

1981

The Board of Education of The Granite School District, A Body Politic of The State of Utah v. Salt Lake County, A Body Corporate And Politic And Arthur Monson, Salt Lake County Treasurer : Brief of Plaintiff-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

THE BOARD OF EDUCATION OF)
THE GRANITE SCHOOL DISTRICT, a)
body politic of the State of Utah,)

Plaintiff and Appellant,)

v.)

Case No. 17175

SALT LAKE COUNTY, a body corporate)
and politic and ARTHUR MONSON,)
Salt Lake County Treasurer,)

Defendants, Respondents,)
and Cross Appellants.)

BRIEF OF PLAINTIFF - APPELLANT

APPEAL FROM THE TRIAL AND JUDGMENT
OF THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE
STATE OF UTAH

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FILED

JAN 16 1981

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BRIEF OF PLAINTIFF - APPELLANT

NATURE OF THE CASE

This is an action on appeal before the Supreme Court of the State of Utah seeking judicial review of a Judgment after trial before the Third Judicial District Court of the State of Utah and upon decisions rendered by Judge David K. Winder upon Motion for Partial Summary Judgment to determine liability and Judge Jay E. Banks upon trial for damages. The Judgment herein reversed Judgment of David K. Winder, determined no liability for damages and dismissed Plaintiff's Complaint.

DISPOSITION AND PROCEEDINGS BELOW

Plaintiff-Appellant sought judgment for damages and injunctive relief against Defendants concerning the timely transfer of property tax funds collected by Defendants for and on behalf

of Plaintiff-Appellant and the transfer to Plaintiff-Appellant of all interest income earned on Plaintiff-Appellant's funds during the period that Defendant held those funds. Original action was brought by Plaintiff-Appellant concerning the tax years 1974 and 1975. First Amended Complaint included claims for the tax year 1976. Plaintiff-Appellant brought Motion for Partial Summary Judgment to determine liability for improper transfer of funds from Defendants to Plaintiff. Judge David K. Winder on May 6, 1977 granted partial Summary Judgment as to liability and referred the issues of damages to trial. Plaintiff filed its Second Amended Complaint alleging grounds for damages. Trial followed and Judge Jay E. Banks vacated and overruled the decision of Judge David K. Winder and found no liability and consequently no damages and no grounds for injunctive relief and dismissed Plaintiff's Complaint. Plaintiff appeals.

RELIEF SOUGHT ON REVIEW

Plaintiff petitions this court to reverse the decision of the Third Judicial District Court, Judge Jay E. Banks presiding, reinstate the decision of Judge David K. Winder and remand for trial for proper findings on damages and injunctive relief. Damages to be based upon the trust relationship of Defendants to Plaintiff and injunctive relief to be based upon the statutory requirements for the proper transfer of funds collected by one political entity for and on behalf of another.

STATEMENT OF THE FACTS
(Summary of Facts)

Granite School District is dependent upon Salt Lake County for the collection of property taxes. During the years 1973, through 1977 Salt Lake County Treasurer collected the property taxes and held the funds collected for lengthy periods beyond the statutory transfer dates. While the funds were held by the Salt Lake County Treasurer, the funds were earning interest income which was given by the Treasurer to Salt lake County by deposit to the county's general fund. Granite School District seeks injunctive relief that all funds collected be timely transferred pursuant to statute and that Salt Lake County pay over to Granite School District the interest income that it unjustly received.

FACTS IN DETAIL

The Salt Lake County Treasurer is charged by statute to collect property taxes for all taxing districts within the county. The Treasurer is reimbursed for his expenses pursuant to statute and he is required to disburse those funds on a regular basis until the final adjustment day on the last day of March of each year.

1. Transfer Practice. In 1973, the last year of Salt Lake County Treasurer Sid Lambourne's term of office, the property tax collected by him was transferred to the Granite School District as shown in Exhibit 2P as follows:

<u>Date Transferred</u>	<u>Amount Transferred</u>
December 13, 1973	\$ 5,853,000.00
January 2, 1974	140,000.00
January 7, 1974	4,024,000.00

<u>Date Transferred</u>	<u>Amount Transferred</u>
February 1, 1974	\$ 1,646,000.00
February 27, 1974	19,869.69
May 28, 1974	2,066,886.32
	<hr/>
TOTAL	\$13,749,756.01

2. Transfer Dates. There are three transfer dates set out by statute. In Utah Code Annotated, 1953, §53-7-10, requires that the County Treasurer pay the funds collected to the Board of Education within 30 days after the taxes are collected. In Utah Code Annotated, 1953, §59-10-66 requires all funds in the treasurer's hands collected for and due the School District be paid to the treasurer of the School District each month. And in this same section (§59-10-66) the final costs are set on the last day of March of each year. #1

3. 1974 - 1977 Transfer Practice. With the entry into office of Salt Lake Treasurer Arthur Monson, the transfer practice of his office went from bad to worse as follows: (Exhibit B)

<u>Date Transferred</u>	<u>Amount Transferred</u>
December 2, 1974	\$ 142,000.00
December 3, 1974	56,200.00
December 16, 1974	2,900,000.00
December 19, 1974	5,000,000.00
January 9, 1975	3,000,000.00
January 31, 1975	3,000,000.00
June 12, 1975	<u>1,224,128.14</u>
TOTAL	\$15,322,328.14

<u>Date Transferred</u>	<u>1975</u>	<u>Amount Transferred</u>
December 2, 1975		\$ 1,561,453.00
December 15, 1975		10,000,000.00
January 5, 1976		3,015,643.00
February 3, 1976		163,001.00
March 31, 1976		1,876,367.51
June 15, 1976		54,201.86
December 17, 1976		16,018.38
		<hr/>
TOTAL		\$ 16,686,684.75

<u>Date Transferred</u>	<u>1976</u>	<u>Amount Transferred</u>
December 7, 1976		\$ 1,767,700.00
December 13, 1976		9,713,500.00
December 17, 1976		384,963.33
December 28, 1976		692,000.00
January 4, 1977		252,000.00
March 31, 1977		2,842,945.17
		<hr/>
TOTAL		\$ 18,029,608.50

Keeping in mind that by November 30th of each year Salt Lake County collected 99431292% of 1973 taxes, 99274363% of 1974 taxes, 98586137% of 1975 taxes and 98168721% of 1976 taxes (Exhibit P-2). (Finding No. 8)

4. Investment Practice. The Salt Lake County Treasurer began investing all funds received in his collections in 1974. Taking great pride in his investment increases to public funds and then promptly determined that no taxing district was more

appropriate to receive this windfall from his accumen and expertise than was the Salt Lake County general fund to meet the expenses of Salt Lake County government. Admittedly, Salt Lake County was only one of the 48 taxing districts for whom he made collections (trp. 721 Finding No. 4), but after all, it was the county government that hired his staff, paid his salary, arranged his office accommodations and in general accompanied his concert. Only one principal governed. If you have extra money, give it to the people who will do you the most good. That's called the scratch-my-back method of political survival and the Salt Lake County Treasurer followed that path to the very penny of income earned. (Finding No. 34).

5. The School District's Dilemma. A school district depends upon a monthly flow of cash to meet its financial commitments. But, its major source of funds is property tax collections which accrue only once each year and are paid by November 30th of each year. For 1980, that will be approximately 75 million dollars. So the school district anticipates its cash flow demands by selling tax anticipation notes and by budgeting into its income projections interest income earned on the funds received at one time but needed only proportionately throughout the year. When the property tax funds are collected but not transferred and the income earned but not paid over the budget of the school district becomes of little use, the projections have no validity and the cash flow becomes an unmanageable problem. (trp 619).

6. The Proposed Solution. The transfer of funds is as close to a mathematical exercise in accounting as any procedure. Upon fixing of the mill levy and the evaluation, the percentage of all funds to be collected and the actual dollar figure available to the school district from the total collectable is accurately determinable. All of which is accomplished prior to assessment of taxes in October of each year. The slight fluctuations of abatements, redemptions or defaults cause a very minute change in that accounting, the last day of March of each year was set as the adjustment date for transfer of proportionate shares of delinquent taxes, interest, penalty, and costs which is to be accomplished monthly and finally on the last adjustment date. No one ever said that over-payment by the County Treasurer to a taxing district could not be as easily corrected or adjusted as under-payment. (TR640). The only thing that was left to the responsibility of the parties was the transfer also of the income received from the funds from funds investment. The hypothetical emphasises the problem. In 1980, Salt Lake County will collect within a few dollars of \$165,000,000 in property tax collections. Twenty-three percent of that amount or within a few dollars of \$75,000,000 is collected for the Granite School District based upon assessed valuations and mill levy set by the School District. Granite School District should have 23% of all receipts transferred upon collection which is within 30 days from actual receipt and on the first day of each month of all funds actually in hand collected.

7. The Repayment of Income Earned but not Paid Over.

The final fact is that the School District has not received the interest income earned on funds belonging to the School District which income was paid over to Salt Lake County. Using the county's figures of their income and the amounts actually earned 1974 through 1977, the county obtained \$83,000 in income which was not earned on county funds collected but from the funds collected for the School District. That amount plus legal interest should be reimbursed to the School District for the tax years 1974 through 1976. (Finding No. 34)

ISSUES PRESENTED

1. Whether the decision of liability rendered by the lower court could properly be vacated and overruled by a decision of the same court charged with considering the bifurcated issue of damages.

2. Whether Defendants-Respondents properly transferred to Plaintiff-Appellant funds collected for Plaintiff within the statutory transfer periods pursuant to the statutory requirements.

3. Whether interest income received from investment of Plaintiff's funds was improperly transferred to Defendant Salt Lake County to its unjust enrichment.

4. Whether Plaintiff is entitled to injunctive relief to require the proper transfer of all funds collected plus earned income within 30 days after the funds are collected, and by the first day of each month of all funds in hand actually collected with a final adjustment on the last day of March of each year.

ARGUMENT

"Your money is the County's money because I say so." So the Salt Lake County Treasurer approaches his statutory responsibility of collecting taxes for 49 taxing districts in Salt Lake County. Not only does he keep the collections to the last possible moment to enhance his investment image, but then he gives the income to anyone he pleases. What he really says is, "Your money is the County's money because I say so." Thus began the unsavory task of telling the Treasurer that he misappropriated earned income by seeking judicial decision of two basic questions. How long can the Treasurer hold the collected funds and who should get the benefit of the income earned on invested funds.

POINT I

WHETHER THE DECISION OF LIABILITY RENDERED BY THE LOWER COURT COULD PROPERLY BE VACATED AND OVERRULED BY A DECISION OF THE SAME COURT CHARGED WITH CONSIDERING THE BIFURCATED ISSUE OF DAMAGES.

The Supreme Court of the State of Utah "shall have appellate jurisdiction...to review all final judgments of the District Court.. In equity cases the appeal may be on questions of both law and fact..." Utah Code Annotated, 1953 §78-2-2.

The District Court "shall have original jurisdiction in all matters and...appellate jurisdiction from all inferior courts.." Utah Code Annotated, 1953 §78-3-4.

The bifurcation of issues is discretionary with the trial court. Having bifurcated the issues the final judgment in the

case would have to be entered before any appeal could be taken. Twin Falls County vs. Knieval, 563P2d 45,98 Idaho 321 (1977) and partial determinations based on motion which dispose of only part of the issues are not final judgments for appeal. Lopez v. Hoffman, 423 P2d 429, 77 N.M. 396 (1962).

The issues bifurcated for discussion provided a basis for carrying the case to its final decision on the whole case and not on a piecemeal appeal of each bifurcated issue. The trial court takes each portion and renders decision until the whole case is completed and ripe for appeal. Gazin v. Hieber, 504 P2d 1178, 8 Wash. App. 104(1972) and Wheatland Irrigation District v. McGuire, 537 P2d 1128, hearing granted in part 552 P2d 1115 rehearing 562 P2d 287 (Wyo. 1975). and Hayes v. Nielsen, 568 P2d 905 (Wyo. 1977). The granting of summary judgment as to liability was not a "final order" but was "interlocutory" until after the case was tried on the issues of damages. The same conclusion was reached in Empress Beauty Supply, Inc. v. Price, 567 P2d 350, 116 Ariz. 34 (1977). The final judgment for appeal was after the trial on damages following the partial summary judgment as to liability. See also North Point Consol. Irrigation Co. v. Utah S.L. Canal Co. 63 P812, 23 Utah 199 (Utah, 1901), Standard Steam Laundry v. Dale, 58P.1109, 20 Utah 469 (1899), and J.B. & R.E. Walker, Inc. vs. Thayne, 405 P2d 342, 17 Ut.2d 120 (1965). Appellant review was not that of the trial court as to is granting of partial summary judgment but was the responsibility of the

Supreme Court after the proper determination of damages and a completion of the case as a whole with the entry of final judgment as to all remaining issues to be tried on a trial court level emanating for the trial court's original jurisdiction.

The Supreme Court of the State is the proper forum for review of the whole case after final determination of each of the parts of the case. Mid-Century Inc., Co. v. Pavlikowski 576 P2d 748 (Nev. 1977) Central-Southwest Dairy Co-op v. American Bank of Commerce, 432 P2d 820, 78 N.M. 464 (1967) and Bowing v. Board of Trustees of Green River Community College, Dist. No. X, 534 P2d 1365, 85 Wash. 2d 300 (1975).

The final determination of liability was made herein by Judge David K. Winder. It had the quality of res judicata as it was fully determinative of that issue. It was not subject to interlocutory review but awaited finalization of the whole case. Clouver s. Spaniol Ford, Inc., 522 P2d 1360 (Wyo. 1979) as evidenced by defendants' Notice of Intent to Appeal upon completion of the whole case.

POINT II

WHETHER DEFENDANTS-RESPONDENTS PROPERLY TRANSFERRED FUNDS COLLECTED FOR PLAINTIFF WITHIN THE STATUTORY TRANSFER PERIODS PURSUANT TO THE STATUTORY REQUIREMENTS.

Judge Winder made the following findings and conclusions concerning the improper withholding of funds from transfer to the School District:

Findings of Fact

"1. The County Treasurer, pursuant to statute (53-7-10, UCA, 1953), is required to levy property taxes in the Granite School District at the rate set by the School District within the requirements set by law, collect the taxes and pay the same to the treasurer of the Granite School District within thirty (30) days after the taxes are collected.

2. The County Treasurer, pursuant to statute (59-10-66, UCA, 1953), shall pay to the Treasurer of Granite School District, on the first day of each month, all monies in the Treasurer's hands collected for and due the School District.

3. Any monies of the Granite School District collected and held by the County Treasurer for more than thirty (30) days is a violation of state law and all monies held by the County Treasurer for the Granite School District during any given month should be paid over to the Granite School District on the first day of the subsequent month.

4. The Salt Lake County Treasurer levied and collected property taxes for and in behalf of the Granite School District in each of the tax years of 1973 through 1976.

5. The Salt Lake County Treasurer held monies collected for and in behalf of the Granite School District for more than thirty (30) days and did not pay to the Granite School District, monies which it held in the months of the tax years 1973 through 1976, on the first day of the month following the month the monies were collected.

CONCLUSIONS OF LAW

1. The Salt Lake County Treasurer is required (and has been so required since at least 1973) to pay to the Treasurer of the Granite School District within thirty (30) days after collection of property taxes by Defendant, the Plaintiff's share of said taxes.

2. The Salt Lake County Treasurer collected certain property taxes for each of the tax years 1973 through 1976, which the Salt Lake County Treasurer failed to pay to Plaintiff within the required thirty (30) day period.

3. The Salt Lake County Treasurer having failed to pay to Plaintiff the property taxes collected for and in its behalf, caused the Plaintiff damages in each of those tax years.

4. No finding, conclusion or ruling is made by this court concerning the amount of those damages or what the proper measure of damages should be.

PARTIAL SUMMARY JUDGMENT

Plaintiff's Motion for Partial Summary Judgment is granted and Plaintiff is hereby awarded Summary Judgment against Defendant finding the Defendant liable to Plaintiff for failure on the Defendant's part to pay to Plaintiff within the required thirty (30) day period, the property taxes collected by Defendant for each of the tax years, 1973 through 1976, which were collected by Defendant for and in behalf of Plaintiff pursuant to law."

It is generally accepted law that where two statutes treat

the same subject the court will endeavor to interpret both to be valid and not contradictory. Park and Recreation Commission v. Department of Finance 388 P2d 233, 15 Ut. 2d 110 (1964). State vs. Hunt, 368 P2d 261, 13 Ut. 2d 32 (1962). All statutes should be viewed liberally with an intent to effect the objects of the statutes.

The object is to harmonize the statutes in accordance with the objective to make the statute carry out the intent and purpose of the law. Osuala v. Aetna Life & Casualty 68 P2d 242 (Utah, 1980).

The two statutes governing in this action as previously cited are 53-7-10 and 59-10-66^{#1}

Considering as a fact that 99% of all property taxes are paid by November 30th of each year and acknowledging that it takes a few days to process the payments received. These two statutes are to be construed to give validity to the process of collection and to the proper payment of funds over to the separate entities for whom the funds were collected. Using the term "collected" as the day on which the payments were made and the term "in hand collected" as the actual date on which the collected funds were deposited to the account of the County Treasurer. The two statutes are wholly compatible and give complete guidance to the County Treasurer as to the proper payment of funds collected for the School District.

U.C.A. §53-7-10 (1953) provides;

After the evaluation of property has been extended on the assessment rolls, the county commissioner shall levy a tax on the taxable property in the respective school districts at such a rate as will, subject to limitations hereinafter set forth and as nearly may be, raise the amounts required by each board of education. Such taxes shall be collected and the county treasurer shall pay the same to the treasurer of said board within thirty days after it is collected, who shall hold the same subject to the order of the Board of education.

In addition, U.C.A. § 59-10-66 (1953) provides:

It is the duty of the county treasurer to pay to the other treasurer of each city, town, school district, and other taxing unit of the county, on the first day of each month, all monies in his hands collected for and due such city, town, school or taxing unit. The county treasurer shall pay to the treasurer of each city, town school district or other taxing unit, a proportionate share of delinquent taxes, interest, penalty, and costs on all tax sales and redemptions therefrom monthly, and shall make a final settlement with the differing taxing units on the last day of March of each year. (Emphasis Added.)

of school land "must" be made within 90 days of filing of plat held not mandatory); State ex rel Right v. Park City School District, 133 P.128 (Utah 1913); (statute requiring timely hearing and filing of report as condition for subdivided school district is merely advisory); Tanner v. Nelson, 70 P. 984 (Utah 1902) (statute calling for public meeting on bonds for funding school textbooks considered directory only).

A careful reading of the above cases that they merely lend support to the argument of the Plaintiff that the intent of the legislature is the most fundamental rule of statutory construction. In addition, all of these cases may be distinguished from the instant case in that there was no showing of substantial prejudice or injury to any of the interested parties as a result of failure to strictly comply with the statutes in question.

POINT III

WHETHER INTEREST INCOME RECEIVED FROM INVESTMENT OF PLAINTIFF'S FUNDS WAS IMPROPERLY TRANSFERRED TO DEFENDANT SALT LAKE COUNTY TO ITS UNJUST ENRICHMENT.

With respect to the collection and transfer of the tax monies in question, the county treasurer has acted as an agent of Salt Lake County.

U.C.A. §17-5-19 (1953) provides:

"They [Board of County Commissioners] supervise the official conduct of all county officers and officers of all precincts, districts and other subdivisions of the county (except municipal corporations); see that they faithfully perform their duty, direct prosecutions for delinquencies, and if necessary, require them to renew their official bonds, make reports and present their books and accounts for inspection."

It is clear that the above statute provides the Board of County Commissioners with authority to exercise general supervision over the County Treasurer. Tooele County v. De LaMare, 59 P.2d 1155 (Utah 1936). The fact that the County Treasurer is subject to general direction by County Commissioners makes Salt Lake County more than just an "unwilling" recipient of the property tax monies and interest thereon.

As a general rule, where a person acts for another who accepts and retains the benefits of the transaction, such other is deemed to ratify the transaction. Moses v. Archie McFarland & Son, 230 P.2d 571 (Utah 1951); see also 3 Am. Jur. 2nd Agency §175, at 560 (1962). A principal, after receiving information that an act has been done without actual authority by one acting on its behalf, must promptly elect to repudiate the act, if he wishes to avoid being bound as a principal. Moses v. Archie McFarland & Son, supra; see also 3 Am. Jur. 2nd Agency §175, at 560 (1952).

The following facts are established. Salt Lake County has been fully informed by virtue of this action that the Salt Lake County Treasurer has failed to pay over tax monies when due. Further, Salt Lake County has knowingly and consistently accepted all interest accrued on overdue tax monies. The County has never repudiated the acts of the County Treasurer with respect to the handling of tax monies, nor has it offered to return any of the accrued interest withheld by the County Treasurer contrary to statute.

The County's acquiescence in the conduct of the County Treasurer clearly shows ratification of the Treasurer's conduct in this matter. On this basis alone, the County is liable for the Treasurer's acts.

Even if the County Treasurer is not the agent of Salt Lake County, the County may not unjustly enrich itself at the expense of the District.

Defendants in their trial brief have acknowledged that the County Treasurer "may indeed be a trustee of Plaintiff's tax monies." (p.26, tr.²⁶⁹). Indeed, they would have difficulty in maintaining a contrary position in the light of Board of Education v. Daines, 166 p.977 (Utah 1917). In Daines, the Court held that the County Treasurer had no right to be compensated for expenses incurred in the collection of school property taxes from the tax monies due the school. In the course of its discussion, the Court stated:

"School funds in this state, in one sense, are deemed trust funds, and, under our laws, are to be devoted strictly for school purposes."

Id., at 979.

Plaintiff has previously contended by virtue of Utah law that the County Treasurer is an agent of Salt Lake County, and that the Treasurer and the County Commissioner acted as a single entity in this matter. Assuming, arguendo, that the above facts are not the case, Salt Lake County, as recipient of the transfer of trust funds, should not be allowed to retain the income earned on tax monies in question.

The Restatement of Trusts (2d) §289 (1958) states:

"If the trustee in breach of trust, transfers trust property and no value is given to the transferor, the transferee does not hold the property free of the trust, although he had no notice of the trust."

In such a case as described in the above quotation, the beneficiary can charge the transferee as a constructive trustee of the property, and the transferee will be liable for profits from investment of the money, or at the very least, interest upon the transferred funds at the legal rate. Id., at §292.

Utah courts of law recognize the equitable doctrine of constructive trusts. See e.g. Nielson v. Rasmussen, 558 P.2d 511 (Utah 1965).

During the years in question, the County retained interest earned on tax monies improperly withheld in violation of state statutes. The tax monies gathered by the Treasurer were and are trust funds. Interest on the funds has been retained, and credited to the account of the County. The County's retention of the funds is a classic case of unjust enrichment. Accordingly, the County should be obliged to pay over any income received upon the tax monies in question.

The funds so held for the School District are funds held in trust. Salt Lake County is a trustee of tax monies collected for Granite School District. Finding No. 16.

The Utah Supreme Court has held that a trust is sufficiently established where "(the) trust estate is definite, the trustee is certain, and the purpose of the trust and use of the fund is definite, certain and particularly characterized." Duchesne County v. State Tax Commission, 140 P. 2d 335, 337-38 (Utah, 1943).

A public agency may serve as a trustee. Id. Utah statutes govern-

ing the collection, use, and disposition of tax monies collected on behalf of school districts demonstrate that counties hold such monies in trust.

In State v. Stanton County, 161 N.W. 264 (Neb. 1917), the State of Nebraska brought an action to recover from Stanton County, the board and care of patients committed to the state hospital from said county. The county was authorized by state law upon being notified of the charges for its patients in the state hospital to add such charges to the next state tax to be levied in the county and to then pay the amounts that were levied into the state treasury. The county levied the tax but then declined to pay the tax proceeds into the state treasury. The court held that it was obligated to do so indicating that the county held the money in trust for the state. As a consequence, the court ruled that the county was liable for interest on the monies from the time that it was due to be paid to the state:

The money was collected for, and belonged to, the State, and was wrongfully withheld by the county. While so wrongfully held, the county is properly chargeable with the use of the money and should pay interest thereon as found by the referee.

Id. at 266.

In State v. City and County of Milwaukee, 149 N.W. 579 (Wisc. 1914), the state as plaintiff sued the city for the amount of fines received by the city in its courts and payable to the state. The court stated that the funds were trust funds and held that where the city had failed to pay the state the amount of fines collected by it, interest was due from the time the funds were to be paid. Id. at 583; see also Booth v. Parne, 197 A. 50 (N.J. 1934) (city ordered to pay interest on delayed tax payment to county).

In sum, both Utah statutes and the common law impose the office and duties of a public trustee upon political subdivision, such as Salt Lake County, which hold tax monies collected for other units of government.

The state laws provide for funding of a basic school program based on a formula called a weighted pupil unit. Each year that basic program is met from assessment of real property taxes within the School District augmented by the state supplied funds pursuant to limits established by the legislature. The School District is then left with the responsibilities of administering these funds. Whatever the School District earns on these funds by investment, or obtains by a gift, or from other means such as tax anticipation notes or sale of property or student fees are funds left to the discretionary use of the School Board but are to be used for School District purposes only. Board of Education vs. Daines, Ibid. Such extraordinary funds have never been accounted for in determining the basic school program dictated by the state weighted pupil formula.

For Salt Lake County to allege that a windfall of income is the County's by way of the state already supporting the basic school program is to allege that unjust enrichment is all right as long as someone else picks up the deficit or curtails their programs so that the county can take advantage of its wrongful appropriation of those funds. Public policy dictates the separation of governmental entities and the separate responsibility of managing the tax payors funds under their care.

The issue of whether a county holds school district funds in public trust has been directly litigated now in at least three other neighboring jurisdiction. Pomona City School District v. Payne, 50 P.2d 822 (Cal. App. 1935). In Pomona City, the school district, plaintiff, maintained its school funds on deposit in the treasury of Los Angeles County. The County Treasurer followed the administrative practice of depositing the funds in state and national banks pursuant to state statutes. However, the county treasurer did not credit the school district with any of the interest earned on school funds. The Pomona School District sued, claiming a right to the interest on that portion of school district funds which represented its share. The court framed the issues as follows:

Decision of this case we believe rests upon the determination of the status of the school funds while they are in the custody of the county. Is the county the owner of such funds, or is the county simply the trustee for the benefit of the school district? If accretions belong to such owner; but as trustee, the county would have no ownership in the funds or in their interest increments. Id. at 823.

The court held that the county was merely a trustee of the school funds deposited in its care, and as such, could not enrich its own coffers with interest increments upon money placed in its custody by the school district. It indicated that its decision rested not only on statutory interpretation, but also on general common law principles. Id. at 825.

California and other courts have applied Pomona School District in analogous situations. Metropolitan Water District v. Adams, 32 Cal. 2d 620, 197 P.2d 543 (1948); Ostly v. Saper, 305 P.2d 946 (Cal. App. 1957); Board of Law Library Trustees of Los Angeles County v. Lorery, 154 P.2d 719 (Cal. App. 1945). See

also, Lynn v. Longview, 131 P.2d 164 (Wash. 1942).

In State of Missouri ex rel Fort Zumwalt School District,
et al, Realtors vs. Dichherker Auditor of St. Charles County
and St. Charles Missouri, 576 So. 2 2d 532 (Mo. Feb. 13, 1979).
The Supreme Court of Missouri reviewed a Writ of Mandamus filed
by the Circuit Court which ordered the County Auditor to transfer
over interest income earned on School District funds at the same
time as the funds themselves were transferred.

"This is an appeal by appellant, Dickherber, the auditor of St. Charles County from a writ of mandamus entered on May 31, 1977 by the circuit court of St. Charles County commanding the appellant to countersign checks or warrants issued by the treasurer or collector of St. Charles County for the payment of interest on school tax monies collected by the county."

"This proceeding has a long history and involves an interpretation of law relating to the payment of interest on school tax monies received and deposited by the proper officials of St. Charles County. The precise issue is whether the interest on school tax monies deposited in authorized depositories should be paid to the treasurers of various school districts in the county or whether such interest should be credited to the general revenue fund of the county."

Realtors prayed that the circuit court issue its writ of mandamus commanding the treasurer and collector to "forthwith deliver to each Treasurer-Relator interest earned on tax monies received by Respondents in behalf of each Relator-School District" Respondents answered and relied upon §52-360 RSMo 1969 n2 contending that such interest "shall go to the general revenue fund of the County." Respondents contended that it is the duty of the collector to transfer interest on all funds to the credit of the general revenue fund of the county.

The circuit court made its alternative writ absolute and ordered and enjoined respondents to pay to relators school district

the interest earned on all school tax monies received and invested by them.

The Missouri statutes dealing with payment of funds to the school districts are not much different than those of Utah in that a regular monthly day is set for payment ("at least once in every month", 165.071 R.S. Mo., 1969). The Missouri statutes provided for disposal of interest income earned on the general county funds to the general revenue fund of the county but such requirement was not statutorily applied to funds collected for the school district.

The court held that the trial court did not err in issuing the writ and that the interest on deposited school tax funds go to the respective treasurers of the relator school districts rather than to the general revenue fund of St. Charles County.

"The resolution we make comports with the general principle that the interest on public funds designated for a specific purpose follows those funds in the absence of an unequivocal legislative expression otherwise. See annotation, 143 A.L.R. 1341, 1342 (1943); State Highway Commission v. Spainhower, 504 S.W. 2d 121 (Mo. 1973); Pomona City School District v. Payne, 50 P.2d 822 (Cal. App. 1935). In Pomona, the court expressed the principle in terms of the applicability to school funds. The issues were similar to the present case, and involved the question whether the interest on school funds was to go to the county or to the school district. In the course of the opinion the court stated:

"We are also confronted with the primary law that interest is an accretion or increment to the principal fund earning it, and unless lawfully separated therefrom becomes a part thereof This was the common-law rule, and unless the depository acts clearly demonstrate an intention to deprive school districts of such common-law right to interest accruals, they should retain such interest." 50 P.2d at 825. See also State Highway Commission v. Spainhower, *supra*.

"We, therefore, conclude that based upon statutory interpretation and public policy that interest on deposited school funds are payable to the treasurer of the six-director school districts and that the trial court did not err."

State Highway Commission v. Spainhower 504 S.W. 2d 121 (Mo. 1973). Involved an action for declaratory judgment with regard to whether interest on state road funds should be paid into such fund. The circuit court found that the interest and income from investment of the fund had to be credited to such fund and not diverted to the general revenue. The issue is whether interest from investment of the state road fund must be credited by the State Treasurer to the state road fund to be used for highway purposes as contended by the Highway Commission and as found by the trial court, or whether such interest is to be credited to the general revenue fund as contended by the State Treasurer. Appellant argues that in the absence of a requirement in Section 15 that income or interest from the investment of state monies in a special fund be credited to that fund, the General Assembly

has the power to provide for the disposition of such increments. The court found that it was clear that no money was to be diverted from that state road fund for any other use than that for which the use of the road fund was designated ie. state highway purposes. And that interest income on highway funds belonged to the highway fund. This problem has been considered and the same result reached in the State of Oregon where a taxpayer petitioned for writ of mandamus to compel the state treasurer to return to the state's general fund certain money accumulated as interest on several special funds of the state, one of which was the state highway fund. The treasurer had credited such interest to the particular funds involved. The highway funds involved were moneys received from various motor vehicle and fuel taxes. Article IX, Section 3, Constitution of Oregon, requires that "the proceeds" from any such tax "be used exclusively" for the construction and maintenance, etc., "of public highways, roads and streets within the state of Oregon."

"An examination of all of the authority * * * is convincing that the legislature cannot divert interest from these funds.

* * *

"It is recognized that the people's approval of the amendment to Article IX Section 3 provides no actual expression of a will and intent that interest that may be earned by the accumulated revenues controlled by the amendment should accrue to the highway fund. There is a strong inference, however, that the clear

intent of the people to compel the specific revenues to be used for one purpose implies that it would include all of the interest that would accrue during the State Treasurer's holding of the revenues for their eventual use." State v. Straub, 240 Or. 272, 400 P.2d 229, 232 (banc 1965). See also 81 A.C.J.S. States §155 ap. 1192: "Interest earned by a deposit of special funds is increment accruing thereto, and not to the general funds of the state."

"In Lawson v. Baker (Tex.Civ.App.) 1920, 220 S.W. 260, the Texas Court held that interest became a part of a similar highway fund in Texas and that the constitutional limitation in the Texas Constitution as to the use of the fund prohibited the legislature from diverting the interest away from the fund . . . At 143 A.L.R. beginning at page 1341 is an annotation on the liability of municipalities for interest earned on special funds held by the treasurer of the municipality. The annotators have collected cases relating to interest on the funds of a school district or drainage district, for example, held by a county treasurer. These cases are significant in that they generally hold that interest must follow a special fund and be used for the benefit of the fund or for the purpose for which the fund was created. See particularly Pomona City School District v. Payne 1935, 9 Cal.App.2d 510, 30 P.2d 822.

This same conclusion as to interest earned on state highway funds is reached by Utah State Attorney General's opinion requiring the Utah State Treasurer to turn over all interest earned

on state highway funds to the Utah State Highway Commission
rather than the depositing of such earned income to the State
general fund. (Attorney General's opinion No. _____ dated
_____, 19____.

Under Utah statutes, the property tax levied is to be collected by the County Treasurer, paid to the Treasurer of the Board of Education "who shall hold the same subject to the Order of the Board of Education" Sec. 53-7-10. The Board of Education shall levy a property tax solely for educational purposes within the school district. 53-7-8 and 53-7-9 and 53-7-16(a) and (b) and 53-7-19 and 53-7-23. Each provide for tax levys for designated school purposes. The funds of the district have no other purposes and are levied under statutory authority for those purposes only.

Most recently the Supreme Court of Arkansas reviewed these same issues Mears v. Little Rock School District, 593 S.W. 2d, (Ark. Feb. 4, 1980).

School district and others brought action to enjoin operation of ordinance of county quorum court whereby interest on school taxes was deposited in county general fund and not passed on to the school districts, with defendants asking that school districts pay a pro rata share of certain expenses incurred for assessment and collection of the taxes. The Chancery court held ordinance illegal and allowed only the assessor to collect his expenses, and defendants appealed. In effect, the ordinance provided that the county could use the tax money to earn money for the county--the interest earned not being passed on to the school districts.

The appellants responded and counterclaimed defending the legality of the ordinance. In addition, they asked that the school districts pay a pro rata share of certain expenses incurred for the collection of the taxes. In the case of the county assessor a claim was made for \$37,700 for "rentals and other contracts" and \$38,000 was claimed for ten vehicles used by the assessor's office. Over \$24,000 was claimed on behalf of the collector for "rentals and other contracts" and over \$9,000 on behalf of the treasurer for the same expense. The proof showed that the appellants' claim for these rentals was largely based on what the rental value would be of the space occupied in the Pulaski County Courthouse by these various county offices.

The chancellor held that the ordinance was illegal, that the interest earned on such tax money belonged to the legal entities for which it was collected. The chancellor also declared that the law provided that only the assessor's office could charge these entities its expenses and that no other county officer was authorized to collect for his expenses. Therefore, the chancellor denied all requests for charges claimed by county officers other than the assessor's. The total amounts claimed by the assessor, which covered automobiles and the rental value of space, were allowed.

Mears and the other appellants appeal the judgment of the chancellor and argue that the use of the tax money to earn interest

is not prohibited by law and that the chancellor should have allowed the other county officials to collect for their expenses. The Supreme Court affirmed the chancellor's decree. The Court held: "Clearly on point is Pomona City School District v. Payne, 9 Cal. App2.d 510, 50 P.2d 822 (1935), which held that interest on school taxes was part of the principal and belonged to the schools absent legislative action. We relied on Pomona in Miles v. Gordon, 234 Ark. 525, 353 S.W.2d 157 (1962), when we held that Article 16, Section 12 of the Constitution, which prohibits taking money out of the state treasury without an appropriation, did not apply to interest on tax money when the two were separated by legislation. In view of Article 16, Section 11, our reasoning in Miles, and the absence of legislative action, there is no doubt the interest belongs to the school districts."

In the State of New Mexico ex rel Board of County Commissioners of Bernalillo County vs. Monlaya, Director of the State Department of Finance 575 P.2d 605, 91 N.W. 421(1978) the court held that interest accruing on proceeds of bonds issued by county to finance construction of a county juvenile detention home was required to be used for the purpose for which the bonds were issued. The county argued that there was no statute prohibiting the accruing interest from being used for the general county funds. The court held: "About a special statutory provision, the general rule is that interest is an accretion or increment

to the principal fund earning it and becomes a part of that fund. The court cited Pamona City School District vs. Payne, Ibid. Bordy vs. Smith 150 Neb 272, 34 N.W. 2d 331 (1948) and State v. Straub 240 Oregon 272, 400 P.2d 229 (1963) (interest on State School Fund and Commissioners of Woburn Cemetary vs. Treasurer of Woburn 64 N.E. 2d 627, (Mass., 1946) required that interest earned on cemetary perpetual care fund should be kept separate from the county general fund and under the control of the Cemetary Board.

POINT IV

WHETHER PLAINTIFF IS ENTITLED TO INJUNCTIVE RELIEF TO REQUIRE THE PROPER TRANSFER OF ALL FUNDS COLLECTED PLUS EARNED INCOME WITHIN 30 DAYS AFTER THE FUNDS ARE COLLECTED AND BY THE FIRST DAY OF EACH MONTH OF ALL FUNDS IN HAND ACTUALLY COLLECTED WITH A FINAL ADJUSTMENT ON THE LAST DAY OF MARCH OF EACH YEAR.

Injunctive relieve lies in equity when the Salt Lake County Treasurer as a trustee wrongfully transfered the funds to the wrongful enrichment of the County General Fund. There is no dispute that the County has consistently diverted all interest earned on tax monies improperly withheld to its own purposes. It has consistently refused to tender such money to the District. Such conduct constitutes an intentional and wrongful abuse of trust justifying the imposition of compound interest.

As a consequence of the County's breaches of trust, the District has been denied the interest it could have earned, if it had the use of the tax monies on the dates they were required to be paid. This is the true measure of the District's loss for which it must be compensated. See In re Listman's Estate, *supra*, 197 P. at 602.

As an alternative measure of damages and to prevent unjust enrichment, the District is at least entitled to a sum equal to the interest which the County earned or could have earned while it had District monies in its possession.

In Listman's Estate, the Utah Supreme Court held that an executor who failed to comply with a court order directing him to invest estate monies in government bonds, and instead invested

in a bank which failed, was liable as a trustee for the principal and interest which would have accrued had the executor invested in government bonds. As stated by the Court:

The actual loss sustained by the estate ought to be the measure of damages, we think, under the facts and circumstances of this case, where the specific direction of the court's order was to invest in bonds that would have earned for the respondents no more than 4-1/4 per cent interest per annum.

Id. at 602.

Such a sum should include compound interest where a trustee intentionally and wrongfully diverts and uses trust funds for his own private purposes the court may require compound interest. See In re Listman's Estate, supra, 197 P. at 602; Gordon vs. Brunson, 253 So. 2d 183 (Ala. 1971); Pullis v. Somerville, 117, S.W. 736 (Mo. 1909).

Assuming, arguendo, that Salt Lake County is not a Trustee of monies collected for Granite School District, Salt Lake County is nonetheless liable to Granite School District for interest at the legal rate for the unlawful delay in paying a legitimate indebtedness.

As a general rule, a debt is any liability to pay a sum certain whether that liability arises by contract or is imposed by law without contract. 26 C.J.S. Debt at 3 (1956).

A "statutory obligation in the nature of a debt bears interest even though the statute creating the obligation fails to provide for it." United States v. United Drill Corp., 183 F.2d 998, 999 (D.C. Cir. 1950); see also, Reserve Supply Corp. v. National Labor Relations Board, 317 F.2d 785, 789 (2d. Cir. 1963). Units of local or state government are not exempt from

the above rule. Milwaukee County v. Schmidt, 187 N.W. 2d 77 (Wis. 1971); City of Wauwatosa v. Union Free High School Dist., 252 N.W. 351 (Wis. 1934). In Milwaukee County, interest was allowed on state aid adjudged due to counties from the state department of health. In City of Wauwatosa, a plaintiff city brought an action against a school district for the payment of tuition owed to the city under a statute which required school districts in which no high school was maintained to pay the tuition of students residing in such districts, but who were attending high school in other districts. The court held that the plaintiff was entitled to recover monies due for the tuition of defendant's students who were attending the city's high school plus interest on such monies.

The long standing rule in Utah and the common law is that interest is allowed on debts overdue even if there is no statute providing for interest. Wasatch Mining Co. v. Crescent Mining Company, 24 P. 586 (Utah 1890), aff'd 151 U.S. 317, 38 L.Ed. 177 (1894); Goodbe v. Young, 82 U.S. 562, 565, 21 L.Ed. 250, 251, (1873).

Political subdivisions are not exempt from the general obligation to pay interest on their overdue debts. Baker Lumber Co. v. A. A. Clark Co., 178 P. 764 (Utah 1919); Wilson v. Salt Lake City, 174 P. 847 (Utah 1918). In Baker Lumber Co., the Supreme Court held that a school district was required to pay interest at the legal rate on a debt owed to companies which furnished

materials and labor for the construction of a school building. Concluding that there was no reason why a public corporation should be treated differently from individuals, upon failure to meet legally authorized obligations, the Court said:

Public policy, it seems to us, should require a public corporation to meet its obligations legally authorized when due, and upon failure to do so that it be subjected to the same duty as probate individuals -- to reimburse the creditor for his forbearance or delay in receiving what is his due.

Baker Lumber Co. v. A. A. Clark Co., supra, 178 P. at 770.

In the case at bar, there are no legitimate grounds in either public policy or law, for exempting Salt Lake County from an obligation to reimburse Granite School District for the delay in receiving tax monies due to the District. To permit Salt Lake County to escape paying interest would be to provide the worst possible example to private citizens in settling their debts and obligations. Moreover, it would remove any incentive to Salt Lake County to meet its statutory obligations in the future. Therefore, Plaintiff should be entitled to recover interest on all overdue sums at the legal rate of six percent from the dates the sums should have been paid. U.C.A. §15-1-1 (1953); Baker Lumber Co. v. A. A. Clark Co., supra, 178 P. 764.

Such overdue sum should include compound interest. Utah courts have ruled that a creditor -- in the absence of an agreement -- is entitled to interest on all interest due and payable at the legal rate of six percent per annum. Farnsworth vs. Jensen,

217 P.2d 571 (Utah 1950); Jensen v. Lichtenstein, 145 P. 1936 (Utah 1915); see also U.C.A. §15-1-1 (1953).

V. CONCLUSION

Salt Lake County is a public trustee of tax monies collected for Granite School District. The School District's funds are not the County's funds no matter the opinion of the County Treasurer to the contrary. Utah law requires the County Treasurer to pay such money in his hands collected to the District on the first day of each month. In failing to pay tax monies when lawfully due during the tax years 1973 through 1977, the County Treasurer intentionally committed a breach of trust. He compounded his misappropriation of funds by retaining interest earned on the tax monies and paying the same to his principal, the general fund of Salt Lake County.

At law, the measure of damages to the District is that sum which will compensate the District for the loss of the use of its money. Specifically, the measure is that interest which the District could have earned by lawful investment if the County had made timely payments. At equity as alleged, the District measure of damages is the sum which the County Treasurer earned on the monies wrongfully detained and paid over to the general fund of Salt Lake County plus legal interest from the date of payment to Salt Lake County general fund until paid to Plaintiff herein.

This judgment of Judge David K. Winder should be reinstated the interest income due determined by remand to the District

Court for a proper determination of damages at equity plus legal interest and for injunctive relief requiring proper and statutorily required timely transfer of funds.

Respectfully submitted this 15th day of January, 1981.

FABIAN & CLENDENIN

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing BRIEF OF PLAINTIFF-APPELLANT to Ted Cannon, Salt Lake County Attorney and Bill Thomas Peters, Special Deputy County Attorney, Attorneys for Defendants, Respondents and Cross Appellants, 400 Chancellor Building, 220 South 200 East, Salt Lake City, Utah 84111 postage prepaid on this 12th day of January, 1981.

FABIAN & CLENDENIN

BY: M. Byron Fisher

IN THE SUPREME COURT OF THE
STATE OF UTAH

THE BOARD OF EDUCATION OF)	
THE GRANITE SCHOOL DISTRICT, a)	
body politic of the State of Utah,)	
)	
Plaintiff and Appellant,)	
)	
v.)	Case No. 17175
)	
SALT LAKE COUNTY, a body corporate)	
and politic and ARTHUR MONSON,)	
Salt Lake County Treasurer,)	
)	
Defendants, Respondents,)	
and Cross Appellants.)	
)	

ADDENDUM TO BRIEF OF PLAINTIFF - APPELLANT

Plaintiff inadvertently left off the citation to Attorney General's Opinion cited on page 30 of its Brief. That citation is Opinion No. 77-002 dated January 25, 1977, a copy of the opinion is included in the transcript of record pp. 72-75.

DATED this 27th day of January, 1981

FABIAN & CLENDENIN

By: M. Byron Fisher
M. Byron Fisher
Attorney for Plaintiff-Appellant