

1960

State Road Commission of Utah v. Utah Power & Light Co. et al : Supplemental Authorities

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UNIVERSITY UTAH

STATE ROAD COMMISSION OF UTAH,

: MAR 3 1960

Plaintiff & Appellant,

: LAW LIBRARY

-vs-

:

UTAH POWER & LIGHT COMPANY,
a corporation; MOUNTAIN FUEL
SUPPLY COMPANY, a corporation,
and MOUNTAIN STATES TELEPHONE
& TELEGRAPH COMPANY, a corpora-
tion,

: Case No. 9136
2143

Defendants & Respondents..

FEB 8 - 1960
Clerk, Supreme Court, Utah

SUPPLEMENTAL AUTHORITIES

Pursuant to Rule 75 of the Utah Rules of Civil Procedure, the State Road Commission of Utah hereby submits additional and supplemental authority to its original brief filed herein. Appellant states that the reason for so doing is that new counsel has been assigned to represent the State Road Commission in this matter, specifically, Robert S. Campbell, Jr. and Franklyn B. Matheson, Assistants to the Attorney General of the State of Utah, and that such assignment was made and accomplished

subsequent to the submission by the appellant of its original brief.

Authorities

1. The franchise given the utilities to place their facilities on the public highways is revocable in nature and does not create a vested property right in the nature of an easement. Article I, Section 23, Utah State Constitution, provides:

No law shall be passed granting irrevocably any franchise, privilege or immunity.

2. Nor is such franchise within the purview of the power of eminent domain of the State of Utah. Article XII, Section 11, Utah State Constitution, provides:

The exercise of the right of eminent domain shall never be so abridged or construed, as to prevent the Legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

3. The State of Utah and its political subdivisions may regulate and require utilities to remove their facilities from public highways

without compensation being paid therefore.
Section 10-8-21, Utah Code Annotated 1953,
provides that a city:

* * * may prohibit or regulate the
erection of telegraph, telephone or
electric wire poles in the public
grounds, streets or alleys, * * *.

In addition thereto, Section 10-7-27, Utah Code
Annotated 1953, provides in part:

Every street railway company shall
at its own expense restore the pavement,
including the foundation thereof, of
every street disturbed by it in the
construction, reconstruction, removal
or repair of its tracks, * * * to the
satisfaction of the governing body
having charge of such street. * * *
(Emphasis added.)

4. The Public Service Commission of
the State of Utah has the power and authority
by statute to require utilities to relocate
their facilities and to order that the cost of
doing so shall be paid by the utility. See
Section 54-4-8, Utah Code Annotated 1953.

5. The Attorney General of the State
of Utah has questioned the constitutionality
of Chapter 53, Laws of Utah 1957, as violative

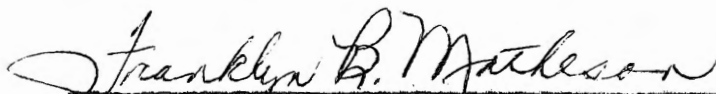
of Article VI, Section 27, and Article VI,
Section 31, of the Utah State Constitution.
See opinion of Attorney General E. R. Callister,
issued June 24, 1957, and reported in the 1958
Biennial Report of the Attorney General at
page 243 thereof.

Dated this 8th day of February, 1960.

Respectfully submitted,

WALTER L. BUDGE
Attorney General


ROBERT S. CAMPBELL, JR.
Assistant Attorney General


FRANKLYN B. MATHESON
Assistant Attorney General

Attorneys for Appellant