

1960

# In the Matter of the Disconnection of Part of the Territory of West Jordan, Inc. : Brief of Appellant

Utah Supreme Court

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Robert B. Hansen; Attorney for Petitioners; Edwin B. Cannon; Attorney for Petitioners; C. N. Ottosen; Attorney for Utah Farm Bureau;

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## Recommended Citation

Brief of Appellant, *State v. West Jordan*, No. 9254 (Utah Supreme Court, 1960).  
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IN THE SUPREME COURT  
of the **FILED**  
STATE OF UTAH NOV 14 1960

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Clerk, Supreme Court, Utah

IN THE MATTER OF THE DIS-  
CONNECTION OF PART OF THE  
TERRITORY OF THE TOWN OF  
WEST JORDAN, INC.

BRIEF IN  
SUPPORT OF  
PETITION  
FOR  
REHEARING  
Case No.  
9254

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BRIEF OF APPELLANT  
\_\_\_\_\_

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## BRIEF OF APPELLANT

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### STATEMENT OF POINT

EVIDENCE PRESENTED AT TRIAL CLEARLY PROVED  
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RECORD PURSUANT TO RULE 75 (h) U.R.C.P.

### ARGUMENT

Petitioners make this application for a new hearing  
because they contend that it has never been disputed

that the area seeking disconnection is contiguous with the border of Respondent's town and the evidence presented in the trial court is ample to establish this fact. It is true, as pointed out by the Utah Municipal League, that the lower court made no express finding as to the fact that the area seeking disconnection was physically upon the borders of the respondent's town for approximately one-half mile, but it is not a correct implication to infer that the lower court dismissed this petition because no part of the area seeking disconnection was upon the border of the respondent town as urged in that brief. Petitioner will submit a supplemental transcript of the record in this cause pursuant to Rule 75 (h) of the Utah Rules of Civil Procedure and have moved this court for an order that it be made a part of the record in this cause so that an adequate and complete review might be made of this case.

Exhibits P-13 and D-51, as explained by the testimony of the engineer for Utah-Idaho Sugar Company and for the Town of West Jordan respectively, clearly show that respondent's counsel's admission (see page 5 of its brief).

“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 the complaint)."* (Emphasis added.)

was well founded. These exhibits and the testimony identifying them constitute all the material evidence on this point at the trial and there was no proof to the contrary.

The Supreme Court of Nebraska in the case of *Jones vs. City of Chadron*, 156 Neb. 150, 55 NW 2nd 495 held

"It is indispensable that the petition in this kind of proceeding should show by statement of fact that the territory sought to be detached is within the municipality and that a *substantial part of the boundary* thereof is adjacent to a segment of the boundary of the city or village. Adjacent as used in this statute means contiguous or co-existence with." (Emphasis added.)

It has never been questioned that the area seeking disconnection *physically* lies upon the border of the respondent town. The only question is whether or not it *legally* does so in view of the fact the border of the area seeking disconnection which is adjacent to the town border is narrower than the area which does not touch the border. Under the doctrine of the *Chadron*

case, *supra*, it is respectfully submitted that the area here of approximately one-half mile is substantial and within the meaning of our statute. The *Anaconda* case, cited by prior briefs of both parties, is not in conflict with such a holding because the court there was of the opinion that 150 feet was not substantial and the court there appeared to be concerned about setting a precedent for a contiguous border narrower than that.

It was stated in the case of *Boskovich vs. Utah Construction Company* 123U385, 259P 2nd 885 that Rule 75 (h) was purposely made broad enough to cover any situation requiring remedial action to present a complete and accurate record of the proceedings below.

The supplemental transcript of the record which petitioners have moved to be made a part of the record in this cause clearly shows that in fact the area seeking disconnection lies upon the border of the respondent town and this is particularly made graphic by respondent's own exhibit (P-51). Therefore, no purpose would be served by further proceedings in the trial court and the order for dismissal of appellants' petition should be vacated and the cause remanded to the lower court

with instructions to enter a decree of severance after suitable proceedings to adjust the property rights and liabilities of the respective areas.

Respectfully submitted,

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