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Jesse B. Stone v. Salt Lake City, a municipal corporation, J. Bracken Lee, Joe L. Christensen, L. C. Romney, T. I. Guerts and J. K. Piercey, its Commissioners, Chamber of Commerce of Salt Lake City, and Gus P. Backman, its Secretary, Zions Securities Corporation, a corporation, and the Corporation of the President of the Church of Jesus Christ of Latter-day Saints, a corporation sole : Brief of Respondent

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UTAH SUPREME COURT

BRIEF

FILE NO. **9268D-SLC**

Court

of the State of Utah

JESSE B. STONE, *Plaintiff and Appellant,*

vs.

SALT LAKE CITY, a municipal corporation, **J. BRACKEN LEE**, **JOE L. CHRISTENSEN**, **L. C. ROMNEY**, **T. I. GEURTS** and **J. K. PIERCEY**, its Commissioners, **CHAMBER OF COMMERCE OF SALT LAKE CITY**, and **GUS P. BACKMAN**, its Secretary, **ZIONS SECURITIES CORPORATION**, a corporation, and **THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**, a corporation sole,

Defendants and Respondents.

Case No.
9268

**APPEALED FROM THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, UTAH**

Brief of Defendants and Respondents

Salt Lake City, a municipal corporation; **J. Bracken Lee**, **Joe L. Christensen**; **L. C. Romney**; **T. I. Geurts** and **J. K. Piercey**, its Commissioners

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In the Supreme Court of the State of Utah

JESSE B. STONE, *Plaintiff and Appellant,*

vs.

SALT LAKE CITY, a municipal corporation, J. BRACKEN LEE, JOE L. CHRISTENSEN, L. C. ROMNEY, T. I. GEURTS and J. K. PIERCEY, its Commissioners, CHAMBER OF COMMERCE OF SALT LAKE CITY, and GUS P. BACKMAN, its Secretary, ZIONS SECURITIES CORPORATION, a corporation, and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation
sole,

Defendants and Respondents.

Case No.
9268

APPEALED FROM THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, UTAH

Brief of Defendants and Respondents

Salt Lake City, a municipal corporation; J. Bracken Lee, Joe L. Christensen; L. C. Romney; T. I. Geurts and J. K. Piercey, its Commissioners

STATEMENT OF CASE

This is an attempt by the plaintiff herein to halt the proposed sale of city-owned property at First South and State Streets in Salt Lake City by the defendant Salt Lake City acting through its Board of Commissioners in accordance with a proposal made by the Salt Lake City Chamber of Commerce on behalf of Zions Securities Corporation.

It is common knowledge that a new federal building for Salt Lake City is being proposed for the site and that the ultimate purchaser will be the United States of America. When it became generally known that this corner was being considered as a site for a federal building, the Board of Commissioners scheduled a public hearing on December 29, 1959, at which the question of the adequacy of the structures on this property was fully and carefully discussed, and it was the general consensus that such buildings were inadequate and obsolete. Thereupon, on January 21, 1960, the Board of Commissioners passed a resolution which declared the structures to be inadequate and obsolete for the present and future needs of Salt Lake City. The resolution also declared that the facilities should be replaced on a new situs more centrally located in relation to the other offices of city government.

The Board of Commissioners thereupon determined that the property should be sold and advertised for bids. Only the bid of the Chamber of Commerce was received, and such bid was duly acted upon by the Board of Commissioners and the contemplated sale of the property is to the Chamber of Commerce or Zions Securities Corporation for transfer to the

United States, and it is contemplated that a federal building will be erected thereon.

The trial court upheld the proposed sale of this property and the method whereby it was sold 'by granting defendants' motions to dismiss, stating respecting these defendants as follows:

" . . . Although the sale of the same might have been handled in a different manner, still Salt Lake City through its Board of Commissioners and Legal Department handled the matter in the manner in which they thought proper, and if some other procedure than was used by them should be used, then the Legislature should so provide . . ."

These defendants will not attempt to answer individually all the points raised in appellant's brief, for it is our contention that all the points raised in appellant's brief are so much window-dressing to the real issues in this case concerning these defendants and that these real issues are:

(1) Does the City Board of Commissioners, acting in an official meeting, have the power to sell city-owned property, undedicated except by use, for a fair consideration, and, in particular, can it sell such property when it determines the property to be inadequate and obsolete?

(2) If this transaction involves the LDS church as plaintiff alleges, do the members of the Board of Commissioners who are also LDS church members have an unlawful conflict of interest in such sale?

(3) Does plaintiff have standing to question the sale of the said property without alleging a pecuniary detriment to

himself and in any event, does he have standing to question the method of sale?

STATEMENT OF POINTS

POINT I.

THE SALT LAKE CITY BOARD OF COMMISSIONERS
HAS POWER TO SELL CITY PROPERTY.

POINT II

MEMBERSHIP IN A CHURCH WITH WHOM THE
BOARD OF COMMISSIONERS TRANSACTS BUSINESS
DOES NOT GIVE RISE TO AN UNLAWFUL CONFLICT
OF INTEREST.

POINT III.

PLAINTIFF HAS NO STANDING TO QUESTION
THE SALE OF THIS PROPERTY NOR THE METHOD
WHEREBY THE SALE WAS MADE.

ARGUMENT

POINT I.

THE SALT LAKE CITY BOARD OF COMMISSIONERS
HAS POWER TO SELL CITY PROPERTY.

(A) City Property in General.

While it is true that municipal corporations are creatures of the state and restricted to their express or implied powers, it is equally true that the cities of this state have been given broad and sweeping powers over city-owned property.

Section 10-8-1, U.C.A. 1953, provides:

"The boards of commissioners . . . of cities shall have the *power to control* the finances and *property of the corporation.*" (Emphasis added.)

Section 10-8-2, U.C.A. 1853, provides:

"They . . . may purchase, receive, hold, *sell*, lease, *convey* and *dispose of property*, real and personal, for the benefit of the city both within and without its corporate boundaries, improve and protect such property, and *may do all other things in relation thereto as natural persons.*" (Emphasis added.)

Section 10-8-8, U.C.A. 1953, also provides:

"They may lay out, *establish*, open, alter, widen, narrow, extend, grade, pave or otherwise improve streets, alleys, avenues, boulevards, sidewalks, parks, airports and *public grounds*, and *may vacate the same* or parts thereof, by ordinance." (Emphasis added.)

Plaintiff argues in his brief that Section 10-8-8 requires that a vacating ordinance be passed before city-held property may be sold. It is the City's contention that the section clearly states that when property is established by ordinance, it must be vacated by ordinance. It is clear and natural that the act abandoning must have equal dignity with the act establishing and therefore, establishment by ordinance means vacation by ordinance. The position of the final comma in the statute makes this clear:

Cities may "establish . . . public grounds, and may vacate the same or parts thereof, by ordinance."

In other words, the same public grounds that have been established by ordinance may be vacated by ordinance. The City has power to undo what it has once done. Therefore, since the property at First South and State Streets was never dedicated to the use of the municipality by ordinance, resolution or otherwise, except such dedication as may have arisen from actual use, the action of the Board of Commissioners in determining to sell such property is of equal dignity with the action whereby the said board of commissioners devoted the property to the use of the public, and Section 10-8-8 does not stand in the way of this sale. Plaintiff seems to contend that an ordinance is required for every act of the City; if this were the case, the City would be bankrupted by its publishing bill. Ordinances are required only for the exercise of the legislative power and to vacate property previously dedicated by ordinance.

Neither does there appear to be any good reason for the claimed restriction of Section 10-8-2 to property held by the municipality in a non-governmental capacity. Since the City is given absolute power to vacate the public use in property that has been dedicated even by ordinance, it certainly can sell the same upon the extinguishment of the public use regardless of the means by which that extinguishment is accomplished.

Two dicta statements in early Utah cases might seem to indicate a contrary opinion, but in neither of them was the question decided and in both the matter was not carefully considered under the present statutes and Constitution of Utah. In the more recent of the two, *McDonald v. Price*, 45 Utah

464, 146 Pac. 550, the court held that a specific statute governing the sale of light and power plants prevailed over the general statutes governing sales of city property. The court said that the Legislature had the power to prescribe the method by which the power of the city to sell might be exercised, and that it could provide this method in respect to all or only a particular kind of property. As a side comment, the court said:

“ . . . As to property such as streets, alleys, parks, public buildings and the like, although the title is in the city, yet such property, it may be said, is held in trust for strictly corporate purposes, and, as a *general rule*, cannot be sold or disposed of so long as it is being used for the purposes for which it was acquired.”
(Emphasis added.)

The court makes no application or reference to the Utah statutes cited herein because the general rule quoted by the court is held to be inapplicable. We are willing to admit that the court correctly states the general rule respecting municipal property and that municipal property is subject to the control of the legislature. Rhyne, *Municipal Law*, Sec. 16-11, Page 379. However, in Utah, the Legislature has spoken and has given the City authority to sell and dispose of all types of public property. The cases are unanimous that where cities are given power by the Legislature to vacate public grounds in addition to the general authority to sell and convey real property, the city has complete and plenary power over its property. The cases from other jurisdictions where this power has not been granted to cities are not applicable where the power has been granted. Thus, in *McCarter v. City of Raton*, 45 N.M. 351, 115 P.2d 90, the question was whether the city

could vacate a park and dispose of it. The court held that it could and stated:

"The contention of appellant is that the City of Raton holds said property as a trustee for the benefit and use of the public, and is without authority to vacate it, or any portion of it, for any purpose; . . .

"By general law, cities in New Mexico were at the time of the acquisition of said property, and still are, authorized 'to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks, and *public grounds*, and *vacate* the same . . .

"We need not go into the question of what the authority of the city would have been in the absence of such a statute. Appellant cites numerous decisions as supporting his contention. *None is authority on the question here to be decided because none involves application to similar facts of a statute authorizing municipalities to vacate parks. . . .*" (Emphasis added.)

That this is the unanimous rule where a similar statute exists appears in the case of *Lloyd v. City of Great Falls*, 107 Mont. 442, 86 P.2d 395, by the cases cited therein which are to the same effect. See also *Carson v. State*, 240 Iowa 1178, 38 N.W.2d 168.

The statement in the other Utah case that might concern the court is the statement of Judge Zane in *Ogden City v. Bear Lake and River Water-Works and Irrigation Co.*, 16 Utah 440, 52 Pac. 697, wherein, speaking for himself only and not for the court, he stated:

"But property devoted to a public use cannot be sold or leased without *special* statutory authority." (Emphasis added.)

The confusion in this case probably stems from the fact that the case was initiated before statehood, since it is clear that this statement was not well considered in the reflected light of the Utah Constitution and statutes adopted after statehood. The Utah Constitution, by Article VI, Section 26, prohibits "special statutory authority" in this field. It states:

"The Legislature is prohibited from enacting any private or special laws in the following cases: . . . vacating . . . public grounds . . ."

To require special statutory authority as Judge Zane would appear to require is to demand an impossibility and the foregoing statement of Judge Zane should be completely overruled. The court should not blindly follow such a completely unworkable dicta statement from one judge and if it does, the stinging rebuke of the stanza of the poet William Cowper's "Tirocinium" would be applicable:

"The slaves of custom and established mode,
With packhorse constancy we keep the road,
Crooked or straight, through quags and thorny dells,
True to the jingling of our leader's bells.
So follow foolish precedents, and wink
With both our eyes, is easier than to think."

quoted from the *State of Montana ex rel Tripp v. District Court*, 130 Mont. 574, 305 P.2d 1101, (dissenting opinion).

It is clear that the Legislature of Utah has given the broadest power possible to cities to sell and convey property. The present power granted by the Legislature provides that cities can vacate public grounds and may "Sell, lease, convey and dispose of property, real and personal, for the benefit of

the city . . . and may do all other things in relation thereto as natural persons."

Certainly the Legislature, by its language, intended the City to have the complete control over its property and that result is as it should be. Why should the Legislature, which is responsible not only to citizens of Salt Lake City but also to citizens of other parts of the state, exercise greater control over Salt Lake City property than the Salt Lake City Board of Commissioners, which is responsible only to the citizens of Salt Lake City in the exercise of its control of city property?

Nowhere in the statutes of the State is there any restriction on the method whereby property of the nature under discussion must be sold. Consequently, it is for the Board of Commissioners to decide how it will exercise its powers concerning the sale of property and for plaintiff to contend that the sale of the property must be consummated in a certain manner is to substitute the judgment of an individual taxpayer for the judgment of a duly elected and constituted Board of Commissioners of Salt Lake City.

In addition, the sale of the properties involved in this action for a fair consideration by the City is not the disposition of trust property, but is merely an exchange by the City of trust estates and is an exchange that the elected officials of the City feel is in the best interest of the citizens of Salt Lake City. If the citizens disapprove of the sale of this property, they can reflect their displeasure at the polls, but the court should not interfere with municipal government in the face of such clear and unambiguous authorizing legislation as is set forth herein.

In *Miller v. City of Pasco*, 50 Wash. 2d 229, 310 P.2d 863, the court held that a statute providing that cities might "control and dispose of it (property) for the common benefit," gave the city the power to sell a park. The court held that the words "dispose of" were to be given their usual and ordinary meaning. The court also held that since the city had been given no general authority to lease property, a specific statute authorizing the sale or lease of this particular piece of property was unconstitutional special legislation.

In 141 A.L.R., Page 1459, the author states:

"In other cases holding that a municipality may properly sell its real property under a general grant of power to acquire, hold or convey property, no distinction has been made as to whether the property was held in a governmental capacity or was devoted to public use and typical of cases of this nature are *Matthews v. Darby* (1928), 165 Ga. 509, 41 S.E. 304 (city hall); *Shaves v. Salisbury* (1873), 63 N.E. 29 (town hall and public square); *Thompson v. Nemeyer* (1899), 50 Ohio St. 486, 52 N.E. 1024 (gas plant); *Verlin Bros Co. v. Toledo* (1900), 20 Ohio CC 603, 11 Ohio C.D. 56 (gas plant)."

To this list may be added *Carter v. City of Greenville*, 175 S. Car. 130, 178 S.E. 508, (1935), (city hall).

(B) Obsolete and Inadequate Property in Particular.

What has been said in respect to all city property applies to an even greater degree to property that has become inadequate and obsolete.

Even without the specific authority given by Section 10-8-8, U.C.A. 1953, *supra*, it is the general rule of law that

the public trust in governmentally-held property ceases when the property becomes inadequate and obsolete. This is stated succinctly in Rhyne's *Municipal Law*, Section 16-11, Page 379:

"The state legislature has complete control over the sale and distribution of municipal property, subject only to constitutional provisions relating to local and special legislation. It is the general rule *that in the absence of charter or statutory authority*, municipal property dedicated and being used for a governmental purpose, or held in trust may not be sold by a municipality . . . However, it is an equally well-settled proposition that property which has outlived its usefulness, or which has become inadequate for the public purpose to which it had formally been dedicated . . . may be sold by a municipality without specific legislative authority, under a general grant of statutory or charter authority to hold and to convey property." (Emphasis added.)

In the case of *Marshall v. Mayor, etc., of City of Meridian*, 103 Miss. 206, 60 So. 135, the court held that an old city hall could be sold even though its use had not in fact yet ceased when provision had been made for building a new city hall. The court said:

"In the absence of legislative authority, a municipal corporation is without power to sell or dispose of property held by it for governmental purposes. By the city's charter, appellees are empowered to 'purchase and hold real, personal and mixed property, and may dispose of the same for the benefit of said city.' This provision of the charter clearly gives appellees power to sell property under some circumstances. It may be that this general grant of power carries with it no authority to sell property held and used for governmental purposes, as to which we express no opinion;

but when such property has ceased to be used for such purposes, the reasons for the rule prohibiting the sale thereof cease, so that the rule itself ceases, and thereafter it can be sold under this general power to sell. There can be no question that, under a general grant of power to sell, a city has the power to sell property which it owns not charged with a trust. In the case at bar the only trust charged upon the property, other than the general trust under which all municipal property is held, is that which results from its being dedicated to a public use, and when this use shall lawfully cease this trust will cease also. It is true that the use of this property for public purposes has not in fact ceased, but provision has been made for the building of a new city hall and the sale of the old city hall is but a preliminary thereto, and in aid thereof, and when the new city hall is built, the use of the old will cease.

"Where a city is empowered to build a new city hall, and the money which can be realized from a sale of its old hall will be of material aid in so doing, it ought to have power to sell its old hall for that purpose, and we are aware of no good reason for holding that it has not." (Emphasis added.)

Judge Zane, in *Ogden City v. Bear Lake and River Water-Works & Irrigation Co.*, supra, although mistaken in his statement concerning special legislation, recognizes the right and necessity for the city to be able to dispose of obsolete and inadequate property when he states:

"Public buildings may become unfit for public use, and for sufficient reasons the city may not wish to build upon the same lot; and such buildings, and the lots upon which they stand, may be no longer used by the public. The city from time to time may have other classes of property that has ceased to be used, or is

not used by the public. All such property of a municipal corporation, not devoted to the public use, may be sold or leased under the general authority to sell or lease, as the public welfare may demand. Such property may be converted into money or other things, and in that form devoted to the use of the public."

The determination of the city to sell is not subject to judicial review in the absence of fraud or bad faith, neither of which has been alleged. In *Board of Revenue of Etowah County v. Hutchins*, 250 Ala. 173 33 So.2d 737, the city needed a new jail and courthouse and decided not to build on the old site. The court said:

"It [the Board of Revenue] therefore had authority to direct and control the property of the county as it may deem expedient according to law, . . . to erect and to keep in order and repair the buildings of the county at county expense . . . and to erect courthouses, jails, and hospitals and other necessary county buildings, . . .

"When acting within the limits fixed by law and the constitution, *the authority of the board over the particular matter in question was all-encompassing*. It was within its exclusive discretion to determine the necessity for a new courthouse and jail and the proper place within the county seat for its location. In making this determination *the board acted in a quasi-legislative capacity and in the absence of fraud, corruption, or unfair dealings that action is not subject to judicial control or revision*.

" * * *

" . . . the board of revenue was within its authority to enter into a binding contract for the sale of the present courthouse site, no bad faith attending the

transaction. The contract to sell the old property was a part of the plan of obtaining a new courthouse and jail . . . This likewise was a matter consecrated to the discretion of the managing board of the county and unless it were shown that the discretion has been arbitrarily exercised and bad faith entered into the action it cannot be challenged.

"While a municipality has no implied power to alien or dispose of property dedicated to or held in trust for the public use, . . . ordinarily its property abandoned from public use or not devoted thereto may be disposed of by the managing authorities when acting in good faith and without fraud.

" * * *

" . . . *It would be a legal casuistry to extract from the statute an interpretation that would require the postponement to a probably unpropitious time the execution of a contract for the disposal of the old property when complete plans had been put under way for the procurement of a new facility and the abandonment of the old one.*" (Emphasis added.)

In *Schutz v. City Council of City of New England, N. Dak.*, 61 N.W.2d 423, the court said:

"It is well settled that 'The discretionary powers of municipal authorities will not be interfered with in a suit by a taxpayer for an injunction in the absence of fraud or palpable abuse.' "

To the same effect of both these points are the following authorities: *Pioneer Inv. & Trust Co. v. Board of Education*, 35 Utah 1, 99 Pac. 150; *Griffis v. City of Fort Lauderdale, Fla.*, 104 So. 2d 33; *Kirkland v. Johnson*, 209 Ga. 824, 76 S.E. 2d 396; *Blaser v. Dalles City*, 171 Ore. 441, 137 P.2d 991; *Miller v. City of Pasco*, 50 Wash. 2d 229, 310 P.2d 863; *Fussell-*

Graham-Alderson Co. v. Forrest City, 145 Ark. 375, 224 S.W. 745; *Reed v. Village of Hibbing*, 150 Minn. 130, 184 N.W. 842; *Babin v. City of Ashland*, 160 Ohio St. 328, 116 N.E. 2d 580; *Carson v. State*, 240 Iowa 1178, 38 N.W. 2d 168; *City of New Orleans v. Louisiana Society*, 229 La. 246, 85 So. 2d 503; *Dix v. Port of Port Orford*, 131 Ore. 157, 282 Pac. 109; *Southeastern Greyhound Lines v. City of Lexington*, 299 Ky. 510, 186 S.W. 2d 201; *Ravenelle v. City of Woonsocket*, 73 R.I. 270, 54 A.2d 376; *Hermann v. City of Lake Mills*, 275 Wis. 537, 82 N.W.2d 167; *Seafeldt v. Port of Astoria*, 141 Ore. 418, 16 P.2d 943; *Haesloop v. City Council of Charleston*, 123 S. Car. 272, 115 S.E. 596; *Hall v. City & County of Denver*, 115 Colo. 538, 177 P.2d 234.

Certainly the determination of the Board of Commissioners that these properties are inadequate and obsolete is not infused with the fraud, bad faith or palpable abuse of discretion necessary to invoke the conscience of equity, and to require this court to void the sale of this property.

POINT II

MEMBERSHIP IN A CHURCH WITH WHOM THE BOARD OF COMMISSIONERS TRANSACTS BUSINESS DOES NOT GIVE RISE TO AN UNLAWFUL CONFLICT OF INTEREST.

McQuillin, in *Municipal Corporations*, Section 29.97, Page 390, states:

“The interest of an officer which will render void a contract with a city, is a present, personal, and pecuniary interest.”

In the case of *Furlong v. South Park Commissioners*, 350 Ill. 363, 172 N.E. 757, the claimed disqualifying interest was that five members of the park commission were to be trustees of a museum corporation, a non-profit corporation with whom the park commissioners were contracting. The court held that the agreement was not in violation of the corrupt practices act and said:

“ ‘In general, the disqualifying interest must be of a pecuniary or proprietary nature.’ And it is said in 44 Corpus Juris, 93: ‘An interest to invalidate the contract must be of a personal or private nature, so that an interest incident to a membership in a corporation organized for the public welfare, and not for profit, will not have that effect.’ ”

See also *Quackenbush v. City of Cheyenne*, 52 Wyo. 146, 70 P.2d 577; *Mumma v. Town of Brewster*, 174 Wash. 112, 24 P.2d 438; *Panozzo v. City of Rockford*, 306 Ill. App. 443, 28 N.E. 2d 748; *Crawford v. Clifton Heights*, (1901), 11 Pa. Dist. R. 630, 140 A.L.R. 349.

Certainly members of the Board of Commissioners do not have to live in a complete vacuum. They can be members of churches and have dealings with those churches. Otherwise, only atheists who were complete social outcasts and owed allegiance to no one could hold public office. The complete absurdity of plaintiff's position in respect to conflicts of interest is illustrated by the fact that no case in point has ever arisen even though statutes and the common law have prohibited conflicts in interest for centuries. All of plaintiff's cited cases involve some sort of pecuniary interest; some involve an immediate interest, some a remote interest, but all involve a pecuniary interest nevertheless.

POINT III.

PLAINTIFF HAS NO STANDING TO QUESTION THE SALE OF THIS PROPERTY NOR THE METHOD WHEREBY THE SALE WAS MADE.

This property was sold after appraisal for a fair consideration. Plaintiff has failed to allege wherein he, as a taxpayer, will suffer as a result of this sale. That he must allege and prove pecuniary loss in order to have standing in court is universally recognized.

In the case of *Henderson v. McCormick*, 70 Ariz. 19, 215 P.2d 608, the city made a sale of a truck to a person with whom a city officer had an admittedly unlawful interest in the contract. However, it appeared the buyer paid as much or more than the truck was worth. The court said a taxpayer's action could not be maintained, and stated:

"The authorities universally uphold the rule that a taxpayer may maintain an action only when such taxpayer, and taxpayers as a class, have sustained or will sustain pecuniary loss.

" * * *

"There is unanimity in the authorities that where the plaintiffs as taxpayers, or the taxpayers as a class, sustain no injury, a court of equity is powerless to grant relief . . .

"The suit was improvidently brought by plaintiffs and to uphold the judgment of the lower court would encourage *disgruntled citizens* to resort to the courts in the guise of taxpayers' suits, thereby, in effect, taking over and *throttling the administration of municipal affairs.*" (Emphasis added.)

To the same effect is *Quackenbush v. City of Cheyenne*, supra, and see also *Lyon v. Bateman*, 119 Utah 434, 228 P.2d 818, wherein this court said:

" . . . the various courts have always required an allegation and a showing that the taxpayer is subject to some pecuniary loss . . . The attack alleged is not that the expenditures, if made, will be for unlawful or illegal purposes, but rather for legitimate state services. In all of the cases cited, it will be noted that there was illegality in the purpose of the appropriation, not irregularities in the manner of making the money available."

This plaintiff has failed to allege or offered to prove any pecuniary loss and this alone defeats his right to this action.

To an even greater extent, plaintiff has no standing to question the method employed by the Board of Commissioners to effect this sale. The authorities cited herein under Point I (B) and especially the cases of the *Board of Revenue of Etowah County v. Hutchins*, supra, and *Schutz v. City Council of City of New England*, supra, are clear that the court will not interfere with the actions of governmental bodies in the absence of fraud or palpable abuse, neither of which has been alleged. Plaintiff cannot, in the guise of a taxpayer suit, decide the method of operation of municipal affairs. Even if he can attack the right of the Board of Commissioners to sell city property, he cannot attack the procedure adopted by the Board of Commissioners in selling the same.

There is absolutely no justification for plaintiff's contentions that the sale should have proceeded in a certain manner. Mandatory requirements must be made by the Legislature

and none have been made in Utah. The Legislature has seen fit to give the Board of Commissioners the complete power over city property and the only requirements set forth in the statutes are that formal action of the commission must be done openly and that a majority of a quorum of commissioners must concur.

CONCLUSION

From all that has been stated, it is clear that the City had full authority to sell the property in question, that plaintiff has no standing to question its sale, and that no unlawful conflict of interest bars the Board of Commissioners from doing business with Zions Securities Corporation or for that matter with the LDS Church. The trial court's dismissal of the first cause of action should be affirmed.

Respectfully submitted,

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