

1967

Great Salt Lake Authority v. Island Ranching Company : Brief of Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

GREAT SALT LAKE AUTHORITY,

Plaintiff and Respondent,

vs.

ISLAND RANCHING COMPANY,

Defendant and Appellant.

Case No.
10395

BRIEF OF RESPONDENT

Interlocutory Appeal from Order of Second District Court
for Davis County
Honorable Thornley K. Swan, District Judge

UNIVERSITY OF UTAH

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IN THE SUPREME COURT OF THE STATE OF UTAH

GREAT SALT LAKE AUTHORITY,
Plaintiff and Respondent,

vs.

ISLAND RANCHING COMPANY,
Defendant and Appellant.

Case No.
10395

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

This case is brought before the Court on Interlocutory Appeal under the provisions of Rule 72 (b), Utah Rules of Civil Procedure. The action is one in eminent domain, initiated by the Respondent to acquire properties of the Appellant. The Appeal raises issues of law questioning the constitutional validity of Title 65, Chapter 8, Utah Code Annotated, 1953 as amended, establishing the Great Salt Lake Authority as well as the Authority's power to condemn the lands of Appellant.

DISPOSITION OF CASE BY LOWER COURT

The trial Court entered an Order denying Island Ranching Company's Motion to dismiss the Complaint in condemnation of GSLA for failure to state a claim upon which relief could be granted on May 26, 1965. The Complaint was dismissed on all counts. On the same date, the lower Court also granted Appellant an extension of time in which to respond to the Complaint so as to permit Appellant to file a petition for interlocutory appeal with this Court.

RELIEF SOUGHT ON APPEAL

The Order of the trial Court denying Appellant's Motion to dismiss the Complaint of the Great Salt Lake Authority should be affirmed.

STATEMENT OF FACTS

Respondent accepts as accurate and correct the Statement of Facts contained in Appellant's Brief.

ARGUMENT

POINT I

**APPELLANT'S MOTION TO DISMISS
GSLA'S COMPLAINT WAS A PROPER TEST
OF THE COMPLAINT'S LEGAL SUFFICI-
ENCY.**

The above point is accepted as correct by Respondent and is not contested in this brief.

POINT II

THE TERRITORIAL JURISDICTION OF GSLSA'S POWER AS STATED IN THE ACT IS CAPABLE OF DEFINITION AND THE ACT CANNOT BE DECLARED UNCONSTITUTIONALLY INVALID ON THAT BASIS.

The appellant states that Title 65, Chapter 8, Utah Code Annotated, 1953, is invalid and unenforceable for failure to adequately define the territorial jurisdiction of the power of the Great Salt Lake Authority.

- (1) The title to the Act establishing the Great Salt Lake Authority is a valid source of legislative intent for the purpose of resolving ambiguities within the body of the Act.

Section 65-8-1, Utah Code Annotated, 1953, as amended, defines the purpose of the Act as the development of the "Great Salt Lake and its environs," which appellant asserts is an inadequate delineation of territorial jurisdiction.

If the phrase can be said to be ambiguous, it is a well recognized principle of statutory construction that courts can seek interpretive guidance from sources extrinsic to the actual body of the statute. Sutherland, *Statutory Construction*, Section 4506, 3rd ed.

A primary aid, extrinsic to the statutory provisions, in determining the legislative intent is the title of the statute.

“In short, in ascertaining the intention of the legislature nothing is to be rejected which will assist in the clarification of ambiguous phrases and where the title throws light on the meaning of the statute itself, it is an available tool for the resolution of the doubt.” Sutherland, *Statutory Construction*, Section 4802, 3rd ed.

In *Donahue v. Warner Bros. Pictures Distributing Corp.*, 2. U. 2d 256, 272 P.2d 177 (1954), this Court stated its view of the statute’s title as an aid to construction: where a statute is ambiguous, it is “. . . permissible to consider the title of the statute, which admittedly is no part of its actual context, to shed light on its meaning.” (P. 183, 272 P.2d). The Court cited the above quoted portion of Sutherland, *Statutory Construction*, in support of its opinion.

The principle quoted above from the Utah decision and Sutherland, *supra*, is widely accepted in other jurisdictions including the Supreme Court of the United States. *Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Co.*, 331 U.S. 519, 67 S.Ct. 1387, 91 L.Ed. 1646 (1946).

State courts have generally adopted the same view. The Montana Court has held that the title may be looked to in determining legislative intent. *In Re Coleman’s Estate*, Mont., 132 Mont. 339, 317 P.2d 880 (1957). The California Court has on several occasions held

that the title of an act may be relied upon when attempting to ascertain legislative intent: that the title may guide the Court in determining the “. . . intended scope of legislation”, *People v. Taxney*, 168 C.A.2d 599, 366 P.2d 659, 668 (1959); *Lawton v. Board of Medical Examiners*, 147 C.A.2d 256, 299 P.2d 362 (1956), in support of the general proposition stated.

Appellant’s statement that the jurisdictional and constitutional requirements of a statute cannot be supplied by the title is irrelevant, misleading, and unsupported by the authorities he cites. (P. 13, Appellant’s Brief). The respondent is not arguing that the title of an act is part of the “law”, nor that the title should supply necessary elements that are totally lacking in the statute. The argument is only that the title of a statute can properly be looked to in determining legislative intent as to those existing elements which are indefinite, uncertain or ambiguous.

The decisions do not distinguish the types of ambiguities which can be resolved by looking to the title of the statute. The Utah Court in *Donahue*, supra, utilized the title to a statute in question to resolve an ambiguity in favor of a result which avoided invalidating the statute as unconstitutional. Several decisions have utilized the statutory title to determine the intended scope of the statute as to persons affected and territory involved. *Maricopa County v. Douglas*, 69 Ariz. 35, 208 P.2d 646 (1949); *Police Pension Board of City of Phoenix v. Warren*, 97 Ariz. 180, 398 P.2d 892

(1965); *Kidder v. Nekoma Lumber Co.*, 196 Ore. 409, 249 P.2d 754 (1952).

The title of the Act establishing the Great Salt Lake Authority, Title 65, Chapter 8, Utah Code Annotated, 1953, as amended, furnishes a detailed geographical description of the territory the Legislature intended to be included within the phrase "Great Salt Lake and its environs." The title to the Statute reads in part: "An act relating to the development of all of the *mainland, islands, minerals and water within the Great Salt Lake meander line* established by the United States surveyor general;". (Emphasis added).

- (2) The surveyed meander line adequately delineates the territorial jurisdiction of GS-LA.

Appellant has argued that the United States Surveyor General has never completed a survey of the lake, and that a legislative reference to such a surveyed meander line is therefore an inadequate description of territorial jurisdiction. Since there is nothing in the record to support this assertion, appellant cites a memorandum filed by the Utah Attorney General in a congressional hearing on Senate Bill 265.

As this Court judicially knows, Great Salt Lake has been surveyed as to its meander line on a piece-meal basis, with the survey of each segment being separately approved by the United States Surveyor General and accordingly platted on Federal and State land records.

At the present time certain areas on the west side of the lake remain unsurveyed.

The entire argument of appellant as to this point is inadequate because:

- (a) There is nothing in the record to show that the surveyed meander is not an adequate territorial guide;
- (b) GSLA is not attempting and has not attempted to exercise any jurisdiction in any unsurveyed area of the lake;
- (c) The Court can sustain the reference to the surveyed meander as a territorial delineation, and judicially limit the GSLA to those areas of the lake where the meander has been surveyed;
- (d) In the nature of the situation, it would be difficult, if not impossible, for the Legislature to find a better definition of territorial jurisdiction than the lake and its environs situated within the surveyed meander.

The uncertainty of the phrase "Great Salt Lake and its environs" as used in the body of the Act can easily be resolved by reference to the title, which contains a statement of the territory the Legislature intended the Great Salt Lake Authority to have within its jurisdiction, and consideration of that title by this Court will quickly eliminate any question of invalidating

the Act on the basis of failure to define territorial jurisdiction.

POINT III

THE ACT ESTABLISHING THE GREAT SALT LAKE AUTHORITY IS NOT VULNERABLE TO ATTACK AS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY TO AN ADMINISTRATIVE BODY.

Appellant claims that the Legislature has conferred upon the Great Salt Lake Authority unlimited discretion in the exercise of its statutory powers. It is clear that courts will not permit a legislature so to empower an administrative body. It is equally clear that the Legislature did not so empower the Great Salt Lake Authority.

- (1) The more recent state court decisions determine the validity of a legislative delegation of power upon the adequacy of the stated legislative policy and the sufficiency of protection of the interests affected.

Courts have long recognized the necessity of delegation of certain powers by the legislature to administrative bodies. *Sunshine Anthracite Coal Co v. Adkins*, 310 U.S. 381, 60 S.Ct. 907, 84 L.Ed. 1263 (1940). But this recognition has traditionally been coupled with a suspicion that delegation of power to the administrative body by the legislature may result in usurpation

by the administrative body of powers which are exclusive to the legislature. This suspicious attitude has produced such statements as the following: "That the legislative power of Congress cannot be delegated is, of course, clear." *United States v. Shreveport Grain & Elevator Co.*, 282 U.S. 311, 324, 51 S.Ct. 159, 162, 75 L.Ed. 359 (1931). Despite these rather definite verbalizations, no congressional delegation to an administrative agency which has been regularly constituted has ever been held invalid by the United States Supreme Court. Davis, (*Administrative Law Treatise*,) Section 2.01 (1958).

It is conceded that the state courts have previously adhered more zealously to the above stated policies of the Supreme Court than has the Supreme Court itself. In recent years, however, the decisions indicate a liberalizing trend in the attitude of state courts toward the delegation of power by the legislature to administrative bodies.

A brief consideration of Utah decisions as well as decisions from several of our sister jurisdictions will illustrate those factors which state courts deem primarily persuasive when reviewing a legislative delegation of power.

The Utah Supreme Court has declared legislative delegations of power invalid in two major decisions. *Union Trust v. Simmons*, 116 Utah 422, 211 P.2d 190 (1949); *Revne v. Trade Commission*, 113 Utah 155, 192 P.2d 563 (1948). The factor which persuaded the

Court to hold the delegation unconstitutionally invalid is identical in both cases.

The Court in *Revne*, supra, articulated with great specificity the defects in the *Barbers' Price and Hour Act*, which rendered several of its sections invalid, and emphasized that:

“The board is not given power to act for the public upon its own initiative. Thus the public interest is subjected to the interests of a group who may be very antagonistic to that public interest. * * * We believe this act is not properly confined to the public interest.” (P. 568, 192 P.2d).

The language of this Court in *Union Trust Co.*, supra, is strikingly similar:

“Thus, the operation of the law is not contingent primarily upon the determination of public convenience and advantage by proper administrative authority, but is primarily contingent upon the whim and caprice of competitors . . .” (P.192, 211 P.2d).

The *Union Trust Co.* decision quoted the language in *Revne*, supra, relating to the delegation of power by the legislature, thus indicating approval by the Court of the principles stated therein, and concluding:

“We recognize, of course, that the legislature may properly delegate to some administrative body the duty of ascertaining the *facts* upon which the provisions of a law are to function . . .” (P.567, 192 P.2d). (Emphasis added).

This Court in *Clayton v. Bennett*, 3 U.2d 152, 298 P.2d 531 (1956), quoted the judicial policy earlier framed in *Rowell v. State Board of Agriculture*, 98 Utah 353, 99 P.2d 1, 3 (1940), indicating a reasonably liberal view toward the delegation by the legislature of power to administrative bodies:

“That the legislature may not surrender or delegate its legislative power is elemental. It may, however, provide for the execution through administrative agencies of its legislative *policy* and may confer upon such administrative officers certain powers and the duty of determining the question of the existence of certain *facts* upon which the effect or execution of its legislative *policy* may be dependent.” (Emphasis added).

The Court then stressed the importance of an element which has recently been recognized by many courts as essential to a valid legislative delegation of power to an administrative agency—procedural safeguards for those who are affected by the actions of that body.

“If they [agency members] should fail to regularly pursue their authority, or refuse to do so, or act in any manner which is arbitrary, capricious or discriminatory . . . , recourse to the courts is available.” (P.536, 298 P.2d).

The above cited Utah decisions permit formulation of those factors which exert the most persuasive force upon this Court in its determination of the constitutional adequacy of a delegation of power by the legislature to an administrative body. Any statute purporting to delegate must contain an ascertainable legislative

policy, which will guide the administrative body in its consideration of facts when implementing the policy, as well as protection of the public and private interests involved through effective procedural safeguards provided by the statute in question.

The significance of the above enumerated elements has been emphasized by the courts of other jurisdictions. The California Supreme Court, speaking through Justice Traynor, analyzed the insistence upon legislative "standards" as a result of the judicial desire to insure the protection of the public interest, and adopted the view that "standards" and "safeguards" are synonymous as to function.

"The absence of such standards, or safeguards . . . , renders effective review of the exercise of delegated power impossible. * * * Delegated power must be accompanied by suitable safeguards to guide its use and to protect against its misuse." *Blumenthal v. Board of Medical Examiners*, 57 C.2d 228, 368 P.2d 101, 105 (1962).

The Arizona Court in *Schechter v. Killingsworth*, 93 Ariz. 273, 380 P.2d 136 (1963), stated its continued reliance upon the criteria of validity of legislative delegation of power to administrative bodies formulated by it in one of its earlier decisions (*Southwest Engineering Co. v. Ernst*, 79 Ariz. 403, 291 P.2d 764, 772, 775 (1955)):

"We note also a distinct modern tendency to be more liberal in the granting of discretion in the administration of laws in fields where the complexities of economic and governmental con-

ditions have increased, particularly where it is impractical to lay down a comprehensive rule. * * * If the law provides a defined course of conduct upon the occurrence or determination of a particular condition or state of facts, even though that determination is dependent upon an evaluation in the nature of a deduction from facts, there is neither an unconstitutional delegation of power *nor is the act so indefinite and uncertain that it can be held to be invalid.*" (P. 144, 380 P.2d). (Emphasis added).

The Arizona Court in the *Schechter* opinion was strongly persuaded by the existence of ". . . adequate provision for judicial review . . ." in ruling in favor of the constitutional validity of the delegation of power by the legislature. (See P. 144, 380 P.2d).

A recent decision of the California Supreme Court is particularly in point. The Justices were unanimous in upholding the validity of a legislative delegation of power to an administrative agency which was established for the accomplishment of purposes substantially similar to those for which the Great Salt Lake Authority was established. *In Re Bunker Hill Urban Renewal Project 1B*, 37 Cal. Rptr. 74, 389 P.2d 538 (1964). The Court reviewed an agency which had been created for the purposes of designating areas in Los Angeles for development and formulating plans for said development. The Court was realistically cognizant of the situation motivating the legislature to create such an agency and the effect that such legislative motivation should properly have on the court's judgment.

“It appears to us likewise that the scope of permissible delegation of power to the agency should ‘be measured in terms of the complexity and diversity of the conditions which will be encountered’ in the performance of the final plan.” (P. 558, 559, 389 P.2d).

In the same decision, the Court expressed its attitude toward the relationship between a legislative body and an administrative body:

“The essentials of the legislative function are the determination and formulation of the legislative policy. Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others.” (P. 564, 389 P.2d).

This Court, in the instant appeal, is faced with a situation identical to the situation before the California Court in the above case.

- (2) The Statute establishing the Great Salt Lake Authority contains an adequately defined legislative policy and sufficient procedural safeguards.

The Legislature established the Great Salt Lake Authority for the purpose of development of the Great Salt Lake and its environs as expressed by Section 65-8-1, Utah Code Annotated, 1953, as amended. This Section is the initial statement of the Legislative policy. The remaining provisions of the Statute contain ample definition of the meaning of the word “development” in further delineation of the Legislative policy.

Section 65-8-3, Utah Code Annotated, 1953 as amended, establishes an Advisory Council to the Authority. The following State departments and agencies are members of this Council: State Engineer, Tourist and Publicity Council, State Parks and Recreation Commission, Fish and Game Commission, State Land Board, State Road Commission, State Water and Power Board. The conclusion is inevitable that these departments and agencies were chosen because the GSLA would be operating in areas wherein the special knowledge of these sister agencies could be of assistance.

Section 65-8-6(5), Utah Code Annotated, 1953 as amended, describes with specificity what the Legislature means by "development". The Legislature has instructed the Authority to design plans and programs to coordinate the development of grazing areas, fish and game activities, mining and mineral removal, and natural resources—with emphasis on utilization of water resources, industrial activities, and recreational and tourist facilities.

The result intended to be achieved by the Legislature involves a program of operation too varied and complex to be effectively performed by the Legislature. The complexity of the intended program necessitated the creation of an administrative body. To require the Legislature to be meticulously specific in defining its policy is to substantially destroy the value of administrative agencies as vehicles for implementing broad legislative policy.

Section 65-8-1, Utah Code Annotated, 1953 as amended, expresses the necessity of creating an administrative body in the instant situation by requiring its members to be persons “. . . who shall be selected because of their *understanding* of and demonstrated interest in the development of the Great Salt Lake and its environs.” (Emphasis added). The Legislature thus recognized its dependence upon the expertise of an administrative agency to achieve practical realization of a broad legislative policy—a policy which the Legislature was able to formulate only as a statement of the result it desired to achieve.

Title 65, Chapter 8, Utah Code Annotated, 1953 as amended, satisfies the second major criterion of validity of a legislative delegation of power to an administrative body by including provisions limiting the Authority’s discretion so as to protect the public and private interests. Throughout the Statute, the Legislature has specified that the activities of the Authority must be “reasonably” related to the accomplishment of the results desired to be achieved. The standard of “reasonableness” is susceptible to practical interpretation by the judiciary.

The most substantial power delegated to the Authority, eminent domain, is subject to the provisions of Title 78, Chapter 34, Utah Code Annotated, 1953. (See Section 65-8-6(7), Utah Code Annotated, 1953 as amended). The procedural limitations imposed upon the Authority’s exercise of the power of eminent domain

are more fully discussed in Point IV of this brief. The protection of public and private interests from arbitrary and discriminatory taking of property by the Authority is effectively provided for.

In addition to the procedural safeguards mentioned above, the discretion of the Authority is circumscribed by Section 65-8-6(1), Utah Code Annotated, 1953 as amended. Acquisition of all real or personal property, in any manner authorized by the Statute, requires the approval of the Legislature. The credit of the State of Utah cannot be pledged without the consent of the Legislature, thereby allowing the Legislature to exercise a very effective control upon the discretion of GSLA with regard to the acquisition of real and personal property.

(3) Appellant is not justified in asserting its ability to ascertain its position under the Act.

A reading of the Act reveals that the Legislature intended Antelope Island to be included within the term "Great Salt Lake and its environs." Section 65-8-6(10), Utah Code Annotated, 1953 as amended, embodies a detailed legislative mandate to the Authority to initiate immediate action for the purpose of developing properties on Antelope Island as tourist and recreational attractions. The extent of the legislative grant of power to GSLA to enable it to obey this mandate is discussed in Point IV of this brief.

The legislative intent with regard to the properties on Antelope Island is further revealed by Section 65-

8-8, Utah Code Annotated, 1953 as amended, which states in part:

“Within the limitations of available funds the state road commission is authorized to construct a road from the town of Syracuse to the *north end of Antelope Island* along with the necessary roads on the *island* to serve the *recreational development*. These roads are to be located by the state road commission with approval of the authority, and are to be programmed for design and construction *upon the securing of Antelope Island property*.” (Emphasis added).

The validity of the legislative delegation of power to the Great Salt Lake Authority must be decided with reference to the circumstances motivating the creation of GSLA by the Legislature.

The Authority was established to accomplish the desire of the Legislature that the “Great Salt Lake and its environs” be developed to the maximum extent. Implementation of such a legislative policy contemplates a staggeringly complex program of operation. To require a precise statutory description of such a program would unduly burden the Legislature.

The Legislature has outlined for the Authority's guidance the purpose to be accomplished and the areas of operation for accomplishing that purpose. The Act defines the methods of operation by enumeration of GSLA's legal powers. The Legislature has conferred upon the Authority that amount of discretion deemed realistically necessary to successful implementation of

the legislative policy. This discretion has been sufficiently limited by procedural safeguards designed to protect the public and private interests involved, resulting in a balance which is acceptable to the courts.

There is no basis upon which the delegation of power to GSLA can be held unconstitutionally invalid.

POINT IV

ANY INTERPRETATION OF SECTION 65-8-6(10), UTAH CODE ANNOTATED, 1953 AS AMENDED, DENYING GSLA POWER TO ACQUIRE PROPERTIES ON ANTELOPE ISLAND BY EMINENT DOMAIN IS INCONSISTENT WITH THE CLEAR LEGISLATIVE INTENT.

The appellant relies upon several widely-respected canons of statutory construction discussed in detail below to support an interpretation of Section 65-8-6(10), Utah Code Annotated, 1953, as amended, which denies the Authority the power to acquire properties on Antelope Island by eminent domain. It must be emphasized, however, that the primary function of such canons is to aid the courts in ascertaining the intent of the Legislature.

- (1) Canons of statutory interpretation will not be used to frustrate the intent of the Legislature.

The primary purpose of canons of statutory construction is the determination of the legislative intent.

In determining the legislative intent, the Utah Supreme Court has generally placed primary emphasis upon an examination of the purpose of the legislation as expressed by the statute. "It is generally recognized that courts will give an act such a construction as will accomplish its purpose." *Ralph Child Construction Co. v. State Tax Commission*, 12 U.2d 53, 58, 362 P.2d 422, (1961).

This Court in *Rogers v. Wagstaff*, 120 Utah 136, 232 P.2d 766 (1951), stated that the primary rule of statutory construction is the ascertainment of the intention of the Legislature in order that the intent can be effectively accomplished.

A difficult problem of statutory construction arises when a provision of a statute is allegedly susceptible to more than one interpretation. The Utah Supreme Court has been practical in those instances in which it has faced this problem. In *Driggs v. Utah State Teachers Retirement Board*, 105 Utah 417, 142 P.2d 657 (1943), it was stated that the statutory language must be interpreted to effectuate the purposes of the statute and ". . . as between two possible constructions, that one will be adopted which does so give effect to its purpose." (P. 633, 142 P.2d). In *Conover v. Board of Education*, 110 Utah 454, 175 P.2d 209. (1946), this Court said: "It is settled law that an interpretation which defeats any of the manifest purposes of the statute cannot be accepted." (P. 210, 175 P.2d). In *Snyder v. Clune*, 15 U.2d 254, 390 P.2d 915 (1964).

the Court stated that results incongruous with the legislative purposes are to be avoided. In *Rowley v. Public Service Commission*, 112 Utah 116, 185 P.2d 514, (1947), the Court held that legislative intent will prevail over a literal interpretation, especially where the literal interpretation will yield an absurd result. In *Maisch v. United States Smelting, Refining & Mining Co.*, 113 Utah 101, 191 P.2d 612, (1948), the Court said that, in addition to avoiding an interpretation that will result in confusion or uncertainty, the Court should adopt that construction which “. . . will permit the officials having the responsibility for its administration to proceed in an orderly manner.” (P. 620, 191 P.2d).

The appellant, Island Ranching Company, maintains that a literal reading of Section 65-8-6(10), Utah Code Annotated, 1953, would lead to the conclusion that the property on Antelope Island is immune from the power of eminent domain as exercised by the Great Salt Lake Authority. Appellant asserts that two fundamental rules of statutory construction, *ejusdem generis* and *expressio unius est exclusio alterius*, compel an interpretation of the phrase “or other lawful means” contained in subsection (10), which would limit the phrase to legal proceedings in which the consent of the parties involved is necessary because the specific words, “donation”, “purchase”, etc., preceding the phrase “or other lawful means” limit that more general phrase to lawful means having the same common denominator as the specific words, i.e. consent.

The Utah Supreme Court has said, however, that the rule of *expressio unius est exclusio alterius* may not be used to defeat the apparent intent of the Legislature. *Spring Canyon Coal Co. v. Industrial Commission*, 74 Utah 103, 277 Pac. 206, (1929).

In regard to the use of the maxim *ejusdem generis* the Colorado Court is in accord with the reasoning of the Utah Court:

“The rule of *ejusdem generis* is resorted to merely as an aid of construction. If upon consideration of the whole law upon the subject and the purposes to be effected, *it is apparent the legislature intended the general words to go beyond the class specifically designated the rule does not apply.*” *Martinez v. People*, 137 P.2d 690, 693 (1943). (Emphasis added).

The language of Title 65, Chapter 8, Utah Code Annotated, 1953, clearly reveals the purpose of the Statute to be development of the lake area to the greatest degree possible.

The Legislature revealed its awareness of GSLA's need for the power of eminent domain when it expressly granted that power for the purposes of acquiring real and personal property in furtherance of the purposes of the Statute. Section 65-8-6(1), Utah Code Annotated, 1953. No distinction as to where the property must be located is made, as long as it is within the “Great Salt Lake and its environs.”

The property on Antelope Island is within the territorial jurisdiction of the Authority's powers. Fur-

thermore, the Legislature specifically designated Antelope Island as a primary target for "tourist and recreational uses." Section 65-8-6(10), Utah Code Annotated, 1953. Nevertheless, it is argued that despite the legislative intent revealed by consideration of the preceding paragraphs, the phrase empowering the Authority to act with respect to the property on Antelope Island excludes the exercise by the Authority of the power of eminent domain to procure that property.

It is submitted that the above argument is more than sufficient to show that a limitation of the phrase, "or other lawful means", Section 65-8-6(10), Utah Code Annotated, 1953, by application of rules of statutory construction formulated by the courts to discover legislative intent, would only frustrate the accomplishment of a legislative intent that is very clearly stated.

This Court has itself stated a proper course of action when faced with statutory provisions which appear to be in conflict:

"It is our duty in interpreting a statute to give effect to the legislative intent as expressed by the wording of the statute. If reasonably possible, effect should be given to every part of a statute and if the enactment is subject to one or more interpretations by reason of conflicting provisions, *then that construction which will harmonize and give effect to all provisions is preferred.*" *Taft v. Glade*, 201 P.2d 144, 285, 287, Utah 435 (1948).

It is emphasized that Subsections (1) and (10) of Section 65-8-6, Utah Code Annotated, 1953, are not

in conflict, but the above quotation is simply in reply to appellant's erroneous assumption that said provisions are in fact conflicting. If the phrase "or other lawful means" contained in Subsection (10) is read to include those means defined as "legal" in Subsection (1), i.e. purchases, gift, devise, eminent domain, etc., the alleged conflict would evaporate and effect would be given to all provisions of the Statute in accord with the stated legislative intent.

- (2) The judicial policy of strict construction of statutes granting the power of eminent domain is not properly applicable to the GSLA Act.

The appellant has presented case authority, which will be examined below, in support of the proposition that a statute delegating the power of eminent domain is to be strictly construed against that body which exercises the power. The application of this principle in the manner proposed by appellant would be improper when one considers the guidelines set up for application of the principle and the general policy which has motivated the courts in applying it.

A case much relied on by appellant is *Bertagnoli v. Baker*, 117 Utah 348, 215 P.2d 626 (1950). The Utah Supreme Court was determining the validity of an attempt by the Salt Lake City Board of Education to acquire by eminent domain property which was clearly outside the territorial boundaries of the Salt Lake City School District. Although invalidating this particular attempt, the Utah Supreme Court recognized the pro

priety of case decisions which interpreted similar exercises of the power of eminent domain as authorized by clear implication of the statute granting the power, because to interpret otherwise would have rendered useless the grant of power to condemn for the stated statutory purposes. (P. 628, 215 P.2d). Such would be the result in the instant case if GSLA were denied power to acquire properties on Antelope Island by eminent domain.

State v. Superior Court for King County, 33 Wash. 76, 204 P.2d 514 (1949), is twice cited by the Utah Court in *Bertagnoli v. Baker*, supra, in support of its position that statutes granting the power of eminent domain will be strictly construed. (P. 628, 215 P.2d). The Washington Court judges the validity of the exercise of the power by determining whether said exercise is expressly granted or necessarily implied from the statutory language. In the case cited, the Court said the exercise of the power was clearly invalid because the statute under which its validity was claimed did not expressly grant the power of eminent domain for any purpose whatsoever.

Another case cited by appellant adopts the position that the power of eminent domain must be clearly and unequivocally given. *Beth Medrosh Hagodol v. City of Aurora, Colo.*, 126 Colo. 265, 248 P.2d 732 (1952). In this case, the municipality was attempting to condemn property which had been dedicated to a public use by authority of a statute which expressly granted

the power to condemn private property only. The Colorado Court held that the attempted exercise was contrary to the express statutory grant.

The appellant contends that the maxims of "*ejusdem generis*" and "*expressio usius est exclusio alterius*" nullify the express grant of the power of eminent domain to the Authority contained in Section 65-8-6(1), Utah Code Annotated, 1953, in regard to the property on Antelope Island by excluding from the phrase "or other lawful means", Section 65-8-6(10), Utah Code Annotated, 1953, the right to take property by eminent domain. Appellant argues that the traditionally "strict construction" of statutes granting such power can be justified by application of these two maxims to language which is an express grant of the power of eminent domain, when viewed in a realistic manner. The above cases illustrate the circumstances under which courts properly adopt a strict construction. Consideration of these circumstances reveal appellant's contention to be without merit and the interpretation he urges to be contrary to the "clear implication" of the statute.

The above discussed cases set forth a second ground upon which courts base adoption of a "strict construction" which ground appellant also heavily relies on in support of his argument.

The proposition is well stated in *Bertagnoli v. Baker*, supra. The Utah Court held that a statute granting the power of eminent domain should be strictly construed " . . . so that no person will be wrongfully deprived of

the use and enjoyment of his property.” (P. 628, 215 P.2d).

The Court in *Moyle, et al. v. Salt Lake City*, 111 Utah 201, 176 P.2d 882 (1947), stated that the purpose of strict construction of statutes granting the power of eminent domain is to protect the rights of the property owner.

It is widely recognized that courts view the exercise of the power of eminent domain as “. . . fraught with the possibility of injustice and abuse.” 18 Am. Jur., Eminent Domain, Section 26. It is the fear of arbitrary and discriminatory exercise of the power of eminent domain which motivates the courts to strictly construe statutes which grant this power. The courts attempt to mitigate these dangers by strictly construing the statute granting the power in order to limit the exercise of the power as much as possible.

So restrictive a construction is not necessary where the dangers are mitigated to the point of complete elimination by the statute itself. Title 65, Chapter 8, Utah Code Annotated, 1953, achieves the desired elimination of the injustices which the Courts fear by imposing procedural safeguards upon the exercise of the power of eminent domain by the Great Salt Lake Authority.

Section 65-8-6(7), Utah Code Annotated, 1953, requires that the exercise of the power of eminent domain by the Great Salt Lake Authority adhere to the pro-

cedures outlined by Title 78, Chapter 34, Utah Code Annotated, 1953. The Authority is thereby precluded from acquiring property by eminent domain in an arbitrary or discriminatory manner.

Section 78-34-8, Utah Code Annotated, 1953, states that the Court or the judge of the Court has the power to determine whether or not the conditions for valid exercise of the power of eminent domain specified in Section 78-34-4, Utah Code Annotated, 1953, have been satisfied. The conditions are as follows:

“Before property can be taken it must appear:

- (1) That the use to which it is applied is a use authorized by law;
- (2) That the taking is necessary to such use; and
- (3) If already appropriated to some public use, that the public use to which it is applied is a more necessary public use.” Section 78-34-4, Utah Code Annotated, 1953.

Application of the above statutory criteria of validity to the actions of the Great Salt Lake Authority in taking property for public use places a substantial limitation on the Authority’s discretion. The power of the Court in eminent domain proceedings constitutes a sufficient controlling element which reviews GSLA’s exercise of its discretionary powers.

In addition to the safeguards provided by Title 78, Chapter 34, Utah Code Annotated, 1953, the Legislature has imposed an additional limitation on the

Authority's power to take property for public use. Section 65-8-6(1), Utah Code Annotated, 1953, requires the Authority to procure the consent of the Legislature before pledging the credit of the State for the purpose of acquiring any real or personal property. The exercise by the Authority of its power of eminent domain is subject therefore to a second review.

A reading of Title 65, Chapter 8, Utah Code Annotated, 1953, reveals that the Legislature recognized the possible arbitrary and discriminatory exercise of the power of eminent domain and that it provided procedural limitations which would effectively eliminate this possibility. Therefore, the strict construction urged by defendant is not justified on the bases which motivate to courts to adopt a strict construction.

The interpretation of the phrase "or other lawful means", Section 65-8-6(10), Utah Code Annotated, 1953, to include the exercise of the power of eminent domain by the Great Salt Lake Authority in regard to the property on Antelope Island is consistent with the plain meaning of the statute, will allow the accomplishment of the stated legislative intent, and will do no violence to the policy which has previously motivated the courts to strictly construe statutes which delegate that power.

- (3) A denial to GSLA of the power to acquire properties on Antelope Island by eminent domain would grant a special immunity to Antelope Island, which unconstitutional result the Legislature could not have intended.

The appellant would have the Court adopt a statutory construction which would render the property of Antelope Island immune to the Authority's power of eminent domain.

The property on Antelope Island is clearly within the jurisdiction of the Authority's power as it is specifically mentioned by the statute. Section 65-8-6(10), Utah Code Annotated, 1953. Therefore, the construction argued for by the appellant would have the effect of singling out a certain area of the "Great Salt Lake and its environs" for special privileges and immunities. Such a construction of the Statute would transform Section 65-8-6(10), Utah Code Annotated, 1953, into special legislation in violation of Article VI, Section 26(16), Constitution of Utah.

The following Utah cases illustrate the manner in which this Court characterizes special legislation.

A statute must operate uniformly to all within the jurisdiction of the statute. If a statute discriminates in an unreasonable and arbitrary manner, it is unconstitutional. *Tygeson v. Magna Water Co.*, 119 Utah 274, 226 P.2d 127 (1950).

"The mere fact that legislation is made to apply to certain persons and not to others does not affect its validity if it be so made *that all persons affected by its terms are treated alike under like circumstances and conditions.*" *Abrahamsen v. Board of Review of Industrial Commission*, 3 U.2d 289, 283 P.2d 213, 216 (1955).

A statute is not special legislation as long as it is uniformly applied to those subject to its terms. *Entre Nous Club v. Toronto*, 4 U.2d 98, 287 P.2d 670 (1955).

A statute must apply equally to all members within the class to which it applies. *State v. Twitchell*, 8 U.2d 314, 333 P.2d 1075, 1077 (1959).

A law is general if it operates uniformly upon those things subject to its application. *Conover v. Board of Education*, 110 Utah 454, 175 P.2d 209 (1946).

A law must operate uniformly upon all members of any class of persons, *places*, or things in order to be classified as general legislation. (Emphasis added). *State v. Kallas*, 97 Utah 492, 94 P.2d 414, (1939).

If the construction of the Statute requested by the appellant is adopted by the Court, the Statute would be unconstitutional as granting special privileges and immunities in violation of Article VI, Section 26(16), Constitution of Utah.

The construction requested by appellant is, in the first instance, clearly violative of the stated legislative intent and is therefore a strained construction based solely upon the mechanical application of certain rules of statutory construction. In addition, adoption of the construction the appellant proposes would violate the principle of statutory construction that a statute is interpreted in favor of a finding of constitutionality. Sutherland, *Statutory Construction*, Section 4509, 3rd ed.

The Utah Supreme Court in *Patterick v. Carbon Water Conservancy Dist., et al.*, 106 Utah 55, 145 P.2d 503 (1944), stated its recognition of the general acceptance of this principle:

“It is well established that a court will uphold the validity of an act passed by the legislature wherever possible and will not declare it unconstitutional unless its invalidity is apparent.” (P. 505, 145 P.2d).

The language of the Court in *Donahue v. Warner Bros. Pictures Distributing Corp.*, 2 U.2d 256, 272 P.2d 177 (1954), is even more explicit:

“Where there is ambiguity or uncertainty with respect to the interpretation or application of the statute, and two alternatives exist, one by which the statute would be either unconstitutional, or serious doubt would exist as to its constitutionality, as compared with an interpretation whereunder the statute would be clearly constitutional, the latter will be given effect.” (P. 184 272 P.2d).

The interpretation proposed by appellant is contrary to the plain meaning of the statute. Such an interpretation would require the Court to declare the Statute unconstitutional when any less artificial interpretation would raise no doubt as to the Statute’s validity.

POINT V

THE JUDICIAL FUNCTION IS TO INTERPRET THE STATUTE, AS IS, AND NOT TO ENLARGE.

A reading of the Statute, as is, shows that it withstands appellant's arguments without enlargement by the Judiciary.

CONCLUSION

The purpose of the Legislature in establishing the Great Salt Lake Authority was to create an organization sufficiently flexible to implement the legislative policy. A degree of rigidity greater than that found in the procedural safeguards imposed for the protection of public and private interests would have made accomplishment of the stated purpose an impossibility.

A consideration of the purpose hoped to be accomplished shows that the Legislature chose the most realistic definition of GSLA's jurisdiction—the lake and its environs within the surveyed meander line. A definition which named counties, etc., to be included within the jurisdiction would be needlessly confusing.

The Legislature placed the problem of the lake's development into the hands of persons whose knowledge would enable them to set up a working program. The details of that program were necessarily left to GSLA.

Having outlined a basic plan for implementation of its policy, the Legislature inserted certain standards to prevent arbitrary and discriminatory action by a body to which it had given very broad powers. These standards limit GSLA's discretion without destroying its effectiveness.

The language of the Act gives sufficient notice to those who will be affected by its operation—by description of GSLA's jurisdiction—and by specific mention in regard to the appellant in this appeal.

Appellant has failed to present any basis upon which the Act can be held unconstitutionally invalid. This court should affirm.

Respectfully submitted,

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