

1991

Vanter v. Millard Recreation : Brief of Appellant

Utah Supreme Court

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

910044

IN THE UTAH SUPREME COURT

GEORGE VAN DE VANTER and
MIKE VAN DE VANTER,

Plaintiff-Appellant,

vs.

WEST MILLARD RECREATION
DISTRICT and JOHN DOES I
through XX,

Defendant-Respondent.

)
) Subject to Assignment to
) the Court of Appeals
)

) Case No. 900486
)

) Classification Priority No. 16
)

) 91-0044-CA
)

BRIEF OF APPELLANT

Appeal from a Summary Judgment dated September 14,
1990, of the Fourth Judicial District Court for Millard County,
State of Utah, the Honorable Ray M. Harding, District Judge,
presiding.

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FILED

JAN 15 1991

Clerk, Supreme Court, Utah

IN THE UTAH SUPREME COURT

GEORGE VAN DE VANTER and)	
MIKE VAN DE VANTER,)	Subject to Assignment to
)	the Court of Appeals
Plaintiff-Appellant,)	
)	
vs.)	Case No. 900486
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through XX,)	
)	
Defendant-Respondent.)	

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IN THE UTAH SUPREME COURT

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DISTRICT and JOHN DOES I)	
through XX,)	
)	
Defendant-Respondent.)	

JURISDICTION OF THE SUPREME COURT

The Jurisdiction of the Utah Supreme Court is established by 78-2-2(3)(j), Utah Code Annotated, 1953, as amended. This case is subject to assignment to the Court of Appeals.

NATURE OF THE PROCEEDINGS

This is an appeal from a Summary Judgment granted in favor of the Defendant-Respondent ruling that the Defendant-Respondent Recreation District had the authority to acquire and operate a bowling alley.

ISSUES PRESENTED ON APPEAL

Does the West Millard Recreation District have the authority, under its establishing resolutions, to acquire and operate a bowling alley and theater complex in Delta, Utah?

DETERMINATIVE STATUTES OR RULES

The statutes which are believed to be determinative in this case are 11-23-1 through 29, Utah Code Annotated, 1953, as amended, as they were in effect at the time of the creation of the district in 1977. These statutes are reproduced in total as the addendum to this brief. Amendments to the statutes since 1977 do not affect this case.

NATURE OF THE CASE

This is a lawsuit filed to contest the validity of the acquisition by the West Millard Recreation District of a bowling alley and theater complex in Delta, Utah, and also asserting damages to the Plaintiffs who own and operate a roller skating rink in Delta, Utah, which is in competition with the bowling alley and theater complex.

COURSE OF THE PROCEEDINGS

The complaint was filed against the West Millard Recreation District and discovery was had specifically centering around the creation of the District. Cross-Motions for summary judgment were filed by both the Plaintiff and the Defendants, and the District Court ruled in favor of the Plaintiffs.

DISPOSITION AT TRIAL COURT

The District Court's Memorandum decision of September 14, 1990, held that no material issue of genuine fact existed and that the Defendant did not exceed its authority in acquiring the bowling alley. The District Court also ruled that the Defendant has not created an unconstitutional debt; though, in all candor

to this court, that issue was not raised by the Plaintiffs in the Plaintiff's Motion for Summary Judgment.

STATEMENT OF FACTS

On August 17, 1977, the Millard County Commission established the West Millard Recreation District with its general purposes to provide recreational services to those within the District which consists of the western portion of Millard County. The Recreation District was re-established specifically to create swimming pool facilities and any services related thereto in December of 1977. The resolutions creating the Recreation District in August and December of 1977 are incorporated herein in the addendum to this brief. Thereafter, in 1989, the Recreation District acquired by first lease and then by purchase a bowling alley in Delta, Utah, which is operated in direct competition with the Plaintiff's roller skating rink also in Delta, Utah. (See Affidavit of James L. Shumate, filed in support of Plaintiff's Motion for Summary Judgment.) The Plaintiff filed the complaint in this matter in order to contest the acquisition of the bowling alley by the Recreation District and its operating said bowling alley in competition with the Plaintiffs privately-owned skating rink. A Motion for Summary Judgment was heard on the trial-court level, both parties agreeing that there was no material issue of fact between the parties regarding the creation of the District.

SUMMARY OF ARGUMENT

The West Millard Recreation District was not created to have the authority to acquire and operate a bowling alley in Delta, Utah.

ARGUMENT

POINT I

THE WEST MILLARD RECREATION DISTRICT WAS CREATED WITH THE SPECIFIC AUTHORITY TO BUILD AND OPERATE A SWIMMING POOL AND HAS NO AUTHORITY TO ACQUIRE AND OPERATE A BOWLING ALLEY AND THEATER COMPLEX.

Because of the creation of this District by the legislative body of Millard County, the Millard County Commission, the powers of the Recreation District should be limited strictly by its creating language. Unfortunately, the limits of powers of such districts have never been defined by this court or particularly addressed by the Utah statutes. Because each State's statutes differ considerably, little assistance can be had from neighboring jurisdictions. However, some general rules do apply such as the rule that powers conferred to special districts should be strictly construed; and if there is any ambiguity in the grant of power, it should be resolved against the municipal corporation and the power denied. (See 56 Am Jur 2d, Municipal Corporations, Section 195) The Plaintiffs in this action argue specifically that the language creating the District was focused solely on its power to establish and operate a swimming pool facility. The enabling

resolution of the Millard County Commission never gave any authority on the part of the Recreation District to acquire or operate a bowling alley.

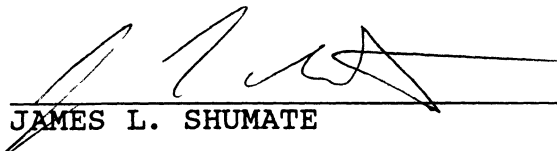
This district, while not technically a municipal corporation, is at least a quasi municipal corporation; and for that reason, similar rules governing municipal corporations should apply regarding the powers of this corporation. (See Am Jur 2d Corporation Section 13.)

Because of the limitations in the enabling resolution, the acquisition of the bowling alley was beyond the authority of the West Millard Recreation District and, as an ultra vires act, should be struck down by the courts and damages awarded to the Plaintiffs in a trial to determine the damage issue. "The doctrine of ultra vires has, with good reason, been applied with greater strictness to municipal corporation than to private corporations....." (56 Am Jur 2d Municipal Corporation Section 503)

CONCLUSION

These Plaintiffs specifically request that the judgment of the trial court be reversed and the matter be remanded to the trial court for an evidentiary hearing regarding their damages arising from the unlawful actions of this Recreation District.

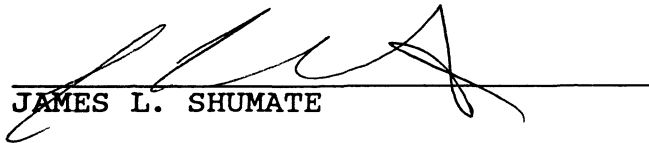
DATED this 11th day of January, 1991.



JAMES L. SHUMATE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing BRIEF OF APPELLANT to Mr. Robert Henderson, 10 Exchange Place 11th Floor, P.O. Box 45000, Salt Lake City, Utah 84145, and to Mr. A. Thorpe Waddingham, 362 West Main, P.O. Box 430, Delta, Utah 84624, on this 14 day of January, 1991, first class postage fully prepaid.


JAMES L. SHUMATE

R E S O L U T I O N

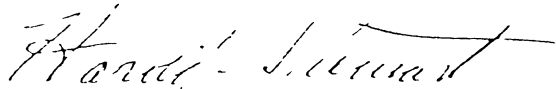
WHEREAS, at the regular meeting of the Board of Commissioners of Millard County on the date of July 6, 1977, there was full discussion by the Commission of a proposal set forth in Petitions duly filed with the Commission containing the signatures of more than 10% of the qualified electors of the area in Millard County, Utah, which is included or within the West Millard Hospital District, said Petitions indicating the signers' approval of a proposed service district known as West Millard Recreation District with the purpose of providing recreational services to those within said proposed district.

NOW THEREFORE after full discussion of said matter and upon approval of the Board of Millard County Commissioners the following Resolution was adopted:

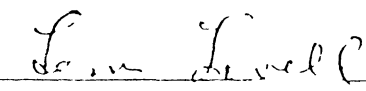
BE IT RESOLVED that the Board of Millard County Commissioners declare that the public health, convenience, and necessity of the citizens of the County requires the establishment of a service district known as "West Millard Recreation District", for the purpose of providing recreational services and any incidental services with a boundary of that area of Millard County, Utah, which is within the area and confines of the West Millard Hospital District.

DATED this *3rd* day of July, 1977.

BOARD OF MILLARD COUNTY COMMISSION



Harold Steward, Chairman



Lem Lovell, Commissioner

NOTICE

NOTICE IS HEREBY GIVEN of the intention of Millard County to establish a service district known as the West Millard Recreation District with boundaries which cover and include that portion of Millard County which is included or within the West Millard Hospital District. The service to be provided by the proposed service district is a general recreational service and any service incidental thereto. Taxes may be annually levied upon all taxable property within the proposed service district and fees and charges may be imposed to pay for all or a part of the services to be provided by the proposed service district.

A PUBLIC HEARING on the establishment of said proposed service district will be held in the Auditorium at the Delta High School, Delta, Utah at the hour of 8:00 o'clock p.m. on Tuesday, August 9, 1977. Protests against the establishment of the service district or the furnishing of said service within the district may be made orally at the hearing or in writing, at or at any time prior to the hearing, by any interested person or persons.

DATED this 6th day of July, 1977.

s/ Guy L. Robins
Millard County Clerk

Publication Dates:

July 14, 1977
July 21, 1977
July 28, 1977

B

AFFIDAVIT OF PUBLICATION

1977

NOTICE OF INTENTION TO REAFFIRM THE CREATION OF THE WEST MILLARD RECREATION DISTRICT

NOTICE IS HEREBY GIVEN THAT ON November 16, 1977, the Board of County Commissioners of Millard County, Utah, adopted a Resolution declaring its desire to reaffirm the creation of the West Millard Recreation District for the purpose of providing within the area of said Service District recreational services, specifically swimming pool facilities and any services incidental thereto. Said Resolution also provides for a public hearing to reaffirm the creation of said Special Service District in the County Building in Delta, Utah at 2:00 p.m. on December 7, 1977.

Description of District

The boundaries of said Special Service District are those of the West Millard Hospital District and are more specifically defined as follows:

Beginning at the Southwest corner of Millard County, State of Utah, and running thence East being the Beaver-Millard County boundary line to the township line separating townships 12 West and 13 West, Salt Lake

Base and Meridian; thence North to the Northwest corner of Section 6, Township 20 South, Range 12 West, Salt Lake Base and Meridian; thence East to the Southeast corner of Section 36, Township 19 South, Range 7 West, Salt Lake Base and Meridian; thence North to the Southeast corner of Section 36, Township 18 South, Range 7 West, Salt Lake Base and Meridian; thence East to the South Quarter corner of Section 34, Township 18 South, Range 5 West, Salt Lake Base and Meridian; thence North to the middle of Section 27, Township 18 South, Range 5 West, Salt Lake Base and Meridian; thence East to the East Quarter corner of Section 27, Township 18 South, Range 5 West, Salt Lake Base and Meridian; thence North to the Southeast corner of Section 22, Township 18 South, Range 5 West, Salt Lake Base and Meridian; thence East to the Southeast corner of Section 23, Township 18 South, Range 5 West, Salt Lake Meridian; thence North to the East Quarter corner of Section 23, Township 18 South, Range 5 West, Salt Lake Base and Meridian; thence East to the East Quarter corner of Section 24, Township 18 South,

PROPOSED SERVICES

Said District was created to provide recreational services within said District, specifically swimming pool facilities and any service related thereto.

METHOD OF FINANCING

Pursuant to the provisions of the Utah Special Service District Act, Utah Code Annotated, Sections 11-23-1 to -29 (1953) as amended, and Article XIV, Section 8 of the Utah Constitution, the West Millard Recreation District may annually impose fees and charges

to pay for all or a part of the services to be provided by said District. It may also annually levy taxes upon all taxable property within said District, to

provide the proposed services, and may issue bonds for the acquisition and construction of said services, provided, however, that said tax levy to provide said services or to repay said bonds, must be authorized and approved by a majority of the qualified electors of the Special Service District at an election for that purpose.

PUBLIC HEARING TO REAFFIRM THE ESTABLISHMENT OF SAID SERVICE DISTRICT

The Board of County Commissioners will hold a public hearing to reaffirm the creation of said Special Service District and the furnishing of said services therein at 2:00 p.m. on Wednesday, the 7th day of December, 1977. Any interested person may protest the creation of the West Millard Recreation District or the furnishing of services therein either orally at the hearing or in writing, at or at any time prior to the hearing. Written protests must be filed with the County Clerk, and may be withdrawn by the protestant at any time before the above scheduled hearing.

Any protest signed on behalf of a corporation owning property in said District shall be sufficient if it is signed by the president, vice president, or any duly authorized agent of the corporation. Where title to any property is held in the name of more than one person, all of the persons holding title to the property must join in the signing of the protest

At said public hearing, the County Commissioners will give full consideration to all protests which shall have been filed and will hear and consider all interested persons desiring to be heard. After conclusion of the hearing, the Commission will adopt a resolution either reaffirming the creation of the West Millard Recreation District or determining that the creation of said District should be abandoned.

If over fifty percent (50%) of the qualified voters of the territory proposed to be included within said District file written protests against the establishment of the District with the County Clerk, the County Commission is required by law to abandon the establishment of said District.

Any person who shall, at or any time prior to the date and time above specified for the hearing, file a written protest with the County Clerk against the establishment of said District and whose property has been included within the boundaries of the District notwithstanding such protest, may, within thirty (30) days after the above referenced hearing, apply to the District Court of the Fifth Judicial District for a writ of review of the actions of the Board of County Commissioners in establishing the West Millard Recreation District, only upon the grounds, however, that his property will not be benefited by the services authorized to be furnished by said District or that the proceedings taken in the establishment of the District have not been in compliance with law.

A FAILURE TO APPLY FOR SUCH WRIT OF

WITHIN THE DESCRIBED TIME SHALL FORECLOSE ALL OWNERS OF PROPERTY WITHIN SAID DISTRICT SO ESTABLISHED FROM THE RIGHT FURTHER TO OBJECT THERETO.

GIVEN by order of the Board of County Commissioners of Millard County, Utah, this 16th day of November, 1977.

Commissioner

ATTEST-

County Clerk
Published in the
County Chronicle 1
ber 24, 1977.

My Commission Expires

16 Dec 1977

C

RESOLUTION

A RESOLUTION TO ESTABLISH THE WEST MILLARD RECREATION DISTRICT AND TO AUTHORIZE CONSTRUCTION OF IMPROVEMENTS AS SET FORTH IN THE NOTICE OF INTENTION TO CREATE THE DISTRICT.

BE IT RESOLVED by the Chairman and Board of Commissioners of Millard County, Utah:

Section 1. The Board of Commissioners of Millard County, Utah, believe that the public health, convenience and necessity require the construction of the improvements identified and described in the Notice of Intention concerning the establishment of the West Millard Recreation District, which notice has been published as required by law.

Section 2. The Board of Commissioners has heretofore considered each and every protest filed and has heard each and every person who wished to be heard in protest against the creation of the District or the construction of any of the improvements therein or on any other matter pertinent to said Special Recreation District

Section 3. The improvements proposed and described in the Notice of Intention to create said Special Recreation District are hereby authorized, and the West Millard Recreation District is hereby created.

Section 4. The membership of the Administrative Control Board of said Special Service District shall consist of nine (9) members, four (4) members of whom shall be appointed by the Board of Commissioners. The remaining five (5) members of the Administrative Control Board shall be appointed one member by each of the following municipalities lying within the boundaries of said District: Delta, Hinckley, Oak City, Lynndyl, and Leamington. The Board of Commissioners shall

appoint the initial four (4) members of said Administrative Control Board, which it is entitled to appoint, one member to serve a two year term, the determination of who shall serve in each category to be made by lot. Said terms shall commence on January 1, 1979, which is the next succeeding date that the terms of office commence for members of the Board of Commissioners. The initially appointed members of the Administrative Control Board shall serve an additional term commencing on the date of appointment and continuing until the regular commencement of the above-specified terms.

Vacancies of the four (4) appointed members of said Board, other than by expiration of term, shall be filled by appointment of the Board of Commissioners for the unexpired term of the member whose vacancy is filled.

Section 5. The Board of Commissioners hereby appoints as the initial membership of the Administrative Control Board the following members, who shall serve those terms opposite their names as determined by lot.

<u>Name</u>	<u>Term</u>
Vincent Cropper	6 years
Ken Ashby	4 years
Judy Stoneking	4 years
Reid Jeffery	2 years
Marjorie Mankin	6 years
Walter Manis	2 years
Jackie Cox	2 years
Carol Ann Nielson	6 years
Andrea Nielson	4 years

Carol Ann Nielson shall serve as Chairwoman of the Administrative Control Board and Reid Jeffery shall serve as Clerk until the Board of Commissioners otherwise directs.

Section 6. The Administrative Control Board is hereby established for the purpose of performing all activities, rights, power and authority of said Service District as provided by the Special Service District Act, Utah Code Annotated, Sections 11-23-1 to -29 inclusive (1953) as amended.

Those voting AYE:

Harold Stewart


Leigh R. Maxfield

Lem Lovell

Those voting NAY:

None


PASSED and approved this 17th day of August, 1977.


Chairman

ATTEST:


Clerk

(Here follows other business not pertinent to the above). Pursuant to motion duly made and seconded, the meeting adjourned.


Chairman

ATTEST:


Clerk

The Board of County Commissioners then considered each and every protest so filed, whether written or oral, and heard each and every person who wished to be heard in protest against the creation of said District and the construction of said improvements therein.

The following resolution was then moved and unanimously adopted:

A RESOLUTION REAFFIRMING THE CREATION OF WEST
MILLARD RECREATION DISTRICT.

Whereas, the Board of County Commissioners of Millard County, Utah created the West Millard Recreation District by resolution adopted on August 17, 1977, having found that the public health convenience necessity required the creation of said District for the purpose of providing within the area of said service District, recreational services, specifically swimming pool facilities and any facilities incidental thereto; and

Whereas, a special bond election was held within said Special Service District on October 11, 1977 wherein the Administrative Control Board of said District was authorized to issue \$250,000 in general obligation recreation bonds and to levy a tax for the purpose of repaying said bonds; and


Whereas, on November 16, 1977, the Board of County Commissioners called a special hearing to consider any additional comments either in favor of or opposed to the creation of said District for purposes of reaffirming public support of said District; and

Whereas, the Board, having considered all protests and comments, now desires to reaffirm the creation of said District:

Now therefore be resolved by the Board of County
Commissioners of Millard County, Utah as follows:

Section 1. The creation of the West Millard Recreation
District is hereby reaffirmed and the Administrative Control
Board of said Special District is hereby directed and authorized
to exercise all powers it may lawfully exercise pursuant to
the Special Service District Act, Utah Code Annotated,
Section 11-23-1 to -29 inclusive (1953), as amended.

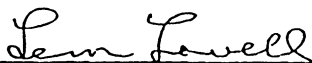
Adopted this 7th day of December, 1977.


Chairman

ATTEST:


Clerk

After the conduct of other business not pertinent to
the above, a motion was made, seconded and carried for the
meeting to be adjourned.


Chairman

ATTEST:


Clerk

teen inches shall be subject mandatory to this section. Others may be licensed by owner upon request. 1973

Chapter 22. Port Authorities

11-22-1. Definition of "port authority."

11-22-2. Authority of state or political subdivision to establish port authority.

11-22-1. Definition of "port authority."

As used in this act:

(1) "Port authority" means a commission established by the state of Utah, or any political subdivision thereof, or any combination thereof, with the authority to designate a port district and to plan, finance, develop, operate or regulate transportation, distribution or other facilities, including manufacturing or assembling all types of personal property, which promote and protect commerce. 1974

11-22-2. Authority of state or political subdivision to establish port authority.

The state of Utah, or any county, municipality, or combination thereof, may establish, operate and maintain a port authority pursuant to provisions of the constitution and laws of the state of Utah and of the United States of America. Any port authority established by a municipality may be located within, partially within or outside of the boundaries of that city. The police power of a municipality extends to the entire area of any port authority established by that municipality. Any unit of government establishing a port authority may expend its public funds to establish, operate or maintain the same. 1974

Chapter 23. Special Service Districts.

11-23-1. Citation.

11-23-2. Definitions.

11-23-3. Purpose.

11-23-4. Establishing service districts - Improvement districts within service districts.

11-23-5. Resolution - Governing authority - Motion or petition.

11-23-6. Resolution proposing district to include part of another subdivision or district - Action by governing body of other entity - Amendment on rejection - Jurisdiction on approval.

11-23-7. Notice of intention - Prior to establishing - Contents - Public hearing.

11-23-8. Notice of intention - Publication or posting.

11-23-9. Protests - Oral or written - Time limit - Majority.

11-23-10. Petition or protest - Signing - Corporation or property held by more than one.

11-23-11. Hearing - Conclusion - Resolution - Court action - Time limit.

11-23-11.1. General obligation bonds authorized by petition of property owners - Contest.

11-23-12. Service district as separate body politic - Supervision and control by governing authority - Delegation to administrative control board, officers or employees.

11-23-13. Service district - Rights, powers and authority.

11-23-13.1. Powers of improvement districts within special districts.

11-23-14. Budget and funds of service district - County or municipal laws govern.

11-23-15. Borrowing power - Issuance of bonds and notes - Use of proceeds.

11-23-16. Bonds payable from taxes - Limitations.

11-23-17. Guaranteed bonds.

11-23-18. Service district indebtedness - Not enforceable against state, county, municipality, school district, other public corporations.

11-23-19. Fees or charges for services or facilities.

11-23-20. Delinquent fees and charges.

11-23-21. Tax levy and bonds - Approval by majority of electors voting in election - Procedure for election.

11-23-21.5. Intent of legislature regarding bond elections - Majority vote - Validation of elections.

11-23-22. Issuance of bonds and tax levy approved - Proposition.

11-23-23. Exceptions to election requirements.

11-23-24. Administrative Control Board - Appointment or election of members - Qualifications - Terms - Powers - Compensation - Filing requirements - Delegated powers.

11-23-25. Adding additional services - Annexing additional area.

11-23-26. Discontinuance of service.

11-23-27. Dissolution of district - Withdrawal of area from district.

11-23-28. Other districts not affected - Permitted to become service districts - Procedure.

11-23-29. Act to control in a conflict.

11-23-30. Validation of creation and prior actions of districts.

11-23-1. Citation.

This chapter shall be known and may be cited as the "Utah Special Service District Act." 1983

11-23-2. Definitions.

As used in this chapter:

(1) "County" means a county of this state and includes any such county regardless of the form of government under which it is operating.

(2) "Improvement district" means an improvement district established under chapter 6, title 17.

(3) "Governing authority" means the board or body, however designated, in which the general legislative powers of a county, municipality, or improvement district are vested and includes the board of commissioners of a county or a city of the first or second class, the city council of a city of the third class, the town council of a town, and the board of trustees of an improvement district.

(4) "Municipality" means a city or town of this state.

(5) "Service district" means a special service district established in the manner provided by this chapter under Article XIV, Section 8 of the Constitution of Utah.

(6) "Guaranteed bonds" mean bonds the annual debt service on which is or will be guaranteed by one or more taxpayers owning property within the boundaries of the service district.

(7) "Facility" or "facilities" means any structure, building, system, land, water right, and other real and personal property required to provide any service authorized by section 11-23-4, including, without limitation, all related and appurtenant easements and rights-of-way, improvements, utilities, landscaping, sidewalks, roads, curbs and gutters, and equipment and furnishings. 1983

11-23-3. Purpose.

The purpose of this chapter is to:

(1) implement the provisions of Article XIV, Sec. 8, Utah Constitution by providing authority for the establishment and operation of service districts within a county or municipality; and

(2) allow service districts created under this chapter to create and administer improvement districts under Chapter 7, Title 17 and Chapter 16, Title 10. 1987

11-23-4. Establishing service districts -

Improvement districts within service districts.

(1) A county or a municipality may establish a service district for the purpose of providing within

the area of the service district any of the following services or any combination of them: water, sewerage, drainage, flood control, garbage, hospital, transportation, recreation, fire protection, or street lighting. Snow removal services may be provided in service districts established under this section to more effectively carry out the purposes of those service districts. These services may be provided through facilities or systems acquired or constructed for that purpose through construction, purchase, lease, contract, gift, or condemnation or any combination of the above.

(2) The area within any service district may include all or any part of the county or municipality which established it except that:

(a) a service district may not include the area of any other service district established by the same county or municipality which is then providing the same service proposed to be supplied by the new service district;

(b) a service district established by a county may contain all or a part of any municipality or of an existing improvement district that provides the same service proposed to be provided by the service district but only with the consent of the governing authority as provided in a resolution or ordinance adopted by the governing authority. All parts of a service district need not be contiguous; and

(c) a service district may not include any area not directly benefited by the services provided under this section without the consent of the nonbenefited landowner.

(3) As provided in Section 11-23-13.1, the governing authority of any service district created under this chapter may create within the boundaries of the special service district one or more improvement districts under Chapter 7, Title 17, or under Chapter 16, Title 10. There is no requirement that the intent to create any such improvement district or districts be present at the time a service district is organized, but any such improvement district or districts may only be organized to undertake projects or improvements which are within the scope of the purpose or purposes for which the service district creating such improvement district or districts was organized. All procedural requirements for creating an improvement district shall be met at the time that the improvement district is created, as provided in Section 11-23-13.1 and in Chapter 16, Title 10, or in Chapter 7, Title 17, as the case may be. For purposes of determining whether a project or improvement undertaken by an improvement district is within the scope of the purpose or purposes for which the service district creating that improvement district was organized, any project or improvement reasonably related to the purpose or purposes for which the service district creating that improvement district was organized shall be deemed as within the scope of such purpose or purposes. 1987

11-23-5. Resolution - Governing authority - Motion or petition.

(1) The governing authority of a county or of a municipality, upon its own motion, may by resolution declare that the public health, convenience, and necessity requires the establishment of a service district. The resolution shall describe the boundaries of and the services to be provided within the proposed service district and shall designate a name for the proposed service district.

(2) It shall be the duty of the governing authority of a county or municipality to adopt such a resolution, upon presentation to the governing authority

of a petition proposing the establishment of a service district and setting forth the boundaries of and the services to be provided within the proposed service district, if the petition is approved by the owners of 10% or more of the assessed value of the taxable property included in the proposed service district (as shown on the assessment rolls last completed before the signing of the petition) or by 10% or more of the qualified electors of the proposed service district (as shown on the registration lists last made or revised). Approval of the petition shall be evidenced by one or more writings, attached to a copy of the petition, signed by the property owners or electors and so designated, together with their residence address and, in the case of property owners, the address of or other description sufficient to identify the property in the proposed service district owned by them. Signatures need not be notarized or witnessed, and signers need not be sworn; but all persons signing shall be deemed to have represented that they are a property owner or qualified elector of the proposed service district, as the case may be. 1983

11-23-6. Resolution proposing district to include part of another subdivision or district - Action by governing body of other entity - Amendment on rejection - Jurisdiction on approval.

(1) If the service district proposed to be established by a county includes any part of another county or counties or of an improvement district which is providing the service proposed to be provided by the service district, or if proposed by a municipality, includes any part of another municipality or municipalities or of an improvement district which is providing the service proposed to be provided by the service district, the resolution provided for in section 11-23-5 shall further state the name or names of the other county or counties, municipality or municipalities, or improvement district, and the areas within them proposed to be included within the service district. A certified copy of the resolution shall then be presented to the governing authority of the county or counties, municipality or municipalities, or improvement district, as the case may be. It shall be the duty of such other governing authority or authorities to consider the resolution and to either approve or reject the same; but if no action has been taken within 30 days after the delivery of this certified copy to the other governing authority or authorities, the resolution shall be deemed rejected.

(2) If the resolution is rejected or is deemed rejected, the county or municipality which adopted the resolution shall then amend the resolution to delete the areas within the other county or counties, municipality or municipalities, or improvement district as shall have rejected the resolution or, in the case of an improvement district, to delete the service or services which are provided by the improvement district. If the resolution is approved by the other governing authority or authorities, or if the deletions have been made as provided in this subsection (2), the governing authority of the county or municipality adopting the original resolution shall thereafter have complete jurisdiction of the entire service district and its creation and operation and shall proceed as provided in this chapter in all respects as though only a single county or municipality, as the case may be, were involved. 1983

11-23-7. Notice of intention - Prior to establishing - Contents - Public hearing.

Before a service district may be established, the county clerk, city recorder, or town clerk, as the case may be, shall give notice of the intention of the county or municipality to establish the service district. The notice of intention shall describe the boundaries of the service district, shall generally describe the type or types of services proposed to be provided within the service district, shall state that taxes may be annually levied upon all taxable property within the service district and that fees and charges may be imposed to pay for all or a part of the services to be provided by the service district, and shall designate a time and place for a public hearing on the establishment of the service district. The notice of intention may contain such other information concerning the proposed service district as the governing authority deems necessary or appropriate. 1977

11-23-8. Notice of intention - Publication or posting.

The notice of intention to establish a service district shall be published at least once a week during three consecutive weeks, the first publication to be not less than 21 days nor more than 35 days before the hearing, in a newspaper having general circulation in the county or municipality proposing the establishment of the service district; except for service districts located entirely within cities of the third class or towns where there is no newspaper published in the city or town, the governing authority of that city or town may provide that the notice of intention may be given by posting in lieu of publication of the notice. In this event the notice of intention shall be posted by the city recorder, town clerk, or other officer designated by the governing authority in at least five public places in the city or town at least 21 days before the hearing. If the service district proposed to be established by a county includes any part of another county or counties or improvement district or if proposed by a municipality includes any part of another municipality or improvement district, the notice of intention shall also be published or posted in each such other county or counties, municipality or municipalities, or improvement district, as the case may be. 1977

11-23-9. Protests - Oral or written - Time limit - Majority.

Protests against the establishment of the service district or the furnishing of specified types of services within the service district may be made orally at the hearing or in writing, at or at any time prior to the hearing, by any interested person. Any protest may be withdrawn by the protestant at any time before the governing authority establishes or abandons the service district. At the place and on the date and time specified for the hearing in the notice of intention, the governing authority of the county or municipality shall give full consideration to all protests which may have been filed and shall hear and consider all interested persons desiring to be heard. The hearing may be continued from time to time. If persons constituting and consisting of over 50% of the qualified voters of the territory proposed to be included within the service district or the owners of over 50% of the assessed value of the taxable property included within the proposed service district file written protests within 15 days after the conclusion of the hearing, against the establishment of the special service district or against the specified type or types of extended service within the service district, the governing authority shall in

the former instance abandon the proposed establishment of the special service district, and in the latter instance eliminate those types of services objected to from the resolution finally establishing the service district. 1983

11-23-10. Petition or protest - Signing -

Corporation or property held by more than one.

The petition provided for in section 11-23-5 made by the owners of the taxable property in the proposed service district, and any protest permitted by section 11-23-9 made by the owners of the taxable property in the proposed service district, signed on behalf of a corporation owning property in the proposed service district shall be sufficient if it is signed by the president, vice-president, or any duly authorized agent of the corporation. Where title to any property is held in the name of more than one person, all of the persons holding title to it must join in the signing of the petition or protest. 1983

11-23-11. Hearing - Conclusion - Resolution

- Court action - Time limit.

(1) After conclusion of the hearing and after the time for filing protests, as provided in section 11-23-9 has expired, the governing authority shall adopt a resolution either establishing the service district or determining that the proposal to establish it should be abandoned. A resolution establishing a service district may contain any changes from the initial resolution or notice of intention the governing authority determines to be appropriate, including reduction of the boundaries of the service district and elimination of one or more of the types of services proposed; but the boundaries of the service district may not be increased nor additional types of services added without the giving of a new notice of intention and the holding of a new hearing. The abandonment of a service district shall be without prejudice to the inclusion of all or a part of the area of the abandoned district in a new service district established in the manner provided in this chapter.

(2) Any person who files a written protest within the period specified in section 11-23-9 and who is a qualified voter residing within the district or whose property has been included within the boundaries of the service district by the governing authority notwithstanding such protest, may within 30 days after the adoption of the resolution establishing the service district, apply to the district court of the judicial district in which the county or municipality is located for a writ of review of the actions of the governing authority in establishing the service district, but only upon the ground that the protestor's property will not be benefited by one or more of the types of services authorized to be furnished by the service district or upon the ground that the proceedings taken in establishing the special service district have not been in compliance with law. A failure to timely apply for a writ of review forecloses the right of all owners of property or qualified voters within the service district to further object. 1983

11-23-11.1. General obligation bonds authorized by petition of property owners - Contest.

(1) With respect to any service district established under this chapter, if there is no individual residing in the service district, such that compliance with the election requirements of Article XIV, Section 8, Utah Constitution and Section 11-14-2 is otherwise impossible, then, 75% of the owners of real property located in the district, as shown on the most recent assessment roll of the county or municipality, as the case may be, may by written petition

require the governing body of the county or municipality which established the service district to issue general obligation bonds pledging the full faith and credit of the district in an amount which may lawfully be issued by the district but not to exceed the amount set forth in the petition. Except for the election provisions of the Utah Municipal Bond Act, the bonds required to be issued shall be issued in accordance with the Utah Municipal Bond Act. Any such petition to require issuance of bonds shall be equivalent to and have the same force and effect as an election approving the issuance of the bonds by a majority of the qualified electors of the district.

(2) Upon receiving the petition described in Subsection (1), the governing body of the county or municipality which established the district shall proceed to issue the bonds in accordance with the Utah Municipal Bond Act.

(3) The determination by the governing body that 75% of the owners of real property located in the district have duly filed a written petition requiring the issuance of bonds as provided in Subsection (1), shall be conclusive in any action or proceeding involving the validity of the petition or the district's authority to issue the bonds instituted after the expiration of the period provided in Subsection (4), for the filing of actions contesting the validity of the bonds and after the date of delivery of and payment for any part of the bonds.

(4) When the validity of any bond issue under this section is contested, the plaintiff or plaintiffs shall, within 40 days after the validity of the petition has been declared by the governing body, file with the clerk of the district court of the county in which the district is located, a verified written complaint setting forth specifically: (a) the name of the party contesting the issuance of the bonds, and that he is an owner of property within the district; and (b) the grounds of such contest. No such contest may be maintained and the issuance of the bonds may not be set aside or held invalid unless such a complaint is filed within the period prescribed in this section.

11-23-12. Service district as separate body politic
- Supervision and control by governing authority
- Delegation to administrative control board, officers, or employees.

(1) After the adoption of the resolution establishing a service district, the service district so established shall be a separate body politic and corporate and a quasi-municipal public corporation distinct from each county or municipality in which the service district is located.

(2) The governing authority of the county or municipality in which the service district is located shall control and have supervisory authority over all activities of the service district but may delegate:

(a) to an administrative control board established under Section 11-23-24 or to designated officers or employees, (who may, but need not be, officers or employees of the county or municipality which established the service district) the performance of any such activities and the exercise of any rights, powers, and authority of the service district; and

(b) to designated officers or employees all rights, powers, and authority that may be delegated to an administrative control board established under Section 11-23-24.

11-23-13. Service district - Rights, powers and authority.

(1) In addition to all other rights, powers, and

authority granted by law or by other provisions of this chapter, a service district has the following rights, powers and authority:

(a) The right to sue and be sued.

(b) The power to exercise all powers of eminent domain possessed by the county or municipality which established the service district.

(c) The power to enter into contracts considered desirable by the governing authority of the service district to carry out the functions of the service district, including, without limitation, the power to enter into contracts with the government of the United States or any of its agencies, the State of Utah, counties, municipalities, school districts, and other public corporations, districts, or political subdivisions including institutions of higher education. These contracts may include, without limitation, provisions concerning the use, operation, and maintenance of any facilities of the service district and the collection of fees or charges with respect to commodities, services, or facilities provided by the service district.

(d) The power to acquire or construct facilities, to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, finance, and otherwise deal in and with real and personal property, or any interest in them, wherever situated, either within or outside of the service district, including water and water rights, and including the power to acquire other than by condemnation property or interests in property owned or held by institutions of higher education.

(e) The power to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of or contract with respect to the use, operation, and maintenance of, all or any part of its property and assets, including water and water rights.

(f) The power to accept governmental grants, loans, or funds and to comply with the conditions of them.

(g) The right to utilize any officers, employees, property, equipment, offices, or facilities of the county or municipality which established the service district, and for which the governing authority of the service district shall reimburse the county or municipality from service district funds a reasonable amount for the services so rendered or for the property, equipment, offices, or facilities so used.

(h) The right to employ officers, employees, and agents for the service district, including engineers, accountants, attorneys, and financial consultants, and to fix their compensation.

(i) The right to adopt an official seal for the service district.

(2) The governing authority of a county shall by ordinance establish those classes of contracts of a service district which shall be subject to the requirements of section 17-15-3, or of any law hereafter enacted for the same purpose.

(3) The governing authority of a municipality shall by ordinance establish those classes of contracts of a service district which shall be subject to the requirements of section 10-7-20, or of any law hereafter enacted for the same purpose.

11-23-13.1. Powers of improvement districts within special districts.

(1) In addition to all other rights, powers, and authority granted by law or by other provisions of this chapter, a service district established by a county under this chapter may organize an improvement district under Chapter 7, Title 17. This improvement district has all the rights, powers, and

authority of an improvement district otherwise organized under Chapter 7, Title 17, except:

(a) notwithstanding Subsection 17-7-27(2), any bonds issued under Chapter 7, Title 17, need comply only with the requirements of Section 11-14-15 with regard to the use of manual and facsimile signatures;

(b) the governing authority of the service district may act in the same capacity as the governing body of a county with respect to all actions required to be taken in the creation or administration of an improvement district under Chapter 7, Title 17; and

(c) notwithstanding Subsection 17-7-4(1), an improvement district created by a service district may be organized to include any incorporated or unincorporated area of the county and may cause improvements to be made within any incorporated or unincorporated area of the county, and the consent of the governing body of the municipality in which an incorporated area lies is not required prior to the establishment of an improvement district that includes all or part of that incorporated area.

(2) In addition to all other rights, powers, and authority granted by law or by other provisions of this chapter, a service district established by a municipality under this chapter may organize an improvement district under Chapter 16, Title 10. This improvement district has all the rights, powers, and authority of an improvement district otherwise organized under Chapter 16, Title 10, except that:

(a) notwithstanding Section 10-16-27, any bonds issued under Chapter 16, Title 10, need comply only with the requirements of Section 11-14-15, with regard to the use of manual and facsimile signatures;

(b) the governing authority of the service district may act in the same capacity as the governing body of a municipality with respect to all actions required to be taken in the creation or administration of an improvement district under Chapter 16, Title 10; and

(c) notwithstanding Subsection 10-16-13(1), assessments for improvements in an improvement district organized under Chapter 16, Title 10, may include assessments for all interest on any bonds issued. 1987

11-23-14. Budget and funds of service district - County or municipal laws govern.

With respect to the budgeting, accounting for, and disbursing of funds of the service district, including taxes levied for the service district, fees and charges imposed by the service district, and other revenues of the service district, the service district shall be governed by the general laws relating to such matters applicable to the county or municipality which established the service district; but at all times these funds and any expenditures from these funds shall be separately accounted for and utilized only for service district purposes. Accordingly:

(1) A budget for the service district shall be adopted and administered in the same manner as the budget for general purposes of the county or municipality which established the service district, either as a part of the general budget or separate from it.

(2) Funds of the service district shall be collected, held, and administered in the same manner as other funds of the county or municipality, or as required by any resolution, ordinance, mortgage, indenture, or other proceeding or instrument under which bonds or notes of the service district are issued or secured but shall be segregated and separately maintained as service district funds, except where in the

judgment of the governing authority advantages inure to the service district from co-investment of service district funds and other funds also subject to control by the governing authority, then the governing authority may effect this co-investment, but in no event shall the funds of any service district or the income from their investment be used for other purposes than those of that service district.

(3) Expenditures shall be made in the same manner as other expenditures of the county or municipality are made or as required by any resolution, ordinance, mortgage, indenture, or other proceeding or instrument under which bonds or notes of the service district are issued or secured. 1987

11-23-15. Borrowing power - Issuance of bonds and notes - Use of proceeds.

(1) A service district may borrow money and incur indebtedness, issuing its bonds or notes therefor, including, without limitation:

(a) bonds payable in whole or in part from taxes levied on the taxable property in the service district;

(b) bonds payable from revenues derived from the operation of revenue-producing facilities of the service district;

(c) bonds payable from both such revenues and taxes;

(d) guaranteed bonds, payable in whole or in part from taxes levied on the taxable property in the service district;

(e) tax anticipation notes;

(f) bond anticipation notes; and

(g) refunding bonds.

(2) Tax anticipation notes are notes issued in anticipation of the collection of taxes and other revenues of a service district which are due and payable in not more than one year from their date of issue and, together with all other such notes then outstanding, do not exceed the estimated amount of taxes and other revenues to be collected from the date of issue until maturity.

(3) Bond anticipation notes are notes issued in anticipation of the receipt of the proceeds of bonds of the service district.

(4) All these bonds and notes shall be issued and sold in the manner, at either public or private sale, shall be in the form, and signed by the person or persons (who may, but need not, be officers of the county or municipality which established the service district) and generally shall be issued in the manner and with the details as is provided for in proceedings of the governing authority of the service district authorizing the issuance of the bonds or notes; but all these bonds and notes and the interest on them shall be exempt from all taxation in this state, except for the corporate franchise tax, and all these bonds and notes may contain those terms and provisions as are permitted by and shall be issued in compliance with the Utah Municipal Bond Act Chapter 14, Title 11.

(5) The proceeds of bonds or notes issued under the authority of this chapter shall be used to pay the costs of acquisition or construction of service district facilities or the providing of services including, without limitation:

(a) all costs of planning, designing, acquiring, and constructing a facility, including architectural, planning, engineering, legal, and fiscal advisor's costs;

(b) all costs incident to the authorization and issuance of the bonds or notes, including accountants' fees, attorneys' fees, financial advisors' fees,

underwriting fees, (including underwriting fees or bond discount), and other professional services and printing costs;

(c) interest estimated to accrue on bonds or notes for a reasonable time before, during, and for a reasonable time after the completion of the acquisition or construction of the facilities or services; and

(d) all amounts deemed necessary to establish one or more bond reserves and maintenance, repair, replacement, contingency funds and accounts, and all amounts necessary to provide working capital for the facility. 1984

11-23-16. Bonds payable from taxes - Limitations.

Bonds of a service district which by their terms are payable in whole or in part from taxes may not be issued in an amount which, when added to the then outstanding bonds of the service district similarly payable from taxes, shall exceed 12% of 100% of the fair market value, as established under Section 59-2-103, of the taxable property in the service district. For purposes of this section, the fair market value, as established under Section 59-2-103, of all tax equivalent property, as defined in Section 59-3-102, shall be included as a part of the fair market value, as established under Section 59-2-103, of taxable property in the service district. The fair market value, as established under Section 59-2-103, shall be computed from the assessed values shown on the assessment rolls of each county in which the service district is located as last equalized prior to the issuance of the bonds and by converting these assessed values to fair market value, as established under Section 59-2-103, using for that purpose the appropriate multiple based on the statutory assessment ratio provided by law. Tax anticipation notes, bond anticipation notes, and bonds of the service district payable solely from revenues derived from the operation of revenue-producing facilities of the district may not be included as outstanding bonds for purposes of limitation. 1987

11-23-17. Guaranteed bonds.

(1) Guaranteed bonds may be issued in addition to and in excess of the 12% limitation provided for in Section 11-23-16, but only upon the conditions provided for in Subsections (2) and (3).

(2) There shall have been filed with and approved by the Department of Community and Economic Development the following:

(a) a report to the service district proposing to issue the guaranteed bonds from qualified registered architects or engineers or other persons qualified by experience as may be appropriate to the project involved, setting forth:

(i) the estimated or, if available, the actual cost of acquisition, construction, and equipment of the project financed or to be financed including a description of the project;

(ii) the principal amount of guaranteed bonds to be issued, the date and amount of each stated maturity of them and, set forth separately, the same information with respect to any guaranteed bonds of the service district as may be outstanding, including as to such outstanding guaranteed bonds the rates of interest they bear;

(iii) the amount and the estimated amount of the annual debt service for each year during the life of all guaranteed bonds issued and then intended to be issued to finance all or any part of the project;

and

(iv) the date or estimated date of the completion of the project;

(b) a copy, certified by the recording officer of the governing authority of the service district of the proposed guarantee by one or more taxpayers owning property within the boundaries of the service district of debt service on the guaranteed bonds, together with an opinion of counsel to the effect that the guarantee, when executed, will be the legal and binding obligation of the taxpayer or taxpayers in accordance with its tenor and terms; and

(c) evidence satisfactory to the Department of Community and Economic Development from the taxpayer or taxpayers guaranteeing the bonds as to the financial ability of the taxpayer or taxpayers to perform under the guarantee.

(3) If the Department of Community and Economic Development shall approve the issuance of the guaranteed bonds, it shall indicate its approval upon a duplicate original of the proceedings and return the same to the service district. Upon the filing of this approval in the office of the county recorder in which the governing authority is located, the principal amount of guaranteed bonds may be issued, but only upon compliance with the election requirements of Section 11-23-21.

(4) If the principal amount of any guaranteed bonds which having once been issued, remain outstanding but by their terms no longer enjoy the benefit of the guarantee, shall be included in the determination of bonded indebtedness for the purpose of the 12% limitation contained in Section 11-23-16. The service district shall on July 1st of each year file with the department of community affairs a report certifying:

(a) The total amount of bonds and other debt then outstanding and subject to the 12% limitation of Section 11-23-16;

(b) The total amount of guaranteed bonds then outstanding and not subject to such 12% limitation; and

(c) The total amount of bonds which, during the preceding 12 months, were deemed by their terms to no longer enjoy the benefit of the guarantee. 1987

11-23-18. Service district indebtedness - Not enforceable against state, county, municipality, school district, other public corporations.

Bonds, notes, or other obligations or indebtedness of a service district, whether or not payable from taxes, shall in no event be considered an obligation or indebtedness of and shall not be enforceable against the State of Utah or any county, municipality, school district, or other public corporation, district, or political subdivision in which the service district or any part of it is located and shall not be taken into account in computing any limitation on indebtedness of the state of Utah or of any such county, municipality, school district, or other public corporation, district, or political subdivision. 1975

11-23-19. Fees or charges for services or facilities.

(1) The governing authority of a service district may by resolution or ordinance impose and collect fees or charges for any commodities, services, or facilities provided by the service district and may pledge all or any part of the revenues so derived to the payment of any bonds issued by the service district, whether the bonds are issued as revenue bonds, guaranteed bonds, or as general obligations

of the district. Where revenue bonds are issued payable solely from the fees and charges so imposed, the fees and charges shall always be sufficient to carry out the provisions of the resolution or ordinance authorizing the issuance of the revenue bonds, including provisions for payment of the principal of and interest on the bonds, the operation and maintenance of the facilities, and the establishment and maintenance of appropriate reserve fund or funds while these bonds are outstanding.

(2) The governing authority shall take such action and adopt such regulations as are necessary to assure the proper collection and enforcement of all fees and charges imposed, including assessment and collection of penalties and interest if the fees and charges are not paid when due. Where more than one commodity, service, or facility is furnished by the district, the fees and charges for all commodities, services and facilities may be billed to the user in a single bill. All or any of the commodities, services, and facilities furnished to a user by the service district may be suspended if any fees or charges due the service district are not paid in full when due. 1975

11-23-20. Delinquent fees and charges.

The governing authority of a service district may, by ordinance or resolution, provide that fees and charges for water, sewer, or garbage services supplied by the service district shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises. 1975

11-23-21. Tax levy and bonds - Approval by majority of electors voting in election - Procedure for election.

(1) The governing authority of a county or municipality which has established a service district may levy a tax on all taxable property within the service district in addition to all other taxes on such property levied or imposed by the county or municipality or by any other public corporation, district, or political subdivision in which the service district is located, and may also issue bonds payable in whole or in part from these taxes. No tax may be levied and no bonds or guaranteed bonds shall be issued, however, unless authorized, except as otherwise provided in Section 11-23-23, by a majority of the qualified electors of the service district voting at an election for that purpose held as provided in this section.

(2) The proposition to levy the tax or to issue the bonds shall be submitted to the qualified electors of the service district at an election called and held and for which notice is given in the same manner as is provided in the Utah Municipal Bond Act for the holding of bond elections. The proposition shall state the purpose or purposes for which the taxes are to be levied or the bonds are to be issued. In addition, a proposition for the issuance of bonds shall state the maximum amount of bonds to be issued, the maximum number of years from their respective dates for which the bonds may run, and, if the bonds are to be payable in whole or in part from taxes, that fact and that taxes may be levied on all taxable property in the service district to pay the principal of and interest on the bonds. The purpose or purposes may be stated in general terms

and need not specify the particular projects or services for which the taxes are to be levied or the bonds are to be issued nor the specific amount of the proceeds of the taxes or of the bonds to be expended for each project or service. If bonds are to be payable in part from tax proceeds and in part from the operating revenues of the service district or from any combination of them, the proposition shall so indicate but need not specify how the bonds are to be divided as to source of payment. If the bonds are to be issued as guaranteed bonds, the proposition shall also clearly state that fact together with the name or names of the guarantors. A proposition for the levy of taxes and for the issuance of bonds may be combined as a single proposition. 1984

11-23-21.5. Intent of legislature regarding bond elections - Majority vote - Validation of elections.

It is the intent of the legislature that bonds be approved only by a majority of the electors voting in the election as provided in other sections of the chapter rather than a majority of all electors. It is also the intent of the legislature that any bond elections held by a special district since May 10, 1983, be validated and ratified if the bonds were authorized by a majority of the electors voting in the election. 1984

11-23-22. Issuance of bonds and tax levy approved - Proposition.

(1) When approved by a majority of the qualified electors of the service district voting at an election for that purpose:

(a) A proposition for the issuance of bonds shall be full authorization for the issuance of bonds for the purposes, up to the maximum amount and for the period provided for in the proposition, and also, if the bonds are to be payable in whole or in part from taxes, shall be full authorization for the levy of these taxes, without limit as to rate or amount, as may be necessary to pay the principal of and interest on such bonds;

(b) A proposition for the levy of taxes shall be full authorization for the levy of taxes for the purpose or purposes as are stated in the proposition, the levy to be at such rate or rates, in such amount or amounts and for such period of time as the governing authority of the county or municipality shall determine to be appropriate, subject, however, to any limitations on these rates, amounts and period as may be expressly stated in the proposition; and

(c) A combined proposition for the levy of taxes and for the issuance of bonds shall grant the same authority as if submitted in separate propositions. 1975

11-23-23. Exceptions to election requirements.

The election provided for in section 11-23-21 shall not be required for the issuance by the service district of:

(1) Bonds payable solely from revenues derived from the operation of revenue-producing facilities of the district or which are otherwise not payable from taxes levied on the taxable property in the service district;

(2) Tax anticipation notes;

(3) Bond anticipation notes; or

(4) Refunding bonds. 1983

11-23-24. Administrative Control Board - Appointment or election of members - Qualifications - Terms - Powers - Compensation - Filing requirements -

Delegated powers.

(1)(a) The governing authority of a county or municipality which has established a service district may, by resolution adopted at the time of the establishment or at any time afterwards, create an administrative control board for the service district.

(b) The administrative control board shall consist of at least three and no more than seven persons, each of whom is a qualified elector of the service district. If a county establishes a service district including all or part of one or more municipalities or one or more improvement districts organized under Chapter 6, Title 17, to provide the same service as the service district, then the municipality or improvement district is entitled to appoint one member to represent it on any administrative control board created. Such member may, but need not be, a qualified elector of the service district.

(c) If a service district is providing commodities, services, or facilities to an institution of higher education, that institution is entitled to appoint one member (or additional members necessary to assure that it has at least one-third of the total of the board members) to represent it on the board (who may, but need not be, a qualified elector of the service district).

(d) The number of members of the administrative control board shall be increased by the number of improvement district, municipal, or institution of higher education members so appointed.

(2) Members of the administrative control board (other than improvement district, municipal, or institution of higher education members) shall be either appointed by the governing authority of the county or municipality which established the service district or elected by the qualified electors of the service district as provided by resolution of the governing authority. An appointive board may be made elective, and an elective board may be made appointive, all as determined by resolution of the governing authority. However, the term of any member who was elected may not be reduced by reason of this change.

(3) In the case of a service district established to provide either water or sewerage service or both, the governing authority may by resolution adopted at or after the time of establishment, or in the case of a service district established before March 29, 1983, or within 90 days after that date, create an administrative control board in accordance with the provisions of Subsection (1). A resolution for a service district for water or sewerage purposes adopted after March 29, 1983, under Section 11-23-5 shall identify all existing water and sewerage districts within the area of the proposed service district and state the terms upon which the administrative control board will be initially appointed or, if to be elected, thereafter elected.

(4) If an administrative control board is elective, its members (other than improvement district, municipal, or institution of higher education members) shall be determined as follows:

(a) The election shall be held as a part of the general election at which officers are elected for the county or municipality which established the service district.

(b) Candidates shall qualify by filing with the appropriate clerk or recorder, in accordance with the time requirements of Section 20-4-9, a declaration of candidacy which includes a sworn statement that the candidate is a qualified elector of the service district.

(c) There shall be no primary election.

(d) Each voter shall be entitled to vote for as many candidates as there are offices to be filled, and those candidates receiving the highest number of votes for the offices to be filled shall be declared elected.

(e) Only qualified electors of the service district, duly registered for the election as shown in the registration books last made or revised, shall be entitled to vote.

(f) The ballots shall be in the form prescribed by the governing body of the county or municipality and may be a separate ballot from the ballot otherwise used at the general election.

(g) The election shall otherwise be held in accordance with the general laws governing the election of officers of the county or municipality which established the service district.

(5) Except as otherwise provided in this subsection, the terms of office of members of the administrative control board shall be four years each, commencing on the same day that the terms of office commence for officers of the county or municipality which established the service district. However, members initially appointed to an administrative control board which has only appointive members may be appointed for an additional term commencing on the date of appointment and continuing until the regular commencement of the above-specified term. Of the members initially elected or appointed, as nearly as may be, one-half of the members shall serve for terms of office of two years each and the remaining one-half for terms of office of four years each from the regular commencement of their term of office, the determination of whom shall be in each category to be by lot. Whether or not the board is elective or appointive, vacancies other than by expiration of term, shall be filled for the unexpired term by appointment of the entity which has under this chapter the authority to make the initial appointment.

(6) The governing authority of the county or municipality which established the service district may delegate to the administrative control board such powers of the governing authority with respect to the service district as may be specified by resolution of the governing authority, including, without limitation, the power to act as the governing authority of the service district and to exercise all or any of the powers provided for in Sections 11-23-13, 11-23-15, 11-23-18, 11-23-19, and 11-23-20. Notwithstanding anything to the contrary in this chapter, the governing authority of the county or municipality may not delegate the power to levy a tax on the taxable property of the service district, to issue bonds payable from taxes, to call or hold an election for the authorization of the tax or bonds, to levy assessments for improvements in an improvement district created under Chapter 16, Title 10, or Chapter 7, Title 17, to issue interim warrants or bonds payable from such assessments, or to appoint a board of equalization under Section 10-16-17 or Section 17-7-17. No election may be held, tax or assessment levied, or bonds or interim warrants issued unless the governing authority of the county or municipality has approved the calling and holding of the election, the levy of the tax or assessment, or the issuance of the bonds or interim warrants. Any delegation to an administrative control board or other officers or employees may be revoked in whole or in part by resolution of the governing authority.

(7) Administrative control board members shall be paid at a per diem rate to be set by resolution of the governing authority. The administrative control board shall be assigned or authorized to employ staff commensurate with the duties and functions assigned to it by the governing authority. 1987

11-23-25. Adding additional services - Annexing additional area.

After the establishment of a service district, additional services from that specified in the resolution establishing the district may be added and additional area from that specified in the resolution may be annexed to the district by using the procedure provided for in this chapter for the establishment of the district with appropriate changes in the wording of the required instruments. No additional area, however, shall be annexed and the governing authority shall abandon the annexation proceedings if the owners of more than 50% of the assessed value of the taxable property within the area to be annexed or if more than 50% of the assessed value of the taxable property within the established district (as determined from the owners, properties, and assessed values shown on the assessment rolls last completed prior to the adoption of the resolution proposing the annexation) or more than 50% of the qualified electors of the area to be annexed or more than 50% of the qualified electors of the established district (as determined from the registration lists last made or revised) file written protests to the annexation at or prior to the hearing regarding it. 1983

11-23-26. Discontinuance of service.

The governing authority of a service district may, by resolution and without dissolving the district, discontinue a specified type of service supplied by the district unless at the time of the discontinuance the district has outstanding bonds payable in whole or in part from the fees and charges imposed for the services to be discontinued or is under contractual obligation to provide these services. If these bonds are outstanding, these services may be discontinued only if the bonds are paid, adequate provision is made for their payment, or, if the proceedings authorizing the issuance of the bonds so provided, the holders of the bonds agree to the discontinuance in accordance with procedures prescribed in the proceedings. If this contractual obligation exists, the services may be discontinued with the consent of all parties to the contract. 1983

11-23-27. Dissolution of district - Withdrawal of area from district.

(1) A service district may not be dissolved nor areas withdrawn from the district if any bonds, notes, or other obligations of the district are outstanding and unpaid or if any contractual obligation to provide the services exists.

(2) Subject to the limitation in subsection (1), the governing authority of the service district may by resolution:

(a) Dissolve the district upon a determination that the district is no longer needed for the purposes for which it was formed; or

(b) Withdraw specifically described areas from the service district upon a determination that these areas should not or cannot be supplied with the services of the service district. 1983

11-23-28. Other districts not affected - Permitted to become service districts - Procedure.

(1) The adoption of this act shall not affect the existence or operation of any improvement district

operating under authority of chapter 6 of Title 17, metropolitan water district, water conservancy district, county service area, drainage district, fire protection district, or other district in existence at the time this act takes effect; and, except as otherwise provided in sections 19-1-1.5 and 17-9-1, such districts may continue to be established pursuant to existing laws authorizing the same. Any such district existing at the time this act takes effect or established afterwards which provides services of the type permitted by this act for service districts may elect to become a service district and be governed by the provisions of this act upon:

(a) Adoption of a resolution or ordinance by the governing authority of the district so electing; and

(b) Establishment of a new service district to supply the same services as the former district to the same area as the former district after compliance with the procedures for the establishment of service districts provided for in this act.

(2) Any outstanding bonds, notes or other obligations of any former district described in subsection (1) shall become the bonds, notes, and obligations of the new service district with like effect as if issued by the service district; and any election authorizing the issuance of bonds of the former district shall have like effect as a bond election held under this act. Taxes in the amount and at the rate levied by the former district in the tax year preceding the change to the service district may continue to be levied by the service district without authorization at an election in the service district. No increase in the rate of these taxes shall be made unless an election authorizing the increase is held as provided for in this act; except that if any outstanding bonds are payable from taxes, the service district may levy such taxes as are necessary to pay the principal of and interest on these bonds without limit as to rate or amount and without an election. 1975

11-23-29. Act to control in a conflict.

To the extent that any one or more provisions of this act shall be in conflict with any other law or laws, the provisions of this act shall be controlling. 1975

11-23-30. Validation of creation and prior actions of districts.

All service districts created before the effective date of this act, and all bonds and notes issued by such districts and all proceedings had in the authorization and issuance of such bonds and notes before the effective date of this act and the security for them are hereby validated, ratified, and confirmed; and all these service districts are declared to be validly existing and all these bonds, notes, agreements, and security constitute legally binding obligations of the service districts in accordance with their terms. 1983

Chapter 24. Parking and Business Improvement District Act

11-24-1. Short title.

11-24-2. Purpose of act.

11-24-3. Definitions.

11-24-4. Establishment of improvement district - Tax levy - Parking and business improvement fund.

11-24-5. Resolution declaring need for district - Petition proposing establishment of district.

11-24-6. Notice of intention to establish district - Contents.

11-24-7. Notice of intention - Publication or posting.

11-24-8. Protests - Hearing - Abandoning proposed