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In the Matter of the Restriction of the Corporate Limits of the City of Bingham Canyon, Utah : Respondent's Brief

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

IN THE MATTER OF THE RESTRICTIONS OF THE CORPORATE LIMITS OF THE CITY OF BINGHAM CANYON, UTAH.

RESPONDENT'S BRIEF

Appeal from a Decree of the Third
District Court, Salt Lake C
The Honorable Stewart M. Hanso

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IN THE

SUPREME COURT

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STATE OF UTAH

IN THE MATTER OF THE RESTRICTIONS OF THE CORPORATE LIMITS OF THE CITY OF BINGHAM CANYON, UTAH.	Civil No. 10456

RESPONDENT'S BRIEF

STATEMENT OF NATURE OF THE CASE

This is an action brought by Petitioners Kennecott Copper Corporation and The Anaconda Company, seeking the disconnection of certain property from the city limits of the City of Bingham Canyon, State of Utah, which action is brought pursuant to Utah Code Ann., Section 10-4-1 (Rep. Vol. 1962).

DISPOSITION OF THE CASE IN THE LOWER COURT

The Trial Court, Judge Stewart M. Hanson presiding, granted the prayer of Petitioners in full and ordered the restriction of the limits of the City of Bingham Canyon,

State of Utah, as prayed, upon a finding that justice and equity so required.

NATURE OF RELIEF SOUGHT ON APPEAL

The Appellant, City of Bingham Canyon, seeks to have the decree restricting the limits of the city reversed and the application of Petitioners dismissed.

STATEMENT OF FACTS

Beginning in 1959, at the behest of property owners within the City of Bingham Canyon, the Petitioner, Kennecott Copper Corporation, embarked upon a program of purchasing property from property owners of that city (R. 32). Sales by the property owners were made willingly, without coercion, and at fair prices (R. 98). At the time of these various sales, assurances were made by Kennecott to the sellers of the property that future purchases would be undertaken for prices proportionate to those involved in the executed sales (R. 41). As a result of this purchasing program, all of the property within the original Bingham Canyon City limits has been purchased by Kennecott with the exception of 14 parcels, all of which remain within the limits of said city after disconnection (R. 34). In total, Kennecott has purchased 207 parcels of property at a total cost of $3,621,860.00, including the approximate sum of $180,000.00 for demolition of buildings on the properties purchased (R. 60).

The property sought to be disconnected is owned exclusively by the Petitioners, Kennecott and Anaconda. The

original area of the City of Bingham Canyon was approximately 324 acres (R. 53). The petition here involved sought to disconnect approximately 90% of this area leaving approximately 30 acres within the restricted limits of the City of Bingham Canyon (R. 53). In the area to be disconnected, there are no inhabited dwellings whatsoever (R. 14). Moreover, the owner of the disconnected property, Kennecott, has stated that it has no plans for future use of said property for residential or commercial purposes (R. 58). The disconnected property will be used only by the petitioners in pursuit of mining operations (R. 59).

Of the 30 acres remaining within the restricted city limits, there are 14 parcels of property owned by residents of Bingham Canyon and others (R. 34). The remainder of this 30 acres, (over 90% thereof) is owned by Kennecott Copper Corporation (R. 63) (Ex. P. 2). Kennecott plans no residential or commercial use of its properties within the restricted city limits (R. 34).

There has been a marked decrease in the population of the City of Bingham Canyon from a total of 3200 people in 1930, to 2834 in 1940, 2569 in 1950, and 1516 in 1960 (R. 14). The present population of the City of Bingham Canyon is 74 people, including two or three transients (R. 50). Of the 74 residents, only 7 are employed at the Bingham Canyon pit, owned and operated by Kennecott Copper Corporation, out of a total employment at the mine of 2757 workers during the month of June, 1965 (R. 63-64). Kennecott Copper Corporation does not depend upon either the

City of Bingham Canyon or its residents for a labor force for the operation of the mine (R. 17).

A portion of the property sought to be disconnected is actually a part of the open pit mine (R. 58). Naturally, Petitioners wish to continue to use said property for mining purposes (R. 58). In addition, other portions of the area to be disconnected are the sites for developmental drilling holes, which are used by the Petitioners in formulating future mining plans (R. 61). The mining usage of such property has been hampered and impeded by virtue of zoning ordinances, construction permits, and other Bingham City legal requirements (R. 61-62). In one instance, an action was instituted by the City of Bingham Canyon against Petitioner Kennecott and its contractor seeking to enjoin them from drilling and mining within a section of Bingham City (R. 61).

The City of Bingham Canyon has surplus funds in its treasury which, at the present time, amount to approximately $98,000.00 (R. 94-95). The budget of Bingham City, for the fiscal year 1965-1966, is approximately $29,000.00 (R. 94). By virtue of the City's surplus and the fact that it receives sufficient funds from other tax sources, the City of Bingham Canyon resolved that no property tax would be levied against city property for the taxable year of 1965 (R. 84). Mayor Dimas, for the City, stated that the City could continue to run for several years without tax revenue by virtue of the surplus, barring some unforeseen emergency (R. 95). The budget for the City of Bingham Canyon has declined substantially over the last two years, (R .94), and

further decreases may be anticipated as the population continues to dwindle.

With minor exceptions, to be noted hereinafter, the City of Bingham Canyon does not extend municipal benefits or services to the area sought to be disconnected (R. 15). The evidence is undisputed that Kennecott Copper Corporation maintains duplicate facilities for virtually all services rendered by the City of Bingham Canyon (R. 55). Thus, Kennecott Copper Corporation does not desire to use City services with the sole exception of the sewer system, which consists of a cement flume into which Bingham Creek flows and into which the residents of Bingham empty their sewage (R. 15, 56). The sewer, which has no disposal plant, (R. 56) was originally built in the early years of the 1930's as a WPA project by the City of Bingham Canyon with financial assistance from Kennecott Copper Corporation (R. 15, 56). Kennecott has been partially responsible for the maintenance of this sewer in the past and will continue to maintain it after disconnection (R. 64).

The Petitioner, Kennecott, and the City of Bingham Canyon presently have a "joint" arrangement with regard to culinary water (R. 57). By virtue of a mutual agreement between the City and Kennecott, the latter supplies a percentage of water to the City. A spokesman for Kennecott stated that this arrangement could continue unchanged after the disconnection (R. 57). However, if the City should refuse or prefer not to furnish its share of these facilities, Petitioner, Kennecott, could provide its own culinary water with the addition of a few pipelines (R.

57). As things presently stand, however, culinary water is not so much a service rendered by the City of Bingham Canyon to the area to be disconnected, but the result of a mutual agreement between the City and the Petitioner (R. 57).

With respect to other services traditionally offered by a city to its residents, the undisputed testimony is to the effect that such services are not needed, required, or usable by the Petitioner in the area to be disconnected. In this regard, Mr. J. P. O'Keefe, General Manager of Utah Copper Division, Kennecott Copper Corporation, stated that, with regard to the property to be disonnected:

> "We have no need for and we do not want and there is no way we can possibly use any of the city services" (R. 35).

To the extent that the few remaining buildings upon the disconnected area require certain services, the Petitioner is able and prefers to provide said services for itself. Chief Engineer Thuli testified as follows in this regard:

> "Question: (By Mr. Evans) And will you explain whether or not the Kennecott Copper Corporation is in need or desires to have any of the services which are ordinarily furnished by the City?
>
> "Answer: (By Mr. Thuli) No. We have almost 100% duplication service for all of our areas and industrial sections; and, therefore, we don't need the services offered by the City of Bingham nor do we desire them" (R. 55).

With regard to police protection, the City of Bingham does provide a policeman who controls traffic within the

city limits (R. 81). As concerns the protection of property and other security matters, however, the Petitioner maintains its own security force which, with the occasional use of the County Sheriff, is sufficient for its needs (R. 57).

With regard to fire protection, although the Bingham City fire department has responded on occasion to fires in the surrounding area, Mayor Dimas of Bingham conceded that the protection had been inadequate (R. 93). Moreover, the Petitioner maintains its own fire protection force, its own volunteer firemen, and fire protective sprinklers in its buildings (R. 58).

ARGUMENT

POINT I.

JUSTICE AND EQUITY REQUIRE THE RESTRICTION OF THE CITY LIMITS OF BINGHAM CANYON.

Respondents would agree with the initial proposition that Utah Code Ann., Section 10-4-2 (Rep. Vol. 1962) presents only one basic criterion as a prerequisite to the restriction of municipal limits:

> "That justice and equity require that such territory or any part thereof should be disconnected from such city or town."

An examination of the Utah cases on the question of municipal disconnection suggests that there is no set definition of "justice and equity" which can be applied with facility in

every case. However, there are numerous factual ingredients which reappear in virtually all of the Utah cases. Thus, "justice and equity" have come to acquire a somewhat specific meaning within the context of municipal severance, which meaning may be elicited from an analysis of the facts of the several Utah cases in point.

The following subpoints constitute an analysis of the various facets typically involved in the Utah municipal severance decisions. Such analysis can ultimately compel only one conclusion: That justice and equity require the restriction of the corporate limits of Bingham Canyon City as prayed by the Petitioner and as granted by the trial court.

A. *The alleged loss of tax revenues is neither factually nor legally sufficient to preclude restriction of corporate limits.*

Shed of surplusage, the case for the Objector can be stated as follows:

> The City of Bingham Canyon objects to the municipal severance because such severance will result in a loss of tax revenue to the City.

Not only is the major portion of the Objector's brief devoted to a discussion of the loss of tax revenues (see Objector's brief pp. 8-10), but the only witness produced by the Objector at trial, Mayor Peter C. Dimas, admitted that the loss of tax revenues together with certain ephemeral, "psychological effects" were the primary reasons for the City's resistance to the petition to disconnect (R. 96-97).

In point of fact, however, the cries of poverty heard from the City of Bingham Canyon are simply not supported by the evidence. Mayor Dimas testified that, prior to the disconnection, the revenue to the City of Bingham Canyon from sales and use tax for the year of 1964 was approximately $28,000.00 (R. 83). It is undisputed that the vast proportion of these sales and use tax revenues, which after disconnection will be paid to the County, derive from Kennecott's operations at the mine (R. 83). Because of this extraordinary sales and use tax income, which amounts to about $2,000.00 per property owner per year within the City of Bingham, the City, unlike most other cities and counties within the State of Utah, has had no need this year to exact a general property tax. And, by virtue of the excessive tax revenues enjoyed by the citizens of Bingham Canyon, the City has been able to accrue a surplus of $98,000.00. Given the rapidly dwindling population, the disconnection of 90% of the City's property, and even a minimal general property tax levy, the City of Bingham Canyon can undoubtedly live out its remaining years in relative prosperity on the surplus of $98,000.00, even without sales and use tax revenues.

Certainly "justice and equity" do not require the situation which has existed by virtue of which 14 property owners profit because of the fortuitous fact that they are located near an important industrial area. "Justice and equity" do not insure such property owners the inalienable right to be free forever from property taxes. And yet, the City (see Objector's Brief, page 9, paragraph 4), claims

that the potential necessity of a general property tax is unjust and inequitable. To the contrary, it is submitted that justice and equity would demand that all property owners, *including Kennecott,* pay a fair share of City expenses through a general property tax.

Furthermore, the Objector certainly stretches the fact when it states (see p. 10 of Objector's Brief) that Kennecott does not want to pay its fair share of expenses. In point of fact, Kennecott as an owner of more than 90% of the remaining property will remain the largest property owner within the restricted city limits, and thus, will pay its fair share for municipal services through the general property tax. Moreover, in addition to taxes, Kennecott will continue to make contributions to the City of Bingham Canyon by way of assistance in the maintenance of the water system and sewage system. It can hardly be claimed, therefore, that Kennecott is abandoning the poor child of Bingham City without revenues and without support. To the contrary, Kennecott does now and will continue to pay a pre-eminently fair share of expenses incurred in the operation of the city and the provision of its services.

Moreover, even if it were true that the City would suffer the alleged loss of tax revenues because of the municipal disconnection, this would not be a sufficient reason to deny the disconnection as prayed. It is only obvious that any reduction in municipal acreage will ultimately result in a loss to the city of property tax revenues. If such a loss of tax revenues were a sufficient reason to preclude severance, there would never be a severance granted. Apparent-

ly sensing this situation, the Supreme Court of Utah has repeatedly held that the deprivation of tax revenues is an insufficient reason to preclude municipal severance. Thus, in *Application of Peterson,* 92 Utah 212, 216, 66 P. 2d 1195 (1937), this court stated:

> "So, also, the mere fact that the town would lose the income derived from the segregated lands is not a suffiicent reason to defeat the action."

Similarly, in the case of *In Re Peterson,* 87 Utah 144, 154, 48 P. 2d 468 (1935), the town alleged that the present taxes were "barely sufficient" to support the town government, but the Court said:

> "The mere fact that the town of Moab would lose its income heretofore derived from the taxation of the lands in question does not justify the refusal of petitioner's application to have his land segregated from the town."

A fortiori, where the City of Bingham Canyon has a fat surplus which, together with normal property taxes, can support the City easily for its forseeable future, the cry of poverty is not a sufficient reason to deny disconnection; particularly where, as here, the Petitioner will continue to be the largest taxpayer in the city even after severance.

B. *There are no direct, substantial, or appreciable municipal benefits conferred upon the area to be disconnected.*

Another factor relied upon by the Objector in its Brief is that the City of Bingham Canyon renders municipal services and benefits to the area to be disconnected, and thus,

justice and equity purportedly require that the petition be denied. Again, however, an analysis of the Utah cases, together with the facts of this case, clearly shows this not to be the case.

By its mere existence, a city tends to create certain benefits for property owners in the vicinity as well as the public in general, but such benefits are not sufficient, within the contemplation of Utah law, to require the retention of such properties within the city's limits. Rather, the Supreme Court of Utah has made it entirely clear that the benefits must be tangible and specific. This, for example, the court has required *"direct and appreciable benefits."* (*In Re Fullmer*, 33 Utah 43, 46, 92 Pac. 768 (1907)) and *"substantial, direct and special benefits,"* (*Howard v. North Salt Lake*, 7 Utah 2d 278, 284, 323 P. 2d 261 (1958)). See also, *In Re Smithfield City*, 70 Utah 564, 568, 262 Pac. 104 (1927) ("direct or appreciable benefit"); *In Re Chief Consolidated Min. Co.*, 71 Utah 430, 443, 266 Pac. 1044 (1928) ("direct and special benefit") (dissenting opinion).

What then are the direct, special, substantial and appreciable benefits conferred by the City upon the area to be disconnected? Basically, the following "benefits" are alleged by the Objector as being sufficient to preclude severance: Water, sewer, roads, police protection, fire protection, and garbage collection. But a closer analysis of the facts suggests that these are either: (1) not provided by the City at all, or (2) if available, are unnecessary and duplicative by virtue of the Petitioner's own facilities.

Water and sewer — These benefits are not in fact provided by the City to the Petitioner. The undisputed evidence is to the effect that the sewer system is little more than a concrete flume into which a natural creek flows. The Petitioner, Kennecott Copper Corporation, originally assisted in the construction of this facility, it has been jointly responsible for the maintenance thereof to the present date, and it will continue this service in the future (R. 64). Clearly, this is no more a service furnished by the City to the Petitioner than it is a service furnished by the Petitioner to the City. In no event can this be properly described as an appreciable, special or direct benefit accorded by the City to the property to be disconnected.

Much the same thing is true with regard to the water system. The City and the Petitioner have a joint agreement with respect to culinary water by virtue of which Petitioner provides water to the City. Again, there has been a joint responsibility for the maintenance of the system (R. 57), and it clearly cannot be said, as a net proposition, that the City furnishes an appreciable or special benefit to the property in this regard. Moreover, the evidence shows that, if need be, the Petitioner could supply its own water with facility (R. 57).

Roads — The Objector has continually stressed the significance of the fact that tourists and workers traveling to the mine must use the Bingham City road. Thus, the argument goes, since the City maintains the road, it is unjust and inequitable for the Petitioner to disconnect part of its property from the City limits. That this is a non-

sequitur is aptly demonstrated by the fact that tourists and workers traveling to the mine must also drive through Copperton, Magna, Lark, and Salt Lake City to reach their destination. Demonstrably, all of these cities should, under Objector's theory, have an equal opportunity to include the mine within their boundaries.

Moreover, it has not been suggested that City road maintenance will continue in the area to be disconnected, and thus this is not a service which is relevant in determining the propriety of severance.

Less than two miles of road will remain within the City after disconnection. The obligation to maintain this road is one owed to the public in general and is not a sufficient ground to deny disconnection. This court has expressly so held in another case, *In Re Chief Consolidated Mining Co.*, 71 Utah 430, 266 Pac. 1044 (1928) wherein the Court stated:

> "The main road running through the inhabited area was constructed, and is kept in repair, by the City, and there is also some testimony that the road leading from the inhabited portion of Mammoth City to one of the areas designated 3 was, to a limited extent, kept in repair by the municipality."

After noting such "benefits" existed along with others, the Court concluded:

> "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 the Petitioners their

claim for severance of the area from the boundaries of the municipality."

Police and Fire Protection — As an initial proposition, these municipal services are rendered only on a *de minimus* basis. The "police protection" consists of a patrolman who performs essentially a traffic control function within the inhabited portion of the City. The fire protection consists of a volunteer department, which renders much of its performance outside of the city boundaries (R. 91) and which, measuring effectiveness by fire losses incurred, has not been markedly successful (R. 93). The case of *In Re Chief Consolidated Mining Co., supra.,* is again pertinent inasmuch as the Court, after noting the existence of a similar fire protection service, concluded that it and other analogously indirect benefits "are not alone sufficient, in our judgment, to deny the petitioner's their claim for severance of the area from the boundaries of the municipality."

Moreover, the Petitioner does not need or desire police and fire protection on the area to be disconnected inasmuch as it has its own facilities for these needs. Again, the Utah authority on the matter indicates that the owners of uninhabited property, seeking severance from a municipality, have the right to refuse available city services if they prefer to provide for themselves. In two Utah cases, Petitioners could have made use of city water, but found it more convenient to obtain it elsewhere. In both instances, this Court granted severance presumably on the theory that available services, which are not required or desired, are not sufficient to render severance unjust or inequitable. *Howard* v. *Town of North Salt Lake,* 7 Utah 2d 278, 323 P.

2d 261, (1958); *Application of Peterson*, 92 Utah 212, 66 P. 2d 1195 (1937). The same duplication exists with regard to garbage collection (R. 16).

In summary, therefore, it would appear that the services provided by the City to the disconnected area are far short of meeting the descriptions of substantial, special, direct or appreciable. For the most part, they are services which merely redound to the benefit of the public in general and which have no direct or special application to the subject property. Clearly Petitioner's property is not benefited appreciably by being included within the City limits of Bingham Canyon. Therefore, it is submitted that justice and equity, as defined in the Utah cases, would demand severance. See, e.g., *Howard* v. *North Salt Lake*, 7 Utah 2d 278, 323 P. 2d 261, (1958).

C. *There is not such a connective and interdependent relationship between Bingham City and the area to be disconnected as would, in justice and equity, dictate their perpetual unity.*

Objector has cited and relied upon the Utah case of *In Re Chief Consolidated Mining Company*, 71 Utah 430, 266 Pac. 1044 (1928). While there are some superficial similarities between that case and the instant one, it is clearly distinguishable on the facts, so far as it holds that disconnection should not be granted. That case involved a petition by the mining company to disconnect its properties from the small mining town of Mammoth City. With regard to municipal benefits and improvements, the evidence was similar to that involved in the instant case in that there

were no substantial benefits, and the court ultimately concluded the benefits were insufficient to deny the Petitioner's claim for severance (71 Utah at 434). However, the majority in that decision found a different type of benefit extended by the City to the mining company — it provided the only convenient residence for mine workers. Thus, the court noted:

> "It quite definitely appears that a large percent of the men residing in Mammoth City are employees of the mines located within the boundaries of such city. The fact that the workmen needed to carry on the mining operations have a place to reside near the mines *could not be otherwise than a direct benefit to the mine owners.*"

In the court's view, the relationship between the mine owners and the city was of a symbiotic nature — i.e. but for the city, the mines could not operate by virtue of a lack of workers, and, conversely, but for the mine the city would have no reason to exist. Thus, the court concluded:

> "Mammoth City, as the testimony shows, has a population of approximately 1,000 people. The interests of the mining companies or rather the mines operated within the municipality, are so closely related and dependent upon the labor thus gathered together that they ought not and cannot in equity and justice, disclaim any interest in supporting these necessary conveniences."

Thus, having found that the mine owners had an obligation to help support the city, the court reversed the trial court and denied severance of 3 parcels, and granted severance of 1. Justices Cherry and Hansen dissented arguing

that all of the parcels should have been severed as prayed. It is submitted that the Mammoth City decision is clearly distinguishable from and clearly not controlling in the instant case on the following grounds:

(1) There is no evidence whatsoever in the instant case that there is an interdependent relationship between the petitioners and the City of Bingham Canyon. Nor is there any evidence that the City of Bingham Canyon offers any benefit to the mine by virtue of being a residential area for its laborers. To the contrary, of some 2500 mine workers, only seven are presently residing in the city of Bingham. Certainly, it cannot therefore be claimed that the mine depends upon Bingham as a labor source.

(2) There is no evidence in the instant case that after disconnection, the petitioners will discontinue their contributions to and support of the City of Bingham Canyon. The evidence shows that Kennecott Copper Corporation, after disconnection, will own approximately 90% of the real property within the restricted limits of Bingham City. As a major property owner, Kennecott will be called upon to contribute substantially to support the services offered by Bingham. Moreover, by virtue of joint agreements between Kennecott and Bingham, the former will continue to supply maintenance and assistance with regard to the sewer system and the water system which serve the City of Bingham Canyon. Therefore, the petitioners

here do not, in the words of the Court, "disclaim any interest in supporting these necessary conveniences."

(3) It is clear that the holding in the Mammoth City case rests upon the theory that severance should be denied, given a dependent relationship, where severance would result in a loss of tax revenue to the city. If this be the case, it is submitted that the case has been overruled by two subsequent cases which have clearly held that the loss of tax revenues is insufficient, in justice and equity, as a basis for denying severance. *Application of Peterson,* 92 Utah 212, 66 P. 2d 1195 (1937); *In re Peterson,* 87 Utah 144, 48 P. 2d 468 (1935).

(4) Finally, it is submitted that the recent case of *Howard* v. *North Salt Lake,* 7 Utah 2d 278, 323 P. 2d 261 (1958) is more closely in point. In that case, the court noted that only two employees of 229 employed in an industry in the disconnected area lived in the town itself. Impliedly, the Court concluded that this was hardly sufficient to create a Mammoth City-like symbiotic relationship. *A fortiori,* when only seven employees of some 2500 are residents of Bingham, the symbiotic relationship does not exist and severance should therefore be granted.

Since, sans the interdependency found in the Mammoth City case, said case is factually quite similar to the instant case, it is submitted that that case can be cited in favor of

severance in the instant case, since there, as here, the benefits were insufficient, alone, to preclude severance.

D. *The totality of facts here involved, in justice and equity, dictate severance of the subject property.*

In order to attain a workable application of the concepts of "justice and equity" in municipal severance cases, it is imperative that the nature and function of a municipal corporation should be analyzed. It seems beyond dispute that the major function of cities is to provide a local government to administer and provide services to a population center. It seems also clear that some density of residential population is necessary to make the existence of a municipal corporation efficient or necessary. Thus, for example, in order to incorporate a city or town, there must be a petition by at least 100 real property taxpayers within the proposed city limits. Utah Code Ann. Section 10-2-1 (Rep. Vol. 1962). It is interesting to note, in passing, that there are only 15 property owners within the original boundaries of Bingham City, and thus, were this an incorporation proceeding, rather than one for disconnection, a municipal government could not even be created. The unsuitability of including uninhabited, nonresidential properties within city limits has also been recognized by this Court in its decisions, which, without notable exception, have allowed severance where the property involved was uninhabited and received no appreciable municipal benefits. See e.g. *Howard* v. *North Salt Lake,* 7 Utah 2d 278, 328 P. 2d 261 (1958); *In Re Peterson,* 87 Utah 144, 48 P. 2d 468 (1935);

Christensen v. *Town of Clearfield,* 66 Utah 455, 243 Pac. 367 (1926). And, as stated by the Supreme Court of Iowa, in *McKeon* v. *Council Bluffs,* 221 N. W. 351, (Iowa 1928):

> "The purpose of municipal incorporation is to furnish local self government and cooperative service. The needs of the municipality and the benefits to the property and residents thereon are the sole justification for inclusion of land within municipal limits."

Since the land herein involved is wholly uninhabited, is not needed for the future growth or development of Bingham City, does not receive appreciable municipal benefits, and is not needed by the municipality, justice and equity would seem to require its severance. The words of Justice Hansen, dissenting in part in the case of *In re Chief Consolidated Mining Co.,* are appropriate:

> "When property owners seek to have their property disconnected from a city, under our laws, or laws similar thereto, inquiry in the adjudicated cases is directed toward the results based upon a determination of these propositions: Does the property sought to be excluded from the city receive any direct and special benefit resulting from the exercise of the powers granted to the city? Is it probable that the future growth and expansion of the city will require the territory sought to be disconnected? Is the property sought to be disconnected necessary for the use of the city? If the answers to these three propositions are all in the negative, it is quite generally, if not uniformly, held, and properly so, that equity and justice require that the request of the property owners be granted and the

property disconnected from the city." (71 Utah 430, 440, 266 Pac. 1044 (1928)).

Nor can the Court, in its consideration of justice and equity, ignore the obvious public interests involved in this case. The present boundaries of Bingham City, which stretch far outside the inhabited section thereof (see Ex. P-2), have resulted in the creation of substantial obstacles to the industrial development of the area involved. Mining operations may not be carried on with facility by virtue of zoning ordinances, construction permits, and other difficulties which arise from the inclusion of this area within the city limits. It seems questionable, that justice and equity would require the frustration of an important commercial and industrial development within the State of Utah for the sake of 14 property owners.

Nor should this court ignore the public interest in the use and sales taxes presently created by the Kennecott mining complex. As things presently stand, the City of Bingham Canyon receives a large amount of these taxes — some $28,000.00 this year. It would seem more logical and more conducive to public well-being that this revenue be distributed throughout the county, which county contributes numerous conveniences and necessities to the mining complex.

Finally, it should be noted that this is not a case where the Petitioners are seeking to avoid their responsibilities to financially support Bingham City. As noted by the Objector, in its brief, the taxes of Kennecott Copper Corporation would not decrease by virtue of this disconnec-

tion, there being at present no property tax within the city. As a matter of fact, since after disconnection a general property tax will probably be levied within the remaining city limits, Kennecott may incur an increase in tax obligations by virtue of the disconnection.

CONCLUSION

In summary, therefore, it is submitted that justice and equity require the severance of the subject property from the city limits of the City of Bingham Canyon, Utah, for the following reasons:

(1) The subject property is not suitable for habitation or residential use, and thus is not the type of property which normally belongs in a city, it being remote from the City and not required for its future growth and development.

(2) The Petitioners will continue to financially support the City of Bingham Canyon through property taxes and through contributions to the maintenance of the sewer and water systems.

(3) The disconnection will allow the progression of industrial and mining usage of the property to the ultimate betterment of the public in general.

(4) The city renders no substantial, appreciable, direct or special benefits to the area sought to be disconnected.

(5) The public in general, rather than 74 members thereof, should enjoy the tax revenues from the mining operation herein involved.

Respectfully submitted,

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