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In the Matter of the Restriction of the Corporate Limits of the City of Bingham Canyon, Utah : Objector'S Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE RESTRICTION OF THE CORPORATE LIMITS OF THE CITY OF BINGHAM CANYON, UTAH:

Brief of Objector No. 10456

OBJECTOR'S BRIEF

**Appeal from a Decree of the Third Judicial District Court,
Salt Lake County
Honorable Stewart M. Hanson, Judge**

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IN THE MATTER OF THE RESTRICTION OF THE CORPORATE LIMITS OF THE CITY OF BINGHAM CANYON, UTAH:

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STATEMENT OF NATURE OF THE CASE

This is an action brought by Kennecott Copper Corporation and Anaconda Company to remove from the City Limits of the City of Bingham Canyon certain properties owned by the corporations. The holdings of the petitioner Anaconda Company are minimal. This action is brought pursuant to Chapter 4, Title 10, Utah Code Annotated, which sets forth the jurisdictional requirements, the procedure and the necessary showing for the severance of territory from the corporate limits of a City in the State of Utah.

DISPOSITION OF THE CASE IN THE LOWER COURT

The trial court granted the prayer of the petitioners in full and ordered the restriction of the limits of the City.

NATURE OF RELIEF SOUGHT ON APPEAL

The appellant, the City of Bingham Canyon, seeks to have the Order restricting the limits of the City reversed and the application of the petitioners dismissed.

STATEMENT OF FACTS

The Kennecott Copper Corporatoin in the year 1959 started purchasing properties held by individuals in the City of Bingham Canyon (Tr. page 17) and at the time of the hearing of this matter had purchased all but 14 properties located within the present City Limits (Tr. page 7). Plaintiff's Exhibit #2 is a map which shows the buildings which will remain in the City if the application is granted and also the buildings which will be disconnected. Plaintiff's Exhibit #1 is a compilation of photographs of the buildings which will remain and Exhibit #3 of the buildings which will be excluded. The testimony is that there are presently 74 residents of the City (Rec. 50, Tr. 23). The evidence is also that if the petition is granted that 90% of the present limits of the City of Bingham Can-

you will be excluded from the City (Tr. 37, Rec. 64). Some of the buildings remaining in the City are owned and will be used by Kennecott, which consist of a rectifier, the old post office which is used for storage and a clinic (Tr. 32, Rec. 59).

If the proposed application to disconnect is granted the testimony is that the buildings owned by Kennecott, both in and out of the incorporated area, will use the sewer owned by the City (Tr. 38, Rec. 65).

The Company would use the water system both in and out of the limits (Tr. 40, Rec. 67).

An examination of Plaintiff's Exhibit #2 and all of the testimony discloses that the only means of ingress and egress to the main mine itself and to the following buildings owned by Kennecott: Gemmil Club, two warehouses, Main Office Bldg., track machine shop, field repair shop, electrical storage building, water service building and assay lab, all of which would be in the disconnected area, is by the road maintained and policed by the City. The testimony is that the road through the City of Bingham Canyon serves only the property owned by Kennecott. Some idea of the amount of use of the road made by Kennecott and its employees and tourists going to the mine is shown by Objector's Exhibit #5. The trucks going to the warehouses and the other facilities must use the road. All road maintenance and snow clearance is furnished by the City (Tr. 52, Rec. 79).

The City also furnishes and maintains 45 street lights of 6,000 watts (Tr. 51, Rec. 78).

The City maintains two fire stations with three trucks, two of which are pumpers (Tr. 53, Rec. 79). These facilities have been used by Kennecott recently (Tr. 53, Rec. 80).

The policing of the area is done by the City (Tr. 54, Rec. 81).

No property tax will be assessed by the City for the year 1966 (Objector's Exhibit #6). The sales and use tax revenue for the year 1964 amounted to about $28,000.00 (Tr. 56, Rec. 83). This is because of the use of Kennecott, which will be lost if the application is granted.

ARGUMENT

POINT I. UNDER OUR STATUTE THE ONLY QUESTION IS WHETHER OR NOT JUSTICE AND EQUITY REQUIRES THE GRANTING OF THE APPLICATION.

Chapter 4 of Title 10, Utah Code Annotated 1953, provides for the procedure and the requirements of an application for disconnection. There is no dispute as to the jurisdictional requirements having been met by the applicants, Section 2 of Chapter 4 provides in part

> "If the court finds that the petition was signed by a majority of the real property owners of

> the territory concerned and that the allegations of the petition are true and that justice and equity require that such territory or any part thereof should be disconnected from such city or town, * * * "

The statutory provision relating to "justice and equity" is found in the laws of Nebraska and Utah.

The case most nearly in point which we have found in either jurisdiction is the case of, In re Chief Consolidated Mining Co., Utah, 266 P. 1044. In this case the Mining Company petitioned to have property adjacent to its property disconnected from the City of Mammoth. Mammoth like Bingham is located at the mouth of a canyon. The parts petitioned to be disconnected were located on rugged mountain sides and the City provided few, if any, services in the area. The roadway through the City provided the only route of ingress and egress to the Mine. The Court in determinnig that justice and equity would not be served said in part the following:

> The undisputed testimony respecting the municipal benefits by way of municipal improvements such as above enumerated and as found by the court on any of the areas are not alone sufficient, in our judgment, to deny to the petitioners their claim for the severance of the areas from the boundaries of the municipality. Should the words "municipal benefits," as used in our decisions, under the facts appearing in this record, be confined to the narrow limits insisted upon by the petitioners? We think not. The statute is that the court shall decree a severance when justice and equity require it to be done.

> In the determination of what constitutes justice and equity, the facts in each case, under well-recognized principles of law, must, to a very large extent, determine that question.

In the case before the court there is no question but that the properties owned by the petitioners will continue to use the facilities provided for by the City. The testimony is undisputed that the sewer system and the water system will be used by buildings located in the area to be disconnected. There is no dispute that the only means of ingress and egress to the buildings and the main access to the mine is on a road maintained by the City. The traffic count shows the extensive use of the road and the testimony can only be interpreted that the servants, business associates and tourists account for substantially all of the use.

The law in Utah is well settled that each case is to be decided upon its own facts. There has been no attempt to define the terms "justice and equity."

> Young vs. Salt Lake City, 24 Utah 321, 67 P 1066
> Re Fullmer, 33 Utah 43, 92 P 768
> Christensen vs. Clearfield, 66 Utah 455, 243 P 376
> Re Smithfield City, ... 262, P 105
> Application of Peterson, 66 P 2nd 1195

It will be noted that in the Fullmer case, Supra, Application of Peterson (Supra) and in the Christensen vs. Clearfield case, Supra, that the property to be disconnected was agricultural and received no services from the cities concerned.

An examination of the Nebraska cases shows the same conditions as in the Utah cases where severance has been granted:

Osmond vs. Smathers, 62 Neb. 509, 87 N.W. 310
Marsh vs. Trenton, 92 Neb. 63, 137 N.W. 981
MacGowan vs. Gibbon, 94 Neb. 771, 144 N.W. 808
Joegar vs. Bethany Heights, 97 Neb. 675, 151 N.W. 236
Edgecombe vs. Rulo, 109 Neb. 843, 192 N.W. 499

In the Nebraska case of Harvey vs. Hyamis, 97 Neb. 220, 149 N.W. 405, the owner of the land within the corporate limits of the City petitioned for severance. The evidence was that he had purchased the property to be near a school located in the City. The land was pasture and received no City services. There was also testimony that the owner objected to the construction of a proposed water system. The court held that under these conditions justice and equity did not warrant disconnection from the City.

In the case of Swanson et al. vs. City of Fairfield, Clay County, 155 Nebraska 682, 53 N.W. 2nd 90:

In this case the petitioners asked that land they claimed was agricultural be detached from the City. They received no City service with the exception of some roads which fronted the land sought to be detached, with one road intersecting part of the land.

The evidence was that there was a water main, a fire hydrant, and a city street light one block West of

plaintiff's home. The plaintiff by complying with the ordinance could avail himself of the water facilities and fire protection was available. The City maintained police protection. The streets were maintained by the City.

The lower Court ordered detachment of the territory. The Appellate Court citing the case of In re Chief Consolidated Mining Company, supra, reversed the lower Court.

Where there is a petition to disconnect the burden to prove that justice and equity require such disconnection is on the petitioner. The case of Lee vs. City of Harvard, 146 Neb. 807, 21 N.W. 2nd 896, says:

> "In an action to disconnect territory from a City, the burden is upon the petitioner to establish by sufficient evidence that justice and equity require that such territory be disconnected."

The applicants will not suffer any material disadvantage if disconnection is denied. There will be no property tax imposed during the current year and nothing has been presented which leads to the conclusion that there will be a future property tax (Objector's Exhibit No. 6).

Under the provisions of the Uniform Local Sales and Use Tax Law of Utah (Chapter 9, Title 11, Utah Code Annotated, 1953), the applicant corporations will incur no change in the amount of the local option sales or use tax that they will be required to pay.

If disconnection is granted ,they will pay to the State Tax Commission for the benefit of Salt Lake County, and if disconnection is denied, they will pay to the State Tax Commission for the benefit of the City of Bingham Canyon.

But the City of Bingham Canyon and its remaining 14 taxpayer owners will suffer a catastrophe.

The City will lose sales and use tax income of $28,000.00, but still be faced with the maintenance and operation of the streets, the sewer system, the water system, the fire protection system, and all of the other functions. These functions it will not perform just for the benefit of the 14 families, but for the applicants and their employees. (Tr. 38, Rec. 65; Tr. 40, Rec. 67; Plaintiff's Exhibit 2, Tr. 52, Rec. 79).

How will the cost of these functions be borne? By a tax levy on property, if disconnection is allowed, the property taxed will be that of the 14 owners and that portion of the Kennecott property remaining within city limits.

If the budget of the city continues at $28,000 or $29,000, an unfair burden will be shifted upon these few and an exhorbitant levy upon real property must be imposed.

Far from supporting applicant's burden to prove that justice and equity demands disconnection, the facts in this case must lead to the conclusion thta justice and equity will best be served if disconnection is disallowed.

CONCLUSION

It is the position of the City of Bingham Canyon that all of the evidence shows that rather than be served "justice and equity" will be subverted if the order of the lower Court disconnecting the area here involved is sustained by this Court. In effect, the petitioner, Kennecott Copper Corporation is asking 14 property owners to maintain a road for its almost exclusive use, the use of the road being extensive; to maintain a water system, to be used by Kennecott both in the remaining area and in the disconnected area; to maintain a fire department which will be available for use in both the disconnected area and the remaining area; to maintain a sewer for use in both areas and to provide police protection.

It seems that Kennecott is saying to the people and property owners of Bingham, "you do not fit in our plans for the future and even though we avail ourselves of your services, we do not want to pay our share of expenses because we have purchased all of the property to be disconnected."

We submit the order of the lower Court should be reversed and the application dismissed.

Respectfully submitted,

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