

1989

Kennecott Corporation, Morton Thiokol, Inc.,  
Barrick Resources (Usa) Inc., and Hercules,  
Incorporated, v. Utah State Tax Commission, R.  
Hal Hansen, Roger O. Tew, Joe B. Pacheco, G. Blaine  
Davis, Tom L. Allen, Edward T. Alter, Arthur L.  
Monson, and Grant L. Pendleton : Brief of  
Appellant

Utah Supreme Court

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Paul Van Dam; Utah Attorney General; Ralph Finlayson; Assistant Attorney General; Bill Thomas Peters; Special Deputy County Attorney; Attorneys for Respondents.

James B. Lee, Kent W. Winterholler, Maxwell A. Miller; Parsons, Behle, and Latimer; Attorneys for Appellants.

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UTAH

UTAH SUPREME COURT

FILED

BRIEF

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.S.

DOCKET NO.

89-0416

IN THE SUPREME COURT OF THE STATE OF UTAH

KENNECOTT CORPORATION, MORTON  
THIOL, INC., BARRICK RESOURCES  
(USA) INC., and HERCULES,  
INCORPORATED,

Appellants-Plaintiffs,

vs.

UTAH STATE TAX COMMISSION,  
R. HAL HANSEN, Chairman of the  
Utah State Tax Commission,  
ROGER O. TEW, Utah State Tax  
Commissioner, JOE B. PACHECO,  
Utah State Tax Commissioner,  
G. BLAINE DAVIS, Utah State  
Tax Commissioner, TOM L. ALLEN,  
Utah State Auditor, EDWARD T.  
ALTER, Utah State Treasurer,  
ARTHUR L. MONSON, Salt Lake  
County Treasurer, and GRANT L.  
PENDLETON, Tooele County  
Treasurer,

Respondents-Defendants.

No. 89-0416

Priority Category 14B

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT

TAX DIVISION

BRIEF OF APPELLANTS

Paul Van Dam  
Utah Attorney General  
Ralph Finlayson  
Assistant Attorney General  
Attorney for "State Defendants"  
Rm. 236 State Capitol Bldg.  
Salt Lake City, UT 84114  
Telephone (801) 538-1324

James B. Lee  
Kent W. Winterholler  
Maxwell A. Miller  
PARSONS, BEHLE & LATIMER  
185 South State Street,  
Suite 700  
Salt Lake City, UT  
Telephone (801) 532-1234

Bill Thomas Peters  
Special Deputy  
County Attorney  
Attorney for "County Defendants"  
9 Exchange Place, Suite 1000  
Salt Lake City, UT 84111  
Telephone (801) 364-8644

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Clerk Supreme Court Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

FILED

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Clerk, Supreme Court, Utah

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Paul Van Dam  
Utah Attorney General  
Ralph Finlayson  
Assistant Attorney General  
Attorney for "State Defendants"  
Rm. 236 State Capitol Bldg.  
Salt Lake City, UT 84114  
Telephone (801) 538-1324

James B. Lee  
Kent W. Winterholler  
Maxwell A. Miller  
PARSONS, BEHLE & LATIMER  
185 South State Street,  
Suite 700  
Salt Lake City, UT  
Telephone (801) 532-1234

Bill Thomas Peters  
Special Deputy  
County Attorney  
Attorney for "County Defendants"  
9 Exchange Place, Suite 1000  
Salt Lake City, UT 84111  
Telephone (801) 364-8644

On December 28, 1989, the Appellants-Plaintiffs filed the Brief of Appellants. Due to an oversight, attached to the Brief of Appellants as Exhibit B was the filed, but unsigned, Summary Judgment, Final Order and Certification of the lower court's decision in this matter. Attached hereto as the corrected Exhibit B, is a signed copy of the lower court's Summary Judgment, Final Order and Certification.

The Appellants-Plaintiffs hereby substitute the attached corrected Exhibit B for the Exhibit B originally filed with the Brief of Appellants.

Respectfully submitted.

DATED this 16th day of January, 1990.

A handwritten signature in cursive script, appearing to read "Maxwell A. Miller", is written over a horizontal line.

JAMES B. LEE  
KENT W. WINTERHOLLER  
MAXWELL A. MILLER  
of and for  
PARSONS, BEHLE & LATIMER  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, UT 84147-0898  
Telephone: (801) 532-1234

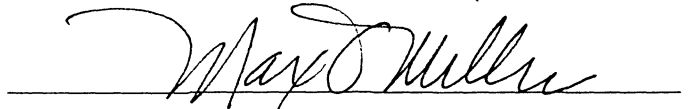


MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing BRIEF OF APPELLANTS-ERRATUM to the following on this 16th day of January, 1990:

Paul Van Dam  
Utah Attorney General  
Ralph Finlayson  
Assistant Attorney General  
Attorney for "State Defendants"  
Rm. 236 State Capitol Bldg.  
Salt Lake City, Utah 84114

Bill Thomas Peters  
Special Deputy  
County Attorney  
Attorney for "County Defendants"  
9 Exchange Place, Suite 1000  
Salt Lake City, Utah 84111

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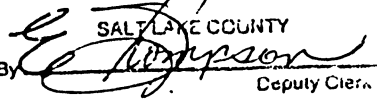
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EXHIBIT B

FILED DISTRICT COURT  
Third Judicial District

AUG - 7 1989

JAMES B. LEE (A1919)  
KENT W. WINTERHOLLER (3525)  
MAXWELL A. MILLER (A2264)  
of and for  
PARSONS, BEHLE & LATIMER  
Attorneys for Plaintiffs  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

By  SALT LAKE COUNTY  
Deputy Clerk

IN THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

KENNECOTT CORPORATION, MORTON )  
THIOKOL, INC., BARRICK RESOURCES )  
(USA) INC., and HERCULES, )  
INCORPORATED, )  
Plaintiffs, )

SUMMARY JUDGMENT, FINAL  
ORDER AND CERTIFICATION

vs. )

UTAH STATE TAX COMMISSION, )  
R. HAL HANSEN, Chairman of the )  
Utah State Tax Commission, )  
ROGER O. TEW, Utah State Tax )  
Commissioner, JOE B. PACHECO, )  
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County Treasurer; and GRANT L. )  
PENDLETON, Tooele County )  
Treasurer, )  
Defendants. )

Civil No. 88-3457

Judge Timothy R. Hanson

\* \* \* \* \*

Before the Court are reciprocal motions for partial  
summary judgment and other related reciprocal motions to strike

various supporting affidavits and attached exhibits. The parties filed extensive memoranda, appeared through their counsel and argued orally. Plaintiffs appeared by and through their attorneys, Maxwell A. Miller and Kent W. Winterholler. Defendants appeared by and through their attorneys, Bill Thomas Peters, special Deputy Salt Lake County and Tooele County attorney, and Karl Hendricksen, Deputy Salt Lake County Attorney.

The Court, having heard the arguments of counsel, and having considered legal authorities and memoranda filed by the parties, issued its Memorandum Decision on the above-stated motions on April 11, 1989. Based on that Memorandum Decision, and being otherwise fully advised in the premises, the Court hereby enters the following Summary Judgment, Final Order, and Certification pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

1. The Court rules that plaintiffs lack standing to contest the constitutionality of Utah Code Ann. § 17-19-15 (1987) under Article XIII, Section 5 of the Utah Constitution.

2. The Court rules that Utah Code Ann. § 17-19-15 (1987) is in furtherance of resolving a matter of statewide concern, and as such, is constitutional under Article, XIII Section 5 of the Utah Constitution.

3. The Court rules that the revenue distribution aspect of the funding mechanism established by Utah Code Ann. § 17-19-15 (1987) does not mandate revenue sharing between

counties, and, therefore, does not violate that provision of Article XIII, Section 5 which permits only consensual revenue sharing.

4. Based on the foregoing, the Court denies plaintiffs' Motion for Partial Summary Judgment.

5. The Court grants defendants' Motion for Summary Judgment as it pertains to the constitutionality of Utah Code Ann. § 17-19-15 (1987) under Article XIII, Section 5 of the Utah Constitution.

6. The Court denies the parties' respective motions to strike.

7. The Court dismisses plaintiffs' Amended Complaint, with respect to its First Cause of Action, with prejudice.

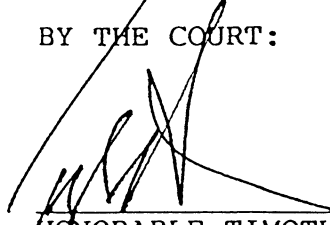
8. The Court rules that there are multiple parties in the present action and that plaintiffs' Amended Complaint raises multiple claims.

9. The Court rules that the Summary Judgment entered herein is a final order, wholly disposes of plaintiffs' First Cause of Action, and would be appealable but for the presence of plaintiffs' remaining claims.

10. The Court determines and certifies that there is no just reason to delay the plaintiffs from taking an appeal from the present Summary Judgment and Final Order.

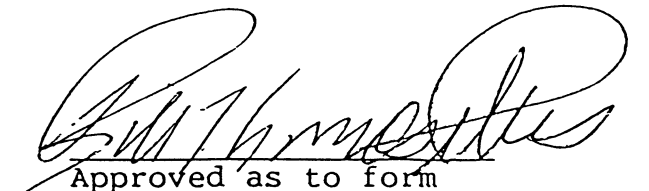
DATED this 7 day of August, 1989.

BY THE COURT:



HONORABLE TIMOTHY R. HANSON  
Third District Court Judge  
Tax Division

*E. Thompson*  
Attst.



Approved as to form  
Bill Thomas Peters  
Attorney for County Defendants

239:050589A

IN THE SUPREME COURT OF THE STATE OF UTAH

JAN 16 1990

KENNECOTT CORPORATION, MORTON  
THIOKOL, INC., BARRICK RESOURCES  
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INCORPORATED,

Appellants-Plaintiffs,

vs.

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ROGER O. TEW, Utah State Tax  
Commissioner, JOE B. PACHECO,  
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ALTER, Utah State Treasurer,  
ARTHUR L. MONSON, Salt Lake  
County Treasurer, and GRANT L.  
PENDLETON, Tooele County  
Treasurer,

Respondents-Defendants.

Clark Supreme

No. 89-0416

Priority Category 14B

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT

TAX DIVISION

BRIEF OF APPELLANTS - ERRATUM

Paul Van Dam  
Utah Attorney General  
Ralph Finlayson  
Assistant Attorney General  
Attorney for "State Defendants"  
Rm. 236 State Capitol Bldg.  
Salt Lake City, UT 84114  
Telephone (801) 538-1324

James B. Lee  
Kent W. Winterholler  
Maxwell A. Miller  
PARSONS, BEHLE & LATIMER  
185 South State Street,  
Suite 700  
Salt Lake City, UT  
Telephone (801) 532-1234

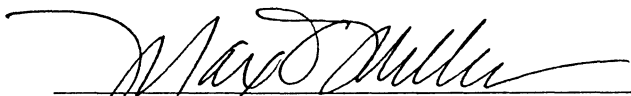
Bill Thomas Peters  
Special Deputy  
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Attorney for "County Defendants"  
9 Exchange Place, Suite 1000  
Salt Lake City, UT 84111  
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JAMES B. LEE  
KENT W. WINTERHOLLER  
MAXWELL A. MILLER  
of and for  
PARSONS, BEHLE & LATIMER  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, UT 84147-0898  
Telephone: (801) 532-1234

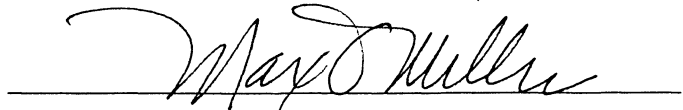


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Rm. 236 State Capitol Bldg.  
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284:011590A

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Attorneys for Plaintiffs  
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P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

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SUMMARY JUDGMENT, FINAL  
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Civil No. 88-3457

Judge Timothy R. Hanson

\* \* \* \* \*

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various supporting affidavits and attached exhibits. The parties filed extensive memoranda, appeared through their counsel and argued orally. Plaintiffs appeared by and through their attorneys, Maxwell A. Miller and Kent W. Winterholler. Defendants appeared by and through their attorneys, Bill Thomas Peters, special Deputy Salt Lake County and Tooele County attorney, and Karl Hendricksen, Deputy Salt Lake County Attorney.

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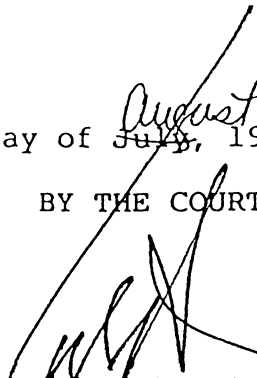
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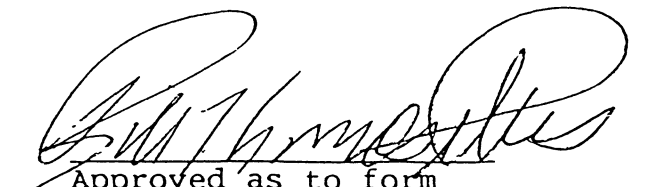
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DATED this 7 day of August, 1989.

BY THE COURT:

  
\_\_\_\_\_  
HONORABLE TIMOTHY R. HANSON  
Third District Court Judge  
Tax Division

  
Attest.

  
\_\_\_\_\_  
Approved as to form  
Bill Thomas Peters  
Attorney for County Defendants

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Paul Van Dam  
 Utah Attorney General  
 Ralph Finlayson  
 Assistant Attorney General  
 Attorney for "State Defendants"  
 Rm. 236 State Capitol Bldg.  
 Salt Lake City, UT 84114  
 Telephone (801) 538-1324

James B. Lee  
 Kent W. Winterholler  
 Maxwell A. Miller  
 PARSONS, BEHLE & LATIMER  
 185 South State Street,  
 Suite 700  
 Salt Lake City, UT  
 Telephone (801) 532-1234

Bill Thomas Peters  
 Special Deputy  
 County Attorney  
 Attorney for "County Defendants"  
 9 Exchange Place, Suite 1000  
 Salt Lake City, UT 84111  
 Telephone (801) 364-8644

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### JURISDICTION AND NATURE OF CASE

This Court has jurisdiction of this appeal pursuant to Article VIII, Section 3 of the Utah Constitution, Utah Code Ann. § 78-2-2 (1989), and Rule 4 of the Rules of the Utah Supreme Court.

This is an appeal by Kennecott Corporation, Morton Thiokol, Inc., Barrick Resources (USA) Inc., and Hercules, Incorporated (hereinafter referred to as the "Coalition") from a Summary Judgment and Final Order entered on August 7, 1989 by the Third Judicial District Court of Salt Lake County, State of Utah, in favor of Utah State Tax Commission, et. al.<sup>1</sup> (hereinafter referred to as the "County and State defendants"), holding that (1) the Coalition members lacked standing to contest the constitutionality of Utah Code Ann. § 17-19-15 (1987); (2) Utah Code Ann. § 17-19-15 (1987) furthers a statewide purpose and is thus constitutional; and (3) Utah Code Ann. § 17-19-15 (1987) does not mandate revenue sharing in violation of Article XIII, Section 5 of the Utah Constitution.

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<sup>1</sup> All parties to this proceeding are listed in the caption of this case.

### ISSUES PRESENTED FOR REVIEW

1. Do the Coalition members have standing to challenge the constitutionality of Utah Code Ann. § 17-19-15 (1987), which establishes a system for assessing, collecting and distributing property taxes?

2. Does Utah Code Ann. § 17-19-15 (1987) impose upon the Coalition an obligation to pay state taxes for the benefit of Salt Lake and Tooele Counties<sup>2</sup> in violation of Article XIII, Section 5 of the Utah Constitution?

3. Does the revenue distribution aspect of Utah Code Ann. § 17-19-15 (1987) mandate revenue sharing between counties in violation of Article XIII, Section 5 of the Utah Constitution?

### CONSTITUTIONAL AND STATUTORY PROVISIONS

Article XIII, Section 5 of the Utah Constitution provides:

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law vest in the corporate authorities thereof respectively, the power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary.

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<sup>2</sup> The Coalition members also own property in Box Elder, Davis and Utah counties which have also imposed upon Coalition members ad valorem taxes pursuant to Utah Code Ann. § 17-19-15; however, only Salt Lake and Tooele counties are named defendants to this action.

contained in this Constitution, political subdivisions may share their tax and other revenues with other political subdivisions as provided by statute.

Senate Bill 151, 1986, Utah Laws Ch. 109 Section 1, Codified at Utah Code Ann. § 17-19-15, is set forth in Appendix A to this brief.

#### STATEMENT OF THE CASE

1. Nature of the Proceedings. In 1987, the Coalition members, as taxpayers in Utah, had imposed upon them an assessment, collection, and distribution levy under Utah Code Ann. § 17-19-15 in the amount of .0005 of the assessed value of their property. Record at 9. On May 25, 1988, the Coalition commenced this action by filing a Complaint in the Third Judicial District Court of Salt Lake County, State of Utah. Record at 2-37. The Coalition's Complaint, as amended, sought a declaratory judgment that the Act violated various provisions of the state and federal constitutions, recovery of taxes paid under protest, and injunctive relief enjoining enforcement of the Act. Record at 53-66. The Coalition's first claim for relief asserts that the Act is unconstitutional because it violates Article XIII, Section 5 of the Utah Constitution. Record at 57-60.

The County and State defendants answered the Complaint. Record at 67-90 and 273-280. The Coalition and County defendants

then filed reciprocal motions for partial summary judgment with supporting affidavits and exhibits with respect to the Coalition's first claim for relief.<sup>3</sup> Record at 98-137 and 270-272.

2. Decision of the Court. On April 11, 1989, the district court entered a Memorandum Decision, attached hereto as Exhibit A (Record at 291-300), and on August 7, 1989, entered a Summary Judgment, Final Order, and Certification, attached hereto as Exhibit B (Record at 308-311). The district court ruled that the Coalition members lacked standing to contest the constitutionality of Utah Code Ann. § 17-19-15 (1987) under Article XIII, Section 5 of the Utah Constitution; that Utah Code Ann. § 17-19-15 (1987) is in furtherance of resolving matters of statewide concern, and therefore, is constitutional under Article XIII, Section 5 of the Utah Constitution; and that the revenue distribution aspect established by Utah Code Ann. § 17-19-15 (1987) does not mandate revenue sharing between counties, and,

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<sup>3</sup> The State defendants have preferred to remain neutral throughout the entire proceeding, having neither joined nor participated in either party's summary judgment motion. The State defendants are in a difficult and inconsistent position since the Tax Commission Chairman has filed an affidavit describing what he sees as the expedient benefits of the Act (Record at 260-263), while the Attorney General has opined that the Act is unconstitutional. Record at 14-29.

therefore, does not violate Article XIII, Section 5 which permits only consensual revenue sharing. Record at 309. Based on the foregoing, the district court denied the Coalition's Motion for Partial Summary Judgment and granted the County defendants' Motion for Partial Summary Judgment as it pertained to the constitutionality of Utah Code Ann. § 17-19-15 (1987) under Article XIII, Section 5 of the Utah Constitution. Record at 310. Pursuant to Rule 54(b) of the Utah Rules of Civil Procedure, the district court certified that there was no just reason to delay the Coalition from taking an appeal from the present Summary Judgment and Final Order. Record at 310.

The district court determined in its Memorandum Decision "that Section 17-19-15 is in furtherance of resolving a matter of statewide concern, and as such is constitutional under Article XIII, Section 5 of the Utah Constitution." Record at 297. As a basis for its determination, the district court adopted the arguments the County defendants made in their Memorandum In Response To Motion For Partial Summary Judgment And In Support Of Defendants' Cross-Motion For Summary Judgment, attached hereto as Exhibit C. Record at 177-215. The district court also ruled that the revenue distribution aspect of the Act does not mandate revenue sharing, but rather provides for consensual revenue sharing since it "merely provides that where



counties generate proceeds in excess of budgeted amounts that are the result of a uniform statewide tax levy, that those excess funds may be diverted to other counties in conformity with the funding programs in the spirit of the statewide purpose of uniformity assessment valuation." Record at 297 (emphasis added). Additionally, the district court noted that the Utah Association of Counties, the Utah League of Cities and Towns, and the Utah State School Board Associations have, on behalf of their members, supported Utah Code Ann. § 17-19-15 and, on that basis, concluded that "even if the statutory provision mandated revenue sharing, it would not be offensive to Article XIII, Section 5, because the counties do so voluntarily." Record at 298.

Finally, the district court ruled that the Coalition members do not have standing to bring this lawsuit because the individual counties or their elective representatives are the only entities that have standing. Record at 297.

3. Statement of Facts. In the 1986 General Session of the Utah Legislature, the Utah Legislature enacted Senate Bill No. 151, codified at Utah Code Ann. § 17-19-15, entitled "An Act Relating to Counties; Providing for the Collection, Assessment, and Distribution Costs Charged by the County and Providing an Effective Date" (hereinafter referred to as the "Act"). The Act imposes a mandatory statewide levy upon all real property for the

purpose of defraying costs incurred by Utah's counties in assessing, collecting and distributing property taxes for, in behalf of, and to various taxing entities and districts located within each county's geographical boundaries.

Before the Act became effective, each county was responsible for budgeting the costs for assessment, collection and distribution of property taxes for that county. Each county determined the categories of costs and expenses involved in the assessment, collection, and distribution of property taxes it levied. The individual county then set a tax rate at the appropriate level to fund these costs. The state did not participate, nor did it have any responsibility, in determining county budgets and did not participate in levying taxes to fund these county purposes.

Under the Act's provisions, individual counties no longer have the discretion to identify, budget, and levy for costs the county deems legitimate. Each county is now required to separately budget for certain categorical costs incurred in the assessment, collection, and distribution of property taxes and related appraisal programs for submission to the state auditor for review. The counties no longer set a local tax rate to cover these costs. Utah Code Ann. § 17-19-15(1).

The budget submitted to the state auditor is limited to certain categories of allowable costs which the state auditor establishes, and is subject to certification for compliance with these set categories. Id. § 17-19-15(2). After certification by the state auditor, the aggregate costs of each county are transmitted to the State Tax Commission "for determination of a mandatory statewide tax rate sufficient to meet these expenditures." Id. § 17-19-15(3) (emphasis added). The tax rate set by the State Tax Commission may not exceed a maximum of .0005 per dollar of taxable value of taxable property, with certain exceptions. Id. § 17-19-15(4). Any revenues received by a county pursuant to the provisions of the Act, in excess of the amount of its certified budget, are required to be transmitted to the state treasurer for distribution to other counties. Id. § 17-19-15(6).

The result of this redistribution scheme created by the Act is that the counties with a large property tax base subsidize counties with a smaller property tax base. In short, two groups of counties result; some counties are "exporting counties" and other are "importing counties." Record at 166.<sup>4</sup>

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<sup>4</sup> See also Affidavit of Auston Johnson, III and its attached Exhibit A1. Apparently due to oversight, the Johnson Affidavit Footnote continued on next page.

### SUMMARY OF ARGUMENT

Article XIII, Section 5 is a specific constitutional prohibition against the state legislature's imposition of taxes for county purposes or functions. The purpose of this constitutional proscription is to preserve the autonomy of local governments by precluding state officials from influencing or deciding local issues. This Court has repeatedly interpreted this constitutional provision as prohibiting the state from levying taxes for county purposes.

The Act imposes a mandatory statewide tax for the purpose of funding local county functions in violation of Article XIII, Section 5 of the Utah Constitution. Because the Act violates Article XIII, Section 5, the district court erred in granting summary judgment to the County defendants. While

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Footnote continued from previous page.

and the Motion to Supplement the Record requesting permission to enter the Johnson Affidavit into evidence was not made a part of the record. However, the County defendants' Motion to Strike the Affidavit of Auston Johnson, III is part of the record (Record at 282-286) and is referenced in the district court's Memorandum Decision when the district court declined to strike the Johnson Affidavit from the record. Record at 292. Thus, the Johnson Affidavit was apparently omitted by error. The Johnson Affidavit is attached hereto as Exhibit D. On December 28, 1989, the Coalition filed a Motion to Correct the Record in the district court to have the Johnson affidavit and its exhibits included in the record.

legislative statutes are presumed valid, the judiciary has the responsibility to ensure that the safeguards placed in our Constitution are preserved. Characterizing the Act as being for statewide purposes cannot and does not override a specific constitutional prohibition. To so hold renders Article XIII, Section 5 meaningless because the state could levy for county purposes at any time under the guise that a statewide purpose is being furthered.

Each Coalition member has standing to contest the provisions of the Act. This Court clarified standing guidelines in Terracor v. Utah Board of State Lands & Forestry, 716 P.2d 796 (Utah 1986). The Coalition members meet all of the three criteria this Court listed: First, the Coalition members have "suffered some distinct and palpable injury that gives [the Coalition] a personal stake in the outcome of the legal dispute." Id. at 799. Second, no one else has "a greater interest in the outcome of the case and the issues are unlikely to be raised at all unless [the Coalition] has standing to raise the issue." Id. And third, the issue raised in this appeal is unique and of great public importance which should be decided in furtherance of the public interest. Id.

Finally, the Act mandates revenue sharing amongst counties. Regardless of whether the counties agree to share

revenues, the Act is written in the imperative mode, mandating compliance. The Act does not provide for consensual revenue sharing, and this clearly violates the Constitution, which permits only consensual sharing. Furthermore, the counties have failed to take appropriate and necessary actions under which legal consent to share revenues is authorized. Informal county actions or the vote of county associations are not the requisite actions to be taken by a county in order to authorize revenue sharing. Therefore, the revenue sharing scheme fails for lack of proper authorization.

#### ARGUMENT

Introduction. Rule 56(c) of the Utah Rules of Civil Procedure provides that Summary Judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Bowen v. Riverton City, 656 P.2d 434 (Utah 1982). Although it was appropriate for the district court to grant summary judgment in the absence of factual disputes, the district court erred in granting the County defendants' Motion for Partial Summary Judgment because the Act violates Article XIII, Section 5. The Coalition, rather than the County defendants, is entitled to summary judgment as a matter of law. Accordingly, the district court's summary judgment and

final order should be reversed with directions to enter summary judgment for the Coalition.

I. THE COALITION MEMBERS HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF UTAH CODE ANN. § 17-19-15.

The district court erred in holding that the Coalition members lacked standing to contest the constitutionality of the Act. This Court, in Terracor, supra at 798, summarized Utah case law on standing as follows:

The first general criterion is that the '[p]laintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute.'

Second, if a Plaintiff does not have standing under the first criteria, he may have standing if no one else has a greater interest in the outcome of the case and the issues are unlikely to be raised at all unless that particular Plaintiff has standing to raise the issue.

Third, even though standing is not found to exist under the first two criteria, a Plaintiff may nonetheless have standing if the issues are unique and are of such great public importance that they ought to be decided in furtherance of the public interest.

The Coalition members satisfy each of these standards. First, as taxpayers and owners of real property, the Coalition members are directly affected by the distribution of tax proceeds. Indeed, the distribution scheme of the Act requires the

Coalition to pay a tax, which, in part, would not be otherwise due. More importantly, because the levy assessed against the Coalition reflects the counties' budgeted costs in which the Coalition has no presence, the Coalition members have suffered a real and "palpable" injury. If the Coalition members do not have standing to contest the constitutionality of this distribution scheme, they will be denied an opportunity to seek any redress since they have no right to representation before counties in which they have no presence or property (but yet are bearing the costs of county assessment operations). For this reason, the Coalition members have the requisite "personal stake in the outcome of the legal dispute." Id.

Second, no one else has a greater interest in the outcome of this case than Coalition members or similarly situated taxpayers. Unless the Coalition raises this issue it is unlikely to be raised at all. The Coalition members own substantial property in Tooele, Box Elder, Utah, Davis, and Salt Lake Counties and pay substantial taxes under the Act. Most other taxpayers have less valuable property and cannot justify the necessary legal expenses to challenge the Act. Moreover, this Court has previously held that local taxpayers have standing to contest state tax levies to fund county functions (school fund budget



items). In Olson v. Salt Lake City School District, 724 P.2d 960, 962-63 (Utah 1986), (footnote 1), this Court stated:

We find that applying the general principles enunciated in the cases noted, individual taxpayers in Salt Lake City would be granted standing on the basis that there are no more likely appellants and the issue is otherwise unlikely to be raised.

Third, the issues presented in this case are unique and of great public interest. Certainly a statutory taxing scheme which affects every property owner in Utah by imposing a mandatory statewide levy on each of the 29 counties in this state is of great public importance.

One additional criteria frequently overlooked in the Terracor decision is found in footnote four on page 799 which states that "[i]n addition, taxpayers may have standing to challenge an illegal expenditure." This additional criteria was previously recited in Jenkins v. Swan, 675 P.2d 1145, 1153 (Utah 1983) wherein this Court stated that "[it] has long held that a taxpayer has standing to prosecute an action against municipalities and other political subdivisions of the state for illegal expenditures." See also Olson v. Salt Lake City School District, supra at 962-63, footnote 1. A taxpayer's right to sue over the illegal use of public monies has been extended to include an action against the state. Jenkins, supra at 1153. To have

standing to challenge the Act the Coalition need not show injury.

In Jenkins, this Court stated:

'[A] taxpayer should be permitted to enjoin the unlawful expenditure of tax monies in which he has a pecuniary interest, or to prevent increased levies for illegal purposes.' In arriving at this conclusion, we quoted with approval the following language of the Illinois Supreme Court:

We have repeatedly held that taxpayers may resort to a court of equity to prevent the misapplication of public funds, and that this right is based upon the taxpayers' equitable ownership of such funds and their liability to replenish the public treasury for the deficiency which would be caused by the misappropriation.

Id. (citations omitted).

Finally, it should be noted that one of the Coalition members has a further right to standing pursuant to Utah Code Ann. § 59-2-1411 (1987). Kennecott Corporation paid its 1987 taxes under protest and brought the action below to recover those taxes; it thus has standing to contest the lawfulness of the taxes imposed. "The constitutionality or legality of a tax statute may be raised in an action that is properly filed pursuant to § 59-11-1 [sic] [(§ 59-11-11 (supp. 1981) is the predecessor to § 59-2-1411 (1987))] in the district court." Id. at 1152.

II. UTAH CODE ANN. § 17-19-15 VIOLATES ARTICLE  
XIII, SECTION 5 OF THE UTAH CONSTITUTION.

A. The Supreme Court of Utah has Repeatedly Enforced  
Article XIII, Section 5 to Prohibit State Levies for County  
Purposes.

Since 1901, and as recently as 1979, the Utah Supreme Court has interpreted Article XIII, Section 5 to preclude the legislature from forcing county governments to tax for state purposes.<sup>5</sup> None of the cases interpreting Article XIII, Section 5 has overruled any of the preceding cases; and all consistently stress three salient doctrines emanating from Article XIII, Section 5:

1. The state, acting through its legislature, may impose taxes only for a state purpose.
2. The levy and collection of local ad valorem taxes is a county function, not a state function, even though the state, acting through the Tax Commission, must "assess" or value certain properties on a unitary basis.

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<sup>5</sup> The significant cases interpreting Article XIII, Section 5 are: State v. Standford, 24 Utah 148, 66 P. 1061 (1901); State v. Eldredge, 27 Utah 477, 76 P. 337 (1904); Salt Lake County v. Salt Lake City, 42 Utah 548, 124 P. 560 (1913); Bailey v. Van Dyke, 66 Utah 184, 240 P. 454 (1925); The Best Foods v. Christensen, 75 Utah 392, 285 P. 1001 (1930); Smith v. Carbon County, 90 Utah 560, 63 P.2d 259 (1936); Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975); Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979); Baker v. Matheson, 607 P.2d 233 (Utah 1979).

3. Article XIII, Section 5 precludes state interference with county taxation.

Each of these points are explained below through a brief survey of relevant cases.

1. The state, acting through its legislature, may impose taxes only for a state purpose.

Article XIII, Section 5's underlying intent, as first declared in State v. Stanford, 24 Utah 148, 149, 66 P. 1061, 1062 (1901), is to prevent the state from compelling a county to levy taxes for county functions or purposes:

When the county government is established separate from the state, each is compelled to bear its own burdens, and not assume those of the other. The legislature is forbidden to impose taxes for county purposes, as is the county for state purposes, and the state is not authorized to impose taxes for other than state purposes.

(Emphasis added.)

In Stanford, the Utah Supreme Court held that a state statute, which required the county commission of each county to appoint a horticulturist as a tree inspector, violated Article XIII, Section 5 of the Utah Constitution.

The aspects of the statute challenged in Stanford that offended Article XIII, Section 5 were: (1) The state inspector, with the advice of the state board, appointed deputy inspectors

as he saw fit, thus compelling the county to "levy and collect taxes with which to pay such officers." Id. (2) County commissioners had no supervisory control over the inspectors, which "in no sense can be called county officers." Id. (3) The county was compelled to audit and pay the monthly salaries of the inspector and deputies.

Upon these facts the Standford Court concluded:

[S]ection 5, art. 13, of the constitution, not only limits local or county taxation to local county purposes, but it was also intended as a limitation upon the power of the legislature to grant the right or impose the duty of creating a debt or levying a tax to any person or body other than the corporate authorities of the county. Nor can the state compel a county to incur a debt or to levy a tax for the purpose named in the act without its consent.

Id. at 1063 (emphasis added).

Standford thus stands for the principle that legislation violates the mandatory provisions of Article XIII, Section 5 if it attempts to achieve a state purpose through local ad valorem taxation, a function exclusively reserved to the counties.

The more recent Utah Supreme Court cases (decided after 1940) confirm Standford's rationale by holding that Article XIII,

Section 5 is not violated as long as revenues from state taxing schemes are not being used to fund local county functions.

For instance, in Tribe v. Salt Lake City Corporation, 540 P.2d 499 (Utah 1975), the Utah Supreme Court upheld, against an Article XIII, Section 5 challenge, a statute that required a portion of property taxes to be diverted directly to help pay off revenue bonds issued by the Salt Lake City Redevelopment Agency to finance a redevelopment project. In dismissing the Article XIII, Section 5 claim the Tribe Court held "it needs only to be said that the law is well settled that in exercising the powers of the state the legislature may require the revenue of a municipality, raised by taxation, to be applied to uses other than that for which the taxes were levied." Id. at 504 (emphasis added).

It is important to emphasize the context in which the Tribe Court's commentary on Article XIII, Section 5 was made. The Court repeatedly stressed that the Salt Lake City Redevelopment Agency, which issued tax allocation and parking revenue bonds, was "a quasi-municipal corporation, a public agency created for beneficial and necessary public purposes. "It is not a true municipal corporation, having power of local government, but an agency of the state designed for state purposes." Id. at 503 (emphasis added). Since the agency was part of state government, Article XIII, Section 5, which precludes state interference

with county taxation powers, did not apply. Given that distinction, the state in Tribe could require that state tax revenue collected by the county be applied to state purposes. The Tribe Court found that no further analysis of Article XIII, Section 5 was necessary because the revenue expenditures were not for local county purposes.

In Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979), the Utah Supreme Court, specifically relying upon the Tribe decision, upheld a redevelopment act that, as Salt Lake County alleged, required diversions of taxes assessed by the county for county purposes to the defendant Murray City for Murray City redevelopment. Salt Lake County sought to distinguish Tribe on the basis that the statute at issue in Salt Lake County v. Murray City authorized the diversion of assessed taxes, normally accruing to the benefit of the county, from the county to Murray City; and further that such a diversion would shift the burden of paying for improvements from Murray City to Salt Lake County as a whole. Consequently, Salt Lake County claimed that it would be forced to increase its mill levy to compensate for lost revenues and that this constituted an imposition of taxes on Salt Lake County residents for Murray City purposes, contrary to the intent and language of Article XIII, Section 5.

The Court disagreed with Salt Lake County on a purely factual basis:

[I]t should be noted that Salt Lake County will not lose its vested authority to 'collect taxes for all purposes of such corporation' as provided in Article XIII, Section 5. Salt Lake County will not even be subordinated to the redevelopment agency in the collection of taxes. It will be held to the amount and proportion of tax revenues that it would have received had no redevelopment plan been adopted, and that amount will remain static for that period of time during which the bonds of redevelopment are being retired.

Id. at 1342 (emphasis added and footnotes omitted).

The Court further stressed, quoting Tribe, that the Murray City Redevelopment Agency was a quasi-municipal corporation, and not a special commission. Accordingly, the Murray City Redevelopment Agency:

is an arm of the State government, designed for State purposes with powers granted by the Legislature separate and distinct from the municipality within whose territory it may be established. The Agency benefits the public at large by alleviating urban blight, which was also recognized by this Court in Tribe as a problem of statewide, not merely local concern.

Id. (emphasis added).

Thus, the Court in Salt Lake County v. Murray City Redevelopment avoided a constitutional impasse with Article XIII, Section 5 by finding as a factual matter that (1) the statutory



scheme Salt Lake County challenged did not impact its power to collect taxes; and that (2) the Redevelopment Agency was an arm of state government and thus could, if authorized by the legislature, raise revenue for state purposes.

In its most recent analysis of Article XIII, Section 5, Baker v. Matheson, 607 P.2d 233 (Utah 1979), the Court followed this same rationale in upholding, as against an Article XIII, Section 5 challenge, a statute that authorized certain home owners and renters to file claims for refunds from the state general fund. The operative provisions of the challenged act permitted the "owner of a dwelling" and the "renter of a dwelling comprising a household" to file claims for refunds of "state general fund free revenue." The act's underlying purpose, as determined by the legislature and quoted in the opinion was:

to provide for a refund of the excess of the free revenues in the state general fund on an equitable basis to those . . . who have experienced the primary impact of the increases in the property taxes, and increased living costs, this refund to be effectuated through payments from these free revenues and computed on the basis provided for in this section.

Id. at 236 (emphasis in original).

The Baker Court had little trouble in dismissing the Article XIII, Section 5 challenge since:

the Act is not a taxing measure, and there simply is no substance to the proposition

that the Act 'impose[s] taxes for the purposes of a county, city, town or other municipal corporation. . . .'. The Act makes no provision whatsoever for any payments to or for any county, city, town or municipal corporation.

Id. at 241 (emphasis added).

As with prior opinions, the Baker Court stressed that Article XIII, Section 5 only applied to state-compelled taxation for county purposes. The provision otherwise does not preclude state financing measures, such as those at issue in Tribe, Salt Lake County and Baker.

2. The levy and collection of local ad valorem taxes is a county function, not a state function, even though the state, acting through the Tax Commission, must "assess" or value certain properties on a unitary basis.

In State v. Eldredge, 27 Utah 477, 76 P. 337 (1904) the Utah Supreme Court, again invoking Article XIII, Section 5, held that a statute giving the State Board of Equalization power to levy property taxes on property wholly located within one county was unconstitutional because that is an exclusive county function. In construing Article XIII, Section 5 the Eldredge Court commented:

If the construction which the relator seeks to place upon that language of the Constitution [(the language of Article XIII, Section 11 creating a State Board of Equalization and conferring upon it such

other duties as may be prescribed by law)] were to be adopted, then there would seem to be no reason why the State Board, by legislative enactment, might not be authorized to also levy and collect the taxes upon property situate wholly within one county, or to perform many of the other local duties which the legislature might see fit to impose upon the board. As will be noticed, this would clearly be in violation of section 5, art. 13, which directs the Legislature to vest in the corporate authorities the power to assess and collect taxes for local purposes.

Id. at 340 (emphasis added).

3. Article XIII, Section 5 precludes state interference with county taxation.

Consistent with the cases discussed above, which hold that ad valorem taxation is a county function, are cases which uphold a challenged statute under Article XIII, Section 5 because they do not involve taxation.

For example, in Salt Lake County v. Salt Lake City, 42 Utah 548, 124 P. 560 (1913) Salt Lake County (the "County") brought an action against Salt lake City to recover the costs of caring for, educating, and maintaining certain delinquent children who were ordered by the juvenile court to be sent to a detention home maintained by the County. The County maintained the detention facility pursuant to state law which provided that upon the recommendation of the Juvenile Court Commission, the

Board of County Commissioners "shall establish . . . and maintain detention homes . . . ." The act further provided that the county establishing and maintaining such a detention home was entitled to recover from cities of the first and second class the support and maintenance costs. Salt Lake City contended that the law authorizing a county to recover against a city was unconstitutional because, among other reasons, it violated Article XIII, Section 5.

In discussing the act at issue, the Supreme Court stated, "What is sought to be accomplished by that law does not relate to the assessment or collection of taxes; nor does it regulate or attempt to regulate county or township officers." Id. at 563 (emphasis added). The Court continued to state that "What is required from Salt Lake City is required from it as an arm or agency of state government, and in no way affects or interferes with any of its functions as a municipal corporation governing its own local affairs." Id. (emphasis added).

In its analysis of the Article XIII, Section 5 issue, the Court held that "[t]he Legislature in exercising sovereign powers of the state in our judgment had the right to require both Salt Lake county [sic] and Salt Lake City to each draw upon its general fund to defray the expenses of caring for and educating delinquent children who became wards of the juvenile court

. . . ." Id. at 564. The Court further held, "[W]e think that we have already made clear that the purpose to which the fund in question is sought to be applied is for general public good, and not for a private purpose; that such purpose is not one which pertains to the corporate powers or interest of Salt Lake City." Id. As explicitly recognized by the Court, Salt Lake County did not concern the imposition of taxes for county purposes and thus Article XIII, Section 5 was not violated.

Later cases also interpret the proscriptions of Article XIII, Section 5 as limited to county taxation powers. In Bailey v. Van Dyke, 66 Utah 184, 240 P. 454 (1925) the Utah Supreme Court held that the Article XIII, Section 5 claim before it was:

wholly insupportable because the statute in question does not impose any obligation whatever upon the county. The county is merely given legal power to enter into the contract and provide the funds or not, as its duly constituted officers may elect. There is no imposition of taxes, direct or indirect, by legislative authority upon the county, and no interference with local self government by the county.

Id. at 457. (emphasis added).

In The Best Foods v. Christensen, 75 Utah 392, 285 P. 1001 (1930), the Utah Supreme Court upheld, against a challenge under Article XIII, Section 5, a statute that imposed a \$5.00 annual permit fee payable by the seller of oleomargarine to the

general fund of a county, city or town. Explicitly, in Best Foods, the Court avoided the Article XIII, Section 5 challenge, concurring with the defendant's contention that \$5.00 fee "for a permit to sell oleomargarine is not a tax within the meaning of article 13, § 5, of our state Constitution." Id. at 1002 (emphasis added).

In Smith v. Carbon County, 90 Utah 560, 63 P.2d 259 (1936), the Utah Supreme Court held that, under Article I, Section 24 (mandating the "uniform operation" of all laws of a "general nature") a statute that provided for graduated "fees" in probate proceedings based upon the size of the estate was unconstitutional.

The Smith Court raised the Article XIII, Section 5, issue sua sponte because it was "not argued in the briefs of counsel and therefore we refrain from answering it in the present opinion." Id. at 262. Nonetheless, the Court in dicta declared:

It is not necessary in the present case to consider what power, if any, the Legislature has to impose inheritance taxes for the use and benefits of counties because the fees provided for in the statute under review are not inheritance taxes.

Id. (emphasis added.)

These cases are important because they stress that legislation which does not impact the levy and collection of ad valorem taxes does not offend Articles XIII, Section 5.

Finally, while not binding on the Court, it is relevant that on February 11, 1988, the Utah Attorney General issued a Formal Opinion concluding that the Act does interfere with the local county functions of levying and collecting taxes and is thus unconstitutional. Formal Opinion No. 88-01, Feb. 11, 1988. Record 14-29. In this Formal Opinion, the Attorney General concludes that Utah Code Ann. § 17-19-15 violates Article XIII, Section 5 because the provisions of the Act "mandate" that counties: 1) collect taxes for their own use; 2) share their tax revenues with other counties regardless of their consent; and 3) submit to the other described state controls. Formal Opinion No. 88-01, p. 11 (emphasis added). Record at 25.

B. The Constitution Prohibits a State Levy for County Purposes Even if a Concomitant Statewide Purpose is Being Furthered.

Article I, Section 2 of the Utah Constitution sets forth that "[a]ll political power is inherent in the people." The state Constitution therefore serves as a limitation on the exercise of the sovereign power of the state inherent in the people, and the state legislature must, accordingly, operate

within those constitutional limits. The essence of the Coalition's argument in this case is that Utah Code Ann. § 17-19-15 attempts to do what the Constitution prohibits; thus it is unconstitutional, irrespective of any concomitant statewide purpose that might be furthered.

Article XIII, Section 5 of the Utah Constitution does not grant authority but constrains authority. Once again, the proscription is that the "Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation. . . ." (Emphasis added.)

In other words, the state legislature cannot levy taxes for the purposes of any county for any reason. This restriction is not conditional. "The terms of the constitution are made mandatory and prohibitory unless expressly declared to be otherwise." State v. Stanford, supra at 1063 (emphasis added).<sup>6</sup> Consequently, a state cannot levy for county purposes in

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<sup>6</sup> It is relevant to note that Article XIII, Section 5 specifically allows one exception to its proscription, which is that counties may share their revenues with other counties if they so consent. Therefore, if the intent of the Constitution was that Article XIII, Section 5 would not apply if a concomitant state purpose was being furthered, the constitutional framers would have logically included this exception as well.



disregard of a constitutional restraint on the pretext that a concomitant statewide purpose is being furthered.

In a recent decision, this Court, following a similar principle, rejected the argument that a statute furthering a state purpose can ignore a constitutional prohibition. In Utah Technology Finance Corporation v. Wilkinson, 723 P.2d 406 (Utah 1986) the Utah Technology Finance Corporation ("UTFC"), as established by the Utah Technology and Innovation Act, had committed one million dollars of public funds to subscribe to stock, indirectly, in selected businesses. The Attorney General argued that the Utah Technology and Innovation Act violated Article VI, Section 29 of the Utah Constitution which prohibits the state from "subscrib[ing] to stock or bonds in aid of any . . . corporate enterprise or undertaking." UTFC sought judicial approbation on the ground that the legislature has found the subscription of stock in fledging businesses to have a public purpose. Id. at 413. This Court responded:

[T]he legislature's findings of a public purpose are of no avail in this instance. The constitutional convention in promulgating section 29 and its subsequent adoption by the electorate of this state have foreclosed any speculation or further debate on that issue. Whether the public benefits thereby is of no consequence. This means of assistance is forbidden by section 29. The state is foreclosed from subscribing, even though the legislature may determine that public benefits will flow therefrom.

Id. at 413-414.

This same rule applies to this case. A statute that violates a constitutional prohibition cannot be validated by finding that a statewide purpose is served. Regardless of the merits of a statute and any potential public good it may accomplish, if that statute intrudes upon the Constitution it must fail. The Act is unconstitutional because it transgresses a specific constitutional provision.

C. Utah Code Ann. § 17-19-15 Is a State Tax Being Levied For County Purposes.

In its Memorandum Decision, the district court upheld the constitutionality of the Act, in part, on the finding that the Act "does not on its face dictate to the counties that they shall impose taxes for some specific county purpose." Record at 296. This is incorrect. The Act specifically provides that the revenues generated from the "mandatory statewide tax rate" will be used to offset "all costs incurred in the assessment, collection, and distribution of property taxes and related appraisal programs." Utah Code Ann. § 17-19-15(1), (3) and (5). It is the duty, responsibility, and constitutional right of each county to have exclusive control and domain over inherently county purposes. Article XIII, Section 5 provides that the power to assess and collect taxes for all county purposes may be delegated to the

individual counties, and the state itself cannot exercise such powers. State v. Eldredge, supra at 340. The Court stressed this point by interpreting Article XIII, Section 5 as vesting the levy and collection of ad valorem taxes with the counties as an exclusive county function, for county purposes, which authority cannot be assumed or delegated to others. State v. Stanford, supra at 1062. Thus the costs, expenses, salaries of county officials, etc. involved in the assessment, collection, and levy of ad valorem property taxes are expenses and costs specifically related to county purposes.<sup>7</sup>

In an effort to prove that the Act does not impose a tax for a "county purpose," the County defendants have referred to the Tax Commission's various supervisory powers and duties over counties. The County defendants then argue that the Tax Commission's statutory duties are circumscribed within the general constitutional duty to "review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties." Article XIII, § 11. From these and other such duties, the County defendants conclude that "the legislature and the Tax Commission

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<sup>7</sup> See 106 A.L.R. 906 (1937) for a discussion and description of other expenses and costs incurred by a county/local municipality that are related to local purposes.

have, to a large degree, completely assume[d] control of the local administration of the property tax system." Record at 180.

The County defendants exhaustive recitation of the Tax Commission's supervisory duties appears to advance the following logic: (1) the Tax Commission, by statute and constitutional mandate, has general supervisory control over the counties' assessment, collection and equalization functions; (2) the Act is a legislative attempt at equalization; and, (3) therefore, the Act is within the constitutional framework of the Tax Commission's duties.

The fatal flaw in this logic lies in the second premise. It is an unwarranted and unsupported logical leap to assume that because the Tax Commission has general supervisory powers over equalization and assessment that it also has equivalent powers over county authority to levy taxes. The Court should decline to make that leap for two reasons.

First, Utah Supreme Court cases interpreting Article XIII, Section 5 make it indisputably clear that the levy of ad valorem taxes is a county function, for county purposes which cannot be assumed by or delegated to others. State v. Stanford, supra at 1062. Further the Stanford Court stated that "[u]nder the constitution the state has no power to make a disposition of county funds, and require that they be appropriated for other and

different purposes than those for which by authority of the county they were collected." Id. at 1063. Standford also held that the state could not "compel a county to incur a debt or to levy a tax . . . without its consent." Id.

As discussed above, the Utah Supreme Court in State v. Eldredge, invoking Article XIII, Section 5, held that a statute giving the State Board of Equalization (the predecessor to the Utah State Tax Commission) power to assess property wholly located within one county was unconstitutional, notwithstanding the Board's general supervisory powers. In construing Article XIII, Section 5, the Eldredge Court stated, as extensively quoted earlier, that the State Board of Education could not levy and collect taxes on property wholly situated within one county:

As will be noticed, this would clearly be in violation of section 5, art. 13, which directs the Legislature to vest in the corporate authorities the power to assess and collect taxes for local purposes.

Id. at 340 (emphasis added).

Eldredge, therefore, is authority that - whatever the oversight responsibilities of state taxing authorities - state power over the taxing function of local governments stops far short of the actual levy and collection of a tax. By constitutional mandate, the levy and collection of an ad valorem tax is a county function. The Act, by vesting the power to impose local

ad valorem taxes in state officials, unconstitutionally intrudes upon the role of county government. If that is not so, and the Tax Commission and other state officials can impose local ad valorem taxes and redistribute collected taxes to other counties, Article XIII, Section 5 proscribes nothing, and is meaningless. This result runs afoul of this Court's consistently repeated doctrine that statutory enactments that contravene constitutional provisions are void even though they are arguably meritorious. See, e.g., Rio Algom Corporation v. San Juan County, 681 P.2d 184 (Utah 1984) and Dean v. Rampton, 556 P.2d 205 (Utah 1976).

Second, most of the Tax Commission's supervisory control over counties does not relate to the levy of local ad valorem taxes. Because Article XIII, Section 5 addresses only ad valorem taxation by counties, many of the County defendants' arguments below - no more than a laundry list of state supervisory controls over various county functions - are irrelevant. For example, the County defendants rely upon the statutory financing scheme for the Uniform School Fund to bootstrap an argument that the Act is constitutional. Specifically, the argument is "the method of financing an effective and economic statewide system of property tax assessment, collection and distribution was closely modeled on the finance mechanism for the state supported minimum school program (Uniform School Fund).

See Utah Code Ann. § 53-7-1 et seq. (1953, as amended)." Record at 183.

This argument is unavailing because statewide taxes to support public education stand upon an entirely different constitutional footing (Article X, Section 1) than do state imposed ad valorem taxes. "[A] legislative scheme requiring taxes to be collected by counties for the benefit of school districts has been distinguished from a scheme requiring taxes to be collected by counties for their own use." Attorney General, Formal Opinion No. 88-01, February 11, 1988 (citing Board of Education v. Burgon, 62 Utah 162, 217 P. 1112 (1923) and Board of Education v. Daines, 50 Utah 97, 166 P. 977 (1917)), Record at 19-20. The County defendants' position, that the funding mechanism for public schools required under Article X, Section 1 amounts to the same thing as a taxation scheme prohibited under Article XIII, Section 5, is obviously wrong.

The same observation applies to the County defendants' recitation of law enforcement, assessing, and other local functions subject to state supervision. It does not save the Act (exclusively concerned with local ad valorem taxation) to argue that county sheriffs must serve all process when the state is a party; or that county attorneys must conduct on behalf of the state all prosecution for public offenses within the counties; or

that county assessors are supervised by the Tax Commission. See Record at 199. The Act violates Article XIII, Section 5 because state officials, not county officials, set the levy for local ad valorem taxes intended to cover collection costs, and the power of taxation is wrenched from the county, where it constitutionally resides, and is transferred to state officers and entities.

As this Court stated in Best Foods:

There can be no doubt but that the farmers of our state Constitution recognized the rights of the people of Utah to local self-government. It was to preserve local self-government free from needless legislative interference that the power to levy taxes for local purposes was by the state Constitution vested exclusively in the proper authority of counties, cities, towns, and other municipal corporations. The power to collect and control the revenues of a municipality is of the very essence of local self-government.

Best Foods, supra at 1003.

### III. THE ACT UNCONSTITUTIONALLY MANDATES REVENUE SHARING.

Utah Code Ann. § 17-19-15 provides for a mandatory statewide tax which results in the forced sharing of county revenues. Forced revenue sharing is prohibited by Article XIII, Section 5. As discussed above, this Court has held that "[u]nder the constitution the state has no power to make a disposition of county funds, and require that they be appropriated for other and



different purposes than those for which by authority of the county they were collected." State v. Stanford, supra at 1063.

The district court erred in holding that the Act does not force revenue sharing for three reasons. First, the district court misinterpreted Utah Code Ann. § 17-19-15 as providing for consensual sharing. In its Memorandum Decision, the district court stated:

An evaluation of the language contained in Section 17-19-15, merely provides that where counties generate proceeds in excess of budgeted amounts that are the result of a uniform statewide levy, that those excess funds may be diverted to other counties in conformity with the funding programs in the spirit of the statewide purpose of uniformity of assessment in valuation.

Record at 297 (emphasis added).

The district court stated that counties "may" share revenues. The fact of the matter is that revenues received in excess of certified budgets "shall be transmitted to the state treasurer for equalization and distribution." Id. § 17-19-15(6) (emphasis added).<sup>8</sup> The counties do not have the option of withholding excess revenues. The counties do not have the option of not participating in the sharing scheme of the Act. This is

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<sup>8</sup> The Utah Attorney General stated that the Act "mandate[s] that counties collect taxes for their own use." Record at 25 (emphasis added).

clearly a mandatory revenue sharing scheme and is unconstitutional.

Second, the district court erred in holding that "even if this statutory provision mandated revenue sharing, it would not be offensive to Article XIII, Section 5, because the counties do so voluntarily." Record at 298. If the statute "mandated revenue sharing" the district court should have stopped its inquiry at that point for mandatory revenue sharing would on its face be unconstitutional and no action by the counties can legalize an illegal act. Utah Technology Finance Corporation, supra.

Furthermore, even if the statute provided for consensual sharing, the counties have not taken the necessary procedural steps to authorize such sharing. The informal actions of county officials, or vote of unofficial associations (no legal status under the Utah Constitution or statutes) are not actions which meet the procedural requirements necessary to authorize valid county action.

Utah Code Ann. § 17-4-2 provides that a county must exercise its power "only by board of county commissioners or by agents and officers acting under authority of the board or authority of law." Utah Code Ann. § 11-13-16.5 states:

Any county, city, town or other local political subdivision may, at the discretion of the

local governing body, share its tax and other revenues with other counties, cities, towns or other local political subdivision. Any decision to share tax and other revenues shall be by local ordinance, resolution, or interlocal agreement.

Utah Code Ann. § 17-19-15, with its mandatory revenue sharing, is a state statute, not a local ordinance, resolution or interlocal agreement. Moreover, the counties have not provided, by affidavit or otherwise, any local ordinance, resolution, or other interlocal agreement between counties by which revenue raised through ad valorem taxation will be shared.

Finally, the fact that Article XIII, Section 5 was amended in 1983 to provide for the consensual sharing of county revenues reinforces the conclusion that the Act violates the constitution in requiring mandatory revenue sharing. As the title of the resolution proposing the amendment that became effective in 1983 indicates,<sup>9</sup> revenue sharing may be permitted, if a county consents. Anything short of permissive sharing; i.e. mandatory sharing, is unconstitutional.

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<sup>9</sup> "PROVIDING FOR PERMISSIVE SHARING OF REVENUES BETWEEN POLITICAL SUBDIVISIONS OF THE STATE." S.J.R. No. 3, Tax Article Revision, 1982 Budget Session, Utah State Legislature (emphasis added).

#### IV. CONCLUSION

Based on the foregoing, Utah Code Ann. § 17-19-15 violates Article XIII, Section 5 of the Constitution of the State of Utah and thus is unconstitutional. Accordingly the district court erred in granting summary judgment to the County defendants and the decision of the district court should be reversed with instructions to enter summary judgment for the Coalition.

DATED this 28th day of December, 1989.



JAMES B. LEE

KENT W. WINTERHOLLER

MAXWELL A. MILLER

of and for

PARSONS, BEHLE & LATIMER

185 South State Street, Suite 700

P.O. Box 11898

Salt Lake City, UT 84147-0898

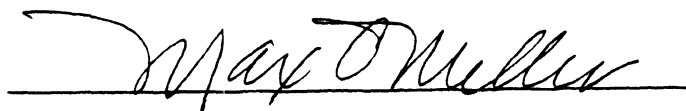
Telephone: (801) 532-1234

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing BRIEF OF APPELLANTS to the following on this 28th day of December, 1989:

Paul Van Dam  
Utah Attorney General  
Ralph Finlayson  
Assistant Attorney General  
Attorney for "State Defendants"  
Rm. 236 State Capitol Bldg.  
Salt Lake City, Utah 84114

Bill Thomas Peters  
Special Deputy  
County Attorney  
Attorney for "County Defendants"  
9 Exchange Place, Suite 1000  
Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Max O. Miller", is written over a horizontal line.

284:110389A

Tab A

## Exhibit A

APR 11 1988

SALT LAKE COUNTY  
By Eulene Thompson  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

KENNECOTT CORPORATION, et al.,	:	MEMORANDUM DECISION
Plaintiffs,	:	CIVIL NO. C-88-3457
vs.	:	
UTAH STATE TAX COMMISSION,	:	
et al.,	:	
Defendants.	:	

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Before the Court are reciprocal Motions for Partial Summary Judgment, and other related reciprocal Motions to Strike various supporting Affidavits and/or attached exhibits. The Motions for Summary Judgment deal with the constitutionality of Section 17-19-15, Utah Code Ann., 1953 as amended. Prior to oral argument, the parties, through their respective counsel, filed extensive Memoranda of law. The parties, through their counsel, also appeared and orally argued their respective positions. Following oral argument, the Court took the matter under advisement to further consider the legal authorities cited by the parties, and to consider counsel's oral presentations. The Court has now reviewed the authorities cited by the parties, and has evaluated the legal positions of both parties, and being otherwise fully advised, enters the following Memorandum Decision.



As indicated above, the respective Motions for Partial Summary Judgment are directed to the plaintiffs' First Cause of Action as contained in plaintiffs' Complaint. Plaintiff asserts that Section 17-19-15, Utah Code Ann., 1953 as amended, (hereinafter 17-19-15), is unconstitutional because the statute violates the provisions outlined in Article XIII, Section 5, of the Utah Constitution. Defendants, on the other hand, assert that the statutory requirements of Section 17-19-15, are not in violation of Article XIII, Section 5, and therefore seek a determination that the statute and its mandates are constitutional.

Intertwined in the respective Motions for Partial Summary Judgment are plaintiffs' Motion to Strike Affidavits as not relevant, and defendants' Motion to Strike an Exhibit dealing with a similar action pending before the Honorable Don V. Tibbs, District Court Judge, Sixth Judicial District Court.

Dealing first with the Motion to Strike, the Court declines to strike either the Affidavits or the Exhibits. Those documents will stand and be considered for any probative value that they may have. Accordingly, both the plaintiffs' and defendants' Motions to Strike are denied.

Turning to the merits of the reciprocal Motions for Partial Summary Judgment, the Court's examination must focus on the

pronouncements of Section 17-19-15, to determine whether or not those requirements constitute a levying of taxes by the state for county purposes. If Section 17-19-15, evidences such, then the statute runs afoul of the Constitution and cannot stand.

Section 17-19-15, reads as follows:

Separate budget for costs of assessing, collecting, and distributing property taxes -- Submission to state auditor for review -- Allowable costs established by rule -- Transmission to tax commission -- Limitations on tax rate -- Exceptions -- Adjustments.

(1) To promote appraisal and equalization of property values and effective collection and distribution of property tax proceeds, the county governing body of each county shall annually separately budget for all costs incurred in the assessment, collection, and distribution of property taxes and related appraisal programs and submit those budgets to the state auditor for review.

(2) The state auditor shall establish, by rule, categories of allowable costs and shall certify submitted budgets for compliance with approved categories.

(3) Upon review and certification by the state auditor, the aggregated statewide costs shall be transmitted to the State Tax Commission for determination of a mandatory statewide tax rate sufficient to meet those expenditures. By June 8 of each year the tax commission shall certify the rate to each county auditor for inclusion upon the tax notice as a separately listed and identified local levy.

(4) The tax rate may not exceed a maximum of .0005 per dollar of taxable value of taxable property except for: (a) mandated or formally adopted reappraisal programs conforming to tax commission rules; or (b) actions required to meet legislative, judicial, or administrative orders. Taxes levied for this purpose may not be included in determining the

maximum allowable levy for the county or any other taxing district.

(5) In the initial year that the levy adopted under this section is effective, each taxing district within counties which had not previously levied separate assessing, collecting, and distributing levies, shall reduce its property tax levy by an amount equal to that paid by the taxing district in the previous year for the cost of assessing, collecting, and distributing taxes.

(6) Revenues received by each county from the levy authorized by this section in excess of the amount set out in the certified budget shall be transmitted to the state treasurer for equalization and distribution to the counties in accordance with the certified budgets. Any revenue excess resulting from an increase in collection rates upon final settlement shall be deposited by the state treasurer in a trust account to be adjusted against subsequent years.

Article XIII, Section 5, of the Utah Constitution, reads as follows:

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, but power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary contained in this Constitution, political subdivisions may share their taxes and other revenues with other political subdivisions as provided by statute.

In approaching a decision regarding the constitutionality or lack thereof of any legislative enactment, the accepted criteria for evaluation is that there should be a presumption of constitutionality. On the other hand, the Court has the duty to carefully examine the contested statute to insure that the final word of the people, as contained in the Constitution is adhered

to by their elected representatives. It is not the role of the courts to examine the merits or lack of merits of any particular legislation. The responsibility of determining what is appropriate public policy is deposited with the legislative branch of government, and is not a function of the judiciary to examine the merits of challenged legislation in determining whether or not the challenge is sufficient. In the final analysis, either the statute passes constitutional muster, or it does not.

Article XIII, Section 5, prohibits the legislature from imposing taxes for purposes of any county, city, town or the like, but does not prohibit the legislature to allow by statute local governments to levy taxes for their own purposes. Section 5 goes on to note that the legislature may provide by statute for local government to share their tax revenue. Likewise, Article XIII, Section 5, does not prohibit the legislature from requiring the counties to impose taxes for state purposes, as opposed to county purposes.

The pivotal issue then is whether or not Section 17-19-15 is in actuality the legislature directing the county to levy taxes for county purposes, or whether or not the statutory enactment merely requires the county to impose taxes for a state or statewide purpose.

The reason and basis for Article XIII, Section 5, of the Utah Constitution seems to be clear to this Court. Remote state officials should not force local elected officials to levy taxes for what state officials think might be necessary local functions. What is needed, or what is not needed, in government, public facilities, and the like at the county level should be decided by county officials who are closest to the situation and closest to the needs of the local citizens.

Section 17-19-15, does not on its face dictate to the counties that they shall impose taxes for some specific county purpose. The purpose and the requirements of Section 17-19-15, is directed to a statewide purpose. It is not the mere fact that state officials or other parties interested in maintaining the constitutionality of the section state that it is for a statewide purpose, but rather an examination of the provisions of the statute and what it accomplishes lead this Court to the conclusion that the purposes are statewide in scope.

The bases for determining that Section 17-19-15, is for a statewide purpose are clearly articulated in the Memorandum of the defendants, and no good purpose would be served here in restating those arguments. Suffice it to say that the Court finds those arguments persuasive, and adopts them as the basis for this Court's determination that the purposes of the contested

statute are for statewide purposes, as opposed to county purposes.

Based on the foregoing, the Court determines that Section 17-19-15, is in furtherance of resolving a matter of statewide concern, and as such is constitutional under Article XIII, Section 5, of the Utah Constitution.

Plaintiffs further contend that the revenue redistribution aspect of the funding mechanism established by Section 17-19-15, also violates Article XIII, Section 5, of the Utah Constitution by mandating revenue sharing between the counties. The plaintiffs argue that Article XIII, Section 5, only provides for consensual revenue sharing.

An evaluation of the language contained in Section 17-19-15, merely provides that where counties generate proceeds in excess of budgeted amounts that are the result of a uniform statewide tax levy, that those excess funds may be diverted to other counties in conformity with the funding programs in the spirit of the statewide purpose of uniformity of assessment in valuation.

The Court also concludes that the only entities that have standing to complain would be the counties through their elected representatives, which is not the case here. To the contrary, the counties resist the interpretation of Section 17-19-15, asserted by the plaintiffs. If individual taxpayers have

displeasure with the official position of the county, their remedy is with the elected county officials. The Court also notes that the Utah Association of Counties, the Utah League of Cities and Towns, and the Utah State School Board Associations have supported on behalf of its members Section 17-19-15 which is complained of by the plaintiffs. Accordingly, even if this statutory provision mandated revenue sharing, it would not be offensive to Article XIII, Section 5, because the counties do so voluntarily.

The Court is satisfied that Article XIII, Section 5, does not prohibit the distribution of local revenues to effect a statewide purpose. The procedure outlined in Section 17-19-15, is a permissible extension of legislative authority dealing with a matter of statewide interest.

Based upon the foregoing, the Court determines that the position of the defendants regarding the interrelationship between Article XIII, Section 5, and Section 17-19-15, is appropriate, and grants the defendants' Motion for Partial Summary Judgment.

Counsel for the defendants are to prepare an appropriate Order in accordance with this Memorandum Decision, and submit the

same to the Court for review and signature in conformity with the Code of Judicial Administration.

Dated this 11 day of April 1989.

  
TIMOTHY R. HANSON  
DISTRICT JUDGE



Deputy Clerk




MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 11 day of April, 1989:

James B. Lee  
Kent W. Winterholler  
David R. Bird  
Attorneys for Plaintiffs  
185 S. State, Suite 700  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898

Bill Thomas Peters  
Special Deputy Salt Lake and Tooele  
County Attorney  
Attorney for Defendants Monson  
and Pendleton  
9 Exchange Place, Suite 1000  
Salt Lake City, Utah 84111

Ralph Finlayson  
Assistant Attorney General  
Attorney for Defendant Tax Comm.  
236 State Capitol Building  
Salt Lake City, Utah 84114

  
\_\_\_\_\_

Tab B

**Exhibit B**

JUL 12 1989

JAMES B. LEE (A1919)  
KENT W. WINTERHOLLER (3525)  
MAXWELL A. MILLER (A2264)  
of and for  
PARSONS, BEHLE & LATIMER  
Attorneys for Plaintiffs  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

By *Eruelyn Thompson*

IN THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

KENNECOTT CORPORATION, MORTON )  
THIOKOL, INC., BARRICK RESOURCES )  
(USA) INC., and HERCULES, )  
INCORPORATED, )  
Plaintiffs, )

SUMMARY JUDGMENT, FINAL  
ORDER AND CERTIFICATION

vs. )

UTAH STATE TAX COMMISSION, )  
R. HAL HANSEN, Chairman of the )  
Utah State Tax Commission, )  
ROGER O. TEW, Utah State Tax )  
Commissioner, JOE B. PACHECO, )  
Utah State Tax Commissioner, )  
G. BLAINE DAVIS, Utah State )  
Tax Commissioner, TOM L. ALLEN, )  
Utah State Auditor, EDWARD T. )  
ALTER, Utah State Treasurer, )  
ARTHUR L. MONSON, Salt Lake )  
County Treasurer; and GRANT L. )  
PENDLETON, Tooele County )  
Treasurer, )

Civil No. 88-3457

Judge Timothy R. Hanson

Defendants. )

\* \* \* \* \*

Before the Court are reciprocal motions for partial  
summary judgment and other related reciprocal motions to strike

various supporting affidavits and attached exhibits. The parties filed extensive memoranda, appeared through their counsel and argued orally. Plaintiffs appeared by and through their attorneys, Maxwell A. Miller and Kent W. Winterholler. Defendants appeared by and through their attorneys, Bill Thomas Peters, special Deputy Salt Lake County and Tooele County attorney, and Karl Hendricksen, Deputy Salt Lake County Attorney.

The Court, having heard the arguments of counsel, and having considered legal authorities and memoranda filed by the parties, issued its Memorandum Decision on the above-stated motions on April 11, 1989. Based on that Memorandum Decision, and being otherwise fully advised in the premises, the Court hereby enters the following Summary Judgment and Final Order.

1. The Court rules that plaintiffs lack standing to contest the constitutionality of Utah Code Ann. § 17-19-15 (1987) under Article XIII, Section 5 of the Utah Constitution.

2. The Court rules that Utah Code Ann. § 17-19-15 (1987) is in furtherance of resolving a matter of statewide concern, and as such, is constitutional under Article, XIII Section 5 of the Utah Constitution.

3. The Court rules that the revenue distribution aspect of the funding mechanism established by Utah Code Ann. § 17-19-15 (1987) does not mandate revenue sharing between counties, and, therefore, does not violate that provision of Article XIII, Section 5 which permits only consensual revenue sharing.

4. Based on the foregoing, the Court denies plaintiffs' Motion for Partial Summary Judgment.

5. The Court grants defendants' Motion for Summary Judgment as it pertains to the constitutionality of Utah Code Ann. § 17-19-15 (1987) under Article XIII, Section 5 of the Utah Constitution.

6. The Court denies defendants' Motion for Summary Judgment as it pertains to plaintiffs' Second, Third and Fourth Causes of Action.

7. The Court denies the parties' respective motions to strike.

8. The Court dismisses plaintiffs' Amended Complaint, with respect to its First Cause of Action, with prejudice.

Based upon the foregoing Summary Judgment and Final Order, and pursuant to Rule 54(b) of the Utah Rules of Civil Procedure, the Court makes the following Certification.

9. The Court rules that there are multiple parties in the present action and that plaintiffs' Amended Complaint raises multiple claims.

10. The Court rules that the Summary Judgment entered herein is a final order, wholly disposes of plaintiffs' First Cause of Action, and would be appealable but for the presence of plaintiffs' remaining claims.

11. The Court determines and certifies that there is no just reason to delay the plaintiffs from taking an appeal from the present Summary Judgment and Final Order.

DATED this \_\_\_\_\_ day of May, 1989.

*7-11-89  
filed  
see summary  
order.  
THH*

BY THE COURT:

---

HONORABLE TIMOTHY R. HANSON  
Third District Court Judge  
Tax Division

239:050589A

Tab C



Exhibit C

FILED IN CLERKS OFFICE  
SALT LAKE COUNTY, UTAH  
SEP 14 4 57 PM '88  
CLERK

SEP 14  
H. DICKINSON CLERK  
U.S. DIST. COURT

BY                      DEPUTY CLERK

Arthur L. Monson, Salt Lake County Treasurer, and  
Grant L. Pendleton, Tooele County Treasurer, by and through

their attorney, submit the following Memorandum of Points and Authorities in Response to Plaintiffs' Motion for Partial Summary Judgment.

## INTRODUCTION

### I. FACTUAL BACKGROUND AND LEGISLATIVE HISTORY

Except for the limited role of the State Tax Commission in assessing certain multi-county or specifically designated properties, valuation for ad valorem taxation is accomplished in the State of Utah through local county officials in each of the twenty-nine counties. To suggest, however, that because functions are reposed within the statutory portfolios of locally elected officials and financed partially or totally by county general fund revenues ignores the significant historical role which the State Legislature and State Tax Commission have played in all local assessment issues. Article XIII, Section 11, Constitution of Utah, establishes a State Tax Commission and provides specifically that:

"under such regulations in such cases and within such limitations as the Legislature may prescribe it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties."  
(Emphasis added.)

The same constitutional provision gives the State Tax Commission power to regulate and control local County Boards of Equalization and local elected officials with respect to taxation matters. Utah Code Ann. §59-1-210, 1953, as amended,

grants sweeping control to the Tax Commission over local county taxing matters. Specifically, it may "adopt rules and policies...to govern county boards and officers in the performance of any duty relating to assessment, equalization and collection of taxes" [§59-1-210(3)], "prescribe the use of forms relating to the assessment of property and the equalization of those assessments" [§59-1-210(4)], and "administer and supervise the tax laws of the state" [§59-1-210(5)]. Additionally it may:

"exercise general supervision over assessors and county boards of equalization and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination" [§59-1-210(7)].

It may "confer with, advise and direct county treasurers, assessors and other county officers in matters relating to the assessment and equalization of property for taxation and the collection of taxes" [§59-1-210(9)]. Finally, to enforce its complete supervisory control over the local property tax process it may "cause complaints to be made in the proper court seeking removal from office of assessors, auditors, members of county boards and other assessing, taxing, or disbursing officers who are guilty of official misconduct or neglect of duty" [§59-1-210(12)]. As part of its investigative responsibility to the Commission is charged with the power to:

"investigate and direct the work and methods of local assessors and other officials in the

assessment, equalization, and taxation of property, and to ascertain whether the law requiring the assessment of all property not exempt from taxation, and the collection of taxes, have been properly administered and enforced." [§59-1-210(19)].

This comprehensive grant of regulatory authority and state control over all assessment and collection practices within the counties of the State is also evidenced by several specific statutory enactments relating to the performance of those duties. Chapter 2 of Title 59, Utah Code Ann. (1953, as amended) provides a comprehensive statutory framework with regard to time frames, procedures, standards and methods under which local assessors, treasurers, auditors, and County Boards of Equalization must function. The Legislature and Tax Commission have, to a large degree, completely assume control of the local administration of the property tax system.

Consistent with the Constitutional requirement for the fair, equitable and accurate assessment of all property in the State (Utah Const. Art. XIII §3), the Tax Commission has been constitutionally and statutorily mandated to equalize the valuations of the various counties for purposes of guaranteeing equitable assessment levels in financing the Uniform School Fund. The revenues of that fund are derived to a large degree from a uniform statewide tax levy imposed by local school districts. To further state equalization and uniformity of assessment, the Utah State Legislature, in 1969, established comprehensive programs of assessor certification and examination

and a statewide re-appraisal program with costs to be shared between counties and the State Tax Commission. This program was designed to provide for re-appraisal of all taxable property in each county every five years on a county-by-county basis. The Legislature also implemented a program of personal property auditing conducted by the State Tax Commission with cost sharing by the counties. See generally, Laws of Utah 1969, Chapter 179, Section 1 through 6, [Codified as Utah Code Ann. §59-5-106 through 111 (1953, as amended)]].

In 1981, the re-appraisal program created in 1969 was repealed by the Utah State Legislature, (Laws of Utah 1981, Chapter 233, Section 2.) In its place was substituted a comprehensive program of sales-assessment ratio studies to be conducted by the State Tax Commission. The provisions relating to certification of county assessors, education and training programs conducted by the Tax Commission, personal property audits and assessment-sales ratio studies are currently codified at Utah Code Ann. §59-2-701 through 705 (1953, as amended.) With respect to the assessment-sales ratio responsibility of the State Tax Commission, Utah Code Ann. §59-2-704 (1953, as amended) provides, in pertinent part, that upon completion of the study by the Tax Commission:

"The Commission shall before the fourth Tuesday of November of each even numbered year beginning in 1984 order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that

prescribed in §59-2-103. Adjustment or factoring may include an entire county, geological areas within a county, and separate classes or property. The Commission shall also order corrective action where significant value deviations occur." (Emphasis added.)

Accordingly as part of the comprehensive State policy with respect to equal and uniform assessments, the Tax Commission has been given authority to order adjustments to values and even order corrective action (re-appraisal) when significant value deviations occur.

Finally, as part of its effort to guarantee accuracy of assessment for purposes of equality within the equalized tax levy supporting the Uniform School Fund, the Legislature in 1977 (Laws of Utah, 1977, Chapter 22, Sections 1 through 4) provided that uniform minimum standards for real property plat maps used by counties for property tax assessments would be established by a separate committee chaired by a member of the State Tax Commission. The statutes provide that all plat maps prepared by local elected county recorders and assessors must conform to those standards and that the counties would be reimbursed for the cost of correcting existing plats. The importance of this activity and its relevance to the support of the Uniform School Fund were deemed sufficient to justify the enactment of Utah Code Ann. §59-5-114, now codified at Utah Code Ann. § 59-2-318 (1952, as amended), which stated:

Cost of preparation of revised plats are to be borne by the Commission and appropriated from the Uniform School fund to the Property Tax

Division of the Commission for distribution to the various counties...(Emphasis added.)

Thus, the Legislature clearly established that equality of assessment between counties was of such statewide concern that an equalized statewide levy should be used to pay for the services. This financing mechanism is identical to that challenged by the plaintiffs in the instant case.

The Act presented for the court's review is the culmination of five years concerted legislative activity and litigation of cities, school districts and counties. See generally Board of Education v. Salt Lake County, 659 P.2d 1030 (Utah 1983), and Boards of Education of Granite, Murray and Salt Lake School Districts v. Salt Lake County Commission, et al., Appeal No. 19814 (Decided February 1, 1988). In an attempt to resolve and/or eliminate continuing litigation over the apportionment of the costs of assessing, collecting and distributing property taxes, the statewide financing mechanism currently under attack in the instant case was duly enacted by the Utah State Legislature as S.B. 151. The method of financing an effective and economic statewide system of property tax assessment, collection and distribution was closely modeled on the financing mechanism for the State supported minimum school program (Uniform School Fund). See Utah Code Ann. §53-7-1 et seq. (1953, as amended.)

Under the uniform statewide tax administration levy, local county governing bodies established budgets for assessing,



collecting and distributing property taxes, categorized those costs in the uniform budgeting categories adopted by rule by the State Auditor, and imposed as a local levy a uniform statewide tax rate sufficient to finance the aggregated budgets submitted by the 29 counties. If, in any county, the levy for tax administration purposes generated an amount in excess of the amount budgeted by the Board of County Commissioners for that county, the excess funds were to be transmitted to the State Treasurer for re-distribution to counties like Tooele County where the tax rate was insufficient to generate the amount required for the tax administration system. County commissions were free to budget and expend whatever funds they deemed necessary to accomplish the operation of the property tax administration system. In the event the expenditures were not within one of the uniform categories adopted and approved by the State Auditor, the County Commission retained the authority to provide for the expenditure from other county revenues.

The utilization of an equalized statewide levy approved during the 1986 general legislative session was a deviation from the previous authority of each county to levy a separate tax for the cost of assessing, collecting and distributing property taxes. The equalized levy was in specific recognition of the significant differences in property tax valuation throughout the 29 counties. Many counties such as Tooele County, possess insufficient tax base to fully fund the

cost of property tax assessment, collection and distribution with the tax rate authorized by the Legislature for that purpose. The utilization of an equalized tax rate was an attempt to minimize the negative impact of this disparity in taxing capability. As a solution it received the unanimous support of the cities, counties and school districts which are three major groups which had previously been involved in litigation over these same issues (see Affidavit attached hereto).

It is against this background that the present Act, codified as Utah Code Ann. §17-19-15 (1953, as amended), must be analyzed. The present Act is the Legislature's considered solution to the need for an equalized, efficient mechanism to pay for the costs of a statewide property tax assessment, collection and distribution system.

#### ARGUMENT

##### POINT I

CONTRARY TO PLAINTIFFS' ERRONEOUS ASSERTION, THE ATTORNEY GENERAL HAS NOT HELD S.B. 151 TO BE UNCONSTITUTIONAL.

Plaintiffs, in their Amended Complaint at paragraph 25 make the following assertion:

"...the Utah Attorney General has rendered an opinion holding S.B. 151, Utah Code Annotated §17-15-19, is unconstitutional..."

At page 24 and 25 of Plaintiffs' Memorandum the following statement is made: "Indeed, the Attorney General's analysis of the Act does not claim that the language of the Act or the procedures outlined therein are so vague and ambiguous that the Court can construe them so as to save them from being declared unconstitutional."

Much of Plaintiffs' Complaint and Memorandum are premised upon the assertion that the Attorney General has held the Act to be unconstitutional. That position is not only without merit, but is an exaggeration or a misrepresentation.

The opinion does not "hold" S.B. 151 to be unconstitutional. Indeed, Plaintiffs' attorney Max Miller was in Court on September 1, 1988, when the author of the opinion, Ralph L. Finlayson, Assistant Attorney General, made an appearance in the case before Judge Tibbs where the constitutionality of the same statute was being argued. The position of the Attorney General with regard to the statute and its opinion was set forth in a letter in said proceedings to the Honorable Don V. Tibbs, District Court Judge, wherein it is stated:

"The counties are vigorously and adequately representing the interest in upholding the statute at issue. The Attorney General has provided an opinion on the central issue involved, which opinion speaks for itself. The opinion is already a part of the Court record and is hereby tendered to assist in addressing the issue. The opinion is an analysis that does not purport to bind the Court and is not an unequivocal declaration of constitutionality or unconstitutionality." (Emphasis supplied.) See Exhibit "A", letter

of Ralph L. Finlayson to The Honorable Don V. Tibbs, dated August 26, 1988.

Even assuming arguendo that Plaintiffs' mis-characterization is correct, Plaintiff cites no authority for the proposition that an opinion by the Attorney General can rule an act of the legislature to be unconstitutional and have that determination by binding upon the Courts. Indeed, under the doctrine of the separation of powers that determination has been given, exclusively to the judicial branch of government, not the executive branch. The Courts, not the Attorney General determine constitutionality of statutes. To the extent Plaintiffs' Complaint, Memorandum and argument are premised upon such an assertion they should be disregarded as being totally without merit.

## POINT II

SENATE BILL NO. 151, (CODIFIED AT UTAH CODE ANNOTATED §17-19-15, DULY ENACTED BY THE 1986 LEGISLATURE, IS PRESUMED CONSTITUTIONAL AS A VALID LEGISLATIVE ENACTMENT DESIGNED TO PROMOTE EFFICIENT STATEWIDE PROPERTY TAX ASSESSMENT, COLLECTION AND DISTRIBUTION.

The plaintiffs seek to have this Court find the Act violative of various provisions of the United States and Utah Constitutions. The Utah Supreme Court has repeatedly stressed judicial restraint in finding any duly enacted legislative particular force to tax statutes." Rio Algom Corp. v. San Juan County, 681 P.2d 184, 190-191 (Utah, 1984). It is also presumed

that all legislative enactments are the result of the considered opinions of the state's duly elected and representative lawmakers. To find any statute unconstitutional, the court must find that no reasonable reading of the statute permits a finding of constitutionality. [The Best Foods, Inc. v. Christensen, 285 P. 1001, 1004 (Utah, 1930)]. If any fair reading of the statute permits a constitutional interpretation, the Court must uphold it. It is against this strong presumption that the statutory scheme discussed below must be analyzed.

### POINT III

THE ACT AND THE TAX LEVY IMPOSED THEREUNDER  
ARE IN FURTHERANCE OF A STATEWIDE PUBLIC  
PURPOSE AND THUS DO NOT VIOLATE UTAH CONSTITU-  
TION ARTICLE XIII, §5.

Plaintiffs claim the Act violates Utah Const. Art. XIII, §5 by allowing the Legislature to impose taxes for County purposes, by granting the State Auditor excessive control over local budgetary decisions and by forcing Counties to share property tax revenues with each other. In construing the statute it must be read so as to give effect to the Legislative purpose utilizing the plain meaning of the statutory language. The statute under attack is a funding mechanism designed, after many years and several attempts to achieve a reasonable, efficient and equalized system of paying for the costs of assessing, collecting and distributing property taxes. The Act unequivocally provides that "to promote appraisal and equalization...and

effective collection or property tax proceeds," proper officials, based upon reasonable economic data and assumptions, must levy a tax uniformly statewide. As has been previously set forth for this Court's consideration, the mechanism employed by this Act is not an aberration. Other statutes resolve similar statewide concerns through funding mechanisms that reallocate revenues between local entities. As an example, the statewide Uniform School Fund levy also appears as a local levy on property tax notices. Utah Code Ann. §53-7-17, §53-7-18, and §59-2-904 (1953, as amended).

Plaintiffs' challenges to the Act rely extensively on several Utah Supreme Court decisions issued between 1901 and 1936. State v. Stanford, 24 Utah 148, 66).1061 (1901); State v. Eldredge, 27 Utah 477, 76 P.337 (1904); Bailey v. VanDyke, 66 Utah 184, 240 P.242 (1925); The Best Foods v. Christensen, 285 P.1001 (Utah 1930); Smith v. Carbon County, 63 P.2d 259 (Utah 1936). These early cases are distinguishable from the case at bar both factually and legally. Additionally, several recent cases however have significantly diminished the relevance of the earlier authority in assessing the constitutionality of funding mechanisms authorized by the Legislature as in the public interest--especially where matters of statewide concern are involved. Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975); Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979); U.T.F.C. V. Wilkinson, 723 P.2d 406 (Utah

1986). See also A. Lynn Jr., Financing Modernized and unmodernized Local Government in the Age of Aquarius, 1971 Utah L.REV.30. Under this latter line of cases, the funding mechanism established by the Act is clearly constitutional. Finally, the clear distinctions between the statutory mechanism set out in the Act support validation even under the earlier strict construction of Utah Const. Art. XIII, §5.

In State v. Stanford, 24 Utah 148, 66 P.1061 (1901) the Legislature imposed upon counties the requirement of hiring and paying a pre-selected fruit tree inspector. This employee performed duties under the direction of the state board of horticulture and had the unrestricted authority to hire deputies. In striking down the Act, the Court held that it impermissibly usurped county administrative authority, created county debt without county consent, violated the constitutional prohibition against imposing a local tax for the solely local purpose, lacked uniformity of operation, and lacked a state purpose. There was no statement of state purpose in the act under review. The Court recognized the state possessed clear authority to impose taxes for state purposes. Id. at 1062.

Substantial differences exist between the current Act and the scheme addressed by the Stanford court. In the instant case, county employees, subject to the control of county officials, continue to perform their statutorily imposed responsibilities. Budgets and expenditures remain under county

control. Tax rates are applied uniformly statewide, and the funding mechanism furthers a comprehensive statewide public purpose. Uniform and efficient property tax assessment and collection were the same goals sought by the earlier state funded reappraisal and assessment plat review programs and are the precise public policy objectives articulated by the legislature in the body of the current act.

Three years later, the Court again considered the application of Article XIII Section 5 to a legislative act. In State v. Eldredge, 76 P.337 (Utah 1904), the Legislature authorized the State Board of Equalization to assess or value certain property situated wholly within one county. This duty was constitutionally vested in county officials. That portion of the statute authorizing state assessment or valuation of property situated or operated wholly within one county was severed or voided. No fair reading permitted upholding that portion in light of the specific Constitutional limitation of Utah Const. Art. XIII, §11. It should be noted that the constitutional provision relied upon by the Court has been amended three times since the 1904 decision. The constitutional separation of state and local functions has been abolished and the clear supervisory control of the State Tax Commission has been reinforced. In fact, much of the litany of potential abuse cited by the Eldredge Court (and by Plaintiffs) is now constitutionally sanctioned by express constitutional language.



Eldredge thus provides little guidance to this Court in determining questions of state purpose and state taxation. In the case at hand, the Act can be read fairly without finding clear violations to Article XIII, Section 5 or Article XIII, Section 11. The duties and functions of each public official set forth in the Act come within and are consistent with the respective statutorily permitted duties for each such public position. (See, Utah Code Ann. §59-1-210, general powers and duties of State Tax Commission; Utah Code Ann. §17-5-52, -53, -54, duties of Board of County Commissioners; Utah Code Ann. §67-3-1, general functions and duties of State Auditor; Utah Code Ann. §67-4-1, general duties of State Treasurer.)

In 1925 the Court again considered an Article XIII Section 5 challenge to a law providing for agricultural extension services throughout the state. In Bailey v. Van Dyke, 240 P.454 (Utah 1925), the Court upheld a law authorizing county commissions to enter contracts for state agricultural extension services with the local taxes.

Certain distinctions between Bailey and the present case should be noted for proper understanding of the real issues. In Bailey, local governments could, at their option enter into contracts for agricultural extension services. A local decision supported by a local tax would result; no section of the Constitution was violated. The plaintiffs contend that Bailey would prohibit requiring that taxes be imposed to fund

the administration of the property tax system. Such a contention ignores the statewide public purpose addressed by the Act. In the present case, a legislatively defined statewide concern required a statewide remedy and it is well settled that the Legislature in furtherance of a statewide purpose may require the imposition of local tax levies. Such is the case with the analogous Uniform School Fund levy described above.

Plaintiffs also seek support in Smith v. Carbon County, 63 P.2d 259 (Utah 1936.) The Act under review by the Smith Court involved the imposition by county clerks of probate fees graduated according to the size of the estate. At the outset it must be noted that Smith was not an Article XIII, §5 case. The only reference to that provision is a passing one--in dicta. The case largely revolved around whether the probate charge was a "fee" or a "tax." The Court concluded that it was a "tax" which, because of its graduated nature, violated the uniform and equal provisions. As the Article XIII §5 issues were not briefed the Court didn't address them. Thus the case is of little support to the Plaintiffs since there is clear authority for sustaining the power of the State to impose burdens on local government and require the imposition of taxes to pay for them. The Best Foods, Inc. v. Christensen, 285 P.1001-1004 (Utah 1930.)

Finally, plaintiffs rely on The Best Foods, Inc. v. Christensen, 285 P.1001 (Utah 1930) for the proposition that the

current Act intrudes impermissibly into the right of local self-government. In Best Foods, a legislative requirement that local officials grant and sell permits prior to allowing commercial trade of oleomargarine was upheld even though the local governments were directed to charge and keep the administrative fees allowed. While the Court stated that the "very essence of local self-government," was the power of municipalities to collect and control revenues. Id. at 1003, it upheld the act first stating clearly the rule that a statute must be found constitutional if susceptible to a valid interpretation. Second, the Court found that the Legislature acted well within its power in imposing a duty on local governments to assist the state in enforcing the Act and furthering a statewide purpose. Id. at 1004. The Court also noted that the Legislature may, under settled authority, impose on counties the duty to impose taxes other than for its own purposes. Id. at 1004. This reasoning applies with equal force in the instant case where property tax administration has been the subject of extensive legislative control and state financial and administrative involvement.

While these early decisions by the Utah Supreme Court strictly construed the constitutional restriction on the Legislature vis-a-vis local governments' sovereignty, the Court has taken a far more pragmatic approach in later years. These later cases stress the importance of granting deference to legislative

enactments responding to statewide concerns, even when the concerns may initially appear as localized issues.

In Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975) the Court considered the Article XIII Section 5 challenge to the Utah Neighborhood Development Act. Plaintiffs had alleged that the state's diversion of locally assessed and collected property taxes to a local redevelopment agency's use was unconstitutional. Finding the act to have a statewide purpose, the facial appearance of local benefits accruing to an agency controlled by a Board of Directors composed of the Salt Lake City Council occurring at the instance of a legislative act was not controlling. To respond to a statewide concern, blighted areas, "the law is well settled that in exercising the powers of the state the Legislature may require the revenue of a municipality, raised by taxation, to be applied to uses other than that for which the taxes were levied." Id. at 504.

The holding in Tribe is important to the present case because it properly recognizes the Legislature's authority to recognize a legitimate statewide purpose (i.e., respectively, rid localities on a statewide basis of blighted areas, Tribe; and create an efficient statewide assessment , collection and distribution mechanism of all property tax proceeds for the benefit of all, the instant case), and the concomitant authority to require imposition of a tax for or the diversion of local revenue to that identified specific statewide purpose.

Following Tribe, in Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979), this Court again upheld the Utah Neighborhood Redevelopment Act and found the diversion of locally assessed taxes to the Murray City project's use as a proper exercise of the state's power to tax for the benefit of the public at large. The Salt Lake County Court took the opportunity to reaffirm its earlier conclusions in Tribe. The Legislature is empowered to redirect the tax revenues of local governments for purposes it has concluded are statewide concerns. Additionally, the Court pointed out that the Plaintiff Salt Lake County was not deprived of its taxes to the sole benefit of Murray City. The County's "power to assess and collect taxes for all purposes of such corporation" remained intact. Id. at 1343.

These two recent cases clearly demonstrate the Court's approval of taxing mechanisms created by the Legislature to resolve identified statewide concerns such as that faced in the present case. Even earlier cases relied on by the plaintiffs reference the principle of state purpose as justification for legislatively imposed taxes or diversions of locally assessed taxes. These later cases clearly note the overriding state purpose and uphold the legislative acts satisfying that definition. There is no intimation by the earlier courts that if in fact a statewide purpose were at issue that the acts would not have been upheld.

The Utah Supreme Court has recently and succinctly stated the roles of the judiciary and the Legislature relative to public purpose enactments.

Due respect for the legislative prerogative in law making requires that the judiciary not interfere with enactments of the Legislature where disagreement is founded only on policy considerations and the legislative scheme employs reasonable means to effectuate a legitimate objective.

Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406, 412 (Utah 1986), citing Baker v. Matheson, 607 P.2d 233 (Utah 1979). Continuing in this narrative, the UTFC Court, citing with favor its opinion in Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984) states:

[A]cts of the Legislature are presumed constitutional, especially when dealing with economic matters based on factual assumptions. It is only when a legislative determination of public purpose is so clearly in error as to be capricious and arbitrary that the judiciary should upset it. Allen v. Tooele, supra. Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406, 412-413 (Utah 1986).

And finally, the Court described the nature of public purpose.

What is public purpose varies and changes with the times. In 1890, it was held that the purchasing and operating of an electrical distribution system to supply electricity to homes was not a public purpose. Maudlin v. City Council of Greenville, 33 S.C. 1, 11 S.E. 434 (1890). In contrast, in the past twelve years we have found public purpose in industrial development by a county, Allen v. Tooele County, supra; eradication of urban blight by a quasi-municipal corporation, Tribe v. Salt Lake City; and the providing of funds for low- and moderate-income housing by a state agency. Utah Housing Finance v. Smart, supra. We

cannot say in the face of those precedents that the stimulation of Utah's economy and the creation of employment is not a legitimate public purpose. It is closely related to industrial development and not different in kind. Whatever our private views on the matter might be, we must concede that the Legislature's determination that a public benefit would result was within its latitude. Id. at 413.

The Plaintiffs, at great length, reiterate that the uniform levy to defray the costs of collecting and assessing property taxes created pursuant to Utah Code Ann. §17-19-15 (Supp. 1988) constitutes a legislative imposition of a local tax for purely local purposes in violation of Utah Const. Art. XIII, §5. Ignoring the long history of State involvement and supervision over the property tax assessment and collection process, they base their argument almost exclusively upon the fact that assessment and collection functions are performed by County elected officials. The argument is simply that if County officials perform these services, they must be County purposes and accordingly Utah Constitution, Article XIII, §5 must be violated. Such an argument ignores the historical development of counties, the relationship of counties to the State and the dual obligations of County officials in performing both State and purely local functions. In Utah, counties are legal subdivisions of the State. Utah Const. Art. XI, §1. They are organized and created by general law. Utah Const. Art. XI, §4. They are not municipal corporations of purely local character as defined in Utah Const. Art. XI, §5. This distinction is

important in the instant case since the Utah Supreme Court in Salt Lake County v. Salt Lake City, 134 P. 560, 564 (Utah 1913) defined a "local purpose" for Article XIII §5 analysis as one "for the public good, and not for a private purpose; that such purpose is not one which pertains to the corporate powers or interests of Salt Lake City." The critical question is then whether purely local self-government is affected. There, as in the instant case, "the state, ...simply calls upon its agencies, the counties, and the cities to assist in discharging a public duty which in no way affects local self-government." Id. at 564 Counties, as legal subdivisions of the State act as instrumentalities of the State in effecting State purposes. The State uses the County as its agent in the discharge of the State's functions and duties. Specific examples of this role are found throughout Title 17, Utah Code Annotated. Sheriffs must serve all process when the State is a party. §17-22-26, Utah Code Anno. (1953 as amended.) County Attorneys must conduct on behalf of the State all prosecutions for public offenses within counties. They must attend to all legal business required by the Attorney General, without charge, when the interests of the State are involved. §17-17-1, Utah Code Ann. (1953 as amended.) County Assessors, in cooperation with and under the supervision of the State Tax Commission, must perform all the duties mandated by Tax Commission Rule, the Legislature or the Constitution. Utah Const., Art. XIII, §11, and §17-17-1, Utah Code Ann. (1953



as amended.) Based upon this mix of delegated State responsibility and the County quasi-municipal police powers over purely local matters Plaintiffs err in suggesting an interpretation of Utah Const. Art. XIII, §5 that ignores these differences. The State of Utah has a long history of involvement in and supervision over property tax assessment and collection matters. (Defendants Memorandum pp. 1-9). The State has paid for many of the local assessment functions. As early as 1917 the State, with State general fund revenues, was obligated to pay a proportionate share of the costs of collecting and assessing property taxes. Compiled Laws of Utah, 1917, §1561, Revised Statutes of Utah 1933, §19-16-16, and §19-16-16 Utah Code Ann. 1943. Specifically, those statutes provided "the sum (of the assessing and collection costs) so apportioned to the state and the state school funds shall be borne and paid by the state, ..." Clearly, the state could not legally expend state funds unless the expenditures were for state purposes.

It is settled law in this State, as it is all jurisdictions throughout the Country, that the Legislature possesses the authority to require local governments to impose taxes or spend funds raised by taxes to effect state-wise purposes. Tribe v. Salt Lake City Corporation, 540 P.2d 499, 504 (Utah 1975); Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339, 1343 (Utah 1979). Plaintiffs choose to ignore this

mandatory aspect of Tribe and Salt Lake County. Also ignored is the simple reality that counties annually budget, levy, and expend millions of dollars in the performance of duties mandated by the State Legislature as part of comprehensive Legislative schemes for effecting State policy. State offenses are prosecuted, state Courts are supported, state statute violators are incarcerated, and state standards for assessing and collecting property taxes are complied with, all by County officials, all with local property tax dollars, and all pursuant to comprehensive State mandated policies. As noted in a leading treatise on County law, ... Everywhere, even in states having the aforementioned constitutional clause, (referring to a constitutional provision identical to Article XIII, §5 of Utah Constitution), it is agreed that state legislatures can impose taxes upon counties for state purposes and can compel counties to spend for such purposes even though taxation will be required. (Emphasis supplied.) Antieau, Local Governmental Law, §41.07.

Additionally, uniform and equitable property tax assessment, collection and distribution has been a matter of general public concern since statehood. Equal and uniform assessment is required by the Constitution. The state has borne the cost of statewide reappraisal programs. Equalized levies have paid for the development of local property assessment plat maps. The timing, sequencing, and performance of tax administration duties by County officials are all subject to

constitutional, statutory, and administrative control by the state. To suggest that the current Act violates local self-government or constitutes legislative imposition of a tax for local purposes ignores both history and reality. The Act is in furtherance of resolving a matter of statewide concern and as such is constitutional under all the cases which have interpreted Utah Const. Art. XIII, §5. In conclusion, the Plaintiffs' claims cannot overcome the presumption of constitutionality and the clear presence of a comprehensive state purpose.

#### POINT IV

THE ACT'S REVENUE SHARING PROVISIONS DO NOT  
VIOLATE UTAH CONSTITUTION ART. XIII, §5.

Plaintiffs contend that the revenue redistribution aspect of the funding mechanism established by the Act violates Utah Const. Art. XIII, §5, by mandating revenue sharing between the counties. Plaintiffs' argument is that the revenue sharing allowed under that constitutional provision is a voluntary act engaged in by counties which may not be imposed upon counties by the Legislature. As discussed above, the revenue redistribution formula set out in the Act is not an anomaly under Utah law. It is similar in its operation to that created by the Legislature for funding the mandated minimum school program [see Utah Code Ann. §53-7-1 et seq. (1953, as amended)], or distributing local sales and use tax revenue. As part of a comprehensive statewide approach to funding the property tax administration system the

revenue redistribution aspects of the Act are clearly consistent with those approved by the Court in Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975) and Salt Lake County v. Murray Redevelopment, 598 P.2d 1339 (Utah 1979). In each of those cases taxes properly levied by taxing entities within Salt Lake County were partially diverted to a redevelopment agency for the purpose of alleviating the statewide problem of blighted areas. In the present case, counties which generate proceeds in excess of their budgeted amounts as a result of the uniform statewide tax administration levy have those excess funds diverted to other counties in furtherance of funding programs leading to statewide uniformity of assessment and valuation. Such a program does not necessarily constitute revenue sharing between the counties, but merely a statewide funding approach to a matter of statewide concern. According, Utah Const. Art. XIII §5 is irrelevant to the discussion.

Even assuming, arguendo that the funding mechanism prescribed by the Act constitutes revenue sharing between the counties, plaintiffs' challenge to the Act on that basis must fail for several reasons. First, if the Act only allows voluntary revenue sharing, the aggrieved parties are not the plaintiffs but those counties which object to the revenue sharing. Plaintiffs lack standing to assert the claims on behalf of the counties and accordingly their claim should be dismissed. Second, the clear factual evidence as set out in the

Affidavit of Mr. Gardner and the joint statement of the Utah Association of Counties, Utah League of Cities and Towns and Utah School Boards Association, clearly establish that the Act was supported by the counties at the time of its passage. Subsequently the Utah Association of Counties, by resolution of all its membership, or the executive committee authorized to speak for it, has, on two separate occasions specifically endorsed S.B. 151 including the funding mechanism established thereunder. Finally, the Utah Association of County Commissioners and County Councils representing the governing bodies of all 29 counties of the State has unanimously endorsed the Act with its revenue sharing provisions and opposed any attempt to amend or repeal it. To assert that the revenue sharing portions of the Act are contrary to the wishes of the counties ignores reality. Third, assuming further that the financing mechanism does constitute involuntary revenue sharing, Utah Const. Art. XIII §5, is silent on the question of whether the State may re-distribute revenue when a statewide purpose is involved. The amendment of Utah Const. Art. XIII §5 was to allow voluntary horizontal revenue sharing (Plaintiff's Memorandum, p. 22). In support Plaintiff cites the "Impartial Analysis" prepared for the 1982 Voter Information Pamphlet. The Amendment and the Analysis speak for themselves. The Amendment allows local governments to voluntarily share their revenues. It is silent as to whether the legislature is prohibited from

diverting or reallocating revenues between local subdivisions. The real question surrounding the 1983 amendment is whether anywhere in that amendment exists a prohibition against the Legislature imposing a tax or requiring revenue sharing for a state purpose. Defendants submit there is not. The amendment is silent on that issue and Plaintiff should not be allowed to create from whole cloth a non-existent Constitutional prohibition. Barring such a constitutional prohibition against legislative action, Utah Const. Art. VI §1 clearly vests in the Legislature of the State of Utah all authority to legislate on matters of statewide concern. Kimball v. City of Grantsville, et al., 57 P.1, 5 (Utah 1899); State ex rel. Nicholes v. Cherry, Judge, 60 P. 1103 (Utah 1900); Lehi City v. Meiling, 48 P.2d 530, 534, 535 (Utah 1935).

In summary, plaintiffs' Utah Const. Art. XIII, §5 challenge to the Act as "involuntary revenue sharing" must fail. Plaintiffs lack standing to challenge a provision that may only be challenged by the affected governmental entities to wit, the counties and, second, the record adequately supports that the revenue sharing of the Act is fully supported and endorsed by all 29 counties.

Simply stated, Utah Const. Art. XIII §5 does not prohibit the diversion of local revenues to effect a statewide purpose (Tribe and Salt Lake County, supra.). Unless prohibited by the Constitution, the power to legislate on matters of State

concern is vested in the Legislature. Utah Const. Art. VI §1. The 1983 amendment to Utah Const. Art. XIII §5, allowing voluntary revenue sharing between local governments is silent and does not specifically prohibit the State from creating funding mechanisms, even including horizontal revenue sharing, when a statewide purpose is involved. Accordingly, Utah Code Ann. §17-19-15, is a legitimate exercise of the reserved power of the Legislature found in Utah Const. Art. VI §1 and is not prohibited by Utah Const. Art. XIII §5.

POINT V.

ASSUMING ARGUENDO THAT THE PROVISIONS FOR "REVENUE SHARING" AND THE ROLES OF THE STATE AUDITOR, TREASURER AND TAX COMMISSION ARE CONSTITUTIONALLY IMPERMISSIBLE, THE IMPOSITION OF A TAX LEVY TO DEFRAY THE COSTS OF ADMINISTERING THE PROPERTY TAX SYSTEM IN EACH COUNTY IS SEVERABLE AND MUST BE UPHELD.

Plaintiffs' challenge the entire funding mechanism by which local counties defray the costs of assessing, collecting and distributing property taxes. Those costs total approximately \$23 million dollars per year statewide in all of Utah's counties. That amount is currently available to counties through the uniform statewide levy challenged by the plaintiffs and additional levies authorized by the statute for local reappraisal purposes. Assuming for purposes of argument that the plaintiffs were to prevail on their challenge to the constitutionality of the Act, the issue must be addressed as to

whether the imposition, on a county by county basis, of a separate tax to defray the costs of administering the property tax system is severable and can thus be sustained. The Utah Supreme Court has addressed the issue of severability in several cases where a portion of a legislative act could not survive constitutional review even given the presumption of validity. The Court held in Salt Lake City v. The International Association of Firefighters, 563 P.2d 786, 791 (Utah 1977) "[s]everability, where part of an act is unconstitutional, is primarily a matter of legislative intent." Assuming this Court were to find any portion of the Act under challenge invalid, the legislative history leading to the Act and the Act itself clearly permit the remaining portions (the tax levy) to stand, thus accomplishing the legitimate purpose for which the Act was drafted. The separate tax levy for administration of the property tax system was enacted by the Legislature some two years prior to the effective date of the funding mechanism currently under attack. (See Laws of Utah 1985, Chapter 88, Section 1). Under the 1985 enactment each county possessed the authority to impose a separate tax levy at a maximum rate equal to that contemplated under the current funding mechanism. The sole change in the financing mechanism created by the current Act was the equalization of that rate throughout the State. Thus, it cannot be said that the enactment of S.B. 151 constituted a dramatic change in State policy with respect to



separate funding of this important governmental process. Against that context the decision of the Utah Supreme Court in Berry by and through Berry v. Beach Aircraft, 717 P.2d 670, 685-686 (Utah 1985) is helpful. The Court in that case reviewed the provisions of the Utah Product Liability Act and determined that no portions were severable if no legitimate purpose remained once the invalid section was removed. The courts stated that "we cannot conclude that the Legislature would have enacted Sections 4 through 6 without Section 3." Id. at 686. It is clear from the legislative history commencing with the 1985 enactment that the Legislature wished to provide a separate taxing mechanism by which counties could derive revenue to defray the costs of administering the property tax system. Assuming arguendo that any particular office is not permitted to perform the duties required by the Act or the proceeds from the tax rate may not be equalized, the main purpose for the separate revenue source still remains. Additionally, to declare this Act unconstitutional in its entirety would cause irreparable economic harm to this State and its political subdivisions. The loss of some \$23 million dollars of property tax revenues, in the face of the loss of federal revenue sharing and depressed economic circumstances, would do significant damage to the re-appraisal and auditing efforts of the counties and State Tax Commission undertaken in aid of assuring equality and uniformity in assessment.

In conclusion it is the position of the defendants that the authority of each county to impose an unequalized tax levy within the current statutory maximum of .0005 is severable from all other provisions of the Act. The Legislature would most certainly, as it did in 1985, have enacted a tax levy provision in this format or another.

## VI.

### SUMMARY AND CONCLUSION

Senate Bill 151 was a result of several years of county legislative efforts in pursuit of a solution to the problem of financing property tax administration in each of the 29 counties of the State. Its specific provisions were sought by the counties, endorsed by the counties and Tax Commission and remain supported by the counties and Tax Commission. (See Affidavit of R.H. Hansen, Chairman, Utah State Tax Commission,) It allows county officials to continue to perform their statutorily designated responsibilities; Boards of County Commissioners retain control over budgets and expenditures, they have the authority to expend any funds they deem necessary, not only through the proceeds of the Uniform Tax Administration levy but through such other general fund revenue sources as they possess. No county officials' responsibilities are impaired by the statute and, accordingly, the intrusion of the Act into local government affairs is minimal. The utilization of the

funding mechanism established by the Legislature (a uniform equalized statewide levy) is a valid exercise of legislative authority in pursuit of a remedy for a statewide problem. Since statehood, the Legislature and State Tax Commission have been integrally involved in the operation of the property tax assessment, collection and distribution systems in each county of the State. The State has utilized proceeds from the Uniform School Fund (an uniform equalized statewide levy) to compensate county officials for the preparation of real property tax maps. The State has utilized general fund revenues to pay its share of the costs of programs. Additionally, the Legislature has vested in the State Tax Commission the authority, in pursuit of statewide equalization and uniformity of valuation, direct adjustment of local values or even re-appraisal of local properties. To suggest that the tax levy established by the Act was not a funding mechanism in furtherance of the matter of statewide concern ignores both historical and current reality. Under Utah Const. Art. XIII, Section 5 as interpreted by the Utah Supreme Court in Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975), and Salt Lake County v. Murray Redevelopment Agency, 598 P.2d 1339 (Utah 1979), the funding mechanism established by the Act now under review is a permissible extension of legislative authority in a matter of statewide concern. It is not a legislative imposition of the local tax for a purely local purpose.

In conclusion, the funding mechanism and budgeting mechanism are analogous to other funding mechanisms found in Utah law. It is directly analogous to the Uniform School Fund levy. Additionally the ACT intrudes no further into local government responsibilities than any other act previously adopted by the Legislature delineating the structure and operation of the property tax system by local elected officials.

As such the Act should be sustained and defendants' Cross-Motion for Summary Judgment granted.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of September, 1988.

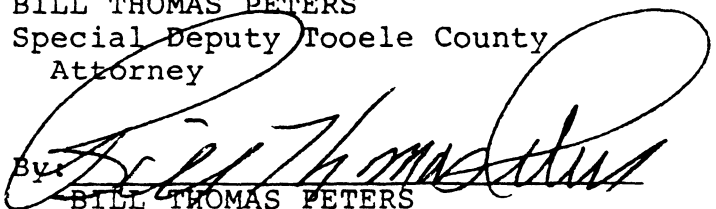
DAVID E. YOCOM  
Salt Lake County Attorney

KARL HENDRICKSON  
Deputy Salt Lake County Attorney

BILL THOMAS PETERS  
Special Deputy Salt Lake County  
Attorney

RONALD ELTON  
Tooele County Attorney

BILL THOMAS PETERS  
Special Deputy Tooele County  
Attorney

By:   
BILL THOMAS PETERS

By:   
KARL HENDRICKSON

CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of September, 1988, I caused to be hand delivered a true and correct copy of the foregoing Memorandum in Response to Motion for Partial Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment, together with the attached Affidavits of L. Brent Gardner and R. Hal Hansen to the following:

Max Miller, Esq.  
Parsons, Behle & Latimer  
185 South State Street, Suite 700  
Salt Lake City, Utah 84147-0898

And mailed to:

Ralph Finlayson, Esq.  
Assistant Attorney General  
236 State Capitol Building  
Salt Lake City, Utah 84114



BILL THOMAS PETERS

BPH:L



THE ATTORNEY GENERAL  
STATE OF UTAH

DAVID L. WILKINSON

PAUL M. TINKER  
DALE W. JENSEN  
EARL E. DORRIS, CHIEF  
STEPHEN W. HINCKLEY, CHIEF  
FRED C. NELSON, CHIEF

PAUL M. WARNER  
STEPHEN G. SCHWENDIMAN, CHIEF  
STEPHEN E. SORENSON, CHIEF  
MICHAEL D. SMITH, CHIEF

August 26, 1988

The Honorable Don V. Tibbs  
Judge, Sixth Judicial District Court  
for Garfield County  
55 South Main Street  
Panguitch, Utah 84759

**RE: Mountain States Telephone and Telegraph Co. v.  
Garfield County, et al., Case No. 3273**

Dear Judge Tibbs:

With a motion for summary judgment pending, I provide this response regarding the position of the State defendants.

The State defendants in this case are the Utah State Tax Commission, R. H. "Hal" Hansen, Chairman of the Utah State Tax Commission, Roger O. Tew, Utah State Tax Commissioner, Joe B. Pacheco, Utah State Tax Commissioners, G. Blaine Davis, Utah State Tax Commissioner, Tom L. Allen, Utah State Auditor, and Edward T. Alter, Utah State Treasurer.

These State defendants have ministerial or administrative roles under the statute at issue, Utah Code Ann. § 17-19-15 (Supp. 1988). These roles are in contrast to the role of the counties, which receive and use money raised by the tax levies at issue. The counties, therefore, rather than the State defendants are the real parties in interest.

The counties are vigorously and adequately representing the interest in upholding the statute at issue. The Attorney General has provided an opinion on the central issue involved, which opinion speaks for itself. The opinion is already a part of the court record and is hereby tendered to assist in addressing the issue. The opinion is an analysis that does not purport to bind the court and is not an unequivocal declaration of constitutionality or unconstitutionality.

The Honorable Don V. Tibbs  
August 26, 1988  
Page Two

Under these circumstances the State defendants do not intend to be active as legal advocates in this case.

Very truly yours,

A handwritten signature in cursive script, reading "Ralph L. Finlayson".

RALPH L. FINLAYSON  
Assistant Attorney General  
Governmental Affairs Division

RLF/cwc

cc: Patrick B. Nolan, Esq.  
✓ Bill Thomas Peters, Esq.  
David K. Detton, Esq.

PATRICK B. NOLAN - #A 2422  
Garfield County Attorney  
55 South Main Street  
Panguitch, Utah 84759

BILL THOMAS PETERS - #A 2574  
Special Deputy County Attorney  
Attorneys for Garfield County Defendants  
#9 Exchange Place, Suite 1000  
Salt Lake City, Utah 84111

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR GARFIELD COUNTY, STATE OF UTAH

MOUNTAIN STATES TELEPHONE  
AND TELEGRAPH CO.,

Plaintiffs,

-vs-

GARFIELD COUNTY: THE  
GARFIELD COUNTY BOARD OF  
COUNTY COMMISSIONERS:  
THOMAS HATCH, SHERRELL OTT,  
AND LOUISE LISTON, COUNTY  
COMMISSIONERS: JUDY HENRIE,  
COUNTY TREASURER: TOM  
SIMKINS, COUNTY ASSESSOR;  
THE UTAH STATE TAX  
COMMISSION: P.H. "HAL"  
HANSEN, ROGER C. TEW,  
G. BLAINE DAVIS AND JOE E.  
PACHECO, UTAH STATE TAX  
COMMISSIONERS: TOM L. ALLEN,  
UTAH STATE AUDITOR: EDWARD T.  
ALTER, UTAH STATE TREASURER,

ANSWER TO COMPLAINT

CASE NO. 3273

Judge Don V. Tibbs



Tab D

Exhibit D

JAMES B. LEE (A1919)  
KENT W. WINTERHOLLER (A3525)  
DAVID R. BIRD (A0336)  
MAXWELL A. MILLER (A2264)  
of and for  
PARSONS, BEHLE & LATIMER  
Attorneys for Plaintiffs  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

IN THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

KENNECOTT CORPORATION, MORTON )  
THIOLKOL, INC., BARRICK RESOURCES )  
(USA) INC., and HERCULES, )  
INCORPORATED, )  
Plaintiff, )

AFFIDAVIT OF  
AUSTON JOHNSON, III

vs. )

THE UTAH STATE TAX COMMISSION, )  
R. HAL HANSEN, Chairman of the )  
Utah State Tax Commission, )  
ROGER O. TEW, Utah State Tax )  
Commissioner, JOE B. PACHECO, )  
Utah State Tax Commissioner, )  
G. BLAINE DAVIS, Utah State )  
Tax Commissioner, TOM L. ALLEN, )  
Utah State Auditor, EDWARD T. )  
ALTER, Utah State Treasurer, )  
ARTHUR L. MONSON, Salt Lake )  
County Treasurer; and GRANT L. )  
PENDLETON, Tooele County )  
Treasurer, )  
Defendants. )

Civil No. 88-3457

Judge Timothy R. Hanson

\* \* \* \* \*

STATE OF UTAH               )  
                                  :SS.  
COUNTY OF SALT LAKE    )

Auston Johnson, III, being first duly sworn and upon his oath, states as follows:

1. I am an employee of the Utah State Auditor's Office and have been so employed for approximately 12 years.

2. For approximately the past three years, I have been the Director of Local Government Accounting and Audit in the Utah State Auditor's Office, and before that, for approximately 9 years, I was an Audit Manager or an Auditor in the Utah State Auditor's Office. Based upon my experience in these assignments, I have personal knowledge of the duties and functions of the Utah State Auditor's Office.

3. In my capacity as Director of Local Government Accounting and Audit in the Utah State Auditor's Office, I have, among other duties, the responsibility to establish budgetary procedures and reporting requirements for Utah's counties as they relate to the Utah State Auditor's Office. Likewise in that capacity, I supervise the county reporting requirements established pursuant to Utah Code Ann. § 17-19-15 (Supp. 1987).

4. Part of my duties in the Utah State Auditor's Office include the regular reception of records, data, and other reports from Utah's counties and the Utah State Tax Commission filed pursuant to Utah Code Ann. § 17-19-15. From the data,

reports and records submitted to the Utah State Auditor's Office by Utah's counties and the Utah State Tax Commission, and as part of my regular duties to compile reports, compilations, records and statements therefrom, I prepared a chart attached hereto and labeled Exhibit "A1", which chart illustrates the operation of Utah Code Ann. § 17-19-15 for 1987.

5. Exhibit A1 is entitled "Assessing and Collecting Control" and is divided into two categories - "Contributing Counties" or counties which remit part of the funds generated pursuant to Utah Code Ann. § 17-19-15 to the State Treasurer and then to other counties, and "Receiving Counties" or all counties which receive taxes generated from the contributing counties pursuant to Utah Code Ann. § 17-19-15. The columns of the exhibit are explained as follows:

(a) The first column entitled "Generated Funds" shows the taxes raised by each county, which taxes are raised as a result of the tax rates set pursuant to Utah Code Ann. § 17-19-15.

(b) The second column entitled "Allowable Funds" shows the costs the Utah State Auditor has, by rule, determined to allow as collection and assessing costs for each county. A copy of the relevant rule is attached and labeled Exhibit "A2."

(c) The third column entitled "Expected Remittance" (for contributing counties) shows the amount those counties expect to remit to other counties via the Utah State

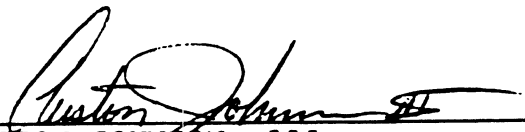
Treasurer pursuant to Utah Code Ann. § 17-19-15(6). The third column entitled "Expected Receipt" (for receiving counties) shows the amount those counties expect to receive from contributing counties listed at the top of the page via the Utah State Treasurer pursuant to Utah Code Ann. § 17-19-15(6).

(d) Column 4 in the "Contributing Counties" portion of the exhibit is a mathematical calculation showing the ratio of the expected remittance in column 3 to the total remittance in column 8. Columns 5 through 7 show the remittances by the contributing counties. In that portion of the chart under "Receiving Counties" the fourth<sup>th</sup> column is a mathematical calculation showing the ratio of expected receipts in column 3 to the total receipts. The other columns in the "Receiving Counties" portion of the chart show the ratio of expected receipt to total remittances and the first and second remittances. Column 8 of that chart shows the total amount remitted.

(e) The final column in each portion of the chart shows that for 1987 nine counties remitted \$2,090,457.24 in taxes collected by those counties to the other 20 counties of the state of Utah pursuant to Utah Code Ann. § 17-19-15.

Further affiant sayeth naught.

DATED this 22<sup>nd</sup> day of September, 1988.

  
AUSTON JOHNSON, III

Subscribed and sworn to before me this 22nd day of September, 1988.

My Commission Expires:

1 March 1989

Alta R. Lloyd  
NOTARY PUBLIC  
Residing at: Salt Lake City

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing AFFIDAVIT OF AUSTON JOHNSON, III to the following on this 23rd day of September, 1988:

Bill Thomas Peters, Esq.  
9 Exchange Place, #1000  
Salt Lake City, Utah 84111

Ralph Finlayson, Esq.  
Assistant Attorney General  
236 Capitol Building  
Salt Lake City, Utah 84114

Billie Jones

239:092288A

## CONTRIBUTING COUNTIES

COUNTY	GENERATED FUNDS	ALLOWABLE FUNDS	EXPECTED REMITTANCE	% OF TOTAL REMITTANCE	1ST REMITTANCE	2ND REMITTANCE	3RD REMITTANCE	TOTAL
BOX ELDER	569,209	411,593	157,616	4.98	60,171.54	70,757.22		130,928.76
CACHE	585,448	520,814	64,634	2.04		76,250.73		76,250.73
EMERY	792,297	655,914	136,383	4.31	55,722.37	14,963.81		70,686.18
MILLARD	1,294,375	485,747	808,628	25.56	101,274.12			101,274.12
SALT LAKE	8,737,075	7,729,231	1,007,844	31.86		794,938.00		794,938.00
SAN JUAN	335,519	205,830	129,689	4.10		126,727.47		126,727.47
SUMMIT	1,073,637	478,355	595,282	18.82	571,690.25	18,197.81		589,888.06
UINTAH	737,956	504,251	233,705	7.39		171,008.00		171,008.00
UTAH	1,929,306	1,900,000	29,306	0.93		28,755.92		28,755.92
TOTAL	16,054,822	12,891,735	3,163,087	100.00	788,858.28	1,301,598.96		2,090,457.24

## RECEIVING COUNTIES

COUNTY	GENERATED FUNDS	ALLOWABLE FUNDS	EXPECTED RECEIPT	% OF TOTAL RECEIPTS	% OF TOTAL REMITTANCE	1ST REMITTANCE	2ND REMITTANCE	TOTAL REMITTED
BEAVER	84,754	124,693	39,939	1.47	1.26	11,630.56	19,190.16	30,820.72
CARBON	376,509	451,870	75,361	2.78	2.38	21,945.72	36,209.97	58,155.69
DAGGETT	59,984	93,382	33,398	1.23	1.06	9,725.76	16,047.30	25,773.06
DAVIS	1,500,704	1,539,923	39,219	1.45	1.24	11,420.89	18,844.21	30,265.10
DUCHESNE	500,153	566,808	66,655	2.46	2.11	19,410.47	32,026.85	51,437.32
GARFIELD	103,177	149,061	45,884	1.69	1.45	13,361.79	22,046.66	35,408.45
GRAND	107,553	141,305	33,752	1.25	1.07	9,828.85	16,217.39	26,046.24
IRON	283,234	438,058	154,824	5.72	4.89	45,085.98	74,390.89	119,476.88
JUAB	115,836	264,277	148,441	5.48	4.69	43,227.20	71,323.95	114,551.15
KANE	76,859	246,979	170,120	6.28	5.38	49,540.30	81,740.42	131,280.72
MORGAN	65,459	102,353	36,894	1.36	1.17	10,743.83	17,727.08	28,470.91
PIUTE	13,396	64,055	50,659	1.87	1.60	14,752.31	24,340.98	39,093.29
RICH	64,320	138,441	74,121	2.74	2.34	21,584.63	35,614.16	57,198.79
SANPETE	115,658	280,991	165,333	6.10	5.23	48,146.29	79,440.33	127,586.62
SEVIER	217,566	438,561	220,995	8.16	6.99	64,355.51	106,185.19	170,540.70
TOOLE	319,712	536,465	216,753	8.00	6.85	63,120.20	104,146.96	167,267.17
WASATCH	154,169	370,579	216,410	7.99	6.84	63,020.32	103,982.16	167,002.48
WASHINGTON	448,860	690,399	241,539	8.92	7.64	70,338.08	116,056.31	186,394.39
WAYNE	25,118	96,995	71,877	2.65	2.27	20,931.16	34,535.95	55,467.11
WEBER	1,652,804	2,259,547	606,743	22.40	19.18	176,688.40	291,532.02	468,220.43
TOTAL	6,285,825	8,994,742	2,708,917	100.00	85.64	788,858.25	1,301,598.96	2,090,457.21
GRAND TOTAL	22,340,647	21,886,477	5,872,004					



**Distribution of Property Taxes**

**R130-2-1 Authority**

As required by Section 17-19-15(2), this rule provides the categories of allowable costs.

**R130-2-2 Purpose and Scope**

This rule sets forth the allowable costs of assessing and collecting property taxes by counties as allowed by current legislative authority, and for the purpose of computing the state-wide tax rate necessary to cover these costs. This rule is for the purpose of cost determination and is not intended to identify the circumstances or dictate the manner of assessing and collecting by counties. Allowable costs will only be considered to the extent they affect the property tax system.

**30-2-3 Categories of Allowable Costs**

Allowable cost categories are enumerated as follows; detail and explanation are located in the Uniform Accounting Manual for Utah Counties.

1. Accounting
2. Advertising
3. Advisory Councils
4. Audit service
5. Bonding
6. Budgeting
7. Building lease management
8. Building space and related activity
9. Central stores
10. Communications
11. Compensation for personal services
12. Data Processing
13. Depreciation
14. Disbursing service
15. Employee fringe benefits
16. Employee morale, health and welfare costs
17. Exhibits
18. Insurance and indemnification
19. Legal expenses
20. Maintenance and repair
21. Management studies
22. Materials and supplies
23. Memberships, subscriptions and professional activities
24. Motor pools
25. Payroll preparation
26. Personnel administration
27. Printing and reproduction
28. Procurement service
29. Professional services
30. Training and education
31. Transportation
32. Travel

KEY: property tax, tax collections  
1987

17-19-15

## Appendix A

## Appendix A

**17-19-15. Separate budget for costs of assessing, collecting, and distributing property taxes — Submission to state auditor for review — Allowable costs established by rule — Transmission to tax commission — Limitations on tax rate — Exceptions — Adjustments.**

(1) To promote appraisal and equalization of property values and effective collection and distribution of property tax proceeds, the county governing body of each county shall annually separately budget for all costs incurred in the assessment, collection, and distribution of property taxes and related appraisal programs and submit those budgets to the state auditor for review.

(2) The state auditor shall establish, by rule, categories of allowable costs and shall certify submitted budgets for compliance with approved categories.

(3) Upon review and certification by the state auditor, the aggregated statewide costs shall be transmitted to the State Tax Commission for determination of a mandatory statewide tax rate sufficient to meet those expenditures. By June 8 of each year the tax commission shall certify the rate to each county auditor for inclusion upon the tax notice as a separately listed and identified local levy.

(4) The tax rate may not exceed a maximum of .0005 per dollar of taxable value of taxable property except for: (a) mandated or formally adopted reappraisal programs conforming to tax commission rules; or (b) actions required to meet legislative, judicial, or administrative orders. Taxes levied for this purpose may not be included in determining the maximum allowable levy for the county or any other taxing district.

(5) In the initial year that the levy adopted under this section is effective, each taxing district within counties which had not previously levied separate assessing, collecting, and distributing levies, shall reduce its property tax levy by an amount equal to that paid by the taxing district in the previous year for the cost of assessing, collecting, and distributing taxes.

(6) Revenues received by each county from the levy authorized by this section in excess of the amount set out in the certified budget shall be transmitted to the state treasurer for equalization and distribution to the counties in accordance with the certified budgets. Any revenue excess resulting from an increase in collection rates upon final settlement shall be deposited by the state treasurer in a trust account to be adjusted against subsequent years.

**History:** C. 1953, 17-19-15, enacted by L. 1986, ch. 169, § 1; 1987, ch. 4, § 16; 1988, ch. 3, § 67.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, in subsection (1) substituted "county governing body" for "board of county commissioners" and in subsection (3) in the second sentence substituted "June 8" for "June 1."

The 1988 amendment, effective February 9, 1988, substituted "per dollar of taxable value of taxable property" for "of assessed valuation"

near the beginning in Subsection (4) and made two minor stylistic changes in Subsection (1).

**Retrospective Operation.** — Laws 1987, ch. 4, § 307 provides that this section has retrospective operation to January 1, 1987.

Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

Cited in *Boards of Educ. v. Salt Lake County Comm'n*, 75 Utah Adv. Rep. 3 (1988).