

1980

Lynn A. Jenkins v. Moroni C. Jensen, State of Utah,
Robert B. Hansen, Attorney General of The State of
Utah, David S. Monson, Secretary of State/Lt.
Governor of Utah : Appellant's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

LYNN A. JENKINS,

Plaintiff-Appellant,

-v-

MORONI C. JENSEN, STATE OF

UTAH, ROBERT B. HANSEN,

Attorney General of the State)

of Utah, DAVID S. MONSON,

Secretary of State/Lt.

Governor of Utah,

Defendants-Respondents.

CASE NO. 17240

APPELLANT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE KENNETH RIGTRUP, PRESIDING

VAN COTT, BAGLEY, CORNWALL

& McCARTHY

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TABLE OF CONTENTS

	page
NATURE OF CASE	1
DISPOSITION IN LOWER COURT	2
RELIEF SOUGHT ON APPEAL	4
STATEMENT OF FACTS	5
ARGUMENT	7
POINT I	
SHIELDS V. TORONTO, ARGUMENT ON SALARY INCREASE	7
POINT II	
SHIELDS V. TORONTO, ARGUMENT ON COST OF LIVING INCREASE	10
POINT III	
STATE EMPLOYEES' SALARY COMPARISON TO ELECTED OFFICIALS	13
POINT IV	
STATE LEGISLATURES' ATTEMPT TO MAINTAIN SALARIES WITH CURRENT LEVELS OF INFLATION	13
POINT V	
CREATION OF CONSTITUTIONAL OFFICE OF LT. GOVERNOR	15
POINT VI	
DEFENDANT JENSEN'S QUALIFICATION TO BE A CANDIDATE FOR THE OFFICE OF LT. GOVERNOR/ SECRETARY OF STATE	17
CONCLUSION	19

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- SHIELDS V. TORONTO, 16 Utah 2d 61, 395 P. 2d 829 (1964)3, 7, 8,
11, 12, 14, 16, 17, 20, 21.
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UTAH CONSTITUTION ARTICLE XXIII SECTION 1. 15.

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OATH OF OFFICE MORONI L. JENSEN -- 5, 14.

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S.J.R. No. 7 - 1979 "REVISION OF EXECUTIVE ARTICLE." --
5,17.

EXHIBIT No. 3 -- pages 1 through 3.

HB No. 246 - 1975, EXECUTIVE SALARIES INCREASES 1975 --
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5, 8.

EXHIBIT No. 5

H.B. No. 60 - 1980, EXECUTIVE SALARIES INCREASES 1980 --
5, 8.

EXHIBIT No. 6

SECRETARY OF STATE SALARY INCREASE SINCE STATEHOOD -- 6, 10.

EXHIBIT No. 7

SALARIES WITH BENEFITS -- GOVERNOR, SECRETARY OF STATE,
SUPREME COURT, 1976 to 1981 -- 7.

EXHIBIT NO. 8

COST OF LIVING INDEX, 1896-1979 -- 6, 10.

EXHIBIT NO. 9 -- pages 1, 2.

CAMPAIGN LITERATURE OF MORONI C. JENSEN FOR LT. GOVERNOR
OFFICE - 7, 16.

EXHIBIT No. 10

UTAH STATE CONTRIBUTION TO STATE RETIREMENT PROGRAM, 1972
to 1979 -- 7, 14.

IN THE SUPREME COURT OF THE STATE OF UTAH

LYNN A. JENKINS,

Plaintiff-Appellant,

-v-

MORONI C. JENSEN, STATE OF
UTAH, ROBERT B. HANSEN,
Attorney General of the State
of Utah, DAVID S. MONSON,
Secretary of State/Lt.
Governor of Utah,

Defendants- Respondents.

CASE NO. 17240

APPELLANT'S BRIEF

NATURE OF CASE

This is an action that was brought by the Plaintiff, Lynn A. Jenkins, to remove the name of Defendant, Moroni L. Jensen, from the official 1980 primary election ballot for the following reasons.

1. On January 10, 1977, Defendant Jensen took the oath of office as Senator from the Sixth District, State of Utah, for the period of January 1, 1977 to and including December 31, 1980, and as a member of the Utah State Legislature did vote and pass certain emuloment increases for the office of Utah Secretary of State/Lt. Governor, during his term of office as senator, which precludes him from being

elected to the office of Secretary of State/Lt. Governor, as mandated by the Utah State Constitution, Article VI, Section 7.

2. That the Utah State Legislature during the current term of Senator Moroni L. Jensen did pass a proposed constitutional change in the office of Secretary of State to the Office of Lt. Governor, which change would alter, reform, and create the constitutional executive office of Lt. Governor for the State of Utah, thus prohibiting any member of the Utah State Legislature during their term from being an eligible candidate for that created office, as mandated by the Utah State Constitution, Article VI, Section 7.

3. That Plaintiff Lynn A. Jenkins is a candidate for the office of Utah State Senate, District Eight, and is on the official 1980 primary ballot. At the primary election, the voters are required to select a one-part ballot from which to choose and with Plaintiff Jenkins being with the Republican Party and Defendant Jensen being with the Democratic Party, the Plaintiff would be harmed if the name of Moroni L. Jensen were not removed from said ballot as a qualified candidate.

DISPOSITION IN LOWER COURT

The trial court granted the defendant's motion to dismiss with prejudice on July 30, 1980, after finding and ruling the following:

1. Plaintiff has standing to bring the present action as a party plaintiff.
2. Plaintiff has not unreasonably delayed the filing and bringing of the present action.

3. Plaintiff's complaint and each cause of action set forth therein do not state a claim for which relief may be granted. In connection therewith, the Court takes judicial notice of and considers the following points:

(a) The claims of plaintiff are governed by a prior Utah Supreme Court decision in the case of Shields v. Toronto, 16 Utah 2d 61, 395 P. 2d 829 (1964), which decision approved as constitutionally permissive under Article 6, Section 7 of the Constitution of the State of Utah the candidacy for the office of Governor and Secretary of State of members of a legislature which legislature had enacted pay increases for the offices for which those members sought election.

(b) The Court judicially notices that in 1964, the time of the Shields v. Toronto decision, the rate of inflation was running somewhere between 3% and 6%.

(c) The Court judicially notices that the current rate of inflation is much greater, being on the order of 13% to 14%.

(d) The Court further judicially notices that the salaries of elected state officials have lagged behind and have not kept current with either the salaries provided to other state employees or with increases in price indices from which inflation rates are derived.

(e) The action of the State Legislature in increasing the salary for the Secretary of State/Lt. Governor appears to be an attempt to maintain that salary with current levels of inflation.

(f) The increase in salary for the Secretary of State/Lt. Governor from \$26,500 to \$33,500 is consistent with and proper according to Shields v. Toronto Supra.

(g) S.J.R. 7 as adopted in 1979, proposed that the constitutional amendment that establishes the office of Lt. Governor as a replacement for the office Secretary of State does not "create" a new office within the meaning of Article 6, Section 7 of the Utah Constitution.

(h) Under Shields v. Toronto, Supra, to deny defendant Moroni L. Jensen a position on The September 9, 1980 primary ballot for the Democratic nomination for Secretary of State/Lt. Governor would be an interference with the democratic process for the election of state officials.

On August 4, 1980, the Honorable Kenneth Rigttrup amended his order of July 30th, 1980, with the following:

1. The findings and rulings as contained in the Order of July 30th, 1980, are hereby supplemented to include the following language:

Since January 1, 1977, the Secretary of State/Lt. Governor has received by legislative enactment two pay increases raising his salary from \$22,000 to \$33,500. During the same period of time, the Secretary of State/Lt. Governor has received increases in Social Security, retirement and similar benefits, which when added to his base salary, represent in total benefits paid an increase in the same period from \$25,956 to \$41,333. These increases were not the result of specific legislative enactment.

2. In all other respects, the motion to amend is hereby denied and the Court reaffirms its prior rulings and Order of July 30, 1980.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the trial court's decision of July 30th, 1980, as to item no. 3, points (a) thru (h) and August 4, 1980, items no. 1, 2 and further appeals the Court to grant the relief prayed for in the Complaint as follows:

1. That if "REVISION OF EXECUTIVE ARTICLE" resolution 1979 General Session of the Utah State Legislature also known as S.J.R. No. 7-1979, is passed by the Utah State Electorate in the 1980 General Election, that the intent of the Utah Legislature is to create the constitutional office of Lt. Governor for Utah, effective January 1, 1981.

2. That Moroni L. Jensen is a duly seated member of the Utah State Senate and as a member of that legislative office is denied the right to be a candidate for Secretary of State/Lt. Governor, State of Utah until after December 31, 1980, as mandated by the Utah State Constitution, Article VI, Sec. 7, for the reason of the increase of emoluments and the possible creation of the constitutional office of Utah State Lt. Governor.

3. That the Secretary of State, David S. Monson, be restrained from issuing a certificate for primary election in the name of Moroni L. Jensen on the Democratic ballot as required by 20-3-17, U.C.A.

4. That Moroni L. Jensen's Declaration of Candidacy for Lt. Governor/Secretary of State, filed in the office of David S. Monson, Secretary of State/Lt. Governor be null and void by reason of the constitutional taint imposed by U.S.C. Art. VI, Sec.7.

STATEMENT OF FACTS

1. Defendant Moroni L. Jensen is a member of the Utah State Senate with the term of elected office being January 1, 1977, to and including December 31, 1980. Exhibit No. 1, p. 1-2.

2. March 8, 1979, the Utah State Legislature passed S.J.R. No. 7 titled "Revision of Executive Article," which provides for the creation of the constitutional office of Lt. Governor and deleting the office of Secretary of State, if ratified by the Utah electorate in the General Election of 1980. Exhibit No. 2, p. 1-7.

3. January 1, 1977, the salary without benefits for the office of Utah Secretary of State/Lt. Governor was \$22,000. Exhibit No. 3, p. 1-3. Exhibit No. 3, p. 1-3.

4. The 1977 General Session, Utah State Legislature, approved a salary plus benefits increase for the office of Secretary of State/Lt. Governor to \$26,500 effective May 10, 1977, an increase of 20.45%. Exhibit No. 4, p. 1-6.

5. The 1980 Budget Session, Utah State Legislature, increased the salary of the Secretary of State/Lt. Governor to \$33,500, effective January 1, 1981, a percentage increase of 26.42%. Exhibit No. 5.

6. At the beginning of Senator Moroni L. Jensen's

latest term of office that salary without benefits of the Secretary of State/Lt. Governor has increased from \$22,000 to \$33,500, a gain of 52.27%. Exhibit No. 6.

7. At the beginning of Senator Jensen's term of office, the total salary expense of the Secretary of State to the State of Utah was \$25,956, and that during his four-year term as Senator, the total salary expense has increased to \$41,333 or 59.24%. Exhibit No. 7.

8. If defendant Jensen were elected to the office of Lt. Governor/Secretary of State, the emolument increases enacted by the Utah State Legislature during his present four-year term of office would benefit him personally \$61,508.

9. The cost of living index increased:

1977	--	6.45%
1978	--	7.66%
1979	--	11.26%
1980	--	*14.2 % estimated

TOTAL 39.57% or 9.89 % per annum estimated.

* Source - Frank K. Stuart affidavit. Exhibit 8 p. 1-2.

10. July 12th, 1980, Defendant Jensen became an official Democratic Party Candidate for Lt. Governor/Secretary of State on the 1980 Primary Election Ballot.

11. June 23rd, 1980, Plaintiff Jenkins became an official candidate on the Republican Party primary ballot for the Utah State Senate District Eight.

12. The 1980 Primary Election is to be held September 9th, 1980.

13. August 5th, 1980, Defendant David S. Monson certified the name of Moroni L. Jensen as an official candidate of the Democratic Party for the 1980 Primary election.

14. Defendant Jensen is campaigning for the passage of the "Revision of Executive Article" S.J.R. No. 7, as part of his quest to be elected to the office of Lt. Governor. Exhibit No. 9, p. 1-2.

ARGUMENT

POINT I

In Shields v. Toronto, 16 Utah 2d 61, 395 P. 2d 829 (1964), the Utah Supreme Court did not argue in its decision that an increase of one executive office salary would make a legislator ineligible to run for that office as mandated by Article VI, Section 7, Utah Constitution.

(Ineligibility of member to office created at term for which elected.)

"No member of the Legislature during the term for which he was elected, shall be appointed or elected to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected."

Shields v. Toronto decision discussed very clearly that if the primary interest of the legislation was other than an emolument increase, then the motive of the enactment of the salary increase was secondary in nature and the real intent of Article VI, Section 7, was not applicable.

"The important fact here is that the salary increases involved could not by any stretch of the imagination be regarded as partaking of the impropriety just referred to. There are two

significant points which emphasize the correctness of this conclusion. In the first place, the raises given were not directed toward the creation of, nor to the increase of emoluments of any particular office, but were part of a general salary overhead covering 74 executive officers and judges of the state. . . . The 1963 Act referred to was not primarily a salary increase bill, but its main purpose was to repeal all of the separate acts and to consolidate in one act the salaries of all of those officers in order to classify and bring about some uniformity and correlation among them. And second, the comparatively small increases amounting to about 5% of the remuneration of the offices in question were merely incidental to the main purpose. Shields v. Toronto at 831, underlining emphasis added.

In exhibits 4, p. 1-6, S.B. No. 175-1977, and 5, H.B. No. 60-1980, the salary increases for the Secretary of State were clearly the intent of the legislature and were in such amounts that increases were done on a one-to-one basis, and not across the board as mandated by Shields v. Toronto. Further, S.B. No. 175-1977 provided for a 14.29% increase for the Governor, 20% increase for Attorney General, 20.45 % increase Secretary of State, 26.19% increase Auditor and Treasurer, and between 1 and 3 level changes for appointed officers of the State. H.B. No. 60-1980 removed Judges from the salary increase of 1980 and provided for 0% increase for Judges, 20% increase for Governor, 21.67% increase for Attorney General and 26.42% increase for Secretary of State, Auditor, and Treasurer. Then the 1980 Legislature denied the presently elected executive officers from receiving the pay raise until January 1, 1981. This machination thus increases the need of prohibition of Article VI, Section 7, by increasing the term of the legislators office to that date. The Utah Supreme Court ruled in State, ex rel, Jugler v. Grover et al., 102 U. 41, 125 p. 2d 809:

"The weight of authority is that where there exists a constitutional provision such as we are now considering, that a term of office fixed by statute runs not only for the period fixed, but for an additional period between the date fixed for its termination and the date at which a successor shall be qualified to take the office, the period between the expiration of the term fixed by statute and the time at which a successor shall be qualified to take the office is as much a part of the incumbent's term as the fixed statutory period. . . ."

In the Utah Constitution, Article VII, Section 1, the term of office for the Secretary of State commences on the 1st Monday of 1981. This being the 5th day of January, and if Defendant Jensen were elected, he then directly jumps from the office of Utah State Senator to Lt. Governor/Secretary of State. The Supreme Court recognized this jumping and pointed out in State v. Grover the reason the people of the state needed protection from the legislature.

"The above provision of the Constitution was enacted to prevent members of the Legislative branch of the government from occupying a dual position and to prohibit members of the Legislature from deriving directly or indirectly any pecuniary benefit of the legislative enactments or appropriations made by them. . . This act was to prevent and prohibit members of the Legislature, after making appropriations for the other departments. . . from accepting employment from that branch of the government, and receive a pecuniary benefit from the money they appropriated."

"The language of the Constitution is plain. Its meaning cannot be mistaken. The purpose of the provision is apparent. It is intended to preclude the possibility of any member deriving, directly or indirectly, any pecuniary profit from legislation enacted by the legislature of which he is a member. It is one of the most important of many reforms attempted by the framers of one organic law. It is intended to remove any suspicion which might otherwise attach to the motives of members who advocate the creation of new offices or the expenditure of public funds." (underlining added)

"The reason for excluding persons from office, who have been concerned in creating them, or increasing their emoluments, are to take away as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness."

"The respondent participates in the legislation of which he, while his then senatorial term of office is not at an end, has become its beneficiary in the office created and in its substantial emoluments. Thus, the appeal at bar is a real illustration of what the clause was designed to prevent."

The salary increases of the 1977 and 1980 Utah Legislature are just what their intended purpose was to increase the emoluments directly and indirectly for the office of Secretary of State.

POINT II

The trial court judicially noticed that,

"...in 1964, the time of the Shields v. Toronto decision, the rate of inflation was running somewhere between 3% and 6%."

The facts as presented by exhibit No. 8, p. 1-2, clarify and correctly show the cost of living index for the State of Utah since statehood. Exhibit No. 6 indicates the total salary increase for the Secretary of State. In retrospect, the cost of living increased:

<u>YEAR</u>	<u>COST OF LIVING</u>	<u>SEC. OF STATE SALARY</u>	<u>YEARS</u>	<u>SALARY INCREASE</u>
1961	1.01%	\$10,500	4	10.53%
1962	1.12%	10,500	1	0 %
1963	1.21%	11,500	2	4.76%
1964	1.31%	11,500	1	0 %
1965	1.72%	13,000	2	13.04%

The Court erroneously assumed that Shields v. Toronto dealt with a cost of living factor of under 6%. This factor should have been no greater than 1.31%. The Supreme Court in Shields v. Toronto was very careful not to allow any future interpretation of that opinion to be attached as a mandated cost of living increase or that anything greater than 5% in a two-year period of time would ever be acceptable.

"The Secretary of State was raised from \$10,500 to \$11,000. While the raise for the governor was somewhat more, from \$13,200 to \$15,000, (13.64%) when the furnished residence, maintenance and other prerequisites of the office are considered, the raise was just about the same percentage-wise." (Underlining and 13.64% added for emphasis).

The Court then relented carefully not to mislead legislators in the future by requiring guidelines for salary increases which would prohibit them under Article VI, Section 7 from seeking higher office for profit during their term of office.

"These relatively small increases, of that character, should properly be regarded as just what they were, moderate cost of living adjustments on an across-the-board basis in keeping with the steadily rising costs of living. Accordingly, it can be said with assurance that this is not a situation which would lend itself to any ulterior scheme by a legislator to set up a high paying sinecure to take advantage of which Section 7 of Article VI was designed to prevent. Nor is there any reasonable likelihood that such raises would have induced any to run for the offices in question who would not otherwise have done so. . . no contention has been made that there was any actual impropriety or ulterior purpose whatsoever in the conduct of these candidates. . . Months before this suit was filed, they had announced their candidacies for office. (Underlining emphasis added)

The Plaintiff in his pleading maintains that Defendant Jensen has not met the restrictions imposed by the Utah Supreme

Court and that in fact the "moderate cost of living adjustments" given in 1963 was in proper range with the growth of the private and public sector of the State's economic growth. The 1977 and 1980 salary increases however do not reflect Utah's economic growth but reflect emolument increases far greater than the private individual income levels. To determine income levels by inflation alone would mean robbery from the public treasury by the public bureaucrats who thrive upon greater taxes from government created inflation. Also, the legislature refused to give an "across-the-board increase," and it would be inaccurate to say that \$61,508 increase for one term of office would not have "induced any to run for the office." Defendant Jensen's "ulterior purpose" can only be answered by him, but the record before the public and this Court can be scrutinized to reveal "impropriety" from his campaign literature, exhibit 9, p. 1-2:

(a) As a long term public educator, he has retired from the public trust with a pension he now receives.

(b) A member of the Utah Legislature for 16 years, he will retire from that branch of government with a pension.

(c) If elected to the office of Secretary of State, he will receive a pension from that office.

(d) He campaigns for creation of the Constitutional office of Lt. Governor.

(e) (He)"assisted in making the Utah State retirement system one of the best in the Country."

In Shields v. Toronto, the 1963 salary increase was enacted March 1963 and the candidates had filed for office in April 1964, but in the issue before the bar Defendant Jensen filed for office in April 1980 and the 1980 Legislature enacted the salary increase February 1980; thus the period of public scrutiny was greatly reduced for public reaction.

POINT III

State employees' salaries in comparison to elected officials' salaries however out of scale should not be proper for the Courts judicial review. The power of the legislature to enact salaries must remain with them or the separation of power's doctrine is polluted and a constitutional prerogative of the legislature is interfered with. Utah Constitution Article V, Section 1.

"The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislature, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the other, except in the cases herein expressly directed or permitted."

Comparisons of wages, taxes, benefits, inflation, cost of living index, etc., are mainly a function of the electorate and if they perceive a great concern, they voice their opinion to their representatives, and if their representatives fail to respond then the rascal can be thrown out by the voters. No individual is forced or compelled to work for less. If an elected official feels his or her salary is not sufficient and the people are not willing to give more, then the official is free to choose other service or employment.

POINT IV

To expand Points I, II, III, in relationship to the State Legislature "attempt to maintain that salary (Secretary of State/Lt. Governor) with current levels of inflation" the

trial court erroneously assumed that amortization of the inflation rate from (1963) Shields v. Toronto decision, was proper. However, the issue before the bar is Defendant Jensen's current term of legislative office as shown by exhibit 1, p. 1-2, the four years of January 1, 1977, to December 31, 1980. The electorate of Senate District Six had voiced their approval of Senator Jensen's functions for previous years and returned him to office. This principle of election affirms passed acts not future, and the legislator's solemn pledge to his constituents is constitutionally mandated in Article VI, Section 7 that bias or gain will not influence his vote over the rights of the people. Shields v. Toronto,

"(2) The obvious purpose of Section 7 Article (VI) quoted above, was to guard against dishonesty or improper connivance by or with legislators and to prevent them from being influenced by ulterior schemes to enrich themselves at the expense of the public treasury by creating or increasing the pay to a public office and then taking advantage of it. This purpose is altogether salutary. Let it be said with the greatest of emphasis that the provision referred to should neither be ignored nor evaded but whenever there is even a remote possibility that the evil it was designed to prevent might exist, it should be applied in such manner as to accomplish its objectives." (Underlining emphasis added)

Another problem with reviewing the wage increase over an 18 year span is that in 1972, President Nixon placed wage and price controls on salaries; however, he did not place restrictions on retirement benefits, so the Utah Legislature introduced a 5% pay increase to state officials through the retirement program. Exhibit No. 10 column which reads, "Employee Contribution Paid by Employer" shows this 5% program since 1972 to 1979 and should be considered as part of the salary increase.

POINT V

S.J.R. 7-1979 is a creation of a new constitutional office and could only been provided for by the Legislature. State ex rel, Jugler v. Grover, et al., 125 P. 2d 807, the Utah Supreme Court ruled that

"It was only by virtue of an enactment of the legislature in 1941 that there is such an office in existence to which Grover could be appointed. That office exists as one open to appointment by virtue of the act of the legislature of which Grover was a member. . . .Had it not been for the enactment for the law passed by that legislature, the office to Grover has been appointed would not have existed as an office to be filled by appointment of the governor. It exists because of the act of the legislature in creating a vacancy in an office - substantially creating a vacant office." (underlining emphasis added)

The Utah Constitution can only be amended with the enactment of two-thirds vote of the legislature to be placed upon a general election ballot for the vote of the people. Article XXIII, Section 1,

"An amendment or amendments to this constitution may be proposed in either house of the legislature, and if two-thirds of all the members elected to each of the two houses, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays taken thereon. . . ."

The people are entitled to be represented by legislators that are willing to make a solemn pledge that their actions and proposed constitutional amendments are for the general welfare of the public and not for preferential political gain of their special interest. S.J.R. 7-1979 is an attempt by the legislature to change completely the office of Secretary of State and place more executive power with the Governor and or

one political party. This amendment would place the Board of Examiners for example in control of the tandom office of Governor and Lt. Governor and the possibility that there is collusion with the legislature and executive branch to control the state treasury would exist if the legislation for amendment were tied directly with the campaigns of a very popular Governor and State Senator. Reference is made to Exhibit No. 9, 1-2, not to imply wrongful doings, but to point out there is a joint interest that both men by their joint support bring taint on the issue and the legislative intent of S.J.R. 7-1979 becomes more of a political power issue than a constitutional interest. There could be no taint if 1979 legislators were excluded from running for the office of Lt. Governor during the proposal to the people. To quote State v. Grover,

"This is a wise provision of the constitution, designed as far as possible to preserve the purity of legislation by putting the sting of disability into the temptation of members of the legislature to create offices of profit with a view to taking and holding them themselves."

One of the decisions rendered by the Federal Courts in this matter, which could be classified as similar in nature, was Kederick v. Heintzleman, et al. 132 F.S. 582 in which

"The District Court, McCarrey J., held that the Organic Act providing that no member of the Legislature shall hold or be appointed to any office of which has been created while he was a member, during the term for which he was elected and for one year after the expiration of such term, prohibiting members of Legislature from becoming candidates for the Territorial Constitutional Convention."

This ruling relied partly upon State v. Grover,

"The purpose of the prohibition is to eliminate, as far as possible, and hope in the mind of the legislator, that the office so created may be filled by himself, and to insure to the people independent judgment of their representatives. It is necessary to good government that legislators exercise their judgement free from selfish motives and, to this end, these prohibitions have been placed in constitutions and on statute books. . . ."

Exhibit 2, 1-7, S.J.R. 7-1979, the power of the election of Governor and Lt. Governor rest with the political party, not the people and would prohibit independent candidates seeking either office.

"In the election, the names of the candidates for Governor and Lieutenant Governor for each political party shall appear together on the ballot, and the votes cast for a candidate for Governor shall be considered as also cast for the candidate for Lieutenant Governor."

This provision would directly alter the Utah Constitution, Article IV, Section 1,

(Equal political rights)

"The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this state shall enjoy equally all civil, political, and religious rights and privileges." (underlining emphasis added.)

Constitutional changes of our form of government by the Legislature must be done with as little taint as possible, in order for the people to continue their trust in their representatives.

POINT VI

Shields v. Toronto, Supra., incorrectly provided the vehicle which Defendant Jensen's name was allowed to remain on the primary ballot from the lower court ruling, as "an

interference with the democratic process for the election of state officials," underscore to the need of the Utah Supreme Court to reaffirm the constitutional mandate of Article VI, Section 7. Part of the qualifications of the Secretary of State's office include the constitutional prohibitions placed on legislators by Article VI, Section 7. The restriction is not perpetual in nature, but only excludes for the present term of legislative office. The Court in upholding the Constitution of Utah must adhere to that provision in determining the qualifications of Defendant Jensen along with others provided for in the Constitution and statutes of this state, such as those in Article VII, Section 3.

"No person shall be eligible to the office of Governor or Secretary of State unless he shall have attained the age of thirty years at the time of his election. . . . No person shall be eligible to any of the offices provided for in section one of this article unless at the time of his election he shall be a qualified elector, and shall have been a resident citizen of the State or Territory for five years next preceding his election. . . ."

The Utah Constitution is clear on this point and the Court is reminded of Article I, Section 26.

"The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." (underlining emphasis added.)

The democratic process begins only with a qualified candidate and to qualify a candidate for the democratic process sake smacks of despotism on the highest level. State v. Grover at 810,

"The election of a Governor (Secretary of State) is the selection of some person to fill that office."

The selection must be one who possesses the required qualifications, and must be made by those who possess the right to vote, and at a time, place, and in the manner prescribed by law. The election of state officers in this state is a process." (underlining emphasis as shown)

State v. Grover further states at 812,

"(T)he Constitution does not prohibit a member of the Legislature during the term for which he was elected from being appointed or elected to office. The preclusion extends only to any office which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected. Of course, the purpose of the rule is obvious."

at 815,

"It is true a person might honestly fulfill his duty as a member of the Legislature regarding the appropriations and emoluments of certain offices, without any idea of accepting an employment from that department, and after the Legislature adjourned be employed in that department; but such a construction would open the gates of government and is a direct violation of the Constitution. While it is true the compensation to the Legislature is small, and in most cases perhaps does not pay his actual expenses, but still the constitutional convention thought best to place safeguards around the interests of the state, and thus prevent this-practice which could so easily be abused." (emphasis as shown.)

Defendant Jensen has not met the test of constitutional qualifications for the office of Secretary of State/Lt. Governor, but only those of judicial qualification, and if the organic law of the land is going to remain a protective covenant for the people, this Court has no option but the obvious.

CONCLUSION

In the Utah Constitution, the organic law is plain and clear. It was the intent of the Constitution to provide strong protections for the individual rights against government

intrusion, and it expressly forbade the government from altering or reforming the republican concept without consent of the people. Legislative, Executive, and Judicial actions must remain within the limits placed by the Constitution; that is why the Utah Constitution provided for Article I, Section 27:

"Frequent recurrence to fundamental principles is essential to the security of the individual rights and perpetuity of free government."

It allows this Court the power to correct the inaccurate reasoning that rendered Shields v. Toronto a liberal wedge into the Constitution to alter the plain language of Article VI, Section 7.

In 1964, Chief Justice Henroid strongly dissented and his observations seem almost prophetic to the issue before the bar. Shields v. Toronto at 836.

"Our Constitution states in clear, unambiguous and unmistakably plain, simple English that no member of the legislature, during his term, may aspire to a public office, the emoluments of which are increased by a legislature in which he is a member.

If ever a case were arrived at by judicial and rhetorical prestidigitation, this is that case, which in substance and effect concludes that this Court may determine the eligibility of candidates for office; and that if the Constitution says otherwise, junk the Constitution. . . . The portent of such a conclusion results in lacimonious lament, in the light of our cherished concepts about separation of powers and reverence for Constitutional prerogatives or inhibitions. . . . after this, anyone should be eligible to run for anything if he violates the Constitution a little, but not too much. . . .

After this case, a little increase in the emolument of office will not affect one's eligibility, but a big increase apparently would. The Constitution does not say this, but says just the opposite. . . . To reason that just a little "across-the-board" raise is not actually a raise at all not only strains one's credulity, but suggests that a little pregnancy conveniently but temporarily may be acceptable. . . .

The Constitution does not exempt one where a 1% increase in emolument is involved, nor one with a 10% increase, nor a 100% increase, nor "an across-the-board." It does not say it favors the "little" increase but not the "big" one. Yet this Court says it does without resort to any lexicographical sense or meaning.

The main opinion's unwarranted statement that "the fact that some members of the legislature aspired to the named offices is merely coincidental," is so naive as to merit no analysis, discussion or attempt at answer. It is like saying that if one could have prevented the baby from drowning in the bathtub, its death would be "merely coincidental." In one fell swoop, the amazing pronouncement of the majority says the Constitution means nothing; that it is "merely coincidental," and that the candidate is eligible if morally he is in good standing, otherwise not." (Underlining emphasis added.)

Not to belabor the follies of the Shields v. Toronto, but the facts clearly show the differences at hand.

<u>ISSUE</u>	<u>MORONI JENSEN</u>	<u>SHIELDS V. TORONTO</u>
1. Small increases	NO - (59.25%)	YES - (4.76%)
2. Across-the Board	NO - (1)	YES - (74)
3. Salary Increase Secondary	NO	YES
4. Individual gain	YES- (\$61,508)	YES - (\$2,000)
5. Moderate cost of living	NO - (39.57%)	YES - (2.33%)
6. Ulterior Scheme	YES- (retirement party control)	NO - (none)
7. Induced to run	YES- (\$165,332)	NO - (\$44,000)
8. Time for public reaction	NO - 2 months	YES - 13 months

The organic law of Utah was patterned after the United States Constitution. In 1895, the founding fathers, in their Constitutional proceedings, enacted the mandated resolution from the U.S. Congress. Utah Constitutional Proceedings, Vol. I at page 4,

"The Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution

of the United States and the principles of the Declaration of Independence. . . ."

The United States Constitution Section 6 of Article I.

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments where of shall have been increased during such time. . . ."

This constitutional mandate required that the 1980 United State Congress rescind the salary increase for the United States Secretary of State so that Senator Edward Muskie could be appointed to that office from his senatorial post which, during his term, had been increased with a cost of living allowance. Utah's law contains the same issues. Appellant therefore prays this Court act in accordance to the justice mandated by the Constitution. Further, that Defendant Moroni L. Jensen by being disqualified as a candidate for the office of Lt. Governor/Secretary of State that there was no improper motive in voting for the constitutional creation or the increases which included the emolument for the office of Secretary of State/Lt. Governor. The issue before the Court is a constitutional question and not an issue of personal integrity or impropriety.

Dated this 22nd day of August, 1980.

Respectfully submitted



Lynn A. Jenkins
Pro Se - Appellant

TWENTY-FIFTH DISTRICT: Counties of Cache and Rich -
Charles W. Bullen

TWENTY-SEVENTH DISTRICT: Counties of Carbon, Emery, Grand and
San Juan - Omar B. Bunnell

TWENTY-EIGHTH DISTRICT: Counties of Juab, Millard, Sanpete,
Sevier, Piute, and Wayne - Thorpe A. Waddingham

TWENTY-NINTH DISTRICT: Counties of Beaver, Iron, Washington,
Garfield and Kane - Ivan M. Matheson

AND I FURTHER CERTIFY that by virtue of an election held on
Tuesday, November 5, 1974, at which persons were chosen as members of
said body, for the term of four years then next ensuing, the following are
entitled to serve for the unexpired term, from the several districts, to-wit:

THIRD DISTRICT: County of Salt Lake - Richard J. Carling

FOURTH DISTRICT: County of Salt Lake - Richard C. Howe

NINTH DISTRICT: County of Salt Lake - Warren E. Pugh

TENTH DISTRICT: County of Salt Lake - M. James Macfarlane

ELEVENTH DISTRICT: County of Salt Lake - Edward T. Beck

TWELFTH DISTRICT: County of Salt Lake - Carl E. Pettersson

THIRTEENTH DISTRICT: Counties of Tooele and Salt Lake -
Karl G. Swan

FOURTEENTH DISTRICT: County of Utah - Ernest H. Dean

FIFTEENTH DISTRICT: County of Utah - A. Dean Jeffs

EIGHTEENTH DISTRICT: County of Weber - M. Blaine Peterson

TWENTY-FIRST DISTRICT: Counties of Davis and Weber -
Keith C. Warner

TWENTY-SECOND DISTRICT: County of Davis - Haven J. Barlow

TWENTY-FOURTH DISTRICT: Counties of Box Elder and Cache -
Miles 'Cap' Ferry

TWENTY-SIXTH DISTRICT: Counties of Morgan, Summit, Wasatch,
Daggett, Duchesne and Uintah - Robert F. Clyde

IN WITNESS WHEREOF, I have
hereunto set my hand and caused

Posting of Colors

Under the direction of Captain Ralph Scott Lund, members of the 19th Special Forces Group (Airborne) Utah Army National Guard (commanded by Colonel Gilbert H. Iker) Posted the Colors.

Adjutant General Maurice L. Watts in attendance.

The Honor Guard consisted of the following:

Sgt. Major Edwin Loyle
1st Sgt. Nick Ebbel
Master Sgt. Donald B. Mills
Master Sgt. Steven R. Thunnell
Sgt. Robert J. Poulton

Certification of the Membership of the 1977 General Session of the Utah State Senate was read by the Secretary of the Senate, Sophia C. Buckmiller.

CERTIFICATE OF MEMBERSHIP OF THE 1977 GENERAL SESSION OF THE UTAH STATE SENATE

I, DAVID S. MONSON, Lt. Governor/Secretary of State of the State of Utah, do hereby certify that at a General Election held within and for the State of Utah on Tuesday, November 2, 1976, the following named persons were chosen by the electors as members of the Legislature of the State of Utah, to serve in the Senate, each for the term of four years, beginning January 1, 1977, to-wit:

FIRST DISTRICT: County of Salt Lake - Frances Farley

SECOND DISTRICT: County of Salt Lake - Wilford R. Black

FIFTH DISTRICT: County of Salt Lake - Arthur L. Kimball

SIXTH DISTRICT: County of Salt Lake - Moroni L. Jensen

SEVENTH DISTRICT: County of Salt Lake - K. S. Carnaby

EIGHTH DISTRICT: County of Salt Lake - Fred W. Finlinson

SIXTEENTH DISTRICT: County of Utah - Karl N. Snow, Jr.

SEVENTEENTH DISTRICT: County of Utah - Robert O. Bowen

NINETEENTH DISTRICT: County of Weber - Darrell G. Renstrom

TWENTIETH DISTRICT: County of Weber - Kenneth Pace

TWENTY-FIRST DISTRICT: County of Uintah - Paul M. Bangerter

WHEREAS, he worked for the enhancement of the arts, the enrichment of education, and the sound and orderly governance of the state.

NOW, THEREFORE, BE IT RESOLVED, by the General Session of the 43rd Legislature of the State of Utah, the Governor concurring therein, that the untimely death of B. B. Smith is lamented, and sincere condolences are extended to his wife Lorraine, his children Michael, Sydney Rae, and Carol Sue, and his mother Mrs. R. T. Smith, and the magnitude of his service to the state and the depth of loss at his passing are recognized.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Lorraine Smith.

Approved March 19, 1979.

S.J.R. No. 7

(Passed March 8, 1979)

REVISION OF EXECUTIVE ARTICLE

A JOINT RESOLUTION PROPOSING TO AMEND ARTICLE VII OF THE CONSTITUTION OF THE STATE OF UTAH; RELATING TO THE EXECUTIVE DEPARTMENT; AMENDING SECTION 1, PROVIDING FOR A LIEUTENANT GOVERNOR AND DELETING THE OFFICE OF SECRETARY OF STATE AS AN ELECTED CONSTITUTIONAL OFFICER AND PROVIDING FOR RESIDENCE OF OFFICERS OF EXECUTIVE DEPARTMENT AND LOCATION OF PUBLIC RECORDS; AMENDING SECTION 2, PROVIDING FOR ELECTION OF STATE OFFICERS BY VOTERS RATHER THAN ELECTORS AND PROVIDING THAT THE CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR FROM THE SAME POLITICAL PARTY BE ELECTED JOINTLY; AMENDING SECTION 3, INSERTING LIEUTENANT GOVERNOR FOR SECRETARY OF STATE, PROVIDING FOR QUALIFICATIONS OF GOVERNOR, LIEUTENANT GOVERNOR, AND ATTORNEY GENERAL, AND REMOVING RESTRICTIONS AGAINST THE STATE AUDITOR OR STATE TREASURER BEING ELIGIBLE TO SUCCEED THEMSELVES; AMENDING SECTION 5, PROVIDING THAT THE EXECUTIVE POWER OF THE STATE SHALL BE VESTED IN THE GOVERNOR; AMENDING SECTION 8, REWORDING THE LANGUAGE USED TO ESTABLISH THE GOVERNOR'S VETO PROCEDURE AND INCREASING THE TIME ALLOWED THE GOVERNOR TO VETO BILLS AND PROVIDING FOR THE LEGISLATURE TO CALL ITSELF BACK IN SESSION AFTER ADJOURNMENT TO CONSIDER VETOED BILLS; AMENDING SECTION 11, REWORDING THE LANGUAGE USED TO ESTABLISH SUCCESSION TO THE OFFICE OF GOVERNOR IN THE EVENT OF THE DEATH, IMPEACHMENT, RESIGNATION, REMOVAL, OR DISABILITY OF THE GOVERNOR AND ESTABLISHING PROCEDURES CONCERNING SUCH DISABILITY; AMENDING SECTION 13, DELETING THE BOARD OF STATE PRISON COMMISSIONERS AND CHANGING THE COMPOSITION OF THE BOARD OF EXAMINERS AND THE TYPES OF CLAIMS IT MAY CONSIDER; AMENDING SECTION 16, DELETING THE DUTIES OF THE SECRETARY OF STATE AND PROVIDING THE DUTIES OF THE LIEUTENANT GOVERNOR; AMENDING SECTION 17, PROVIDING FOR DUTIES OF THE STATE AUDITOR; AMENDING SECTION 18, MODIFYING THE DUTIES OF THE ATTORNEY GENERAL; AMENDING SECTION 20, INSERTING THE LIEUTENANT GOVERNOR FOR SECRETARY OF STATE AND MODIFYING PAYMENT PROVISIONS FOR COMPENSATION AND TRAVEL EXPENSES OF STATE OFFICERS; AMENDING SECTION 23, REMOVING CERTAIN RESTRICTIONS ON THE GOVERNOR TO RUN FOR UNITED STATES SENATE; AMENDING SECTIONS 10, 12, 21, AND 22, DELETING THE SECRETARY OF STATE; DELETING SECTIONS 14, 15, AND 24; NUMBERING OR RENUMBERING VARIOUS SECTIONS, MODERNIZING CERTAIN MISCELLANEOUS LANGUAGE, AND REMOVING MASCULINE REFERENCES; AND PROVIDING AN EFFECTIVE DATE.

Justice J. Allan Crockett administered the oath of office to Kay S. Cornaby.

PRESIDENT MORONI L. JENSEN

Mr. Justice Crockett, Mr. Lieutenant Governor Monson, Fellow Senators and Guests. Thank you for this great honor. I assure you that I do not accept it lightly. I am fully aware of the responsibility that is associated with the office.

We have been made increasingly aware of the public's concern over the operation of government on all levels - federal, state, county and city. Many of the criticisms are legitimate. It is your challenge and mine to restore the faith and trust of our citizenry in all levels of government, with particular emphasis on our state operation.

Governor Matheson has indicated his intention to make his administration "a citizen administration." We can assist him in his objectives because we are "citizen legislators" and as such should remember that we are elected to do their business in a thoughtful, dignified and prayerful manner. They, the Utah Citizens, have entrusted us with a great responsibility. Let us keep their welfare in mind constantly.

I have researched the remarks of past presidents of the Utah State Senate including the four who sit in these chambers today; Senators Dean, Pugh, Barlow and Waddingham. Their general theme, as mine will be, is to solicit your cooperation in assessing all proposals with the common rule of "public interest."

We express thanks to our senator friends of last session who are not with us this session. They have each contributed much to this deliberative body. We welcome new members to the Senate and offer our hand of fellowship to help you with your new experience and responsibility.

May I close with this quotation: "A nation is made great not by its acres, but by the men who cultivate them; not by its great forests, but by the men who use them. America was a great land when Columbus discovered it. Americans have made it a great Nation." Utahns have made Utah a great state and we must keep it a great state.

Thank you.

On motion of Senator Bunnell, the Senate expressed its appreciation to Justice J. Allan Crockett for taking time from his busy schedule to administer the oath.

Sponsored by the S.J. Quinley Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

On motion of Senator Bunnell, the Senate expressed its appreciation to Elder Gordon B. Hinckley for his beautiful and inspiring prayer at the opening of the 42nd Legislature.

to be affixed the Great Seal of the State of Utah at Salt Lake City, this Tenth Day of January, 1977.

David S. Monson
Lt. Governor/Secretary of State

Justice J. Allan Crockett of the Supreme Court administered the oath of office to the newly-elected senators.

On motion of Senator Bunnell the Senate voted to proceed with its organization and nominate and elect its President.

Lt. Governor/Secretary of State David S. Monson declared nominations for the office of president were in order.

On motion of Senator Ferry the rules were suspended, nominations closed and Moroni L. Jensen was elected President of the Senate by acclamation.

Senators Beck, Howe and Pugh escorted the newly elected President to the podium.

Justice J. Allan Crockett administered the oath of office to President elect Moroni L. Jensen.

President Jensen indicated to members of the Senate a Special Order of Business to be considered at this time.

SPECIAL ORDER OF BUSINESS

COMMUNICATION FROM THE GOVERNOR

January 7, 1977

Dear Senator Jensen:

In accordance with Section 20-1-5 of the Utah Code Annotated, 1953 on the Governor's power of appointment should a vacancy occur in the office of senator in the State Legislature, I, Scott M. Matheson, Governor, hereby appoint:

Kay S. Cornaby
3791 Hermes Drive
Salt Lake City, Utah 84117

as State Senator for Senate District Seven to fill the vacancy created by the resignation of Douglas G. Bischoff.

Be it resolved by the Legislature of the State of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Article VII of the Constitution of the State of Utah to read:

Sec. 1. The elective constitutional officers of the Executive Department shall consist of Governor, ~~[Secretary of State]~~ Lieutenant Governor, State Auditor, State Treasurer and Attorney General, each of whom shall hold ~~[his]~~ office for four years, beginning on the first Monday of January next after ~~[his]~~ election, ~~[except that the terms of office of those elected at the first election shall begin when the State shall be admitted into the Union, and shall end on the first Monday in January, A.D. 1901].~~ The officers of the Executive Department, during their terms of office, shall reside ~~[at the seat of government, where they]~~ within the State and shall keep the public records, books and papers as provided by law. They shall perform such duties as are prescribed by this Constitution and as ~~[may be prescribed]~~ provided by law.

Sec. 2. The officers provided for in section one of this article shall be elected by the qualified ~~[electors]~~ voters of the state at the time and place of voting for members of the Legislature, and the persons respectively having the highest number of votes cast for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the Legislature, at its next ~~[regular]~~ session, shall elect forthwith by joint ballot one of such persons for said office.

In the election, the names of the candidates for Governor and Lieutenant Governor for each political party shall appear together on the ballot, and the votes cast for a candidate for Governor shall be considered as also cast for the candidate for Lieutenant Governor.

Sec. 3. ~~[No person shall]~~ To be eligible [to] for the office of Governor or [Secretary of State] Lieutenant Governor [unless he] a person shall have attained [to] the age of thirty years at the time of [his] election. [nor to] To be eligible for the office of Attorney General [unless he] a person shall, at the time of election, have attained the age of twenty-five years, be [at the time of his election, and have been] admitted to practice [in] before the Supreme Court [of the Territory or] of the State of Utah [nor unless he shall be] and be in good standing at the bar [at the time of his election]. No person shall be eligible to any of the offices provided for in section one of this article, unless at the time of [his] election [he shall be] that person is a qualified [elector,] voter and shall have been a resident citizen of the State [or Territory] for five years next preceding [his] election. [The State Auditor and State Treasurer shall be ineligible to election as their own successors.]

Sec. 4. The Governor shall be Commander-in-Chief of the military forces of the State, except when they shall be called into the service of the United States. ~~[He]~~ The Governor shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

Sec. 5. The executive power of the State shall be vested in the Governor, who shall see that the laws are faithfully executed ~~[he]~~. The Governor shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the officers of the

Executive Department, and from the officers and managers of State Institutions upon any subject relating to the condition, management, and expenses of their respective offices and institutions, and at any time when the ~~[Legislative Assembly]~~ Legislature is not in session, may, if ~~[he deem it]~~ deemed necessary, appoint a committee to investigate and report to ~~[him]~~ the Governor upon the condition of any executive office or State Institution. ~~[He]~~ The Governor shall communicate by message the condition of the State to the Legislature at every regular session, and recommend such measures as ~~[he]~~ may ~~[deem]~~ be deemed expedient.

Sec. 6. On extraordinary occasions, the Governor may convene the Legislature by proclamation, in which shall be stated the purpose for which the Legislature is to be convened, and it shall transact no legislative business except that for which it was especially convened, or such other legislative business as the Governor may call to its attention while in session. The Legislature, however, may provide for the expenses of the session and other matters incidental thereto. The Governor may also by proclamation convene the Senate in extraordinary session for the transaction of executive business.

Sec. 7. In case of a disagreement between the two houses of the Legislature at any special session, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as ~~[he]~~ the Governor may think proper ~~[:-Provided,]~~ if it ~~[be]~~ is not beyond the time fixed for the convening of the next Legislature.

Sec. 8. Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor; if ~~[he approve]~~ approved, the Governor ~~[he]~~ shall sign it, and thereupon it shall become a law; but if ~~[he do not approve]~~ disapproved, ~~[he]~~ the bill shall ~~[return it with his]~~ be returned with the Governor's objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If ~~[after such]~~ upon reconsideration ~~[it]~~ the bill again passes both houses by a yea and nay vote of two-thirds of the members elected to each house, it shall become a law. ~~[notwithstanding the Governor's objections. If any bill be not returned within five days after it shall have been presented to him, (Sunday and the day on which he received it excepted,) the same shall be a law in like manner as if he had signed it, unless the Legislature by its final adjournment prevent such return, in which case it shall be filed with his objections in the office of the Secretary of State within ten days after such adjournment (Sundays excepted) or become a law. If any bill presented to the Governor contains several items of appropriations of money, he may object to one or more such items, while approving other portions of the bill; in such case he shall append to the bill at the time of signing it, a statement of the item or items which he declines to approve, together with his reasons therefor, and such item or items shall not take effect unless passed over the Governor's objection as in this section provided.]~~ If any bill is not returned by the Governor within ten days after it has been presented to the Governor, Sunday and the day it was received excepted, it shall become a law without a signature; but if legislative adjournment prevents return of the bill, it shall become a law unless the Governor within twenty days after adjournment files the objections thereto with such officers as provided by law. The Governor may disapprove any item of appropriation contained in any bill while approving other portions of the bill; and in such case the Governor shall append to the

bill at the time of signing it a statement of the item or items which are disapproved, together with the reasons therefor, and such item or items shall not take effect unless passed over the Governor's objections as provided in this section. If the Governor disapprove any bill or item of appropriation after the adjournment sine die of any session of the Legislature, the presiding officer of each house shall poll the members of that house on the matter of reconvening the Legislature. If two-thirds of the members of each house are in favor of reconvening, the Legislature shall be convened in a session not to exceed five calendar days and at a time set jointly by the presiding officer of each house, solely for the purpose of reconsidering the bill or item of appropriation disapproved. If upon reconsideration, the bill or item of appropriation again passes both houses of the Legislature by a ye and nay vote of two-thirds of the members elected to each house, the bill shall become law or the item of appropriation shall take effect.

Sec. 9. When any State or district office shall become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill the same by granting a commission, which shall expire at the next election, and upon qualification of the person elected to such office.

Sec. 10. The Governor shall nominate, and by and with consent of the Senate, appoint all State and district officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If, during the recess of the Senate, a vacancy [occurs] occurs in any State or district office, the Governor shall appoint some qualified person to discharge the duties thereof until the next meeting of the Senate, when [he] the Governor shall nominate some person to fill such office. If the office of [Secretary of State] Lieutenant Governor, State Auditor, State Treasurer or Attorney General be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, from the same political party of the removed person; and the appointee shall hold [his] office until [his] a successor shall be elected and qualified, as [may be by law] provided by law.

Sec. 11. [In case of the death of the Governor, or his impeachment, removal from office, inability to discharge the duties of his office, resignation, or absence from the State, the powers and duties of said office shall devolve upon the Secretary of State, until the disability shall cease, or until the next general election, when the vacancy shall be filled by election. If, during a vacancy in the office of Governor, the Secretary of State resign, die or become incapable of performing the duties of the office, or be displaced, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled or the disability cease. While performing the duties of the Governor as in this section provided, the Secretary of State, or the President pro tempore of the Senate, as the case may be, except in case of temporary disability, or absence from the State, shall be entitled to the salary and emoluments of the Governor.] In case of the death of the Governor, impeachment, removal from office, resignation, or disability to discharge the duties of the office, or in case of a Governor-elect who fails to take office, the powers and duties of the Governor shall devolve upon the Lieutenant Governor until the disability ceases or until the next general election, when the vacancy shall be filled by election. If, during a vacancy in the office of

Governor, the Lieutenant Governor resigns, dies, is removed, or becomes incapable of performing the duties of the office, the President of the Senate shall act as Governor until the vacancy is filled or disability ceases. If in this case the President of the Senate resigns, dies, is removed, or becomes incapable of performing the duties of the office, the Speaker of the House shall act as Governor until the vacancy is filled or disability ceases. While performing the duties of the Governor as provided in this section, the Lieutenant Governor, the President of the Senate, or the Speaker of the House, as the case may be, shall be entitled to the salary and emoluments of the Governor, except in cases of temporary disability.

The disability of the Governor or person acting as Governor shall be determined by either a written declaration transmitted to the Supreme Court by the Governor stating an inability to discharge the powers and duties of the office or by a majority of the Supreme Court on joint request of the President of the Senate and the Speaker of the House of Representatives. Such determination shall be final and conclusive. Thereafter, when the Governor transmits to the Supreme Court a written declaration that no disability exists, the Governor shall resume the powers and duties of the office unless the Supreme Court, upon joint request of the President of the Senate and the Speaker of the House of Representatives, or upon its own initiative, determines that the Governor is unable to discharge the powers and duties of the office. The Lieutenant Governor shall then continue to discharge these powers and duties as acting Governor. The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

Sec. 12. Until otherwise provided by law, the Governor, Justices of the Supreme Court and Attorney General shall constitute a Board of Pardons, a majority of whom, including the Governor, upon such conditions[, and with such limitations and restrictions as they deem proper] as may be established by the Legislature, may remit fines and forfeitures, commute punishments, and grant pardons after convictions, in all cases except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except after a full hearing before the Board, in open session, after previous notice of the time and place of such hearing has been given. The proceedings and decisions of the Board, with the reasons therefor in each case, together with the dissent of any member who may disagree, shall be reduced to writing, and filed with all papers used upon the hearing, in the office of [the Secretary of State] such officer as provided by law.

The Governor shall have power to grant respites or reprieves in all cases of conviction for offenses against the State, except treason or conviction on impeachment; but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and such Board, at such session, shall continue or determine such respite or reprieve, or they may commute the punishment, or pardon the offense as herein provided. In case of conviction for treason, the Governor shall have the power to suspend execution of the sentence, until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon, or commute the sentence, or direct its execution; [he] and the Governor shall communicate to the Legislature at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report,

stating the name of the convict, the crime for which ~~[he was]~~ convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the Board made thereto.

Sec. 13. ~~[Until otherwise provided by law, the Governor, Secretary of State and Attorney General shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall, also,] Until otherwise provided by law, the Governor, Attorney General, and State Auditor shall constitute a Board of Examiners, with power to examine all such claims against the State as provided by law [except salaries or compensation of officers fixed by law], and perform such other duties as [may be prescribed] provided by law; and no such claim against the State [except for salaries and compensation of officers fixed by law.] shall be passed upon by the Legislature without having been considered and acted upon by the [said] Board of Examiners.~~

~~[Sec. 14. Until otherwise provided by law, the Governor, State Treasurer and State Auditor shall constitute a Board of Insane Asylum Commissioners. Said Board shall have such supervision of all matters connected with the State Insane Asylum as may be provided by law.]~~

~~[Sec. 15. Until otherwise provided by law, the Governor, Attorney General and Superintendent of Public Instruction shall constitute a Board of Reform School Commissioners. Said Board shall have such supervision of all matters connected with the State Reform School as may be provided by law.]~~

Sec. ~~[16]~~ 14. ~~[The Secretary of State shall keep a record of the official acts of the Legislature and Executive Department of the State, and, when required, shall lay the same and all matters relative thereto before either branch of the Legislature, and shall perform such other duties as may be provided by law.] The Lieutenant Governor shall serve on all boards and commissions in lieu of the Governor whenever so designated by the Governor, shall perform such duties as may be delegated by the Governor, and shall perform such other duties as may be provided by law.~~

Sec. ~~[17]~~ 15. The State Auditor shall ~~[be Auditor]~~ perform financial post audits of Public Accounts, except as otherwise provided by this Constitution, and the State Treasurer shall be the custodian of public moneys~~[7]~~; and each shall perform such other duties as ~~[may be]~~ provided by law.

Sec. ~~[18]~~ 16. The Attorney General shall be the legal adviser of the State officers, except as otherwise provided by this Constitution, and shall perform such other duties as ~~[may be]~~ provided by law.

Sec. ~~[19]~~ 17. The Superintendent of Public Instruction shall perform such duties as ~~[may be]~~ provided by law.

Sec. ~~[20]~~ 18. The Governor, ~~[Secretary of State]~~ Lieutenant Governor, State Auditor, State Treasurer, Attorney General and such other State and District officers as ~~[may be]~~ provided for by law, shall receive for their services ~~[monthly,]~~ a compensation as fixed by law.

The compensation for said officers as provided in all laws enacted pursuant to this Constitution, shall be in full for all services rendered by said officers, respectively, in any official capacity or employment during their respective terms of office. No such officer shall receive for the performance of any official duty any fee for ~~his own~~ personal use, but all fees fixed by law for the performance by either of them of any official duty, shall be collected in advance and deposited with the State Treasurer monthly to the credit of the State. The Legislature may provide for the payment of actual and necessary expenses of said officers while traveling ~~in the State~~ in the performance of official ~~duty~~ duties.

Sec. ~~[21]~~ 19. All grants and commissions shall be in the name and by the authority of the State of Utah, sealed with the Great Seal of the State, signed by the Governor, and countersigned by ~~(the Secretary of State)~~ such officer as provided by law.

Sec. ~~[22]~~ 20. ~~[There shall be a seal of the State, which shall be kept by the Secretary of State, and used by him officially. Said seal shall be called "The Great Seal of the State of Utah." The present seal of the Territory of Utah shall be the seal of the State until otherwise provided by law.] There shall be a seal of the State, which shall be called "The Great Seal of the State of Utah," and shall be kept by such officer as provided by law.]~~

Sec. ~~[23]~~ 21. No person, while holding any office under the United States' government, shall hold any office under the State government of Utah, ~~and the Governor shall not be eligible for election to the Senate of the United States during the term for which he shall have been elected Governor.]~~

~~[Sec. 24. Notwithstanding any general or special provisions of the Constitution the legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including, but not limited to the financing thereof. In the exercise of the powers hereby conferred the legislature shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the legislature so to do would be impracticable or would admit of undue delay.]~~

Section 2. The secretary of state is directed to submit this proposed amendment to the electors of the State of Utah at the next general election in the manner so provided by law.

Section 3. Article VII, Constitution of Utah, shall take effect January 1, 1981, except as follows: all candidates for the state offices provided in this amendment shall stand for election to these offices under the provisions of this amendment during the election year of 1984.

STATE OFFICERS AND EMPLOYEES

CHAPTER 201

H. B. No. 127

(Passed March 12, 1975. In effect July 1, 1975)

SICK LEAVE INCENTIVE

An Act Enacting Section 67-13-4.1, Utah Code Annotated 1953; Relating to Rules and Regulations for Personnel; Providing that those Rules and Regulations Shall Include Provisions Establishing an Incentive to Reduce Sick Leave Abuse; Providing the Manner in Which that Incentive Shall Operate; and Providing an Effective Date.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section enacted.

Section 67-13-4.1, Utah Code Annotated 1953, is enacted to read:

67-13-4.1. Incentive to reduce sick leave abuse—Operational procedure.

As an incentive to reduce sick leave abuse, those rules and regulations for personnel administration promulgated pursuant to section 67-13-4 shall include procedures whereby, after an employee has accumulated 18 unused sick leave days, any sick leave days accumulated during any calendar year in excess of 8, at the option of that employee, may be converted to his schedule vacation period the following year or at the time of retirement may be converted into paid-up health and medical insurance on the basis of the payment by the employing department of one month's premium for each day of accumulated sick leave to a supplemental program developed by the Utah state retirement board.

Section 2. Effective date.

This act shall take effect July 1, 1975.

Approved March 19, 1975.

CHAPTER 202

H. B. No. 140

(Passed March 4, 1975. In effect May 13, 1975)

OFFICE OF LIEUTENANT GOVERNOR

An Act Relating to the Office of Lieutenant Governor; Providing for Creation of the Office; Designating the Duties of that Office; and Providing That Office be Held Ex Officio by Secretary of State.

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Be it enacted by the Legislature of the State of Utah:

Section 1. Creation of the office of lieutenant governor.

There is hereby created a state office which shall be known as the lieutenant governor. This office shall be held *ex officio* by the secretary of state.

Section 2. Functions and duties.

The lieutenant governor shall have those functions and exercise those duties presently delegated to the secretary of state by statute, but the secretary of state shall continue to function in his constitutional duties and responsibilities.

Section 3. Additional duties.

The lieutenant governor shall serve on all boards and commissions in lieu of the governor whenever so designated by the governor, shall perform such duties as may be delegated to him by the governor, and shall perform such other duties as may be provided by law.

Approved March 17, 1975.

CHAPTER 203

H. B. No. 246

(Passed March 13, 1975. In effect July 1, 1975)

EXECUTIVE COMPENSATION

An Act Amending Section 67-8-13, Utah Code Annotated 1953, as Enacted by Chapter 182, Laws of Utah 1971, as Amended by Chapter 183, Laws of Utah 1973; Relating to State Offices and Employees; Providing for Increased Salaries for Elected Officers; and Providing an Effective Date.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 67-8-13, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1971, as amended by Chapter 183, Laws of Utah 1973, is amended to read:

67-8-13. Salary schedule.

The annual salaries of the following elected and appointed state officers are fixed as follows:

STATE OFFICER**ANNUAL SALARY**

Governor	\$35,000
Justices of the Supreme Court	30,000
Attorney General	25,000
Secretary of State	22,000
State Auditor	21,000
State Treasurer	21,000
District Court Judges	27,500
Juvenile Court Judges	27,500

Section 2. Effective date.

This act shall take effect July 1, 1975.

Approved March 24, 1975.

TRANSPORTATION

CHAPTER 204

H. B. No. 22

(Passed March 6, 1975. In effect July 1, 1975)

DEPARTMENT OF TRANSPORTATION

An Act Amending Section 2-1-12, Utah Code Annotated 1953, as amended by Chapter 175, Laws of Utah 1967, as Amended by Chapter 199, Laws of Utah 1969, Section 2-1-2, Utah Code Annotated 1953, as Amended by Chapter 52, Laws of Utah 1957, as Amended by Chapter 1, Laws of Utah 1965, as Amended by Chapter 175, Laws of Utah 1967, Sections 63-11-39 and 63-11-40, Utah Code Annotated 1953, as Enacted by Chapter 200, Laws of Utah 1969, and Section 63-33-3, Utah Code Annotated 1953, as Enacted by Chapter 175, Laws of Utah 1967, as Amended by Chapter 199, Laws of Utah 1969; Relating to Transportation Systems in the State of Utah; Providing a Short Title; Providing Definitions of Terms; Creating a Department Responsible for Statewide Highway, Nautical and Aeronautical, and Other Transportation Planning, Research and Design, Construction, Maintenance, Security and Safety, Relating to Those Transportation Systems; Transferring All of the Functions, Powers, Duties, Rights, Responsibilities and Obligations of the State Road Commission, the State Department of Highways, the State Division of Aeronautics, the State Board of Aeronautics, and the Passenger Tramway Safety Board, Together With Certain Functions, Powers, Duties, Rights and Responsibilities of the

place for hearing shall be given to the aggrieved employee at least five days before the date set for hearing which shall be set not later than 15 days after submission of the grievance. Step 4 evidentiary and procedural rules and rights with respect to representation, witnesses and the recordings are applicable at such hearings.

The hearing officer shall render a written decision supported by findings of fact and conclusions of law within 10 working days after the hearing. The decision of the hearing officer is binding upon the aggrieved employee and the state and its agencies, but nothing herein shall be construed to limit the right of appeal to an appropriate court of law.

Approved March 17, 1977.

CHAPTER 263

S. B. No. 175

(Passed March 10, 1977. In effect May 10, 1977)

EXECUTIVE COMPENSATION

AN ACT AMENDING SECTION 67-8-13, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 182, LAWS OF UTAH 1971, AS AMENDED BY CHAPTER 183, LAWS OF UTAH 1973, AS AMENDED BY CHAPTER 203, LAWS OF UTAH 1975, SECTION 67-8-13.2, AS ENACTED BY CHAPTER 182, LAWS OF UTAH 1971, AS AMENDED BY CHAPTER 23, LAWS OF UTAH 1972, AS AMENDED BY CHAPTER 183, LAWS OF UTAH 1973, AS AMENDED BY CHAPTER 9, LAWS OF UTAH 1976, FIRST SPECIAL SESSION, AND SECTION 67-8-13.7, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 224, LAWS OF UTAH 1969, AS AMENDED BY CHAPTER 182, LAWS OF UTAH 1971; RELATING TO STATE OFFICERS AND EMPLOYEES; PROVIDING FOR INCREASED SALARIES FOR CERTAIN ELECTED OR APPOINTED STATE OFFICERS AND CERTAIN APPOINTED STATE EMPLOYEES; PROVIDING FOR ADJUSTMENTS OF CERTAIN OF THESE SALARIES IN SPECIFIED CIRCUMSTANCES; AND CLARIFYING THE REPORTING RESPONSIBILITY OF THE EXECUTIVE COMPENSATION COMMISSION.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 67-8-13, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1971, as amended by Chapter 183, Laws of Utah 1973, as amended by Chapter 203, Laws of Utah 1975, is amended to read:

67-8-13. Annual salaries of elected state officers.

(1) The annual salaries of the following elected ~~and appointed~~ state officers are fixed as follows:

STATE OFFICER	ANNUAL SALARY
Governor	[\$35,000] \$40,000
Justices of the Supreme Court	30,000]
Attorney General	[25,000] 30,000
Secretary of State	[22,000] 26,500
State Auditor	[21,000] 26,500
State Treasurer	[21,000] 26,500
District Court Judges	27,500]
Juvenile Court Judges	27,500]

Section 2. Section amended.

Section 67-8-13.2, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1971, as amended by Chapter 23, Laws of Utah 1972, as amended by Chapter 183, Laws of Utah 1973, as amended by Chapter 9, Laws of Utah 1975, First Special Session, is amended to read:

67-8-13.2. Wage and salary classification plan for appointed officers—Administration by board of examiners—Application to legislative employees—Consultation with executive compensation commission.

A wage and salary classification plan for appointed officers of the [state] State of Utah is adopted as follows:

(1) The state officers covered and their grade levels are:

State Officer	Grade	Level
Adjutant General		34
Chairman, Industrial Commission	[34]	32
Chairman, Liquor Commission	31]	
Chairman, Public Service Commission	[33]	34
Chairman, Tax Commission	[33]	34
Commissioner, Agriculture		31
Commissioner, Financial Institutions		31
Commissioner, Higher Education		39
Commissioner, Industrial	[34]	32
Commissioner, Insurance		31
Commissioner, Liquor	31]	
Commissioner, Public Safety		34
Commissioner, Public Service	[33]	34
Commissioner, Tax		33
Director, Aging	27]	
Director, Building Board		33
Director, Business Regulation		34
Director, Civil Defense	[26]	27
Director, Corrections	31]	
Director, [Dept.] Department of Social Services		36
Director, Development Services		33
Director, Expositions	25]	
Director, Family Services	31]	
Director, Finance		37

[Director, Fine Arts	26]	
[Director, Wildlife Resources	33]	
Director, Transportation		36
[Director, State History	27]	
[Director, Indian Affairs	26]	
[Director, Industrial Promotion	33]	
[Director, Lands	31]	
Director, Libraries		30
[Director, Liquor Commission	31]	
[Director, Mental Health	35]	
Director, Natural Resources	[34]	35
[Director, Oil and Gas Conservation	31]	
[Director, Parks & Recreation	30]	
[Director, Public Health	39]	
Director, Retirement	[39]	35
Director, Systems Planning & Computing		38
[Director, Travel Development	28]	
[Director, Water Resources	33]	
[Director, Water Rights	34]	
Superintendent of Public Instruction		38
State Planning Co-ordinator		31
[Director, Alcoholism & Drugs	30]	
Director, Community Affairs		30
State Fire Marshal	[26]	29

(2) The board of examiners shall administer the wage and salary classification plan and shall fix the salary of each officer within the specified ranges in accordance with the following principles:

(a) The salary grade levels specified in subsection (1) shall coincide with the salary grade levels established in the pay plan for classified employees. The number of salary steps to be used in each salary range shall be set by the board of examiners. ~~[Whenever the classified pay plan is adjusted due to cost of living factors or salary surveys, the executive compensation plan shall also be adjusted in like amounts.]~~ All within-grade step increases shall be based upon quality and quantity of full-time work or the full-time equivalent of it, or in relation to the proportion of full-time pay an employee receives if he works regularly on a part-time basis. Executives in their first year of continuous service who have completed at least six months of satisfactory employment are eligible for a 3.5% within-grade step increase on the recommendation of the governor or appropriate organizational head. Satisfactory service will be shown by a rating of standard or higher on a performance appraisal, made within the last year, reviewed by the executive compensation commission, and filed with the office of the governor. Otherwise, under normal conditions salary advancements shall be considered only at twelve-month intervals. A performance appraisal filed with the office of the governor and rated within the last year must show that the executive is rated standard or higher before a salary advancement will be recommended to the board of examiners. No employee shall be eligible for a salary advancement who has received a salary advancement during the twelve-month interval

immediately preceding the date of which the new salary advancement would become effective, except that one extra salary adjustment of 3.5% may be made not oftener than once in three years for outstanding service or to correct an inequity or for special conditions, but not for more than one of these. Such increases must be justified fully in writing and will be reviewed by the office of the governor and the board of examiners for their consideration. No officer shall receive a salary advancement of more than 3.5% in the salary range for his position at one time.

(b) Salary advancements shall be made effective at the beginning of a pay period. When the rate of pay of an officer prior to the effective date of this act is lower than the minimum prescribed for his class in the wage and classification schedule, the rate shall be increased to such minimum. When such rate of pay for an officer is between the minimum and the maximum rates of the range prescribed for his class but does not coincide with any intermediate step in such range in the wage and classification schedule, his salary shall be fixed at the next higher step of the range for his class.

(c) All officers covered by the wage and salary classification plan shall have their performance on the job appraised at least once each year by the office of the governor, or by the supervisor of the officer. Such appraisal is to be forwarded to the office of the governor for retention and reference when needed. Officers are to be rated objectively according to their performance on the job in such executive activities as planning, organizing, leading, and controlling the activities and production of others. Political considerations shall not be entertained. Officers are to be given a summary rating in one of the three following categories:

(i) "Below Standard" or "Far Below Standard." All officers so classified would continue at their present pay. Those rated "Far Below Standard," would be served notice they are being placed on "Conditional Status" or that dismissal is pending.

(ii) "Standard" or "Above Standard." All officers so classified would be eligible under current salary increase policy to advance on the salary schedule.

(iii) "Outstanding." Each officer having been classified, would be eligible to advance one step on the salary schedule. Such an officer may have received a merit salary advancement increase in the same year. The outstanding increase would not preclude an earned merit salary advancement. Performance appraisals for officers shall be written and filed with the office of the governor to assure that such appraisals may be reviewed prior to consideration for a salary adjustment.

(d) The provisions of these administrative procedures are intended to apply to legislative employees whose salaries are set by the legislature. However, substituting for the administrative actions outlined above, the appropriate legislative chain of command will be responsible for

rating its own employees and for recommending and approving specific salary increases. Records of performance, appraisals and requests for salary increases, along with the decisions relating to their disposition, will be routed to the joint operations committee of the legislature for filing.

(3) It is the intention of the legislature that the board of examiners in administering this plan shall consult with and consider the recommendations of the executive compensation commission.

Section 3. Section amended.

Section 67-8-13.7, Utah Code Annotated 1953, as enacted by Chapter 224, Laws of Utah 1969, as amended by Chapter 182, Laws of Utah 1971, is amended to read:

67-8-13.7. Executive compensation commission—Duties.

It ~~shall be~~ is the duty of the commission:

(1) To make studies and formulate recommendations concerning the wage and salary classification plan and its administration so that the plan will be reflective of current conditions at all times. In so doing, the commission shall continue to consider educational requirements, experience, responsibility, accountability for funds and staff, comparisons with wages paid in other comparable public and private employment within the ~~[state]~~ State of Utah and states similarly situated, and other factors generally used in similar comprehensive wage and salary classification plans or which may be helpful in determining salaries and other emoluments for state officers.

(2) To consult and advise with and make recommendations to the board of examiners regarding the plan, its administration, and the position of any officer in the plan.

(3) To submit to the ~~[joint budget and audit committee of the]~~ appropriate interim study committee of the legislature not later than sixty days prior to the commencement of each general and budget session of the legislature the following:

(a) A report briefly summarizing the activities of the commission during the calendar year immediately prior to the session.

(b) Recommendations of the commission concerning revisions, modifications, or changes, if any, which should be made in the plan, the method of administration, or the classification of any state officer under the plan.

(c) Specific recommendations with respect to each elected state officer specified in section 67-8-13 concerning adjustments, if any, which the commission feels should be made by the legislature in the salary or other emoluments of office of such elected officers so that all executive officers, both elected and appointed, will continue to receive equitable and consistent treatment, regardless of whether salaries are fixed directly by the

legislature or by the board of examiners under the wage and salary classification plan.

Approved March 20, 1977.

CHAPTER 264

S. B. No. 194

(Passed March 9, 1977. In effect May 10, 1977)

STATE AUDITOR AMENDMENTS

AN ACT REPEALING AND REENACTING SECTION 67-3-1, UTAH CODE ANNOTATED 1953, AS AMENDED BY CHAPTER 136, LAWS OF UTAH 1955, AS AMENDED BY CHAPTER 105, LAWS OF UTAH 1959, AS AMENDED BY CHAPTER 222, LAWS OF UTAH 1969; RELATING TO THE POSITION OF STATE AUDITOR; AND PROVIDING FOR FUNCTIONS AND DUTIES OF THE STATE AUDITOR.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section repealed and reenacted.

Section 67-3-1, Utah Code Annotated 1953, as amended by Chapter 136, Laws of Utah 1955, as amended by Chapter 105, Laws of Utah 1959, as amended by Chapter 222, Laws of Utah 1969, is repealed and reenacted to read:

67-3-1. State auditor's authority—General duties—Not to audit work performed by him prior to becoming auditor.

(1) The state auditor shall be the auditor of public accounts and as such shall be independent of any executive or administrative officers of the state. He shall not be limited by the provisions of section 63-2-15 in the selection of his personnel or in the determination of the reasonable and necessary expenses of his office.

(2) The state auditor has the following functions and duties:

(a) To examine and certify to annually in respect to each fiscal year, financial statements showing the condition of the state's finances, the revenues received or accrued, expenditures paid or accrued, and the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions and the cash balances of the funds in the custody of the state treasurer. The department of finance shall prepare the foregoing financial statements and other reports in accordance with legal requirements and generally-accepted accounting principles for the state auditor's examination and certification, as requested and not later than 60 days following such requests or the end of each fiscal year. The auditor shall file the statements with the governor, the secretary of state, and the legislature.

EXECUTIVE SALARIES

1980

BUDGET SESSION

Engrossed Copy

H. B. No. 60

By Merrill W. Harward

George LaMont Richards

AN ACT RELATING TO SALARIES FOR ELECTED STATE OFFICERS;
PROVIDING FOR AN INCREASE IN THESE SALARIES; REMOVING
 JUDICIAL OFFICERS FROM THIS SALARY GROUP; AND PROVIDING AN
 EFFECTIVE DATE.

THIS ACT AMENDS SECTION 67-8-13, UTAH CODE ANNOTATED 1953, AS
 LAST AMENDED BY CHAPTERS 261 AND 263, LAWS OF UTAH 1977.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 67-8-13, Utah Code Annotated 1953, as
 last amended by Chapters 261 and 263, Laws of Utah 1977, is
 amended to read:

67-8-13. **[**(1)**]** The annual salaries of the following
 elected state officers **[**are*fixed**]** shall be as follows:

STATE OFFICER	ANNUAL SALARY
Governor	[**\$40,000**] <u>\$48,000</u>
[**Chief*Justice*of*the*Supreme*Court*****36,000**]	
[**Associate*Justices*of*the*Supreme*Court****35,500**]	
Attorney General	[**30,000**] <u>36,500</u>
Secretary of State	[**26,500**] <u>33,500</u>
State Auditor	[**26,500**] <u>33,500</u>
State Treasurer	[**26,500**] <u>33,500</u>
[**District*Court*Judges*****33,500**]	
[**Juvenile*Court*Judges*****33,500**]	

Section 2. This act shall take effect on January 1, 1981.

SECRETARY OF STATE

<u>Year</u>		<u>Salary</u>
1898	Article VII, Sec. 20, Constitution of Utah	\$ 2,000.00
1901	Chapter 73, Laws of Utah 1901	3,000.00
1909	Sec. 5070 Compiled Laws of Utah 1917	4,000.00
1919	Chapter 95, Laws of Utah 1919	4,500.00
1945	Chapter 124, Laws of Utah 1945	5,400.00
1953	Chapter 126, Laws of Utah 1953	7,200.00
1957	Chapter 146, Laws of Utah 1957	9,500.00
1961	Chapter 163, Laws of Utah 1961	10,500.00
1963	Chapter 173, Laws of Utah 1963	11,000.00
1965	Chapter 153, Laws of Utah 1965	13,000.00
1971	Chapter 183, Laws of Utah 1971	19,000.00
1973	Chapter 183, Laws of Utah 1973	20,000.00
1975	Chapter 203, Laws of Utah 1975	22,000.00
1977	Chapter 263, Laws of Utah 1977	26,500.00
1980	House Bill 60, Effective January 1, 1981	33,500.00

SALARIES OF STATE OFFICIALS

<u>Governor</u>	<u>Salary</u>	<u>Ret.</u>	<u>FICA</u>	<u>Health (Family Rate)</u>	<u>LI</u>	<u>Total</u>
1976	\$35,000	\$4,051*	\$ 895	\$ 478	\$36	\$40,460
1977	38,196	4,748*	965	608	36	44,553
1978	40,000	5,470*	1,071	768	36	47,345
1979	40,000	5,630*	1,404	888	36	47,958
1980	40,000	5,580*	1,588	1,043	36	48,247
1981	48,000	6,696*	1,975	1,149+	36	57,856

Sec. of State

1976	22,000	2,547	895	478	36	25,956
1977	24,876	3,073	965	608	36	29,558
1978	26,500	3,624	1,071	768	36	31,999
1979	26,500	3,730	1,404	888	36	32,558
1980	26,500	3,697	1,588	1,043	36	32,864
1981	33,500	4,673	1,975	1,149+	36	41,333

Chief Justice

1976	30,000	5,385	895	478	36	36,794
1977	33,835	6,073	965	608	36	41,517
1978	36,000	6,462	1,071	768	36	44,337
1979	37,250	6,039	1,404	888	36	45,617
1980	38,500	5,617	1,588	1,043	36	46,784
1981	38,500	5,617	1,975	1,149+	36	47,277

Justice

1976	30,000	5,385	895	478	36	36,794
1977	33,515	6,016	965	608	36	41,140
1978	35,500	6,372	1,071	768	36	43,747
1979	36,750	5,958	1,404	888	36	45,036
1980	38,000	5,544	1,588	1,043	36	46,211
1981	38,000	5,544	1,975	1,149+	36	46,704

* Does not include extra appropriation made to Legislature and Governor for retirement.

+ Cost at FY 81 rate—assumes no increase for FY 82.

COST OF LIVING INDEX
1896-1979

<u>Year</u>	<u>1967=100</u>
1896	25.7
1897	25.9
1898	25.9
1899	26.5
1900	27.5
1901	28.0
1902	28.8
1903	30.1
1904	29.8
1905	29.8
1906	30.9
1907	32.7
1908	31.4
1909	31.4
1910	33.2
1911	34.2
1912	34.5
1913	35.3
1914	35.8
1915	36.2
1916	38.9
1917	45.7
1918	53.6
1919	61.7
1920	63.1
1921	63.7
1922	59.7
1923	60.8
1924	60.9
1925	62.5
1926	63.0
1927	61.9
1928	61.1
1929	61.1
1930	59.5
1931	45.6
1932	40.9
1933	38.8
1934	40.1
1935	41.2
1936	41.6
1937	43.0

<u>Year</u>	<u>1967=100</u>
1938	42.3
1939	41.6
1940	42.0
1941	44.1
1942	48.9
1943	51.9
1944	52.7
1945	53.9
1946	58.5
1947	66.9
1948	72.1
1949	71.4
1950	72.1
1951	77.8
1952	79.5
1953	80.1
1954	80.5
1955	80.2
1956	81.4
1957	84.3
1958	86.6
1959	87.3
1960	88.7
1961	89.6
1962	90.6
1963	91.7
1964	92.9
1965	94.5
1966	97.2
1967	100.0
1968	104.2
1969	109.8
1970	116.3
1971	121.3
1972	125.3
1973	133.1
1974	147.7
1975	161.2
1976	170.5
1977	181.5
1978	195.4
1979	217.4

Note: Utah's cost of living compares closely with that of the Nation.

EXHIBIT NO. 9-26-1

Moroni Jensen's sensitivity to our energy problems has been felt for years. He was among the first to call for a balance between conservation and development of our energy resources. He was among the first to help provide credit for taxpayers who install energy saving systems. He is among the first to stimulate research for extracting and refining oil out of tar sands.

Moroni Jensen's interest in local government is highlighted in his leadership of the Interlocal Government Act. This act permits cities and counties to cooperate on expenses and services resulting in less cost, control and intervention.

From experience with Elementary, Junior High, Senior High, Community and Adult Education, Moroni Jensen understands the importance of and desire to effectively educate our children.

MORONI L. JENSEN / Lt. Governor

In this election year, we have an opportunity to improve the office of Lt. Governor. That opportunity is

MORONI L. JENSEN / Lt. Governor

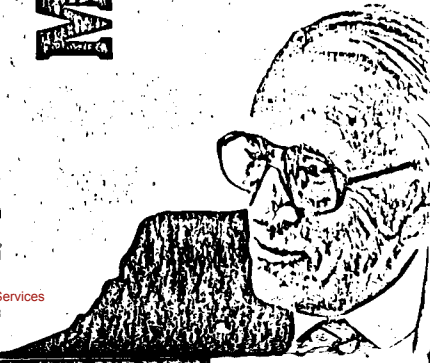
3417

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MORONI L. JENSEN

Lt. Governor Democrat



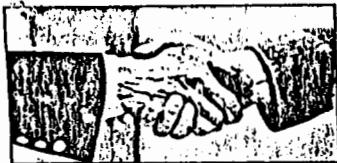
MORONI L. JENSEN / Lt. Governor

For too long, the office of Lt. Governor has been of little value to the Governor and the people of Utah. It is time for the full potential of the office to be realized.

MORONI L. JENSEN has the background, experience and ability to bring the potential of the office of Lt. Governor up to an effective level.

"I enjoy a close working relationship with Moroni Jensen. He is an outstanding leader in the Utah Senate."
—Governor Scott Matheson

Moroni Jensen was born and raised in Utah...has degrees from Snow College, BYU, Columbia University and the University of Utah.



His political career reads like "Who's Who in Government" (where, by the way, he is listed).

- City Council—Salt Lake, Utah
- Mayor—Salt Lake, Utah
- Member—Utah State House of Representatives (2 terms)
- Member—Utah State Senate (3 terms)
- President—Utah State Senate
- Member/Executive Committee—Western Council of State Government
- Commissioner—Education Commission of the States
- Member—National Council of State Legislatures/Task Force on the Arts
- Chairman—Utah Energy Conservation and Development Council
- Vice-Chairman—Utah Interagency Task Force on Plant Sittings
- Chairman—Utah Tar Sands Task Force
- Chairman—Governor's Task Force on Alcohol and Drug Abuse Prevention

- Member—Legislative Energy & Natural Resources Committee
- Member—Legislative State & Local Affairs Committee
- Member—Appropriations Subcommittee on Public Education
- Member—Appropriations Executive Committee
- Member—Commission on State House Fellows
- Advisory Committee—Utah Society to Prevent Blindness
- Advisory Committee—Intermountain Center for Gifted Education
- Advisory Committee—Utah Wings/Civil Air Patrol
- Planning Committee—Utah Educational Seminar
- Member—University of Utah Alumni Board

Along with his political career in Utah's House of Representatives and Senate (1965-1980), Moroni Jensen has been a professional educator (Principal at Cyprus and Granger High Schools, Administrator in Granite School District) from 1959-1977.

With the proposed Utah State Constitutional Amendment, the office of Lt. Governor and Governor would run in tandem effective 1984. This solidifies the Lt. Governor's position as a key in the Administrative Branch of Utah State Government.

Moroni Jensen assisted in making the Utah State retirement system one of the best in the country by consolidating the Fireman, Public Safety, Public Employee and Teachers' Retirement Funds.



Our senior citizens have Moroni Jensen to thank for his assistance in establishing the Circuit Breaker tax relief system. Low income Utah citizens 65 and above now get tax relief.

Through sponsorship of the Procurement Code Bill, Moroni Jensen streamlined the purchasing, contracting and dispensing procedures for all state property.



EMPLOYER RETIREMENT CONTRIBUTIONS 1972-1979
(Basically funded from General Fund
And Uniform School Fund sources)

	<u>Employee Contributions Paid by Employer</u>	<u>Employer Matching Contributions</u>	<u>Total Contribution by Employer for Year</u>
<u>State Departments and Agencies</u>			
1972	\$ 1,414,000	\$ 2,828,000	\$ 4,242,000
1973	3,227,000	3,227,000	6,454,000
1974	3,721,000	3,720,000	7,441,000
1975	4,376,000	4,875,000	9,251,000
1976	5,114,000	6,757,000	11,871,000
1977	5,752,000	8,795,000	14,547,000
1978	6,424,000	11,173,000	17,597,000
1979	7,033,000	12,776,000	19,809,000

Schools (including Colleges
and Universities

1972	\$ -	\$ 8,300,000	\$ 8,300,000
1973	7,360,000	8,687,000	16,047,000
1974	9,900,000	9,900,000	19,800,000
1975	11,051,000	11,051,000	22,102,000
1976	12,826,000	15,502,000	28,328,000
1977	15,112,000	21,458,000	37,570,000
1978	15,770,000	25,705,000	41,475,000
1979	16,946,000	31,141,000	48,087,000

Public Safety

1972	\$ 145,000	\$ 811,000	\$ 956,000
1973	322,000	950,000	1,272,000
1974	404,000	1,137,000	1,541,000
1975	495,000	1,425,000	1,920,000
1976	598,000	1,680,000	2,278,000
1977	680,000	1,969,000	2,649,000
1978	781,000	2,279,000	3,050,000
1979	877,000	2,281,000	3,158,000

Judges

1972	\$ -	\$ 50,000	\$ 50,000
1973	-	50,000	50,000
1974	27,000	59,000	86,000
1975	51,000	102,000	153,000
1976	59,000	118,000	177,000
1977	70,000	140,000	210,000
1978	104,000	206,000	310,000
1979	117,000	239,000	356,000