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S. Baumgaertel and P. Bennion v. Salt Lake County : Unknown

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

LAW Y

14550 A

OF THE STATE OF UTAH

S. BAUMGAERTEL and
P. BENNION,

Plaintiffs and
Respondents,

-vs-

SALT LAKE COUNTY, a body
corporate and politic of the
State of Utah; W. STERLING
EVANS, Salt Lake County
Clerk; RALPH Y. McCLURE, Salt
Lake County Commissioner;
PETE KUTULAS, Salt Lake
County Commissioner; WILLIAM
DUNN, Salt Lake County
Commissioner; GERALD HANSEN,
Salt Lake County Auditor;
and ARTHUR MONSON, Salt Lake
County Treasurer,

Defendants and
Appellants.

Case No. 14550

An Appeal From The Summary Judgment Entered
In The Third Judicial District Court,
In And For Salt Lake County, State Of Utah,
The Honorable Gordon R. Hall, Judge, Presiding

FILED

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Clerk, S. - -

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IN THE SUPREME COURT OF THE STATE OF UTAH

S. BAUMGAERTEL and
P. BENNION,

Plaintiffs and
Respondents,

-vs-

SALT LAKE COUNTY, a body
corporate and politic of the
State of Utah; W. STERLING
EVANS, Salt Lake County
Clerk; RALPH Y. McCLURE, Salt
Lake County Commissioner;
PETE KUTULAS, Salt Lake
County Commissioner; WILLIAM
DUNN, Salt Lake County
Commissioner; GERALD HANSEN,
Salt Lake County Auditor;
and ARTHUR MONSON, Salt Lake
County Treasurer,

Defendants and
Appellants.

Case No. 14550

BRIEF OF DEFENDANTS-APPELLANTS
SALT LAKE COUNTY, ET AL.

NATURE OF CASE

This is an action against Salt Lake County, et al.,
challenging the legality of employing relatives of Salt Lake
County Justices of the Peace as Deputy Salt Lake County Clerks.
The plaintiffs-respondents seek a judicial interpretation of the

language of Article VIII, Section 15 of the Constitution of Utah.

DISPOSITION IN LOWER COURT

The lower court denied defendants'-appellants' motion for summary judgment and granted plaintiffs'-respondents' motion for summary judgment.

RELIEF SOUGHT ON APPEAL

Defendants-appellants seek reversal of the lower court's decision.

STATEMENT OF FACTS

On December 1, 1975, the Board of Salt Lake County Commissioners adopted a program that abolished the old method of paying justices of the peace a fee for each case disposed of. That program called for the salarizing of the local justices of the peace, placing their employee clerks on the county payroll, and absorbing all of the overhead costs of the various precinct courts.

On January 14, 1976, the Board of Salt Lake County Commissioners approved and signed the personnel action request forms submitted by the Salt Lake County Clerk, which included

the names of five wives and two daughters-in-law of local justices of the peace who had previously worked as clerks in the various precinct courts.

At the time this action was filed, all of subject related employees were assigned to the precinct court in which the related justice of the peace presided.

ARGUMENT

POINT I

ARTICLE VIII, SECTION 15 OF THE CONSTITUTION OF UTAH SHOULD BE CONSTRUED AS A WHOLE AND IN LIGHT OF THE GENERAL PURPOSES IT WAS INTENDED TO SERVE, AND SO AS TO ACCOMPLISH THAT OBJECTIVE.

This Court has on many occasions expressed its view that statutes (and constitutional provisions) should be looked at as a whole and in light of the general purposes they were intended to serve, and they should be so interpreted as to accomplish that objective. Andrus v. Allred, 17 U.2d 106, 404 P.2d 972 (1965).

Article VIII, Section 15 of the Constitution of Utah provides:

"Sec. 15. [Judges shall not appoint relatives to office.]

No person related to any judge of any court by affinity or consanguinity within the degree of first cousin, shall be appointed by such court or judge to, or

employed by such court or judge in any office or duty in any court of which such judge may be a member."

It is submitted that the general purpose for which this constitutional provision was enacted was to prohibit a judge of this state from hiring a close relative as an employee of the court of which he is a member and paying said relative with public monies. The potential for abusing the public trust by allowing such activity to go unchecked is obvious.

The situation in this case is not, however, one that offends the mandate of Article VIII, Section 15. All of the named employees were hired--not by the court or by the justice of the peace--but by the Salt Lake County Clerk, the defendant W. Sterling Evans. As employees of the County Clerk's Office, they may be assigned to a variety of duties at the discretion of the Clerk. They need not be assigned to the precinct court where a relative of theirs is the justice of the peace. They are supervised not by the justice of the peace, but by the county clerk. The justices of the peace of Salt Lake County had no part in the hiring of the employees for the ten precinct courts.

The named employees must successfully pass a merit examination before they can be hired on in a permanent position. Therefore, they must meet the minimum qualifications of the position. This, then, requires of the named employees the same

degree of competency as is required for other merit employees of similar grade and similar duties.

It is therefore submitted that the favoritism and potential abuses of nepotism with regard to the named employees does not exist and, consequently, the provisions of Article VIII, Section 15 of the Constitution of Utah do not apply in this case.

POINT II

ARTICLE VIII, SECTION 15 OF THE CONSTITUTION OF UTAH CLEARLY DOESN'T APPLY TO THE FACTS OF THIS CASE.

The key words in this section are as follows:

"No person related to any judge of any court . . . shall be appointed . . . or employed by such court or judge in any office or duty in any court of which such judge may be a member." (Emphasis added.)

The named employees were neither appointed nor employed by "such court or judge". These individuals were appointed and are currently employed by the Salt Lake County Clerk. The courts or judges in this case were entirely relieved of their previous duties of providing clerical and administrative support for the functioning of the justice of the peace system in Salt Lake County. When the several justices of the peace lost their ability to appoint or employ whomever they wished in their

precinct court, the provision of Article VIII, Section 15 of the Constitution became inapplicable.

POINT III

ASSUMING, WITHOUT CONCEDEDING, THAT THE NAMED RELATIVES CANNOT BE EMPLOYED IN THE SAME PRECINCT COURTHOUSE, NOTHING SHOULD PRECLUDE THE COUNTY CLERK FROM EMPLOYING THEM IN OTHER PRECINCT COURTHOUSES WHERE A RELATED JUSTICE DOES NOT PRESIDE.

Assuming, arguendo, that the subject constitutional provision applies to the named employees, it should not preclude the county clerk from employing, for example, Mrs. Conradsen as a clerk in Precinct No. 5 which is presided over by Justice of the Peace Henry Price.

The constitutional proscription deals only with the employment of a person in a court of which a related justice of the peace is a member.

In the case of the ten precinct courts of Salt Lake County, only one justice of the peace may be elected per precinct, whereas ten are currently elected to the Third District Court bench and five currently elected to the Salt Lake City Court bench.

It is submitted that each precinct court of Salt Lake County is an independent court, the justice of which is without jurisdiction to try cases outside of his own precinct. Dillard v. District Court of Salt Lake County, 69 U. 10, P. 1070 (1926).

Therefore, an elected justice of the peace is not a member of any other precinct court and it therefore follows that a relative of one justice may be employed as a clerk in another precinct court.

POINT IV

ANALOGOUS PROVISIONS OF SECTION 52-3-1, UTAH CODE ANNOTATED, 1953, WOULD NOT PRECLUDE THE EMPLOYMENT OF THE NAMED EMPLOYEES.

An accepted aid to the interpretation of statutes and constitutional provisions is reference to those statutes which deal with the same person, thing or class in order to determine the real intent of the language in question. See 82 C.J.S. Section 336, pp. 801-808 and accompanying citations.

Section 52-3-1, Utah Code Annotated, 1953, provides:

"52-3-1. Employment of relatives prohibited--Exceptions.--It is unlawful for any person holding any position the compensation for which is paid out of public funds to employ, appoint, or vote for the appointment of, his or her father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law in or to any position or employment, when the salary, wages, pay or compensation of such appointee is to be paid out of any public funds. It is unlawful for such appointee to accept or to retain such employment when his initial appointment thereto was made in contravention of the foregoing sentence

by a person within the degrees of consanguinity or affinity therein specified having the direct power of employment or appointment to such person, or by a board or group of which such person is a member.

The provisions of this section shall not apply among others to the following employment situations:

* * *

(c) Where the employee or appointee was or is eligible or qualified to be employed by a department or agency of the state of Utah or a political subdivision thereof as the result of his compliance with civil service laws or regulations and merit system laws or regulations or as the result of a certification as to his qualification and fitness by a department, agency or subdivision of the state authorized so to do by law.

(d) Where the employee or appointee was or is employed by the employing unit because he was or is the only person available, qualified or eligible for the position."

It is submitted that the above cited section of our state statutes sheds a great deal of light onto the issue at hand. To be in contravention of the state nepotism statute, the appointing authority must "employ, appoint, or vote for the appointment of" a relative. This is not the case in this action. The related justices of the peace played no part in the employment or appointment of any of the employees of the County Clerk's Office.

Further, the state law specifically recognizes merit system laws and regulations and that persons qualified thereunder

may be employed in the same agency as a relative. Each of the employees named in this action are under the merit system rules and regulations and must qualify for the position prior to their being permanently employed. Also, each of the named employees was appointed because they were the only persons available, qualified and eligible for the new clerical positions.

CONCLUSION

It is respectfully submitted that the language of the state nepotism law and Article VIII, Section 15 of the Constitution of Utah do not preclude the continued employment of the named related employees as Deputy Salt Lake County Clerks.

Respectfully submitted,

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