

1988

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

Utah Supreme Court

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BRIEF

CKET NO. 880435 IN THE SUPREME COURT OF UTAH

MOUNTAIN STATES TELEPHONE )  
AND TELEGRAPH CO., )  
Appellant/Plaintiff, )  
v. )  
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

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IN THE SUPREME COURT OF UTAH

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AND TELEGRAPH CO.,	)	
	)	
Appellant/Plaintiff,	)	
	)	
v.	)	
	)	
GARFIELD COUNTY; THE	)	
GARFIELD COUNTY BOARD OF	)	
COUNTY COMMISSIONERS;	)	
THOMAS HATCH, SHERRELL OTT,	)	
AND LOUISE LISTON, COUNTY	)	Case No. 88-0435
COMMISSIONERS; JUDY HENRIE,	)	
COUNTY TREASURER; TOM	)	
SIMKINS, COUNTY ASSESSOR;	)	
THE UTAH STATE TAX	)	
COMMISSION; R. H. "HAL"	)	
HANSEN, ROGER O. TEW,	)	
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ON APPEAL FROM THE SIXTH JUDICIAL DISTRICT  
COURT FOR GARFIELD COUNTY, STATE OF UTAH

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BRIEF OF APPELLANT

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## STATEMENT OF JURISDICTION AND NATURE OF CASE

The Court has jurisdiction of this appeal pursuant to Art. VIII, § 3 of the Utah Constitution, Utah Code Ann. § 78-2-2, and Rule 4, Rules of the Utah Supreme Court.

This is an appeal by Plaintiff, Mountain States Telephone and Telegraph Co. ("Mountain States"), from a Decision and Summary Judgment upholding the constitutionality of Utah Code Ann. § 17-19-15, entered October 14, 1988, in favor of the Garfield County defendants by the Sixth Judicial District Court in and for Garfield County.<sup>1</sup> The Complaint also listed various state officials as defendants.<sup>2</sup> The State of Utah, however, declined to defend below. See page 9, infra.

## ISSUES PRESENTED FOR REVIEW

1. Whether Utah Code Ann. § 17-19-15 constitutes a legislatively imposed tax for a local purpose or a mandatory horizontal revenue sharing measure in violation of Article XIII § 5 of the Utah Constitution.

2. Whether the trial court erred in entering summary judgment on Mountain States' constitutional claims prior to the conclusion of discovery concerning the extent to which Utah Code Ann. § 17-19-15 actually funds local purposes, intrudes on local

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1. The Garfield County defendants include Garfield County; the Garfield County Board of County Commissioners, Sherrel Ott, Thomas Hatch and Louise Liston; Judy Henrie, Garfield County Treasurer; and Tom Simkins, Garfield County Assessor. The county defendants were represented by counsel listed on the cover of this brief.
  2. The state defendants included the Utah State Tax Commission, R.H. "Hall" Hansen, Roger O. Tew, G. Blaine Davis and Joe B. Pacheco; Tom L. Allen, Utah State Auditor; and Edward T. Alter, Utah State Treasurer.

government, results in mandatory revenue sharing, imposes unfair and disproportionate burdens on certain classes of taxpayers and imposes a local levy that bears no reasonable relationship to the costs of assessing and collecting property taxes.

3. Whether Utah Code Ann. § 17-19-15 violates due process by permitting a county to tax property located outside its boundaries having no substantial nexus to the county.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

Article I, Section 7 of the Utah Constitution provides:

No person shall be deprived of life, liberty or property without due process of law.

Article I, Section 22 of the Utah Constitution provides:

Private property shall not be taken or damaged for public use without just compensation.

Article I, Section 24 of the Utah Constitution provides:

All laws of a general nature shall have uniform operation.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Senate Bill 151, 1986 Utah Laws Ch. 109 § 1, codified at Utah Code Ann. § 17-19-15, is reproduced as Appendix A to this brief.

#### STATEMENT OF THE CASE

1. Statement of Facts. In 1986, the Utah State Legislature adopted and the Governor signed into law Senate Bill No. 151, titled "An Act Relating to Counties; Providing for the Collection, Assessment, and Distribution Costs Charged by the County, and Providing an Effective Date." The Act, which imposed a state-wide levy upon all real property to recoup local property tax collection costs, dramatically altered the historic, county-controlled levy of the property tax.

Prior to the adoption of the Act, each county funded its own costs incurred in the imposition and collection of ad valorem property taxes. Each county included the projected amount of such costs in its annual budget and set its tax rate at a level sufficient to generate revenues to cover all budgeted county costs, including assessment and collection costs. The state neither participated in the process of establishing a budget for county assessment and collection costs nor participated in the levying of taxes to fund these costs; these responsibilities were left totally to the counties. With the passage of the Act, the state assumed control of previously locally performed functions.

Under the Act, the Board of County Commissioners in each county determines the county's cost of "assessment, collection, and distribution of property taxes and related appraisal



programs." Utah Code Ann. § 17-19-15(1). That figure, which constitutes the county's tax collection budget, is submitted to the State Auditor for review. Id. The State Auditor, who is required to establish "categories of allowable costs" for tax collection budgets throughout the state, then reviews each county budget as it is submitted and certifies that it complies "with approved categories" of costs. Id. § 17-19-15(2).<sup>3</sup>

Following certification and review by the State Auditor, all approved county budgets are "transmitted to the State Tax Commission for determination of a mandatory state-wide tax rate sufficient to meet those expenditures." Id. § 17-19-15(3). The tax rate established by the Tax Commission is designed to recoup local tax collection costs. The Act expressly provides that the state-wide tax rate will be included upon tax notices as "a separately listed and identified local levy." Id. (emphasis added). The counties have no discretion to alter or reject the levy certified to them by the State Tax Commission. Under the Act, the counties are left solely with the ministerial task of collecting the certified levy.

Any revenue collected by the counties under the local levy in excess of their approved collection and assessment budgets does not remain with local taxing authorities. Rather, the money is "transmitted to the State Treasurer" without the

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3. The statutory scheme contemplates that the State Auditor has the authority to approve or disapprove local tax collection budgets. Utah Code Ann. § 17-19-15(2). Prior to the passage of the Act, there was no similar state control of local tax collection budgets.

counties' consent. Id. § 17-19-15(6). Funds received by the State Treasurer are redistributed to counties having tax collection budget shortfalls "in accordance with the certified [tax collection] budgets." Id.

The Act promotes inefficient and costly tax collection procedures. The collection scheme established by the statute has encouraged local taxing authorities to increase their tax collection budgets in order to receive maximum benefits from the anomalous state-wide -- but nevertheless "local" -- levy. 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. Tax assessment and collection costs in Grand County, for example, have increased nearly three fold -- from \$58,703 in 1985 to \$141,305 in 1987. Record at 40. Assessment and collection costs have increased nearly five fold in Davis County -- from \$329,695 in 1985 to \$1,540,923 in 1987. Id. The Act not only encourages inefficient tax collection procedures, it also erodes the revenue base of counties with efficient tax collection procedures (or low collection costs) by forcing them to subsidize more costly jurisdictions. In 1987, for example, eight counties were required to turn over approximately \$2,865,590 in revenue for redistribution to the other 21 counties of the state. Compare Record at 19, 21.

2. Proceedings Below. Pursuant to the Act, Garfield County included a separate local levy of \$2,692.21 on Mountain State's 1987 property tax notice. Record at 9, 45. Mountain

States paid the \$2,692.21 Local Levy to Garfield County under protest. Record at 10, 45. On May 19, 1988, Mountain States commenced this action by filing a Complaint in the Sixth Judicial District Court in and for Garfield County, State of Utah. Record at 1-40. This action is only one of 30 substantially identical actions filed by Mountain States and other taxpayers throughout the state.

Mountain States' Complaint For Declaratory Relief and Recovery of Taxes Paid Under Protest contains eight claims for relief. Record at 1-40. The first three claims assert that the Act is unconstitutional on its face and as applied to Mountain States because it violates Art. XIII, § 5 of the Utah Constitution. Record at 1-12. Mountain States alleges that the Act is void under Art. XIII, § 5 because it (1) "constitutes a tax imposed by the legislature 'for the purpose of [a] county,' in direct contravention of the constitutional proscription" (Record at 12, ¶ 43, quoting Utah Const. Art. XIII, § 5), (2) "transgresses the right to local self government secured by the constitutional provision" (Record at 11, ¶ 40), and (3) "mandates revenue sharing without the consent of affected counties" (Record at 12, ¶ 43).

The remaining counts in the Complaint set forth alternative grounds for invalidating the Act as applied to Mountain States. The fourth and fifth claims for relief assert that the Act violates the due process and equal protection provisions of the state and federal constitutions because the

assessment and collection fee imposed by the statute "bears no reasonable relationship" to the costs of assessing and collecting the plaintiff's property taxes. Record at 13 ¶¶ 48, 52; Utah Const. Art. I, §§ 7, 24; U.S. Const. Amend. XIV. The sixth claim asserts that the Act transgresses the equal protection guarantees of the state and federal constitutions because it "force[s] taxpayers in counties with low local tax collection costs to subsidize the local costs of less efficient counties." Record at 15 ¶ 59; Utah Const. Art. I, § 24; U.S. Const. Amend. XIV. The seventh claim asserts that the Act constitutes a taking in violation of state and federal constitutional provisions because the levy it imposes "bear[s] no reasonable relationship to the administrative costs incurred in taxing" Mountain States' property. Record at 15 ¶ 61; Utah Const. Art. I, § 22; U.S. Const. Amend. XIV. The final claim seeks recovery of taxes paid under protest. Record at 15, ¶ 63.

On July 13, 1988, the county defendants answered the Complaint and filed a motion for summary judgment before Mountain States could conduct any discovery regarding the actual operation of the Act. Record at 41-100. On August 4, 1988, Mountain States served its first interrogatories and requests for admissions and production of documents on the Garfield County defendants. Record at 111-112. The discovery requests sought information relevant to both the facial and as-applied challenges set forth in Mountain States' Complaint, including the items actually listed on the county's 1987 assessment and collection

budget, the measures actually undertaken and expenses actually incurred in connection with property tax assessment and collection in 1987, and the specific measures undertaken and expenses incurred with respect to the assessment and collection of Mountain States' property taxes. Mountain States opposed the county's motion for summary judgment, filed its own cross-motion for summary judgment on its facial challenges to the Act, and requested the trial court to postpone ruling on the county's motion until completion of the requested discovery. Record at 118-179; Rule 56(f), Utah R. Civ. P.

The State of Utah did not file any pleading in support of the county defendants. Instead, by a letter dated August 26, 1988, a copy of which is attached hereto as Exhibit A, the state informed the trial court that it considered the counties to be the real parties-in-interest and that the State of Utah would not actively participate in the lawsuit. The letter, however, transmitted an Attorney General's opinion dated February 11, 1988, which found that the Act was unconstitutional, to assist the court in its consideration of the case.<sup>4</sup>

On September 1, 1988, after hearing oral arguments on Garfield County's motion for summary judgment and Mountain

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4. On February 11, 1988, Attorney General David L. Wilkinson issued a formal opinion declaring the Act unconstitutional. Formal Opinion No. 88-01, Feb. 11, 1988 (attached as Exhibit B to this brief). In that opinion, the Attorney General concluded that Section 17-19-15 violates Article XIII, Section 5 of the Utah Constitution because it imposes a tax upon counties "for their own use," subjects county tax collection budgets to control by the State Auditor, and requires counties to share revenues "without their consent." Exhibit B at 11.

States' cross-motion for partial summary judgment, the trial court directed counsel for the respective parties to prepare a proposed memorandum decision. Record at 233. On or about October 6, 1988, Mountain States and the Garfield County defendants each submitted a proposed memorandum decision to the Court.

3. Decision of the Court. On October 14, 1988, Judge Tibbs entered the proposed Decision and Summary Judgment submitted by counsel for the Garfield County defendants, a copy of which is attached hereto as Exhibit C. In its decision, the court briefly perused the operation of the Act, and found that Garfield County had complied with all applicable provisions. Record at 240-241. It also found that the "funding mechanism [established by the Act] address[es] a matter of state-wide concern," i.e., the "effective, efficient collection of ad valorem property tax revenues." Record at 242, ¶ 11.

In its conclusions of law, the court first addressed Mountain State's Article XIII, § 5 challenge.<sup>5</sup> The court repeated its previous finding that equalized and efficient

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5. Prior to conducting its Art. XIII, § 5 analysis, the court cited and analyzed several constitutional and statutory provisions without specifying how those provisions related to its constitutional analysis in this case. The court cited Art. XIII, § 11 of the Utah Constitution and found that the provision gives the State Tax Commission power to regulate and control county boards of equalization and elected county officials with respect to taxation matters. Record at 243, ¶ 2. The Court also found that Art. XIII, § 3 of the Utah Constitution requires uniform valuation within the counties and requires the legislature to provide by law a just valuation. Record at 243, ¶ 3. The court also noted that Utah Code Ann. Title 59 Chapter 2 provides a procedural framework for the property tax assessment and collection program. Record at 243, ¶ 4.

property tax assessment and collection was a state-wide purpose. Record at 243-244, ¶¶ 6-8. The court, however, did not state how the Act furthers this purpose. Id. The court then concluded that, because the Act furthers a state-wide public purpose, it does not violate Article XIII, § 5. Record at 244, ¶ 8. The decision is silent with respect to Mountain States' as-applied Article XIII, § 5 challenge.

The Court addressed the revenue sharing aspects of Mountain States' Article XIII, § 5 challenge by concluding summarily that the revenue sharing aspects of the Act are valid under this Court's holdings in Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975); and Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979). The Court further held that Garfield County had consented to the revenue sharing aspects of the Act by adopting its assessment and collection budget. Record at 244-45, ¶¶ 10, 12.

With respect to Mountain States' fourth through eighth claims for relief, which raise various due process and equal protection arguments, the court concluded without discussion that, because the local levy imposed by the Act is a "tax" and not a "fee," each of those causes of action "are inappropriate and accordingly must be dismissed." Record at 245-46, ¶ 13. The opinion ends with a catch-all finding that the Act "is constitutional in all respects." Record at 246, ¶ 14. The Court ordered that Mountain States' Complaint be dismissed in its entirety with prejudice. Id.

## SUMMARY OF ARGUMENT

Article XIII, § 5 proscribes legislative taxation for county purposes to prevent the state from destroying the autonomy of local governments. By requiring counties to participate in the state-wide sharing of local governmental costs, the Act imposes a tax. That tax, moreover, is imposed for a county purpose. This Court's decisions plainly establish that the payment of salaries of county employees is a local purpose that cannot be infringed on by the legislature. City of West Jordan v. Utah State Retirement Board, 98 Utah Adv. Rep. 37, 40 (Dec. 30, 1988); Smith v. Carbon County, 90 Utah 560, 63 P.2d 259 (1936); State v. Stanford, 24 Utah 148, 66 P. 1061 (1901). The Act also violates Article XIII, § 5 because it mandates horizontal revenue sharing without the consent of affected counties. The trial court's finding that the Act furthers a "state" purpose, moreover, does not avoid these constitutional defects. Indeed, if accepted, the trial court's reasoning renders Article XIII, § 5 a dead letter.

If the Act is not facially invalid, Mountain States' Complaint sets forth various constitutional challenges which turn upon unresolved factual issues. Mountain States' Article XIII, § 5, due process, equal protection and takings claims turn upon such factual questions as whether the local levy actually funds local purposes, intrudes on the operation of county governments, results in revenue sharing; or imposes a disproportionate and unfair burden on certain taxpayers. The summary judgment entered



below improperly prevented Mountain States from developing the necessary evidence on these genuine issues of material fact. At a minimum, therefore, the lower court must be reversed and this matter remanded for further proceedings.

Finally, the Act on its face permits the taxation of persons or entities that have no substantial nexus with the counties to which the local levy is ultimately paid. Indeed, the Act effectively allows counties to collect a levy on property outside their boundaries. If this fact alone does not invalidate the Act under the state and federal due process clauses, Mountain States is at least entitled to an opportunity to show that the Act actually results in improper extra-territorial taxation.

#### ARGUMENT

Summary judgment may be granted only where the record evidence and all reasonable inferences drawn therefrom show that (1) "there is no genuine issue of material fact" and (2) the movant is "entitled to judgment as a matter of law." Rule 56(c), Utah R. Civ P.; Bowen v. Riverton City, 656 P.2d 434 (Utah 1982); Judkins v. Toone, 27 Utah 2d 17, 492 P.2d 980 (1972); Frederick May & Co. v. Dunn, 13 Utah 2d 40, 368 P.2d 266 (1962). Neither element is satisfied here. If the facial validity of the Act under Article XIII, § 5 of the Utah Constitution is indeed ripe for summary disposition, Mountain States -- not the county defendants -- is "entitled to judgment as a matter of law." Rule 56(c), Utah R. Civ P. Moreover, the remaining allegations of the Complaint, which set forth substantial claims under the due

process, equal protection and property clauses of the state and federal constitutions, virtually bristle with unresolved issues of material fact. The judgment below, therefore, must be reversed.

I. THE ACT VIOLATES ARTICLE XIII SECTION 5 OF THE UTAH CONSTITUTION

Genuine issues of material fact preclude summary judgment on many of Mountain States' constitutional claims. Section IIB, below. To the extent that the facial validity of the Act is ripe for summary disposition, however, Mountain States (not the county defendants) is entitled to judgment as a matter of law because the Act plainly violates the local self-government guarantees embodied in the Utah Constitution.

Article XIII, § 5 of the Utah Constitution invests local governments with "the power to assess and collect taxes for all purposes" of those governments, and specifically enjoins the state legislature from "impos[ing] taxes for the purpose of any county, city, town or other municipal corporation . . . ." This language, incorporated in the original 1896 Constitution, has remained unchanged to the present day. The provision is designed to decentralize government and maintain political sensitivity by insuring that the levy, collection and expenditure of local governmental funds is subject to effective oversight and control by the local taxpayer. As this Court noted in The Best Foods, Inc. v. Christensen, 75 Utah 392, 285 P. 1001, 1003 (1930):

There can be no doubt but that the framers of our state Constitution recognized the rights of the people of Utah to local self-government. It was to preserve local self-government free from needless

legislative interference that the power to levy taxes for local purposes was by the state Constitution vested exclusively in the proper authority of counties, cities, towns, and other municipal corporations. The power to collect and control the revenues of a municipality is of the very essence of local self-government.

The power to collect and control revenues is the essence of local self-government precisely because "an unlimited power to tax involves, necessarily, a power to destroy." M'Culloch v. Maryland, 17 U.S. 316 (1819). Indeed, the authority reserved to local governments by Article XIII, § 5 is fundamental to the constitutional structure of the state. Loss of local control over the levy, collection and expenditure of tax dollars used for county purposes debilitates both the accountability and efficiency of local government. Article XIII, § 5 prevents that result.

The constitution was doubtless framed and adopted with a purpose to protect the local self governments which had existed of a practically uniform character from the early settlement of the country, since which they have remained undisturbed, the continued existence of which is therein assumed, and from which the liberty of the people spring and depend.

State v. Stanford, 24 Utah 148, 66 P. 1061, 62, (1901).

The allegations of the complaint, which for the purpose of analyzing the propriety of the trial court's summary judgment must be accepted as true,<sup>6</sup> illustrate the evils that arise from

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6. In the admissible affidavits submitted in connection with their motion for summary judgment and in response to Mountain States' cross-motion, the Garfield County defendants failed to controvert the allegations of Mountain States' complaint. See Snyder v. Merkley, 693 P.2d 64 (Utah 1984); Bridge v. Backman, 10 Utah 2d 366, 353 P.2d 909 (1960) (unless there is a showing that the disfavored parties cannot produce evidence which would reasonably support a finding in their favor on a material or determinative issue of fact, a summary judgment is erroneous).

disregarding Article XIII, § 5. The essential issue in this lawsuit is what autonomy, if any, counties possess. This court recently made it clear that the "right of the legislature is to establish, not to run and operate, the machinery of the local government to the disenfranchisement of the people." State v. Hutchinson, 524 P.2d 1116, 1121-22 (Utah 1980). However, following the passage of the Act, citizens of the counties, through their own elected officials, no longer control the specifics of their tax collection budgets; they must now adhere to the "categories of allowable costs" set by the state auditor. Utah Code Ann. § 17-19-15(2). Moreover, any sense of local accountability or efficiency in establishing local tax collection budgets has been lost; on the contrary, county officers are understandably encouraged to inflate tax collection budgets in order to obtain the maximum possible subsidy under the Act. In turn, the ability of local citizens to control local tax collection costs is measurably diminished because the Act comfortably insulates county officials from the demands of the electorate. The result? Significant increases in tax collection costs throughout the state. Page 6, supra.<sup>7</sup>

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7. As noted above and as will be discussed below (Section IIB), the exact impact of the Act upon tax collection costs has not yet been ascertained because the trial court ruled prior to completion of necessary discovery. The exhibits attached to the Complaint, however, which were prepared largely from information provided by the State Auditor's office, demonstrates there is a firm basis for Mountain States' allegations that the Act unconstitutionally diminishes the power of local self-government secured by Art. XIII, § 5.

The mere fact that the legislature hoped to develop "an efficient means by which to assess, collect and distribute tax monies within the State of Utah" does not shield the Act from the operation of Article XIII, § 5. Record at 244.

While the implied restrictions upon the power of the legislature with reference to local self-government are not defined with that particularity and incisiveness they could have been, yet they are imperative in their character, and when the courts find a case presented for consideration which is clearly within such provision, it has no alternative but to conform to authority.

State v. Stanford, 66 P. at 1062. It is not enough that the legislature thought the Act was "efficient" (Record at 244); the Act must conform to constitutional requirements:

The Constitution implies a right of local self government to each county, and a right to establish a system of county government is expressly recognized and enjoined. The power is given to create the county government, not to administer to such a system when created. The right of the Legislature was to provide for and put in action, not to run and operate, the machinery of the local government to the disenfranchisement of the people. When the county government is established separate from the state, each is compelled to bear its own burdens and not assume those of the other.

State v. Hutchinson, 624 P.2d 1116, 1123-24 (Utah 1980) (citations omitted) quoting State v. Stanford, 66 P. 1061 at 1062.

An analysis of this Court's relevant cases interpreting Article XIII, § 5 demonstrates that, in adopting the Act, the legislature improperly attempted to bear one of the fundamental burdens of the counties: the assessment and collection of

property taxes. This attempt is an unconstitutional intrusion upon the separate responsibilities of county governments.

A. The Utah Constitution Prohibits The Legislature From Imposing A Tax For County Purposes

Article XIII, § 5 of the Utah Constitution essentially places two limitations upon the power of the legislature: (1) it may not "impose" a tax (2) for the "purpose of [a] county." Decisions of this Court illuminate these inquiries. The Act, moreover, violates them both.

1. Imposition Versus Permission

This Court has consistently held that legislative enactments which impose taxes, debts or obligations upon counties for local purposes violate Article XIII, § 5. Smith v. Carbon County, 90 Utah 560, 63 P.2d 259 (1936); State v. Stanford, 66 P. at 1062. By contrast, legislative enactments that merely authorize county governments -- at their option -- to either incur debts or levy taxes pass constitutional muster. Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979); Tribe v. Salt Lake City Corporation, 540 P.2d 499 (Utah 1975); Bailey v. Van Dyke, 66 Utah 184, 240 P. 454 (1925).

State v. Stanford, 66 P. 1061, was the first case in which the Court considered an Article XIII, § 5 assault upon state legislation. The challenged legislation required every county with 5,000 or more fruit trees to select a county fruit tree inspector from the names of three practical horticulturists submitted to it by a member of the State Board of Horticulture

and to pay, out of county funds, the statutory salary of such inspector. Standford invalidated the legislation because:

Article XIII, § 5 not only limits local or county taxation to local county purposes, but it was also intended as a limitation upon the power of the legislature to grant the right or impose the duty of creating a debt or levying a tax to any person or body other than the corporate authorities of the county.

66 P. at 1063. Similarly, in Smith v. Carbon County, 63 P.2d 259 the Court struck down a legislatively imposed probate fee schedule, reasoning that since such taxes were imposed by the legislature for the use and benefit of counties, the statutory scheme violated Article XIII, § 5.

By contrast, where the state legislature merely authorizes county governments to either incur debts or levy taxes at their option, the constitutional barrier is not breached. Thus, in Bailey v. Van Dyke, 240 P. 454, the Court turned aside a challenge to a state statute which permitted, but did not compel, counties to enter into contracts with Utah Agricultural College for extension services. The Court rejected the Article XIII, § 5 challenge because "[t]here is no imposition of taxes, direct or indirect, by legislative authority upon the county, and no interference with local self-government by the county." Id. at 457.

The cases relied upon by the district court in its summary judgment turn upon the "imposition" versus "permission" principle. Record at 244-245 (citing Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339, and Tribe v. Salt Lake City

Corporation, 540 P.2d 499). Murray City Redevelopment and Tribe both involved challenges to the Utah Neighborhood Development Act. That act authorized local governments to finance redevelopment projects in blighted areas with tax revenue bonds.<sup>8</sup> The Court rejected the assertion that the development act violated Article XIII, § 5 because the financing method provided by the legislation did not intrude upon the prerogatives of local government. On the contrary, the statute strengthened local self government by giving counties, cities and towns alternative financing techniques that could be used entirely at their option. Murray City Redevelopment, 598 P.2d at 1342 ("Salt Lake County will not lose its vested authority to 'collect taxes for all purposes of such corporation'"); Tribe, 540 P.2d at 504 ("here we see no specific constitutional limitation which has been offended"). Moreover, the Neighborhood Redevelopment Act imposed no tax at all. Tribe, 540 P.2d at 507 (Crockett, J., specially concurring). Rather, the county continued to impose whatever mill levy was necessary to finance its operations. Id.

## 2. County Versus State Purposes

If state legislation imposes a tax or obligation upon county government, the next inquiry under Article XIII, § 5 is whether that obligation furthers a county or state purpose. Although no precise definition of "county" versus "state" purposes can be gleaned from the decisions of the Court (City of

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8. Such bonds are repaid from the proceeds of ad valorem taxes attributable to the increased assessed valuation in the redevelopment project area. See Murray City Redevelopment, 598 P.2d at 1342 & n.8.



West Jordan v. Utah State Retirement Board, 98 Utah Adv. Rep. 37, 40 (Dec. 30, 1988)), some important guidelines are nevertheless discernible. State v. Stanford, for example, proceeds upon the implicit assumption that hiring and paying the salaries of county fruit tree inspectors are "county purposes" that cannot be mandated by the state legislature -- even though the legislature undoubtedly has an interest in fostering agricultural development throughout the state. 66 P. at 1063. Smith v. Carbon County proceeds upon the similar assumption that probate fees, collected and utilized by county court clerks, are used for "county purposes." 63 P.2d at 259. These cases, therefore, are merely examples of the "general rule" that "the payment of municipal debts and general expenses of local government is a corporate purpose within the meaning of constitutional limitations upon the taxing power of legislatures in regard to county or other municipal purposes." 106 A.L.R. 906, 914 (1937).<sup>9</sup>

By contrast, this Court has found a "state" purpose in cases involving an overriding, regulatory interest of the state in such areas as the elimination of urban blight (Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339; Tribe v. Salt Lake City Corporation, 540 P.2d 499), the regulation of the sale of oleomargarine throughout the state (Best Foods, Inc. v. Christensen, 285 P. 1001) and the implementation of certain

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9. See also Utah Code Ann. § 59-2-909 ("general county purposes" include "the care, maintenance, and relief of indigent sick and otherwise dependent poor" as well as "the construction, improvement, and maintenance of county roads" and "all other purposes authorized by law").

welfare programs (Denver & R.G.R. Co. v. Grand County, 51 Utah 294, 170 P. 74 (1917) (construing Dependent Mothers' Act)).

Importantly, none of these cases suggest that funding the actual operating costs of county government can -- in any circumstance -- constitute a "state" purpose. Cf. State v. Stanford, 66 P. at 1062-63 (funding the actual costs of county government is a "county purpose"); Smith v. Carbon County, 63 P.2d 259 (same).

In its most recent treatment of the "state" versus "municipal" purpose issue, the Court recognized that the opinions cited above have provided "relatively little . . . analytical framework for determining how to characterize a given area of activity." West Jordan v. Utah State Retirement Board, 98 Utah Adv. Rep. at 40.<sup>10</sup> The Court, therefore, rejected "the search for any hard and fast categorization of specific functions as 'municipal' or 'state,'" and instead focused upon the "factors that are pertinent to the specific legislation at issue." Id. The Court stated that these factors:

. . . include, but are not limited to, the relative abilities of the state and municipal governments to perform the function, the degree to which the

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10. The Plaintiff in West Jordan challenged the constitutionality of a statute that required municipalities to either belong to the State Retirement System or opt to provide no retirement benefits to their employees. 98 Utah Adv. Rep. at 38-39. One of the city's constitutional challenges was based on Art. VI, § 28 of the Utah Constitution, which provides that "The Legislature shall not delegate to any special commission, private corporation or association, any power to perform municipal functions." The city argued that the retirement statutes delegated the municipal function of providing retirement benefits for municipal employees to a special commission -- the State Board of Retirement. Id. at 39. This Court assumed for purposes of its analysis that the board was a special commission and therefore conducted a detailed analysis of the meaning of "municipal function."

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.

Id. The Court emphasized that these factors must be applied "'to prevent interference with local self-government.'" Id. (quoting Municipal Building Authority v. Lowder, 711 P.2d 273, 281-82 (Utah 1985)).

### 3. The Act Impermissibly Imposes A Tax For County Purposes

The authorities set out above demonstrate the patent unconstitutionality of the Act. The legislation imposes a defined, unalterable tax upon local property owners to fund the costs of operating county governments. Counties must submit proposed tax collection budgets to the state and must collect the "local levy" certified to them by the state. Utah Code Ann. § 17-19-15(1), (3). Therefore, the first level of analysis under Article XIII, § 5 is satisfied. The proceeds raised by the Act, furthermore, are undoubtedly used to fund a "county" rather than a "state" purpose. Indeed, whether one uses the rather categorical approach of the Court's older cases or the pragmatic, multi-factor analysis of West Jordan, it is plain that the Act imposes a tax for a county purpose.

Although Mountain States has not been afforded the opportunity to conduct discovery as to the specific uses to which the proceeds of the Act are put, it is apparent from the face of the legislation that all proceeds must be used to pay the local

governmental operating costs reflected on county tax collection budgets. Utah Code Ann. § 17-19-15(1). Indeed, the Act itself was legislatively denominated as "An Act Relating To Counties" (S. Bill No. 151) and the tax levy it establishes is labelled a "local levy." Id. § 17-19-15(3). Therefore, it would appear that all proceeds of the Act are used to pay the salaries and expenses of county officials, some of which perform duties relating to the assessment, collection and disposition of property taxes, and some of which do not.<sup>11</sup> It is difficult to conceive how the payment of salaries and the financing of operations that are constitutionally vested in the counties to the exclusion of the state can be described -- by any stretch of the imagination -- as a "state" function. Bearing the costs of elected county officials' performance of their constitutional duties is clearly a fundamental "purpose of [a] county" within the intendment of Article XIII, § 5. Smith v. Carbon County, 63 P.2d at 262 (legislature cannot impose a schedule of fees for county probate clerks; such taxes must "not be levied by the Legislature for the use and benefit of a county"); State v. Stanford, 66 P. at 1063 (despite the state interest in

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11. Mountain States has obtained a copy of Garfield County's 1987 assessment and collection budget from the State Auditor's office. A copy of that budget is attached hereto as Exhibit D. That budget demonstrates that the vast majority of the revenue generated by the local levy is, in fact, used to pay for the salaries and benefits of county employees, including the county commissioners, assessor, treasurer, auditor, recorder, attorney and all of their staff members; county maintenance employees and even county personnel employees.

agriculture, fruit tree inspectors paid by a county are engaged in a "county purpose").<sup>12</sup>

The above result is equally clear under the multi-factored approach of West Jordan, 98 Utah Adv. Rep. at 40. First, the relative abilities of the state and county governments to administer the assessment and collection of property taxes militate toward the conclusion that the the Act's "local levy" is imposed for a county purpose. The valuation of property and collection of property taxes on purely local properties are functions that individual counties are in a much better position to perform than the state because of their proximity to the taxed property and direct control over the officials who perform the valuation and collection functions. The statutory allocation of valuation responsibilities between the State Tax Commission (which establishes values for property that operates as a unit across county lines, property of public utilities and mining

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12. The financing scheme provided by the Act is fundamentally different from that approved by this Court in Tribe, 540 P.2d 499, and Murray City Redevelopment, 598 P.2d 1339. The Act establishes a legislatively imposed mill levy to pay the salaries and expenses of elected county officials. The financing scheme in Tribe and Murray City Redevelopment, by contrast, involved the mere diversion of incremental tax revenues to retire revenue bonds issued by redevelopment agencies. See Utah Code Ann. §§ 11-19-3 and 11-15-4. The creation and operation of those redevelopment agencies, moreover, were subject to local control. Most importantly, however, the temporary diversion of tax revenues did not impinge upon nor deprive the county of its "vested authority to collect taxes for all purposes of such corporation." Murray City Redevelopment, 598 P.2d at 1342. The redevelopment act simply required that taxes levied against redeveloped property "remain static for that period of time during which the bonds of redevelopment are being retired." Id. The Act, by contrast, strips Garfield County of its ability to independently set its mill levy and administer its tax collection budget without state oversight.

properties and counties which assess all other property in their boundaries) recognizes the counties' superior ability to perform valuation and collection functions with respect to purely local properties. Utah Code Ann. §§ 59-2-201, -301; infra p. 45-46 n. 27. The Act, itself, virtually concedes this point by requiring the counties to prepare the budgets and generate the revenues necessary for the legislative scheme to function. Utah Code Ann. § 17-19-15(1) thru (3).

The second prong of the West Jordan balancing test is "the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality." 98 Utah Adv. Rep. at 40. This factor also indicates that the valuation of property and collection of property taxes is a "county" rather than a "state" purpose. The assessment and collection functions funded by the local levy are performed exclusively within the boundaries of each county.<sup>13</sup> Once collected, moreover, property tax revenues collected by each county are used to finance that county's own government (unless that county voluntarily decides to share its revenues). If taxpayers are dissatisfied with their county's efficiency -- or lack of it -- in the collection procedure and the resulting impact on county services, they have direct political input to

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13. Each county assessor, for example, assesses only the property located within that county. Utah Code Ann. § 59-2-301. Moreover, a county commission sitting as a county board of equalization has no authority to hold equalization hearings for property located outside the county. Utah Code Ann. § 59-2-1001. Each county treasurer's office has the responsibility of collecting the property tax due from the owners of property located only within his or her county.

effectuate change. As a result, the efficiency of any given county in assessing and collecting taxes cannot be said to vitally affect "the interests of those beyond the boundaries of the [county]." West Jordan, 98 Utah Adv. Rep. at 40. Indeed, the opposite conclusion would disenfranchise local voters and impermissibly conflict with this Court's declaration in Best Foods Inc. v. Christensen, 285 P. at 1003, that "[t]he power to collect and control the revenues of a municipality is the very essence of local self-government."

The final factor under West Jordan is "the critical question of the challenged legislation's degree of intrusiveness on local officials' control of policies that uniquely affect their citizenry." 98 Utah Adv. Rep. at 41. The Act plainly constitutes an impermissible intrusion upon local officials' control of policies uniquely affecting their electorate. The Act strips citizens and taxpayers in any given county of the power to determine how much they will pay in property taxes. Under the Act, the local levy rate, and thus the amount of property taxes collected by each county, depends on the aggregate budgets of all 29 counties. Thus, a taxpayer's actual tax bill is established by 28 county commissions over which the taxpayer has absolutely no political control.<sup>14</sup>

The Act similarly divests counties and their electorates of political control over the disposition of tax funds. Monies

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14. One of the most egregious examples of this disenfranchisement occurs in Millard County, where the 1987 budgeted cost of tax assessment and collection was \$485,000, but the Act required it to collect \$1,294,375.

collected in excess of approved budgets are not used to cover local costs or enhance county services, but instead are used to pay the salaries of county treasurers, recorders, assessors, attorneys, clerks and other officials in counties where the "local levy" is insufficient to cover local assessment and collection costs.<sup>15</sup> The Act. in short, does not leave the counties and their constituent taxpayers "with complete autonomy" regarding the assessment, collection and disposition of local taxes as required by the third prong of West Jordan. 98 Utah Adv. Rep. at 41. Rather, it intrudes in a "significant way in the day-to-day functioning of local government." Id. As a result, the Act undoubtedly offends the third West Jordan factor.

Whether this Court applies the "general rule" demonstrated by its past cases that "the payment of . . . general expenses of local government is a corporate purpose within the meaning of constitutional limitations upon the taxing power of legislatures in regard to county . . . purposes" (106 A.L.R. at 914; Smith v. Carbon County, 63 P.2d 259, 262; State v. Stanford, 66 P. 1061, 1063) or the more pragmatic West Jordan analysis, the outcome is apparent: the Act imposes a tax "for the purpose of [a] county." Utah Const. Art. XIII, § 5. The proceeds of the Act's "local levy" will undoubtedly fund the "general expenses of local government." 106 A.L.R. 906. The electorate of each county, furthermore, is in the best position

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15. The taxpayers of Millard County, therefore, have no political control over the disposition of \$800,000 of the tax dollars they generate.



to control the purse strings of that county. The property tax assessment and collection process, moreover, is county specific because a breakdown of that function in one county has no effect on neighboring counties. Finally, the Act totally divests voters of any control over the process of setting their own tax rates. Therefore, if this Court finds there are no outstanding factual issues precluding entry of summary judgment, it must reverse the trial court and declare the Act unconstitutional.

B. The Lower Court's Reliance Upon Various Alleged "State" Purposes Does Not Validate The Act

The district court did not specifically address the analysis set out above. Instead, the court found that because the "Act and the tax levy imposed thereunder are in furtherance of [a] state-wide public purpose" the Act "does not violate Article 13, Section 5 of the Constitution of the State of Utah." Record at 244, ¶ 8. The court noted that the state-wide purpose served by the Act included "legislative concerns regarding equality and uniformity of assessment." *Id.* at ¶ 7 This reasoning, however, is at odds with the Court's recent decision in West Jordan v. Utah State Retirement Board, 98 Utah Adv. Rep. at 40, in which this Court proscribed excessive intrusion on "local officials' control of policies that uniquely affect their citizenry," and plainly falters as a guide to constitutional interpretation. Indeed, such logic if approved or adopted by this Court would instantly render Article XIII, § 5 a dead letter

because there would never be any "local purpose" immune from legislative interference and oversight.<sup>16</sup>

Both the state and the counties are responsible for the general welfare of their respective citizens. Since the counties are political subdivisions of the state and have jurisdiction over geographical regions totally within the boundaries of the state, any person or problem of "interest" to local jurisdictions is also of "interest" to the state. See State v. Stanford, 66 P. 1061. Under the lower court's analysis, therefore, the state can claim a legitimate "interest" in virtually every function of county government. Thus, if a legitimate state "interest" is sufficient to avoid application of Article XIII, § 5, that provision has been rendered meaningless.

By its very existence in the Constitution, however, there must be some state conduct that is prohibited by Article XIII, § 5. Because the performance by elected county officials of their constitutional duties to impose taxes for their own purposes constitutes the very essence of county government (Section I, supra), such conduct must fall within Article XIII, § 5. If the constitutional proscription is to mean anything, it

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16. The Trial Court's reliance on uniformity and equalization of property assessments as a justifying "state purpose," moreover, is illogical on its own terms. The trial court's rationale assumes that if all counties have sufficient resources to conduct their assessment roles, equalization and uniformity will result. The Act, however, does not require the counties to expend the revenues from the local levy in any manner that insures uniformity and equalization. Mere expenditure of money does not guaranty equalization and uniformity. Indeed although the levy is imposed and the tax is collected under color of state authority, the state abdicates any responsibility to determine how the funds are spent beyond certifying "approved categories of costs."

must prohibit the legislative imposition of a tax to fund the salaries and expenses of county officials involved in the assessment, collection and disposition of local property taxes.

Perhaps sensing the tenuous nature of its "state interest" holding, the district court suggests that the Act is indistinguishable from numerous other legislative enactments providing state oversight of local taxation. Record at 243.<sup>17</sup> This rationale likewise does not withstand scrutiny. Except for the Act, not a single one of the oversight provisions mentioned by the lower court abrogates the exclusive constitutional right of local governments to impose taxes for their own purposes.

In State v. Eldredge, 27 Utah 477, 76 P. 337, 338 (1904), this Court discussed in some detail the relationship between the respective competencies of local and state taxing authorities. The precise question before the Court was whether the State Board of Equalization (now the State Tax Commission) could constitutionally assess property situated wholly within one county. The Court noted that Article XIII, § 11 of the Utah Constitution established both local and state taxing authorities, "each to act and discharge duties, independent of the other. Each was designed to perform special and important functions." 76 P. at 338. The Court further noted that neither state nor local taxing authorities had the power to perform acts

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17. The court's decision implies that the Act does not raise serious constitutional concerns because, under various other statutes, "the Legislature and the Utah State Tax Commission have, to a large degree, assumed control of the local administration of the property tax system." Id. at 6.

encroaching upon the domain of the other. The Court concluded that, because one of the essential powers reserved to local governments is the right to impose taxes for local purposes, the Utah Constitution does not allow the state to assess "property the situs and operation of which is wholly within one county." Id. at 340. The Court's reasoning behind this conclusion is instructive here (id.):

If the construction which the relator seeks to place upon that language of the Constitution were to be adopted, then there would seem to be no reason why the State [tax commission], by legislative enactment, might not be authorized to also levy and collect the taxes upon property situate wholly within one county, or to perform any other local duties which the legislature might see fit to impose upon the board. As will be noticed, this would clearly be in violation of section 5, art. 13, which directs the Legislature to vest in the corporate authorities the power to assess and collect taxes for local purposes.

Eldredge, therefore, makes clear that -- whatever the oversight responsibilities of state taxing authorities -- state power over the taxing function of local governments stops far short of the actual levy and collection of a tax. The Act, by imposing a tax for the purpose of a county, unconstitutionally intrudes upon the role of local government.

C. The Act Mandates Impermissible Horizontal Revenue Sharing

One "county purpose" that has always been considered to be protected from legislative interference is forced horizontal revenue sharing State v. Stanford, 66 P. at 1063 ("Under the constitution the state has no power to make a disposition of county funds, and require that they be appropriated for other and

different purposes than those for which by authority of the county they were collected").<sup>18</sup> In its cross-motion for summary judgment, Mountain States asserted that the Act violates Art. XIII, Section 5 because the revenue redistribution features of the Act constitute mandatory horizontal revenue sharing. This claim raises two principal issues: (1) whether the property tax redistribution mandated by the Act constitutes impermissible horizontal revenue sharing, and (2) whether the counties have consented to the revenue sharing features of the Act. The trial court erred in its treatment of both issues.

Although the district court did not explicitly analyze the question, the Act unquestionably results in the redistribution of funds between counties. As the Garfield County defendants conceded below, and as is clear from the face of the

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18. In fact, prior to 1983, it was thought that Art. XIII, § 5 prohibited even voluntary revenue sharing. Consequently Art. XIII, § 5 was amended in 1983 to include a second sentence, which expressly permits voluntary revenue sharing by stating as follows: "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." This amendment, however, does not authorize compelled legislative horizontal revenue sharing, but rather provides that local jurisdictions "may share" their revenues. As the "Impartial Analysis" prepared by the Office of Legislative Research and General Counsel for the 1982 voter information pamphlet explains (emphasis added):

Past legal opinions indicate that Article XIII, Section 5 prevents the local governments from sharing their tax revenues with each other. The proposed revision would alter this prohibition and allow local governments at their option to share tax revenues.

Act, revenues generated by taxes imposed on property in one county are diverted to the State Treasurer for redistribution to other counties. Record at 77; Utah Code Ann. § 17-19-15(6). This feature of the Act clearly constitutes horizontal revenue sharing.

The trial court avoided the necessary implication of the preceding fact, however, by concluding -- without explanation -- that "to the extent said statutory program results in revenue sharing . . . that redistribution is clearly consistent with decisions of the Utah Supreme Court, and in particular Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975), and Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979)." As discussed above (at 23 n. 12), both Tribe and Murray City involved challenges to the Utah Neighborhood Development Act. Unlike the intra-county funds transfers in those cases, the horizontal revenue sharing between counties mandated by the Act transgresses the core concerns of Article XIII, § 5. The lower court's reliance upon Tribe and Murray City Redevelopment, therefore, is seriously misplaced.

Tribe and Murray City can be distinguished from this case on numerous grounds. To begin with, the tax funds transferred from the counties to local redevelopment agencies in Tribe and Murray City never left the affected counties. Rather, those funds remained in the affected county and, by fostering development, ultimately benefitted the county by increasing the tax base. Murray City, 598 P.2d at 1342 n.8. The Act's scheme,

on the other hand, diverts money from certain counties for uses that do not benefit those counties in any way. Indeed, the revenues diverted under the Act are given to other counties to fund local operations of those other counties.

More importantly, the legislation involved in Tribe and Murray City left the affected counties "with complete autonomy" in setting their tax levy rates. See West Jordan v. Utah State Retirement Board, 98 Utah Adv. Rep. at 41. The temporary diversion of increased tax revenues flowing from the redevelopment projects that resulted in those increased revenues in the first place simply did not deprive the counties of their "vested authority to 'collect taxes for all purposes of such corporation.'" Murray City, 598 P.2d at 1342. See also Tribe v. Salt Lake City Corp., 540 P.2d at 506 (Crockett, J., specially concurring) (a value increment financing scheme is constitutional because it does not divest the county of the right to set its own mill levy rate). The Act's scheme, on the other hand, vests control of any given county's budget process -- and thus the establishment of any county's mill levy rate -- in 28 other counties. Absent county consent, therefore, for the reasons discussed at length above (Section IA), the Act violates Article XIII, § 5's proscription on horizontal revenue sharing.

The trial court concluded that Garfield County did in fact consent to the revenue sharing aspects of the Act because "by proposing and adopting a budget pursuant to [the Act, the county] has, to the extent they have proceeded to adopt said

budget, voluntarily agreed to any revenue sharing that might take place as a result of the implementation of said statute." Record at 243, ¶ 12. Such reasoning is tautological. The Act itself mandates that "the board of county commissioners of each county annually shall 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." Utah Code Ann. § 17-19-15(1) (emphasis added). The Act simply does not give the counties the option to refrain from submitting a budget and thereby participating in the program.<sup>19</sup> All 29 counties have, in fact, complied with the mandate of the Act by submitting their assessment and collection budgets. Therefore, the lower court's finding that a county consents to horizontal revenue sharing by complying with the Act's mandatory provisions is absurd.<sup>20</sup>

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19. There is no optional provision in the Act, for example, that would permit a newly elected county commission in Garfield County to decide that, instead of assessing the prescribed "local levy," it would instead set its own mill levy and retain the resulting revenues to improve its tax assessment, collection and distribution system under its own program.

20. The only other submission made by the county defendants in support of their claim of consent was that the Utah Association of Counties and the Utah Association of County Commissioners and County Councils supported passage of the Act. This fact, even if established by competent evidence, cannot establish "consent" within the intentment of Article XIII, § 5. Section 5 vests control of county spending in local officials who are subject to local electorate oversight. Best Foods, Inc. v. Christensen, 285 P. at 1003. The state constitution thus contemplates that local officials will vote on measures that affect public spending at public meetings where they will receive the voter's input and be subject to the voters' scrutiny. Allowing local officials to vicariously "consent" to matters affecting local budgets would insulate those officials from the electorate and thereby circumvent the political protections built into the state constitution.

Footnote continued on next page.



The Act violates Article XIII, § 5 by imposing mandatory horizontal revenue sharing for county purposes. The redistribution of funds required by the Act constitutes revenue sharing. That revenue sharing, moreover, possesses none of the unique aspects of the valuation increment financing scheme upheld in Tribe and Murray City. The Act, furthermore, is mandatory and

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Footnote continued from previous page.

The importance of political participation is highlighted by the Truth in Taxation Act, 1985 Utah Laws Ch. 114, codified at Utah Code Ann. §§ 59-2-918 thru 924, which imposes stringent preconditions on ad valorem tax increases. The Truth in Taxation Act requires counties to publish detailed notices of proposed increases and to mail to each taxpayer a notice of tax increase that contains very specific information concerning the nature of proposed tax increases by each taxing district and their impact on that taxpayer and the date, time and place of a public hearing on the proposed tax hikes. Utah Code Ann. §§ 59-2-918, 919. The purpose of the Truth in Taxation Act was to increase political participation in the budgeting and taxation process. The Act, however, circumvents the purpose of the Truth in Taxation Act by creating an assessment and collection levy not subject to the public participation requirements of the Truth in Taxation Act. In order to provide the public with the same participation rights they have for normal ad valorem tax increases under the Truth in Taxation Act, the assessment and collection levy setting would require every county intending to increase its assessment and collection levy to send a Truth in Taxation Notice to every taxpayer in the state. This would be necessary because virtually every county is either importing or exporting money to another county under the Act. This result highlights the manner in which the county defendants' alleged means of consent, if accepted by this court, would insulate the program established by the Act from the political process.

Moreover, even if Garfield County's membership in the above associations could be construed as consent to the revenue sharing features of the Act, that consent would not cure the constitutional infirmities of the Act because it binds successor county commissions to comply with the Act. A governing body of a political subdivision cannot purport to bind its successors with respect to governmental or legislative powers. Bair v. Layton City Corp., 6 Utah 2d 138, 307 P.2d 895 (1957). If an entirely new Garfield County Commission opposed to the revenue sharing aspects of the Act were elected, it could not avoid participation. The language of the Act is mandatory and includes no right for a county to "opt out." Only if the Act allowed each county to choose to participate or not every year would it provide for permissible revenue sharing.

does not even give counties the opportunity to consent.

Accordingly, the lower court's decision must be reversed.

II. MOUNTAIN STATES' CONSTITUTIONAL CLAIMS RAISE NUMEROUS  
UNRESOLVED GENUINE ISSUES OF MATERIAL FACT THAT PRECLUDE  
SUMMARY JUDGMENT IN FAVOR OF THE COUNTY

Mountain States' Complaint raises various constitutional challenges to the validity of the Act. As discussed above, the first three claims for relief essentially assert that the Act violates Article XIII, § 5 of the Utah Constitution. The remaining claims set forth due process, equal protection and takings questions rife with factual issues that must be resolved -- but were improperly ignored -- by the district court. Summary judgment, therefore, was improper.

A. Mountain States Was Entitled To Complete Discovery  
Prior To The Trial Court's Summary Disposition Of  
This Case

Prior to the entry of summary judgment below, Mountain States filed an affidavit pursuant to Rule 56(f), U. R. Civ P., outlining the issues requiring further discovery and requesting a 90-day continuance to permit Mountain States to conduct that discovery. Record at 178-179. Mountain States asserted that it would be error to enter summary judgment on the record then before the trial court because there were certain factual issues relating to the facial and as-applied challenges on which no evidence was before the court and with respect to which Mountain States had not yet been able to conduct discovery. Record at 123, 128-136. The Garfield County defendants, moreover, had previously conceded that the resolution of Mountain States'

claims would require substantial factual development.<sup>21</sup> But, notwithstanding Mountain States' request for time to complete discovery and the county defendants' concession that "there are numerous issues which are county specific and which require in our judgment, resort to tax records within each county" (Exhibit E), the district court summarily concluded that the Act "is constitutional in all respects." Record at 246, ¶ 14. This is plain error. In the words of defendants' own counsel, Mountain States is entitled to "resort to [the] tax records within each county" to resolve the "numerous issues [in this case] which are county specific." Exhibit E.

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21. In May of 1988, attorneys for Mountain States filed an action in each of the 29 counties of the state. Some of those actions were filed on behalf of Mountain States while others were filed on behalf of other taxpayers. By a letter dated June 6, 1988, to William C. Vickery, State Court Administrator, attorneys for Mountain States requested that all 29 actions be reassigned and consolidated in the Third Judicial District Court for Salt Lake County pursuant to Utah Code Ann. § 78-3-24(1). Counsel for the Garfield County defendants objected to consolidation in a letter to William Vickery dated June 15, 1988, in which he stated:

While there is a common legal question, i.e., the constitutionality of the assessing and collecting statute, there are numerous issues which are county specific and which require in our judgment, resort to tax records within each county, assessment records within each county, and treasurers records within each county.

To be specific, in each case there is an assertion concerning the amount it costs to assess and collect property taxes in each specific county and how that compares to the specific amount of taxes paid by each taxpayer within that county.

A copy of that June 15, 1988 letter is attached hereto as Exhibit E.

B. The Article XIII, Section 5 Analysis Would Benefit From Further Factual Development Prior To Judicial Resolution

As shown above (Section IA), Article XIII, § 5 of the Utah Constitution imposes a structural limitation upon the taxing authority of the legislature. Because of the vast ramifications of the state's taxing power -- not the least of which is its potential to virtually obliterate local government -- the legislature is unequivocally prohibited from imposing taxes for local purposes. State v. Stanford, 24 Utah 148, 66 P. 1061 (1901). This division of authority is in harmony with American history and constitutional law, with "our notions of decentralization of power, and with the spirit and genius of our institutions." 46 A.L.R. 607, 615 (1927).

On the present record, the trial court should not have summarily resolved the questions whether the Act imposes a tax for local purposes, unduly infringes the guaranty of local self-government, or constitutes impermissible revenue sharing. For example, although there is apparently no dispute as to whether the local levy is imposed by the legislature,<sup>22</sup> there is a dispute as to whether the local levy is imposed for "the purpose of [a] county." Article XIII, § 5. Critical to the resolution of this issue is evidence, conspicuously absent at the time the trial court terminated these proceedings below, as to the specific expenses that are paid by counties with the proceeds of

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22. Mountain States does not dispute the lower court's finding that the local levy is a tax imposed by the legislature. Record at 244-245, ¶ 7.

the tax. To the extent that the proceeds of the Act are used to pay the expenses of counties and county officials in connection with the performance of their official duties, such proceeds are used for county purposes. Section I, supra.

Evidence regarding the above matters is exclusively within the control of the defendants in this lawsuit and the defendants in the 29 other lawsuits now pending throughout the state.<sup>23</sup> The county defendants, however, have failed to produce it in connection with their motion for summary judgment. As noted above, Mountain States has not been given the necessary opportunity to develop the necessary evidence. Because this information is material and relevant to the resolution of the Article XIII, § 5 claims raised here, the Court should reverse and remand this action for further proceedings in the district court. Rule 56(f), Utah R. Civ P.

C. Mountain States' Due Process, Equal Protection and Takings Claims Are Not Ripe for Summary Judgment

As set forth in the Complaint, Mountain States' due process, equal protection and takings claims turn upon whether the amount of the local levy bears a reasonable relationship to various other aspects of the Act. Reasoned analysis of these

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23. Mountain States is also a plaintiff in actions similar to this one in various other counties. Mountain States has attempted to conduct written discovery concerning budget line items and actual expenditures in four of the other counties, all of which are represented by the same special deputy county attorney, in three judicial districts. Each time it has served discovery requests, counsel for the county defendants here has filed a motion to stay that action and a motion for a protective order prohibiting discovery until this appeal is resolved. To date Mountain States has been permitted to proceed with discovery only in Box Elder County.

## 2. Due Process Analysis of Taxes

Mountain States' due process challenge is based on the due process clause of Section 1 of the Fourteenth Amendment and Article I, § 7 of the Utah Constitution, which are virtually coextensive in their meaning and application. See Untermyer v. State Tax Commission, 102 Utah 214, 129 P.2d 881 (1942). In order to satisfy due process there must be a reasonable relationship between a tax rate and the taxed activity. Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425, 436-37, 100 S.Ct. 1223 (1980) (citing Moorman Mfg. Co. v. Bair, 437 U.S. 267, 272-73, 98 S.Ct. 2340 (1978)). Moreover, special assessment taxes, i.e., taxes that are imposed "to reimburse the state for the costs incurred in providing specific quantifiable services," are subject to special scrutiny in this regard. Commonwealth Edison Co. v. Montana, 453 U.S. 609, 623 n.12, 101 S.Ct. 2946, (1981). These taxes, which include the local levy,<sup>25</sup> pass muster under the due process clause only upon a "showing based on factual evidence, in the record, that the fees charged do not appear to be manifestly disproportionate to the services rendered . . . ." Id.

## 3. Takings Analysis of Taxation

Mountain States' takings challenge is based on Article XI, § 22 of the Utah Constitution, which provides that "[p]rivate

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25. From the face of the Act it is clear that the local levy is "assessed to reimburse the state for the costs of providing a specific quantifiable service," i.e., assessment and collection of property taxes. Commonwealth Edison Co. v. Montana, 453 U.S. at 623 n. 12.

issues cannot proceed in a factual vacuum. As a result, the summary judgment entered below was inappropriate because it deprived Mountain States of the opportunity to develop these claims through discovery. Rule 56(f), Utah R. Civ P.

1. Equal Protection Analysis of Taxes

Mountain States' equal protection challenge is based on Article I, § 24 of the Utah Constitution and the equal protection clause of Section 1 of the Fourteenth Amendment. Both of those provisions restrain legislatures from the "fundamentally unfair practice of creating classifications that result in different treatment being given to persons who are, in fact, similarly situated, all of which redounds to the detriment of some of those so classified." Mountain Fuel Supply Co. v. Salt Lake City Corp., 752 P.2d 884, 886-88 (Utah 1988).<sup>24</sup> In order to assure equal treatment to all similarly situated taxpayers, equal protection requires that a tax -- even a general revenue raising tax -- bear a reasonable relationship with the taxable event. City of Los Angeles v. Shell Oil Co., 480 P.2d 953, (Cal. 1971). This reasonable relationship test necessarily involves a factual inquiry: whether the measure of the tax is reasonably related to the taxable event such that the tax does not result in the imposition of unfair or discriminatory burdens on a class of taxpayers. Id. See also Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S.Ct. 3141, 3147 n. 4 (1987).

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24. A corollary of equal protection is that persons differently situated should not be treated similarly. See City of Los Angeles v. Shell Oil Co., 4 Cal. 3d 108, 480 P.2d 953, 962, 93 Cal. Rptr. 1 (1971).

property shall not be taken or damaged for public use without just compensation."<sup>26</sup> The purpose of this provision is to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. Nollan v. California Coastal Comm'n, 107 S. Ct. at 3147. Thus, unless government action affecting a party is reasonably related to public need, the action violates the property clause because that party is bearing an unfair share of public burdens. Id. at 3147-50. Therefore, a tax, (such as the local levy) which is designed to compensate counties for the costs of assessing and collecting property taxes must bear a reasonable relationship to the burden created by the assessment and collection of those taxes from a given taxpayer.

#### 4. The Factual Record Before the Trial Court

The trial court's dismissal of Mountain States' due process, equal protection and takings claims was based entirely on its conclusion that the local levy was a "tax" and not a "fee." As demonstrated above, however, the simple denomination of the local levy as a "tax" does not circumvent due process, equal protection, or takings clause scrutiny. That scrutiny, moreover, unequivocally requires development of a factual record. Mountain States, however, was prevented by the lower court's ruling from developing -- and the Garfield County defendants did not even attempt to submit -- any evidence regarding the

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26. The language of this provision is substantially identical to the property clause of the Fifth Amendment to the United States Constitution.



relationship between the measure of the local levy and the use of county resources in the assessment and collection of property taxes from various classes of taxpayers, or the relationship between the local levy imposed on a given taxpayer and the cost of assessing and collecting property taxes from that taxpayer. It was, therefore, plain error for the court to grant summary judgment. See Bridge v. Backman, 10 Utah 2d 366, 353 P.2d 909 (1960) (summary judgment is inappropriate unless the moving party proves that the disfavored party cannot produce any evidence in its favor).

Furthermore, from the face of the Act it appears that Mountain States' due process, equal protection and takings clause claims are meritorious. For example, with respect to Mountain States' equal protection challenge, it appears that the measure of the local levy -- property value -- bears no reasonable relationship to the use of county resources to collect and assess property taxes because the levy is uniformly applied to locally assessed as well as centrally assessed property<sup>27</sup> and because the

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27. Property tax assessment duties in Utah are divided between the State Tax Commission and the counties. The State Tax Commission assesses property that operates as a unit across county lines, property of public utilities and mining properties ("centrally assessed properties"). Utah Code Ann. § 59-2-201. With respect to centrally assessed property, the counties are required to do nothing more than prepare and mail the tax notices and deposit the taxpayers' checks. The county, on the other hand, assesses all other property ("locally assessed property"). With respect to locally assessed property, the county has the added burden of conducting appraisals and reappraisals as property is bought and sold, and of holding valuation hearings to consider valuation disputes. Because Mountain States is a public utility, its property is centrally assessed. Garfield County does nothing more than prepare and mail a property tax notice and receive Mountain States' payment.

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Act contemplates that taxpayers in certain counties will actually pay an amount in excess of their pro-rata share of those counties' assessment and collection budget. For the same reasons, it appears that there is no rational relationship between the amount of the local levy imposed on any given taxpayer and the costs of assessing and collecting property taxes from that taxpayer. For example, one taxpayer in Millard County, Intermountain Power Agency, paid a local levy of over \$1 million in 1987, even though Millard County's total assessment and collection budget was only \$400,000 and Intermountain Power Agency's property is a centrally assessed property with respect to which Millard County has only minimal responsibilities.

Mountain States is unaware how many taxpayers bear a disproportionate burden, similar to that borne by Intermountain Power Agency, which bears absolutely no relationship to the cost of assessing and collecting its property taxes. Such data, which as outlined above is necessary for Mountain States to develop its due process, equal protection and takings clause challenges, are

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Notwithstanding the clear differences in the extent of the burden borne by the county with respect to locally assessed property and centrally assessed property, the Act does not differentiate between the local levy rate for each class of property. Mountain States argued below that it believed the cost of printing and mailing tax notices was minimal compared to the cost imposed on Mountain States by the local levy. If indeed Mountain States' belief is correct, under the standards set forth in Los Angeles v. Shell Oil, 480 P.2d 953, the Act violates the equal protection clause of the Fourteenth Amendment and Article I Section 24 of the Utah Constitution because it taxes locally assessed property and centrally assessed property at the same rate, notwithstanding the disparity of the counties' burdens with respect to the different classes of property.

in the exclusive control of the counties. Prior to the ruling below, Mountain States had commenced discovery to compile the data necessary to support its challenges. By entering summary judgment prior to Mountain States' receipt of even the first set of responses, however, the trial court erroneously deprived Mountain States of the opportunity to fairly present its case. Counsel for the county defendants has similarly prevented Mountain States and other taxpayers from developing the necessary information in other counties by moving to stay discovery everywhere it has been sought. The trial court's error and the defendants' attempts to prevent discovery require reversal and remand for further discovery.

D. If The Act Is Not Facially Invalid, Mountain States Is Entitled To Further Discovery On Its Due Process Claim

In addition to the "reasonable relationship" due process challenge discussed above, Mountain States challenges the Act on the ground that it violates due process by permitting taxation of persons who have no nexus with the taxing counties. Mountain States challenged the Act on its face on grounds that it violates due process by permitting taxation of persons who have no nexus with the taxing counties.<sup>28</sup> This claim is simply a restatement of the "taxation without representation" principle that spawned

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28. In order to satisfy the requirements of due process a taxpayer must have a "substantial connection," or nexus, with the taxing entity. Mobil Oil Corp. v. Commissioner, 445 U.S. 425, 436-37, 100 S.Ct. 1223 (1980), citing Moorman Mfg. Co. v. Bair, 437 U.S. 267, 272-73, 98 s.Ct. 2340 (1978); Container Corp. of America v. Franchise Tax Board, 463 U.S. 159, 164, 103 S.Ct. 2933, 2940 (1983); City of Los Angeles v. Shell Oil Co., 4 Cal. 3d 108, 480 P.2d 953, 93 Cal. Rptr. 1 (1971).

the American Revolution. This defect in the Act is perhaps its most offensive aspect.

The Act requires each county to participate in the uniform state-wide local levy rate. Instead of bearing the responsibility to the voters of the state of establishing how the revenues raised by the local levy will be spent, the state abdicates that role to the counties. The uniform-statewide local levy is established by the combined assessment and collection budgets of every county in the state. Utah Code Ann.

§ 17-19-15(3). Consequently, each expenditure included in the assessment and collection budget of a given county increases the statewide tax rate, and ultimately, increases the tax burden of every owner of taxable property in the state. As a result, the amount of taxes paid by the constituents of a given county is based on the assessment and collection budgets adopted by the other 28 counties. The Act also contemplates that taxes collected from taxpayers in some counties will be paid to other counties that will spend those funds for their own assessment and collection purposes. Taxpayers in a given county are thereby deprived of political control over the manner in which their taxes are spent. Thus, taxpayers are taxed for the benefit of jurisdictions with which they have no nexus and in which they have no political input. The Act, therefore, violates the due process clauses of the Utah and United States Constitutions.<sup>29</sup>

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29. Although a political jurisdiction is not limited to imposing taxes on only those imbued with the voting franchise, it cannot discriminate against those who do not have political power.

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Mountain States argued below and still maintains that the Act is facially unconstitutional because its language -- in fact its very existence -- contemplates that taxpayers in some counties will actually be taxed by other counties. Record at 147-48. Accordingly, if summary judgment is to be granted at this point, it must be entered in favor of Mountain States. However, should this Court conclude that this claim is not yet ripe for summary disposition, Mountain States is entitled to conduct discovery to prove that the Act, as applied, results in the taxation of taxpayers having no nexus with the taxing county. See Bridge v. Backman, 10 Utah 2d 366, 353 P.2d 909 (1960).

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It is an axiom of our law that the power to tax is a power to destroy. Where the amount of the tax to be raised, or the rate of taxation, is determined by the legislature itself, the taxpayers who are to be charged with the taxes have a right to, and an opportunity to be heard by the legislature upon the subject of the taxation, including the purpose of the tax, the needs of the public for the promotion of the object for which the taxes are to imposed, the amount of taxation required for those needs, and the amount which can be properly and justly charged against the taxpayers.

Michigan Central Railroad Co. v. Powers, 201 U.S. 245, 26 S.Ct. 459 (1906). See also Container Corp. of America v. Franchise Tax Board, 463 U.S. 159, 204-5 (Powell J., dissenting). In the instant case, it appears that not only does Mountain States lack political power to control tax rates under the Act, but no one else is in a position to protect the interests of taxpayers because the Act effectively disseminates the responsibility beyond the control of any substantial electorate.

CONCLUSION

To the extent the constitutional issues presented are ripe for summary disposition, applicable law requires the entry of summary judgment in favor of Mountain States. If the Court concludes that the present claims require further factual development, the judgment below should be reversed and remanded for further proceedings.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of March, 1989.

HOLME ROBERTS & OWEN

A handwritten signature in cursive script, reading "Mark K. Buchi", is written over a horizontal line.

Mark K. Buchi  
Richie D. Haddock

IN THE SUPREME COURT OF UTAH

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MOUNTAIN STATES TELEPHONE )  
AND TELEGRAPH CO., )

Appellant/Plaintiff, )

v. )

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, )

Case No. 88-0435

Priority CAT. 14B

Respondents/Defendants. )

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

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CERTIFICATE OF MAILING

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I hereby certify that on the 14th day of March, 1989, I  
caused to be mailed in the United States mail, postage prepaid,  
four true and correct copies of the Brief of Appellant Mountain  
States Telephone and Telegraph Co., to each of the following:

KINGHORN, PETERS & PROBST,  
Bill Thomas Peters  
Special Deputy County Attorney  
9 Exchange Place, Suite 1100  
Salt Lake City, UT 84111

GARFIELD COUNTY ATTORNEY  
Patrick Nolan  
55 South Main Street  
Panguitch, UT 84759

ATTORNEY GENERAL OF THE  
STATE OF UTAH  
Ralph Finlayson,  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, UT 84114

HOLME ROBERTS & OWEN

  
\_\_\_\_\_  
Mark K. Buchi

rgwp/aq9



## Exhibit A

GARFIELD COUNTY  
NO. 3273 FILED

AUG 29 1988

THE ATTORNEY GENERAL  
STATE OF UTAH

DAVID L. WILKINSON  
ATTORNEY GENERAL

CLERK

*David L. Wilkinson* DEPUTY

PAUL M. TINKER  
CHIEF DEPUTY ATTORNEY GENERAL

DALLIN W. JENSEN  
Solicitor General

EARL F. DORIS, CHIEF  
Governmental Affairs Division

STUART W. HINGKLEY, CHIEF  
Human Resources Division

FRED G. NELSON, CHIEF  
Physical Resources Division

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ASSOCIATE DEPUTY ATTORNEY GENERAL

STEPHEN G. SCHWENDIMAN, CHIEF  
Tax & Business Regulation Division

STEPHEN J. SORENSON, CHIEF  
Litigation Division

MICHAEL D. SMITH, CHIEF  
Civil Enforcement Division

August 26, 1988

The Honorable Don V. Tibbs  
Judge, Sixth Judicial District Court  
for Garfield County  
55 South Main Street  
Panguitch, Utah 84759

**RE: Mountain States Telephone and Telegraph Co. v.  
Garfield County, et al., Case No. 3273**

Dear Judge Tibbs:

With a motion for summary judgment pending, I provide this response regarding the position of the State defendants.

The State defendants in this case are the Utah State Tax Commission, R. H. "Hal" Hansen, Chairman of the Utah State Tax Commission, Roger O. Tew, Utah State Tax Commissioner, Joe B. Pacheco, Utah State Tax Commissioners, G. Blaine Davis, Utah State Tax Commissioner, Tom L. Allen, Utah State Auditor, and Edward T. Alter, Utah State Treasurer.

These State defendants have ministerial or administrative roles under the statute at issue, Utah Code Ann. § 17-19-15 (Supp. 1988). These roles are in contrast to the role of the counties, which receive and use money raised by the tax levies at issue. The counties, therefore, rather than the State defendants are the real parties in interest.

The counties are vigorously and adequately representing the interest in upholding the statute at issue. The Attorney General has provided an opinion on the central issue involved, which opinion speaks for itself. The opinion is already a part of the court record and is hereby tendered to assist in addressing the issue. The opinion is an analysis that does not purport to bind the court and is not an unequivocal declaration of constitutionality or unconstitutionality.

The Honorable Don V. Tibbs  
August 26, 1988  
Page Two

Under these circumstances the State defendants do not  
intend to be active as legal advocates in this case.

Very truly yours,

A handwritten signature in cursive script, reading "Ralph L. Finlayson". The signature is written in dark ink and is positioned above the typed name.

RALPH L. FINLAYSON  
Assistant Attorney General  
Governmental Affairs Division

RLF/cwc

cc: Patrick B. Nolan, Esq.  
Bill Thomas Peters, Esq.  
David K. Detton, Esq.

## Exhibit B



THE ATTORNEY GENERAL  
STATE OF UTAH  
DAVID L. WILKINSON

**DATE:** February 11, 1988

**FORMAL OPINION NO.** 88-01

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**REQUESTED BY:** The Honorable Glen E. Brown,  
Speaker, Utah House of Representatives

**PREPARED BY:** David L. Wilkinson, Attorney General  
Ralph L. Finlayson, Assistant Attorney General

**QUESTION:** Whether S.B. No. 151--County Collection Costs,  
passed in the 1986 General Session of the  
Legislature, violates Article XIII, Section 5  
of the Utah Constitution.

**ANSWER:** See CONCLUSION.

This Formal Opinion is virtually identical to Informal Opinion No. 87-47, issued November 25, 1987. Although an Informal Opinion is "official," this is being issued as a Formal Opinion because of its importance, nothing having been brought to our attention to question the Informal Opinion's conclusions. The opinions respond to the request of Speaker Glen E. Brown of the Utah House of Representatives asking review by this office of S.B. No. 151 for constitutionality. The indicated bill was passed by the Legislature in the 1986 General Session and was signed into law by the Governor. It enacts a somewhat complicated method of defraying the costs counties incur to assess, collect and distribute property taxes.<sup>1</sup>

#### ANALYSIS

##### The Bill

Since the time of your request we have had a chance to review the bill at greater length and to research its legal implications. The scheme established in the bill is, as indicated, somewhat involved. Under it, the board of county commissioners of each county first determines the county's cost of "assessment, collection, and distribution of property taxes and related appraisal programs", and submits that figure (a "budget") to the State Auditor for review.

The State Auditor, according to rules he is required to have established, then reviews and certifies each of the county budget figures. Then the State Auditor transmits the aggregated statewide costs--presumably a single figure--to the State Tax Commission, which is required to establish a mandatory statewide tax rate sufficient to raise the amount represented by the figure given it by the Auditor, on condition that the tax rate not exceed a maximum of .0005 of assessed valuation. The county Auditor includes the rate thus fixed, as a separately listed and identified local levy, in the tax notice issued to the taxpayer.

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<sup>1</sup> A copy of an enrolled copy of S.B. No. 151 is attached as Appendix A for reference. Although the Office of Legislative Research and General Counsel did not find unconstitutionality in the course of its preparation of the bill, and the Attorney General's office did not find any obvious constitutional flaw in its limited review of the bill following passage, it should be recognized that the mechanisms established by the bill are somewhat involved, and that the review by the two indicated offices was necessarily limited in the press of the processing of large numbers of bills within short, fixed time periods.

Under subsection (6) of Section 17-19-15 of the act, revenues received by each county in excess of the amount set in the certified budget are required to be transmitted to the State Treasurer "for equalization and distribution to the counties in accordance with the certified budgets." That is, counties that collect more than their budgeted figure provide that excess to counties that collect less than their budgeted figure, the tax payers in counties with larger tax bases subsidizing the tax payers in counties with smaller tax bases. As an example, it is my information that one taxpayer in a particular county had been assessed a tax under the bill which substantially exceeds the cost for collection budgeted for that entire county. The excess in that county of collections over the budgeted cost would be transferred by state officials, under the bill, to those counties which collect less than their budgeted costs.

An argument has been suggested in support of the bill that it eliminates local controversy in defraying the costs of collecting property taxes in that state, rather than local, officials certify the budget figures, set the tax rate and "equalize" the tax proceeds collected. One argument that has been suggested in opposition to the bill is that it eliminates the incentive of each county to economize in its tax collection process and conversely gives incentive to each county artificially to increase its budget for collecting taxes on the theory that someone else will pay for however much the budget exceeds collections. These kinds of policy arguments are outside the purview of our legal review. This review is limited to consideration of whether the act violates the Constitution.

#### The Constitutional Provision

The constitutional provision which we have been asked to measure the act against is Article XIII, Section 5 of the Utah Constitution. That section reads as follows:

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.

It is significant to note that the second sentence in the section was added by a constitutional amendment that took effect January 1, 1983. No case decided before that date, therefore, was subject to the allowances and requirements of the amendment. And we know of no case that has construed the section since that amendment.

### The Cases

There are, nevertheless, some Utah cases which have construed and applied Article XIII, Section 5, all of which were decided before the section was amended.<sup>2</sup> In several of the earlier cases no constitutional violation was found, yet in a larger number of them the legislative scheme at issue was held to violate the constitutional provision. In the more recent cases, which find no constitutional violation, the court's focus clearly has shifted from the principle of local control to pragmatic accommodation of perceived public benefit. The Court in The Best Foods v. Christensen, 285 P. 1001 (Utah 1930) found no violation of Article XIII, Section 5 under the facts of that case. It based its conclusion that the statute involved was not unconstitutional on the fact that the statutorily imposed \$5 annual permit fee payable by a seller of oleomargarine to the general fund of a county, city or town was not a tax but compensation for services rendered to the state by the entity issuing the permit and assisting the state to enforce the act creating the fee. Yet that case provides one of the clearer statements of the purpose of Article XIII, Section 5, in the following language:

There can be no doubt but that the framers of our state Constitution recognized the rights of the people of Utah to local self-government. It was to preserve local self-government free from needless legislative interference that the power to levy taxes for local purposes was by the state Constitution vested exclusively in the proper authority of counties, cities, towns, and other municipal corporations. The power to collect and control the revenues of a municipality is of the very essence of local self-government.

Id. at 1003.

<sup>2</sup> Cases from various jurisdictions construing constitutional provisions similar to the original first sentence of the Utah Section are summarized in 106 A.L.R. 906 and 46 A.L.R. 609.



In Bailey v. Van Dyke, 66 Utah 184, 240 P. 454 (1925), the act in question gave counties the legal power to enter into contracts for the expenditure of funds in its discretion. The Court upheld the act as against a claim, inter alia, that it imposed taxes for county purposes in violation of Article XIII, Section 5. The Court relied on the fact that "[t]here [was] no imposition of taxes, direct or indirect, by legislative authority upon the county, and no interference with local self-government by the county." 66 Utah at 192, 240 P. at 457 (emphasis added).

Among the cases holding a Utah statute to be in violation of Article XIII, Section 5 is State v. Stanford, 24 Utah 148, 66 P. 1061 (1901), in that case, the state statute at issue required the county commission of each county with 5,000 or more trees to appoint a practical horticulturist as a tree inspector, and required that in counties having a population of 20,000 or more, the county inspector appoint as many deputy inspectors as in the judgment of the inspector and the state board of horticulture were necessary to implement the statute. The statute required the county to pay the compensation of the inspectors and the statute fixed the pay.

The Court stated that "[t]he Constitution was doubtless framed with a purpose to protect the local self-governments which had existed of a practically uniform character from the early settlement of the country." 24 Utah at 157, 66 P. at 1062. Yet, under the statute, the county was compelled to audit and pay the monthly salaries of the inspector and deputies without its consent. Thus, held the Court, the statute was unconstitutional:

In our opinion section 5, art. 13, of the constitution, not only limits local or county taxation to local county purposes, but it was also intended as a limitation upon the power of the legislature to grant the right or impose the duty of creating a debt or levying a tax to any person or body other than the corporate authorities of the county. Nor can the state compel a county to incur a debt or to levy a tax for the purpose named in the act without its consent.

24 Utah at 161, 66 P. at 1063.

In State v. Eldridge, 27 Utah 477, 76 P. 337 (1904), the Court said that the State Board of Equalization could constitutionally engage in "adjusting and equalizing the valuation of taxable property among the several counties of the State" (27 Utah at 486, 76 P. at 340), but held that the

Legislature had no power to authorize the Board to "assess or value property, for the purposes of taxation, the situs and operation of which are wholly within one county." 27 Utah at 488, 76 P. at 341. In dicta, the Court said also that the Legislature was without power to authorize the Board to levy and collect taxes on property. 27 Utah at 486, 76 P. at 340.

In Smith v. Carbon County, 90 Utah 560, 63 P.2d 259 (1936) the Court held that fees which did not bear a reasonable relation to the extent and nature of services of the county officer to whom paid were taxes the levy of which violated, inter alia, Article XIII Section 5. Such taxes, said the Court, "may not be levied by the Legislature for the use and benefit of a county." 90 Utah at 568, 63 P.2d at 262.

Several more recent cases have rejected Article XIII, Section 5 challenges to local financing programs on rationales that appear to have been pragmatically based on a perceived need to accommodate funding of public projects rather than on a determination that the principle of local control which underlies the constitutional provision was not being undermined. They appear to reflect something of a deemphasis of the constitutional limitation and a deference to the judgment of the Legislature on economic issues.

The Court in Tribe v. Salt Lake City Corp., 540 P.2d 499, (Utah 1975), upheld, as against argument that it violated Article XIII, Section 5, a statute that required a portion of property taxes to be diverted directly to help pay off revenue bonds issued by the Salt Lake City Redevelopment Agency to finance a redevelopment project. It said 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 Court undertook no specific comparison of the statute with the constitutional provision involved. In S. L. Co. v. Murray City Redevelop., 598 P.2d 1339 (Utah 1979), the county asserted violation of Article XIII, Section 5 on the ground that the statute in question effectually required diversion of taxes assessed by the county for county purposes to the Defendant Murray City for Murray City Redevelopment. The Court rejected the argument in a rather complex discussion generally to the effect that the required diversion did not really affect the county's control over its taxing power and that the county was not harmed financially, thereby upholding the act as not in violation of Article XIII, Section 5.

It should be noted that a legislative scheme requiring taxes to be collected by counties for the benefit of school

districts has been distinguished from a scheme requiring taxes to be collected by counties for their own use. See Board of Education v. Burdon, 62 Utah 162, 217 P. 1112 (1923); Board of Education v. Daines, 50 Utah 97, 166 P. 977 (Utah 1917). The Court in The Best Foods v. Christensen, 1285 P. 1001, 1004 (Utah 1930) cited these cases in support of its dicta that the Legislature may, under settled authority, impose on a county the duty to impose taxes other than for its own purposes. The dicta may have been too broadly stated, yet it is safe to say that the courts have upheld financing programs under which counties collect taxes for school districts within their boundaries.

All the cases discussed above were, and it can be assumed that all future cases will be, decided against the general background that "an act of the Legislature will not be declared unconstitutional if it can reasonably be construed to be constitutional,"<sup>3</sup> and that "[w]here the language of a statute is equally susceptible to two constructions, one rendering it valid and the other invalid, the court must adopt the one which renders the statute valid,"<sup>4</sup> but that when the "meaning of the constitutional provision cannot be harmonized with the statute" the statute will be declared unconstitutional. Berry v. Beech Aircraft, 717 P.2d 670, 684 (Utah 1985).

#### The 1983 Constitutional Amendment

The 1983 constitutional amendment to Section 5 of Article XIII appears not to eliminate the protection of a political subdivision against a state-imposed mandate that it impose taxes for its own use, or share them, theretofore provided by that section of the Constitution. The amending sentence provides that political subdivisions "may share their tax and other revenues with other political subdivisions." (Emphasis added.) That, of course, is permissive rather than mandatory language.

Yet meaning must be given to the last words in the amending sentence, "by statute." It might be argued that "by statute" means the Legislature can mandate sharing, and that "may share" was meant not to preserve local control in the face of such a mandate, but was meant only to clear away a previously existing legal obstacle against horizontal revenue-sharing among

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<sup>3</sup> The Best Foods v. Christensen, 285 P. 1001, 1004 (Utah 1930) (citing cases).

<sup>4</sup> Id.

political subdivision. In support of this argument it might be said, accurately in my view, that the recent cases dealing with Article XIII, Section 5 reflect more judicial interest in pragmatic accommodation of funding for projects adjudged by the Legislature to be invested with a public interest than in preserving the principle of local control.<sup>5</sup>

Still, if this expansive interpretation of state legislative power had been intended, it would have been natural directly to state something like, "The Legislature may, by statute, require political subdivisions to share their tax and other revenues" rather than, as the amendment does, state the provision in terms of what "political subdivisions may" do. Further, that this expansive, unnatural interpretation of the amendment is not correct is reinforced by authoritative sources that accompanied the amendment in its sojourn to adoption.

The long title of the resolution proposing the amendment that became effective in 1983 described the amendment as "PROVIDING FOR PERMISSIVE SHARING OF REVENUES BETWEEN POLITICAL SUBDIVISIONS OF THE STATE." S.J.R. No. 3, Tax Article Revision, 1982 Budget Session, Utah State Legislature (emphasis added). The official ballot title described the amendment as one "to allow local governments to share tax and other revenues." Utah Voter Information Pamphlet, General Election, November 2,

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<sup>5</sup> See *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975); *S. L. Co. v. Murray City Redevelop.*, 598 P.2d 1339 (Utah 1979). See also A. Lynn, Jr., *Financing Modernized and Unmodernized Local Government in the Age of Aquarius*, 1971 Utah L. Rev. 30, 39. Similar judicial movement toward accommodating new methods of financing projects the Legislature declares to be in the public interest, and away from strictly construing constitutional limitations on legislative power, is reflected in the case of *U.T.F.C. v. Wilkinson*, 723 P.2d 406 (Utah 1986). Though the Court in the *U.T.F.C.* case did strike down as unconstitutional the only feature of the Act regarding which *U.T.F.C.* had asked the Court to make a declaration, it was plain that the Court did so only reluctantly, and under the mandate of a constitutional clause (barring subscription to stock) so unambiguous as to be impossible to evade. And the Court read the other clause involved (forbidding the Legislature from authorizing the State to lend its credit) in a very narrow way. Justice Zimmerman, in a separate concurrence, described the section of the Constitution involved in that case (Article VI, Section 29) as "two archaic limitations on the powers of state and local government." *Id.* at 416.

1982 (emphasis added). The section in the 1982 Voter Information Pamphlet titled "Impartial Analysis" and prepared by the Office of Legislative Research and General Counsel is most telling, it includes the following:

Past legal opinions indicate that Article XIII, Section 5 prevents the local governments from sharing their tax revenues with each other. The proposed revision would alter this prohibition and allow local governments at their option to share tax revenues.

Id. (emphasis added).

All of these official legislative and ballot sources clearly indicate that the amendment operates to allow revenue sharing at the option of the local governments involved. There is no statement or assertion in any of them that suggests, directly or indirectly, that the amendment would permit the Legislature, by statute, to impose revenue sharing on any county without its consent. And though these official sources are not the law itself, they are authoritative indicators of the amendment's meaning. Perhaps even more important, they are official sources that informed the voting legislators and electors of the meaning of the amendment, and presumably were relied upon as bases for voting.

That the 1983 constitutional amendment does not establish in the Legislature power to require a political subdivision to share its tax revenues without its consent is also supported by the basic canons of construction that potentially inconsistent provisions of law "should be so construed [as] to give effect to both if possible." Pride Club v. Miller, 572 P.2d 385, 387 (Utah 1977). If the new second sentence in Article XIII, Section 5 were read to allow the Legislature to require a county to impose taxes for its own use, and the use of other counties without the consent of the taxing county, that sentence would appear to allow precisely what the original, and still existing, first sentence of that constitutional provision does not allow, under the interpretations the earlier Utah cases have given it. Such an anomalous reading is unsupportable, we submit, even under the later cases.

Though the later cases deemphasize Article XIII, Section 5 and the rationale underlying it, they do not overrule the earlier cases enforcing it, and whatever interest there may be in reading the first sentence out of existence, it is, nonetheless, still there. The second sentence can be harmonized

with the first, giving effect to both, by reading the second sentence to preserve in the political sub-division the option to participate in revenue sharing and construing the language "as provided by statute" as empowering the Legislature to enact mechanisms to facilitate revenue sharing if, and only if, all political subdivisions involved consent to it.

Finally, without extending this opinion with further analysis, I would note that it appears that none of the results in the cases involving Article XII, Section 5 already discussed would have been different had they been decided under the section as it was amended in 1983.

Application of the Constitutional Provision, as  
Judicially Construed, to S.B. No. 151

Functions established in the bill which may be seen as the Legislature's unconstitutionally "impos[ing] taxes for the purpose of any county" (Article XII, Section 5) include the following. 1) The bill requires counties to collect taxes for their own use and prescribes the mechanism for doing so. 2) The bill ultimately requires counties which collect more taxes under the bill's levy than their budgeted cost for assessment, collection and distribution of property taxes, to supply their excess collections to other counties without consent of the supplying counties. 3) The State Auditor certifies county budget figures upon which each county's share of the revenue depends, which function the Auditor has understood to include the power to disapprove a figure and require it to be revised.<sup>6</sup> 4) The State Tax Commission, a State entity, sets a tax rate binding on the counties. 5) The State Treasurer equalizes and distributes excess revenues collected by the counties and required by the bill to be transmitted to the Treasurer.

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<sup>6</sup> Various arguments that might be made regarding this feature requiring State Auditor certification include arguments that it 1) empowers the State Auditor to disapprove a figure and require it to be revised and hence is unconstitutional, 2) does not empower the State Auditor to disapprove a figure and require it to be revised but only to place the figure in an appropriate budget category and hence, though not saving any disapproval or revision by the State Auditor from invalidity, the certification feature itself is not unconstitutional, and 3) empowers the State Auditor to disapprove a figure and require it to be revised and yet is not unconstitutional.

As already noted, two relatively recent cases dismissed Article XIII, Section 5 challenges against financing plans that were quite different from those involved in the earlier cases decided under that provision and from that involved here. Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975) (upholding a statute requiring a portion of property taxes collected by Salt Lake County to be diverted directly to help pay off revenue bonds issued by the Salt Lake City Redevelopment Agency); S. L. Co. v. Murray City Redevelop., 598 P.2d 1339 (Utah 1979) (upholding a statute authorizing diversion of taxes assessed by the county for county purposes to the Defendant Murray City for Murray redevelopment). Despite the factual distinctions it may be difficult to reconcile these decisions with the earlier cases, or for that matter, with the constitutional provision itself.

Yet these later cases do not overrule the earlier cases, also discussed above, the holdings or dicta of all of which clearly would prohibit state legislation that imposes on county control of its taxing power as the bill in question does. See State v. Stanford, 24 Utah 148, 66 P. 1061 (1901) (holding a state act unconstitutional under Article XIII, Section 5 and stating that the state cannot "compel a county to incur a debt or to levy a tax for the purpose named in the act without its consent" (66 P. at 1063)); State v. Eldridge, 27 Utah 477, 76 P. 337 (1904) (holding that the State Board of Equalization was barred by Article XIII, Section 5 from assessing or valuing property for the purpose of taxation within a county, and stating in dicta that the Board could not levy and collect taxes on property); Smith v. Carbon County, 63 P.2d 259 (1936) (holding state legislation imposing a state-assessed probate fee that amounted to a tax to violate Article XIII, Section 5); The Best Foods v. Christensen, 285 P. 1001 (Utah 1930) (finding no violation of Article XIII, Section 5 under facts that showed the alleged tax was a small fee commensurate with services rendered, but stating strong dicta in support of the importance of Article XIII, Section 5 as a protection of the principle of local self-government); Bailey v. Van Dyke, 66 Utah 184, 192, 240 P. 454, 457 (1925) (finding no violation of Article XIII, Section 5 on grounds that "[t]here [was] no imposition of taxes, direct or indirect, by legislative authority upon the county, and no interference with local self-government by the county").

Features of the bill which appear particularly vulnerable are the legislative mandate that counties collect taxes for their own use, the requirement that counties which collect an excess over the cost figure assigned share revenues, without their consent, with other counties, and the State Auditor's power, to any extent the statute grants it, to control the cost figure to be used by each county.


### CONCLUSION

A statute requiring counties to collect taxes to cover their own costs of collecting taxes, without their consent to share their revenues with other counties, and to submit to other state controls of the type employed in S.B. No. 151 has not yet come before the Utah Supreme Court. Also, more recent decisions of that Court manifest greater concern for pragmatic accommodation of funding mechanisms authorized by the Legislature as in the public interest than for preservation of the principle of local self-government originally underlying Article XIII, Section 5, which the earlier cases emphasized. So the conclusion to which the present Utah Court would come on the issue in the exercise of its discretion as interpreter of the Utah Constitution cannot be predicted with assurance.

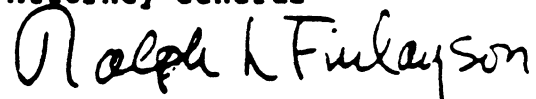
Nevertheless, the language of the constitutional provision itself, the line of cases construing it (softened by the later cases), and the history of the 1983 amendment as it went before the Legislature and the people, all tend to support the conclusion that S.B. No. 151 unconstitutionally intrudes on the right of local self-government vouchsafed to the counties under Article XIII, Section 5 of the Utah Constitution in the bill's mandate that counties collect taxes for their own use, regardless of their consent share their tax revenues with other counties, and submit to the other described state controls.

Though the issue treated in this opinion is complicated, and prediction of how a Utah Court would resolve it is not free from doubt, we hope you will find our analysis helpful.

Respectfully,



DAVID L. WILKINSON  
Attorney General



RALPH L. FINLAYSON  
Assistant Attorney General

DLW/RLF/bks



## **APPENDIX A**

**COUNTY COLLECTION COSTS**

**1986**

**GENERAL SESSION**

**Enrolled Copy**

**S. B. No. 151**

**By Lowell S. Peterson**

**AN ACT RELATING TO COUNTIES; PROVIDING FOR THE COLLECTION, ASSESSMENT, AND DISTRIBUTION COSTS CHARGED BY THE COUNTY; AND PROVIDING AN EFFECTIVE DATE.**

**THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:**

**REPEALS AND REENACTS:**

**17-19-15 AS LAST AMENDED BY CHAPTER 88, LAWS OF UTAH 1985**

**REPEALS:**

**17-19-16, AS LAST AMENDED BY CHAPTER 6, LAWS OF UTAH 1953, FIRST SPECIAL SESSION**

**17-19-17, AS LAST AMENDED BY CHAPTER 6, LAWS OF UTAH 1953, FIRST SPECIAL SESSION**

**Be it enacted by the Legislature of the state of Utah:**

**Section 1. Section 17-19-15, Utah Code Annotated 1953, as last amended by Chapter 88, Laws of Utah 1985, is repealed and reenacted to read:**

**17-19-15. (1) To promote appraisal and equalization of property values and effective collection and distribution of property tax proceeds the board of county commissioners of each county annually shall 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 1 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 of assessed valuation 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.

Section 2. Section 17-19-16, Utah Code Annotated 1953, as last amended by Chapter 6, Laws of Utah 1953, First Special Session, and Section 17-19-17, Utah Code Annotated 1953, as last amended by Chapter 6, Laws of Utah 1953, First Special Session, are repealed.

Section 3. This act takes effect on January 1, 1987.

## Exhibit C

Judge Don V. Tibbs

This matter came on regularly before the Court pursuant to Notice on Thursday, the 1st day of September, 1988, at the hour of 11:00 a.m., pursuant to Garfield County Defendants' Motion for Summary Judgment, or in the alternative, for partial Summary Judgment; and Plaintiff, Mountain States Telephone and Telegraph Company's Cross-Motion for Summary Judgment. Plaintiffs appeared by and through their attorneys, Bruce Johnson of the firm of Holme Roberts and Owen, and the Garfield County Defendants appeared by and through their attorneys Patrick B. Nolan, Garfield County Attorney, and Bill Thomas Peters and Karl Hendrickson, Special Deputy Garfield County Attorneys. Ralph Finlayson, Deputy Attorney General for the State of Utah, appeared for and in behalf of the Utah State Tax Commission, Utah State Auditor and the Utah State Treasurer. And the Court, having considered the arguments of counsel in support of the respective Motions for Summary Judgment, and having reviewed the memoranda filed by the Defendants in support of Defendants' Motion for Summary Judgment, Plaintiffs' Memorandum of Points and Authorities in support of Plaintiffs' Cross-Motion for Summary Judgment and in opposition to Motion for Summary Judgment of the Garfield County Defendants, and Defendants' Memorandum of Points and Authorities in Response to Plaintiffs' Cross-Motion for Summary Judgment, and having further reviewed the Affidavits of L. Brent Gardner, Thomas Hatch, and Hazel Houston, and the Court having reviewed the file, exhibits,

affidavits and memoranda submitted by the parties and being fully advised in the premises, and good cause appearing does hereby enter the following:

STATEMENT OF MATERIAL UNDISPUTED FACTS

1. Utah Code Annotated Section 17-19-15 (The Act), establishes a comprehensive mechanism for funding the assessment of property and the collection and distribution of property tax revenues by the counties of the State of Utah.

2. The Board of County Commissioners of Garfield County duly established the county budget for the cost of collection and distribution of property taxes and related appraisal programs.

3. These costs were submitted to the State Auditor for review and certification as to compliance with the categories of approved costs contained in the rules promulgated by the State Auditor, (Utah State Administrative Rules R130-2).

4. Plaintiffs did not appear at the Garfield County budget hearings to protest either the budget for assessing, collecting and distributing of property taxes, or the imposition of a separate tax levy.

5. Garfield County is not prohibited from making expenditures disallowed by the State Auditor for inclusion in the uniform statewide levy, but must pay for those expenditures from other revenues.



6. Upon review and certification the State Auditor transmitted the aggregate state wide assessing, collecting and distributing costs to the State Tax Commission.

7. The State Tax Commission calculated a uniform state-wide tax rate sufficient to fund the total costs of assessing, collecting and distributing property taxes and transmitted said rate to each county.

8. Each of the 29 counties including Defendant Garfield County imposed the tax rate calculated by the State Tax Commission and included it as a local levy on tax notices.

9. The Act requires that the counties receiving property taxes from the levy in excess of the certified budget transmit the excess revenues to the State Treasurer for disbursement to the counties collecting less than their certified budgets. Defendant Garfield County was such a recipient county in 1987.

10. Local assessment levels have been challenged as inadequate in seven consecutive years of litigation by railroads alleging local commercial and industrial properties were under-assessed; that the State Tax Commission had issued orders to counties directing them to increase the assessment levels in the previous four years; and that at least five law suits had been filed by the State Tax Commission against local county assessors alleging underassessment of locally assessed properties within their respective counties. (See Affidavit of L. Brent Gardner, dated July 12, 1988.)

11. S.B. 151 as codified into Utah Code Annotated, Section 17-19-15, provides a funding mechanism to address a matter of state-wide concern in each of the individual counties including 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. (See Affidavit of L. Brent Gardner, dated July 12, 1988.)

12. S.B. 151 (Utah Code Annotated Section 17-19-15), was viewed by the Utah State Office of Education, the Utah Association of Counties, the Utah School Board Association, and the Utah League of Cities and Towns, to be a positive solution to the problem of payment for assessing and collecting taxes and was supported by each of those representative organizations. (Affidavit of L. Brent Gardner, dated July 12, 1988, Attachment 1.)

The Court having heretofore identified the Material Undisputed Facts does hereby enter the following:

#### DECISION

1. Article XIII, Section 11 of the Constitution of Utah, establishes the State Tax Commission and provides specifically that:

"Under such regulations in such cases and within the limitations as a 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."

2. The Court rules that said constitutional provision gives the Utah State Tax Commission power to regulate and control local county boards of equalization, and local elected officials with respect to taxation matters.

3. Article XIII, Section 3 of the Constitution of the State of Utah requires that valuation and assessments within the various counties are to be equal and uniform and further requires that the Legislature provide by law a mechanism to secure a just valuation for taxation.

4. Chapter 2 of Title 59, Utah Code Annotated, 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, and to that end the Legislature and the Utah State Tax Commission have, to a large degree, assumed control of the local administration of the property tax system.

5. Utah Code Annotated, Section 17-19-15, was passed by the Utah State Legislature to resolve disputes that heretofore existed between counties and cities and school districts. It was further passed by the Legislature to fund a legitimate state-wide purpose, that purpose being an equalized and efficient mechanism to pay for the costs of a state-wide property tax assessment, collection and distribution system.

6. Senate Bill #151, codified at Utah Code Annotated 17-19-15, duly enacted by the 1986 Legislature, is entitled to a

presumption of constitutionality as a valid legislative enactment designed to establish a funding mechanism to promote efficient state-wide property tax assessment, collection and distribution and secure a just valuation for taxation.

7. The Act and the tax levy imposed thereunder are in furtherance of the state-wide public purpose in addressing legislative concerns regarding equality and uniformity of assessment and an efficient means by which to assess, collect and distribute tax monies within the State of Utah.

8. Since the Act does further a valid legitimate state-wide public purpose, the statute does not violate Article 13, Section 5 of the Constitution of the State of Utah.

9. The Court further rules that the Constitution of Utah Article VI §1 reserves to the Legislature authority to enact all laws not specifically prohibited.

10. The Court further rules that to the extent said statutory provision results in revenue sharing, said revenue sharing does not violate Article 13, Section 5 of the Constitution of Utah, because to the extent revenues are transferred from one county to another to assist in funding the property tax administration system, that redistribution is clearly consistent with decisions of the Utah Supreme Court, and in particular 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), wherein the Supreme Court of Utah upheld the diversion of County

funds to a redevelopment agency for the purpose of alleviating the state-wide problem of blighted areas.

11. The Court specifically concludes that the uniform state-wide administration of the assessment, collection and distribution of taxes to accomplish uniformity and equality of assessment is a legitimate state-wide concern and does not constitute the imposition of a purely local tax for a purely local purpose as was identified by the Utah Supreme Court in the case of Salt Lake County v. Salt Lake City, 134 P.560 (Utah 1913), wherein that Court explained a public purpose for purposes of Article XIII, Section 5, was one "for the 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." Here, as in Salt Lake County v. Salt Lake City, "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."

12. The Court further rules that the county commission, by proposing and adopting a budget pursuant to Section 17-19-15, Utah Code Annotated, 1953, as amended, has, to the extent they have proceeded to adopt said budget, voluntarily agreed to any revenue sharing that might take place as a result of the implementation of said statute.

13. The Court finds that the state-wide tax rate established and levied pursuant to Section 17-19-15, constitutes

a tax and not a fee as argued by the Plaintiff in Plaintiffs' Memorandum and since said state-wide uniform levy is a tax, Plaintiffs' 4th, 5th, 6th 7th and 8th claims for relief are inappropriate and accordingly must be dismissed.

14. Senate Bill 151, codified into Section 17-19-15, is constitutional in all respects, and that Defendants' Motion for Summary Judgment be, and the same is hereby granted, and that the Plaintiffs' Cross-Motion for Summary Judgment be, and the same is hereby denied.

SUMMARY JUDGMENT ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Garfield County Defendants, Garfield County, and the Garfield County Board of County Commissioners, Thomas Hatch, Sherrell Ott, Louise Liston; Judy Henrie, County Treasurer; Tom Simkins, County Assessor; are hereby granted Summary Judgment of no cause of action on Mountain States Telephone and Telegraph Company's complaint against the Garfield County Defendants, and said Complaint is hereby dismissed with prejudice.

DATED this 14 day of October, 1988.

BY THE COURT:

  
DON V. TIBBS  
Judge

BPJ:H

MAILING CERTIFICATE

I do hereby certify that on the 14th day of October, 1988, I mailed a true and correct copy of the foregoing Decision and Summary Judgment, to the following:

Mr. Patrick B. Nolan  
Garfield County Attorney  
55 South Main Street  
Panguitch, Utah 84759

Mr. David K. Detton  
Holme Roberts & Owen  
Attorneys for Plaintiff  
50 South Main Street, Suite 900  
Salt Lake City, Utah 84144

Mr. Bill Thomas Peters  
Special Deputy Garfield County Attorney  
Mr. Karl Hendrickson  
Special Deputy Garfield County Attorney  
Attorneys for Garfield County Defendants  
#9 Exchange Place, Suite 1000  
Salt Lake City, Utah 84111

Mr. Ralph Finlayson  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

  
Lorraine Gregerson, Secretary

## Exhibit D



PBC

GARFIELD  
COUNTY

FORM 6

MEMORANDUM BUDGET  
SUMMARY  
ALLOCATED EXPENSES OF ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

<u>Department</u>	<u>Direct Cost</u>	<u>Percent of Total Department Budget</u>
1. Commission	\$ <u>7,191.00</u>	<u>10.8</u> %
2. Assessor	\$ <u>59,217.00</u>	<u>99.7</u> %
3. Treasurer	\$ <u>43,377.00</u>	<u>96.15</u> %
4. Auditor	\$ <u>4,627.00</u>	<u>8.11</u> %
5. Recorder	\$ <u>17,324.00</u>	<u>50.12</u> %
6. Attorney	\$ <u>5,761.00</u>	<u>10.13</u> %
7. Data Processing	\$ <u>5,000.00</u>	<u>100</u> %
8. _____	\$ _____	_____ %
9. _____	\$ _____	_____ %
10. _____	\$ _____	_____ %
11. _____	\$ _____	_____ %
12. _____	\$ _____	_____ %
13. _____	\$ _____	_____ %
14. _____	\$ _____	_____ %
15. _____	\$ _____	_____ %

Total Direct Costs                   \$ 142,497.00

Total Indirect Costs               \$ 14,128.00 (from Form 7)

COUNTY TOTAL                       \$ 156,625.00

GARFIELD

COUNTY

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

FORM 2  
DECEMBER

JAN 19 1987

STATE AUDITOR

DEPARTMENT: COMMISSION

(Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ <u>31,248.00</u>
2. Temporary Salaries	\$ _____
3. Employee Benefits	\$ <u>20,064.00</u>
4. Public Notices	\$ _____
5. Travel	\$ <u>17,500.00</u>
6. Office Supplies	\$ <u>300.00</u>
7. Postage	\$ _____
8. Equipment Supplies and Maintenance	\$ _____
9. Telephone	\$ <u>2,000.00</u>
10. Professional and Technical	\$ _____
11. Equipment Lease	\$ _____
12. Equipment Purchase	\$ _____
13. Miscellaneous Supplies	\$ _____
14. Miscellaneous Services	\$ <u>300.00</u>
15. <u>Subscriptions &amp; Memberships</u>	\$ <u>500.00</u>
16. _____	\$ _____
17. _____	\$ _____
18. _____	\$ _____
19. _____	\$ _____
20. _____	\$ _____
21. _____	\$ _____
22. _____	\$ _____
23. _____	\$ _____
24. _____	\$ _____
<b>TOTAL</b>	\$ <u>71,912.00</u> ①

GARFIELD

COUNTY

FORM 5

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

DEPARTMENT: ASSESSOR(Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ <u>20,580.00</u>
2. Temporary Salaries	\$ <u>12,726.00</u>
3. Employee Benefits	\$ <u>15,610.00</u>
4. Public Notices	\$ <u>          </u>
5. Travel	\$ <u>3,700.00</u>
6. Office Supplies	\$ <u>2,000.00</u>
7. Postage	\$ <u>          </u>
8. Equipment Supplies and Maintenance	\$ <u>1,000.00</u>
9. Telephone	\$ <u>1,000.00</u>
10. Professional and Technical	\$ <u>1,800.00</u>
11. Equipment Lease	\$ <u>          </u>
12. Equipment Purchase	\$ <u>          </u>
13. Miscellaneous Supplies	\$ <u>          </u>
14. Miscellaneous Services	\$ <u>          </u>
15. <u>State Audit</u>	\$ <u>1,000.00</u>
16. <u>Publications</u>	\$ <u>200.00</u>
17. <u>Subscriptions &amp; Memberships</u>	\$ <u>200.00</u>
18. <u>                                  </u>	\$ <u>          </u>
19. <u>                                  </u>	\$ <u>          </u>
20. <u>                                  </u>	\$ <u>          </u>
21. <u>                                  </u>	\$ <u>          </u>
22. <u>                                  </u>	\$ <u>          </u>
23. <u>                                  </u>	\$ <u>          </u>
24. <u>                                  </u>	\$ <u>          </u>
<b>TOTAL</b>	\$ <u>59,816.00</u> <sup>(2)</sup>

GARFIELD

COUNTY

FORM 5

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

DEPARTMENT: TREASURER

(Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ <u>20,580.00</u>
2. Temporary Salaries	\$ <u>5,250.00</u>
3. Employee Benefits	\$ <u>9,447.00</u>
4. Public Notices	\$ <u>2,700.00</u>
5. Travel	\$ <u>2,000.00</u>
6. Office Supplies	\$ <u>1,300.00</u>
7. Postage	\$ <u></u>
8. Equipment Supplies and Maintenance	\$ <u>350.00</u>
9. Telephone	\$ <u>1,000.00</u>
10. Professional and Technical	\$ <u></u>
11. Equipment Lease	\$ <u></u>
12. Equipment Purchase	\$ <u></u>
13. Miscellaneous Supplies	\$ <u></u>
14. Miscellaneous Services	\$ <u></u>
15. <u>Subscriptions &amp; Memberships</u>	\$ <u>150.00</u>
16. <u>Bonds</u>	\$ <u>600.00</u>
17. <u></u>	\$ <u></u>
18. <u></u>	\$ <u></u>
19. <u></u>	\$ <u></u>
20. <u></u>	\$ <u></u>
21. <u></u>	\$ <u></u>
22. <u></u>	\$ <u></u>
23. <u></u>	\$ <u></u>
24. <u></u>	\$ <u></u>

TOTAL

\$ 43,377.00 <sup>(3)</sup>

GARFIELD

COUNTY

FORM 5

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

DEPARTMENT: CLERK/AUDITOR

(Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ <u>21,092.00</u>
2. Temporary Salaries	\$ <u>11,466.00</u>
3. Employee Benefits	\$ <u>14,937.00</u>
4. Public Notices	\$ <u>1,000.00</u>
5. Travel	\$ <u>2,000.00</u>
6. Office Supplies	\$ <u>3,000.00</u>
7. Postage	\$ <u></u>
8. Equipment Supplies and Maintenance	\$ <u></u>
9. Telephone	\$ <u>1,400.00</u>
10. Professional and Technical	\$ <u></u>
11. Equipment Lease	\$ <u></u>
12. Equipment Purchase	\$ <u>2,500.00</u>
13. Miscellaneous Supplies	\$ <u>100.00</u>
14. Miscellaneous Services	\$ <u></u>
15. <u>Subscriptions &amp; Memberships</u>	\$ <u>350.00</u>
16. <u></u>	\$ <u></u>
17. <u></u>	\$ <u></u>
18. <u></u>	\$ <u></u>
19. <u></u>	\$ <u></u>
20. <u></u>	\$ <u></u>
21. <u></u>	\$ <u></u>
22. <u></u>	\$ <u></u>
23. <u></u>	\$ <u></u>
24. <u></u>	\$ <u></u>
<b>TOTAL</b>	\$ <u>57,845.00 (+)</u>

Garfield

COUNTY

FORM 5

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

DEPARTMENT: Recorder

(Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ 20,580.00
2. Temporary Salaries	\$
3. Employee Benefits	\$ 7,968.00
4. Public Notices	\$
5. Travel	\$ 2,000.00
6. Office Supplies	\$ 3,000.00
7. Postage	\$
8. Equipment Supplies and Maintenance	\$
9. Telephone	\$ 1,000.00
10. Professional and Technical	\$
11. Equipment Lease	\$
12. Equipment Purchase	\$
13. Miscellaneous Supplies	\$
14. Miscellaneous Services	\$
15. Subscriptions & Memberships	\$ 100.00
16.	\$
17.	\$
18.	\$
19.	\$
20.	\$
21.	\$
22.	\$
23.	\$
24.	\$
TOTAL	\$ 34,648.00 <sup>(5)</sup>

BC-

Garfield

COUNTY

FORM 5

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

DEPARTMENT: Attorney (Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ 22,680.00
2. Temporary Salaries	\$ 11,025.00
3. Employee Benefits	\$ 12,406.00
4. Public Notices	\$
5. Travel	\$ 2,500.00
6. Office Supplies	\$ 2,000.00
7. Postage	\$
8. Equipment Supplies and Maintenance	\$ 500.00
9. Telephone	\$ 1,500.00
10. Professional and Technical	\$
11. Equipment Lease	\$
12. Equipment Purchase	\$
13. Miscellaneous Supplies	\$ 2,000.00
14. Miscellaneous Services	\$
15. Training Seminars	\$ 1,000.00
16. Law Library	\$ 2,000.00
17.	\$
18.	\$
19.	\$
20.	\$
21.	\$
22.	\$
23.	\$
24.	\$
TOTAL	\$ 57,611.00

GARFIELD

COUNTY

FORM 5

MEMORANDUM BUDGET  
DEPARTMENT EXPENSE ALLOCATIONS TO COSTS OF  
ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

DEPARTMENT: Data Processing

(Commission, Assessor, Treasurer, Auditor,  
Recorder, Attorney, Data Processing, etc.)

<u>Description</u>	<u>Actual Expenses</u>
1. Permanent Salaries	\$ _____
2. Temporary Salaries	\$ _____
3. Employee Benefits	\$ _____
4. Public Notices	\$ _____
5. Travel	\$ _____
6. Office Supplies	\$ _____
7. Postage	\$ _____
8. Equipment Supplies and Maintenance	\$ <u>5,000.00</u>
9. Telephone	\$ _____
10. Professional and Technical	\$ _____
11. Equipment Lease	\$ _____
12. Equipment Purchase	\$ _____
13. Miscellaneous Supplies	\$ _____
14. Miscellaneous Services	\$ _____
15. _____	\$ _____
16. _____	\$ _____
17. _____	\$ _____
18. _____	\$ _____
19. _____	\$ _____
20. _____	\$ _____
21. _____	\$ _____
22. _____	\$ _____
23. _____	\$ _____
24. _____	\$ _____
<b>TOTAL</b>	\$ <u>5,000.00</u> ✓



GARFIELD  
COUNTY

FORM 7

MEMORANDUM BUDGET  
SUMMARY  
INDIRECT COST ALLOCATIONS OF ASSESSING AND COLLECTING PROPERTY TAXES  
FOR CALENDAR YEAR 1987

<u>Description</u>	<u>Actual Expenses</u>	<u>Percent of Total County-wide Cost</u>
1. Utilities	\$ 16,000.00	1
2. Insurance	\$ 1,200.00	1
3. Maintenance/Custodial	\$ 5,600.00	1
4. Personnel	\$ 17,892.00	1
5. <u>SUPPLIES &amp; MISC SERVICES</u>	\$ 8,027.00	1
6. _____	\$ _____	1
7. <u>TOTAL</u>	\$ 48,719.00	1
8. _____	\$ _____	1
9. _____	\$ _____	1
10. _____	\$ _____	1
11. _____	\$ _____	1
12. _____	\$ _____	1
13. _____	\$ _____	1
14. _____	\$ _____	1
15. _____	\$ _____	1
16. _____	\$ _____	1
 <b>TOTAL</b>	 \$ 14,128.51	 29 (14) 1

NOTE: While the method of allocating indirect cost is not defined here, such methods should be defined by the county using the most reasonable common denominator such as number of employees for personnel, square footage for utilities, etc. These calculations are not required to be submitted but must be documented for audit purposes.

## Exhibit E

KINGHORN, PETERS, PROBST & SLOAN

ATTORNEYS AT LAW

9 EXCHANGE PLACE, SUITE 1000

SALT LAKE CITY, UTAH 84111

RALD H. KINGHORN, P.C.

LL THOMAS PETERS

EGORY L. PROBST

ARY ELLEN SLOAN

AN ASSOCIATION OF  
INDIVIDUAL PRACTITIONERS

TELEPHONE 801 364-8644

June 15, 1988

HAND DELIVERED

Mr. William C. Vickery  
State Court Administrator  
Administrative Office of the Courts  
230 South 500 East, Suite 300  
Salt Lake City, Utah 84102

RE: Letter of June 6, 1988--Holme, Roberts and Owen--  
Consolidation of cases relating to costs of assessing and  
collecting Utah property taxes.

Dear Mr. Vickery:

As I advised Mr. Ron Gibson by telephone, I have been contacted by several of the 29 counties of Utah concerning representing them as special counsel with regard to the various actions filed in each of the counties challenging the separate statutory mill levy for assessing and collecting property taxes and specific refund actions for taxes paid under protest by numerous property owners within the various counties of the State of Utah.

It was my understanding that you were advised that, in all likelihood, the counties would have no objection to consolidation. However, that is not accurate, and at this point in time each of the county attorneys that I have discussed the matter with is opposed to consolidation.

While there is a common legal question, i.e. the constitutionality of the assessing and collecting statute, there are numerous factual issues which are county-specific and which require, in our judgment, resort to tax records within each county, budget records within each county, assessment records within each county, and treasurers records within each county.

To be specific, in each case there is an assertion concerning the amount it costs to assess and collect property taxes in each specific county and how that compares to the specific amount of taxes paid by each taxpayer within that county. Further, I do not agree with the assertion in Mr. Denton's letter that the only persons who would be present as

witnesses in the trial would be the State Auditor, State Treasurer and State Tax Commission. In my judgment the State's roll will be relatively passive. Indeed, I would anticipate that each County Assessor, each County Treasurer, each County Auditor and the County Commissioner's of each county who are the chief policy makers and establish and approve each county budget, would also be required to be present at trial. Since the tax payments that are being challenged were made to each specific county, those refund actions do indeed relate specifically to each such county.

Additionally, the counties can be grouped into two general categories. There are some counties that are exporting counties and there are some counties that are importing counties. In short, some counties receive less than the amount that was raised by the separate mill levy, and there are some counties that receive more than is raised in their county by the mill levy. Therefore, to lump them all together with these factual differences does not make any sense. I would agree that ultimately the legal issue concerning the statute would be common to all of the cases. However, it would seem to me that which ever case moved forward the quickest would be the one that would ultimately present the legal question to the judge for a decision. Obviously, once we receive a ruling out of one of the judges, the other cases could then be stayed pending the ultimate determination by the Supreme Court; after which, depending upon the outcome, the case could then be dismissed or would have to be tried factually in each county where the property was assessed, the taxes were paid under protest, and the cause of action was filed.

Certainly, it is not our intent to unduly burden the court system of this State, nor to compound the impact of litigation. However, we do feel at this point in time that consolidation would be premature and, therefore, we request that consolidation be denied at this time.

Based upon the above and foregoing, and pursuant to Section 78-3-24(L), and in behalf of Tooele, Millard, Uintah, Iron, Cache, Emery, Grand, Sevier, Davis, Box Elder, Salt Lake, and Weber Counties, I do hereby object to the proposed consolidation of these cases at the present time.

Very truly yours,



BILL THOMAS PETERS

Special Deputy County Attorney  
for the above-named Counties.

hw

cc: Holme, Roberts and Owen

## Appendix A

**17-19-15. Separate budget for costs of assessing, collecting, and distributing property taxes — Submission to state auditor for review — Allowable costs established by rule — Transmission to tax commission — Limitations on tax rate — Exceptions — Adjustments.**

(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.

**History:** C. 1953, 17-19-15, enacted by L. 1986, ch. 169, § 1; 1987, ch. 4, § 16; 1988, ch. 3, § 67.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, in subsection (1) substituted "county governing body" for "board of county commissioners" and in subsection (3) in the second sentence substituted "June 8" for "June 1."

The 1988 amendment, effective February 9, 1988, substituted "per dollar of taxable value of taxable property" for "of assessed valuation"

near the beginning in Subsection (4) and made two minor stylistic changes in Subsection (1).

**Retrospective Operation.** — Laws 1987, ch. 4, § 307 provides that this section has retrospective operation to January 1, 1987.

Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

**Cited in** *Boards of Educ. v. Salt Lake County Comm'n*, 75 Utah Adv. Rep. 3 (1988).