

1956

## Marion Bair v. Layton City Corporation et al : Brief of Petitioner for Writ of Prohibition

Utah Supreme Court

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George P. Handy; Attorney for Plaintiff and Petitioner;

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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

MARION BAIR,

**FILED**  
DEC 11 1956  
Clerk, Supreme Court  
vs. Plaintiff,

LAYTON CITY CORPORATION, a municipal corporation, ELIAS A. DAWSON, JAMES E. BIGGS, DEAN MORGAN, IRVIN W. ADAMS, RICHARD L. STEVENSON, JR., RICHARD COOK, JOHN M. PARK, NORTH DAVIS COUNTY SEWER DISTRICT, RAY J. DAWSON, A. O. STOKER, CLARENCE J. STOKER, ALBERT MITCHELL, RICHARD S. STEVENSON, JR., ERVIN J. WALL, J. ALEX PATTERSON, LAWRENCE E. HOLT, ARTHUR MITCHELL, JOSEPH COOK, GOLDEN F. LAYTON and VIRD COOK,

*Defendants.*

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**BRIEF OF PETITIONER FOR WRIT  
OF PROHIBITION**

GEORGE B. HANDY,  
*Attorney for Plaintiff and Petitioner*

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# IN THE SUPREME COURT of the STATE OF UTAH

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MARION BAIR,

*Plaintiff,*

vs.

LAYTON CITY CORPORATION, a municipal corporation, ELIAS A. DAWSON, JAMES E. BIGGS, DEAN MORGAN, IRVIN W. ADAMS, RICHARD L. STEVENSON, JR., RICHARD COOK, JOHN M. PARK, NORTH DAVIS COUNTY SEWER DISTRICT, RAY J. DAWSON, A. O. STOKER, CLARENCE J. STOKER, ALBERT MITCHELL, RICHARD S. STEVENSON, JR., ERVIN J. WALL, J. ALEX PATTERSON, LAWRENCE E. HOLT, ARTHUR MITCHELL, JOSEPH COOK, GOLDEN F. LAYTON and VIRD COOK,

*Defendants.*

Case No.  
8585

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## BRIEF OF PETITIONER FOR WRIT OF PROHIBITION

## NATURE OF THIS PROCEEDING

On September 18, 1956, plaintiff filed in this court his Petition for a Writ of Prohibition to restrain the defendants from performing a contract entered into between the defendant Layton City Corporation and the defendant North Davis Sewer Improvement District and restraining the defendant Layton City Corporation from levying taxes upon plaintiff's property.

The Petition for a Writ of Prohibition was supported by a memorandum of authorities in accordance with the rules of this court, and acting upon such petition, the court on October 16, 1956, issued its alternative Writ of Prohibition directing the defendants to desist and refrain from performing such contract and from attempting to levy taxes upon plaintiff's property until the further order of this court and further directing the defendants to show cause before this court why they should not be permanently restrained and prohibited from performing such contract and levying such taxes.

Thereafter and on or about the 18th day of October, 1956, the respondents filed their return to the alternative writ of prohibition, which return was in the form of a Motion to Dismiss plaintiff's complaint and to recall and discharge the alternative writ of prohibition issued thereon. The proceedings are now before this court upon the issues thus raised by the petition for the writ, and such return of the defendants.

## NATURE OF THE CASE

The defendant Layton City Corporation, hereinafter referred to as City, is a City of the Third Class, situate in Davis County, Utah. Plaintiff is a resident property owner and taxpayer of Layton City. The defendants, Elias A. Dawson, James E. Biggs, Dean Morgan, Irvin W. Adams, Richard L. Stevenson, Jr., and Richard Cook, are respectively the duly elected, qualified and acting Mayor and members of the City Council, of Layton City. The defendant, John M. Park, is the duly elected, qualified and acting City Recorder of Layton City.

The defendant North Davis Sewer Improvement District, hereinafter referred to as the District, is a sewer improvement District, organized and existing under and by virtue of the laws of the State of Utah, Chapter 6 of Title 17, Utah Code Annotated, 1953, including within its boundaries the North one-half of Davis County and a part of Weber County, and the defendants Ray J. Dawson, A. O. Stoker, Clarence J. Stoker, Albert Mitchell, Richard S. Stevenson, Jr., Ervin J. Wall, J. Alex Patterson, Lawrence D. Holt, Arthur Mitchell, Joseph Cook, Golden F. Layton, and Vird Cook are members of the Board of said District.

On the 29th day of November, 1955, the defendant Layton City by action of its City Council adopted an ordinance authorizing and directing its Mayor and Recorder to contract with the District for the collection, treatment and disposal of sewage.

The Ordinance was and is as follows:

## ORDINANCE

AN ORDINANCE APPROVING AND ADOPTING A CONTRACT BETWEEN THE NORTH DAVIS COUNTY SEWER DISTRICT AND LAYTON CITY BY THE TERMS OF WHICH SAID DISTRICT IS TO DISPOSE OF AND TREAT SEWAGE FROM SAID LAYTON CITY, AND SETTING FORTH A SCHEDULE OF FEES TO BE PAID BY SAID CITY FOR SUCH DISPOSAL AND TREATMENT, AND AUTHORIZING AND DIRECTING THE MAYOR AND CITY RECORDER TO MAKE, EXECUTE AND DELIVER SAID CONTRACT FOR AND ON BEHALF OF LAYTON CITY.

WHEREAS the North Davis County Sewer District has been heretofore legally created and now exists as an improvement district in the nature of a municipal entity in Davis and Weber Counties, Utah, and is presently operating certain sewage disposal facilities and contemplates the acquisition of additional facilities; and

WHEREAS the district, at an election duly held for the purpose, has been authorized to issue \$2,100,000 general obligation bonds and \$800,000 revenue bonds for the purpose of acquiring a system for the collection, treatment and disposition of sewage, which disposal facilities are to be acquired and operated in part for the benefit of the municipal corporations lying within the boundaries of the district; and

WHEREAS the district is now in the process of authorizing and selling the bonds so voted and entering into construction contracts for the con-



struction of the disposal facilities; and

WHEREAS the city now owns and operates a sanitary sewer system for the purpose of collecting sanitary sewage from the premises in the city, but does not have adequate facilities for the treatment and disposal of the sewage so collected and desires to connect its aforesaid system with the disposal facilities to be constructed by the district and to enter into an agreement pursuant to which such sewage will be treated and disposed of by the district through the medium of such facilities;

NOW, THEREFORE, be it ordained by the City Council of Layton, City:

1. That Layton City, for the best interest of said city and the inhabitants thereof, approve and adopt, enter into, make, execute and deliver a certain contract with the North Davis County Sewer District for the disposal and treatment of raw sewage from Layton City, which said contract is in words and tenor as follows, to wit:

THIS AGREEMENT, made and entered into this 29th day of November, 1955, by and between Layton City, a municipal corporation in Davis County, Utah, acting through its City Council (hereinafter called the "city") and NORTH DAVIS COUNTY SEWER DISTRICT, a legally created and existing improvement district in Davis and Weber Counties, Utah, acting through its Board of Trustees (hereinafter called the "district"),

## WITNESSETH:

WHEREAS the district has been heretofore legally created and now exists as an improvement district in the nature of a municipal entity in Davis and Weber Counties, Utah, and is presently operating certain sewage disposal facilities and contemplates the acquisition of additional facilities; and

WHEREAS the district, at an election duly held for the purpose has been authorized to issue \$2,100,000 general obligation bonds and \$800,000 revenue bonds for the purpose of acquiring a system for the collection, treatment and disposition of sewage (hereinafter called the "disposal facilities"), which disposal facilities are to be acquired and operated in part for the benefit of the municipal corporations lying within the boundaries of the district; and

WHEREAS the city now owns and operates a sanitary sewer system for the purpose of collecting sanitary sewage from the premises in the city, but does not have adequate facilities for the treatment and disposal of the sewage so collected and desires to connect its aforesaid system with the disposal facilities to be constructed by the district and to enter into an agreement pursuant to which such sewage will be treated and disposed of by the district through the medium of such facilities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby mutually agree, covenant and contract as follows, to-wit:

1. The district agrees to proceed promptly with the construction of the additional disposal facilities, and it is expressly agreed that the obligation on the part of the district to construct the said additional facilities shall be conditioned upon the district's ability to obtain all necessary materials, labor and equipment, and the ability of the district to finance the cost of such construction in a manner and at a cost satisfactory to the district in its sole discretion. From and after the execution of this agreement, the district will, to the extent that its existing facilities permit, and to the extent that any part of the additional facilities are necessary therefor, from and after the completion of such necessary additional facilities, continually hold itself ready and able to treat and dispose of sewage turned into the district's disposal facilities by the city in the manner provided and that it will accept, treat and dispose of such sewage as so provided.

2. The city agrees that it will promptly do whatever may be necessary to connect its sanitary sewage system with the disposal facilities of the district, making any new connection which may be necessary at a point on the collection lines of the disposal facilities specified by the engineers of the district, and that the city will henceforth during the term of this agreement transmit the sewage collected by its sanitary sewer system into the disposal facilities of the district for treatment and disposal.

3. Payment for the services to be supplied to the city by the district hereunder shall be on the basis of calendar months, beginning with the

month of January, 1956, and where such payment is computed on the number of customers so connected on the last day of each calendar month shall be controlling as to the amount due for such month. The payment to be made by the city to the district for each calendar month shall be computed as follows:

(a) The city shall pay the district eighty cents (80c) per month for each family residence or unit connected to its sanitary sewer system. Multiple family buildings, other than hotels, motels and rooming houses, shall be considered to be family residences for the purpose of this paragraph, and the charge of eighty cents shall be applicable to each family therein contained.

(b) The city shall pay the district eighty cents (80c) per month for the first unit and sixty cents (60c) per month for each additional unit comprising each trailer camp and motel connected to its sanitary sewer system.

(c) Churches, schools and commercial and industrial establishments, privately or publicly owned, other than trailer camps and motels, shall be charged on the basis of water consumed on the premises during the month as evidenced by the water metered to such establishments, and the city shall pay to the district the sum of one dollar (\$1.00) for the first twelve thousand gallons or any part thereof metered to such establishment in such month, the sum of three cents (\$0.03) per one thousand gallons for the next eighteen thousand gallons so metered, and the sum of two and one-half cents (\$0.02 $\frac{1}{2}$ ) per one thousand gallons for all gallonage so

metered to such establishments in excess of thirty thousand gallons in such month, provided, however, that whenever a property tax for district purposes, of at least one mill or more is assessed and levied against the property served, then all gallonage so metered over fifty thousand gallons per month shall be charged at the rate of two cents (\$0.02) per one thousand gallons. As to water meters not read on the last day of the month, the meter reading made in each month may be accepted as the amount of water used during the preceding month for the purposes of making the payments herein required. If any premises connected to the city's sanitary sewer system use water obtained from sources other than the city's municipal water system, the city is to require such user to install at its expense a meter which can be read at monthly intervals for the purpose of determining the amount of water consumed on such premises.

(d) Where the sewage discharged by any commercial or industrial establishment into the city's sanitary sewer system is of such character as to require special treatment or to constitute an unusual and abnormal burden on the disposal facilities, such additional charges shall be paid therefor by the city as may be agreed upon between the city and the district.

The city shall supply the district on the 15th day of each month an itemized statement containing all factual data necessary to determine the amount due the district for the preceding calendar month, and shall on such 15th day of the month pay the district the amount shown by

such statement to be due.

The district shall never have the right to demand payment of any obligation devolving on the city under this agreement from funds raised or to be raised by taxation, and all obligations so devolving on the city shall never be construed to be a debt of the city of such kind as to require the levy and collection of a tax to discharge such obligation, it being expressly understood by the parties hereto that the district shall not have the right to require the city to make any payment due hereunder from any source other than moneys received by the city from the operation of its sanitary sewer system, and that all payments to be so made hereunder shall constitute operating expenses of such sanitary sewer system; provided, however, that nothing in this paragraph contained shall be so construed as to preclude the making of such payments by the city from any money or revenues which it may have on hand available for such purpose. The city agrees to impose such rates and charges for services supplied by its sanitary sewer system as will make possible the prompt payment of all expenses incurred in operating and maintaining such system, including the payments due hereunder, and the prompt payment of all obligations of the city payable from the revenues of such system.

The city agrees that it will during the term of this agreement do all things necessary to the proper maintenance and operation of its sanitary sewer system, and that it will keep in force at all times during the term of this agreement an ordinance requiring all buildings and structures in said city used for residence, commercial or in-

dustrial purposes, and which are within reasonable distance of an established sewer collection main, to be connected to such main.

4. This agreement shall take effect from and after its execution and shall continue in force for a period of fifty (50) years from such date or until all of the bonds of the district hereinabove described, and any bonds issued to refund such bonds, shall have been fully paid and retired, whichever termination date shall be later.

5. The district is hereby granted the right to bring such suits and to institute such litigation against the city and its officials as may be necessary to require the full performance by the city of all the agreements herein contained and all duties devolving on it under the provisions hereof, which suits may, but without limitation, include suits for mandamus or injunction.

6. In case by reason of force majeure either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this agreement, other than the obligation of the city to make the payments required under the terms hereof, then each such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, and the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove and overcome such inability with all reasonable dispatch. The term "force majeure"

as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Utah, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery or collection lines, partial or complete inability of the city to discharge sewage into the disposal facilities or of the district to treat and dispose of such sewage on account of any other causes not reasonably within the control of the party claiming such inability.

7. In the case of dispute between the parties hereto with respect to the amount of any payment or payments due by the city to the district hereunder and if agreement cannot be reached within thirty (30) days after negotiations thereunto have been commenced, such disagreement shall be submitted to a board of three (3) arbitrators, one of whom shall be appointed by the city, one of whom shall be appointed by the district, and the third of whom shall be a qualified utility engineer appointed by the other two persons so appointed. Should the two persons appointed, respectively, by the city and the district be unable to agree upon the third member of the arbitration board within fifteen (15) days after their appointment, such third member shall be designated by the judge of the Federal District Court of the District in which Davis County is located. The compensation of such arbitrators shall be borne equally by the city and the district.



In the event of such arbitration no interruption of service shall occur pending such arbitration but during the period consumed by such arbitration the city shall pay to the district the amounts claimed by the district and upon completion of such arbitration adjustment shall be made in such manner that the amounts agreed upon by the arbitrators shall be retroactive to the commencement of such arbitration and reimbursement shall be made to the city, if any reimbursement is found to be due.

8. The city agrees that it will keep and maintain, separate and apart from all other city records and accounts, complete records and accounts pertaining to the operation of its sanitary sewer system, the numbers and types of premises connected thereto, and the amounts billed to the owners or occupants of all such premises for sewer services rendered by the city, and that such records shall be open to inspection by the district, its officials, attorneys and accountants, at all reasonable times. The city further agrees that not later than sixty (60) days after the conclusion of each of its fiscal years it will supply to the district a complete operating statement covering the operation of its sanitary sewer system during such fiscal year, which statement shall show the number and types of premises connected to its sanitary sewer system in each month of the fiscal year, the amounts billed such occupant or owner of premises connected to such system during such fiscal year, the operating receipts and disbursements of such system during such fiscal year, and as to churches, schools and commercial and industrial establishments, other

than trailer camps and motels, the amounts of water metered to such establishments in each month of the fiscal year. If the district shall be dissatisfied with the accuracy or completeness of any such annual report, it shall be entitled to require the city, at the expense of the city, to have an audit of its books and records pertaining to its sanitary sewer system made by a certified public accountant of recognized standing, which audit shall contain as a minimum the items hereinabove set forth and shall be delivered to the district.

9. Any notices desired to be served hereunder by the city on the district shall be regarded as effectively delivered if mailed to the district, addressed to it at its office in the Smith Building, Clearfield, Utah, or at such changed addresses as may from time to time be given to the city in writing by the district; and similarly any notices desired to be served hereunder by the district on the city shall be regarded as effectively delivered if mailed to the city, addressed to it at the City Hall, 37 East Gentile, Layton, Utah.

10. If any one or more provisions of this agreement (other than provisions affecting the making or amounts of payments by the city to the district) shall ever be held by a court of competent jurisdiction to be invalid or ineffective for any reason, the remaining provisions of this agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, acting in each case under authority of a proper ordinance or resolution thereunto enabling, having

caused this agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written.

City of.....

By ELIAS A. DAWSON  
MAYOR

Attest:

JOHN M. PARK

City Recorder

(SEAL)

NORTH DAVIS COUNTY SEWER  
DISTRICT

By.....

Chairman of Board of Trustees

Attest:

Clerk of Board of Trustees

(SEAL)

2. That the Mayor and City Recorder of Layton City be, and they are hereby authorized and directed to make, execute and deliver, for and on behalf of Layton City, the contract referred to in Section 1 hereof, and execution of said contract by such officials shall constitute an official act of said Layton City.

3. That in the opinion of the City Council of said City, this ordinance is necessary for the immediate preservation, health and safety of Layton City, and the inhabitants thereof, therefore, this ordinance shall take effect upon passage and adoption, and upon being deposited in the office of the City Recorder and upon being posted in three (3) separate public places within the corporate limits of said Layton City, Utah.

PASSED AND ADOPTED by the City Council of Layton City, Davis County, Utah, this 29th day of November, 1955.

ELIAS A. DAWSON  
Mayor

Attest:

JOHN M. PARK  
City Recorder

(SEAL)

After the passage and adoption of the foregoing ordinance, the Mayor directed the City Recorder to file one copy of said ordinance in the official records of the City Recorder, and to post three (3) copies of said ordinance in three (3) separate public places within the corporate limits of said Layton City, Utah.

Other business not pertinent to the above appears in the minutes of meeting.

Pursuant to motion duly made and carried, the meeting was adjourned.

ELIAS A. DAWSON  
Mayor

Attest:

John M. Park  
City Recorder

(SEAL)

STATE OF UTAH        }  
COUNTY OF DAVIS    }ss

I, John M. Park, do hereby certify that I am the duly appointed, qualified and acting City Recorder of Layton City, Davis County, Utah.

I further certify that the above and foregoing

is a true and correct copy of minutes of meeting of the City Council of said Layton City, Utah, held on the 29th day of November, 1955, and of an ordinance passed and adopted at said meeting as said minutes and ordinance are on record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of said Layton City, this 29th day of November, 1955.

John M. Park  
City Recorder

(SEAL)

That contained in said Ordinance is a purported contract between the District and the City for the collection, treatment and disposal of sewage, which is hereby referred to.

The pertinent facts as set out by the plaintiff in his complaint and attached exhibits and petition for writ of prohibition are not denied by defendants return thereto. These facts are that the taxable property of Layton City is in the amount of \$2,967,319.00, and its revenue for the current year in the amount approximately \$160,053.38. The annual obligation created by such contract with the District amounts to \$24,630.00 a year for not less than fifty years. In addition to these payments, which represent the annual charge for the treatment, collection and disposal of sewage, Layton City must pay for maintenance and operation of its sewer system, auditing and accounting for the said system, which amounts to approximately \$750.00 per year, hence

the total cost for the collection, treatment and disposal of sewage, as contracted for by Layton City, will be \$1,268,750.00.

The City of Layton now owns and operates a Sanitary Sewer System, but does not have adequate facilities for the treatment and disposal of sewage so collected and desires to connect its aforesaid system with the disposal facilities to be constructed by the District, and to pay for the use of the District's facilities has pledged the revenue to be derived from its own existing system for a period of fifty years. The contract further provides that during the term of the contract (fifty years) it will keep in force an ordinance requiring all buildings in the City, and which are within a reasonable distance of an established sewer collection main, to be connected to such main, and the District, by the contract, is expressly granted the right to institute litigation to require the City to fully perform the contract.

## APPLICABLE STATUTES AND LAWS

The applicable statutes and laws requiring consideration in the ultimate determination of the case are as follows:

### Article VI, Section 31. (Lending Public Credit Forbidden)

The Legislature shall not authorize the State, or any County, City, Town, Township, District or other political subdivision of the State to lend its credit or subscribe to stock or bonds in aid of any railroad, telegraph or other private individual or corporate enterprise or undertaking.

Article XIV, Section 3 (DEBTS OF COUNTIES, CITIES, TOWNS, AND SCHOOL DISTRICTS NOT TO EXCEED REVENUE—EXCEPTION.)

No debt in excess of the taxes for the current year shall be created by any county or subdivision thereof, or by any school district therein, or by any city, town, village or any subdivision thereof in this State; unless the proposition to create such debt, shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein, in the year preceding such election, and a majority of those voting thereon shall have voted in favor of incurring such debt.

Article XIV, Section 4 (LIMIT OF INDEBTEDNESS OF COUNTIES, CITIES, TOWNS AND SCHOOL DISTRICTS)

When authorized to create indebtedness as provided in Section 3 of this Article, no county shall become indebted to an amount, including existing indebtedness exceeding two per centum. No city, town, school district or other municipal corporation, shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein, the value to be ascertained by the last assessment for State and County purposes, previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes; provided, that no part of the indebtedness allowed in this section shall be incurred for other than strictly county, city, town or school district purposes; provided further, that any city of the first and second class when authorized as provided in Section three of this article, may be

allowed to incur a larger indebtedness, not to exceed four per centum and any city of the third class, or town, not to exceed eight per centum additional, for supplying such city or town with water, artificial lights or sewers, when the works for supplying such water, light and sewers, shall be owned and controlled by the municipality.

10-7-7. BOND ISSUES FOR WATER, LIGHT AND SEWERS — SUBMISSION TO ELECTORS — Any city of the first or second class may incur an indebtedness, not exceeding in the aggregate with all other indebtedness eight per cent of the value of the taxable property therein, for the purpose of supplying such city with water, artificial light or sewers, when the works for supplying such water, light and sewers shall be owned and controlled by the municipality. Any city of the third class and any town may become indebteded to an amount not exceeding in the aggregate with all other indebtedness twelve per cent of the value of the taxable property therein for the purpose of supplying such city or town with water, artificial light or sewers, when the works for supplying such water, light and sewers shall be owned and controlled by the municipality. The proposition to create such debt must be first submitted to the vote of such qualified electors as shall have paid a property tax in the year preceding such election and a majority of those voting thereon must have voted in favor of incurring such debt.

### THE ISSUE

The issue is simply that of whether the defendant, Dayton City, has exceeded its lawful authority in entering into the contract for the collection, treatment and disposal of sewage.



## THE ARGUMENT

Plaintiff urges that the entering into of such contract by Layton City was and is in excess of its lawful power and authority and that such contract is a nullity and of no force or effect for the following reasons:

I. The contract results in the creation of a debt by Layton City in excess of taxes for the current year without the proposition being submitted to the qualified electors of Layton City in violation of Article XIV, Section 3, Constitution of Utah.

II. The contract results in the creation of a debt by Layton City in excess of twelve per cent of the value of the taxable property in Layton City in violation of Article XIV, Section 4, Constitution of Utah.

III. That no statutory authority exists for Layton City to enter into said contract.

IV. That the contract is unconstitutional because it constitutes a lending of credit of Layton City to the District.

V. That the contract is unreasonable, unconstitutional in that it constitutes an attempt by the present City Council of Layton City to obligate future City Councils of Layton City with respect to governmental matters.

VI. The execution of the contract was an abuse of discretion and its terms are unreasonable and unconstitutional because it requires Layton City to keep in force during the term of the contract an ordinance making it mandatory that buildings within a reasonable distance of an established sewer collection main to be connected to such main.

## POINTS I AND II

THE CONTRACT CREATES A DEBT IN EXCESS OF CITY TAXES FOR THE CURRENT YEAR AND IN EXCESS OF THE CONSTITUTIONAL DEBT LIMIT.

It is the position of the plaintiff that the contract between Layton City and the North Davis County Sewer Improvement District for the collection, treatment and disposal of sewage creates a debt both in excess of the city taxes for the current year and the constitutional debt limit of Layton City in violation of Sections 3 and 4 of Article XIV of the Constitution of Utah. Section 3, insofar as pertinent provides:

“No debt in excess of the taxes for the current year shall be created by any . . . . city . . . . unless the proposition to create such debt shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein in the year preceding such election . . . .”

Section 4, insofar as pertinent, provides:

“No City . . . shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein, the value to be ascertained by the last assessment for state and county purposes, previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes; . . . provided further, that any city . . . when authorized as provided in Section three of this Article, may be allowed to incur large indebtedness, not to exceed four per centum and any city of the third class or town, not to exceed eight per centum additional for supplying such city or

town with . . . sewers when the works for supplying such . . . sewers shall be owned and controlled by the municipality.”

It is alleged in the complaint and not denied by the defendants that the proposition to create the debt incurred by entering into said contract was not submitted to a vote of the qualified electors of Layton City as required by Section 3, Article XIV of the Constitution of Utah, and that the amount due the District for the collection, treatment and disposal of sewage for the term of the contract would be not less than \$1,231,500.00 plus the cost of the operation and maintenance of its sanitary sewer system estimated at \$300.00 per year (\$15,000.00 for 50 years); auditing and accounting expenses estimated at \$450.00 per year (\$22,500.00 for 50 years).

As heretofore stated, the city had revenues for the year 1955 from all sources of approximately \$160,053.38 and the value of the taxable property in Layton City in 1955 was \$2,967,319.00. Twelve per cent of the latter figure is \$356,078.28.

Upon analysis of the foregoing facts in the light of the constitutional provisions, it is clear that if the obligation to pay \$1,268,750.00 is a debt of Layton City, the purported contract between the City and the District is void under both provisions of the Constitution.

The evident purpose of the Constitution makers as expressed in Article XIV, Sections 3 and 4 of the Constitution of Utah, was that the municipalities should keep within the year's income in the operation of their business; in other words to “pay as you go” and not

incur any indebtedness outside of the current taxes and other revenue of that year. (*Dickinson vs. Salt Lake City*, 57 Ut. 530, 195 P. 1110.) In *Barnes v. Lehi City*, 74 Utah, 321, 279 P. 885 the Court said "public policy favors the freedom of contract, however, the restrictions placed upon municipal corporations by the debt limit provisions of the constitution must be upheld. The purpose of such provision is to serve as a limit to taxation and as a protection to taxpayers."

In the case of *Barnes vs. Lehi City*, supra, the Supreme Court of Utah has held that even though the amount involved exceeds the constitutional debt limitation, a city has not incurred a debt if the property or improvement is to be paid for exclusively out of the net earnings or income of the property of improvement.

It is common practice where the debt created is in excess of the constitutional limitation, such as the case at bar, to attempt to come under the "special fund doctrine" stated in *Barnes vs. Lehi City*, supra. When such an attempt was made in *Fjeldsted v. Ogden City*, 28 P 2, 144, 83 Utah 278, the court set forth how public improvements and betterments had to be paid for.

"It matters not how anxious public officials may be to bring about desirable and necessary improvements and betterments, such improvements under our constitution and law, must be paid for either out of revenues within the treasury or such as may be lawfully anticipated as revenues of the current year (*Dickinson v. Salt Lake City*, supra) or the debt incurred for such improvements must be authorized by a majority vote of the qualified electors. (Constitution Arti-

cle 14, Section 3) and be within the constitutional limitation of four per cent or eight per cent, as the case may be, based on the value of the taxable property of the City (Constitution, Article 14, Section 4) or to be paid for exclusively out of the net earnings or income of the property or improvements purchased (*Barnes v. Lehi City*, supra)."

In the present case in an attempt to come under the "special fund" doctrine and thus avoid having the contract construed as creating a debt within the meaning of the Constitutional limitations, the contract between the City and the District provides:

"The District shall never have the right to demand payment of any obligation devolving on the city under this agreement from funds raised or to be raised by taxation, and all obligations so devolving on the City shall never be construed to be a debt of the City of such kind as to require the levy and collection of a tax to discharge such obligation, *it being expressly understood by the parties hereto that the District shall not have the right to require the City to make any payment due hereunder from any source other than money received by the City from the operation of its Sanitary Sewer System.*"

The fact that takes this part of the contract out of the "special fund" doctrine is that Layton City at this time has an existing sewer system from which it obtains revenue and that by pledging the revenue from its sanitary sewer system the City is pledging revenues that are now owned by the City, and that the taxpayers are entitled to have applied to reduce the tax burden. *It is*

*not only income earned or to be earned, by the contemplated improvement that is pledged to meet the contract obligation and to constitute the special fund, but income from the entire system, that is the existing sanitary system as well as the facilities furnished by the District.*

In the California case, *Garrett vs. Swanton*, 13 Pac. 2nd, 725, 729, the Court stated: That there were two well settled limitations or exceptions to the "special fund" doctrine, saying:

"Thus it is well established that an indebtedness or liability is incurred when by the terms of the transaction a municipality is obligated directly or indirectly to feed the "special fund" from general or other revenues in addition to those arising solely from the specific improvement contemplated. It also seems to be well settled as a second limitation to the doctrine that a municipality incurs an indebtedness or liability when by the terms of the transaction the municipality may suffer a loss if the "special fund" is insufficient to pay the obligation incurred."

And that Court in strong language denounces a plan such as is contemplated in the case at bar by saying:

"We do not believe that the "special fund" doctrine was ever intended to be applied to a city where the municipality directly or indirectly is or maybe compelled to feed the "special fund" from other revenues in addition to those arising from the special improvement contemplated. Such a subterfuge if sanctioned would go far to effectually wipe out the purpose and intent of the constitutional provision."

In *Fjeldsted v. Ogden City*, 28 Pac. 2nd, 144, Ogden City by an ordinance entered into a contract for the extension of its water works system and proposed to issue bonds to pay for the improvement. Ogden City pledged the income from the present and existing water works system to meet the obligations on the bonds and to retire them. Opponents of this plan contended that inasmuch as the constitutional debt limitation was exceeded by the contract that the contract was void and the Writ of Prohibition should be made permanent. Ogden City contended that although the debt limitation was exceeded, the obligation created was not a debt in a constitutional meaning and came under the protection of the "special fund" doctrine. The Supreme Court of Utah made the Writ permanent, agreed with *Garrett vs. Swanton*, *supra*, and held:

"By the admitted facts in this case a large income from the existing water works system owned by the City is pledged to pay the principal and interest on the bonds; the greater part of the property to be purchased or improvements made will be incorporated or built into the existing water works system in such manner as it could not thereafter be segregated or withdrawn without destruction of the new property and destructive impairment of the entire system. *The City is irrevocably pledged to pay the bonds out of revenues of which the city is now the owner, and no future board of commissioners will have any option to repudiate the obligation or decline to carry out the terms of the contract. True, the fund out of which the bonds are to be paid is a 'special fund,' but it is a special fund created by impounding the revenues earned by property of*

which the city is now the owner and which, by future contract would be available for use by the City in meeting its other obligations. \*\*\*”

The Court then cited with approval from *Garrett v. Swanton*, supra:

“We are of the opinion that the admitted facts bring the transaction involved in the instant case within either or both of these exceptions or limitations.” (Set forth in *Garrett v. Swanton*, above.)

“While there is a lack of harmony in the decided cases, we are satisfied that the weight of authority and better reasons compel a holding that bonds such as Ogden City now proposes to issue and sell constitute a debt subject to the limitations and restrictions imposed by Sections 3 and 4 of Article XIV of our constitution. Such water bonds cannot be issued or sold unless authorized by a majority vote of the qualified electors of the City and when added to an existing indebtedness to be within 8% of the value of the taxable property of the City.”

In *Wadsworth v. Santaquin City*, 28 Pac. 2nd, 161, the City proposed to issue revenue bonds for betterments and improvements of an existing water works system, the cost of which exceeded the constitutional debt limitation and pledged the revenue from the system to pay off the bonds. The Supreme Court of Utah held that a debt had been created in excess of the limitations and restrictions of the Constitution and that the proposed method of paying the bonds was not within the “special Fund” doctrine, and in so doing stated:

“When an obligation is voluntarily created,



which cannot be paid out of money in the treasury or which may be reasonably anticipated to accrue from taxes or other resources of the city for the current year, it is such an obligation as can be authorized not by the Board of Commissioners, but only by a majority vote of the taxpaying electors of the City \*\*\*.

*“A borrowing to be paid out of revenues earned by an existing water works system, or other utility owned by the City creates a debt in contemplation of Article XIV Section 3 of the Constitution.”*

In view of the rules discussed above, the question presented is whether the obligation imposed by the contract is a debt, and the answer depends on whether the amount to be paid the District is coming out of a “special fund” or whether it is the Municipality’s “obligation directly or indirectly to feed the ‘special fund’ from general or other revenues” of the City in addition to those arising solely from the specific improvements. It is clear from the terms of the contract that where the revenues of the existing sewer system are pledged to make the contract payments and the contract payment is in excess of the limitations and restrictions placed on the City by Sections 3 and 4 of Article XIV of the Constitution, that a debt has been created that does not fall within the “special fund” doctrine and thus the contract is void.

### POINT III

THAT NO STATUTORY AUTHORITY EXISTS FOR LAYTON CITY TO ENTER INTO THE CONTRACT.

There is no constitutional or statutory authority that will allow the City to enter into a long term contract

that by its terms creates a debt in excess of the constitutional debt limit and that by its terms is both arbitrary and unreasonable and extends for an unreasonable term which obligates future City Councils in regard to this matter.

#### POINT IV

THAT THE CONTRACT IS UNCONSTITUTIONAL BECAUSE IT CONSTITUTES A LENDING OF THE CREDIT OF LAYTON CITY TO THE DISTRICT.

Article VI, Section 31 of the Constitution of Utah is as follows:

“The Legislature shall not authorize the State, or any County, city, town, township, district or other political subdivision of the State to lend its credit or subscribe to stock or bonds in aid of any railroad, telegraph or other private individual or corporate enterprise or undertaking.”

The contract provides that payments would commence on the contract as of January, 1956. This was at a time when no services were being rendered to the City by the District and there could be no other conclusion to arrive at than the City was under the circumstances lending its credit to the District to enable the District to pay off its bonded indebtedness. It is clear, that Layton City is undertaking, at least in part to construct the sanitary sewer system facilities for the District.

In *Atkinson v. Board of Commissioners of Ada County*, (Idaho) 108 P. 1046, the question was raised as to whether or not an act authorizing the creation of railroad districts for the purpose of constructing railroads

with county funds was violative of a constitutional provision Article 8, Section 4, of the Constitution of Idaho, which prohibited a city or county from lending its credit directly or indirectly to any individual association or corporation.

The Court held: That the act was violative of the spirit and intent of the Constitution of Idaho, Article 8, Section 4, and that for the district to build a railroad or trunk line would be to lend its credit to the main line.

See also *Sundquist v. Fraser*, 154 Min. 371, 191 N.W. 931; *City of Aurora v. Krauss*, 99 Colo. 12, 59 P2 79; *Skutt v. City of Grand Rapids*, 275 Mich. 258, 266 N.W. 344.

#### POINT V

THAT THE CONTRACT IS UNREASONABLE AND UNCONSTITUTIONAL IN THAT IT CONSTITUTES AN ATTEMPT BY THE PRESENT CITY COUNCIL OF LAYTON CITY TO OBLIGATE FUTURE CITY COUNCILS OF LAYTON CITY WITH RESPECT TO GOVERNMENTAL MATTERS.

By the contract, the City is bound to the District for at least fifty years and must deal exclusively with the District for the collection, treatment and disposal of sewage, and thus has taken from future City Councils of Layton City the right to enter into a better arrangement in regard to this matter, for at least the period of fifty years.

In *Flynn v. Little Falls Electric Co.*, 77 N.W. 38, 78 N.W. 106, 74 Minn. 180, the City entered into an exclusive contract with a water Company for the term of

thirty years. The court held that the contract was an abuse of the City Council's discretionary powers. It said:

"Wherever there is no statutory or charter limitation as to the term for which a city may contract it has been held that such contracts may run for a reasonable term only. In connection with this, it has been held that twenty-five or thirty years was an unreasonable term for a grant of an exclusive privilege by a municipality.

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\*\*\* Where municipal authorities are authorized to contract in relation to a particular matter, they have a discretion as to methods and terms, with the honest and reasonable exercise of which a court cannot interfere, although they may not have chosen the best method, or made the most advantageous contract. But this is not an unlimited and arbitrary discretion to make any kind of a contract that they see fit, as the court below in its memorandum seems to think. If so, the City Council might have made a contract running 100, or even 500 years, as well as 30 years."

In *McBean v. City of Fresno*, 112, Cal. 159, 44 P. 358, Fresno City entered into a contract for twenty-one years. The Court did not void the contract because the length of its term was unreasonable, but in passing said:

\*\*\*\* courts look with disfavor upon contracts by municipalities involving the payment of monies that extend over a long period of time. There is by law a well defined limit to such contracts. In the absence of any other objection to them, they will not be upheld in the absence of a clear showing of a reasonable necessity for their execution."

See also *Scott v. Laporte*, 162 Ind. 34, 68 N.E. 278, 69 N.E. 675; *LeFever v. Northwestern Heat, Light & Power Co.*, 199 Wis. 608, 97 N.W. 203 and *American Jurisprudence*, Vol. 38, Page 174, Section 498.

*American Jurisprudence*, Vol. 37, Page 679, Sec. 66.

“With respect to the power of a municipal council to enter in behalf of the municipality, into a contract which will extend beyond the term for which the members of the council were elected, a distinction is drawn based upon the subject matter of the contract — whether legislative or governmental, or whether business or proprietary. Thus, where the contract involved relates to governmental or legislative functions of the council, or involves a matter of discretion to be exercised by the council unless the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own term, no power of the council so to do exists, since the power conferred upon municipal councils to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or politic, and the council presently holding such powers is vested with no discretion to circumscribe or limit or diminish their deficiency, but must transmit them unimpaired to their successors.”

From the above cases it would appear that the granting of an exclusive contract with the District for not less than fifty years would be unreasonable and in excess of the powers held by the City.

The present City Council by this contract has also expressly granted to the District the right to bring such suits and to institute such litigation against the city and

its officials as may be necessary to require the full performance by the city of all the agreements contained in the contract. Thus, the city can be coerced into paying the contract obligation for the full term of the contract.

One of the reasons that the Supreme Court of Utah prohibited the City of Ogden from pledging the revenue from its waterworks system, in *Fieldsted v. Ogden City*, supra, was that future boards of commissioners were bound in regard to governmental matters.

*"There is no way left open for subsequent boards of Commissioners to refuse to be bound by the debt obligation imposed by the bonds. The bondholders could not repossess the property purchased by the proceeds of the bonds. The improvements and betterments are to be so built into the existing system that they could not be segregated. On the other hand the ordinance expressly provides that its terms and obligations may be enforced by appropriate action in law or in equity. The City is bound to pay the interest on and principal of the bonds and may by court action be coerced to raise or maintain the water rates sufficiently to meet such obligations, and to continue to divert revenues now owned by it, resulting from the operation of its water-works system, into the special fund to pay the water revenue bonds and interest. This is a liability voluntarily incurred by the City by express contract, and which it is bound to pay in money and therefore a 'debt'."*

## POINT VI

THE EXECUTION OF THE CONTRACT WAS AN ABUSE OF DISCRETION AND ITS TERMS ARE UNREASONABLE AND UNCONSTITUTIONAL BECAUSE IT

REQUIRES LAYTON CITY TO KEEP IN FORCE DURING THE TERM OF THE CONTRACT AN ORDINANCE MAKING IT MANDATORY THAT BUILDINGS WITHIN A REASONABLE DISTANCE OF AN ESTABLISHED SEWER COLLECTION MAIN BE CONNECTED TO SUCH MAIN, AND THE CITY HAS NO LEGAL RIGHT TO AGREE AS A MATTER OF CONTRACT THAT IT WILL COMPEL SUCH CONNECTIONS.

The contract contains a provision that "The City agrees that it will during the term of this agreement do all things necessary to the proper maintenance and operation of its sanitary sewer system, and that it will keep in force at all times during the term of this agreement an ordinance requiring all buildings and structures in said City used for residence, commercial or industrial purposes, which are within reasonable distance of an established sewer collection main, to be connected to such main."

Such an ordinance would be invalid because it would be vague and ambiguous. What a reasonable distance from an established sewer collection main would be is not defined and is left to the changing discretion of changing City Councils.

Plaintiff is aware that in *Bigler et al. v. Greenwood*, 254 P. 2nd 843, this court held valid and enforceable, an ordinance which required householders whose property was within 200 feet from the sewer to connect with the sewer, but in that case there was a well-defined distance that could be subjected to the test of reasonableness or unreasonableness. In the case at bar, one City Council may determine that 200 feet was a reasonable

distance and another one would say a half a mile was reasonable.

The right of the City to compel its inhabitants to connect onto the sewer is an exercise of the police powers of the City, (*Bigler v. Greenwood*, supra) and part of its governmental functions. It would be a matter out of the power of the present City Council to contract beyond the term of the said present Council that the City would use its police powers in a particular way and for a particular purpose. See: American Jurisprudence, Vol. 38, Page 174, Sec. 498.

Such an ordinance as is proposed would constitute an unreasonable and unwarranted exercise of police power in the hands of the City Councils of Layton City.

## CONCLUSION

It is respectfully submitted that the contract with the North Davis County Sewer Improvement District for the collection, treatment and disposal of sewage is void for the reason that the contract would create a debt in violation of the limitations imposed by Sections 3 and 4 of Article XIV of the Constitution of Utah; for the reason that no statutory authority exists for Layton City to enter into the contract; for the reason that the contract constitutes a lending of the credit of Layton City to the District; for the reason that the contract constitutes an attempt by the present city council of Layton City to obligate future city councils of Layton City with respect to governmental matters; and for the reason that the execution of the contract was an abuse of discretion



and its terms are unreasonable and unconstitutional because it requires Layton City to keep in force during the terms of the contract an ordinance making it mandatory that buildings within a reasonable distance of an established sewer collection main be connected to such main.

Respectfully submitted,

GEORGE B. HANDY

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