

1981

## Ray M. Harding v. Alpine City : Brief of Respondent

Utah Supreme Court

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SUPREME COURT  
STATE OF UTAH

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RAY M. HARDING,	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. <u>18,031</u>
ALPINE CITY,	:	
Defendant/Appellant,	:	

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RESPONDENT'S BRIEF

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Appeal from the Judgment of the  
District Court of Utah County  
State of Utah  
Honorable Allen B. Sorensen, Judge

--ooo0ooo--

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FILED

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## TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE . . . . .	1
DISPOSITION IN THE LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	1
STATEMENT OF FACTS . . . . .	1
ARGUMENT	
POINT I: SUMMARY JUDGMENT IS APPROPRIATE IN THE INSTANT CASE . . . . .	2
POINT II: THE ENACTMENT OF THE APLINE CITY SEWER CONNECTION ORDINANCE WAS AN ULTRA VIRES ACT ON PART OF THE APPELLANT AND, THEREFORE, SUCH ORDINANCE IS UNLAWFUL AND VOID . . .	5
 <u>CASES CITED</u>	
<u>National American Life Ins. Co. vs. Bayou Country Club</u> , 16 Utah 2d 417, 403 P.2d 26 (1965) . . . . .	3
<u>Rich vs. McGovern</u> , 551 P.2d 1266 (Utah 1976) . . .	3
<u>Trans American Ins. Co. vs. United Resources, Inc.</u> , 24 Utah 2d 346, 471 P.2d 165 (1970) . . . . .	3
<u>Leininger vs. Stearns-Roger Mfg. Co.</u> , 17 Utah 2d 37, 404 P.2d 33 (1965) . . . . .	3
<u>Foster vs. Steed</u> , 19 Utah 2d 435, 432 P.2d 60 (1967)	3
<u>Controlled Receivables Inc. vs. Harmon</u> , 17 Utah 2d 420, 413 P.2d 807 (1966) . . . . .	4
<u>Burningham vs. Ott</u> , 525 P.2d 620 (Utah 1974) . . .	4
<u>State v. Hutchinson</u> , No. 16087, (S. Ct. Utah, filed Dec. 9, 1980) . . . . .	5,6,8

<u>John Call and Clark Jenkins v. City of West Jordan,</u> No. 15908 (S. Ct. Utah, filed Dec. 26, 1979) . . .	5
<u>Rupp v. Grantsville,</u> 610 P.2d 338 (Utah 1980) . . .	5
<u>Redwood Gym vs. Salt Lake County Commission,</u> No. 16833 (Utah 1981) . . . . .	6
<u>Salt Lake City vs. Howe,</u> 106 P705 (Utah 1910) . . .	6
<u>Salt Lake City vs. Kusse,</u> 93 P.2d 671 (Utah 1938) .	6

#### STATUTES CITED

Utah Code Annotated, 1953 as amended

Section 10-8-84 . . . . .	5
Section 10-8-38 . . . . .	7, 8

#### RULES CITED

Utah Rules of Civil Procedure

Rule 56(c) . . . . .	3
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#### OTHER AUTHORITIES

<u>McQuillin On Municipal Corporations,</u> 3rd Edition Revised, Volume II, Section 31-10A . . . . .	8, 9
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SUPREME COURT  
STATE OF UTAH

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RAY M. HARDING, :  
Plaintiff/Respondent, :  
vs. : Case No. 18,031  
ALPINE CITY, :  
Defendant/Appellant, :

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RESPONDENT'S BRIEF

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STATEMENT OF THE NATURE OF THE CASE

This case concerns whether or not an existing Alpine City Sewer Connection Ordinance is an ultra vires act.

DISPOSITION IN THE LOWER COURT

The District Court ruled that the Alpine City Sewer Connection Ordinance is an ultra vires act and awarded Summary Judgment to Respondent on September 30, 1981.

RELIEF SOUGHT ON APPEAL

Respondent respectfully asks the Utah Supreme Court to affirm the Summary Judgment entered by the District Court.

STATEMENT OF FACTS

The presently existing Alpine City Sewer Connection Ordinance provides for mandatory sewer connection of all

buildings located on property within 500 feet of an existing sewer line. The Respondent's property lies approximately 365 feet from an existing sewer line. Therefore, under the Alpine City Ordinance the Respondent is required to connect to the sewer line. Pursuant to the Ordinance, Respondent was assessed a sewer connection fee in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00). Each month Alpine City sends Respondent a billing in the amount of ONE THOUSAND FOUR HUNDRED SIXTY-FOUR AND NO/100 DOLLARS (\$1,464.00), the remaining amount due on the sewer connection fee assessed against the Respondent.

In this action, the Respondent filed a Complaint alleging the above facts and asserting that Alpine City is without authority to provide for mandatory hookups for any building located on property more than 300 feet from an existing sewer line. Respondent also sought an Order of the Court determining that Appellant may not assess Respondent a sewer connection fee. Appellant filed an Answer alleging it had authority to enact and enforce the Ordinance, and counterclaimed for an Order requiring Respondent to pay the remaining amount due on the sewer connection fee.

#### ARGUMENT

#### POINT I

#### SUMMARY JUDGMENT IS APPROPRIATE IN THE INSTANT CASE

It is clear that under Rule 56(c) of the Utah Rules of Civil Procedure Summary Judgment may be rendered forthwith when appropriate. As stated:

. . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The Respondent in the instant case has been awarded Summary Judgment by complying with the above rule. All reasonable factual inferences leave no genuine issue in dispute and disclose no triable issue of fact. The Judgment should therefore be affirmed to promote the prompt administration of justice. As noted in National American Life Ins. Co. vs. Bayou Country Club, 16 Utah 2d 417, 403 P.2d 26 (1965):

The rules permitting summary judgments should not be enlarged by construction yet it should be liberally interpreted to effectuate their purpose, to effect the prompt administration of justice, and to expedite litigation by avoiding needless trials where no triable issue of fact is disclosed.

Id., 403 P.2d at 29. The proposition that Summary Judgment is proper when there are no material factual issues in dispute is well established. See, among others, Rich vs. McGovern, 551 P2d 1266 (Utah 1976); Trans America Ins. Co. vs. United Resources, Inc. 24 Utah 2d 346, 471 P2d 165 (1970); Leininger vs. Stearns-Roger Mfg. Co., 17 Utah 2d 37, 404 P.2d 33(1965); and Foster vs. Steed, 19 Utah 2d 435, 432 P.2d 60 (1967).



Appellant quotes Controlled Receivables Inc. vs. Harmon, 17 Utah 2d 420, 413 P.2d 807 (1966) in arguing that the trial court must consider all relevant facts and the reasonable inferences in a light most favorable to the parties against whom the motion is made, and that Summary Judgment is a harsh measure. This argument is disputed by the Utah Supreme Court in the later case, Burningham vs. Ott, 525 P.2d 620 (Utah 1974). After the plaintiff in that case lost a Summary Judgment, the Court stated:

"Plaintiff says the case should be decided under the rules that (1) The evidence should be viewed in a light favorable to the Plaintiff and (2) A Summary Judgment is a harsh rule. He is not correct in either claim. In Summary Judgments, evidence is not to be viewed. The Judgment can be given only in case there is no dispute on a material evidentiary matter. We do not see that it is a harsh rule to tell a party that he is or is not entitled to recover as a matter of law when the facts are not in dispute."

Id., 525 P.2d at 621.

In the instant case, there are no material issues of fact. The Appellant's brief argues that the Court should have received evidence as to the reasonableness of the sewer connection requirement. However, the Court determined that the City did not have authority to require connection of buildings on property more than 300 feet from an existing sewer line. Therefore, the issue of whether or not the connection requirement

was reasonable is immaterial and should not bar a grant of Summary Judgment.

## POINT II

THE ENACTMENT OF THE ALPINE CITY SEWER CONNECTION ORDINANCE WAS AN ULTRA VIRES ACT ON PART OF THE APPELLANT AND, THEREFORE, SUCH ORDINANCE IS UNLAWFUL AND VOID.

Traditionally, Courts have strictly construed all delegations of power from states to local governments. This rule of strict construction is known as the Dillon Rule. A local government had no authority to act in any area unless it was specifically and explicitly given authority by the state legislature. However, in recent years most states, (including Utah) have relaxed this rule of strict construction. See cases cited by Appellant, State v. Hutchinson, No. 16087, (S. Ct. Utah, filed Dec. 9, 1980); John Call and Clark Jenkins v. City of West Jordan, No. 15908 (S. Ct. Utah, filed Dec. 26, 1979); and Rupp v. Grantsville, 610 P.2d 338 (Utah 1980). Local units of government are no longer governed by the Dillon Rule and may enact ordinances under general welfare grants such as that contained in the Utah Code Annotated, Section 10-8-84, 1953, as amended.

However, in rejecting the rule of strict construction, the Court did recognize that there are still limitations on the authority of local governments acting under broad welfare clauses. In Hutchinson, supra, the Court stated:

. . . local governments are without authority to pass any ordinance prohibited by, or in conflict with, state statutory law. Salt Lake City vs. Allred, 20 Utah 2d 298, 437 P.2d 434 (1968). Also an ordinance is invalid if it intrudes upon an area which the legislature has pre-empted by comprehensive legislation intended to blanket a particular field.

Hutchinson, supra, pg. 90. In 1981 the Utah Supreme Court in Redwood Gym vs. Salt Lake County Commission, No. 16833 (Utah 1981) again declared, "This Court has previously ruled that local governments may legislate by ordinance in areas previously dealt with by state legislation, provided the ordinance in no way conflicts with existing state law. . .", Id., at 1144. See also Salt Lake City vs. Howe, 106 P705 (Utah 1910); and Salt Lake City vs. Kusse, 93 P2d 671 (Utah 1938).

As a further limitation the Court in Hutchinson stated that "specific grants of authority may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use of power in a particular manner." Hutchinson, supra, at 95. Thus, local governments can rely on broad general welfare clauses for authority to enact ordinances not specifically authorized by the legislature. But the broad exercise of authority is limited in the following specific instances:

1. When the ordinance is prohibited by state statute.

2. When the ordinance is in conflict with the state statute.

3. Where a state statute directs the use of a power in a particular manner.

4. Where the ordinance involves an area which has been pre-empted by comprehensive state legislation.

In the instant case, Alpine City has enacted an ordinance requiring hookup of all buildings located within 500 feet of an existing city sewer line. It claims authority for so doing under a broad general grant of power to enact ordinances for the health, welfare, and safety of the city residents. However, in this particular case, most of the limitations set forth above should apply and prevent the city from enforcing its ordinance. Section 10-8-38 of the Utah code specifically directs that a city may "... provide for mandatory hookup where the sewer is available and within 300 feet of any property line. . ." The 300 foot distance is a limit on the city's authority. The state legislature has specifically directed the city how to exercise its authority and any ordinance which requires a hookup of buildings at a distance greater than 300 feet is clearly in conflict with the state statute. Furthermore, Section 10-8-38 pre-empts the field of requiring connection to municipal sewer lines. The statute deals with what buildings can be required to connect, what charge can be made for the connection, and how the mandatory hookup can be enforced. Therefore, even in light of

the new Utah Supreme Court decisions rejecting the strict construction of the Dillon Rule, the ordinance enacted by Alpine City is clearing ultra vires and consequently unlawful and void. If the Alpine City ordinance is allowed to stand, then the limitations set forth in the Hutchinson decision have no meaning at all.

The Appellant urges that the use of the word "may" in Section 10-8-38 indicates that a municipality is not bound by the 300 foot limit set forth therein. However, Appellant clearly misconstrues the statute. If a municipality can increase the 300 foot limit to a 500 foot limit (or any other limit) in its discretion, then the 300 foot requirement in Section 10-8-38 can serve no purpose whatsoever. Including the term "300 feet" in the statute would be a waste of time since it would have no meaning. The only reasonable explanation is that the legislature intended to give municipalities a power to require sewer connections but also intended to limit that power to buildings located on property within 300 feet of an existing sewer line. The word "may" simply gives the municipality the discretion to require sewer hookup of buildings on property within the 300 foot limit. Appellant also quotes McQuillin On Municipal Corporations as support for the idea that a municipality has an inherent right under its police power to compel property owners to make connection with the sewer within a reasonable distance when the



public health requires it. However, McQuillin also states the following:

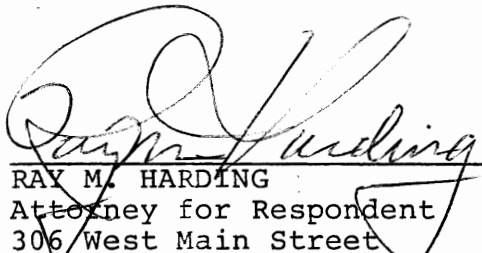
" . . . the operation of a sewer system has been said to be a matter of state-wide concern and, where the state legislature has entered the field, any attempt of a city to deal therewith except in strict accordance with the statutes covering the subject would be without force and effect." (Emphasis added)

McQuillin On Municipal Corporations, Third Edition Revised, Volume II, at Section 31-10A.

#### CONCLUSION

The material facts in this case are without dispute. They clearly show that the Alpine City ordinance is outside of the city's authority and therefore constitutes an ultra vires act. Accordingly, the Summary Judgment granted in favor of the Plaintiff by the District Court below should be affirmed.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of February, 1982.

  
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#### MAILING CERTIFICATE

I hereby certify that I mailed a true and accurate copy of the foregoing Brief to John C. Backlund, Attorney for Defendant/Appellant, 350 East Center Street, Provo, Utah 84601, postage prepaid, this 22<sup>nd</sup> day of February, 1982.