

1956

# The State Water Pollution Control Board of the State of Utah v. Salt Lake City : Brief of Appellant

Utah Supreme Court

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In the  
**Supreme Court of the State of Utah**

THE STATE WATER POLLUTION  
CONTROL BOARD OF THE STATE  
OF UTAH,

*Plaintiff and Appellant,*

vs.

SALT LAKE CITY, a Municipal Cor-  
poration,

*Defendant and Respondent.*

Case No.  
8560

**FILED**  
DEC 12 1956

Clerk, Supreme Court, Utah

**BRIEF OF APPELLANT**

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In the  
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THE STATE WATER POLLUTION  
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BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Subsequent to the enactment of the Utah Water Pollution Act in 1953, Salt Lake City Corporation engaged in certain sewer extension projects, which resulted in the installation of runs of six inch sewer pipe, and in certain sewer manholes the connection of flush tanks to the public

water supply system. In addition the City contracted for, and constructed a pumping station which lacked a mechanical ventilating system in the wet well thereof.

The foregoing installations and construction were made without securing a permit from the State Water Pollution Control Board authorizing such action, and in contravention of regulations enacted by the Board relating to the type installations and construction in question.

Pursuant to Section 7, Chapter 41, Laws of Utah 1953, Salt Lake City was charged with violating the relevant regulations of the Board and after due notice, a hearing was held in the matter on the 27th of September, 1955, at which time Salt Lake City Corporation appeared. The City filed a motion to dismiss which was denied by the Board, and all evidence pertaining to the matter at issue was heard. On the 8th day of December, 1955, the Board issued its findings of fact and conclusions of law, finding therein that the City had violated the rules and regulations as charged, in contravention of Section 5, Chapter 41, Laws of Utah 1953. The Board thereupon ordered that the City disconnect all flush tanks that had been connected to the public water supply system in the sewer extension project in question; that the City cease and desist from future installations of six inch sewer pipe; and that the City install a mechanical ventilation system in the wet well of the pumping station at issue.

An application for rehearing was filed by the City, and denied by the Board on the 11th day of January, 1956. Thereafter Salt Lake City filed in the District Court in

and for Salt Lake County a petition for appeal and complaint. An answer was duly filed and both parties moved for a summary judgment.

The motions were heard on the 11th day of June, 1956, before the Honorable Joseph G. Jeppson, Judge of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah. On the 26th day of June, 1956, that court handed down the following judgment:

“The Court finds that the Water Pollution Board has no jurisdiction over the sewer problems presented in this case. Salt Lake City’s motion for summary judgment is granted.”

From this judgment the Board has appealed.

The facts of this case are not at issue. The City, in praying for its motion for summary judgment, asserted that “insofar as the issues of this motion are concerned, there is no material issue of fact involved.”

The basis upon which the appellant made its initial charges, conducted its hearing, and now takes this appeal, are:

1. The State Water Pollution Control Board does have jurisdiction over the subject matter involved in this case.
2. The City did not secure a permit to effect the projects at issue.
3. The relevant rules and regulations of the Board and their application in this case are reasonable.

(All Hearing citations refer to the Transcript of the Hearing held before the State Water Pollution Control Board, September 27, 1955.)

## STATEMENT OF POINTS

## POINT I.

THE WATER POLLUTION CONTROL BOARD  
HAS JURISDICTION OVER THE SUBJECT  
MATTER INVOLVED IN THIS CASE.

## ARGUMENT

## POINT I.

THE WATER POLLUTION CONTROL BOARD  
HAS JURISDICTION OVER THE SUBJECT  
MATTER INVOLVED IN THIS CASE.

1. *Municipalities are subject to the Water Pollution Act.*

Section 5 (a), Chapter 41, Laws of Utah 1953, provides:

“It shall be unlawful for any *person* to cause pollution as defined in section 2(a) of this act of any waters of the state or to place or cause to be placed any wastes in a location where they will cause pollution of any waters of the state. Any such action is hereby declared to be a public nuisance.”  
(Emphasis added.)

According to Section 2(g), Chapter 41, Laws of Utah 1953, “person” as used in the Act includes “*bodies politic* and corporate, partnerships, associations and companies.” (Emphasis added.)

In view of the foregoing provision, we submit that a municipal corporation is subject to the same sanctions as a private association or corporation, and therefore has no license to place wastes in a location that would cause or has



caused pollution of any waters of the state. See *State v. City of Juneau*, (Wisc.) 300 N. W. 187; *City of Superior v. Committee on Water Pollution*, (Wisc.) 56 N. W. 2d 501; *City of Huntington v. State Water Comm.*, (W. Va.) 73 S. E. 2d 833; *City of Huntington v. State Water Comm.*, (W. Va.) 64 S. E. 2d 225; *State Water Commission v. City of Norwich*, (Conn.) 107 A. 2d 270.

That municipalities are within the jurisdiction of the Water Pollution Control Board is further emphasized by Section 3, Chapter 41, Laws of Utah 1953, which provides for representation of municipalities on the Board.

## 2. *The requirement of a permit.*

Section 4 (i), Chapter 41, Laws of Utah 1953, provides in part:

“The board shall have and may exercise the following powers and duties with the understanding that pollution which results in hazards to public health will be given first priority:

“\* \* \*

“(i) To review plans, specifications or other data relative to *disposal systems* or any part thereof in connection with the issuance of such permits as are required by this act; \* \* \*.” (Emphasis added.)

Section 2, Chapter 41, Laws of Utah 1953, defines “disposal system” as “a system for disposing of wastes, and *includes sewerage systems and treatment works.*” (Emphasis added.) By substituting this definition in Section 4(i), Chapter 41, Laws of Utah 1953, *supra*, it is apparent that the Board has the duty “to review plans, specifications or

other data relative to *sewerage systems and treatment works \* \* \**." According to the City and the lower court, the Board has no jurisdiction over a sewerage system, which position is contrary to the legislative mandate noted.

A definition of the terms "sewerage system" and "treatment works" would further vindicate our conviction. Under Section 2(c), Chapter 41, Laws of Utah 1953, a sewerage system "means *pipe lines* or conduits, *pumping stations* and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to a point of ultimate disposal." (Emphasis added.)

Treatment works "means any plant, disposal field, lagoon, dam, *pumping station*, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes." (Emphasis added.) Section 2(d), Chapter 41, Laws of Utah 1953.

All of the charges in this case involve installations that fall within the definition of "sewerage system" or "treatment works", with the pumping station being included in both terms. Given the power to review plans and specifications of disposal systems including sewerage pipe lines and pumping stations, the Board in this instance fulfilled that duty and found the plans in question were inadequate to meet the accepted sanitation practices of the day.

It is gross error to hold that a Board has no jurisdiction over sewer problems which involve a review of sewer systems and treatment works when the Legislature specifically grants that power of review to that Board. We have nothing involved here but the supervision of sewerage pipe lines and a pumping station.

The permits referred to in Section 4(i), Chapter 41, Laws of Utah 1953, *supra*, are more specifically dealt with in Section 5(b) of that Act, which provides:

“It shall be unlawful for any person to carry on any of the following activities without first securing such permit from the board as is required by it, for the disposal of all wastes which are or may be discharged thereby into the waters of the state: (1) the construction, installation, modification or operation of any treatment works or part thereof or any extension or addition thereto; (2) the increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit; (3) the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; (4) the construction or use of any new outlet for the discharge of any wastes into the waters of the state.

“The board under such conditions as it may prescribe, may require the submission of such plans, specifications and other information as it deems to be relevant in connection with the issuance of such permits.”

The foregoing statute would buttress the argument that the construction and installations in question are within the jurisdiction of the Board.

Furthermore, Section 4 of the Water Pollution Control Act vests in the Board the following specific power:

“(j) To issue, continue in effect, revoke, modify or deny, under such reasonable conditions as it

may prescribe, to prevent, control or abate pollution, permits for the discharge of wastes into the waters of the state, and for the installation or modification of treatment works or any parts thereof;"

If municipal sewerage systems are not to be included within the jurisdiction of the Water Pollution Control Board, why grant the Board power "to review plans, specifications or other data relative to *disposal systems*" and in the same act define "disposal system" as including a "sewerage system"? If the State Water Pollution Control Board is not to have jurisdiction over the size or structure of sewer pipe or lines, why define "sewerage system" as meaning "pipe lines or conduits \* \* \* used for \* \* \* conducting wastes to a point of ultimate disposal"? If the Board is not to review plans and specifications for pumping stations, why does the Legislature give it power to review plans and specifications or other data relative to "disposal systems", then define "disposal system" as including "sewerage system" and "treatment works", "sewerage system" as including "pumping stations" and for further emphasis defining "treatment works" as including "pumping stations"?

### 3. *The Violations.*

The facts of this case are not in dispute. All of the installations and constructions in question were completed by the City without the permit required under Section 5, Chapter 41, Laws of Utah 1953. Furthermore, the installations and constructions were made in contravention of rules and regulations of the Pollution Control Board, and the rationale behind the Board's adoption of the rules prompted

the refusal to grant the permits in question, and caused initiation of this action for the City's non-compliance with said regulations. (Hearing, p. 35.)

The relevant regulations or standards were adopted by the Board on December 18, 1953, pursuant to the authority of Section 4(g), Chapter 41, Laws of Utah 1953, and read as follows:

“21.4: Water Supply Interconnections: There must be no permanent physical connection between a public or private potable water supply system and a sewer, sewage treatment plant, or appurtenance thereto which would permit the passage of any sewage or polluted water into the potable water supply.

23.1: Size: No public sewer shall be less than eight inches in diameter.

32.7: Ventilation: Adequate ventilation shall be provided for all pump stations. Where the pump pit is below the ground surface mechanical ventilation is required, so arranged as to effectively ventilate the dry well and also the wet well if screens or mechanical equipment requiring maintenance or inspection is located in the wet well. The ventilation equipment should have a minimum capacity of 6 turnovers per hour under continuous operation. With intermittent operation a 2 minute turnover should be provided.”

The Board having the authority to adopt rules and “review plans, specifications, and other data relative to” “sewerage system”, including pipe lines and pumping stations, and “treatment works” which includes pumping stations, the primary question then at issue is whether the regulations

are reasonable, related to the powers and purposes of the Board, and properly applied in this case.

*That the regulations are reasonable* seems evident from testimony taken at the administrative hearing concerned with this matter. The rules reflect accepted sanitary engineering practice adopted throughout the United States and are similar to standards developed by the Upper Mississippi River and Great Lakes Boards of Public Health Engineers who represent Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania and Wisconsin.

Two sanitary engineers gave expert testimony at the Board hearing as to the reasonableness of the regulations. The City offered no evidence to contravert the expert testimony, nor did a sanitary engineer testify in behalf of the City's position. Although the Board was prepared to produce further proof of the soundness of its standards, the District Court in granting the summary judgment in effect prevented consideration of this matter.

We submit that the regulations in question and the application thereof have been reasonable and urge that the approach of the lower court should have been that set forth in *State v. Goss*, (Utah), 11 P. 2d 340:

“\* \* \* The preservation of health is and always has been of prime importance to the state, and the courts will go to the greatest extent and give widest discretion in reviewing regulations adopted by boards of health in the actual meeting of such emergencies. \* \* \*”

*The particular application of the rules in question* have also been reasonable. The Board has reviewed disposal



system plans of some 15 municipalities in Utah, involving facilities serving 264,000 people. In view of such uniform application, the present action cannot be classed as arbitrary.

*That the regulations in question are related to the powers and purposes of the Board is apparent from an analysis of the Water Pollution Act and the facts at hand.*

Section 1, Chapter 41, Laws of Utah 1953, provides in part:

“\* \* \* [i]t is hereby declared to be the public policy of this state \* \* \* to provide for the *prevention*, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to public health \* \* \*.” (Emphasis added.)

We have heretofore noted that it is unlawful for a municipality to cause pollution of “any waters of the state” or for any municipality to carry on specified activities, such as the construction of treatment works, without first securing a permit from the Board. We submit that each regulation in question is related to preventing such pollution, and the review of disposal system plans further effectuates that objective.

(1) *The installation of six inch pipe.* The continuous, efficient removal of sewage from residential areas is one of the most important functions performed by a modern city. The large quantities of sewage produced by present-day households as a result of this country’s new, high standard of living have pushed the sewage removal function into

the category of a major engineering task. In order that this task may be performed effectively without hazard to health or pollution of waters, it is essential that established sanitary engineering principles of sewage design be rigidly applied.

As noted, the regulations of the Water Pollution Board require that no public sewer shall be less than eight inches in diameter (Regulation 23.1). Testimony presented at the hearing was to the effect that eight inch sewer pipe prevented clogging and waste back-up to a higher degree than six inch sewer pipe, and to a greater extent insured the free transportation of sewage to the point of ultimate disposal. (Hearing, p. 12, 19, 41.) Furthermore it was in the same price range as six inch pipe, and therefore installation would not result in an economic hardship on the purchaser. (Hearing, p. 43, 44.)

One common result of clogging or waste back-up in sewer lines is the overflow of sewage from manholes, particularly in areas of considerable surface slope, where manhole covers would be at a lower elevation than many of the house connections which introduce sewage into the sewage system. The sewage thus emerging from the confines of the buried sewer must flow through the drainage facilities provided for storm water and other surface runoff, and eventually through storm sewers to a water course. Cities, Salt Lake included, employ many such storm sewers, all of which discharge to the most convenient water course, and none of which will be, or can be, provided with the type of treatment facilities necessary to make sewage innocuous so far as stream pollution is concerned. In Salt Lake City the



storm sewer system is distinct and separate from the “sanitary” sewer system, the two discharging at diverse points.

In Salt Lake City, as elsewhere, it is impractical to establish a treatment facility at every storm sewer outlet; therefore, sewage that has entered the storm sewer finds its way into the Jordan River in an untreated condition, whereas the “sanitary” sewer system finds its outlet in the Great Salt Lake through a sewer canal, the sewage therein to be subjected to treatment in facilities presently under design.

A board charged with the prevention of stream pollution, as well as its abatement, could not countenance the creation of this type of overflow hazard throughout a sewer system, particularly when standard sanitary engineering practice dictates against the use of six inch pipe.

The Water Pollution Act contemplates control of sewage from its place of origin to its point of ultimate disposal, and the Board thereunder is given power to review “plans” and “specifications” for entire sewerage systems including pipe lines. And what is a pipe line “specification” if it isn’t its diameter size?

To properly prevent pollution, an *entire disposal system* must be regulated, and designed to control the *conducting* of wastes to insure the proper treatment thereof. Hence the power of the Board to review sewerage systems, which are defined as conductors of waste. We submit that the power to review a sewer pipe line “specification” includes review of sewer pipe line “size”, and that the regulation in question is based upon accepted sanitary practice that will in-

sure the safe conducting of sewage to its ultimate point of treatment and disposal.

(2) *Ventilation of the pumping station.* The city in this case argues in effect that it may construct any type pumping station it desires and that ventilation thereof is not a concern of the Water Pollution Control Board. Here again we must resort to a construction of Section 4(i), Chapter 41, Laws of Utah 1953. If the State Board has power to review plans relative to disposal systems under that statute, then it would have power to review plans of a pumping station, for Section 2 of the Act in question defines disposal system as including a sewerage system and treatment works, both of which under Section 2 include "pumping stations." See also Section 4(j), Chapter 41, Laws of Utah 1953.

Pumping stations constitute a critical unit in a sewer system. Obviously, every precaution must be taken to insure constant operation of a given station, and *continuous, adequate* maintenance is essential to insure the proper functioning of a mechanical unit. Such maintenance admittedly cannot be positively assured at any time unless the person in charge seriously assumes full responsibility to accomplish it, but it is highly unlikely that it will be diligently handled at all unless it is convenient and safe for a worker to enter the necessary areas regularly to inspect all parts of the equipment. Permanent ventilation equipment for the wet-well of such a pumping station is one of the accepted, standard requirements to guarantee this essential safety and convenience. (Hearing, p. 14, 44, 45.) Failure on the part of the person in charge to check the

wet-well at regular and frequent intervals invites clogging of sewers and overflow of sewage into surface drainage facilities, from whence it will flow through storm sewers and ultimately to a water course in the manner previously outlined in the case of the installation of six inch sewer pipe.

Here again we must point up the necessity of controlling all features of the disposal system, including the pumping stations. The continuous collection and proper disposal of wastes can be regulated only if all features of the system are subject to review, and comply with standards which would insure adequate handling of sewage.

(3) *The installation of flush tanks as cross connections between the domestic water supply and a municipal sewer system.* The lower court's judgment in respect to this violation in effect means that the city may pollute its own water supply, and such action is outside the jurisdiction of the State Water Pollution Board. Those testifying for the State in the original hearing on the matter of potential pollution were experts in the field, and their testimony was to the effect that the present system of cross-connections in Salt Lake City constitutes a serious public health hazard. (Hearing, p. 13, 27, 42, 43.) There was no expert testimony to controvert this opinion.

The question of jurisdiction in regards to this particular violation may be approached from two positions:

First, the Water Pollution Board has the power to review all parts of a municipal disposal system in order to insure the safe conduct and disposal of the waste involved.

The potential escape of sewage through the cross-connection in question would so defeat such control that the frequency and places of sewage disposition would be unregulated.

Secondly, the cross-connection here provides the avenue for the pollution of an accumulation of water. (Hearing, p. 13, 14, 42, 43.) Section 5(a), Chapter 41, Laws of Utah 1953, makes it unlawful for a municipality to pollute "waters of the state", the latter phrase being defined in Section 2(f) of that Act as follows:

" 'Waters of the State' means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be 'waters of the state' under this definition."

It is our conviction that the Legislature intended that the phrase "waters of the state" would include all bodies of water geographically located within the state, and not merely those waters in which the state has a property interest or right or which are found to be outside the geographical area of a public corporation. By removing certain non-related portions of Section 2(f) supra, the section would read as follows:

" 'Waters of the state' means \* \* \* all other bodies or *accumulations of water*, surface and

*underground*, natural or *artificial*, *public* or *private*, which are contained within \* \* \* this state or any portion thereof \* \* \*.” (Emphasis added.)

According to Section 2(f), *supra*, the State Board has jurisdiction over both natural and artificial bodies or accumulations of water within the boundaries of the state, whether these accumulations or bodies are private or public. A municipal water system, whether in surface reservoirs or underground accumulation, would fall within the definition of “waters of the state.” The act in question would seem to permit the State Board to prevent a city’s pollution of its own wells, irrigation systems and drainage systems, but in this case the lower court has held that the state is without power to regulate the actual or potential pollution of an underground accumulation of water such as a municipal water supply.

The Supreme Court of the State of Utah has accepted the dictionary definition of “accumulation” as meaning “to heap up in a mass; to pile up; to collect or bring together, to a mass; gather, store up, aggregate, hold, \* \* \*.” See *Richland’s Irrigation Company v. Westview Irrigation Company*, (Utah) 80 P. 2d 458. We submit that a municipal water supply is an “accumulation” or body of water within the contemplation of the Water Pollution Act, and as such may not be polluted or endangered by any “person”, including the municipality itself.

## CONCLUSION

In our opinion this court is faced with the problem of determining whether legislation authorizing the State Water Pollution Control Board to "review plans, specifications and other data relative to "sewerage" "pipe lines" and "pumping stations" includes the power to review sewer pipe line size, interconnections between a sewer and the public water supply, the ventilation aspects of a pumping station, and the power to enact and enforce regulations to implement such review power.

The City has urged that the Board's power begins at the point of ultimate disposal, where waste is discharged into a lake or stream, and that regulation of treatment at that stage is the sole legislative intent. The Board is of the conviction that control at the point of discharge is important but not adequate, that the *entire* disposal system must in some degree be regulated to insure proper conducting and treatment of waste, and that the Legislature intended such control in enacting the Water Pollution Control Act.

The Water Pollution Control Act reflects the growing need of greater public health regulation on a state basis.

Perhaps the Supreme Court of Wisconsin in *State v. City of Juneau*, 238 Wisc. 564, 300 N. W. 187, best describes the situation here.

"In no field is the power of the state broader or more general than in the protection and promotion of the public health—a matter which concerns not only the state in its corporate capacity but every individual within it. It is principally because municipalities are indifferent to the increasing demands

made upon them by our advancing civilization in the field of education, transportation and health that local bodies have been so largely divested of power and been made subject to legislative regulation and supervision by state authority."

In view of the foregoing authority and argument, we submit that the judgment of the lower court was in error and that the Water Pollution Control Board has jurisdiction over the subject matter involved in this case.

Respectfully submitted,

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