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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
Respondent

Utah Supreme Court

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BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

S9

DOCKET NO.

490416
KENNECOTT CORPORATION, MORTON
THIOKOL, INC., BARRICK RESOURCES
(USA) INC., and HERCULES,
INCORPORATED,

Appellants-Plaintiffs,

-vs-

UTAH STATE TAX COMMISSION,
R. HAL HANESN, 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 RESPONDENTS

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Clerk, Supreme Court, Utah

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JURISDICTION

Respondents, Salt Lake and Tooele County Defendants, agree with the statement of jurisdiction contained in Petitioners' brief. Respondents will not in this brief restate the jurisdiction of the Court to hear this appeal.

STATEMENT OF NATURE OF PROCEEDINGS BELOW

This appeal by Appellants, Kennecott Corporation, Morton Thiokol, Inc., Barrick Resources (USA), Inc., and Hercules, Inc., is from a Decision and Partial Summary Judgment upholding the constitutionality of Utah Code Annotated §17-19-15. Said Decision was premised upon the Court's conclusion that Utah Code Annotated, 17-19-15 was a state-wide tax enacted by the Utah Legislature to fund the state-wide purpose of achieving uniformity and equality of assessment of property taxes by establishing a funding mechanism to provide for the uniform state-wide administration of the assessment, collection and distribution of property taxes.

The Decision was issued by the Honorable Timothy R. Hanson, Judge of the Third Judicial District Court on April 11, 1989. (R-291-300.) Summary Judgment, Final Order and Certification were entered on August 7, 1989. (R321-324.) Appellants filed their Notice of Appeal on September 22, 1989. (R351-352.)

STATEMENT OF ISSUES PRESENTED FOR APPEAL

1. Whether or not it is constitutionally permissible for the Utah State Legislature to pass a law to address the state-wide concern of achieving equality and uniformity of property taxation in the State of Utah.

2. Whether or not a legislatively established uniform, equalized statewide tax levy to fund property tax administration in each of the 29 counties of Utah is a valid exercise of legislative authority in pursuit of a remedy for a state-wide problem.

3. Whether or not the Appellantss have standing to challenge the effect of the Uniform State-wide Tax Levy upon Salt Lake or Tooele County.

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

CONSTITUTIONAL PROVISIONS: (See Exhibit A.)

STATUTORY PROVISIONS: (See Exhibit A.)

STATEMENT OF THE CASE

In 1986, the general legislative session of the Utah State Legislature, in response to representatives of local governmental entities as well as the state and local school boards, enacted into law Section 17-19-15, Utah Code Annotated. The statute was passed to address the concern for compliance with the constitutional requirement that all tangible property be taxed at a uniform and equal rate. Section 17-19-15 established an equalized statewide levy to pay for the cost of

assessing, collecting and distributing ad valorem property tax revenues.

The statute was first applied in 1987 and again in 1988.

Appellants paid their 1988 property taxes under protest and thereafter filed a complaint for refund in the district court of Salt Lake County claiming the statute to be unconstitutional. The county defendants (Respondents herein) filed an answer. Plaintiffs (Appellants herein) filed a motion for partial summary judgment. (R98-99.) Defendants (Respondents herein), filed a cross-motion for summary judgment. (R270-272). The district court determined that the statute was constitutional in all respects and granted summary judgment to the Defendants. Appellants appealed to this Court.

STATEMENT OF FACTS

Except for the limited role of the State Tax Commission in assessing certain multi-county or specifically described properties, valuation for ad valorem taxation is accomplished in the State of Utah through local county officials in each of the twenty-nine counties.

Historically, the State Legislature and the State Tax Commission have played a significant role in all local assessment issues.

S.B. 151 (Codified into Utah Code Annotated, 17-19-15), was passed in the 1986 general session by the Utah State Legislature. (R-27-29.)

The purpose of the legislation was to provide a funding mechanism to address a matter of state-wide concern in each of the individual counties to wit: the accurate, equitable and fair assessment of locally assessed residential, commercial and industrial properties as well as the effective and efficient collection and distribution of ad valorem property tax revenues. (R-260-262.)

Prior to the passage of the challenged statute there had been seven consecutive years of litigation by railroads claiming that local commercial and industrial properties were under-assessed. (R-264-269.)

In each of the previous four years the Utah State Tax Commission had issued orders directing certain counties in Utah to increase assessment levels and at least five lawsuits had been filed by the Utah State Tax Commission against local county assessors claiming under-assessment of locally assessed properties within their respective counties. (R-264-269.)

While the statute required the State Auditor to set forth categories of costs uniform throughout the State to be utilized by county governing bodies in budgeting for the cost of assessing, collecting and distributing ad valorem tax revenues, the final tax rate was to be determined by the Utah State Tax Commission from the aggregated budget total for all counties established by the State Auditor. However, the setting of the county budget, the controlling of costs through the budget process and the expenditure of funds was intended to and did

remain the responsibility of the county governing body.

(R-264-269.)

The Utah Association of Counties, by formal resolution in November of 1987, expressed its support for the provisions of S.B. 151 and opposed any attempt to amend or repeal its provisions. In January of 1988 all 29 counties of the State of Utah unanimously expressed their support for the provisions of S.B. 151 including the revenue sharing provisions contained in the Act and again opposed any attempts to repeal or amend its provisions. (R-264-269.)

The Utah State Office of Education, the Utah Association of Counties, the Utah School Boards Association as well as the Utah League of Cities and Towns, determined that the equalized levy contained in S.B. 151 was a positive solution to the problem of payment for assessing and collecting taxes. (R-269.)

The Act has been a positive force in assisting the Tax Commission in achieving uniformity and equality of assessments, and has operated consistently with state-wide responsibilities of the Tax Commission. (Affidavit of R. Hal Hansen, Exhibit C.)

On June 14, 1988, Appellants filed an amended complaint against Salt Lake and Tooele Counties seeking a refund of taxes paid under protest, a declaration that Utah Code Annotated Sections 17-19-15 was unconstitutional, and a permanent injunction against the State Auditor and the Utah State Tax Commission. (R-53-56.)

The Salt Lake and Tooele County Defendants filed an answer and thereafter Appellants and Respondents both sought summary judgment. After allowing appropriate time for briefing by both parties, the Court heard argument and on the 11th of April, 1989, the Court issued its memorandum decision that Utah Code Annotated Section 17-19-15 was constitutional in all respects. (R-291-300.) Summary Judgment was entered in favor of Respondents and against Appellants. (R-351-352.)

SUMMARY OF ARGUMENT

Section 17-19-15, Utah Code Annotated was the result of several years of efforts on the part of local government, local school boards, the Tax Commission and the Utah legislature to resolve the statewide concern for equal and uniform valuation of property for all ad valorem property taxation. To provide the necessary funding to address that statewide concern, the legislature adopted a funding mechanism similar to the one employed for the State Uniform School Fund. That mechanism was a separate equalized statewide tax levy based upon the actual budgeted costs of assessing, collecting and distributing property tax revenues within each of the 29 counties of the State. The funding mechanism employed was a valid exercise of legislative authority in pursuit of a remedy for a statewide problem. The procedures established by Section 17-19-15, Utah Code Annotated are consistent with the authority set forth in the Utah Constitution for the legislature and the Utah State Tax

Commission. The procedures set forth in the challenged statute are also in keeping with the interpretative decisions of the Utah Supreme Court and do not violate any provisions of the Constitution of the United States or the State of Utah.

Appellants and Respondents both submitted that matter to the trial court for summary judgment. The overarching issue presented by both motions was the constitutionality of Section 17-19-15, Utah Code Annotated. Since Appellants and Respondents had each filed motions for summary judgment, each had concluded that the legal issue of the constitutionality of Section 17-19-15 was ripe for final determination. This Court's decision on that issue will, in the judgment of Respondents, be a final disposition of the entire case.

ARGUMENT

POINT I

SENATE BILL NO. 151, (CODIFIED AT UTAH CODE ANN. §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 Appellants 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 decision unconstitutional. Enactments must be read in a light favoring constitutionality with an effort made to resolve any doubts in favor of the statute. This principle was clearly

stated in some detail in Thomas v. Daughters of Utah Pioneers, 197 P.2d 477, 499 (Utah, 1948).

It is well settled in this state, as elsewhere, that the courts will not declare a statute unconstitutional unless it clearly and manifestly violates some provision of the Constitution of the state or of the United States. Every presumption must be indulged in favor of the constitutionality of an act, and every reasonable doubt resolved in favor of its validity. The whole burden lies on him who denies the constitutionality of a legislative enactment. If by any fair interpretation of the statute the legislation can be upheld, it is the duty of this court to sustain it, even though judges may view the act as inopportune or unwise; and it is not within the province of the judiciary to question the wisdom of the motives of the Legislature in the enactment of the statute. The provision in question was regularly passed by the Legislature and approved by the governor. The presumption should be and is in favor of validity. It must be assumed that the legislative department, whose members pledge themselves by oath to support the Constitution, has not lightly disregarded that pledge.

The Court elaborated upon this theme of presumptive constitutionality in Baker v. Matheson, 607 P.2d 233, 236 (Utah 1979), emphatically stating that legislative enactments were presumed constitutional and that particular deference should be accorded enactments that were primarily economic in nature. In a 1984 case the Court affirmed its previous decisions and also stated that "the presumption of constitutionality applies with 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 law-makers. 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 II

A. THE BACKGROUND TO THE ACT AND THE EXTENSIVE HISTORY OF STATE INVOLVEMENT IN AND CONTROL OVER THE AD VALOREM PROPERTY TAX SYSTEM ESTABLISH A STATE PURPOSE IN FUNDING AND OPERATION OF THE SYSTEM.

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 they are purely local functions, 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)]. As part of its

investigative responsibility 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)].

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)].

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 assumed 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(2) (1953, as amended) provides, in pertinent part, that upon completion of the study by the Tax Commission:

(2) "The commission shall, on or before the 4th Tuesday of November of each even-numbered year, 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 Section 59-2-103. The adjustment or factoring may include an entire county, geographical areas within a county, and separate classes of properties. Where significant value deviations occur, the commission shall also order corrective action."

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 of concerted legislative activity and litigation by 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., 749 P.2d 1264 (Utah, 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 1986 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 establish budgets for assessing, collecting and distributing property taxes, categorize those costs in the uniform budgeting categories adopted by rule by the State Auditor, and impose 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 generates an amount in excess of the amount budgeted by the Board of County Commissioners for that county, the excess funds 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 are free to budget and expend whatever funds they deem necessary to accomplish the operation of the property tax administration system. In the event the expenditures are not within one of the uniform categories adopted and approved by the State Auditor, the County

governing body retains 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 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 the three major groups previously involved in litigation over these same issues. (See Exhibit B, Affidavit of Brent Gardner, R-264-269.)

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.

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

Appellants 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 and distribution of 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).

Appellants' 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 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); City of West Jordan, et al. v. Utah State Retirement Board, et al, 98 Utah Adv. Rep. 37 (Utah, 1988). 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 and those described as defective in earlier cases 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 and 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 is now constitutionally sanctioned by express 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 of 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 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 Appellants 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.

Appellants 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 Appellants 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, Appellant relies 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 this 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, to rid localities on a statewide basis of blighted areas, Tribe; and create an efficient statewide property tax assessment, collection and distribution mechanism, 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 those faced in the present case. Even earlier cases relied on by the Appellants 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 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 Appellants, 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 "state purpose" for Article XIII §5 analysis as one "for the general 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, Appellants 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. (See Point II(A) of

Respondents' Brief). 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.

Finally, this Court has recently addressed the standards that must be applied in determining whether a function is a "municipal function" or a "State function." In City of West Jordan v. Utah State Retirement Board, 98 Utah Rpt. 37, (Utah, 1988), this Court addressed whether the provision of retirement benefits was a municipal function, whether the Utah State Retirement Board was a special commission, and whether the legislative grant of authority over retirement benefits to the State Retirement Board constituted a delegation of municipal functions to a special commission in violation of Utah Const. Art. VI §28. In defining "municipal function" the Court rejected the sort of strict categorization which the appellants would urge upon it and adopted a balancing approach. The Court, Id. at 40, enumerated some of the specific factors as:

"[The] relative abilities of the state and municipal governments to perform the function, the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality, and the extent to which the legislation under attack will intrude upon the ability of the people within the municipality to control through their elected officials the substantive policies that affect them uniquely."

In the present case, the funding mechanism adopted by the Legislature specifically recognized and addressed the disparity in tax base between the various counties of the state. Just as with public education and the Uniform School Fund, many of the counties of the state lack the ability to fund wholly from their own revenues efficient and modernized property tax assessment and collection systems. By providing a uniform state-wide tax rate the ability to perform the constitutionally mandated responsibilities was extended to all counties, not just those with rich tax bases. Failure of counties to perform those functions affects not just taxpayers within the non-performing county, but all other taxpayers in the state through their contribution to the Uniform School Fund and the equalized funding of public education. Little is served in terms of meeting the constitutional mandate of equality of uniformity and assessment if only those counties which have adequate tax bases are properly assessed. Finally, the question must be resolved as to whether the statutory funding scheme "intrudes upon the ability of the people within the county to control through their elected officials the substantive policies that affect them

uniquely." As a general matter no element of the assessment and collection process affects local taxpayers uniquely. To the degree that the properties are mis-assessed, the state as a whole assumes liability for lost revenues in the Uniform School Fund and federal litigation under the Railroad Revitalization and Recovery Act. Appellants assert that the Act strips from local elected officials not only control over how they perform their official responsibilities, but also control over the whole taxation process and the levels of funding afforded those activities. That simply is not the case. The Legislature has uniformly mandated the functions of local officials as they relate to the property tax system. They largely act as agents for the state in the ad valorem taxation process. The levels at which they are compensated and at which they set their programs remain uniquely within local control. They remain subject to their local constituents in all matters respecting the size of their offices and budgets and the efficiency with which they perform their functions. To the extent they believe it locally necessary to expend funds for functions other than those contained within the uniform budgeting categories adopted by the State Auditor, they retain complete ability to pay for those functions out of other county revenues. This is no more nor less the case than currently exists with the Uniform School Fund and the local Uniform School Fund Levy imposed in each school district.

While the foregoing is in the context of an Art. VI, §28 discussion, the elements of municipal functions under that provision and "local purposes" under Art. XIII, §5 are closely intertwined. The balancing test established by the Court for determining whether something is "a municipal function" is equally applicable in determining whether an activity is a "local purpose." In each case the pervasive pattern of state activity and control over the assessment, collection and distribution of property taxes renders those functions as something more than "local purposes" or "municipal functions." They are not "substantive policies that affect them (the County) uniquely." West Jordan, Id. at 40.

It is settled law in this State, as in 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-wide 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). Appellants 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 the 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 Appellants' claims cannot overcome the presumption of constitutionality and the clear presence of a comprehensive state purpose.

POINT III

THE FUNDING MECHANISM CREATED BY THE ACT DOES
NOT VIOLATE UTAH CONSTITUTION ART. XIII, §5.

Appellants 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. Appellants' argument is that the revenue sharing allowed under that constitutional provision must be a voluntary act engaged in by counties and 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 [see Utah Code Ann. §59-12-20, et seq. (1953, as amended)]. 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 in which proceeds in excess of the budgeted amounts are generated by 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. Accordingly, 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, Appellants' 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. Appellants lack standing to assert the claims on behalf of the counties. 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, establishes that the Act was supported by the counties at the time of its passage. R-264-269. 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. 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. Respondents submit there is not. The amendment is silent on that issue and Appellants 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, Appellants' Utah Const. Art. XIII, §5 challenge to the Act as "involuntary revenue sharing" must fail. Appellants 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 IV

APPELLANTS LACK STANDING TO CHALLENGE THE PROVISIONS OF THE ACT.

Article XIII, §5 analysis is ultimately not only a legal analysis of the specific provisions of a challenged act, but also a philosophical analysis of the fundamental inter-relationships between local and state governments. Article XIII, §5 is predicated upon the assumption that remote state officials should not force local elected officials to levy taxes for what state officials might think are necessary local functions. It is a constitutional principle which speaks of co-existence, a separation of responsibility and of direct accountability between local elected officials and their constituents for purely local decisions. The thrust of the Appellants' claims is that the Act violates Art. XIII, §5 by creating too great an intrusion by the State into purely local affairs. As the keystone of Art. XIII, §5 is this inter-governmental relationship, Respondents respectfully submit that Appellants lack standing to assert the Art. XIII, §5 challenges. The only proper parties are the counties themselves and their elected officials. Respondents, Salt Lake and Tooele Counties, voluntarily budgeted in accordance with the Act and imposed the tax levy authorized thereunder. No challenge was made by Salt Lake and Tooele Counties or any of the 29 counties to the funding mechanism. Appellants stand in the position of any other taxpayer with respect to this issue. Their benefits and burdens and the impact of the Act upon them are indistinguishable from

the benefits, burdens or impacts felt by any other taxpayer. This Court in Jenkins v. Swan, 675 P.2d 1145 (Utah, 1983) described a three part analysis appropriate to the determination of standing. The first of those elements is a consideration of the traditional standing requirements. Has the appellant suffered a real and distinct injury caused by the governmental action on which the Appellant bases his claim? Mere allegations of adverse impact are insufficient. In truth, under the Act the Appellant paid less in Tooele County for the costs of assessing and collecting property taxes than if Tooele County had been obligated to rely solely on its own tax base. Respondents submit that for purposes of Art. XIII, §5 analysis the impact of the Act on the relative sovereignty and inter-relationships of local and state governments are only on those governments and are properly litigatable only by them. Taxpayers suffer none of those direct impacts. Appellants are not entities whose sovereignty is abridged by the action of the Legislature. The Legislature has merely, in its discretion, identified certain statewide public policy concerns, placed the obligations for those functions upon local government, and provided a funding mechanism to compensate for the costs of the program. The Appellants' lack of involvement in that inter-relationship or the issue of relative sovereignty precludes them from obtaining standing under the traditional tests.

The second element of the Jenkins test was the consideration of whether there are potential plaintiffs with a greater interest in the outcome who could more adequately pursue the issue. Plaintiffs, such as the Appellants, do not obtain standing merely because more appropriate plaintiffs are absent. It is clear from the analysis of the Art. XIII, §5 considerations that the only appropriate parties are the counties or their elected officials. The Appellants may not bootstrap themselves into their position merely by asserting their absence.

Finally, in Jenkins, the Court turned to the question of whether "the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing." Id. As taxpayers, the Appellants are no different than any other member of society. Their personal interest in the Art. XIII, §5 issue of relative sovereignty and independence of state and local governments is remote. The doctrine of "great public interest and societal impact" should not be applied.

In summary, the Respondents assert that the Appellants lack standing to raise the constitutional questions framed in the Art. XIII, §5 analysis. Questions of the balance between state and local autonomy, the ability of the State to mandate functions in furtherance of State purposes and the requirement of providing funding to support those services are appropriately raised only by the local governments affected. The Appellants'

interests are too remote and more appropriate plaintiffs exist. They suffer none of the palpable injury which would traditionally give rise to standing. Accordingly, standing should be denied and the judgment of the trial court sustained.

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. 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 the property tax system. Additionally, the Legislature has vested in the State Tax Commission the authority, in pursuit of statewide equalization and uniformity of valuation, to direct adjustment of local values or even re-appraisal of local properties. To suggest that the tax levy established by the Act is 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 the ruling of the trial court granting partial summary judgment to Respondents should be affirmed.

RESPECTFULLY SUBMITTED this 27th day of February,
1990.

DAVID E. YOCOM
Salt Lake County Attorney

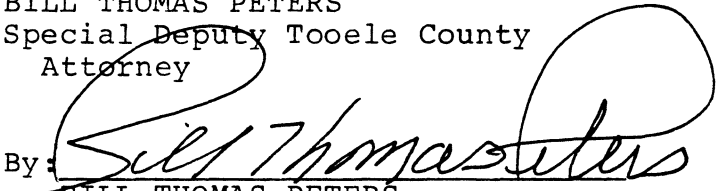
KARL HENDRICKSON
Deputy Salt Lake County Attorney

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

CERTIFICATE OF SERVICE

I do hereby certify that on this 27th day of February, 1990, I caused to be hand delivered four true and correct copies of the foregoing Respondents' Brief to the following:

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

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



BILL THOMAS PETERS

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED
CONSTITUTIONAL PROVISIONS:

Article VI, Section I(1) of the Utah Constitution provides:
The Legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

Article XIII, Section 2 of the Utah Constitution in part provides:

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

Article XIII, Section 3 of the Utah Constitution provides:

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

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

Article XIII, Section 11 of the Utah Constitution provides:

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the State, for such terms of office as may be provided by law.

The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. 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. The duties imposed upon the State Board of Equalization by the Constitution and Laws of the State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature.

STATUTORY PROVISIONS:

The Statute that is the subject of this controversy is Utah Code Annotated Section 17-19-15 which provides:

(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.

DAVID E. YOCOM - #A3581
Salt Lake County Attorney
KARL HENDRICKSON - #A1464
Deputy Salt Lake County Attorney
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FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

SEP 14 4 37 PM '88

H. DIXON HINDLEY CLERK
3RD DIST. COURT

Delivered by [Signature]

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,

-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.

:
:
: AFFIDAVIT OF L. BRENT
: GARDNER, SUBMITTED IN
: OPPOSITION TO MOTION
: FOR PARTIAL SUMMARY
: JUDGMENT.

Civil No. 88-3457

Judge Timothy R. Hanson

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

L. Brent Gardner, being first duly sworn upon his oath, and having personal knowledge of the following, deposes and testifies as follows:

1. That I am the Executive Director of the Utah Association of Counties.

2. That I have been employed by the Utah Association of Counties in that and other capacities since 1976.

3. That among my principle duties on behalf of the Utah Association of Counties is working with counties on property tax assessment, collection and distribution matters, and drafting, negotiating and representing counties before the Utah State Legislature on issues relating to ad valorem tax matters.

4. That in my capacity with the Utah Association of Counties and because of my duties for the Utah Association of Counties I am familiar with the subject matter of this litigation, in particular S.B. 151 (Utah Code Ann. §17-19-15, 1953 as amended), prior legislative enactments relating to the assessment of property, and the collection and distribution of ad valorem property taxes.

5. I am familiar with the re-appraisal efforts which have been undertaken to meet the needs of the 29 counties of the State of Utah.

6. That I was directly involved in drafting S.B. 151 and negotiation and lobbying its passage.

7. That S.B. 151 was a compromise measure between cities, counties and school districts in the State of Utah over the allocation of income derived from the investment of ad valorem property tax revenues and the expenses related to property assessment and tax collection in the 29 counties of the State.

8. That S.B. 151 provided a funding mechanism to address a matter of statewide concern in each of the individual counties to wit: the accurate, equitable and fair assessment of locally assessed residential, commercial and industrial properties and the effective, efficient collection of ad valorem property tax revenues.

9. That I was personally aware that local assessment levels had been challenged as inadequate in 7 consecutive years of litigation by railroads wherein it was alleged that local commercial and industrial properties were under-assessed; that the State Tax Commission had issued orders to counties directing them to increase assessment levels in the previous 4 years; and that at least five lawsuits had been filed by the State Tax Commission against local County Assessors alleging under-assessment of locally assessed properties within their respective counties.

10. That as a result of my role in negotiating and drafting S.B. 151, I am familiar with the duties assigned the State Auditor and State Tax Commission.

11. That the role assigned to the State Auditor was to set forth categories of costs uniform throughout the State to be utilized by County Commissions or councils in budgeting for the costs of assessing properties and collecting and distributing ad valorem tax revenues.

12. That upon receipt of the county budgets broken into the uniform categories, the State Auditor was to aggregate the totals and submit that figure to the State Tax Commission which, upon determination of the statewide assessed valuation, was to calculate a tax rate sufficient to fund the aggregated budget totals.

13. Setting budgets, controlling costs through the budgeting process and expending funds was intended to and does remain the responsibility of The Board of County Commissioners or County Council.

14. That the Utah Association of Counties, by formally adopted resolution, in November 1987, expressed support for the provisions of S.B. 151 and opposed any attempt to amend or repeal its provisions.

15. On or about January 15, 1988, the Utah Association of County Commissioners and County Councils representing all 29 counties of the State of Utah unanimously expressed support for the provisions of S.B. 151 including the revenue sharing provisions of the Act and opposition to any attempts to repeal or amend the provisions thereof.

16. That the attached letter dated February 24, 1986, was signed by Kenneth L. Dallinga, President of the Utah Association of Counties, who signed said statement in behalf of the Utah Association of Counties.

17. That the attached letter is a part of the official business records of the Utah Association of Counties kept in the ordinary course of business of said association.

18. That it is the ordinary course of business in the Utah Association of Counties to keep such records.

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this 13 day of September, 1988.

L. Brent Gardner
L. BRENT GARDNER - Affiant
Utah Association of Counties

SUBSCRIBED AND SWORN to before me this 13th day of September, 1988, personally appeared before me L. BRENT GARDNER, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Ruth W. Leding
NOTARY PUBLIC
Residing at: West Jordan, Utah

My Commission Expires:

05/18/89

BPH:K

UTAH STATE OFFICE OF EDUCATION

UTAH STATE BOARD OF EDUCATION
UTAH STATE BOARD FOR VOCATIONAL EDUCATION

UTAH STATE BOARD OF EDUCATION

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Keith T. Checketts
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Ruth Hardy Funk
Valerie J. Nelson
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Bernarr S. Furse
*State Superintendent
of Public Instruction*

February 24, 1986

Honorable Representative Ted Lewis
Utah State House of Representatives
State Capitol Building
Salt Lake City, UT 84114

Dear Representative Lewis:

S.B. 151, amended to provide for an equalized state levy, represents a positive solution to the problem of payment for assessing and collecting taxes. We support the concept and urge the passage of S.B. 151.

Sincerely yours,

UTAH STATE OFFICE OF EDUCATION

UTAH ASSOCIATION OF COUNTIES
UTAH SCHOOL BOARDS ASSOCIATION
UTAH LEAGUE OF CITIES & TOWNS

/dtt

R. HAL HANSEN, being first duly sworn upon his oath, and having personal knowledge of the following, deposes and testifies as follows:

1. That I am the duly appointed, qualified and acting Chairman of the Utah State Tax Commission.

2. That I have served as Chairman of the Tax Commission during all times relevant to this action.

3. That the State Tax Commission has been sued in 1982, 1983, 1984, 1985, 1986 and 1987 by all interstate railroads operating within the State of Utah claiming that all local commercial and industrial properties are under-assessed.

4. Article XIII, §11 of the Utah Constitution and Utah Code Annotated §59-1-210 charges the State Tax Commission with the administration and supervision of the tax laws of the State of Utah and governance of county officials in the performance of duties relating to assessment, equalization and collection of property taxes.

5. Article XIII of the Constitution of Utah requires uniformity and equality of assessment and is the goal towards which the Tax Commission exercises its supervision over local officials.

6. Uniform and equal assessment within and among the counties are matters of statewide concern in that they affect litigation in which the State is a party.

7. That I am personally familiar with appraisal and reappraisal efforts in the counties of the State and the impact of S.B. 151 upon those efforts as reflected by new reappraisal programs and the results of sales assessment ratio studies.

8. That the State Tax Commission endorses S.B. 151 as being an extension of the state public purpose of favoring and achieving equal and uniform assessments.


9. That said Act has had a positive impact upon the quality of assessment practices and the conformance of assessments to the constitutional mandate of equality and uniformity of assessments.

10. That the State Tax Commission, through a member of the Commission, has testified before the appropriate legislative committee and opposed the repeal of the Act.

11. That the State Tax Commission continues to support the Act in that it assists the Tax Commission in the performance of its duties as mandated by the Constitution and laws of the State of Utah.

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this 14th day of September, 1988.



R. HAL HANSEN, CHAIRMAN
UTAH STATE TAX COMMISSION

SUBSCRIBED AND SWORN TO before me this 14th day of September, 1988, personally appeared be R. Hal Hansen, the signer of the foregoing Affidavit, who duly acknowledged to me that he executed the same.

Loppia C. Buckmiller
NOTARY PUBLIC
Residing at: 825 E. Strasburg
St. #4106

MY COMMISSION EXPIRES:

May 1, 1991

BPI:A