

1960

In the Matter of the Disconnection of Part of the Territory of West Jordan, Inc. : Brief of Respondent Town of West Jordan

Utah Supreme Court

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IN THE SUPREME COURT

of the
STATE OF UTAH **FILED**
JUL 26 1960

Clerk, Supreme Court, Utah

IN THE MATTER OF THE DIS-
CONNECTION OF PART OF THE
TERRITORY OF WEST JORDAN, } Case No. 9254
INC. }

BRIEF OF RESPONDENT
TOWN OF WEST JORDAN

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IN THE SUPREME COURT of the STATE OF UTAH

IN THE MATTER OF THE DIS-
CONNECTION OF PART OF THE
TERRITORY OF WEST JORDAN,
INC. } Case No. 9254

BRIEF OF RESPONDENT
TOWN OF WEST JORDAN

STATEMENT OF FACTS

The town of West Jordan cannot accept the partial statement of procedure given by appellants in the Statement of Facts as an accurate Statement of Facts as shown by the record brought upon appeal by appellants. Appellants, in their Brief, speak of the Findings of Fact and Conclusions of Law as the Amended Findings and Conclusions. This is incorrect. The Findings of Fact and Conclusions of Law upon which the final judgment of the Court was based are the true and correct Findings and Conclusions of Law. Approximately one third of the assessed valuation of the town was included within

the area seeking disconnection. The area cut into the town for a distance of one and one-half miles, through a corridor approximately one-half mile wide and more than three-fourths of a mile long. The area then enlarged to more than a mile in width. Such an area does not come within the provisions and intention of Section 10-4-1, UCA 1953, as being "within and lying on the borders" of the town (R14-15).

(See map on following page) (R map attached to complaint).

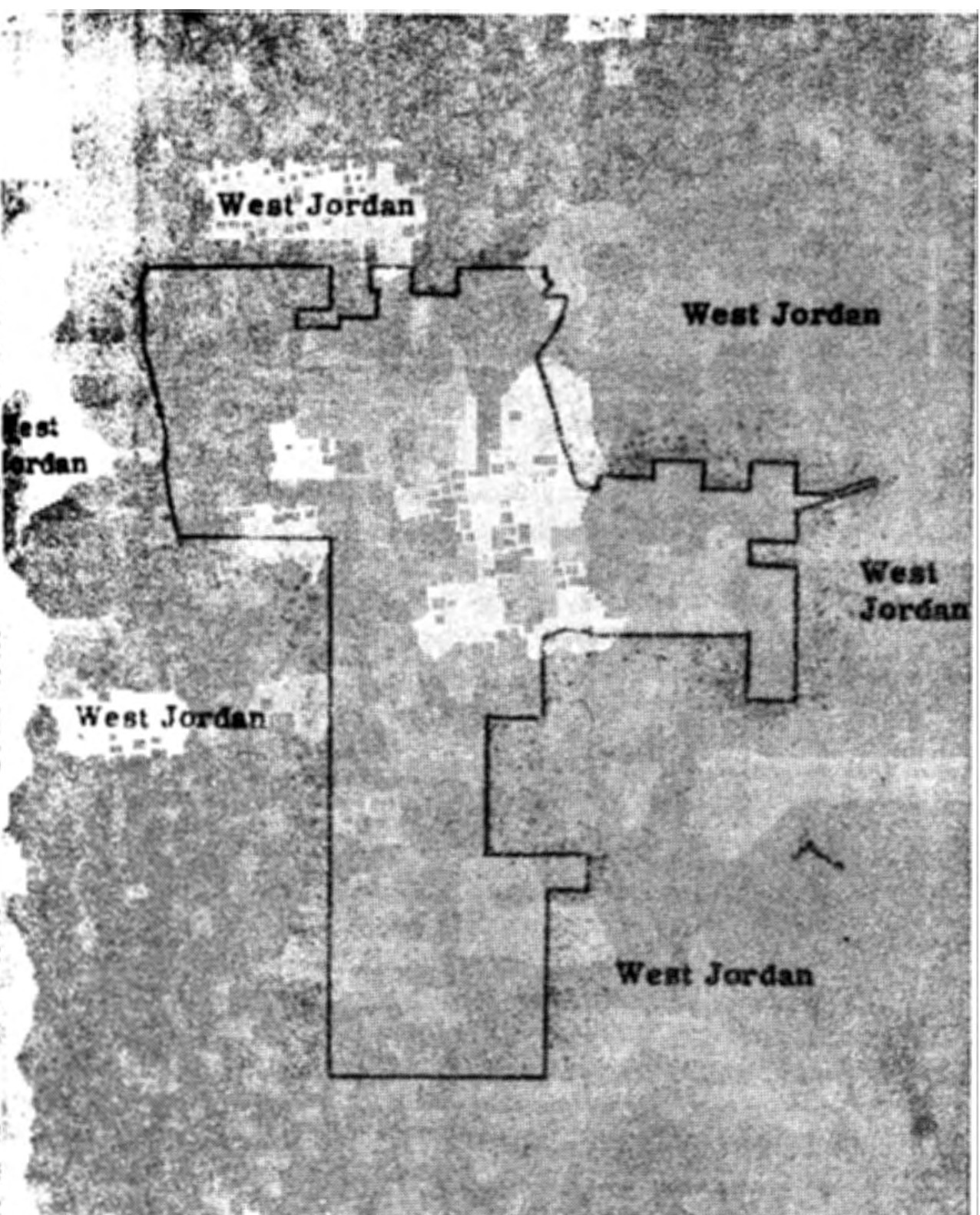
STATEMENT OF POINTS

THE AREA SEEKING DISCONNECTION DOES NOT COME WITHIN THE REQUIREMENTS OF SEC. 10-4-1, UCA 1953, OF BEING LAND "WITHIN AND LYING UPON THE BORDERS" OF THE TOWN OF WEST JORDAN.

ARGUMENT

THE AREA SEEKING DISCONNECTION DOES NOT COME WITHIN THE REQUIREMENTS OF SEC. 10-4-1, UCA 1953, OF BEING LAND "WITHIN AND LYING UPON THE BORDERS" OF THE TOWN OF WEST JORDAN.

The Major question in this Appeal is an interpretation of land "within and lying upon the borders" of a town, under the provisions of Section 10-4-1, UCA 1953. This question is much the same whether considered as jurisdictional, or, as a fact to be determined under the circumstances and under all of the evidence presented in the case.



**AREA SEEKING DISCONNECTION FROM
THE TOWN OF WEST JORDAN**

It is submitted that when the legislature of the State of Utah prescribed that one of the requirements for territory to be disconnected from a town, was that such territory be within the town yet lying upon the borders of the town; the land must be on the boundary or edge of the town. If the legislature had intended that any area regardless of how far it cut into the community was to be permitted to disconnect from the community the legislature might have very easily prescribed a requirement accordingly, such as, that the area "stand on the border" of the town, or that "some part of the area touch the border." There is a deep significance between the terms "lying upon the borders," "touching the borders" or "standing on the borders" of the town.

The condition that would be created by disconnection of an area, that would in a manner of speaking, 'gut' a town to the extent of a hole $1\frac{1}{2}$ miles deep through a corridor less than $\frac{1}{2}$ mile wide seeking to disconnect $\frac{1}{3}$ of the assessed valuation of the town, is the type of condition spoken of in, *Application of Peterson*, 92 U, 212 at page 216, 66 P. 2d 1195. This Court there stated in discussing disconnection of 52.5 acres of land from Moab, Utah; "It is not as if the segregated lands would leave a **hiatus** between one part of the town and another***." (Emphasis added). In the present case before the Court, a hiatus is created which cuts the town into two isolated parts or appendages.

The first case to have considered a similar matter was in Colorado in 1904. It was there held that

land which has a boundary along the town border of 150 feet, which extended into the town for 1500 feet with a general width of 600 feet and consisting of 23 acres of land "does not lie upon the border of the town or contiguous thereto." *Anaconda Mining Co. v. Town of Anaconda*, 33 Colo. 70, 80 P. 144, 147.

Counsel for Appellants has anticipated that the Town of West Jordan would cite the *Anaconda Mining Company* case from Colorado, and in attempting to differentiate the case attempts to point out differences; However, some of the similarities he forgets to point out are:

1. The area seeking disconnection cuts deeply into the community.
2. The "cut" into the community leaves isolated appendages dangling on the east and southeast, and on the west of the area seeking disconnection.
3. The boundary of the area seeking disconnection is more than 14 times as long as the portion of the boundary of the area which touches the boundary of the town. (R. map attached to Complaint).

The doctrine of the *Anaconda Case* was followed by the Colorado Supreme Court in 1952, wherein the Court quoted the *Anaconda Case* as follows: "The clear intent of the Legislature was to permit persons owning property lying upon the border to disconnect from the town. The disconnection of property so lying upon the border would not be injurious. The limits of the town would be

changed but the town would not be divided.' " Town of Greenwood Village v. Heckendorf, 247 P 2d 678, 126 Colo. 180.

The Anaconda Case from Colorado was followed by the Supreme Court of North Dakota in two separate cases in 1921 and 1922. In the first North Dakota case it appears that a sewer line through the area seeking disconnection may have had some influence on the Court. However, in the second case it is clear that cutting a hole into the town was given direct consideration. A tract of land that ran 80 rods deep into the town was held not to border upon the town limits. Mogaard v. City of Garrison 182 N.W. 758, 47 N.D. 468. One quarter section of land which divided or cut a hole out of the side of the town so as to make it necessary to traverse through the area petitioning to be discontinued from the town, does not border upon the town limits. Lincoln Addition Improvement C. v. Lenhart, 195 N.W. 14, 33, 50 N.D. 25.

The Nebraska Supreme Court followed the Anaconda Case from Colorado in 1952. The Court held that land that was adjacent to the town boundary down one side, or part of one side, which if disconnected would leave the city with a long projection into a rural area, should not be disconnected from the town. Swanson v. City of Fairfield, Clay County, 155 Neb. 682, 53 N.W. 2d 90.

Appellants in their Brief cite two Nebraska cases, Jones vs. City of Chadron, 55 N.W. 2d, 499 and Egan vs. Village of Meadow Grove, 66 NW 2d,

427, to the effect that such cases are not applicable to the facts in the present case because in each of those cases attempt was made to disconnect territory which did not touch the border of the town. The Petitions were denied to prevent "doughnut" shaped towns from being formed. Respondent submits both cases are very pertinent. A "horseshoe" shaped town is even more difficult to operate than a "doughnut" shaped town. Respondent submits the only distinction between a "doughnut" shaped town and a "horseshoe" shaped town is that the "horseshoe" shaped town is moreso.

Where the Court has refused to grant the Town of West Jordan a Judgment of Dismissal prior to hearing of the complete matter of disconnection, the inferences from the Findings and the Judgment are that the evidence supports the Judgment of the Court in denying the Petition for disconnection. The respondent contends that the inferences from the Findings of Fact and Conclusions of Law and Judgment in its favor that are not answered in the record, cannot be questioned because no transcript^t of the evidence has been filed. These inferences are as follows:

1. That the area west and the area east and southeast of the territory seeking disconnection would both be completely isolated from the community for all practical effects and purposes.

2. That community planning and zoning, and community administration would be disrupted.

3. That sewer has been constructed and extended to and within part of the territory seeking disconnection, for the purpose of serving such area and surrounding areas.

4. That a good portion of the territory seeking disconnection would, as a matter of necessity, receive sewer facilities in the process of extending sewer to the area west and the area southeast of the territory seeking disconnection.

5. That the town of West Jordan and the territory seeking disconnection generally drain to the east and for flood and sewer purposes must be considered as an integral unit.

6. That the community or town of West Jordan cannot complete the sewer undertaking to furnish sewer to the Town of West Jordan and its inhabitants if the territory seeking disconnection is permitted to disconnect from the town.

7. That the "territory concerned" as set forth in Section 10-4-2 UCA 1953, includes the area completely surrounding the territory seeking to be disconnected. That besides isolating part of the areas of the town, the disconnection, if allowed, would prevent areas along the boundary line of the territory seeking disconnection from getting sewer service at the present time.

8. That a sewer line has been extended into the Utah-Idaho Sugar Company; that Utah-Idaho Sugar Company employs a large number of men, and that

such company has refused to connect its toilet facilities to the town sewer system.

9. That the territory seeking disconnection has gerrymandered its boundaries to such an extent that seven different parcels of land that would remain in the town, if disconnection were to be allowed, are surrounded on three sides by territory seeking disconnection.

10. That to permit one-third of the assessed valuation of a town or community to cut into a community for a distance of 1 ½ miles leaving appendages of the community dangling on each side thereof after a town's bonds have been sold, and part of them issued, would deprive a community of its constitutional right to vote and issue general obligation bonds.

The respondent, Town of West Jordan, is not discussing the first Findings of Fact and Conclusions of Law in favor of appellants, because the trial court has determined those Findings were in error and has made and entered new Findings of Fact and Conclusions of Law and Decree in favor of respondent.

Respondent is not discussing the Order which was erroneously inserted and signed by the Trial Court March 21, 1960. The Order is not included within the pleadings or issues of the case and is directly contrary to the Decree issued by the Court. The error therefore is a moot matter.

CONCLUSION

It is respectfully submitted that the final Findings of Fact and Conclusions of Law, and Decree of the Trial Court are proper and that the judgment should be affirmed.

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