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State of Utah v. Salt Lake City Public Board of Education : Reply Brief of Appellant

Utah Supreme Court

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Walter L. Budge; Robert S. Campbell, Jr.; Rex J. Hanson; Attorneys for Appellant;

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH, by and
through its ROAD COMMIS-
SION,

Appellant,

vs.

SALT LAKE CITY PUBLIC
BOARD OF EDUCATION,

Respondent.

Case No.
9424

REPLY BRIEF OF APPELLANT

WALTER L. BUDGE,
Attorney General,
ROBERT S. CAMPBELL, JR.,
Assistant Attorney General,
REX J. HANSON,
Special Assistant
Attorney General,
Attorneys for Appellant.

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PRELIMINARY STATEMENT

By reason of the respondent's failure and refusal in its brief to meet the issues and questions of law germane to and raised in this interlocutory appeal, and due to new matters set forth in the brief of the Board of Education not discussed in the initial brief of the State Road Commission, it is deemed appropriate and expedient to file this reply brief in order to amplify

and expatiate the grounds for reversal of the lower court's order denying the State Road Commission's motion for summary judgment.

STATEMENT OF POINTS

POINT I.

IN REPLY TO POINT I OF THE BOARD OF EDUCATION'S BRIEF, THE LAWS OF UTAH ARE SILENT AS TO THE PAYMENT OF COMPENSATION FOR THE CHANGE IN USE OF PUBLIC PROPERTY AND ITS TRANSFER FROM ONE AGENCY OF STATE TO ANOTHER.

(A) CHAPTER 34, TITLE 78, UTAH CODE ANNOTATED 1953, HAS APPLICATION ONLY TO "PRIVATE" PROPERTY, PURSUANT TO ARTICLE I, SECTION 22, OF THE UTAH CONSTITUTION.

POINT II.

THE CASE CITED BY THE RESPONDENT IN ITS BRIEF DOES NOT BEAR UPON THE MERITS OF THE ISSUE RAISED IN THE CASE AT BAR.

ARGUMENT

POINT I.

IN REPLY TO POINT I OF THE BOARD OF EDUCATION'S BRIEF, THE LAWS OF UTAH ARE SILENT AS TO THE PAYMENT OF COMPENSATION FOR THE CHANGE IN USE OF PUBLIC PROPERTY AND ITS TRANSFER FROM ONE AGENCY OF STATE TO ANOTHER.

(A) CHAPTER 34, TITLE 78, UTAH CODE ANNOTATED 1953, HAS APPLICATION ONLY TO "PRIVATE" PROPERTY, PURSUANT TO ARTICLE I, SECTION 22, OF THE UTAH CONSTITUTION.

The brief of the Board of Education makes some mention of the fact that the initial brief of the State Road Commission in this cause, fails to take into account statutory legislation of the State of Utah, specifically, Title 78, Chapter 34, Section 1, et seq., Utah Code Annotated 1953; that this legislation is to be considered as directly in point and bearing upon the issues of whether or not compensation must be paid by one agency of state to another for the appropriation of public property for a different public use, said property being held by the latter agency in a governmental capacity; that the absence of discussion by the State Road Commission in its brief of these statutes is a

fatal defect for which the ruling of the lower court should be sustained. Respondent proceeds in its brief, on page 3 thereof, with a purpose that serves nothing more than to take up space, to discuss various sections of the Utah Code dealing specially with eminent domain (78-34-1, et seq.) The apparent intent of respondent was to indicate that the statutes dealing with the condemnation, by eminent domain processes, of private property should control in the case at bar. It is submitted that an analysis of these statutes reveals the blundering inaccuracy of this position and further evidences the fact that the Legislature intended and specifically provided that such laws have application only to the acquisition of private property.

The State Road Commission, in its original brief, did not devote discussion to the statutes on eminent domain relating to the acquisition of private property for the elementary reason that such statutes have no connection with the instant situation. As support for this position, it is noted that 78-34-1, Utah Code Annotated 1953, sets forth the uses declared public in nature, and subject to the exercise of eminent domain. 78-34-2, Utah Code Annotated 1953, lists the interests that may be acquired in property subject to eminent domain processes. 78-34-3, Utah Code Annotated 1953, is conclusive on the point that the legislative intent under Chapter 34 of Title 78, was directed only toward the expropriation of *private* property, for said section specifically delimits the operation

of Chapter 34 to acquisition of private property interests.

Said section provides in part:

“The *private* property which may be taken under this chapter includes:

* * * *

“(6) All classes of *private* property not enumerated may be taken for public use when such taking is authorized by law.” (Emphasis added.)

Section 78-34-3 sets the record clear that Chapter 34 of the Utah Code was enacted to supplement the declaration of policy in this State announced under Article I, Section 22 of the Utah Constitution, which in turn states:

“Private property shall not be taken or damaged for public use without just compensation.”

The argument is not acceptable that the Board of Education in holding the Franklin School property, fits within the meaning of 78-34-3, or any provisions thereof, for the section, by definition and context, has application and relates to property held by a private individual in a private capacity and to property held and used by an agency of government in its private, proprietary and individual capacity; said section further requires that compensation be paid for

property held by a private corporation, the use of which has been declared to be public in nature, to-wit, facilities of a privately owned public utility. In no event does 78-34-3, or any of its provisions, relate to public property held by a public agency pursuant to a governmental function and obligation.

Chapter 34 of Title 78 of the Utah Code sets forth the rules of procedure governing the acquisition of private property by condemnation. in addition to proclaiming conditions precedent to the taking a private property for a public improvement. It has no effect upon the appropriation of public property held in a public capacity, nor does it determine, in any manner, whether compensation shall be paid for the change in use of publicly owned property. It must be of some interest to note that the respondent herein, in its dissertation on the laws of Eminent Domain under Chapter 34, Title 78, fails to mention that 78-34-3 thereof, restricts the operation of the entire Chapter 34 to the expropriation of *private* property. This omission is conspicuous and somewhat revealing of the merits of respondent's argument.

In arriving at a decision of what property constitutes and comprises private property within the boundaries of Title 78, Chapter 34, reference is made to the arguments and authorities under Point I of the initial brief of the appellant herein. It is respectfully submitted that the overwhelming weight of authority in

the United States supports the proposition that the property maintained by the Board of Education, otherwise referred to as the Franklin School facility, is held in a governmental capacity and that such constitutes public property, as distinguished from private property in the truest form.

The State Road Commission does not advance the argument in this case that the Legislature may not provide for the transfer of compensation from one public agency to another for the use by the former agency of public property previously utilized by the latter. The Constitution and articles thereunder are regarded and interpreted in this state as a limitation upon the power of the Legislature and the Legislature may act so long as it does not contravene constitutional provisions. *Spence v. Utah State Agricultural College*, 119 U. 104, 225 P. 2d 18; *Scott v. Salt Lake County*, 58 U. 25, 196 P. 1022; *State of Utah v. Waldram*, 64 U. 406, 231 P. 431; 16 C. J. S. 189, Constitutional Law, Sec. 70 (a).

In point of fact, however, the Utah Legislature has not enacted legislation in respect to the issues raised in this appeal; and absent such legislation, there is no requirement, under law, that compensation be paid for the change in use of public property. A reading of the brief of the Board of Education results in the simple conclusion that it rests its case, in whole and in part, upon the esoteric theory that Chapter 34 of Title 78,

and the individual sections thereunder, are controlling in the case at bar. This result is supported neither by the most liberal rules of statutory construction nor by the statutes themselves, for 78-34-3 restricts the application of Chapter 34 to private property particularly, and neither Article I, Section 22 of the Utah Constitution nor Chapter 34 of Title 78 allow for the payment of compensation from one public agency of state to another for the change in use of public property held in a public or governmental capacity.

POINT II.

THE CASE CITED BY THE RESPONDENT IN ITS BRIEF DOES NOT BEAR UPON THE MERITS OF THE ISSUE RAISED IN THE CASE AT BAR.

The Board of Education, on page 11 of its brief, advocates that the case of *State v. Cooper*, 24 N. J. 261, 31 A. 2d 756, controls the disposition of the instant suit. Therein the Highway Department of the State of New Jersey sought to acquire a "public square", devoted to recreational utilization, for a highway facility, and the Supreme Court of New Jersey ruled that compensation was required.

It should be queried whether or not the *Cooper* case is factually similar with the case presently before this Court? The quick and proper answer is, of course, in the negative, for the property held by the con-

demnee, the Borough of Fort Lee, was for a private and proprietary use, and was not maintained or sustained by the Borough in the execution of an inherent function of government.

State v. Cooper is not indistinguishable from the case cited by the appellant in its initial brief on page 11, the *Village of Canajoharie, Claimant, v. the State of New York*, 13 Misc. 2d 293, 177 N. Y. S. 2d 799, Affirmed 8 App. Div. 2d 656, 184 N. Y. S. 2d 871. Both cases are explained upon the basis that the use of the property by the local public agency was one that was traditionally private and non-governmental.

The respondent, in its discussion of the *School District of the Borough of Speers v. Commonwealth of Pennsylvania, through its Highway Department*, 383 Pa. 205, 117 A. 2d 702, misses the mark when it cites the decision as awarding compensation for the taking of public property. Although the effect of the Pennsylvania decision is explored more completely in the initial brief of the appellant on pages 17 and 18, it is safe to say that the Pennsylvania Supreme Court, after a determination that the "Commonwealth may take property of a political subdivision or agency without payment therefor, the right to compensation in such cases being only a matter of grace or allowance by

the Legislature," rested its decision upon a particular statute requiring payment to all owners of property abutting a highway facility for proximity damages accruing thereto.

The State of Utah has no comparable legislation and as has been pointed out heretofore, Chapter 34 of Title 78 of the Utah Code does not contain the salve and panacea advocated by the Board of Education. No statute or legislation in force in the State of Utah allows or provides for the payment for the change in use of public property held in a public capacity.

The Board of Education cites not a single decision within or without this jurisdiction wherein compensation was required for the appropriation of public property from a public agency acting and maintaining such property in a public and sovereign capacity. It remains to be the case that the respondent rests its presentation upon a chapter of the Utah Code which was enacted to control the appropriation of private property, statutes which have no relevancy to the issues raised herein, and which only compliment the restriction imposed by the Constitution, Article I, Section 22.

CONCLUSION

It is asserted and respectfully submitted that a finding of this Court is required, that compensation is not due said Board from the State Road Commis-

sion, another agency of state, for the change in use of public property, referred to herein, as the Franklin School property.

WALTER L. BUDGE,

Attorney General,

ROBERT S. CAMPBELL, JR.,

Assistant Attorney General,

REX J. HANSON,

Special Assistant

Attorney General,

Attorneys for Appellant.

? Is condemnation of public property possible without specific authorizing legislation

