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Hercules Incorporated v. Salt Lake County and West Valley City Corporation v. Salt Lake County : Reply Brief

Utah Supreme Court

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BRIEF
DOCKET NO: 900542

IN THE UTAH SUPREME COURT

Hercules Incorporated, Plaintiff, vs. SALT LAKE COUNTY, et. al. Defendants and Appellees.	Appellate Court No. 900542 Priority No. 16

WEST VALLEY CITY CORPORATION, a Utah Municipal Corporation, Plaintiff and Appellant, vs. SALT LAKE COUNTY, et. al. Defendants and Appellees.	Appellate Court No. 900542 Priority No. 16

REPLY BRIEF

Appeal from a Final Judgment of the
Third Judicial District Court of Salt Lake County
The Honorable David S. Young Presiding

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IN THE UTAH SUPREME COURT

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Pursuant to Rule 24(c) of the Utah Rules of Appellate Procedure, the Appellant, West Valley City, hereafter the "City" hereby responds to new matters set forth in the County's brief. Most new matters raised may accurately be termed "red herrings" in that they amount to little more than distractions from the primary issue before the Court in this case. The primary issue of law this Court has been asked to consider is whether the wording of §11-12-3 Utah Code Ann. (hereafter §11-12-3) artificially extends the time at which the taxing boundaries change in the event of a municipal boundary change.

I. "Red Herrings" Raised by the County.

A. Constitutional Challenge.

The City does not challenge the constitutionality of §11-12-3 nor is there a challenge to the Legislature's power to legislate taxation. The City simply asserts that the County's interpretation of that section is in error. The Legislature has not, through §11-12-3, delayed the change in taxing boundaries of annexed territory previously within Municipal-Type Service District No. 1 to allow the District to retain taxes assessed and levied on property no longer within its boundaries. Without an express statutory grant of authority, the general rule is that the taxes assessed but uncollected as of the date of levy belong to the annexing or incorporating entity. 62 C.J.S., Municipal Corporations §79. West Valley City annexed the new territory far in advance of the date of assessment and levy for the tax year 1988 and should therefore have received the taxes for the provision of municipal services to the annexed territory.

B. Administrative Inconvenience.

The County attempts to impress this Court with the great administrative inconvenience of giving the tax dollars collected for municipal services to the annexing or incorporating entity that must now provide the services. The City strongly disagrees with the County's unsubstantiated claims of having to adjust budgets, valuations and rates for numerous taxing entities. There are only the three entities affected by the change, the County through its District and the City. The County is statutorily able to open its

budget for the purpose of reevaluation and adjustment during the budget year. §17-36-32(3), Utah Code Ann. If administrative inconvenience is a determining factor, the facts are equally oppressive on the City's side, in that under the County's interpretation of §11-12-3, the incorporating or annexing entity has to deliver services to a new territory without property taxes to pay for them. The extent of administrative inconvenience to both the City and County is factually disputed and should not be a determining factor in determining the question of law before this Court.

C. Administrative Interpretation.

The County further asserts that an administrative interpretation given to §11-12-3 over the years is evidence that they ought to be permitted to retain the taxes from newly incorporated or annexed territory though they no longer provide those services which are now required of the acquiring entity. The County misapplies the cases cited in their brief in support of this proposition. Administrative practices may be a consideration when ambiguity exists in the statute. In the present case the statutory provisions of §11-12-3 are express. Only the County's interpretation of that section may be termed "ambiguous" since it is based on implications and conjecture and not the plain wording of that section. Notwithstanding, the number of new incorporations and annexations in this State have been few and the resulting distribution of tax dollars cannot be said to have created an administrative practice contrary to the express wording of §11-12-

3. If such an error in administrative interpretation has occurred, the City now asks this Court to correct the error.

D. The City's Control Over Boundary Changes.

The County also erroneously asserts that the City has control over boundary changes and receives tax dollars from other sources and, therefore, little harmed by the County's retention of tax dollars needed to service the new territory. Once again, this is not an issue relevant to obtaining an accurate interpretation of §11-12-3. Notwithstanding, the County is far from accurate. The creation and expansion of City boundaries is governed by State law. The incorporation of a city is, by statutory mandate, complete on July 1 of a given year. Since notice, pursuant to §11-12-1, must be filed after the boundary change is complete, under the County's interpretation of §11-12-3, a newly incorporating city is never able to receive tax dollars for the year in which it is incorporated. Also, §10-2-415, Utah Code Ann., requires that a developer developing within one half mile of the City's boundaries apply for annexation. Under the County's interpretation of §11-12-3, the City would have to stall development off until December when it could annex without loss of property tax dollars. In these cases "development," not the City, determines the date of annexation. If the Legislature intended the interpretation of §11-12-3 that the County proposes, they failed to provide for these significant contingencies.

The above issues, though informative, should not be permitted to cloud the issues of law before this Court. Does §11-12-3

prohibit ad valorem taxation by cities of property within their physical boundaries for municipal services they must provide and consequently, is the County entitled to retain those taxes for services it does not provide?

II. THE COUNTY'S INTERPRETATION OF SECTION 11-12-3, UTAH CODE ANN., VIOLATES RULES OF STATUTORY CONSTRUCTION.

A. Statute Must Be Given Its Literal Meaning.

The County contends that §11-12-1 is a comprehensive and exclusive process by which political subdivisions may be incorporated, established or the boundaries thereof modified and that these provisions provide for change of boundary for ad valorem tax purposes at a later period of time than the actual physical occurrence of the boundary change. Such an assertion and interpretation is in direct contradiction of the basic principles of statutory construction set forth by this Court in governing taxation. Amax Magnesium Corporation v. Utah State Tax Commission, 796 P.2d 1256 (1990). In that case this Court established a rule of statutory construction important to the current case:

> A second rule of statutory construction mandates that a statute be read according to its literal wording unless it would be unreasonably confusing or inoperable. It is presumed that a statute is valid and that the words and phrases used were chosen carefully and advisedly. Id. at page 1258.

The County erroneously reads part of §11-12-1 out of context by combining those provisions with the provisions of §11-12-3 to create new law. The County takes the first sentence of §11-12-1 which states:

> No county service area, special purpose district, city or town may be incorporated, established, or the boundaries modified, without notification of the change being filed with the State Tax Commission within 10 days after the conclusion of the proceedings in connection with the change.

and combines it with the independent provision of §11-12-3 which states:

> Property annexed to any existing taxing entity of property in any new taxing entity shall carry any tax rate imposed by that taxing entity, as required by Section 11-12-1, is made to the Tax Commission not later than December 31 of the previous year.

They now interpret these two sections as reading that no boundary change for the purpose of taxation may occur until the tax year following the annexation unless notice is given before December of the previous year. This Court has firmly determined that a statute must be read according to its literal wording, unless it would be unreasonably confusing or inoperable. Section 11-12-1 specifically provides that a boundary is complete after notifying the State Tax Commission within 10 days after the conclusion of the proceedings in connection with the change. West Valley City lawfully completed this requirement on March 31 of the tax year in question. At that time, all legal requirements for a boundary change were met, the annexation became final and the boundaries were changed for all purposes including ad valorem taxation. Section 10-2-415(4)(b)[1] and §11-12-1, Utah Code Ann.

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[1]On filing the maps or plats, the territory annexed is part of the annexing municipality, and the inhabitants of the annexed territory shall enjoy the privileges of the annexing municipality.

The issue of boundary change being addressed, the Legislature next made provision for determining which "tax rate" would apply to the annexed area, but made no statement which would grant power to the County to tax the newly annexed area even though it was physically within the City boundaries. Section 11-12-3 provides that without the required notice, the new entity cannot apply its own tax rate. The literal wording of this section only addresses the "tax rate" to be applied. It does not address the matter of who may levy the tax, either expressly or by implication. This determination is governed by the "general rule" that where the property is located on the date of levy determines which entity will receive the tax. Other provisions of the Code are in harmony with that principle. The express provisions of the enabling legislation governing Municipal-Type Service District No. 1[2] expressly provide for the levying of a tax only on territory within district boundaries. No special distinction is made between actual physical boundaries and boundaries for ad valorem taxation purposes.

The Legislature makes no reference to §11-12-3 in the enabling provisions governing Municipal Type Service District No. 1 to the

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[2](1) Whenever a county furnishes the municipal-type services and functions described in Section 17-34-2 of this chapter to areas of the county outside the limits of incorporated cities or towns, the entire cost of the services or functions so furnished shall be defrayed from funds that the county has derived from either (a) taxes which the county may lawfully levy or impose outside the limits of incorporated towns or cities, or (b) service charges or fees the county may impose upon the persons benefitted in any way by the services or functions, or (c) a combination of these sources.

artificial extension of its boundaries for the purposes of ad valorem taxation in the event of a boundary change. That is a fiction created by the County. The plain wording of those sections presently provide for the levy of taxes upon those areas within the boundaries of the special district and make no reference to the extension of boundaries for ad valorem taxing purposes. When the service district provides municipal services it may defray its cost from funds derived from:

> (a) taxes which the county may lawfully levy or impose outside the limits of incorporated towns or cities .... §17-34-3, Utah Code Ann. (Underline added).

The principle rule of statutory construction identified above operates on the presumption that "... a statute is valid and that the words and phrases used were chosen carefully and advisedly." Amax at Page 1258. At the date of levy, the territory annexed was entirely within the municipal boundaries of West Valley City. The Service District cannot levy a tax outside its boundaries.

B. Mandatory Language Necessary to Sustain the County's Interpretation of §11-12-3 is Missing.

A second important rule of statutory construction in tax matters was provided by this Court in Kennecott Copper Corporation v. Salt Lake County, 575 P.2d 705 (Utah 1978). The County incorrectly claims that the requirements of §11-12-3 were mandatory conditions precedent to the City's ability to tax. The language of §11-12-3 does not meet the Court's requirements for imposing mandatory conditions on the City. In Kennecott Copper, this Court made a determination of whether the provisions of two statutes that

use the words "must" and "shall" were directory or mandatory. Utah Code Annotated, §59-9-6.3 (1953) provided:

> The board of county commissions of each county must levy a tax on taxable property of the county between the last Monday in the seventh month and the second Monday in the eighth month . . .

Utah Code Annotated, §17-36-31 provided that:

> On or before the second Monday in August of each year, the governing body shall levy a tax on taxable real and personal property . . .

The Court held that those two statutes were directory and permitted Salt Lake County to set a new levy after the statutory date had passed. In reaching that holding, the Courts reasoned:

> Generally, those directions which are not of the essence of the thing to be done, but which are given with a view merely to the proper, orderly and prompt conduct of business, and by the failure to obey no prejudice will occur to those whose rights are protected by the statute, are not commonly considered mandatory. Likewise, if the act is performed but not in the time or in the precise manner directed by the statute, the provision will not be considered mandatory if the purpose of this statute has been substantially complied with and no substantial rights have been jeopardized. Id. at page 706.

The Court also stated:

> The general rule is that a statute prescribing the time within which public officers are required to perform an official act, is directory only, unless it contains negative words denying the exercise of the power after the time specified of the nature of the act to be performed, or the language used by the legislature shows that the designation of time was intended as a limitation . . . . Id. at page 706. (Emphasis added).

The focus of the Court in making this determination was whether or not the purpose of this statute was to protect the taxpayer:

> On the other hand, where the purpose of the statute is not to protect the taxpayer, but merely to set up a guide for the tax officials, a provision as to time when an act is to be performed by a tax official or board is ordinarily construed to be merely directory, especially where there are no negative words in the statute that the act shall not be done at any other time. Id. at page 706.

Thus, notwithstanding the use of the words "must" and "shall", the Court concluded that these two statutes were directory because:

> The time provisions appear consistent with a legislative purpose to establish a guide for the orderly and prompt conduct of the public business. Furthermore, there are no negative prohibitions in the statutes as to time or performance. Finally, the purpose of the statute is not to protect the taxpayer, viz., to give him notice or an opportunity for a hearing. Id. at page 706 and 707.

Similarly, the provisions of §11-12-3 are directory because the statute was not enacted to protect taxpayers, nor is the statute drafted in the negative, prohibiting the act of levying taxes unless timely notification is made. The logical purpose of the above statute is to facilitate the prompt and orderly conduct of public business by establishing a guide for the notification and recording of the transfer of property from one taxing jurisdiction to another. The language of §11-12-3 is not mandatory. Therefore, as long as a tax assessment and levy are made while property is within an entity's territorial jurisdiction, the assessment and levy is valid.

The County has argued that the use of a County tax rate, if proper notice is not given under §11-12-3, is fraught with uniformity, truth-in-taxation and other problems. While the City believes these concerns are unfounded, the above rule provides a consistent, alternative argument regarding interpretation of §11-12-3. Where the County proposes that §11-12-3 is a mandatory prerequisite to taxation, the City, due to the above rule, would assert that the language is directory only in that the City's failure to comply with the provisions of §11-12-3 do not take away its power to tax those properties found within its boundaries on the date of levy. Under the above rule, the City may impose its own tax rate and levy a tax against properties found within its boundaries upon the date of levy. Since the date of annexation was far in advance of the date of levy in the instant case, the City may lawfully levy a tax at its own rate for the municipal services it must provide to the new territory.

At the very least, the express language of §11-12-3 does not extend the time for inclusion of the new territory within the boundaries of the City and authorize the County to tax extraterritorially. §11-12-3 provides a guide for the orderly and prompt conduct of public business. There is no negative prohibition as the time for performance and the purpose of the statute is not to protect taxpayers.

The express provisions of §11-12-3 do not take away the City's power to tax, nor does it authorize the County to tax outside the physical boundaries of the service district. Numerous provisions

throughout the Utah Code and Utah case law specifically prohibit taxation outside the physical boundaries of a taxing entity. Those same provisions and cases recognize the date of levy as the date at which power to tax is determined. As previously stated, §10-2-415(4)(b) and §11-12-1 expressly provide that upon the filing of all plats and maps with the County Recorder and upon notice to the Tax Commission within 10 days after the date of annexation, the annexation is final for all purposes and the annexed territory is within the boundaries of the municipality. As indicated previously, the enabling provisions of the Special District Act, under which Municipal-Type Service District No. 1 was created, expressly provides only for taxation for a levying of tax within its boundaries. (See footnote 2). Article XIII, §10 of the Utah Constitution[3] also clearly recognizes the right of an entity to levy taxes only upon property within its boundaries. For almost 100 years, numerous cases in the State of Utah have sustained the same principle. Huntington City v. Peterson, 518 P.2d 1246 (Utah 1974), Utah Parks Company v. Iron County, 380 P.2d 924 (Utah 1963), Parry v. Bonneville Irrigation District, 263 P. 751 (Utah 1928), Gillmor v. Dale, 75 P. 932, 934 (Utah 1907). The County now insists that the statutory provision, §11-12-3, creates a fiction ignoring the physical change in boundaries and by changing the boundaries for ad valorem tax purposes at a later date.

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[3]All corporations or persons in this State, or doing business herein, shall be subject to taxation for State, County, School, Municipal or other purposes, on the real and personal property owned or used by them within the Territorial limits of the authority levying the tax. (Underline added).

It is well established that upon boundary change, it is competent for the Legislature to provide for the disposition of municipal taxes uncollected as of the date of consolidation or annexation. In the absence of such a provision, taxes assessed on the annexed territory, but not collected as of the date of the annexation, belong to the annexing city. 62 C.J.S., Municipal Corporations §79. The County has not challenged the application of the above rule, but instead, insists that §11-12-3 is the Legislature's mandate providing for the disposition of the ad valorem taxes. In light of the above rule of statutory construction, however, the language the County refers to in §11-12-3 for that proposition does not accomplish that. There is no express wording extending the time for boundary change for ad valorem tax purposes and there is no negative, mandatory language prohibiting the City from taxing if the December 31 deadline is not met.

The rules of statutory construction prohibit the County from interpreting that section in the above manner. The City would respectfully request that the Court find that the language of §11-12-3 is directory only, and that the City's failure to comply with that language does not prohibit the City's levying an ad valorem tax upon property within its boundaries upon the date of levy.

III. THE COUNTY'S INTERPRETATION OF SECTION 11-12-3 CREATES A DOUBLE TAX.

If the County is correct, citizens of an annexing city must pay for services provided to citizens in the newly annexed area as well as to themselves. This was precisely the case in Salt Lake

City Corporation v. Salt Lake County, 550 P.2d 1291 (1976). In referring to the provisions of §17-34-1, the same Code sections that govern Municipal-Type Service District No. 1, the Court stated:

> This statute was passed to remedy what is commonly known as "double taxation" which results when municipal residents are required, through county tax assessments, to finance services provided exclusively to residents of the unincorporated areas of the county. Id. at page 1292.

In the present case, citizens in the newly annexed area must pay for municipal services provided exclusively to the unincorporated area of the County. At the same time, citizens of the annexing entity must bear the entire burden for providing municipal services to the new territory. In addition, if, as is often the practice, tax anticipation notes were issued for the provision of municipal services to the newly annexed territory, to defray the cost of municipal services by the newly incorporated city or annexing city, the citizens in the newly annexed or incorporated area would be required to pay a second time for the provision of municipal services for the year in which they were provided. The County's interpretation of §11-12-3 works as a double tax on both the citizens of the annexing and/or newly annexed areas.

IV. TRUTH IN TAXATION REQUIREMENTS ARE MET BY THE CITY'S INTERPRETATION OF SECTION 11-12-3.

Truth-In-Taxation provisions of the Utah Code are not violated by the City's interpretation of §11-12-3. In the present case,

under the City's interpretation of this section, the tax rate to the new territory would be either the same as the County's or at the lower City rate. The Services provided would not change. The only change would be the entity levying the tax. The property owners must, under the States annexation law, be given notice of the change in boundaries and therefore is aware to the change in taxing entity. If the tax rate will be greater than the rate of the annexing entity's, the process for notification is proscribed in the State Code. Section 59-2 Part 9 Utah Code Ann. The notice requirements of Truth-in-Taxation are met under the City's interpretation of §11-12-3.

V. THE CITY'S INTERPRETATION OF SECTION 11-12-3 COMPLIES WITH UNIFORMITY REQUIREMENTS OF THE UTAH CONSTITUTION.

Uniformity of taxation provisions of the Utah Constitution are not violated by the taxation of the newly annexed area by the City, at either its own rate or at the County's rate. If, pursuant to the rules of construction arguments made in Argument II B above, the City used its own tax rate, the County would not have any uniformity argument since the new area would be taxed at the same rate as all other properties in the City. The City, however, takes issue with the County's understanding of uniformity. Article XIII, §2(1) states:

> 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.

As has been properly stated by the County in their brief, the Legislature governs ad valorem taxation by "general law". Article XI, §35, Utah Constitution. The uniformity provisions of the State's Constitution specifically impose upon the Legislature the responsibility of complying with the intent of this section when dealing with taxation. It does not, however, presume to specifically instruct the Legislature on how to do this. It is well established that the intent of uniformity provisions, such as the one this State's Constitution, are meant to preclude double taxation and unreasonable and unjust discrimination. 16 McQuillans, Municipal Corporations, Taxation §44.19.

The Legislature, in dealing with the difficult problem of "tax rate" in the event of a boundary change, enacted §11-12-3. This section reasonably provides that the newly annexed property will not be taxed at its own tax rate unless the required notice is given. The obvious question is, which tax rate then applies? If the County's understanding of uniformity prevails, the City must look at the provisions of §11-12-3 as being directory only and apply its own tax rate notwithstanding that direction. If the City's understanding prevails, the County's rate will be applied. In either case, the City is the entity levying the tax. The County may not levy a tax.

The City asserts that the Legislature, by enacting §11-12-3, has eliminated the possibility of double taxation and does not unjustly discriminate in taxing the newly annexed area at the same rate as surrounding properties though the taxing boundaries change.

It is well recognized that government's ability to deal with taxation is not always going to result in precise equality. The intent of a uniformity clause is to prevent the arbitrary and unreasonable acts of government in this regard and not to prohibit the reasonable attempts of government to provide for such contingencies as a change in boundary. The Legislature's treatment of the tax rate to be applied upon annexation does not violate the uniformity provision of the Constitution, but instead, comports with the intent of that provision.

VI. CONCLUSION

In conclusion, the focus of this appeal centers on an interpretation of §11-12-3. The City's position is that this section refers only to the tax rate that must be applied to newly annexed territory and that the language is merely directory and not mandatory. The legal arguments in favor of the City's interpretation are sound. Notwithstanding, the fairness of the City's position must also be considered. It is not fair to require the City and its tax payers to provide municipal services to a newly annexed area and at the same time, fail to provide funding for it to do so. Neither is it fair to bestow upon the County, a windfall of tax dollars for municipal services they no longer provide to the annexed area. The County has created a fiction by their interpretation of §11-12-3 that does both of these things. The City respectfully requests that this honorable Court determine that the wording of §11-12-3 determines only which tax rate applies and that the language of that section dealing with notice, is

directory and not mandatory and does not artificially prevent a boundary change for ad valorem tax purposes until the next tax year.

DATED this 25th day of June, 1991.

Gary R. Crane

CERTIFICATE OF HAND DELIVERY

I, the undersigned, certify that on Jun 25, 1991, I delivered by hand, four true and correct copies of the foregoing Reply Brief to the following individuals:

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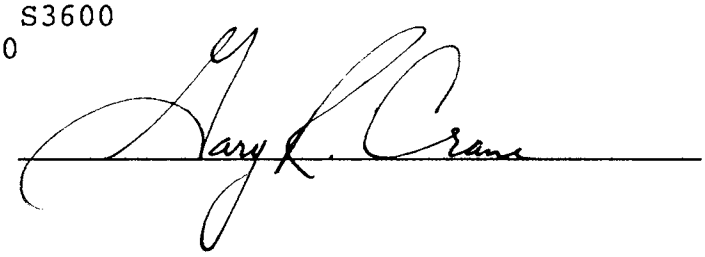

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