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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 : Reply Brief

Utah Supreme Court

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KENNECOTT CORPORATION, MORTON
THIOKOL, 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

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SUMMARY OF ARGUMENT

The County defendants' position and response to the Coalition's Brief of Appellants fails to address three vital issues in this case. First, the County defendants ignore the decision in Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406 (Utah 1986) where this Court held that a statute which transgresses a constitutional proscription is unconstitutional irrespective of any state purpose being furthered or any public good being derived. Consequently, the merits of a statute or the extent to which it accomplishes perceived public policy is irrelevant to whether the statute passes constitutional muster. Supposedly "virtuous" laws are not necessarily interchangeable with "constitutional" ones. The only relevant inquiries in this case are: what specifically does Article XIII, Section 5 prohibit, and does Utah Code Ann. § 17-19-15 (1987) ("Section 17-19-15") attempt to do what the Constitution proscribes.

Second, the County defendants ignore the state constitutional framework by supposing that the Tax Commission's supervisory powers over counties somehow vests the counties' constitutionally delegated powers in the state. On the contrary, each county has certain constitutional rights, powers and duties of self-government, which are inherent in the county, and which cannot be wrenched from their control or subsumed by a supervisory

entity. In any event, the County defendants ignore the fact that Article XIII, Section 5 proscribes more than the intrusion into functions or duties of local government officials; Article XIII, Section 5 also proscribes the use of state tax levy proceeds to fund local government expenses.

Third, the County defendants ignore the constitutional founding upon which the state's education system stands. The Uniform School Fund is constitutionally mandated, and the funding mechanism for the Uniform School Fund is thereby constitutionally authorized. The Uniform School Fund and the property tax redistribution scheme here challenged are critically dissimilar. Section 17-19-15 cannot be saved by imitating the mechanical operation of the taxing scheme under the Uniform School Fund, as the County defendants argue, because the constitutional authority for the fund and constitutional proscription against the property tax scheme arise from different parts of the Utah Constitution, both of which must be given effect.

ARGUMENT

I. ARTICLE XIII, SECTION 5 PROHIBITS A STATE LEVY FOR COUNTY PURPOSES REGARDLESS OF A CONCOMITANT STATEWIDE PURPOSE BEING FURTHERED.

The County defendants' response to the Coalition's Brief fails to address this Court's holding in Utah Technology, and for the same reason is fatally defective. While the County defendants are quick to cite various provisions of Utah Technology such as "acts of the Legislature are presumed constitutional," or "that the judiciary [should] not interfere with enactments of the legislature where disagreement is founded only on policy considerations," (Brief of Respondents at 18, 26) the County defendants did not mention the most significant aspect of that decision, i.e., its holding. Utah Technology held that regardless of how meritorious a statute may be, whether the public thereby benefits or whether the purpose for the statute is to accomplish a statewide need, if a statute does that which is constitutionally proscribed, the statute is unconstitutional. In the Court's words:

However, the 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. . . . The state is foreclosed from subscribing even though the legislature may determine that public benefits will flow therefrom.

Id. at 414.

Thus, the County defendants' repeated statements as to the merits of Section 17-19-15 - that it serves a statewide purpose, or that the counties supposedly face financial disaster if it is ruled unconstitutional - are IRRELEVANT.¹ "Whether the public benefits thereby is of no consequence." Utah Technology at 414. The only relevant inquiries are: what does Article XIII, Section 5 proscribe, and does Section 17-19-15 attempt to do what the Constitution prohibits.²

In interpreting Article XIII, Section 5, the Utah Supreme Court has made the following statements which explicitly define what Article XIII, Section 5 prohibits:

Under 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, 24 Utah 148, 66 P. 1061, 1063 (1901).

The power to collect and control the revenues of a municipality is of the very essence of local self government. Upon principle and the great weight of authority, section 5 of article 13 of our state constitution

¹ The County defendants claim of pending financial chaos is not only irrelevant, it is unsupported by any evidence.

² For this reason, the County defendants' framing of the first Statement of Issues is overly broad, and asks the obvious.

precludes the Legislature from imposing a license tax upon the inhabitants of a city, town, or county for the sole purpose of raising revenue for such city, town, or country.

The Best Foods, Inc. v. Christensen, 75 Utah 392, 285 P. 1001, 1003-4 (1935) (emphasis added).

Here [Article XIII, Section 5] is indicated an intention to have local business transacted and local affairs managed and controlled by local authorities. And the term "assess," as here employed, has a comprehensive meaning. It includes the valuation of property, as well as the levying of the rate of taxation.

State v. Eldredge, 27 Utah 477, 76 P. 337, 340 (1904).

From Article XIII, Section 5's own language and these cases, it is conclusive the Utah Constitution prohibits: (1) the legislature's intrusion into the local affairs of a county; i.e., controlling or regulating inherent county functions, specifically including the assessment and levying of taxes;³ and (2) the state's use of the proceeds from a state compelled county levy to fund county expenditures.⁴ A critically significant, though usually overlooked aspect of Article XIII, Section 5, is that it proscribes not only the intrusion by the state into inherently

³ Eldredge at 339 and The Best Foods at 1003-4.

⁴ Standford at 1063.

county functions, but also precludes state levy proceeds from being used to fund local county functions and expenses.

The later cases⁵ have not overruled these early cases, but reinforce their holdings that the autonomy and independence of a county must be preserved. The County defendants argue that this Court has taken a "far more pragmatic approach in later years" and that "[t]hese later cases stress the importance of granting deference to legislative enactments responding to statewide concerns." Brief of Respondents at 23. In this the County defendants again err. The County defendants repeatedly fail to recognize that in determining whether a statute violates a specific constitutional provision, the Court cannot, and should not, give any deference to the legislature's declarations of public policy or purpose. See Utah Technology at 413; Standford at 1062; and Eldredge at 339. If a statute does what the constitution prohibits, it cannot be upheld simply because it may be "in response to statewide concerns."

Thus the Court in Tribe did not uphold the apportionment of ad valorem taxes to service revenue bonds issued by the Salt Lake City Redevelopment Agency to finance a redevelopment

⁵ E.g., Tribe v. Salt Lake City Corporation, 540 P.2d 499 (Utah 1975) and Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979).

project merely because a statewide purpose was being furthered. The reason the Court upheld the statute, or better stated, the reason the statute was not declared unconstitutional, is because the revenues collected by the county, which were directed to and used by the redevelopment agency to service the debt on the revenue bonds, did not violate any specific constitutional constraints. There was no violation of a specific constitutional restraint because the redevelopment agency, as extensively discussed in the decision, was not a municipality, but an arm of the state.

The agency is 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.

Tribe at 503 (emphasis added).

Because of this critical fact, the taxes were not being used to fund county expenditures in violation of Article XIII, Section 5, but were directed to the redevelopment agency for its use. The same concept is explained in Salt Lake County v. Salt Lake City⁶ to which Tribe cited as the basis for concluding that

⁶ In Salt Lake County, Salt Lake City was required by state statute to reimburse Salt Lake County for the expenses of caring for delinquent children sent to the county detention home. Salt

Footnote continued on next page.

no specific constitutional provision was violated. The County defendants tout Salt Lake County v. Salt Lake City as authority for their argument that supervisory arms of government can compel action by an inferior governmental entity. To some extent, that is true, but in this case, the County defendants' reliance on Salt Lake County v. Salt Lake City obfuscates the issues. The holding in Salt Lake County v. Salt Lake City specifically states that "what is required of Salt Lake City is required from it as an arm or agency of the state government, and in no way affects or interferes with any of its functions as a municipal corporation governing its own affairs." Salt Lake County at 563 (emphasis added). Once again the County defendants failed to address the most significant aspect of the case.

The County defendants also cite Tribe to support the constitutionality of Section 17-19-15 on the theory that the state may unabatedly "require imposition of a tax for or the diversion of local revenue to [an] identified specific statewide purpose." Brief of Respondents at 24. In Tribe, this was true only because the redevelopment agency was an arm of the state;

Footnote continued from previous page.

Lake City argued that the statute requiring reimbursement was unconstitutional under Article XIII, Section 5.

thus the levy and distribution of tax proceeds was not to a county for the purpose of funding inherent county functions and expenses. Without discussing the facts in Salt Lake County v. Murray City Redevelopment, the Court reached the same conclusion for the same reasons as discussed in Tribe. The Murray City Redevelopment Agency was likewise an arm of the state and the tax proceeds apportioned to it were not used to fund inherent county functions or expenses.⁷

The County defendants attempt to dilute the standards this Court has already set for Article XIII, Section 5 by attempting to distinguish the case law. For example, the County defendants incorrectly infer that this Court invalidated the statute under scrutiny in Standford under Article XIII, Section 5 because the Court could not find a statewide purpose being furthered. Again, this ignores the appropriate test. Even if a state purpose was present, the Court still would have struck down the statute because it unconstitutionally interfered with local county affairs. Next, the County defendants attempt to

⁷ It is also important to stress that the Supreme Court in Murray held that the county was not "being deprived of its power to assess and collect taxes for all purposes of such corporation." Id. at 1343. This statement implicitly recognizes that one of the inherent functions of counties is the right "to assess and collect taxes for all purposes" of that county.

distinguish the present appeal from Standford by arguing that there is no intrusion into the local county's affairs since budgets and expenditures under Section 17-19-15 remain under county control. This is not true. The state's intrusion into county affairs under Section 17-19-15 continually exists. No longer does each county have the discretion to identify, budget and levy for costs the county deems legitimate. While the local taxpayer may voice objection to a specific county budget, the resulting levy reflects twenty-nine counties' budgets, and, consequently, the local electorate is powerless to control the levy process, and local officials are unaccountable. This erosion of local political power has constitutional significance. As this Court explained in Salt Lake City v. International Association of Firefighters, 563 P.2d 786, 790 (Utah 1977):

The political power which the people possess under Article I, Sec. 2, and which they confer on their elected representatives is to be exercised by persons responsible and accountable to the people--not independent of them.⁸

⁸ Article I, Section 2 of the Utah Constitution provides:

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

The budgets which the counties submit to the state must fall within certain cost categories set by the state. The costs which the counties submit to the state must be certified by the state. To argue that the counties retain control over their budgets and expenditures in light of these state controls is to trifle with the plain language of Section 17-19-15. These state controls are a prime example of unconstitutional intrusion into inherent county affairs as proscribed by Article XIII, Section 5, and as interpreted by case law, both because of the intrusion into the inherent county functions of assessment, levy and collection of taxes, and because the proceeds of a state levy are being used to fund inherent county functions and expenses.

**II. THE POWER TO ASSESS, LEVY AND COLLECT TAXES
IS AMONG THE INHERENT CONSTITUTIONAL POWERS
OF A COUNTY.**

The County defendants once again undermine their own inherent power and authority to administer their own affairs, including the assessment, levy and collection of taxes, by arguing that "[t]he constitutional separation of state and local functions has been abolished and the clear supervisory control of the State Tax Commission has been reinforced." Brief of Respondents at 20. This is also incorrect. As a matter of law, the statement flies in the face of this Court's decisions which

declare that the sovereignty and inherent political power vested in local government is paramount to our legal system, and that the Constitution stands to maintain and protect that sovereignty.

As this Court said in Standford:

The constitution was doubtless framed and adopted with a purpose to protect local self-governments which had existed of a practically uniform character from the early settlement of the country, since which they have remained undisturbed, and the continued existence of which is therein assumed, and from which the liberty of the people spring and depend.

Id. at 1062.

The County defendants' argument is also confusing because it interchanges supervisory powers with original powers. To understand the constitutional proscription of Article XIII, Section 5, it is necessary to recognize the inherent powers and responsibilities which are constitutionally vested in local governments; i.e., to assess, levy and collect taxes, to govern its own affairs, to set its own budgets; to pay the costs and expenses of its operations. The County defendants attempt to justify Section 17-19-15 as not infringing on these inherent local powers by identifying various supervisory powers that the state has over the counties. The County defendants would have the Court believe that to claim that "functions [which] are reposed within the statutory portfolios of locally elected

officials and financed partially or totally by county general fund revenues . . . are purely local functions, ignores the significant historical role which the State Legislature and State Tax Commission have played in all local assessment issues." Brief of Respondents at 9. From that, the County defendants conclude that "the Legislature and Tax Commission have, to a large degree, completely assumed control of the local administration of the property tax system",⁹ and thus Section 17-19-15 does nothing more than carry out state functions and purposes. Brief of Respondents at 11 (emphasis added).

While the Coalition recognizes the Tax Commission's various roles in county taxation, the Tax Commission's revision of tax levies or other supervisory powers hardly qualify as constitutionally vested authority to levy taxes in the first instance. Original powers to levy are vested in the county. As this Court has previously stated:

An examination of the constitution will show that at least by implication local self-government to the people of each county is intended to be imposed and recognized.

Standford at 1062.

⁹ This argument is inconsistent because, at the same time, the County defendants state the "[b]udgets and expenditures remain under county control." Brief of Respondents at 19.

After citing various constitutional provisions regarding the establishment and powers of the counties¹⁰ this Court concluded:

The constitution implies a right of local self-government to each county, and a right to establish a system of county government is expressly recognized and enjoined.

Id.

This Court has also recognized the need to protect these constitutional safeguards:

While the implied restrictions upon the power of the legislature with reference to local self-government are not defined with the particularity and incisiveness they could have been, yet they are imperative in their character, and when the courts find a case presented for consideration which is clearly within such provisions it has no alternative but to conform to authority.

Id., accord. Utah Technology.

¹⁰ See Sections 1 and 4, Article XI, which recognize the existence of the several counties as legal subdivisions of the state and the establishment of a system of county governments; Section 3, Article XIV, which prohibits any county from creating any indebtedness in excess of the taxes for the current year without a vote of the electors thereof; Section 6, Article XIV, which prohibits the state from assessing the debt of any county; Section 3, Article XI, which prohibits the legislature from changing county lines without a vote of the electors of the counties interested; and finally, Section 5, Article XIII, which prohibits the Legislature from imposing taxes for the purpose of any county, but may vest the corporate authorities thereof, with the power to assess and collect taxes for the purpose of such corporation.

In State v. Eldredge, this Court similarly stated:

The constitution of this state, the same as of every other state, was framed with local self-government in view.

The idea which promotes our whole system is that local authority shall manage and control local affairs.

Eldredge at 339-340.

Finally, this Court in The Best Foods stated:

There can be no doubt but that the framers of our 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.

The Best Foods at 1003.

The County defendants would have the Court ignore these constitutionally mandated county rights and powers to assess, levy and collect taxes as a means of funding county operations simply because the state has various supervisory powers. While the state's supervisory powers include a responsibility to ensure equalization, the state's ultimate authority over equalization does not give it the right to assess, levy or collect taxes for county purposes or to fund county expenditures.

To illustrate this principle, an analogy to our present court system is appropriate. Article VIII, Section 1 vests the judicial power of the state in the Supreme Court and the district courts (and such other courts as the legislature establishes). The Supreme Court by and large is an appellate court and has various supervisory roles and powers. The Supreme Court adopts rules of procedure and evidence for use in the state courts. The Supreme Court is responsible to manage the appellate process. The Supreme Court may authorize retired justices and judges pro tempore to perform any judicial duties. The Supreme Court is also responsible for governing the practice of law, including admissions and disciplinary matters. Certainly the Supreme Court is extensively and intimately involved in the supervision and administration of the legal system, including the supervision of the district courts.

District courts have original jurisdiction in all matters except as limited by the constitution or statute. This jurisdictional authority is inherent in the district court and cannot be ignored or usurped irrespective of any supervisory control a higher court has over the district court. Everyone would agree that while the Supreme Court exercises extensive supervision and control over the district court, the Supreme Court does not have original jurisdiction over most matters. This concept

is at least as old as Marbury v. Madison, 1 Cranch 137, 171 (1803) where Chief Justice John Marshall, speaking for the United States Supreme Court, wrote: "If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared its jurisdiction shall be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of justice, made in the constitution; is form without substance." The same principle applies to the state's supervisory powers over taxation. Although the state has a great deal of involvement in supervising local matters, there is no constitutional authority for the state to perform those duties the Constitution vests in local governments. In fact, that is Article XIII, Section 5's very purpose - to prohibit such an intrusion.

Finally, it must be emphasized that Article XIII, Section 5 also prohibits state intrusion into local affairs vis-a-vis using the proceeds of a state levy to fund county expenditures. The County defendants lose sight of this fact in their repeated arguments that the state's supervisory and equalization powers do not intrude into the counties' inherent duties and responsibilities. Nowhere do the County defendants discuss why the use of state levy proceeds to fund local expenditures does not violate Article XIII, Section 5. In fact, the County

defendants repeatedly indicate that Section 17-19-15's purpose is to fund inherently county expenses.¹¹ Because Section 17-19-15 imposes a state levy, the proceeds of which are used to fund local county expenditures, the statute is unconstitutional under Article XIII, Section 5.

III. THE UNIFORM SCHOOL FUND STANDS ON AN ENTIRELY SEPARATE CONSTITUTIONAL FOOTING.

Article X, Section 1 of the Utah Constitution mandates that the "Legislature shall provide for the establishment and maintenance of the state's education system." Section 5 of Article X provides for the establishment of the Uniform School Fund for the support of the state's education system, and the means by which the Uniform School Fund is to be funded. By a delegation of authority, the Constitution authorizes the Legislature to appropriate revenues to fund the Uniform School Fund. Pursuant to that constitutional delegation of authority, the Legislature enacted a taxing scheme to raise revenues for the Uniform School Fund. See, e.g., Utah Code Ann. § 59-2-902 (1989). That taxing scheme involves the redistribution of revenues raised from state levies to various school districts. The crucial difference

¹¹ "The statute under attack is a funding mechanism designed . . . [for] paying the costs of assessing, collecting and distributing property taxes." Brief of Respondents at 17.

between this taxing scheme and Section 17-19-15 is, that while the taxing mechanism to fund the Uniform School Fund is not specified in the Constitution, the legislature was constitutionally delegated the authority to create such a funding mechanism.¹²

¹² Article X, Section 5 must be construed in pari materia or as a comprehensive whole with Article XIII, Section 5, giving effect to both if possible. See State Board of Education v. State Board of Higher Education, 505 P.2d 1193 (Utah 1973). To the extent these provisions as to the levy and distribution of taxes for public schools conflict, Article X, Sections 1 and 5 would control over Article XIII, Section 5 because the former are a specific provision (vesting the legislature with authority to establish and maintain a public school system) whereas the latter is a general provision (proscribing the imposition of state taxes for the purpose of any county). See, e.g., de'Sha v. Reed, 572 P.2d 821 (Colo. 1977). Prior to 1973, ad valorem taxation for education was constitutionally vested in school districts and separated from the counties. Former Article X, Section 6 (repealed in 1973 by the electorate; see laws 1971, Senate Joint Resolution No. 2) provided: "In cities of the first and second class the public school system shall be controlled by the Board of Education of such cities, separate and apart from the counties." This meant, as construed by this Court in Board of Education v. Burgon, 217 P. 1112, 1113 (Utah 1923) that the Board of Education had "the right to determine its revenues without interference or restriction by the county." (Emphasis added.) Historically, city school districts' power to tax has always originated from a different constitutional source than the counties' power to tax. The Uniform School Fund does not violate Article XIII, Section 5 because the latter section's coverage is restricted to "any county, city, town or other municipal corporation," not school districts. Notwithstanding the repeal of Article X, Section 6, ad valorem taxation for school districts is not restricted by Article XIII, Section 5. Utah Code Ann. § 53A-2-108(2) (1989), consistent with Article XIII, Section 5, states: "Each school district shall be controlled by its board of education and shall be independent of municipal and county governments."

The distribution scheme for the Uniform School Fund stands upon the same constitutional footing as the establishment of the fund itself. Here again, this concept is at least as old as M'Culloch v. Maryland, 4 Wheat 316, 407 (1819), where Chief Justice John Marshall, speaking for the United States Supreme Court, wrote:

The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the heavy burden of establishing that exception.

The County defendants repeatedly refer to the taxing scheme under the Uniform School Fund for authority that Section 17-19-15 is equally constitutional. Specifically, the County defendants state that Section 17-19-15 "was closely modeled on the financing mechanism for the state supported minimum school program (Uniform School Fund)." Brief of Respondents at 15. This argument is specious. The mere fact that Section 17-19-15 adopts the mechanics of the taxing scheme under the Uniform School Fund does not give Section 17-19-15 equal constitutional approbation. Clearly the taxing scheme under the Uniform School Fund stands on entirely different constitutional footing than do

state imposed ad valorem taxes.¹³ The state has the constitutional right and obligation to fund public schools; it has no similar constitutional right to impose taxes for a county purpose.

The County defendants also refer to Utah Code Ann. § 59-2-318 (1987) which provides that the costs of preparation of plat maps is to be borne by the Tax Commission and appropriated out of the Uniform School Fund to the counties. The County defendants maintain that this statute is likewise identical to Section 17-19-15. Here again the County defendants are mistaken. In response, it is necessary to consider Section 59-2-318's purpose. The County defendants indicate that "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 . . . provided that uniform minimum standards in real property plat maps used by counties for property tax assessments would be established. . . ." Brief of Respondents at 13.

¹³ As set forth in the Coalition's Brief of Appellants, the Utah Attorney General has similarly stated that "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 102, 217 P. 1112 (1923) and Board of Education v. Daines, 12 Utah 97, 166 P. 977 (1917)).

Hence, the purpose of revising plat maps was to ensure the equality of assessment of the taxing scheme under the Uniform School Fund. For this reason, the costs of this statute is borne by the Uniform School Fund. As discussed above, the Uniform School Fund, and the costs and expenses which it supports are constitutionally sanctioned under Article X.

IV. SECTION 17-19-15 UNCONSTITUTIONALLY MANDATES REVENUE SHARING.

Article XIII, Section 5 only permits the consensual sharing of taxes with other political subdivisions of the state. The County defendants repeatedly claim that the various organizational associations of counties support Section 17-19-15. The Coalition does not dispute this fact, although that fact is, once again, irrelevant. The relevant fact is that no county has taken official action to adopt and incorporate the provisions of Section 17-19-15. Neither has any county taken any requisite action to authorize the sharing of tax proceeds with other counties. Utah Code Ann. § 17-4-2 (1989) 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 (1989) similarly 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.

Section 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.

V. THE COALITION HAS STANDING TO CHALLENGE THE CONSTITUTIONALITY OF SECTION 17-19-15.

For the reasons set forth in the Coalition's Brief of Appellants, Section I, pages 12-15, the Coalition members have standing to contest the constitutionality of Section 17-19-15.

CONCLUSION

Article XIII, Section 5 prohibits the state from intruding upon inherent county functions such as the assessment levy and collection of ad valorem taxes and using the proceeds of state levies to fund inherent county expenses. Section 17-19-15 does exactly what Article XIII, Section 5 proscribes because under the statute, state officials compel the counties to levy an ad valorem tax and then redistribute tax revenues generated by

the state levy to fund county expenses. Section 17-19-15 is unconstitutional on its face.

DATED this 28th day of March, 1990.



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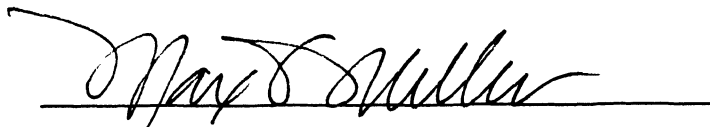
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MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing REPLY BRIEF OF APPELLANTS to the following on this 28th day of March, 1990:

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

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