

1956

Marion Bair v. Layton City Corporation et al : Brief of Respondents

Utah Supreme Court

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

MARION BAIR,

FILED
DEC 11 1956
Clerk, Supreme Court, U
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.

RESPONDENTS' BRIEF

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MARION BAIR,

Plaintiff,

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Defendants.

Case No.
8585

RESPONDENTS' BRIEF

THE FACTS

The factual situation, as presented by the Plaintiff, is not substantially in dispute. Some additional historical background may, however, be beneficial and of aid to the Court in understanding and considering the problems to be resolved.

HISTORICAL BACKGROUND

At the beginning of World War II, the United States of America constructed in North Davis County several lines of outfall sewer. This construction was for the purpose of providing sanitary facilities for military installations and adjacent housing. After the war, the government desired to divest itself of these facilities. In the year, 1946, the communities of Layton, Syracuse, Sunset, Clearfield, Roy, Clinton and Laytona formed an unincorporated association, known as the North Davis Metropolitan Sewer. This association thereupon entered into a lease and purchase agreement to acquire the above-referred to governmental facilities. As time went on, the rapid population growth made it apparent to the Board of Directors of the association that North Davis County was in imminent need of a vastly expanded sanitary sewer project.

FORMATION OF DISTRICT

As a result of the urgency and extreme need for additional outfall lines and the need for an adequate treatment plant, the Board of Directors for the Metropolitan Sewer determined to promote the creation of a legally recognized improvement district. The creation of such a district was necessary to provide the legal machinery for the authorization, issuance and sale of bonds to raise money for the needed construction. As a result of the efforts of the citizens

of North Davis County, the Board of County Commissioners of Davis County, with the concurrence of the Board of County Commissioners of Weber County, did on Thursday, the 15th day of July, 1954, pass and adopt a resolution, legally creating and establishing an improvement district known as the "North Davis County Sewer District," which said District was created pursuant to authority made and provided in Title 17, Chapter 6, Utah Code Annotated 1953, as amended by the Laws of Utah, 1953. Immediately thereafter, the Board of Trustees met and organized the new district.

DESCRIPTION OF THE AREA

The area of the North Davis County Sewer District is essentially all that portion of Davis County lying north of the North Boundary of the City of Kaysville and including, generally, the City and Precinct of Roy, Weber County, and which said district is bounded on the west by the Great Salt Lake and on the east by the foot of the Wasatch Mountains. The District includes the Municipalities of Clearfield, East Layton, Sunset, West Point, Laytona, Clinton, Syracuse and Layton in Davis County and the City of Roy in Weber County.

NEED FOR SANITARY FACILITIES

In addition to the population centers above-named, the district has considerable industry which is rapidly expanding and which has a tremendous immediate and future potential.

The United States of America, also maintains within the district three large military installations, namely: The Clearfield Naval Supply Depot, Hill Air Force Base and Hill Air Force Base, West Sector. Total present workers at

these installations is approximately 15,000 with several times that many in event of any national emergency. All of the district lies within the recently created Weber Basin Water Conservancy District, and with the coming of an adequate water supply, it is expected that the area will receive a tremendous impetus to industrial and residential growth. The population of the area in 1947 stood at 12,075, for 1950, 22,000 and the statistical population, estimated, places the population for 1973 at a minimum of 47,980.

With the rapidly expanding population, and the industrial growth within the district, there is presently a great urgency for the construction of additional sanitary sewer facilities, including a modern treatment plant.

The State of Utah, through its legislature, did in 1953, pass an act creating the State Water Pollution Control Board. This Board has undertaken a program to compel all municipalities to provide adequate treatment of raw sewage. Such treatment will be required where untreated sewage may contaminate water under state control and 'classification'. The present site of disposal of sewage from the district is the Great Salt Lake. This body of water is under the control and jurisdiction of said Water Pollution Control Board. The District is working in close harmony with the Water Pollution Control Board and the contemplated treatment plant and disposal of effluent therefrom has been approved by said Water Pollution Control Board.

Realization of the tremendous population, industrial and military growth of the District makes it apparent this area cannot continue in growth without the contemplated expansion of sanitary facilities. Failure to provide additional sanitary facilities would jeopardize the entire future growth

of the district and place in peril the health and welfare of the inhabitants of said District.

To provide funds for the needed construction of new and additional sanitary facilities including an adequate 'treatment' plant, the Board of Trustees called a special election of all the qualified taxpaying electors within the District for the third day of May, 1955. At said special election, the proposition of issuing \$2,900,000 of bonds of the District was submitted to said electors. This proposition was overwhelmingly approved. At said election \$2,100,000 of the authorized bonds were voted as general obligation bonds and \$800,000 of said issue were voted as revenue bonds payable from the revenue of the District. To obtain part of the revenue to retire said general obligation and revenue bonds and pay the interest thereon, it becomes necessary for the District to charge the various municipalities, within the District, for the use of its sanitary disposal lines and treatment plant. To accomplish that purpose, a uniform contract was prepared and submitted to all of the municipalities within the District. All of said municipalities have heretofore through their proper governing bodies duly executed said contract. A copy of said contract is before the Court in this proceeding and is alluded to in both the Plaintiff's Brief, and later on in this Brief for the Defendant.

PLAN FOR DEVELOPMENT

The North Davis County Sewer District project was planned to prepare for the industrial, commercial and residential expansion of North Davis County and the Roy, Weber County area. The project program calls for construction of a modern sewage treatment plant west of Syracuse, Utah. This will be a two stage, high rate filter

plant and will produce an effluent meeting Utah State Water Pollution Control Board standards for irrigation water. It will provide capacity for the next ten to fifteen years and will be so designed that additions may be made as required without loss of value of the initial construction. It will provide that type of treatment necessarily required for the protection of the health and safety of the inhabitants of the entire area.

The physical plant consisting of outfall lines and treatment plant will be so designed and located as to make full and complete utilization of all facilities previously constructed and which have been acquired by the present District and the present system will become an integral and functioning part of the new overall system. There will be constructed a new outfall main to provide new outlets for Roy, Clinton, Westpoint, and Syracuse and will permit relief sewers to be installed from the existing main at points in Roy, Clinton, West Point, and Syracuse. A new outfall line will also be laid from the sewage treatment plant in southeasterly direction to intercept the Syracuse outfall main and continue southeasterly to intercept the Layton outfall main and from there, there will be constructed interceptors to the Clearfield City limits. From this interceptor a new main will be laid to intercept the present outfall from Hill Air Force Base. A new outfall will also be constructed along the south side of the Clearfield Naval Supply Depot to relieve the overloaded situation of Clearfield City and the Clearfield Naval Supply mains at this point. A considerable amount of the outfall mains have already been placed under contract and the work actually completed. This has been financed from money raised from the sale of the General Obligation bonds above referred to.

It is contemplated that the treatment plant will cost approximately one million dollars; eight hundred thousand of which must be raised from the sale of the revenue bonds. It might also be of interest to note that the effluent from the treatment plant will be disposed of in cooperation with the Water Pollution Control Board and Civic groups interested in the promotion of wild life. Through such cooperation it is hoped that a vast area for water fowl may be opened and protected. It is generally conceded that the area is now fast becoming useless for such purposes by reason of the growing pollution.

We wish to emphasize the plan of development contemplates all future expansion. The project is so designed that all future needs and requirements can be met by the construction of additional facilities and that by reason of this planning, no separate installations or treatment plants will ever be required by a municipality or segment lying within the boundaries of the District. As the project relates to the separate municipalities and the individual, it presents the most economically feasible method of collecting, disposing of and treating the sewage emanating from said territory in said district.

The question now has arisen as to whether municipal sewer contracts in the form executed by Layton City are valid in view of constitutional and statutory debt limitations on municipalities. This is the question now before the Court.

While these proceedings directly challenge the power of Layton City to enter into the contract with the District, the questions raised are not limited in applicability to Layton City alone, but are and will be present in the contracts of all

of the municipalities seeking the sewer disposal and treatment service which can only be furnished by the District, the municipalities involved being nine in number. The form of the contract is the same in each case. The amount will vary, of course, in accordance with municipal needs based upon the number of sewer "connections." Thus, it is apparent that the decision upon the question of the validity of this contract, will in effect, determine the validity of municipal participation of all the municipalities in the entire project—indeed will determine the economical feasibility of the project. For without firm contracts from the municipalities, the completed disposal system and treatment plant cannot be made available.

With this background and statement of plan of development, we proceed to answer the contentions of Plaintiff that the so called Layton contract is invalid and beyond the powers of Layton City, its Mayor, and Councilmen, to effect. We will answer the points of argument seriatum:

THE ARGUMENT

I and II

THE CONTRACT IS NOT INVALID AS CREATING A DEBT IN EXCESS OF THE CONSTITUTIONAL LIMITATIONS OF THE STATE OF UTAH.

This point of argument, as we understand it, is to the effect that the contract creates a debt both in excess of the city taxes for the current year (current revenues) and the constitutional debt limitations of Layton City in violation of Section 3 and 4 of Article XIV of the Constitution of Utah. This contention of the Plaintiff seems to be based upon the theory that the sum total or aggregate amounts

involved in the contract creates an immediate and irrevocable debt to the extent of such aggregate amounts. It is admitted by the Defendants that the amounts involved, if treated as debt, are in excess of such limitation; but we contend that there is no violation of the constitutional debt limitations in any event because the contract does not create a debt and particularly not a debt within the meaning of the Constitution.

(A) "SPECIAL FUND" DOCTRINE.

The Plaintiff further seems to labor under the illusion and the theory that the Defendants' situation does not come within the "special fund" doctrine as enunciated by this Court in the cases cited by the Plaintiff. We prefer to meet this argument head on. It is the contention of the Defendants that the contract can be sustained and stand legally unimpaired on other doctrines and factors and that the position of the Defendants need not be sustained solely upon the basis of the "special fund" doctrine. In fact, it is our contention that the instant case fits squarely within the "special fund" doctrine or "restricted special fund" doctrine as enunciated and defined by the Supreme Court of the State of Utah in *Condor vs. University of Utah* and *Barlow vs. Clearfield City*, *infra*.

The defendant city, Layton City, is not now attempting and never has attempted and under the terms of the contract does not intend to obtain or receive any monies which are to be *repaid* out of any facilities, either facilities presently owned or to be owned by such City in the future. The instant contract is not a *financing contract* for Layton City by the terms of which Layton City is attempting to raise funds for the construction of any new facility or the

maintenance of any old facility. The contract, stated simply, is a contract whereby Layton City seeks to obtain and enjoy certain *necessary benefits* which said City can not independently, financially afford to provide itself. The services to be furnished provides for the transportation away from the city limits of Layton City, all of its raw sanitary sewage, and thereafter the proper and adequate sanitary treatment of such sewage. The contract provides for the obtaining of this service which can not be provided by Layton City as a single municipality. The contract provides an equitable "pay as you go" method for paying for such service. It will be understood from the reading of the contract that the City in essence agrees to pay to the district the sum of 80 cents per month per sewer connection; in return for which payment, the District agrees to carry from the boundries of Layton City to the shores of the Great Salt Lake, all the raw Sewage of said City and thereupon to treat the same in a modern, adequate, sewage treatment plant which will shortly be under construction.

It will be noted here that the 80 cents per month connection charge which will be made by Layton City for the use of the facility, and which will be paid over to the District, constitutes a fund or an amount of money which was not at the time of entering into the contract or prior thereto, available to the City of Layton for any other purpose. It does not constitute a fund and never has, that need be replenished from any other source such as from advalorem taxes. Under these circumstances, we are of the opinion that the instant case comes squarely within the rule as enunciated by this court in *Condor vs. University* and *Barlow vs. Clearfield City*, *infra*. The City cannot be coerced into levying any tax for this purpose or for the purpose of

replenishing any fund. In the *Condor* case this court said:

“If the validity of the special fund doctrine be assumed, the debt affected by constitutional limitations is an obligation for the payment of which the levy of taxes may be required. It is inconsistent with that assumption to treat as debt an obligation for the payment of which taxation cannot be required.”

In *Barlow vs. Clearfield City*, *infra*, the court said among other things:

“Here it is clear that the City cannot be coerced into levying a tax to meet this obligation, although it may pay the whole or part thereof from the water revenues or other sources . . . We hold that these facts do not make this a debt of the City.”

Under these rulings and interpretations, it is the contention of the Defendants that the instant case falls squarely within the doctrine thus enunciated in the *Condor* and *Barlow* cases.

It is further noted from a reading of the contract that the City is not obligated to pay any amount *certain* other than the monthly per connection “charge” and this “charge” *only* when the District furnishes to Layton City the above described services. Layton City is presently and for some years past, has been accepting and receiving such service from the North Metropolitan Sewer Board, assignor of the District.

Let us turn our attention to some of the language in the cases cited by the Plaintiff’s counsel which reflect upon the question of the determination of when a “debt” of a municipality has been created.

In the case of *Barlow vs. Clearfield City.*, 268 Pac. 2nd at page 682 this Court stated:

“Thus it is clear that whether or not the City can be coerced into levying a tax to pay the obligation either directly or indirectly is held to be a strong factor in determining whether or not an obligation is a debt of the City. Here it is clear that the City can not be coerced into levying a tax to meet this obligation, although it may pay the whole or a part thereof from the water revenues or other sources. If the City fails to make any part of such a payment, the balance must be collected through a tax levy by the Board of Directors of the District upon the property within the City. The water was allotted to the City upon its petition. The City will distribute the water delivered under such allotment and will collect the revenues for the use thereof. *We hold that these facts do not make this a debt of the City.*”

See also: *Condor vs. University of Utah*, *Infra*.

In this connection, we quote from the instant contract on page 4 thereof, the following language:

“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 monies received from the City for 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 payment 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 sanitary sewer system as will make possible the prompt payment of all expenses incurred in operating and maintaining such systems, including the payments due hereunder, and the prompt payment of all obligations of the City payable from the revenues of such systems.”

In fact, we think that the case of *Barlow vs. Clearfield City Corp.*, supra, has determined and disposed of the issues raised by the claimant under Points I and II. However, we feel that we should point out, as will be done later on, the similarity between the two cases and the fact that the present contract as to Points I and II can be more readily sustained than the contract involved in the *Barlow vs. Clearfield* case above cited. However, we would like to comment further on the Plaintiff's thinking respecting the “special fund” doctrine. We reiterate that Layton City, in entering into this contract is not attempting to borrow money or to dispose of any corporate securities for the purpose of obtaining money under loan for the construction of any municipal facilities, in fact, such City already owns its municipal sewer and is constantly adding extensions thereto from funds derived from present sources. In entering into this contract, Layton City in no way seeks to raise new revenue, to obtain a loan of money, or to obtain credit from the District or from any other source.

Plaintiff objects to the use of certain language in the

contract which he says is an attempt to bring the contract under the "special fund" doctrine and thus avoid having the contract construed as creating a debt and within the meaning of the constitutional limitation. We do not find anything wrong in writing a contract to comply with existing laws and existing constitutional provision. It appears, however, that Plaintiff misconstrues the purpose of the language. The provision complained of has been quoted above and refers to the fact that 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 from taxation. It is our contention that this language was used for the purpose of establishing that any obligation being created under the contract is not an immediate debt or a general obligation of the City nor a pledge of revenues from a presently owned city facility, and, therefore, is not a debt within the meaning of the Constitution; and comes within the rules established in *Condor vs. University of Utah* and *Barlow vs. Clearfield City*. See also: *Joseph vs. Joseph Waterworks Co.*, 111 Pac. 864, *Cunningham vs. Cleveland*, 98 Fed. 657 and *Herman vs. Oconto* 86 N. W. 681.

(B) CONTRACT DOES NOT CREATE "DEBT" IN EXCESS OF TAXES FOR CURRENT YEAR.

We quite agree with the Plaintiff in stating that the evident purpose of the constitutional provisions of Section 3 and 4 of Article XIV of the Constitution of Utah is to keep each municipality within its current income and on a "pay as you go" plan and not to incur indebtedness outside the current taxes and other revenue for the year. We think Layton City is here doing exactly that. Let us briefly examine Layton City's position in this connection with refer-

ence to entering into of the instant contract. Heretofore, Layton City has been paying to the old Metropolitan Sewer District the sum of 50 cents, per month for each sewer connection which entitled the City to empty its raw sewage into the trunklines originally owned by the Metropolitan District. The Metropolitan District has now assigned all of those lines to the new North Davis County Sewer District, and by bonding said New District, additional extensions and expensive lines have now been installed and construction of a new treatment plant will shortly be underway. These new facilities were necessary to adequately care for Layton City and the other municipalities in the District to be served. The old lines were inadequate and no treatment was provided. Upon entering into the present contract Layton City, together with all the other municipalities within the District raised its local municipal sewer service rates by an additional 30 cents. The 30 cents coupled together with the original 50 cents that was already being charged the users of the old Sewer District complete the payment of 80 cents per month for each individual sewer connector. A brief analysis of this situation will immediately show and reveal that in any event the contract being entered into will not place Layton City beyond a "pay as you go" basis, for automatically as new connections are made to the Layton City sewer collection system, Layton City's monthly and annual revenues from such sources will increase. For example, one thousand new connections to Layton City's collection system would automatically increase the city's obligation to the District to the extent of \$800.00 per month but at the same time would automatically increase Layton City's revenue by the sum of \$800.00 per month.

It is also interesting to note in this connection that each

of the municipalities that lie within the North Davis County Sewer District charge its users, the citizens of the municipality, different and various rates. Some communities charge a \$1.50 per month per connection, others charge as high as \$2.65 per connection. The defendant district has no power nor has ever sought any power to direct or influence the municipalities as to what charge could be made per month for each individual residence or place of business connected to a municipal sewer collection system. That is a matter of strictly local concern and the only interest that the District has in such charges is that each municipality charge sufficient to pay over to the District 80 cents per month over and above the sums that may be required by the local municipality for operation and maintenance of its own collection system and for its own bond retirement and interest sinking funds, if any. We note that this Court heretofore has construed the word "taxes" to mean revenue from all sources, including revenue from taxes, fines, forfeitures, and all other sources. This being so, it can readily be understood, as above pointed out, that Layton City will always be, as far as this contract is concerned, within its estimated revenues for the current year for the reason that its sewer payment charges to the District will be determined in direct proportion to the number of connectors to its own sewer collection system. As the City's obligation under the contract increases, the collection rates and amounts collected from its own sewer will increase automatically in the same proportion. Layton City will never be compelled under the terms of this contract to pay over to the North Davis County Sewer District any sum in any one year which will exceed the sum or sums which Layton City will collect from the users of its own sewer system. This being so, we are of the opinion that this contract comes squarely

within the rules set forth by Plaintiff's counsel with respect to staying within a "pay as you go" financial condition. Should the District at any time require a rate higher than that stated in the contract, the City under its powers may levy a higher rate from its users and thereby automatically increase its current revenues for the year. Should the population of the District increase to the point where the rates referred to can be lowered, then Layton City under its municipal powers can automatically lower its rates so that there would be a constant factor or level between income and the outgo required under the terms of contract.

(C) CONTRACT DOES NOT CREATE "DEBT" OR "PLEDGE" WITHIN MEANING OF EITHER SECTION 3 OR 4, ARTICLE XIV, CONSTITUTION OF UTAH

We now proceed to our contention that the contract does not create a debt of Layton City or a pledge against any "special fund" which must be "fed" from taxation or a debt within the meaning of Article XIV, Section 3 and 4, Constitution of Utah. As set forth above, Plaintiff urges in support of Points I and II of his brief, that Layton City acted in excess of its lawful powers, in that:

"The contract results in a debt of Layton City in excess of taxes for the current year without the proposition to create such debt having been submitted to the Layton electors, in violation of Article XIV, Section 3, Constitution of Utah."

These points we continue to consider together because if either are true, both of them are true. Defendants contend, however, that neither are true. We refer to the admitted facts. There is, accordingly, no dispute that if these provis-

ions of the Constitution are held applicable and it is the sum total or aggregate of the payments that are to be considered as distinguished from any monthly or annual payment, then the obligation that has been created contravenes both Sections 3 and 4 of the Constitution. On the other hand, if neither Sections 3 and 4 of the Constitution are applicable, *or if applicable*, the extent of their applicability is to but a single monthly payment rather than the total of the payments, then there has been no contravention of the Constitution as urged by the Plaintiff. We urge: The constitutional limitation, if applicable at all, are applicable only to single payments and not to the sum total thereof. In considering this phase of the case, we are of the opinion that the general rule or perhaps more accurately, the weight of authority, is that where a municipality obligates itself unconditionally to pay a sum certain each year for a number of years, an indebtedness is immediately created for the aggregate annual installments, and not merely to each installment as it comes due. *Conversely*, the general rule is that a present indebtedness is not created for the aggregate of all periodic installments provided for by the contract for the rendition or furnishing of service in the future, where the installments do not come due until and unless the service is rendered. The usual example of the first type of case is where a municipality, in order to finance a facility, issues bonds payable in future years. Under such circumstances, an indebtedness for the sum total of the amount payable has been presently created, and if it exceeds constitutional limitations, it is void. The second type of case may be designated as the continuing service type of contract. An extensive annotation of this type of contract is to be found in 103 A. L. R. at page 1160. There, innumerable cases are cited and discussed, with the Courts almost uniformly following the

lead of the Supreme Court of the United States in the case of *Walla Walla vs. Walla Walla Water Co.*, 172 U. S. 1, 43 Law Ed. 341, where it was held:

“We think the weight of authority as well as of reason favors the more liberal construction that a Municipal Corporation may contract for a supply of water or gas or like necessary, and may stipulate for the payment of an annual rental for the gas or water furnished each year, notwithstanding, the aggregate of its rentals during the life of the contract may exceed the amount of the indebtedness limited by the charter. There is a distinction between a debt and a contract for a future indebtedness to be incurred, provided the contracting party performs the agreement out of which the debt may arise. There is also a distinction between the latter case and one where an absolute debt is created at once, as by the issue of railway bonds or for the erection of a public improvement, though such debt be payable in the future by installments. In the one case, the indebtedness is not created until the consideration has been furnished. In the other, the debt is created at once, the time of payment being only postponed. In the case under consideration, the annual rental did not become an indebtedness within the meaning of the charter until the water appropriated to that year had been furnished. If the company had failed to furnish it, the rental would not have been payable at all, and while the original contract provided for the creation of an indebtedness, it was only upon condition that the company perform its own obligation.”

In light of the above language, let us consider for a moment the terms of the contract in this regard. Paragraph *One* of the contract provides as follows:

“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 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 a manner provided and that it will accept, treat, and dispose of such sewage as so provided."*

Section 6 of the contract, in brief form, provides:

"That, in case by reason of Force Majeure, either party thereto shall be rendered unable, wholly or in part, to carry out its obligations under the agreement other than the obligations of the City to make the payments required under the terms thereof, 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 parties giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed."

It thus seems clear from a reading of the above quoted sections 1 and 6 of the contract, that it is the intent of the parties to the contract that the City's obligation to make payments are conditioned upon the ability of the District to furnish and upon the actual furnishing by the District to

the City the services of the District for the purposes and intents of the contract. That should the District at any time be unable to perform its services to accept the raw sewage of the City, that the City shall be relieved of its obligations under the contract to make the payments therein provided for. It is the position of the Defendants, therefore, that the wording of the contract now before the Court brings the contract clearly within the doctrine enunciated in *Walla Walla vs. Walla Walla Water Co.*, supra, and other cases therein cited and hereinafter referred to.

The Defendants urge that the contract in question is a contract for a needed municipal service to be paid for on a monthly or periodic basis as the services are received, enjoyed, and used to the beneficial advantage of the City of Layton and the Inhabitants thereof. It is interesting to note from an examination of the other cases cited in the Annotation and coming from perhaps two dozen different states, that in almost every case, the Courts made a studied effort to bring the contracts there under consideration under the doctrine of *Walla Walla*, apparently recognizing the need for an interpretation which would permit their Cities to secure vital municipal necessities over an extended period of time.

(D) COMPARATIVE ANALYSIS OF PRESENT CASE TO BARLOW VS. CLEARFIELD CITY.

It would now be well to attempt a short comparative analysis between the present case and the case of *Barlow vs. Clearfield City Corp.* et al., a Utah case reported at 268 P. 2nd 682. The two contracts involved are similar in that in each case a municipality seeks to purchase on a pay as

you go basis, a needed and necessary municipal service. In the Barlow case an adequate water supply; in the case at hand an adequate, available and necessary method of disposing of the sanitary sewage waste of the City, and thus attempting to preserve the health of the inhabitants of the City. The contract in the Barlow case was looked upon with favor by this Court and the contract sustained as not being void by reason of creating a debt in excess of the constitutional limitations as set forth in Article XIV, Sections 3 and 4 of the Constitution of Utah. We now wish to point out that in the Barlow case the contract contained several very important elements which the Court had to contend with in writing its decision which are not incorporated in the present contract. *First*, the City in the *Barlow vs. Clearfield* case agreed to pay a "fair proportion of the amount of estimated, operating and maintenance charges of the District for the next succeeding calendar year. Such fair proportion and amount shall be determined each year by the Board of Directors of the District and the determination shall be *final and conclusive*." *Second*, the Clearfield contract provided that the annual amount specified shall be paid *whether or not all or any part* of the water allotted is called for or used by the City. *Third*, the Clearfield contract provided that the Board of Directors of the District shall have the *power to levy annually* upon the property within the City, taxes at rates sufficient to produce the annual amounts specified in the contract less any amount paid or undertaken to be paid from water revenues and from other sources. In making such annual levies, the Board of Directors of the District shall take into account the deficiencies and defaults of prior years and shall make ample provisions for the payments thereof.

Now let us turn our attention to the present contract. *Firstly*, under the terms of this contract, the City is obligated in no way to pay any *amount proportionate* or *otherwise* of the estimated operating and maintenance charges of the District for the next succeeding calendar year or any year. *Secondly*, as pointed out heretofore, the City can not be called upon to make payment or any payments whatsoever to the District in the event the District fails to provide and furnish the services agreed upon. We wish to note that in our opinion this is a very important distinction between the present case and the Barlow case. *Thirdly*, the District in this case is in no way impowered by law or by the terms of the contract to levy any special taxes upon the property within Layton City in order to raise amounts sufficient to pay the service charge totals that may accrue against the City. This is likewise a very important distinction between the present contract and the Clearfield Contract. (It should be noted in passing that under the present contract the Board of Trustees of the Sewer District have no power over City affairs such as provided for in the Clearfield Contract.) We emphasize that in the present contract the only remedy the District has in the event of the failure of the City to pay any amount that may accrue under the contract is the right to bring suits and to institute litigation against the City and its officials as may be necessary to require performance of the contract by the City.

To briefly sum up the comparative analysis between the two contracts, it is fair to say that under the present contract, the City *cannot* be compelled to pay any part of the operating expenses of the District, the City *cannot* be compelled to pay the amount specified in the contract unless the services are furnished and that the District has *no power* under law or any power granted under the con-

tract to levy special taxes against the property lying within Layton City, and the District has *no power* to levy annual taxes to make up any deficiencies or defaults of prior years upon the part of Layton City. As noted, this Court looked in favor upon the Clearfield contract and held that it did not create an obligation or debt within the meaning of the Constitution of the State of Utah, specifically Article XIV, Sections 3 and 4, notwithstanding the features of the contract which we have heretofore above referred to and which said features are not contained in the Layton contract now under attack before this Court.

(E) THE CONSTITUTIONAL LIMITATIONS ON MUNICIPAL DEBT ARE NOT HERE APPLICABLE AT ALL BECAUSE THERE IS NO DEBT OR OBLIGATION TO PAY ON THE PART OF LAYTON CITY IN ANY RESPECT WHATSOEVER.

In further discussing the question of whether the total of the installments involved in the *Barlow vs. Clearfield Case*, supra, are a debt or indebtedness of the City as those terms are used in Article XIV, Sections 3 and 4 of the Constitution, the Court cited the case of *Barnes vs. Lehi City*, 279 P. 878 as follows:

“We have decided related problems but never directly decided this question. In *Barnes vs. Lehi City*, we held with most jurisdictions that the terms debt and indebtedness as used in constitutional debt limitation of municipalities is given a meaning much less broad and comprehensive than it bears in general usage.”

The Court still in the *Barlow vs. Clearfield* case then stated:

“Later in *Conder vs. University of Utah*, 257 P. 2nd. 367, we refused to apply the “restricted special fund” theory wherein we said, ‘in the event of failure to pay the indebtedness, the State would be under no obligation to appropriate money from general taxes to pay it. Such an obligation is not a debt in the contemplation of the constitutional limitations.’ ”

The Court further quoted with approval the following:

“If the validity of the “special fund doctrine” be assumed, the debt affected by constitutional limitations is an obligation for the *payment of which the levy of taxes may be required*. It is inconsistent with that assumption to treat as debt an obligation for the payment of which taxation cannot be required.”

The Court still in the *Barlow-Clearfield* case then went on to rule as follows:

“Thus it is clear that whether or not the City can be coerced into levying a tax to pay the obligation either directly or indirectly, is held to be a strong factor in determining whether an obligation is a debt of the City. Here it is clear that the City cannot be coerced into levying a tax to meet this obligation, although it may pay the whole or a part thereof from water revenues or other sources. If the City fails to make any part of such payment, the balance must be collected through a tax levied by the Board of Directors of the District upon the property within the City. The water was allotted to the City upon its petition. The City will distribute the water delivered under such allotment and collect the revenues for the use thereof. *We hold that these facts do not make this a debt of the City.*”

Applying this latter reasoning to the present case, it is clear that Layton City under the present contract cannot in any way be coerced into levying a tax to pay the obligation, either directly or indirectly, although, it may pay the whole or any part thereof from revenues derived from operations of its sanitary sewer collection system or from any other source. Unlike the City in the Barlow case, in the present case, if the City fails to make any part of the payment which is to become due, the District Board cannot in this case levy a tax upon the property within the City to enforce payment.

(F) THE CONTRACT IS FOR PERIODIC PAYMENTS FOR SERVICES AS FURNISHED—CONTINUING SERVICE CONTRACT DOCTRINE.

We are therefore of the opinion that the present case, in relation to the precise point now under consideration, falls clearly within the doctrine and under the rules, regulations, and interpretations of the Court as outlined and adjudicated in the case of *Barlow vs. Clearfield City Corporation*, supra, and in relation to the question of constitutional debt limit as above discussed and as under consideration is now 'Stare Decisis' by the Supreme Court of the State of Utah.

Notwithstanding this fact, it may be well for us to consider some cases from other jurisdictions bearing from this particular subject. As stated, the case of *Walla Walla vs. Walla Walla Water Company*, supra, was a case decided by the Supreme Court of the United States and is undoubtedly the most quoted case on this subject. Before proceeding to other jurisdictions, it might be well to note that this Court in *Barnes vs. Lehi City*, supra, quoted with approval the

case of *Shields vs. City of Loveland*, 218 P. 913. This Court there said:

“In *Shields vs. City of Loveland*, supra, the contract and the ordinance there in question, required the City to pay \$5,000 dollars per annum for street lights for not less than 10 years. This the Court held not to be a debt but only a method of paying annually for street lights annually furnished. The general rule is that such contracts being for services to be paid for periodically are merely arrangements to pay for current expenses as they are incurred. (Citing cases.)”

In McBean vs. Fresno City, a California case reported at 44 P. 358, the facts were as follows. The City of Fresno entered into a contract with Plaintiff by which Plaintiff agreed to take care of and dispose of sewage of the City of Fresno for a period of five years for the sum of \$4,500.00 per year. No natural means were available for the disposition of its sewage. It had provided sewers that had no provisions for the care of their contents. They were to be discharged beyond the city limits, but before the sewers could be used, a sewer farm was necessary for the reception and treatment of waste matter. The City had secured no such farm. Under the circumstances, the contract with McBean was entered into. It was contended that the contract amounts exceeded the debt limitations under provisions similar to those of the State of Utah. In making a determination upon this matter, the Courts opinion stated:

“When we come to consider the contract provisions, it is at once seen that the City cannot be liable in any one year for more than \$4,900.00, an amount far within the revenue derived to the sewer fund and further, it cannot become liable for this amount at all until faithful service rendered by the contractor

each year. We have our views upon the conviction that at the time of entering into the contract, no debt or liability is created for the aggregate amount of the installments to be paid under the contract, but that the sole debt or liability created is that which arises from year to year in separate amounts as the work is performed. These views find abundant support in the adjudicated cases of this State.”

In *Smilie vs. Fresno County*, 44 P. 556, the Court reiterated the doctrine laid down in the McBean Case. The Smilie case involved a contract for payment for construction of a county courthouse over a period of years, the aggregate of which payments would surely be in excess of the constitutional limitations. Here the Court upheld and reiterated the doctrine in the McBean case. Numerous other cases reached the same results as those reached by this Court in *Barlow vs. Clearfield*, *supra*, and as reached by the California Court in the *McBean and Smilie* cases.

In *Shields vs. City of Loveland*, *supra*, the Colorado Court, in considering whether this constituted the debt of the City said:

“Plaintiffs insist, however, that the revenue bonds constitute a debt and so the lawful limit is exceeded. We do not think that they amount to a debt within the intent of the Constitution or statute. The definitions of the word “debt” are many; and depend upon the context and the general subject with reference to which it is used, 17 C.J. 1371. Its meaning in the sections of the Consitution and Statute now before us must be determined by their purpose which was to prevent the overburdening of the public or bankruptcy of the municipality. Clearly, the revenue bonds are not within that purpose. The public can never be overburdened by that

which it is under no obligation to discharge, nor can the City become bankrupt by what it does not have to pay, nor are these bonds a technical debt. Nothing is my debt unless a judgment for its amount can be recovered against me upon it." See *Larimer County vs. Fort Collins*, 189 P. 929; *Evans vs. Holman*, 91 NE 723; *Moline vs. Pope*, 79 NE 587. This point was likewise decided by Mr. Justice Burke, then on the District bench in *Nothern Colorado Power Company vs. Longmont*".

"Is the agreement to pay into the funds \$5,000.00 per annum for street lights a debt? We think it is not. The clause in question reads as follows:

" '(B) For street lighting purposes the City of Loveland hereby irrevocably covenants with each and every holder of said revenue bonds issued under the provisions of this ordinance, that it will pay into said fund not less than \$5,000.00 per annum.'

"Fundamentally, this is a method of paying annually for street lighting annually furnished, and it has been held that such contracts do not create debts within the meaning of laws like those in question. *Leadville Gas Company*, 49 P. 268; *Denver vs. Hubbard*, 68 Pac. 993; *Valpariso vs. Gardener*, 49 A.R. 416; *Uhler vs. Olympia*, 151 P. 117. The first of these cases involved the statute requiring an appropriation for every city contract and it was held that a like contract for 25 years was not within the requirement. The analogy is not perfect, but worthy of consideration. In the second case, however, the Court of Appeals had under consideration not only the same point but also the section of the Constitution now in question. It did not decide the direct question, whether or not the contract created the debt within the meaning of the Constitution, though it is suggested that it did not, but based its decision

on the proposition that, if it did create a debt, it was but for one year's payment, citing many cases. The reasoning of these cases is that *such a contract creates no debt until the goods are delivered or services rendered*, and it would seem to follow that all the payments under such a contract, would no more constitute an indebtedness than one of them."

In further support of this position, we cite some of the cases sustaining this view:

City of Laport vs. Gainwell Fire Alarm Telegraph Co., 45 NE 588, 37 LRA NS 1063; Weston vs. Syracuse, 17 New York 110; Lewis vs. Brady, 17 Idaho 251, 104 P. 900; Smilie vs. Fresno County, 112 Cal. 311, 44 P. 556; Moore vs. Springfield, 16 ALR 2nd. 502; Vandergrif vs. Riley, California Case, 16 P. 2nd. 734; Tumey vs. Bridgeport, 6479 Connecticut 229, Vos vs. Waterloo Water Co., 163 Indiana 69, 66 LRA 95, 106 ASR 201; Farmers State Bank vs. Conrad, Montana case, 47 P. 2nd. 853, 37 LRA, new series 1042; Saleno vs. Neosho, 30 Southwestern 190; Allison vs. Chester, 72 SE 472.

At Section 463 of Municipal Corporations, 38 American Jurisprudence, page 144, there is a very enlightening discussion of this problem. It is therein stated:

"According to the weight of authority, a continuing contract for the furnishing of electric, water or other services to a municipality for which the municipality agrees to pay in periodic installments as the service is furnished, does not give rise to a present indebtedness for the amount of all the installments to become due thereunder throughout the whole term of the contract, within the meaning of a constitutional or statutory limitation of municipal indebtedness, and such a contract is not rendered invalid by the fact that the aggregate of the installments exceed the debt limit."

The section then goes on to give a further and more complete analysis of this problem and also states the minority view which has developed in a few jurisdictions. We humbly suggest that the adoption of the minority view and the discarding of the weight of authority on this matter would have the effect of denying countless numbers of municipal corporations and the citizens thereof, much needed essential and necessary improvements such as, adequate water supplies, lights, sidewalks, streets, curbs, gutters, and sanitary sewer disposal facilities. We appreciate the founding fathers' philosophy and the reason for the writing of prohibitions upon creation of debt into the Constitution of the State of Utah. It is evident that they intended that future generations should live under a "pay as you go basis", and in the instant case, we are of the opinion and submit to this Court that Layton City, in entering into this instant contract, is doing exactly that.

The contract is one to obtain a much needed municipal service for the use and benefit of all the inhabitants of the City and will be paid for on a monthly or annual basis, strictly within the estimated revenues for each monthly or annual period. Though the aggregate amount paid over the term of the contract or any number of years would be in excess of the constitutional provisions, it is not a debt or obligation within the meaning of the Consitution. We hold it is merely a contract for timely and necessary services as the same are provided and furnished by the District in the same manner that the City would buy building materials, employ workmen or labor or in any manner, purchase or lease goods, wares, merchandise, or services for legal Municipal Corporate purpose.

The rule laid down in the *Walla Walla case* and in the *McBean vs. Fresno case*, is most cogent. As there pointed out, in the continuing service contract, "the indebtedness is not created until the consideration has been furnished." In our case, the District undertakes monthly to render a service, namely, provide and have available for Layton City, adequate sewer disposal facilities. We respectfully submit that this agreement is within the "continuing service" type contract and under the rule of the *Walla Walla case*, the *Loveland Case* and as approved by this Court in *Barnes vs. Lehi City* and under the *McBean vs. Fresno Case* which latter is almost analogous with the present case that no debt is created within any constitutional limitations. We believe the foregoing conclusively answers any contention that might be raised, that this agreement is not within the "continuing service contract" doctrine. Nevertheless, we bring to the Court's attention, two recent decisions on factual situations somewhat similar to ours.

In Robins vs. City of Rapid City, 23 N.W. 2nd 144, Rapid City had taxable property in the amount of \$10,000,000, an outstanding indebtedness of \$300,000, and current net income of \$55,000. The City entered into a contract with the United States, whereby the United States was to construct a reservoir to make water available to the City and allotted to the City the preferred right to 7,000 acre feet of water to be stored therein. The City, "for its supply of water", agreed to pay the United States \$500,000 in forty successive, equal annual installments of \$12,500 each, plus operation and maintenance charges. The Court, in considering the type of contract before it, observed:

"According to the weight of authority, a continuing contract for the furnishing of electricity,

water or other service to a municipality for which the municipality agrees to pay in annual installments as the service is furnished, does not give rise to a present indebtedness for the aggregate amount of installments to become due. 44 C.J. 1130.”

A long list of cases supporting this rule and a very few opposed thereto, appears in the note in 103 A.L.R. 1160. The leading case is the *City of Walla Walla vs. Walla Walla Water Co.*, 172 U. S. 1, (cited and quoted supra). The other case is that of *Hillard vs. City of Mobile*, 47 Southern 2nd. 162. There the City of Mobile, in order to secure and maintain an adequate water supply for its inhabitants, entered into a contract with the Water Works Board of the City of Mobile, a separate public corporation for a water supply. Such corporation is referred to as the “Board”. As to the financial situation of the City of Mobile, the Court states:

“On account of its growth and expansion within the last decade, Mobile has outgrown its present existing water works system and source of supply. Although, the city is still below or within its constitutional debt limitations, the amount necessary to acquire or construct a water works system to adequately meet the present and future needs of the City would create debts over and beyond said constitutional debt limitations. The Board, in order to construct the works and provide the supplies to fill its contract with the City, issued its revenue bonds. By its contract, the Board agreed to meet the City’s requirements to the extent of twenty-five million gallons per day, and for such water, the City agreed to pay at the rate of \$288,000 per year, payable in monthly installments of \$19,000.”

In this regard, the Court said:

“Stripped of all surplusage, under the terms of

the proposed contract between the Board and the City, the Board agrees to furnish the City with a sufficient volume of raw water to adequately meet the City's present and future requirements including a standby volume to meet emergencies. The City agrees to pay, therefore, the amount named in the contract and at the time and the manner provided therein."

The Court, commenting upon this situation, further analyzed the problem and stated it as follows:

"Appellant's argument is in substance that a contract calling for future periodical payments, creates a debt of the City in violation of Sections 222 and 225 of the Constitution of 1901. In a few states, the rule has been adopted that as soon as such a contract is entered into indebtedness to the amount of the aggregate future payments is deemed to be incurred, irrespective of any condition connected with the furnishing of water. See Dillon on Municipal Corporation, (5th Ed.), Page 359, Section 196. But the same section of that authority also states that:

" 'By the weight of authority and, as we think reason also favor a more liberal construction of the constitutional limit upon the power to incur indebtedness. Municipal contracts calling for future payments extending over a series of years, usually relate to water, light, or some other municipal matter which is regarded as a prime vital importance to the inhabitants. If the municipality has already reached its constitutional limit of indebtedness, it is obviously debarred from purchasing or establishing a plant of its own and is forced to contract with some corporation or individual that is willing to incur the large expense necessary in erecting works upon the faith of the City paying annual

rentals or other stipulated compensation. A construction, therefore, of these provisions which will debar the City from entering into a contract covering a period of years by making the aggregate amount to be earned and to be paid thereunder immediate indebtedness of the City, would be disastrous to the City's interest; and a City which has already reached the constitutional limit of indebtedness, or whose indebtedness closely approaches that limit, would be as effectually debared from making such a contract as it is from purchasing or contracting for the construction of works of its own. The Courts have, therefore, recognized a distinction between a debt in the sense of the Constitution, and a contract for a future indebtedness to be incurred upon the performance by the contracting party of the agreement out of which a debt may arise. They also recognize a distinction between the latter case and one where an absolute debt is created at once, as by the issue of bonds for the erection of a public improvement, though such debt is payable in the future by installments. In the one case, the indebtedness is not considered to be created until the consideration has been furnished; in the other, the debt is created at once, the time of payment only being postponed. The Courts, therefore, have generally held that contracts by municipalities for a supply of water, light, or other like necessary, by which the municipality binds itself for the payment of the annual rental or other periodical consideration for the water or light furnished, do not create indebtedness until the property contracted for has actually been furnished, and the municipality may contract to make such yearly or periodical payments, notwithstanding that the aggregate of such payments during the stipulated life of the contract, may exceed the amount of the indebtedness limited by the Constitution or by a charter provision.' "

The Court then observed that under Alabama law, a Municipal Corporation, in order to anticipate and provide for its necessities in years to come and make present contracts for them without creating a debt, must make the annual payments payable out of current revenues for that year, but in order to maintain the legality of the particular contract under consideration, held that this requirement was met. We are of the opinion that such a requirement here has adequately been met and that we have heretofore, in this argument, successfully demonstrated that any amount that may become accrued against Layton City and in favor of the District by reason of the payments specified in the contract, will, of necessity, always be within the estimated *current revenues* of said City for each and every year.

(G) NO DEBT OF LAYTON CITY WITHIN THE CONSTITUTIONAL MEANING OR OTHERWISE HAS BEEN CREATED.

The Plaintiff contends that Layton City has acted outside and in excess of its lawful powers in contracting with the Sewer District for sewer disposal and treatment service, by reason that the contract has resulted in a debt to Layton City in excess of its constitutional limits. For the purpose of the argument heretofore made, we have assumed that the contract resulted in an obligation on the part of the City to make the monthly payments but have demonstrated that the agreement comes within the continuing service doctrine and does not result in the creation of a debt in excess of constitutional limitations.

We would, however, before leaving the points here involved, desire to briefly argue and demonstrate that no obligation for the payment of any sum, anytime, has been created on the part of Layton City, and hence, the con-

tention that Layton City has exceeded its debt limitation, is wholly without merit. We refer at the outset to the meaning of the word debt or indebtedness, as those words are used in Article XIV of our Constitution, particularly Sections 3 and 4. In *Condor vs. University of Utah*, a Utah case, supra, the Court quotes with approval from an article entitled, *Municipal Improvements as Affected by Constitutional Debt Limitations*, 37 Columbia L. R. 195 as follows:

“It is inconsistent with that assumption to treat as a debt an obligation for the payment of which taxation cannot be required.”

And further in the same case the Court said:

“In the event of a failure to pay the indebtedness, the State would be under no obligation to appropriate money from general taxes to pay it. *Such an obligation is not a debt in the contemplation of the constitutional limitations.*”

In *Barnes vs. Lehi City*, supra the Court observes:

“The City cannot be coerced into applying any part of its general revenue for the payment of the purchase price of the plant or any part of the cost of maintenance thereof. We are of the opinion that by entering into the proposed contract with Fairbanks Morse and Co., Lehi City will not thereby create such an indebtedness as is contemplated by Section 4 of Article XIV of the Utah Constitution.”

It seems accordingly that a debt or indebtedness within the constitutional limitations applicable to municipalities *must* be *constituted* of an obligation which the City is legally obligated to pay and which it can be coerced into paying from its general revenues.

At the risk of being repetitious, we wish once again to refer the Court to the terms of the contract to determine

the obligation to pay, if any, which Layton City here has assumed under the terms of the contract. As set forth in paragraph three, the City agrees to pay a stipulated sum per month for each unit connected to its sanitary sewer system and in the cases of churches, schools and commercial or industrial establishments a stipulated amount per month based upon the gallonage metered to each establishment. The contract specifically provides that payment shall be computed upon the number of sewer customers connected to the City sewer system on the last day of each calander month. Such number shall determine the amount due for such month. Thus there is a clear indication that the City assumes no obligation to pay or incurs no indebtedness until the end of the monthly period after the service has been furnished to the City by the District. The contract further provides that the District shall never have the right to demand payment of any obligation devolving upon the City under the agreement from funds raised or to be raised from taxation. We think that stripped of all surplusage that the contract means simply that Layton City agrees to buy a much needed service from the North Davis County Sewer District and pay, therefore, a sum certain *to be determined at the end of each month* after the service has been rendered to the City by the District. We are, therefore, of the opinion that the Defendants have successfully met the Plaintiff's objection to the contract as outlined in Sections I and II of Plaintiff's Brief.

III

THERE DOES EXIST CONSTITUTIONAL AND STATUTORY AUTHORITY FOR LAYTON CITY TO ENTER INTO THE CONTRACT.

The Plaintiff urges as point Number 3 that there is

no constitutional or statutory authority that will allow Layon City to enter into a long term contract such as herein involved, and that by the terms of the contract it is both arbitrary and unreasonable and extends for an unreasonable term which obligates future City Councils in regards to the subject matter. We will consider these matters in the same order that they are raised by the Plaintiff's Brief.

We direct our attention first to the contention that there is no constitutional or statutory authority allowing the City to enter into the contract. We direct the Court's attention first to Article XI, Section 5, subsection B, Constitution of Utah, which reads as follows:

"The power to be conferred upon Cities by this Section shall include as follows:

(B) To furnish all local public services, to purchase, hire, construct, own, maintain or operate or lease public utilities, local in extent and use; to acquire by condemnation or otherwise within or without the Corporate limits, property necessary for any such purposes subject to restrictions imposed by general law for the protection of other communities; and to grant local public utilities franchises and within its powers, regulate the size thereof."

We now refer to the statutory provisions applicable to the designation of powers granted to Municipal Corporations of the State of Utah.

Section 10-7-1, Utah Code Annotated, 1953, provides as follows:

**"CITIES AND TOWNS AS POLITICAL BODIES—
COMMON SEAL.**

Cities and towns shall be bodies political and and corporate with perpetual succession. They shall

be known and designated by the name and style adopted, and under such name *may sue and be sued, make contracts* and acquire and hold real and personal property for corporate purposes. They shall have a common seal and may change the same at pleasure."

Section 10-8-2, Appropriations, Utah Code Annotated, 1953, (APPROPRIATIONS—ACQUISITION AND DISPOSAL OF PROPERTY.

"The cities may appropriate money for corporate purposes only and provide for payment of debts and expenses of corporations; may purchase, receive, hold, sell, lease, convey and dispose of property, real and personal for the benefit of the City both within and without its corporate boundaries, improve and protect such property and may do all other things in relation thereto as natural persons, provided that it shall be deemed a corporate purpose to appropriate money for any purpose which in the judgment of the Board of Commissioners or City Council may provide for the safety, preserve the health, promote the prosperity and improve the morals, peace, order and comfort and convenience of the inhabitants of the City."

Respecting the power of a municipality to protect the health of the inhabitants of the City, we refer to and quote the following statutory provisions:

SECTION 10-8-61. REGULATIONS TO PREVENT CONTAGIOUS DISEASES—QUARANTINE—GARBAGE DISPOSAL.

"They may make *regulations to secure the health of the City*, prevent the introduction of contagious, infectious or malignant diseases into the City, and make quarantine laws and enforce the same within the City limits and within twelve miles thereof."*

Respecting the subject more nearly at hand, to wit; the disposal of City sanitary sewage, we refer the Court to the language of Section 10-8-38 U. C. A. 1953.

SEWAGE AND WATER SYSTEMS, CONSTRUCTION, REGULATION AND CONTROLS, CHARGES FOR USE, COLLECTION OF CHARGES, ETC.

“Boards of Commissioners, City Councils and Boards of Trustees of Cities and Towns may construct, reconstruct, maintain and operate sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment and facilities necessary to the proper drainage, sewage and sanitary sewage disposal requirements of the City or Town and regulate the construction and use thereof. Any city or town may for the purpose of defraying the cost of construction, reconstruction, maintenance or operation of any sewer system or sewage treatment plant, make a reasonable charge for the use thereof. In order to enforce the collection of such charge, any city or town operating a water works system may make one charge for the combined use of water and services of the sewer system, including the services of any sewage treatment plant operated by the city or town and may provide by ordinance that application for service from such combined systems shall be made in writing, signed by the owner desiring such service or his authorized agent.”*

In the 1953 session the Legislature completely re-wrote and re-enacted Chapter 6 of Title 17, Utah Code Annotated, 1953. This act is designed to allow the creation of improvement districts, such as the Defendant District, which districts may be established in any county or counties in the State and the main purpose for which is to collect, dispose of and treat sanitary sewage. It will be noted that the act

specifically provides that the boundries of such districts may include Municipal Corporations. It is our contention that the act was created and passed by the Legislature because the legislative body recognized the financial impossibility of each municipality separately establishing and constructing adequate, modern sewage disposal and treatment plants. There can be no doubt from a reading of the act that the framers fully intended that the municipalities included within any given sewer district, indirectly would and could contribute financial aid and support to the district. It is perhaps unfortunate that the act itself did not specifically spell out the method, manner or means by which the municipalities could contribute to the district and, therefore, share in the ultimate goal desired by all parties interested, to wit; the disposal and treatment of sanitary sewage within any given area.

The Legislature meeting in 1955, apparently recognizing what might have been a failure in not defining the powers of cities and towns to contract with sanitary districts for services, passed and adopted an act referred to as Chapter 26, Section 2, which reads as follows:

**"CONTRACTS BETWEEN MUNICIPALITIES AND
IMPROVEMENT DISTRICTS—AUTHORITY TO
FIX SERVICE CHARGES.**

When any Municipal Corporation shall contract with any district operating under Chapter 6 of Title 17 as amended for the supplying of sewage treatment and disposal service or both by such district to such Municipal Corporation, such Municipal Corporation shall have authority to make, therefore, such appropriate service charge to each party connected with the sewer system as it shall deem reasonable and proper. If such Municipal Corpor-

ation operates a waterworks system the charge aforesaid may be combined with the charge made for water furnished by the water system and may be collected and a collection thereof secured in the same manner as specified in Section 10-8-38, Utah Code Annotated, 1953.”

An analysis of this aforesaid section will clearly indicate that the Legislature in passing this section assumed the power of Municipal Corporations to enter into contracts with sewer districts operating under Chapter 6 of Title 17 as amended; and thus recognizing such powers went on to provide in said section that such Municipal Corporations shall have authority to make, therefore, such appropriate service charges to each party connected with its system as it shall deem reasonable and proper.

It is our interpretation of this section that the purpose of the same was to grant to the Municipal Coporations the power to make such additional sewer service charge from the individual parties as might be necessary to compensate the sewer district for its services under any contract that the city may enter into for the purpose of securing such services for sanitary sewage disposal and treatment. This seems to be the only fair interpretation that can be placed upon the wording of the section; for it is acknowledged that prior to the enactment of said section, cities and towns had already been possessed of the power to levy sewer service rates upon its inhabitants for the use of the cities local sewage collection system, and that the Legislature now recognized the fact that the City additionally, thereto, should have the power to levy such additional charges as might be necessary to fulfill the City’s commitments under any contracts entered into with the sewer districts that might be created under Chapter 6 of Title 17, Utah Code Annotated, 1953, as

amended. We feel that the Constitution and Statutory citations above set forth fully meet and dispose of the Plaintiff's contention under Point Number III. We think the foregoing fully illustrates that such a contention is without basis.

Plaintiff's other contention as raised under point III will be answered under point V where the same objections are again raised in detail by Plaintiff.

IV

THE CONTRACT DOES NOT CONSTITUTE A LENDING OF THE CREDIT OF LAYTON CITY TO THE DISTRICT.

Plaintiff cites Article VI, Section 31, Constitution of Utah and claims as his position that by virtue of the contract Layton City is undertaking, at least in part, to construct the sanitary sewer system facilities for the District. Plaintiff complains that the contract was entered into at a time when no services were being rendered to the City by the District.

The facts do not bear out this contention. Layton City was at the time of entering into the contract being serviced by the District in the disposal of its raw sanitary sewage, and had been serviced by the District's predecessor, the Metropolitan Sewer District, since the year 1946. It is admitted that the District was not at that time furnishing treatment service for the sewage. The situation and position between the parties in no way supports or bears out the Plaintiff's assumption that Layton City was undertaking, at least in part, to construct District facilities. While it is true that certain of the charges received by the District from Layton City and the other municipalities within the the District, may eventually be used for District purposes,

including payment of construction costs and interest on and principal of bonds sold by the District, nevertheless, the City has no direct or indirect obligation to pay any such charges and cannot in any event be forced or coerced into payment of any such charges. All contracts entered into by the District for construction and for repayment of bonds issued by the District are direct obligations of said District and the City can under no circumstances or pretext be called upon to make any payments upon such obligations.

Let us now turn our attention to the legal restrictions placed upon the municipalities of this State in respect to the lending of credit. Plaintiff relies upon Article VI, Section 31, Constitution of Utah as prohibiting Layton City from entering into said contract. Plaintiff alleges that the contract constitutes a lending of the credit of Layton City in violation of this section of the Constitution which reads 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 stocks or bonds in aid of any railroad, telegraph or other private individual or corporate enterprise or undertaking.”

To us it is clear that the intent of the framers of the Constitution in writing said section was to prevent the lending of public credit to private enterprise. This to us seems clear from the type of enterprise referred to in said section. Note the use of the words *“any railroad, telegraph or other private, individual or corporate enterprise or undertaking”*. Of course, in the entity of the North Davis County Sewer District, we have no such private undertaking. Said District is a public creature owned “lock, stock and barrel” by the

inhabitants and taxpayers of North Davis County who are resident within the physical boundries of said District. Aside from the distinction as above pointed out, it is our position that Layton City is in no event lending its credit to the North Davis County Sewer District. Plaintiff relies upon *Atkinson vs. Board of Commissioners of Ada County (Idaho)* 108 P. 1046. We have no quarrel with the conclusions reached in that case, but are of the opinion that it has no application to the case at hand. In that case it is clear that there was an outright attempt to use public money for private enterprise.

Such is not the situation in the contract here under consideration. Under title of Municipal Corporations, 38 Am. Jur. Section 401, page 93, we find the following enlightening discussion on the matter at hand. We quote:

“GIVING FINANCIAL AID OR LENDING CREDIT.”—“In many jurisdictions there are constitutional provisions which prohibit the Legislature from granting to Municipal Corporations the power to lend their credit or grant money or things of value to any individual, association, or corporation and prohibit Municipal Corporations from making any appropriation or donation or in any way lending their credit to any individual corporation or association. Such provisions are generally construed as directed against benefits at public expense, attempted in behalf of individuals, corporations or associations as such, acting independently in conducting some enterprise of their own such as are usually conducted for profit and are commercial in nature. It has been held that a Municipal Corporation may without violating either a constitutional provision which prohibits it from appropriating or lending money to corporations or associations or a provision which declares that such Municipal Corporations

shall never lend their credit for any purpose, issue warrants in payment of money advanced to a local improvement district located wholly within the municipal limits, to complete the construction of the improvement. The money in such case is spent for a public and not a private purpose. . . .”

Such action was held not to be violative of the type of constitutional prohibition we have here, by the Court in the case of *Bank of Commerce vs. Huddleston*, 291 Southwestern 422. We refer the Court also to the annotations contained at 50 A.L.R. 1208.

See also Vol. 64 C.J.S. Municipal Corporation, Section 1870 page 434, and *State vs. Florida Keyes Aqueduct Com. 4 So. (2nd) 662* and *Burrough of Runnemede vs. New Jersey Water Co., 8 A. (2nd) 576*.

A reading of the foregoing and a consideration of the terms of the contract will amply demonstrate that said contract under no interpretation constitutes a lending of the City's credit, and in no event a lending of credit prohibited by the wording of the Constitution of Utah.

V

THE CONTRACT IS NOT UNREASONABLE AND UNCONSTITUTIONAL IN THAT IT CONSTITUTES AN ATTEMPT BY THE PRESENT COUNCIL TO OBLIGATE FUTURE COUNCILS WITH RESPECT TO GOVERNMENTAL MATTERS.

Th Plaintiff urges 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. Plaintiff urges that the contract entered into takes from future City Councils the right to enter into a better arrangement in regard to this matter for at least the period of the contract. In discussions of this problem, the Courts almost uniformly make at the outset a distinction based upon the subject matter of the contract, as to whether the subject matter is legislative or governmental or whether business or proprietary.

It is admitted that if the matter is governmental or legislative in nature, the present council may be restricted from entering into such a contract where it tends to bind future City Councils. We think that it is here clear that the type of contract entered into is within the exercise of the business powers of the Municipal Corporation and that it is not controlled by any rule preventing it from entering into such a contract. Under *Municipal Corporations*, 37 Am. Jur. Section 66, page 679, we find the following language:

“Acts as binding successors --- 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 a statute conferring power to contract clearly authorizes the council to make contract extending beyond its own term, no power of the council so to do exists since the power conferred upon the municipal councils to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or

politic. Then the council presently holding such power is vested with no descretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their successors, *'but in the exercise of business powers of a Municipal Corporation, the municipality and its officers are controlled by no such rule, and they may lawfully exercise these powers in the same way and in their exercise the municipality will be governed by the same rules which control a private individual or business corporation under like circumstances. Under this distinction, it is generally held that a Municipal Corporation may contract for a water supply, street lighting, gas supply, etc. and bind subsequent boards, such contracts being made in the exercise of the City's business or proprietary functions.* One of the leading cases supporting this latter view is *Walla Walla vs. Walla Walla Water Co.* 172 U.S. 1, heretofore cited upon another point, wherein the Court said:

"The argument that the contract is void as an attempt to barter away the legislative power of the City Council rests upon the assumption that contracts to supply the City with water are within the police powers of the City, and may be controlled, managed, or abrogated at the pleasure of the council. This Court has doubtless held that the police power is one which remains constantly under the control of the legislative authority, and that a City Council can neither bind itself nor its successors to contracts *prejudicial* to the peace, good order, health, or morals of its inhabitants; but it is to cases of this class that these rules have been confined . . . , but where a contract for a supply of water is innocuous in itself, and is carried out with due regard of the good order of the city and the health of the inhabitants, the aid of the police power cannot be invoked to abrogate or impair it."

In *Farmers State Bank vs. Conrad*, supra, on another point, facts were that the City agreed to buy water for thirty years out of gross revenues from the sale of the water. It was contended that the City exceeded its powers by contracting for such an extended time. The Court on the point said:

“In the case of *State Ex. Rel. Great Falls Waterworks vs. Mayer and City Council of City of Great Falls*, 19 Mont. 518; 49 Pac. 15, this Court held that in making such a contract as the one under consideration, the municipality acts under its *Proprietary powers* and not under its legislative, public, or governmental powers, and it was there held that the power granted a city by the legislature to contract for and procure a water supply are plenary and unlimited save for the duty to exercise them with reasonable care.”

See also *Charleston vs. Littlepage* 51 LRA (NS) 352.

See also 63 C.J.S. Mun. Corp., Section 973, page 523 and 538 under sub-division ‘Sanitation and Public Health’, also the annotated case thereunder, *Cunningham vs. Cleveland*, 98 Fed. 657.

We have already under Point III above referred the court to the statutory and constitutional citations setting forth the express granted powers of Municipal Corporations in Utah with respect to the subject matter at hand. It seems well established by the authorities that Municipal Corporations have the implied powers to carry out all express granted powers, and have those implied powers which are necessarily or fairly implied in or incident to the powers expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation. A long line of cases support this view respecting implied

powers. It would thus appear that it would be a fair statement to say that Layton City in entering into the instant contract did so not only by express granted power, but that the execution of the contract and the aims and objects thereof are necessarily implied as being within the power of the City Council of Layton City to obtain for and furnish to its inhabitants the necessary facilities for sewage disposal and treatment. In 37 Am. Jur. Municipal Corporations, Section 117, Page 731, in a discussion of this matter, we find the following language:

“Thus where the Legislature delegates power to a Municipal Corporation to establish a public improvement, such as a sewer system, that delegation carries with it all the incidental powers necessary to carry its object into effect within the law, for the grant of power would be useless if unaccompanied with sufficient authority to carry it into effect.”

See also *McBean vs. Fresno*, 44 Pac. 358, supra on another point. Here the facts concerned a contract for sewage disposal—very similar to this case—the court held this type of contract binding on successor Councils of the City.

In view of the Supreme Court case cited and the other cases, and the weight of authority with respect to this matter, we are of the opinion that the Plaintiff's objection as set forth under his Point V is without merit and that it does not apply to the instant case which is purely a contract within the functions of Layton City, and is a contract to obtain much needed services for the City and the inhabitants thereof, and is not governmental or legislative in character.

VI

THE CONTRACT IS NOT AN ABUSE OF DISCRETION AND ITS TERMS ARE NOT 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. CITY HAS RIGHT TO SO CONTRACT.

We now address ourself to Plaintiff's sixth and final point. Plaintiff contends the contract is unconstitutional because it contains the provision that the City will during the term of the contract maintain an ordinance requiring all buildings and structures in said City used for residence, commercial or industrial purposes, and which are within a reasonable distance of an established sewer collection main, to be connected to such main. Plaintiff urges in support of his position, that such an ordinance would be invalid because it is vague and ambiguous for the reason that the term "reasonable distance" is used, rather than establishing a set or stipulated distance. He urges, that, therefore, what is a reasonable distance would be left to the changing discretion of changing City Councils. Plaintiff cites the case of *Bigler et al vs. Greenwood, a Utah case*, reported at 254 P. 2nd 843. In that case the Court held valid and enforceable an ordinance which required householders whose property was within 200 feet of the sewer to connect with the sewer. Plaintiff urges that such a ruling is good, but that the present contract is bad because no established or stipulated distance is well defined.

We take the position that this court should not rule

that the contract is bad because of the agreement to maintain in force an ordinance requiring all buildings and structures to be connected which are within a *reasonable distance from an established sewer collection main*. Plaintiff assumes that some future council may be unreasonable in the exercise of its statutory and municipal authority to compel residents to connect to established sewers. We think that the presumption is in favor of City Councils and Boards of Commissioners in acting in a reasonable and prudent manner in the administration of the affairs of the City, and that each case should be determined upon its own merits, when and if, presented to a court for review. We sincerely urge that this Court should not presume against the reasonableness of municipal governing bodies. We note in passing that the contract was drawn using the words 'within a reasonable distance' rather than attempting to specify an exact distance within which people would be required to connect to the sewers. This undoubtedly was done by the framers of the contract, the representatives of the Sewer District and the representatives of the municipality, for the reason that all parties concerned recognize that whereas there are nine or ten separate communities located within the Sewer District, there might well be and probably will be varying local conditions which will require each City Council to pass and adopt an ordinance compelling connection to its municipal collection system in accordance with local conditions, standards and requirements. We grant that what might be reasonable in Layton City, might under a local situation be unreasonable in Sunset City, Clearfield City or one of the other municipalities within the District. Therefore, it is urged that this matter was left to the discretion and reasonableness of each City Council in each municipality.

The section of the contract to which the Plaintiff here objects is the last paragraph in numbered paragraph three of the contract as set forth at the top of page 5 thereof.

We do not interpret this paragraph to mean that each City Council in passing an ordinance requiring connection to its sanitary sewer system will use the exact wording "within reasonable distance of an established sewer collection main". We interpret this to be the language of the contract between the District and the City and are further of the opinion that the District under the wording of this paragraph could not complain against the City regardless of the stipulated number of feet used in its local ordinance compelling connection to the sewer system, if the Court in interpreting the contract at hand determined that the distance employed in the local ordinance was "within a reasonable distance". We, therefore, admit that what is a "reasonable distance" is left to the changing discretion of the changing City Councils, and it was so intended, the District having no intention of dictating matters of local policy to the local City Council, but intending only and merely that wherever a commercial, residential or industrial structure was within a reasonable distance, to be determined by the local council, that the City would require connection to such sanitary facilities. To allow any person, firm or corporation to make his or its own determination as to when connection should be made to the City's sanitary sewer collection system would defeat and nullify the entire purpose and intention and use and desirability of the City's sanitary sewer collection system and the facilities to be afforded by the District. Without some definite means of compelling the use of the sewers both within and without the City limits of all persons, firms and

corporations within the boundries of the District would be to completely nullify the purpose of the City's sanitary efforts as well as the Sewer District itself and would result in a situation of complete and utter chaos where a goodly part of the population would afford itself of the facilities and the balance would refuse so to do.

With respect to the City's powers in connection with these matters, we refer the Court to Municipal Corporation, 37 Am. Jur., Section 288, at p. 925 which is as follows:

"As a matter of settled generalization and within the scope of their powers as granted by the statutes in charter or both or by constitutional provisions, Muncipal Corporations may enact all appropriate ordinances or promulgate appropriate regulations for the protection or preservation of the public health and to control whatever constitutes a menace thereto. The control of local health and sanitary matters is one of the powers commonly vested in municipalities and is among the chief duties of municipalities under and in connection with their police powers."

More in point we quote from 9 Am. Jur., Buildings, Sectin 14 at P. 209-210, where in it is stated among other things:

"Statutes and ordinances compelling owners of buildings to install water closets and to connect their premises with public sewers when not plainly unreasonable or arbitrary are also within the police powers. An arbitrary exercise of this power may be restrained but it must be palpably so to justify a Court in interferring with so salutary a power and one so necessary to the public health."

In *Fristoe vs. Crowley* 76 Southern 812, it is stated:

“An ordinance allowing ample opportunity to property owners to furnish their own material and have their premises connected with the public sewage system and authorizing the City upon default of an owner to construct for the work to be done at his expense has been upheld.”

In *Gault vs. Fort Collins, a Colorado case*, 142 P. 171, the Court held that a City has a statutory authority to compel owners of buildings in a sewer district to connect with a sewer, and also to prohibit the maintenance of privies within the sewer district. In view of these cases and a multitude of others which uniformly hold that Municipal Corporations have the authority to legislate upon such matters and compel property owners to connect their buildings with sanitary sewers provided by the municipality or by some other agency to be valid, we are of the opinion that the contract under question is not invalid or unconstitutional merely because the phrase, “reasonable distance” is used rather than a stipulated distance. Granted that the municipality has the authority to pass and enforce such ordinances, then the only question remaining for decision by this Court is whether the use of the phrase “within a reasonable distance” is so arbitrary or ambiguous as to make the contract void. We sincerely urge as above pointed out that, that language is used in the contract and that there is not from the wording of the contract any attempt to coerce or compel City to use that phrase in any ordinance legislating upon the subject. However, assuming that Layton City did use this phrase in an enforcement ordinance, we urge the Court that such a phrase would not invalidate the ordinance and that a Court would not restrain the City from enforcing such an ordinance if a rule or regulation under the ordinance relating to the distance within which users must

connect to the sewer was by the Court determined to be within a reasonable distance. That is to say that we urge that it is not the wording of the ordinance or the contract in this case that would make the same invalid or unconstitutional, but an attempted application of the usage of the words and phrase "within a reasonable distance". We feel that the Court should not as above pointed out, presume against the reasonableness of future City Councils, and that the Court on the other hand should assume that all future Councils or City Commissions will conduct and operate the business of their municipalities within a reasonable, prudent and well maner.

Plaintiff further contends that the City has no legal right to agree as a matter of contract that it will compel such connections. It is well recognized that a Municipal Corporation cannot contract to surrender any of its granted or implied powers. However, such is not the case here. In the contract under consideration, the City does not agree not to use its police powers to compel connection to its sanitary sewer system, but on the contrary agrees that it will exercise such powers in this regard in a *reasonable manner*. We think the court will clearly recognize the distinction between an attempt upon the part of the City to delegate or surrender its granted or implied powers, and the case where the City merely agrees that it will use its granted and implied powers toward a common goal within the corporate powers of said Municipality and for the use, benefit and good of the inhabitants thereof.

The list of cases holding that a Municipality may not surrender its powers, police or otherwise, is almost limitless, however, we have been unable to find any cases holding that a city or municipality may not contract or agree with

another political subdivision to exercise its police powers or other granted powers for the use and benefit of its inhabitants. As pointed out previously, there can be no doubt that Layton City has the right to engage in providing for its inhabitants, a method and means of proper sanitary sewage disposal and treatment, and further that there is no doubt that it has the right to use its police power to enforce connections to its sanitary sewage system in the interest of and for the preservation of the peace, health, and safety of the inhabitants of said City. Therefore, in entering into a contract with the District, whereby the City agrees that it will use such power as herein stated for the purpose of enforcing connections to its system it appears that the City is merely exercising a well recognized granted authority received from the legislature of the State of Utah and is in no way attempting to limit, subvert or surrender its statutory or constitutional powers in this regard.

CONCLUSION

For the reasons hereinabove set out, we respectfully submit that the contract between Layton City and the North Davis County Sewer District here under consideration, either as a whole or by its collective parts has not resulted in the creation of a debt on the part of Layton City, however, if the Court should decide that a debt on the part of Layton City has been created, nevertheless, it is not a debt in violation of constitutional limitations for the reason that it arises out of a contract of the continuing service type.

We further respectfully submit that there does exist constitutional and statutory authority for Layton City to enter into the contract, that the contract does not constitute an unconstitutional lending of the credit of Layton City to

the District, that the contract is not unconstitutional as an attempt by the present City Council to obligate future City Councils with respect to governmental matters; and lastly we submit that the City has a legal right to agree as a matter of contract that it will compel connections to its sanitary sewer system. For these reasons the alternative writ heretofore issued herein should be recalled and discharged and the petition for a permanent writ should be denied.

Respectfully submitted,

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