutional mandate of equality of uniformity and assessment if only those counties which have adequate tax bases are properly assessed. Finally, the question must be resolved as to whether the statutory funding scheme "intrudes upon the ability of the people within the county to control through their elected officials the substantive policies that affect them uniquely." As a general matter no element of the assessment and collection process affects local taxpayers uniquely. To the degree that the properties are mis-assessed, the state as a whole assumes liability for lost revenues in the Uniform School Fund and federal litigation under the Railroad Revitalization and Recovery Act. Appellant asserts that the Act strips from local elected officials not only control over how they perform their official responsibilities, but also control over the whole taxation process and the levels of funding afforded those activities. That simply is not the case. The Legislature has uniformly mandated the functions of local officials as they relate to the property tax system. They largely act as agents for the state in the ad valorem taxation process. The levels at which they are compensated and at which they set their programs remain uniquely within local control. They remain subject to their local constituents in all matters respecting the size of

their offices and budgets and the efficiency with which they perform their functions. To the extent they believe it locally necessary to expend funds for functions other than those contained within the uniform budgeting categories adopted by the State Auditor, they retain complete ability to pay for those functions out of other county revenues. This is no more nor less the case than currently exists with the Uniform School Fund and the local Uniform School Fund Levy imposed in each school district.

While the foregoing is in the context of an Art. VI, §28 discussion, the elements of municipal functions under that provision and "local purposes" under Art. XIII, §5 are closely intertwined. The balancing test established by the Court for determining whether something is "a municipal function" is equally applicable in determining whether an activity is a "local purpose." In each case the pervasive pattern of state activity and control over the assessment, collection and distribution of property taxes renders those functions as something more than "local purposes" or "municipal functions." They are not "substantive policies that affect them (the County uniquely." West Jordan, Id. at 40.

It is settled law in this State, as in all jurisdictions throughout the Country, that the Legislature possesses the authority to require local governments to impose taxes or spend funds raised by taxes to effect state-wide purposes. Tribe v. Salt Lake City Corporation, 540 P.2d 499, 504 (Utah 1975); Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339, 1343 (Utah 1979). Appellant chooses to ignore this

mandatory aspect of Tribe and Salt Lake County. Also ignored is the simple reality that counties annually budget, levy, and expend millions of dollars in the performance of duties mandated by the State Legislature as part of comprehensive Legislative schemes for effecting State policy. State offenses are prosecuted, state Courts are supported, state statute violators are incarcerated, and state standards for assessing and collecting property taxes are complied with, all by County officials, all with local property tax dollars, and all pursuant to comprehensive State mandated policies. As noted in a leading treatise on County law," ... Everywhere, even in states having the aforementioned constitutional clause, (referring to a constitutional provision identical to Article XIII, §5 of the Utah Constitution), it is agreed that state legislatures can impose taxes upon counties for state purposes and can compel counties to spend for such purposes even though taxation will be required." (Emphasis supplied.) Antieau, Local Governmental Law, §41.07.

Additionally, uniform and equitable property tax assessment, collection and distribution has been a matter of general public concern since statehood. Equal and uniform assessment is required by the Constitution. The state has borne the cost of statewide reappraisal programs. Equalized levies have paid for the development of local property assessment plat maps. The timing, sequencing, and performance of tax administration duties by County officials are all subject to constitutional, statutory, and administrative control by the state. To suggest that the current Act violates local self-government or constitutes legislative imposition of a tax for local purposes

ignores both history and reality. The Act is in furtherance of resolving a matter of statewide concern and as such is constitutional under all the cases which have interpreted Utah Const. Art. XIII, §5. In conclusion, the Appellant's claims cannot overcome the presumption of constitutionality and the clear presence of a comprehensive state purpose.

POINT III

THE FUNDING MECHANISM CREATED BY THE ACT DOES
NOT VIOLATE UTAH CONSTITUTION ART. XIII, §5.

Appellant contends that the revenue redistribution aspect of the funding mechanism established by the Act violates Utah Const. Art. XIII, §5, by mandating revenue sharing between the counties. Appellant's argument is that the revenue sharing allowed under that constitutional provision must be a voluntary act engaged in by counties and may not be imposed upon counties by the Legislature. As discussed above, the revenue redistribution formula set out in the Act is not an anomaly under Utah law. It is similar in its operation to that created by the Legislature for funding the mandated minimum school program [see Utah Code Ann. §53-7-1 et seq. (1953, as amended)], or distributing local sales and use tax revenue [see Utah Code Ann. §59-12-20, et seq. (1953, as amended)]. As part of a comprehensive statewide approach to funding the property tax administration system the revenue redistribution aspects of the Act are clearly consistent with those approved by the Court in Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975) and Salt Lake County v. Murray Redevelopment, 598 P.2d 1339 (Utah 1979). In each of those cases taxes properly levied by taxing entities within Salt Lake County were partially diverted to a

redevelopment agency for the purpose of alleviating the statewide problem of blighted areas. In the present case, counties in which proceeds in excess of the budgeted amounts are generated by the uniform statewide tax administration levy have those excess funds are diverted to other counties in furtherance of funding programs leading to statewide uniformity of assessment and valuation. Such a program does not necessarily constitute revenue sharing between the counties, but merely a statewide funding approach to a matter of statewide concern. According, Utah Const. art. XIII §5 is irrelevant to the discussion.

Even assuming arguendo that the funding mechanism prescribed by the Act constitutes revenue sharing between the counties, plaintiff's challenge to the Act on that basis must fail for several reasons. First, if the Act only allows voluntary revenue sharing, the aggrieved parties are not the plaintiffs but those counties which object to the revenue sharing. Plaintiff lacks standing to assert the claims on behalf of the counties and accordingly its claim should be dismissed. Second, the clear factual evidence as set out in the Affidavit of Mr. Gardner and the joint statement of the Utah Association of Counties, Utah League of Cities and Towns and Utah School Boards Association, clearly establish that the Act was supported by the counties at the time of its passage. R. 94-98. Subsequently the Utah Association of Counties, by resolution of all its membership, or the executive committee authorized to speak for it, has, on two separate occasions specifically endorsed S.B. 151 including the funding mechanism established thereunder. Finally, the Utah Association of County Commissioners and County

Councils representing the governing bodies of all 29 counties of the State has unanimously endorsed the Act with its revenue sharing provisions and opposed any attempt to amend or repeal it. To assert that the revenue sharing portions of the Act are contrary to the wishes of the counties ignores reality. Third, assuming further that the financing mechanism does constitute involuntary revenue sharing, Utah Const. Art. XIII §5, is silent on the question of whether the State may re-distribute revenue when a statewide purpose is involved. The amendment of Utah Const. Art. XIII §5 was to allow voluntary horizontal revenue sharing (Appellant's Brief p. 32). In support Appellant cites the "Impartial Analysis" prepared for the 1982 Voter Information Pamphlet. The Amendment and the Analysis speak for themselves. The Amendment allows local governments to voluntarily share their revenues. It is silent as to whether the legislature is prohibited from diverting or reallocating revenues between local subdivisions. The real question surrounding the 1983 amendment is whether anywhere in that amendment exists a prohibition against the Legislature imposing a tax or requiring revenue sharing for a state purpose. Respondents submit there is not. The amendment is silent on that issue and Appellant should not be allowed to create from whole cloth a non-existent Constitutional prohibition. Barring such a constitutional prohibition against legislative action, Utah Const. Art. VI §1 clearly vests in the Legislature of the State of Utah all authority to legislate on matters of statewide concern. Kimball v. City of Grantsville, et al., 57 P.1, 5 (Utah 1899); State ex rel.

Nicholes v. Cherry, Judge, 60 P. 1103 (Utah 1900); Lehi City v. Meiling, 48 P.2d 530, 534, 535 (Utah 1935).

In summary, Appellant's Utah Const. Art. XIII, §5 challenge to the Act as "involuntary revenue sharing" must fail. Appellant lacks standing to challenge a provision that may only be challenged by the affected governmental entities to wit, the counties and, second, the record adequately supports that the revenue sharing of the Act is fully supported and endorsed by all 29 counties.

Simply stated, Utah Const. Art. XIII §5 does not prohibit the diversion of local revenues to effect a statewide purpose (Tribe and Salt Lake County, supra.). Unless prohibited by the Constitution, the power to legislate on matters of State concern is vested in the Legislature. Utah Const. Art. VI §1. The 1983 amendment to Utah Const. Art. XIII §5, allowing voluntary revenue sharing between local governments is silent and does not specifically prohibit the State from creating funding mechanisms, even including horizontal revenue sharing, when a statewide purpose is involved. Accordingly, Utah Code Ann. §17-19-15, is a legitimate exercise of the reserved power of the Legislature found in Utah Const. Art. VI §1 and is not prohibited by Utah Const. Art. XIII §5.

POINT IV

APPELLANT'S "DUE PROCESS", "EQUAL PROTECTION" AND "TAKING" CLAIMS ARE DEFECTIVE AS A MATTER OF LAW AND RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT.

Appellant asserts generally that its various constitutional claims require extensive factual development before they may be adjudicated. This contention rests upon the Appellant's position that the taxes it pays must bear a reasonable relationship to either the burden it imposes on the local tax system or the benefit it receives from that system. As addressed in the Appellant's original complaint below, most of the bases for these constitutional claims arise in the Appellant's contentions that the tax is a fee thus necessitating a reasonable relationship between the cost of the governmental service and the amount of the fee. (R-1-17.) The Appellant, however, at the time it filed its Cross-Motion for Summary Judgment and Supporting Memorandum, conceded that the funding scheme set up by the Act constituted a tax. (R-130 footnote 4.) Notwithstanding that concession, the Appellant continues to assert that all the hallmarks of a fee must now apply to the tax. In support of its contention that extensive factual development must occur, the Appellant cited the chronology of this Court's decisions relating to the attributes of a fee and the factual analysis which must occur to determine the reasonableness of a fee (see Home Builders Assoc. of Greater Salt Lake v. Provo City, 28 U.2d 402, 53 P.2d 451 (1972); Call v. City of West Jordan, 614 P.2d 1257 (Utah, 1980); Banbury Development Corp. v. South Jordan City, 631 P.2d 899 (Utah, 1981); Lafferty v. Payson City, 642 P.2d 376 (Utah, 1982); Patterson v. Alpine City, 663 P.2d 95 (Utah, 1983)). Respondents concede that all of the above cases are relevant to the question of whether a fee is reasonable. They do not, however, have any relevance to the issue of what must

occur with respect to a tax. Fees are regulatory in nature. The amount collected to cover the cost of regulation must be reasonably related to the service provided pursuant to that regulation.

Traits common to fees may be succinctly noted as follows:

(1) Fees are charged in exchange for a service that benefits the person charged as opposed to a benefit to the public at large.

(2) Fees are paid by choice by the person deciding to utilize government services.

(3) Fees are collected to compensate the governmental activity for the service provided.

Southview Cooperative Housing Corp. v. Rent Contro. Board of Cambridge, 396 Mass. 395, 486 N.E.2d 700, 704-705 (Mass., 1985).

On the other hand, taxes are imposed to fund the general purpose of government. Statutes duly enacted by the Legislature primarily to raise revenue may appear at first glance to bear some of the hallmarks of a fee. As the Court noted several years ago, if there is no attempt to regulate a business or activity or protect a public interest, the measure is a tax. Furthermore the Legislature may impose whatever tax it deems necessary and may require local governmental entities to assess and collect the tax so long as the Legislature is not specifically prohibited from so doing. The Best Foods, Inc. v. Christensen, 285 P.1001, 1003-1004 (Utah, 1930). Admittedly the Legislature may choose to denominate a measure as either a fee

or a tax and that denomination may be erroneous but, however, when the Legislature chooses a particular term knowing that distinctions exist, deference should be accorded and a presumption established. Smith v. Carbon County, 90 U. 560, 63 P.2d 259 (1936). Mere characterization is not controlling but the burden to state otherwise than the choice selected by the Legislature is upon the one seeking to challenge the statute. See Weber Basin Home Builders Assoc. v. Roy City, 26 U.2d 215, 487 P.2d 866 (1971). In the present case the Legislature has denominated the funding mechanism as a tax. It is a uniform, equalized, statewide tax rate applied to all taxable property. The fact that it is imposed to fund a particular governmental service does not change the nature of the imposition to a regulatory fee. Many single purpose tax levies exist. (See generally, Utah Code Ann. §59-2-911 (1953, as amended)). These restricted purpose taxes do not, by virtue of the restriction, become fees or special assessments as the term is commonly understood.

Different due process and equal protection standards apply. The funding mechanism imposed by the Act, is a tax upon all taxable property in the State of Utah. To the extent that the Appellant does not own property in any county, it is not subjected to property taxation in that county. In that regard, its treatment is identical to that afforded all other taxpayers. The most it can legitimately claim is that in the event taxes paid by it are transmitted to counties in which it doesn't own property, there is indirect taxation. It contends that such indirect taxation violates its due process and equal protection

guarantees. If such were the case, there could be no rational basis for sustaining taxes such as the Uniform School Fund Levy or the Local Option Sales and Use Tax (a portion of which is distributed on a per capita basis regardless of the jurisdiction in which the taxpayer paid the tax.) The two examples cited above are denominated by statute as local levies or local taxes, and have not been successfully challenged with respect to their imposition or collection. The funding mechanism set out in §17-19-15 rests upon an equally strong constitutional footing.

Appellant's argument that it is denied the requisite political voice with respect to taxation matters ignores the requirements which have been established by the Utah Supreme Court. See generally Lehi v. Meiling, 48 P.2d, 530, 536 (Utah, 1935.) Its interest in avoiding excessive expenditures is identical to and represented by each and every taxpayer in the State. Appellant has the right to appear at budget hearings in any county, it may protest the valuation placed upon its properties either by appeals to the State Tax Commission or local boards of equalization, and finally, it may petition the Legislature for a change in the law. Significantly, such a change was sought in the 1988 general session and rejected by a decisive vote of that body. Additionally, Appellant did not appear at the 1987 or 1988 budget hearings of the Garfield County Commission. See Affidavit of Hazel Houston. (R-216-219.)

Appellant further contends that its due process rights are violated because it is centrally assessed by the State Tax Commission, and the tax amount levied against it is not substantially equivalent to the burden it imposes or the benefit it

receives. In support of that position, it cites Commonwealth Edison Company v. Montana, 453 US 609 (1981). What Appellant fails to cite from Commonwealth Edison, supra, is the Court's language at page 627 thereof. In response to a similar argument raised by Commonwealth Edison, the Court stated:

"Appellants urge, however, that the fourth prong of the Complete Auto Transit test must be construed as requiring a factual inquiry into the relationship between the revenues generated by a tax and the costs incurred on account of the taxed activity, in order to provide a mechanism for judicial disapproval under the Commerce Clause of state taxes that are excessive. This assertion reveals that appellants labor under a misconception about a court's role in cases such as this. The simple fact is that the appropriate level or rate of taxation is essentially a matter for legislative, and not judicial, resolution."

The Court then went on to note, Id. 627:

"In any event, the linchpin of Appellants' contention is the incorrect assumption that the amount of state taxes that may be levied on an activity connected to Interstate Commerce is limited by the costs incurred by the state on account of that activity. Only then does it make sense to advocate judicial examination of the relationship between taxes paid and benefits provided. But, as we have previously noted, see supra, at 623-624, interstate commerce may be required to contribute to the costs of providing all governmental services, including those services from which it arguably receives no direct "benefit."

This position has been recently reaffirmed in Cotton Petroleum v. New Mexico, S.Ct. 1989 WL 38235 (U.S.) issued April 25, 1989.

There is no constitutional requirement that the benefits received from taxing authority by an ordinary commercial taxpayer--or by those living in the community where the taxpayer is located--must equal the amount of its tax obligations. See Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 491, n.21 (1987). As we recently explained:

"[T]here is no requirement under the Due Process Clause that the amount of general revenue taxes collected from a particular activity must be

reasonably related to the value of the services provided to the activity. Instead, our consistent rule has been:

"Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.

"A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve abandonment of the most fundamental principle of government--that it exists primarily to provide for the common good. *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-523 (1937) (citations and footnote omitted.)

While Appellant does raise equal protection challenges not raised by the Appellants in Commonwealth, Appellant's equal protection rights are adequately safeguarded by the remedies available to all taxpayers--including it.

It is clear that significant benefits flow to all taxpayers of the State, be they centrally or locally assessed, when properties are appropriately valued and tax values are equalized so as to assure that each property is taxed only in proportion to its value at an equal and uniform rate. These are indirect benefits which the Appellant receives by virtue of the funding mechanism established in Utah Code Ann. §17-19-15. Appellant wishes to dismiss these indirect benefits as of no consequence in determining whether its equal protection or due process rights have been violated. The Commonwealth Edison Court spoke to that question as well. *Id.* at 628 and 629:

"Furthermore, the reference in the cases to police and fire protection and other advantages of civilized society is not, as Appellants suggest, a disingenuous incantation designed to avoid a more searching inquiry into the relationship between the value of the benefits conferred on the taxpayer and the amount of taxes it pays. Rather when the measure of the tax is reasonably related to the taxpayer's activities or presence in the State--from which it receives some benefit such as the substantial privilege of mining coal--the taxpayer will realize, in proper proportion to the taxes it pays, "(t)he only benefit to which the taxpayer is constitutionally entitled...(:) that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes." Citing with approval Carmichael v. Southern Coal and Coke Company, 301 U.S., at 522.

In the case at bar, Appellant is taxed only upon the property it owns throughout the State at a uniform and equal rate. Those tax revenues support matters of state-wide concern such as the appropriate assessment, equalization, collection and distribution of property taxes for all taxing entities in the State, including the Uniform School Fund. The Appellant receives the benefits that collection of those tax dollars allows. It utilizes an educated work force that comes from all portions and counties of the State. It has the subtle and indirect, but no less important, benefit of living in a civilized society--a society which is supported by the property tax collection system paid for under Utah Code Ann. §17-19-15.

In summary, the funding mechanism is a tax and not a fee. Appellant is taxed only on the property it owns at a rate equal to all similar property. There need be no factual development as required in "fee" analysis. As a "taxpayer," the Appellant has forums for its concerns, be they budgetary, valuation or legislative. It receives indirect but real

benefits from the system it attacks. It has the equal protection and due process guarantees afforded it by the Constitution.

POINT V
APPELLANT LACKS STANDING TO CHALLENGE THE
PROVISIONS OF THE ACT.

Article XIII, §5 analysis is ultimately not only a legal analysis of the specific provisions of a challenged act, but also a philosophical analysis of the fundamental inter-relationships between local and state governments. Article XIII, §5 is predicated upon the assumption that remote state officials should not force local elected officials to levy taxes for what state officials might think are necessary local functions. It is a constitutional principle which speaks of co-existence, a separation of responsibility and of direct accountability between local elected officials and their constituents for purely local decisions. The thrust of the Appellant's claims is that the Act violates Art. XIII, §5 by creating too great an intrusion by the State into purely local affairs. As the keystone of Art. XIII, §5 is this inter-governmental relationship, Respondents respectfully submit that Appellant lacks standing to assert the Art. XIII, §5 challenges. The only proper parties are the counties themselves and their elected officials. Respondent, Garfield County, voluntarily budgeted in accordance with the Act and imposed the tax levy authorized thereunder. No challenge was made by Garfield County or any of the 29 counties to the funding mechanism. Appellant stands in the position of any other taxpayer with respect to this issue. Its benefits and burdens and the impact of the Act upon it are

indistinguishable from the benefits, burdens or impacts felt by any other taxpayer. This Court in Jenkins v. Swan, 675 P.2d 1145 (Utah, 1983) described a three part analysis appropriate to the determination of standing. The first of those elements is a consideration of the traditional standing requirements. Has the appellant suffered a real and distinct injury caused by the governmental action on which the Appellant bases his claim? Mere allegations of adverse impact are insufficient. In truth, under the Act the Appellant paid less in Garfield County for the costs of assessing and collecting property taxes than if Garfield County had been obligated to rely solely on its own tax base. Respondent submits that for purposes of Art. XIII, §5 analysis the impact of the Act on the relative sovereignty and inter-relationships of local and state governments are only on those governments and are properly litigatable only by them. Taxpayers suffer none of those direct impacts. Appellant is not an entity whose sovereignty is abridged by the action of the Legislature. The Legislature has merely, in its discretion, identified certain statewide public policy concerns, placed the obligations for those functions upon local government, and provided a funding mechanism to compensate for the costs of the program. The Appellant's lack of involvement in that inter-relationship or the issue of relative sovereignty precludes it from obtaining standing under the traditional tests.

The second element of the Jenkins test was the consideration of whether there are potential plaintiffs with a greater interest in the outcome who could more adequately pursue the issue. A plaintiff, such as the Appellant, does not obtain

standing merely because more appropriate plaintiffs are absent. It is clear from the analysis of the Art. XIII, §5 considerations that the only appropriate parties are the counties or their elected officials. The Appellant may not bootstrap itself into their position merely by asserting their absence.

Finally, in Jenkins, the Court turned to the question of whether "the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing." Id. As a taxpayer, the Appellant is no different than any other member of society. Its personal interest in the Art. XIII, §5 issue of relative sovereignty and independence of state and local governments is remote. The doctrine of "great public interest and societal impact" should not be applied.

In summary, the Respondents assert that the Appellant lacks standing to raise the constitutional questions framed in the Art. XIII, §5 analysis. Questions of the balance between state and local autonomy, the ability of the State to mandate functions in furtherance of State purposes and the requirement of providing funding to support those services are appropriately raised only by the local governments affected. The Appellant's interests are too remote and more appropriate plaintiffs exist. It suffers none of the palpable injury which would traditionally give rise to standing. Accordingly, standing should be denied and the judgment of the trial court sustained.

VI.

SUMMARY AND CONCLUSION

Senate Bill 151 was a result of several years of county legislative efforts in pursuit of a solution to the

problem of financing property tax administration in each of the 29 counties of the State. Its specific provisions were sought by the counties, endorsed by the counties and Tax Commission and remain supported by the counties and Tax Commission. It allows county officials to continue to perform their statutorily designated responsibilities; Boards of County Commissioners retain control over budgets and expenditures, they have the authority to expend any funds they deem necessary, not only through the proceeds of the Uniform Tax Administration levy but through such other general fund revenue sources as they possess. No county officials' responsibilities are impaired by the statute and, accordingly, the intrusion of the Act into local government affairs is minimal. The utilization of the funding mechanism established by the Legislature (a uniform equalized statewide levy) is a valid exercise of legislative authority in pursuit of a remedy for a statewide problem. Since statehood, the Legislature and State Tax Commission have been integrally involved in the operation of the property tax assessment, collection and distribution systems in each county of the State. The State has utilized proceeds from the Uniform School Fund (an uniform equalized statewide levy) to compensate county officials for the preparation of real property tax maps. The State has utilized general fund revenues to pay its share of the costs of the property tax system. Additionally, the Legislature has vested in the State Tax Commission the authority, in pursuit of statewide equalization and uniformity of valuation, to direct adjustment of local values or even re-appraisal of local properties. To suggest that the tax levy established by the Act is not a funding mechanism in furtherance of the matter of state-

wide concern ignores both historical and current reality. Under Utah Const. Art. XIII, Section 5 as interpreted by the Utah Supreme Court in Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975), and Salt Lake County v. Murray Redevelopment Agency, 598 P.2d 1339 (Utah 1979), the funding mechanism established by the Act now under review is a permissible extension of legislative authority in a matter of statewide concern. It is not a legislative imposition of the local tax for a purely local purpose.

In conclusion, the funding mechanism and budgeting mechanism are analogous to other funding mechanisms found in Utah law. It is directly analogous to the Uniform School Fund levy. Additionally the Act intrudes no further into local government responsibilities than any other act previously adopted by the Legislature delineating the structure and operation of the property tax system by local elected officials.

As such the Act should be sustained and the ruling of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 15th day of May,
1989.

PATRICK B. NOLAN
Garfield County Attorney

BILL THOMAS PETERS
Special Deputy Garfield County
Attorney

KARL L. HENDRICKSON
Special Deputy Garfield County
Attorney

By: 

BILL THOMAS PETERS

By: 

KARL L. HENDRICKSON

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED
CONSTITUTIONAL PROVISIONS:

Article VI, Section I(1) of the Utah Constitution provides:
The Legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

Article XIII, Section 2 of the Utah Constitution in part provides:

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

Article XIII, Section 3 of the Utah Constitution provides:

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

Article XIII, Section 5 of the Utah Constitution provides:

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary contained in this Constitution, political subdivisions may share their tax and other revenues with other political subdivisions as provided by statute.

Article XIII, Section 11 of the Utah Constitution provides:

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the State, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the

tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of the State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature.

STATUTORY PROVISIONS:

The Statute that is the subject of this controversy is Utah Code Annotated Section 17-19-15 which provides:

(1) To promote appraisal and equalization of property values and effective collection and distribution of property tax proceeds, the county governing body of each county shall annually separately budget for all costs incurred in the assessment, collection, and distribution of property taxes and related appraisal programs and submit those budgets to the state auditor for review.

(2) The state auditor shall establish, by rule, categories of allowable costs and shall certify submitted budgets for compliance with approved categories.

(3) Upon review and certification by the state auditor, the aggregated statewide costs shall be transmitted to the State Tax Commission for determination of a mandatory statewide tax rate sufficient to meet those expenditures. By June 8 of each year the tax commission shall certify the rate to each county auditor for inclusion upon the tax notice as a separately listed and identified local levy.

(4) The tax rate may not exceed a maximum of .0005 per dollar of taxable value of taxable property except for: (a) mandated or formally adopted reappraisal programs conforming to tax commission rules; or (b) actions required to meet legislative, judicial, or administrative orders. Taxes levied for this purpose may not be included in determining the maximum allowable levy for the county or any other taxing district.

(5) In the initial year that the levy adopted under this section is effective, each taxing district within counties which had not previously levied separate assessing, collecting, and distributing levies, shall reduce its property tax levy by an amount equal to that paid by the taxing district in the previous year for the cost of assessing, collecting, and distributing taxes.

(6) Revenues received by each county from the levy authorized by this section in excess of the amount set out in the certified budget shall be transmitted to the state treasurer for equalization and distribution to the counties in accordance with the certified budgets. Any revenue excess resulting from an increase in collection rates upon final settlement shall be deposited by the state treasurer in a trust account to be adjusted against subsequent years.

GARFIELD COUNTY
NO. 3273 FILED

CLERK
DEPUTY

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

L. Brent Gardner, being first duly sworn upon his oath, and having personal knowledge of the following, deposes and testifies as follows:

1. That I am the Executive Director of the Utah Association of Counties.

2. That I have been employed by the Utah Association of Counties in that and other capacities since 1976.

3. That among my principle duties on behalf of the Utah Association of Counties is working with counties on property tax assessment, collection and distribution matters, and drafting, negotiating and representing counties before the Utah State Legislature on issues relating to ad valorem tax matters.

4. That in my capacity with the Utah Association of Counties and because of my duties for the Utah Association of Counties I am familiar with the subject matter of this litigation, in particular S.B. 151 (Utah Code Ann. §17-19-15, 1953 as amended), prior legislative enactments relating to the assessment of property, and the collection and distribution of ad valorem property taxes.

5. I am familiar with the re-appraisal efforts which have been undertaken to meet the needs of the 29 counties of the State of Utah.

6. That I was directly involved in drafting S.B. 151 and negotiation and lobbying its passage.

7. That S.B. 151 was a compromise measure between cities, counties and school districts in the State of Utah over the allocation of income derived from the investment of ad valorem property tax revenues and the expenses related to property assessment and tax collection in the 29 counties of the State.

8. That S.B. 151 provided a funding mechanism to address a matter of statewide concern in each of the individual counties to wit: the accurate, equitable and fair assessment of locally assessed residential, commercial and industrial properties and the effective, efficient collection of ad valorem property tax revenues.

9. That I was personally aware that local assessment levels had been challenged as inadequate in 7 consecutive years of litigation by railroads wherein it was alleged that local commercial and industrial properties were under-assessed; that the State Tax Commission had issued orders to counties directing them to increase assessment levels in the previous 4 years; and that at least five lawsuits had been filed by the State Tax Commission against local County Assessors alleging under-assessment of locally assessed properties within their respective counties.

10. That as a result of my role in negotiating and drafting S.B. 151, I am familiar with the duties assigned the State Auditor and State Tax Commission.

11. That the role assigned to the State Auditor was to set forth categories of costs uniform throughout the State to be utilized by County Commissions or councils in budgeting for the costs of assessing properties and collecting and distributing ad valorem tax revenues.

12. That upon receipt of the county budgets broken into the uniform categories, the State Auditor was to aggregate the totals and submit that figure to the State Tax Commission which, upon determination of the statewide assessed valuation, was to calculate a tax rate sufficient to fund the aggregated budget totals.

13. Setting budgets, controlling costs through the budgeting process and expending funds was intended to and does remain the responsibility of The Board of County Commissioners or County Council.

14. That the Utah Association of Counties, by formally adopted resolution, in November 1987, expressed support for the provisions of S.B. 151 and opposed any attempt to amend or repeal its provisions.

15. On or about January 15, 1988, the Utah Association of County Commissioners and County Councils representing all 29 counties of the State of Utah unanimously expressed support for the provisions of S.B. 151 including the revenue sharing provisions of the Act and opposition to any attempts to repeal or amend the provisions thereof.

16. That the attached letter dated February 24, 1986, was signed by Kenneth L. Dallinga, President of the Utah Association of Counties, who signed said statement in behalf of the Utah Association of Counties.

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this 12 day of July, 1988.

L. Brent Gardner
L. BRENT GARDNER - Affiant
Utah Association of Counties

SUBSCRIBED AND SWORN to before me this 12th day of July, 1988, personally appeared before me L. Brent Gardner, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Ruth W. Leddin
NOTARY PUBLIC
Residing at: West Jordan, Utah

My Commission Expires:

05/18/89

BPD:A

UTAH STATE OFFICE OF EDUCATION

UTAH STATE BOARD OF EDUCATION
UTAH STATE BOARD FOR VOCATIONAL EDUCATION

UTAH STATE BOARD OF EDUCATION

M. Richard Maxfield
Chairman

Darlene C. Hutchison
Vice Chairman

Linn C. Baker
Neola Brown
Keith T. Checketts
Donald G. Christensen

Ruth Hardy Funk
Valerie J. Nelson
Margaret R. Nelson



Bernarr S. Furse
State Superintendent
of Public Instruction

February 24, 1986

Honorable Representative Ted Lewis
Utah State House of Representatives
State Capitol Building
Salt Lake City, UT 84114

Dear Representative Lewis:

S.B. 151, amended to provide for an equalized state levy, represents a positive solution to the problem of payment for assessing and collecting taxes. We support the concept and urge the passage of S.B. 151.

Sincerely yours,

UTAH STATE OFFICE OF EDUCATION

UTAH ASSOCIATION OF COUNTIES

UTAH SCHOOL BOARDS ASSOCIATION

UTAH LEAGUE OF CITIES & TOWNS

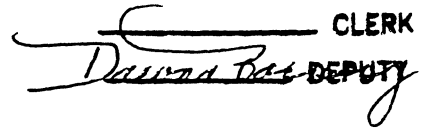
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GARFIELD COUNTY

NO. 3273 FILED

AUG 25 1988

PATRICK B. NOLAN - #A 2422
Garfield County Attorney
55 South Main Street
Panguitch, Utah 84759
BILL THOMAS PETERS - #A 2574
Special Deputy County Attorney
Attorneys for Garfield County Defendants
#9 Exchange Place, Suite 1000
Salt Lake City, Utah 84111

 CLERK
DEPUTY

IN THE SIXTH JUDICIAL DISTRICT COURT

IN AND FOR GARFIELD COUNTY, STATE OF UTAH

MOUNTAIN STATES TELEPHONE
AND TELEGRAPH CO.,

Plaintiffs,

-vs-

GARFIELD COUNTY: THE
GARFIELD COUNTY BOARD OF
COUNTY COMMISSIONERS:
THOMAS HATCH, SHERRELL OTT,
AND LOUISE LISTON, COUNTY
COMMISSIONERS: JUDY HENRIE,
COUNTY TREASURER: TOM
SIMKINS, COUNTY ASSESSOR;
THE UTAH STATE TAX
COMMISSION: R.H. "HAL"
HANSEN, ROGER O. TEW,
G. BLAINE DAVIS AND JOE B.
PACHECO, UTAH STATE TAX
COMMISSIONERS: TOM L. ALLEN,
UTAH STATE AUDITOR: EDWARD T.
ALTER, UTAH STATE TREASURER,

Defendants.

:
: AFFIDAVIT OF L. BRENT
: GARDNER, SUBMITTED IN
: OPPOSITION TO CROSS MOTION
: FOR SUMMARY JUDGMENT

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STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

L. Brent Gardner, being first duly sworn upon his
oath, and having personal knowledge of the following, deposes
and testifies as follows:

1. That I am the Executive Director of the Utah Association of Counties.

2. That I have been employed by the Utah Association of Counties in that and other capacities since 1976.

3. That among my principle duties on behalf of the Utah Association of Counties is working with counties on property tax assessment, collection and distribution matters, including the collection, collation and compilation of data submitted to the Association by many of the 29 counties in the State of Utah concerning assessment, collection and distribution of ad valorem tax monies.

4. That in my capacity with the Utah Association of Counties and because of my duties for the Utah Association of Counties, I collected financial and budget data from the various counties of the State of Utah concerning the costs associated with the assessing, collection and distribution of ad valorem tax monies.

5. That based upon the data supplied to me by the County Auditors from each county listed on the attached Exhibit A, I prepared a summary and compilation of the full costs associated with the assessment, collection and distribution of tax monies for each of the counties identified on Exhibit A attached hereto and by this reference incorporated herein.

6. That the total of said full costs for the year 1985, excluding Grand and Sevier County was \$17,564,047.00.

7. That attached hereto as Exhibit B, is a preliminary recapitulation of settlements and costs of assessing and

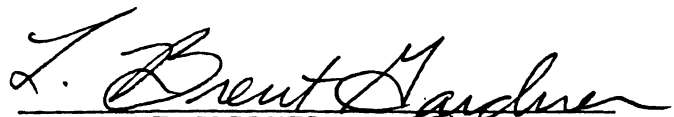
collecting property taxes for 1985 which was prepared by me from data supplied to me by the County Auditor of each of those counties identified on Exhibit B which recapitulation sets forth in summary manner from the data received by me, the total costs billed in 1984, the full costs as budgeted for 1985 and an estimate of the final costs in 1985 based upon final settlement.

8. That this preliminary recapitulation of settlements was prepared personally by me from data in my possession supplied to me by each of the Auditors of the counties listed on said Exhibit, and that said information was submitted by me to the Utah State Legislature in connection with its review and consideration of legislation relating to the cost of assessing, collection and distributing ad valorem tax monies within the State of Utah.

9. That the information on Exhibits A and B is true and correct to the best of my knowledge, information and belief.

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this 25 day of August, 1988.


L. BRENT GARDNER - Affiant
Utah Association of Counties

SUBSCRIBED AND SWORN to before me this 25th day of
August, 1988, personally appeared before me
L. Brent Gardner, the signer of the foregoing
instrument, who duly acknowledged to me that he executed the
same.

My Commission Expires:

05/18/89

Ruth W. Ledding
NOTARY PUBLIC
Residing at: West Jordan, Utah

BPG:C

COUNTY	FULL COSTS 1985	1985 ASSESSED VALUATION	MILL LEVY
Beaver	\$ 116,419	\$ 34,736,677	3.38
Box Elder	332,915	213,081,868	1.56
Cache	550,943	239,647,356	2.30
Carbon	496,598	142,535,723	3.48
Daggett	61,991	16,327,977	3.80
Davis	1,293,996	585,295,146	2.21
Duchesne	431,142	242,111,612	1.75
Emery	474,430	280,440,279	1.69
Garfield	194,961	40,967,953	4.76
Grand	-	-	-
Iron	338,481	112,186,515	3.02
Juab	232,205	36,559,810	6.35
Kane	204,000	30,677,745	6.50
Millard	473,540	70,038,122	6.76
Morgan	87,169	27,146,090	3.21
Piute	41,313	6,210,584	6.65
Rich	110,576	33,314,634	3.32
Salt Lake	6,000,000	3,540,308,051	1.70
San Juan	226,217	183,286,647	1.23
Sanpete	180,671	68,356,450	2.64
Sevier	-	-	-
Summit	440,533	674,878,147	.65
Tooele	414,786	121,102,212	3.43
Uintah	398,785	408,863,889	.98
Utah	1,937,224	860,164,705	2.25
Wasatch	204,301	57,646,046	3.54
Washington	436,826	177,274,258	2.46
Wayne	55,220	9,170,855	6.02
Weber	1,828,805	636,475,654	2.87

PRELIMINARY RECAP OF SETTLEMENTS AND COSTS OF ASSESSING AND COLLECTING PROPERTY TAXES FOR 1985

ity	Final Settlement	Total Costs Billed in 1984	Full Costs as Budgeted 1985	Estimate of Final Costs in 1985 Based on Final Settlement
ver	County levy with county retaining all interest	73,917	116,419	114,019
Elder	Phase in full costs over 4 years	179,325	332,915	213,989
ie	County levy	222,489	550,943	550,943
oon	County levy with county retaining all interest	200,662	496,598	363,933
gett	Phase in full costs over 3 years	30,619	61,991	43,372
is	Full costs plus payment of new interest	395,431	1,293,996	953,380
hesne	Full billing unless schools demonstrate need for reduction at later date	223,374	431,142	338,948
ry	Reduced costs (equal to amount of new interest)	234,577	474,430	415,519
field	Full costs	89,594	194,961	194,961
nd	Status Quo - no new costs, no new interest	67,235	N/A	69,552
on	Status Quo - no new costs, no new interest	187,541	338,481	190,000
ab	Phase in full costs over 10 years	86,489	232,205	95,138
ne	Half year full costs starting in January, 1986	88,021	204,000	146,010
llard	Phase in full costs 10% first year, 30% second year on	215,716	473,540	241,498
rgan	Phase in full costs over 5 years starting January, 1986	36,979	87,169	37,500

Carroll
BS

ity	Final Settlement	Total Costs Billed in 1984	Full Costs as Budgeted in 1985	Estimate of Final Costs in 1985 Based on Final Settlement
te	Phase in full costs over 3 years	19,387	41,313	26,997
h	Phase in full costs over 10 years	59,252	110,576	65,177
t Lake	County levy	2,184,202 4,678,036	6,000,000	6,000,000
Juan	Phase in full costs over 4 years	79,613	226,217	124,840
pete	Full costs with payment of new interest	125,864	180,671	153,267
ier	County levy with county retaining all interest	111,271	N/A	100,000
mit	County levy	205,408	440,533	287,083
ele	Full costs plus payment of new interest	187,933	414,786	314,055
tah	Phase in full costs over 3 years	182,321	398,785	324,830
h	Phase in full costs over 10 years	989,012	1,937,224	1,087,913
atch	County levy	140,198	204,301	159,427
hington	Status Quo - no new costs, no new interest	222,389	436,826	222,400
ne	Full costs	21,000	55,220	38,110
er	Status Quo - no new costs, no new interest	958,102	1,828,805	958,102

Hazel Houston, being first duly sworn upon her oath, and having personal knowledge of the following, deposes and testifies as follows:

1. That I am the duly elected, qualified and acting Garfield County Clerk/Auditor.

2. That I have served in the capacity as Garfield County Clerk/Auditor, since January 1, 1984.

3. That among my duties as Garfield County Clerk/Auditor, is to act as the Clerk of the meetings of the Garfield County Commission, and in that regard keep the minutes of Commission Meetings. That attached to this Affidavit as Exhibit "A", are the minutes of the Garfield County Commission meeting held December 15, 1986. Further, attached hereto as Exhibit "B" are the minutes of the Garfield County Commission meeting held December 14, 1987.

4. That in my capacity as Clerk/Auditor for Garfield County, I caused to be published notice of the meetings of the Garfield County Commission, and in particular, I caused to be published a public notice of the public hearing of the Garfield County budget for the calendar year 1988, and further published notice inviting anyone wishing to examine the tentative budget to do so in the Office of the County Clerk during the hours of 9:00 a.m. to 12:00 noon, and 1:00 p.m. to 5:00 p.m., Monday through Friday. A copy of said public notice is attached hereto as Exhibit "C", and by this reference incorporated herein.


5. That further, in my capacity as Garfield County Clerk/Auditor, I caused to be published a public notice of budget opening, wherein Garfield County would hold a budget hearing for the purpose of opening the budget for the year ending December 31, 1987, a copy of said public notice is attached hereto as Exhibit "D".

6. That neither Mountain States Telephone and Telegraph Company, nor any person identifying themselves as a representative of or for and in behalf of Mountain States Telephone and Telegraph Company, appeared at the hearing on the 1987 Garfield County Budget, nor the hearing on the 1988 Garfield County Budget.

7. That the above and foregoing statements are true to the best of my knowledge, information and belief, and as to those matters stated upon information and belief, I believe the same to be true.

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this 25th day of August, 1988.


HAZEL HOUSTON - Affiant
Garfield County Clerk/Auditor

SUBSCRIBED AND SWORN to before me this 25th day of August, 1988, personally appeared before me

[illegible]

Thomas Hatch, being first duly sworn, upon his oath, and having personal knowledge of the following, deposes and testifies as follows:

1. That I am a duly elected, qualified and acting Commissioner for Garfield County having served in this capacity since January of 1985.

2. That I am currently serving as Chairman of the Garfield County Commission, having served in that capacity since January of 1986.

3. Among the duties I perform as a Garfield County Commissioner is the proposal and adoption of the annual County budget.

4. That I participated in the adoption of the 1987 and 1988 Garfield County budgets.

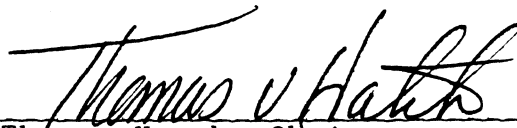
5. That in 1987 and 1988, the Garfield County Commission voluntarily adopted a budget that separately accounted for and included all costs associated with the assessing, collecting and distribution of taxes as set forth in Utah Code Annotated Section 17-19-27.

6. That the adoption of said County budget including the cost of assessing, collecting and distributing tax monies was voluntary in all respects.

7. In adopting said budget for the years 1987 and 1988, the Garfield County Commission voluntarily consented to and approved revenue sharing between and among the several counties of the State of Utah for the years 1987 and 1988 and we thereby voluntarily approved and imposed the tax levy set forth in Utah Code Annotated Section 17-19-27 upon all taxable property within Garfield County.

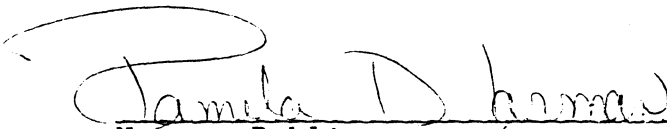
FURTHER AFFIANT SAYETH NAUGHT.

DATED THIS 25th DAY OF AUGUST, 1988.



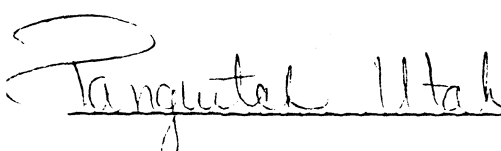
Thomas Hatch, Chairman
Garfield County Commission

On this the 25th day of August, 1988, personally appeared
before me, Thomas Hatch, the signer of the foregoing instrument and
acknowledged to me that he did execute the same.



Notary Public

Residing at:



Tanguel Utah

My Commission Expires: 2-25-1990