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Jesse B. Stone v. Salt Lake City, a municipal corporation, J. Bracken Lee, Joe L. Christenson, 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 Sexurities Corporation, a corporation, and the Corporation of the President of the Church of Jesus Christ of Latter Day Saints, a corporation sole :  
Petition for Rehearing

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ET NO. 9268 P

URT

of the  
**STATE OF UTAH**

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JESSE B. STONE,

*Plaintiff and Appellant,*

vs.

SALT LAKE CITY, a municipal corporation, J. BRACKEN LEE, JOE L. CHRISTENSON, 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.*

LYNN FAUSETT and FIAMETTA FAUSETT,

*Petitioners in Intervention and Appellants.*

Case No.  
9268

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**PETITION FOR REHEARING**  
AND BRIEF IN SUPPORT THEREOF

---

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BURTON W. MUSSER  
*Attorneys for Appellants*

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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

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JESSE B. STONE,

*Plaintiff and Appellant,*

vs.

SALT LAKE CITY, a municipal corporation, J. BRACKEN LEE, JOE L. CHRISTENSON, 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.*

LYNN FAUSETT and FIAMETTA FAUSETT,

*Petitioners in Intervention and Appellants.*

Case No.  
9268

---

**PETITION FOR REHEARING  
AND BRIEF IN SUPPORT THEREOF**

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Comes now Appellant and respectfully petitions this Honorable Court to grant a Rehearing in the above entitled

cause upon the grounds and for the reasons that the Court erred in the following particulars:

1. That the statement of the purposes of the action as set out in the opinion is inaccurate, in that, plaintiff seeks to secure a judgment granting him the following relief:

(a) That the purported bid of the Chamber of Commerce made for the purchase of the property at First South and State Streets be declared null and void;

(b) That the acceptance of said purported bid be declared null and void;

(c) That Salt Lake City be enjoined from entering into a contract whereby it agrees to convey the above described tract of land to the Salt Lake City Chamber of Commerce, or to the Corporation of the President of the Church of Jesus Christ of Latter-day Saints, or to Zions Securities Corporation;

(d) That defendant, Salt Lake City and its Commissioners, be enjoined from conveying the City property above described to anyone until it has provided facilities for its officers and employees while engaged in the governmental function of the City;

(e) That neither defendant, Zions Securities Corporation, nor defendant Corporation of the President of the Church of Jesus Christ of Latter-day Saints, may purchase a site for the erection of a Federal Building, nor use any of their assets in payment of the purchase price thereof.

(f) Plaintiff also prays for general relief.

2. That the Court erred in stating that the Salt Lake City Chamber of Commerce, and persons representing the interests

of the Church, were desirous of cooperating with the Federal Government to obtain a suitable site for the building in downtown Salt Lake City rather than for it to build on land wholly owned by the Government on the Fort Douglas Military Reservation at the eastern outskirts of the City.

The pleadings show that Mr. Backman, while representing the Church, solicited the United States Government to purchase the property at First South and State Streets. There is nothing in the pleadings from which it may be concluded that the United States owned any land on the Fort Douglas Reservation on which it intended to construct a Federal Building.

3. That the Court erred in stating that the agreement to purchase the Lafayette School site was held in abeyance, and that it was decided it would be better to locate the new Federal Building on property owned by the City. It is alleged in the Complaint that the Lafayette School site was conveyed to Zions Securities Corporation prior to the time this action was commenced and that said Zions Securities Corporation continues to be the owner thereof for the purpose of erecting thereon a Federal Building.

4. That the Court erred in confirming its opinion as to the grounds upon which plaintiff attacked the transaction to A, B, C and D mentioned on page 2 of the opinion, and in failing to state that plaintiff attacked the transaction upon the ground that such sale, if carried out, was contrary to and in violation of the Fifth Amendment of the Constitution of the United States, and of Section 22 of Article I of the Constitution of the State of Utah, which provides that private property shall not be taken or damaged for a public use without just compensation.

5. The Court erred in stating that plaintiff did not designate the purposes for which his donation to the Church was given, and that, therefore, such donor has no right to direct the manner in which the money so given shall be used merely because he has made such contribution to the Church, or because he is a member of a class which may be benefitted by the carrying out of its purposes. That this is in accord with the majority of the authorities.

6. That the Court erred in stating that there is no doubt that the Church can legally purchase and sell property as any other property owner, and it can use any legitimate means to persuade a buyer to purchase from it, in that, while the Church can sell property, there is no authority conferred upon the Church to dispose of the property which it holds in trust for the purpose of constructing a Federal Building, and the sale here questioned is contrary to the provisions of U.C.A. 1953, 16-7-6.

7. The Court erred in holding that no matter how great the benefit to be derived, or the detriment to be suffered by the Church in this transaction, neither would redound to the benefit or detriment of the commissioners as individuals, and further finding that:

“Thus the ‘conflict of interest’ reasons for borbidding contracts between the city and officials interested in the subject matter does not exist here because it is uniformly held that the ‘interest’ referred to in such a statute means that the official must have a ‘personal and pecuniary interest’ in the subject matter.”

8. The Court erred in stating that:

“To assume that they (the commissioners) would

betray their public trust and subvert the interests of the City to those of the Church would require the conjecture that they are bent on wrongdoing and violating their oaths of office. Such conjecture the law will not indulge, but in the absence of a specific charge to the contrary, right conduct is always presumed."

In such particular the Court in assuming that to hold the City Commissioners were not disqualified from participating in the transaction involved in this action unless they were guilty of wrongdoing is contrary to the law applicable in such cases, in that, the good or bad intentions of the City Commissioners is immaterial. The statute makes them disqualified because of the relation that exists between them and the party with whom the contract is being made.

9. The Court erred in holding that the conflict of interest reason for forbidding contracts between the City and officials interested in the subject matter does not exist here because it is uniformly held that the interest referred to in such statute means that the officers must have a personal and pecuniary interest in the subject matter. (As we read them the cited authorities do not so hold.)

10. The Court erred in concluding that the application of the extension of the Rule again conflict of interest applied to the circumstances here shown would go far beyond the evils against which it is directed, and would likely create evils of its own.

11. The Court erred in concluding that membership in the Church under the circumstances presented here does not fall within and as being prohibited by Section 10-6-38, Utah Code Annotated, 1953.

12. The Court erred in holding that the provisions of Section 10-8-8, Utah Code Annotated, 1953, does not apply to a sale of the property here involved.

13. The Court erred in concluding that there is no allegation that there was any impropriety in the manner in which the City property was sold.

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Burton W. Musser

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Elias Hansen

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We, the undersigned, Attorneys for Plaintiff and Appellant, hereby certify that in our opinion there is merit to the foregoing Petition for Rehearing, and that in order to do justice to the parties a rehearing should be granted, and the errors complained of corrected.

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Burton W. Musser

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Elias Hansen

## ARGUMENT

It may be that some of the alleged errors claimed by Appellant to have been committed by the Court in the opinion

heretofore written are not of controlling importance, but we assume that if the errors complained of are meritorious, the Court will welcome that the same be called to its attention so that the same be corrected before they become the established law in this jurisdiction.

#### POINT ONE

THE COURT ERRED IN ITS STATEMENTS OF THE PURPOSE FOR WHICH THE CITY UNDERTOOK TO SELL ITS PROPERTY AT FIRST SOUTH AND STATE STREETS, IN THAT THE ONLY BID IT HAD WAS BY THE CHAMBER OF COMMERCE OF SALT LAKE CITY WHICH CONTAINED A PROVISION THAT THE CITY COULD CONVEY THE PROPERTY TO WHOMSOEVER IT MIGHT DESIGNATE; THAT IF AND WHEN THE PROPERTY WAS CONVEYED TO THE CHAMBER OF COMMERCE IT PLANNED TO CONVEY THE PROPERTY TO THE DEFENDANT, ZIONS SECURITIES CORPORATION, WHICH IN TURN PLANNED TO CONVEY THE PROPERTY TO THE UNITED STATES.

It is, of course, the established law that if there is such a defect in the chain of title to real property so that the title sought to be conveyed fails to pass from a grantor to a grantee in chain of title, the ultimate grantee does not acquire title. Thus, if the City is without authority to convey its property to the Chamber of Commerce, and the Chamber of Commerce is without authority to convey the property to Zions Securities Corporation, or Zions Securities Corporation is without authority to convey the property to the United States, then and under

such a state of facts the United States will not acquire title to the property. Thus, if the City was without authority to convey the property, the title thereto remains in the City. We have alleged facts which we claim are fatally defective in passing title by the various conveyances, and if the alleged facts are established, Appellant is entitled to prevail. We shall discuss the legal effect of the various alleged defects later in this Brief.

## POINT TWO

THE COURT ERRED IN STATING THAT THE SALT LAKE CITY CHAMBER OF COMMERCE AND PERSONS REPRESENTING THE INTERESTS OF THE CHURCH WERE DESIROUS OF COOPERATING WITH THE FEDERAL GOVERNMENT TO OBTAIN A SUITABLE SITE FOR THE BUILDING IN DOWNTOWN SALT LAKE CITY RATHER THAN FOR IT TO BUILD ON LAND WHOLLY OWNED BY THE GOVERNMENT ON THE FORT DOUGLAS MILITARY RESERVATION AT THE EASTERN OUTSKIRTS OF THE CITY.

It has been established law in this and other jurisdictions generally that when an attack is made upon the sufficiency of a complaint to state a cause of action, the court in passing upon such an attack is confined to the facts alleged in the complaint. It is alleged upon information and belief in paragraph 16 of the complaint that the bid made by Gus P. Backman was so made at the solicitation of defendant, Corporation of the President of the Church of Jesus Christ of Latter-day Saints, and its agent and owned defendant, Zions Securities Corpo-



ration. There is nothing alleged in the complaint to the effect that the United States owned any land on the Fort Douglas Military Reservation upon which it intended to construct a Federal Building. There is an allegation in the complaint that defendant, Zion's Securities Corporation, acquired title to the Lafayette School site for the purpose of having the same conveyed to the United States for the purpose of having erected thereon a Federal Building.

While we are not clear just what bearing some of the matters discussed under this Point has upon the conclusions reached by the Court, we assume the Court will joint with us in an effort to have the opinion reflect the facts alleged in the Complaint.

### POINT THREE

THE COURT ERRED IN STATING THAT THE AGREEMENT TO PURCHASE THE LAFAYETTE SCHOOL SITE WAS HELD IN ABEYANCE, AND THAT IT WAS DECIDED IT WOULD BE BETTER TO LOCATE THE NEW FEDERAL BUILDING ON PROPERTY OWNED BY THE CITY.

It is alleged in paragraphs 10, 11 and 12 of the Complaint that the Board of Education of Salt Lake City granted an option to defendant, Zions Securities Corporation, to purchase the Lafayette School site for \$750,000.00 for the purpose of erecting thereon a Federal Building, that notwithstanding a Lis Pendens was filed Zions Securities Corporation exercised the Option, and is holding the title thereto with the apparent purpose of erecting thereon a Federal Building. It is alleged

in subsection paragraph 20(a) of the Complaint that only one Federal Building is planned to be constructed in Salt Lake City at this time, and that by reason of such fact Zions Securities Corporation is estopped from securing an additional site for such purpose.

It may well be that neither the plaintiff nor the Fausetts have sufficient ground for complaint, if as stated in the opinion, the transaction touching the purchase of the Lafayette School site was held in abeyance, but when \$750,000.00 of the Trust Fund held by the Corporation of the President and/or Zions Securities Corporation for the use and benefit of the members of the L.D.S. Church are used, to purchase a site for a Federal Building, an entirely different situation is presented.

We shall have more to say about this phase of the case later in this Brief. We at this time again refer the Court to what is said and the authorities cited on page 50 of Appellant's original Brief.

#### POINT FOUR

THE COURT ERRED IN FAILING TO PASS ON THE QUESTION RAISED IN PARAGRAPH 20(f) OF THE COMPLAINT WHEREIN IT IS ALLEGED THAT TO PERMIT THE DEFENDANT CORPORATION OF THE PRESIDENT AND/OR ZIONS SECURITIES CORPORATION TO EXPEND FOR THE PURCHASE OF A SITE FOR A FEDERAL BUILDING SEVERAL HUNDRED THOUSAND DOLLARS OF THE TRUST FUND HELD BY THEM FOR THE BENEFITS OF THE MEMBERS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY

SAINTS WILL BE TO DEPRIVE THE BENEFICIARIES OF SUCH FUNDS WITHOUT DUE PROCESS OF LAW AND WITHOUT JUST COMPENSATION CONTRARY TO SECTION 22 OF ARTICLE ONE OF THE CONSTITUTION OF UTAH AND THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

"It is a fundamental principle of the constitutional system of government of the United States that the decisions of the Federal Supreme Court are final and authoritative declaration as to the proper and correct construction to be placed on the Constitution and laws of the United States, and as to whether a state law contravenes any provisions of the Federal Constitution." 11 *Am. Jur.* 740.

In footnotes to the foregoing quotation will be found numerous cases of both federal and state courts of last resort where the law above quoted has been applied. Ever since the decision of the Supreme Court of the United States in the famous case of *Dartmouth College v. Woodman*, 4 Wheat (U.S.) 518, 4 L. Ed. 629, it has been held the established law uniformly adhered to that the legislative branch of government may not deprive one of a vested interest in property without due process of law, nor shall private property be taken for public use, without just compensation. It is alleged in the Complaint that defendant Corporation of the President and/or defendant Zions Securities Corporation seek to expend several hundred thousand dollars of the money held by them for the benefit of the members of the Church of Jesus Christ of Latter-day Saints for the purpose of paying for the purchase of a site for a Federal Building. In paragraph 7 of the Complaint the purposes or objects of defendant Corporation as stated in its

Articles of Incorporation are to acquire, hold, dispose of such real and personal property as may be conveyed to acquire by said Corporation for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, for the benefit of religion, for works of charity and for public worship.

The powers of defendant Corporation of the President, being a corporation sole, is thus defined in *U.C.A.* 1953, 16-7-6, *subsection* (1):

"To acquire and possess, by donation, gift, bequest, devise or purchase, and to hold and maintain property, real, personal and mixed, and to grant, sell, convey, rent or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation."

To say that one of the objects of the Corporation of the President is the purchase of a site for a Federal Building is to stretch the language of such corporation and the provision of the statute above cited far beyond the breaking point. No less an authority than the Supreme Court of the United States has held that the funds held by the Church are trust funds which must be used for the benefit of its members and not otherwise. *Church of Jesus Christ of Latter-day Saints v. United States*, 136 U.S. 1, 34 L. Ed. 481, 140 U.S. 665, 35 L. Ed. 592. It may or may not be that the funds which are to be used to assist in the purchase of a Federal Building are part of the funds involved in the foregoing decision. If such funds are the funds involved in the foregoing decision, the purpose for which the same may be used is *res adjudicata*, if not, the doctrine of *stare decisis* applies. In either event to hold that *U.C.A.* 1953, 16-7-6 empowers the Corporation of the President

to use the trust funds held by it to assist in the purchase of a Federal Building constitutes a taking of the property of the beneficiaries of such trust fund in violation of the provisions of Section 22 of Article One of the Constitution of Utah, and of the Fifth Amendment of the Constitution of the United

In their respective briefs, the defendant corporation of the President (see its Brief page 36) and Zions Securities (see its Brief page 28) commit such defendants to the position that the giving of several hundred thousand dollars toward the purchase of a Federal Building is an act of charity. The opinion rejects such theory and bases its opinion on a strictly commercial basis, that is to say to advance the financial interests of the Corporation of the President and Zions Securities. The defendants do not make the claim that the money to be spent is for the purpose of aiding them financially and if that is the purpose, then under the circumstances alleged in the complaint, such a purpose is condemned by law in that it is the duty of public officers to select a site for a public building at a place which best serves the public interest without being influenced by a purpose intended to serve special interests.

#### POINT FIVE

THE COURT ERRED IN STATING THAT PLAINTIFF DID NOT DESIGNATE THE PURPOSES FOR WHICH HIS DONATION TO THE CHURCH WAS GIVEN AND THAT, THEREFORE, SUCH DONOR HAS NO RIGHT TO DIRECT THE MANNER IN WHICH THE MONEY SO GIVEN SHALL BE USED.

While neither appellant, Jesse B. Stone, nor appellants Fausetts, allege in their pleadings that they placed any limitation on the donation that they made to the Church, they do allege that they have an interest in the trust fund held by the Corporation of the President which is alleged to be the owner of the defendant Zions Securities Corporation, which being the allegations the court must assume the same as true. In light of the fact that the Corporation of the President, as stated in its Articles of Incorporation, will use the property it might acquire for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, "for the benefit of religion, for works of charity and for public worship," nothing would be gained by the donor stating how the donation should be used. The trustee of the fund having stated the purposes for which the donation will be used, there would seem to be no escape from the conclusion that the property must be used for the stated purpose. Moreover, under the provisions of the statute, *U.C.A.* 1953, 16-7-1, and 16-7-6, property held by a corporation sole may lawfully be used only for "the benefit of religion, for works of charity and public worship." If the corporation sole uses the property held by it for any purpose other than that provided in its Articles and as provided by the law pursuant to which it is permitted to exist, such corporation not only fails to keep its promises to the donor, but also fails to keep within the powers conferred upon it by law. While a beneficiary may not direct how a trust fund shall be used by the trustee, he may prevent the trustee of the fund from disposing of the same in violation of the terms of the trust. In support of such view we direct the attention of the Court to some of the cases cited by Counsel

for the Corporation of the President, among which are the following:

*Nancy v. Busby*, 91 Tenn. 303, 18 S.W. 874, 15 L.R.A. 801;

*Kittinger v. Churchill*, 292 N.Y.S. 35;

*Skinner v. Holmes*, 133 N.J. Eq. 593, 33 A.(2d) 819.

See also brief of Zions Securities, pages 7 to 10.

These cases do hold that one who ceases to be a member of a church may not be heard to complain as to the manner in which the church property is being used, but on the contrary a member of the church as a beneficiary may maintain an action to enjoin those who have control of the fund from using the same in a manner contrary to the purposes for which the fund is being held. Other authorities and cases of similar import are cited on page 48 of Appellant's original Brief.

It may be that plaintiff Stone may not be heard to complain if the fund is misused, but in its opinion the Court disposed of the case as if the Fausetts were parties to the action, and as such be heard to raise the question of the manner in which the Corporation of the President is using the trust fund. Indeed, if the beneficiaries of a fund may not maintain an action to prevent the misuse of a trust fund, it follows that the trustee may use such fund as meets its fancy. The Court cites the cases of *Wemme v. Noyes*, (Ore.) 294 Pac. 602, incorrectly cited as being in 194 Pac.; *Clark v. Oliver*, 91 Va. 421, 22 S.E. 175; *Restatement of Trusts*, (2d) Sec. 391; *Dickey v. Volker*, 62 A.L.R. 858, erroneously cited as being in 11 S.W. (2d) 279. As we read these cases and authorities

they make against and not in support of the statement in the opinion.

To understand the purport of the holdings in the case of *Wemme v. Noyes*, *supra*, it is necessary to read the other Oregon case therein cited where the same question was before the court. We especially direct the attention of the Court to the cases of *Wemme v. First Church of Christ*, 219 Pac. 618, and 237 Pac. 674. In these cases the distinction between Public and Private Trusts is discussed. It is held that in case of a Public Trust an action to enforce a compliance with its terms must be brought by the Attorney General, and in case of a Private Trust such an action must be brought by a beneficiary of the trust. The trust here involved is, under all of the authorities as we read them, a private trust. It is no concern of the Attorney General how the Corporation of the President shall dispose of its funds, but it is of the concern of the beneficiaries of such fund how the same shall be disposed of.

To review the facts and the law in the other cases and authorities cited on page 3 under Note 2 of the opinion will unduly lengthen this Brief. We earnestly urge the Court to re-examine the question of right of a member of the L.D.S. Church to maintain this action, and having done so we believe the Court will not be able to escape the conclusion that the law there discussed applies to Public Trusts, and not to Private Trusts, and that a beneficiary of a Private Trust such as this may maintain an action to enjoin the trustee from disposing of the property held by him in a manner not provided by the terms of the trust and in accord with the law providing for the purposes for which such fund may be used. On page



48 of our original Brief will be found other authorities dealing with public and private trusts and by whom its terms may be enforced.

## POINT SIX

THE COURT ERRED IN STATING THAT THERE IS NO DOUBT THAT THE CHURCH CAN LEGALLY PURCHASE AND SELL PROPERTY AS ANY OTHER PROPERTY OWNER, AND IT CAN USE ANY LEGITIMATE MEANS TO PERSUADE A BUYER TO PURCHASE FROM IT.

It has repeatedly been held by this Court that a corporation has such powers and only such powers as have been conferred upon it by law, which include such powers as are necessary for the exercise of the powers conferred.

*Republic v. Price*, 65 Utah 57, 234 Pac. 231.

*Wilde v. Emma Copper Co.*, 58 Utah 524, 200 Pac. 517.

The same is true of Municipal Corporations.

*American Fork City v. Robinson*, 77 Utah 168, 292 Pac. 249;

*Eureka City v. Wilson*, 15 Utah 55, 48 Pac. 41;

*Salt Lake City v. Nutter*, 61 Utah 533, 216 Pac. 234;

*Bohn v. Salt Lake City*, 79 Utah 121, 8 Pac. (2d) 591.

A corporation sole is a creature of statutory law the same as a corporation created for profit. The powers of a corporation sole are defined in *U.C.A.* 1953, 16-7-1. Thus a corporation sole may be formed for the purpose of acquiring, holding or

disposing of church or religious society property for "the benefit of religion, for works of charity and for public worship in the manner hereinafter provided."

U.C.A. 1953, 16-7-6, provides that a corporation sole shall have power

"(1) To acquire and possess, by donation gift, bequest, devise or purchase and to hold and maintain property, real, personal and mixed, and to grant, sell, convey, rent or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation."

Thus, a corporation sole is limited to disposing of its property for the benefit of religion, for works of charity and for public worship. To say that the expenditure of several hundred thousand dollars of religious society property to induce the officers of the Federal Government to select a site for a Federal Building is neither a power conferred upon a corporation sole, nor is it necessary to so use its funds in order to exercise the conferred powers. In our somewhat extended research we have been unable to find any adjudicated case or other authority so holding. The law announced in the cases of *Church of Jesus Christ of Latter-day Saints v. United States*, *supra*, is to the contrary.

## POINT SEVEN

THE COURT ERRED IN HOLDING THAT NO MATTER HOW GREAT THE BENEFIT TO BE DERIVED OR THE DETRIMENT TO BE SUFFERED BY THE CHURCH IN THIS TRANSACTION NEITHER WOULD REDOUND TO THE BENEFIT OR DETRIMENT OF THE COMMIS-

SIONERS AS INDIVIDUALS, AND FURTHER FINDING THAT: THUS THE "CONFLICT OF INTEREST" REASON FOR BIDDING CONTRACTS BETWEEN THE CITY AND OFFICIALS INTERESTED IN THE SUBJECTMATTER DOES NOT EXIST HERE BECAUSE IT IS UNIFORMLY HELD THAT THE INTEREST REFERRED TO IN SUCH A STATUTE MEANS THAT THE OFFICIAL MUST HAVE A PERSONAL AND PECUNIARY INTEREST IN THE SUBJECTMATTER.

In making the foregoing statement the Court apparently overlooked a number of authorities cited in Appellant's original Brief, among them *Vol. 2, Dillon on Municipal Corporations*, Sec. 773, page 1143, where it is said:

"It is impossible to lay down any general rule defining the nature of the interest of a municipal officer which comes within the operation of these principals. Any direct or indirect interest in the subjectmatter is sufficient to taint the contract with illegality if the interest be such as to offset the judgment and conduct of the officers in the making of the contract or in its performance."

In the case of *Miller v. City of Martinez, et al.*, 28 Cal. App. (2d) 364, 83 Pac. (2d) 519, it is said that the interest of the public officer need not be financial, but may be any interest which would tend to prevent him from exercising absolute loyalty and undivided allegiance to the best interests of the city. To the same effect is *Clark v. Utah Construction Co.*, 51 Idaho 867, 8 Pac. (2d) 454. We have discussed this phase of the case at some length under Point Four, pages 31 to 42 of our original Brief, and no useful purpose will be served by

repeating what is there said. However, as we read the authorities cited in footnote 4 on page 4 of the opinion of the Court the same do not support what is claimed for them.

Thus, it is said in *Sec. 29.97, page 390 of the 3rd Ed. of McQuillin Municipal Corporations* that municipal officers and agents are held by the courts to a strict accountability in their dealings with one on behalf of the corporation. In 63 C.J.S., *Mun. Corp., Sec. 991(b)*, it is said, and numerous cases are cited, that wherein a municipality is brought into contractual relations with firms or companies or which councilman or other city officer was a member, stockholders or employee, the courts have usually applied the general doctrine to the undoing of such contracts just as though the officers were individually interested. If the beneficiaries of a trust fund are not interested in the same, it may be inquired, who are interested? They are the ones who own the fund. The only interest that the trustees, as such, have in the fund is to carry out its provisions. On page 3 of the opinion, the Court directs attention to a provision of the Articles of Incorporation of the Corporation of The President as recited in the Brief of the Corporation to the effect that the Corporation may grant, sell, rent, mortgage, exchange or otherwise dispose of any part or all of said property. While such provisions are probably not properly before the Court, the disposal of the assets of the Corporation by its trustee is not inconsistent with the ownership by the beneficiaries. If any proceeds are derived from the grant, sale, rent, mortgage, exchange or other disposition of the property, such proceeds continue to belong to the beneficiaries.

It is true that some of the adjudicated cases where contracts with a city have been declared invalid involve matters

wherein one or more officers or agents of a city have a direct pecuniary interest. Many statutes so provide. However, to limit the disqualification to monetary interests would be to ignore the very essence of the evils sought to be prevented. The authorities are all agreed that the purpose of the law is to prevent a public officer from putting himself in a position which will subject him to the temptation of acting in any manner other than in the best interests of the public. The authorities are cited on pages 32 to 42 of our original Brief.

In our original Brief under Point Seven, pages 45 to 49, we have discussed the monetary interest that the members of the Mormon Church have in the trust fund held by the Corporation of the President and Zions Securities Corporation, defendants. Probably no useful purpose will be served by an attempt to enlarge upon what is there said. If effect be given to prevent the evils sought to be avoided by the provisions, such laws as *U.C.A.* 1953, 10-6-38, it is necessary that the act be applied to matters that are not monetary. It has frequently been said that the people of Utah, especially those who are members of the dominant Church, are a peculiar people. If it be meant by such expression that the belief in the infallibility of their leaders and their duty to comply with their desires is inquired into, there can be no doubt that the members of the L.D.S. Church are unique.

It is alleged in paragraph 21(b) that one of the cardinal principles of the Church of Jesus Christ of Latter-day Saints is that its members shall comply with the announced desires of the leaders of that Church, and particularly such desires of its President and his Counselors.

"That when it was conceived that the property owned by defendant City might be acquired for the purpose of having erected thereon a Federal Building, defendant Gus P. Backman, a member of said Church, was called upon by the leaders of said Church to aid in undertaking to acquire the above mentioned city property, and to get the consent of the proper officers of the United States to consent to accept the same as a site for a Federal Building. That when it became known that the Corporation of the President of the Church of Jesus Christ of Latter-day Saints and the leaders of said Church desired to purchase the above mentioned city property as a site for a Federal Building, the defendant City Commissioners proceeded to have the property appraised," etc.

This Court will doubtless take judicial notice of the fact that the President of the L.D.S. Church, who is also the Corporation of the President, is the Prophet, Seer and Revelator of that Church, and as such is the representative of God on this earth. If the Court may not take judicial notice of such fact, plaintiff is entitled to show that to be the fact under the pleadings above quoted. Under such allegations, plaintiff is entitled to show and will show that at each semi-annual Conference of the members of the L.D.S. Church it is, in effect, proposed by the person presiding at such Conference that whoever is then President of the Church be sustained as the prophet, seer, revelator and trustee in trust of said Church, and that "those who are in favor of so doing signify it by raising your hand, and that when you do vote affirmatively, that you covenant to sustain the person so voted for."

Under the pleading above mentioned plaintiff is entitled to show and will show that it is the established doctrine of said

Church that its members are morally obligated to comply with the announced desires of the Church in both spiritual matters as well as temporal matters in which the Church may have an interest. That being so, the members of a City Council who are members of the L.,D.S. Church are clearly placed in the position which subjects them to conflicting duties, and exposes them to the temptation of acting in a manner other than in the best interest of the public. Indeed, the allegiance of one to his Church far transcends any monetary interest that one may have in a transaction.

#### POINT EIGHT

THE COURT ERRED IN CONCLUDING THAT "TO ASSUME THAT THEY (the Commissioners) WOULD BETRAY THEIR PUBLIC TRUST AND SUBVERT THE INTERESTS OF THE CITY TO THOSE OF THE CHURCH WOULD REQUIRE THE CONJECTURE THAT THEY ARE BENT ON WRONGDOING AND VIOLATING THEIR OATH OF OFFICE. SUCH CONJECTURE THE LAW WILL NOT INDULGE, BUT IN THE ABSENCE OF A SPECIFIC CHARGE TO THE CONTRARY, RIGHT CONDUCT IS ALWAYS PRESUMED."

If we look at the other side of the situation, it may be said with even greater force that:

"To assume that they (the Commissioners) would betray their covenant with and duty to their Church and subvert the interests of the Church to those of the City, would require the conjecture that they are bent on turning their backs on their Church and violating their covenant with the Church and endangering their

standing with their Church and their rewards in the hereafter; that they ignore the doctrine of their Church which in effect teaches that the Will of their President is the Will of God.

Such conjecture the law will not indulge. The purpose of the law is to prevent public officers who are placed in a position such as that of the defendant Commissioners who are members of the L.D.S. Church from participating in a contract involving the sale of the city property to the Church. That the Church had an interest in the deal is evident because it is, according to the allegation of the Complaint, expending several hundred thousand dollars toward the purchase of the site. Moreover, it is very strange that the Church should participate in a transaction by a series of circuitous transactions in an attempt to get the title to the site in the United States. The orderly procedure would be to have the City contract with and convey the property directly to the United States.

#### POINT NINE

THE COURT ERRED IN HOLDING THAT THE CONFLICT OF INTEREST REASON FOR FORBIDDING CONTRACTS BETWEEN THE CITY AND OFFICIALS INTERESTED IN THE SUBJECT MATTER DOES NOT EXIST HERE BECAUSE IT IS UNIFORMLY HELD THAT THE INTEREST REFERRED TO IN SUCH STATEMENT MEANS THAT THE OFFICERS MUST HAVE A PERSONAL PECUNIARY INTEREST IN THE SUBJECT MATTER.

What we have said under Points 7 and 8 have a bearing on this Point, and we adopt the same in support hereof without



repeating what is there said. We, however, direct the attention of the Court to the fact that our statute, unlike many others, makes no reference to either personal or monetary interests. To say that the statute means personal financial interests is to read in the statute a meaning that is not there. The words directly or indirectly interested expressly excludes the thought that the officer must have a direct personal interest. If the legislature had intended the interest to be monetary interest only, it would have so provided. Whether the allegations of the Complaint above mentioned and the evidence which plaintiff intended to introduce in support thereof be viewed in light of the provision of our statute or the common law, a member of the City Council, who is also a member of the L.D.S. Church and as such believes that the President of his Church is the emissary of God on this earth, cannot reasonably escape the conclusion that his obligation to his Church requires that he comply with the wishes of his President. To hold otherwise would be to emasculate the provisions of *Section 10-6-38, U.C.A. 1953*, as applied to the pleaded facts in this case.

#### POINT TEN

THE COURT ERRED IN CONCLUDING THAT THE APPLICATION OF THE EXTENSION OF THE RULE AGAINST CONFLICT OF INTEREST APPLIED TO THE CIRCUMSTANCES HERE SHOWN WOULD GO FAR BEYOND THE EVILS AGAINST WHICH IT IS DIRECTED AND WOULD LIKELY CREATE EVILS OF ITS OWN.

As heretofore argued under Point Nine, it is not an extension of the rule against interests to give effect to the allegations

of the Complaint and the evidence which plaintiff intends to offer in support thereof. It is the function of the court to construe the law as passed by the legislative branch of government, and not to determine whether or not it is a good law. Moreover, if there are evils which may arise by preventing public officers from participating in making contracts with the President of their Church to whom such officers own allegiance because he is the Prophet, Seer and Revelator, and the representative of God on this earth, such evil is an incident to our democratic system of government, and may not be discarded because compliance with the will of the President of the Church may bring about better results.

#### POINT ELEVEN

THE COURT ERRED IN CONCLUDING THAT MEMBERSHIP IN THE CHURCH UNDER THE CIRCUMSTANCES PRESENTED HERE DOES NOT FALL WITHIN AND AS BEING PROHIBITED BY SECTION 10-6-34, UTAH CODE ANNOTATED, 1953.

We have heretofore discussed this phase of the case, and shall not repeat what has been said, except to observe that it is alleged in paragraph 21, Sec. (a) "That the defendant commissioners seek to realize some benefits from such transactions." (The sale of the property). Such allegations must be taken as true. Plaintiff has a right to try this case on his theory.

#### POINT TWELVE

THE COURT ERRED IN HOLDING THAT THE PROVISION OF SECTION 10-8-8, UTAH CODE ANNOTATED,

1953, DOES NOT APPLY TO A SALE OF THE PROPERTY HERE INVOLVED.

In the opinion of the Court it is said *Section 10-8-8, U.C.A. 1953*, does not apply to the property at First South and State Streets because it names streets, alleys, avenues, boulevards, sidewalks, airports and public grounds. It is held that the doctrine of *ejustem geneus* excludes the city property here involved because it is not of the same kind as the enumerated properties. The mentioned properties are all real estate. It would seem that there is a greater reason for formal binding steps to be taken in the sale of property used to house city officers engaged in the performance of governmental functions than in securing the vacating of the enumerated public properties. There are numerous cases dealing with when the above mentioned doctrine should be applied, but to review the same would extend this Brief beyond reasonable limits. In our view the procedure followed by the City in its attempt to dispose of the property at First South and State Streets is *fatally* defective for reasons other than the failure to pass an ordinance. Before taking up a discussion of such other reasons we direct the Court to the provisions of *U.C.A. 1953, 10-7-2*, which provides that if the manner of exercising the power of the City Commission is not specifically pointed out, the Commission "may provide by ordinance the manner and details" necessary for the full exercise of such power. In this case the City did not by Ordinance or at all specifically point out the manner and details necessary for the full exercise of the power to sell the property at First South and State Streets. Even if the power to sell the city property at First South and State Streets may be exercised by the passage of a Resolution, such

Resolution must meet the requirements enumerated by *McQuillin on Municipal Corporations*, Vol 2, page 672, which we have set out on page 26 of our original Brief. Among such requirements are that:

“It must be precise, definite and certain in expression. It must be enacted in good faith, in the public interest alone and designated to enable the corporation to perform its true functions as a local government organ.”

### POINT THIRTEEN

THE COURT ERRED IN CONCLUDING THAT THERE IS NO ALLEGATION THAT THERE WAS ANY IMPROPRIETY IN THE MANNER IN WHICH THE CITY PROPERTY WAS SOLD.

Plaintiff has in substance alleged in paragraph 21 of his Complaint that the property at First South and State Streets is being used to house the employees of the City who are engaged in the performance of governmental functions, and that no provision has been made for providing other places for such employees. The purported bid made by the Chamber of Commerce is set out in paragraph 13 of plaintiff's Complaint. In its Motion for Leave to File an Amendment to the Complaint plaintiff alleged that there was no lawful publication of notice to sell the property. No lawful bid was made for the property; that the purported bid did not comply with the Notice; that there was no lawful acceptance of the purported bid, etc. Obviously, these allegations show that there were subterfuges and impropriety in the manner in which the City is attempting to dispose of its property at First South and State

Streets, and that plaintiff should be permitted to produce his evidence in support of his allegations.

These allegations if and when established by the evidence will entitle plaintiff to prevail, and the Court is in error in assuming that these allegations are not true.

### CONCLUSION

In the foregoing Petition for a Rehearing and the Brief in support thereof we have called the attention of the Court to allegations in the Complaint which we believe may be readily established by competent evidence, and to the law applicable to facts alleged in the Complaint. The Court has apparently either misconceived the purport of the pleaded facts, or concluded that the same are insufficient to entitle plaintiff to any relief. We have carefully read the authorities cited by the Court and believe that if the Court will re-examine such law in the light of the pleaded facts, the Court will be forced to come to a different conclusion.

We are filing this Petition and Brief not only in our effort to seek a different decision in this case, but with the thought in mind that if some of the conclusions reached in this case are permitted to become the established law in this jurisdiction, they may well result in permitting public property and trust funds to be dissipated without any means to prevent such unfortunate results.

Respectfully submitted,

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