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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 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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Homer Holmgren; Attorney for Said Defendant and Respondent.

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Brief of Respondent, *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 SECURITIES CORPORATION, a corporation, and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation sole*, No. 9268.00 (Utah Supreme Court, 1992).
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CKET NO.

UTAH SUPREME COURT

BRIEF

9268 D-C

COURT

of the
STATE OF UTAH

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 COM-
MERCE OF SALT LAKE CITY, and
GUS P. BACKMAN, its Secretary,
ZIONS SECURITIES CORPORA-
TION, a corporation, and THE
CORPORATION OF THE PRESI-
DENT OF THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS,
a corporation sole,

Defendants and Respondents.

Remov
7/24/60
Case No. 9268

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

BRIEF OF DEFENDANT AND RESPONDENT

The Corporation of the President of the Church of
Jesus Christ of Latter-day Saints.

HOMER HOLMGREN

*Attorney for Said Defendant and
Respondent*

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IN THE SUPREME COURT
of the
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JESSE B. STONE,

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Defendants and Respondents.

Case No. 9268

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

BRIEF OF DEFENDANT AND RESPONDENT

The Corporation of the President of the Church of
Jesus Christ of Latter-day Saints.

STATEMENT OF CASE

This is an appeal from a judgment of dismissal entered
by The District Court of Salt Lake County upon motions to

dismiss filed by this defendant and similar motions by the other defendants.

The complaint contains two causes of action. The first cause of action attacks the sale by the defendant city to defendant Chamber of Commerce of the property presently housing the police and fire departments of defendant city, located at First South and State Streets in Salt Lake City. This property is to be, in turn, conveyed to the United States for a site for a federal office building. Insofar as this defendant is concerned it is alleged that this defendant has no right to use what plaintiff calls a trust fund to assist in the acquisition of the property for a federal building site. The plaintiff claims such plan is null and void as to this defendant for six separate reasons. We shall discuss these in our argument.

No where in the complaint is there any attempt to define the so called trust fund, the purposes of the trust, the limitations of the trust or the rights of beneficiaries in the trust. It is simply alleged defendant was incorporated as a corporation sole with the right to acquire, hold, dispose of such real and personal property as may be conveyed to or acquired by it for the benefit of the members of the Church for the benefit of religion, works of charity and for the purpose of worship.

In the second cause of action the plaintiff attacks the sale by Salt Lake City of the Forest Dale Golf Course to this defendant. The sale is alleged to be void solely because all of the members of the city commission were members of the Church of Jesus Christ of Latter-day Saints, hereinafter referred to as the Church, and so were disqualified to partici-

pate in the sale and because the city did not proceed with the sale in the proper manner. There are no allegations involving this defendant in any unauthorized activity.

In the first cause of action plaintiff alleges he was once a member of the Church and had once paid tithing and had made contributions to the Church. At the hearing on the motions in the lower court and in his written brief, plaintiff conceded that he was not a member of the Church and that he had no standing to question the use of the funds of the Church. In an attempt to overcome the fatal defect of having a plaintiff who had no interest in the so called trust fund of this defendant, and so had no status to question the use to be made of the same, counsel for plaintiff filed a motion on behalf of Mr. and Mrs. Fausett to intervene. Their complaint in intervention alleged they were members of the Church and had paid tithes and other contributions to the Church. They adopted the allegations of the original complaint. Any further analysis of the complaint that may be necessary will be made in the course of our argument to avoid repetition.

This defendant relies upon the following points for an affirmance of the judgment of dismissal by the lower court:

POINT ONE

PLAINTIFF, NOT BEING A MEMBER OF THE CHURCH, HAS NO INTEREST IN THE CHURCH PROPERTY AND HAS NO STANDING IN COURT TO QUESTION THE USE MADE OF CHURCH FUNDS, AND FOR THIS REASON PLAINTIFF'S FIRST CAUSE OF ACTION FAILS TO STATE A CLAIM UPON

WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

POINT TWO

THE FIRST CAUSE OF ACTION FAILS TO STATE A CLAIM AGAINST THE DEFENDANT AS IT FAILS TO ALLEGE: (a) THAT ONLY TRUST FUNDS ARE AVAILABLE AND WILL NECESSARILY BE USED TO PURCHASE THE FIRST SOUTH PROPERTY; AND (b) THE NATURE OF THE TRUST UNDER WHICH THE FUNDS OF THIS DEFENDANT ARE CLAIMED TO BE HELD IN TRUST, THE PURPOSE OF THE TRUST OR WHEREIN THE CONTEMPLATED TRANSACTION WILL VIOLATE THE TRUST AS SO DEFINED.

POINT THREE

PARAGRAPH 20 OF THE FIRST CAUSE OF ACTION ATTEMPTS TO ALLEGE WHEREIN THE TRANSACTION COMPLAINED OF IS NULL AND VOID AS TO THIS DEFENDANT, BUT SUCH ALLEGATIONS FAIL TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE HAD AGAINST THIS DEFENDANT.

POINT FOUR

SINCE PLAINTIFF IS NOT A MEMBER OF THE CHURCH, AND SO HAS NO STATUS TO QUESTION THE USE PROPOSED TO BE MADE OF CHURCH FUNDS, THE FIRST CAUSE OF ACTION IS LIMITED

TO A SUIT BY A TAXPAYER TO RESTRAIN A SALE OF CITY PROPERTY AND FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

POINT FIVE

VOLUNTARY CONTRIBUTIONS FOR GENERAL RELIGIOUS PURPOSES CREATE NO TRUST OR BENEFICIAL INTEREST IN THE PERSON CONTRIBUTING.

POINT SIX

THE TRIAL COURT COMMITTED NO ERROR IN REFUSING TO GRANT THE MOTION OF LYNN AND FIAMETTA FAUSETT TO INTERVENE IN THIS ACTION.

POINT SEVEN

THE FIRST CAUSE OF ACTION FAILS TO STATE FACTS SUFFICIENT TO WARRANT A DISREGARD OF THE SEPARATE CORPORATE ENTITY OF ZIONS SECURITIES CORPORATION AND TO MAKE THIS DEFENDANT ITS ALTER EGO AS A MATTER OF LAW OR FACT.

POINT EIGHT

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION BECAUSE IT FAILS TO ALLEGE FACTS SUFFICIENT TO SHOW A BREACH OF TRUST.

POINT NINE

THE TRIAL COURT DID NOT ERR IN DISMISSING THE SECOND CAUSE OF ACTION AS TO THIS DEFENDANT.

ARGUMENT

POINT ONE

PLAINTIFF, NOT BEING A MEMBER OF THE CHURCH, HAS NO INTEREST IN THE CHURCH PROPERTY AND HAS NO STANDING IN COURT TO QUESTION THE USE MADE OF CHURCH FUNDS, AND FOR THIS REASON PLAINTIFF'S FIRST CAUSE OF ACTION FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

There are numerous cases which hold that a person who has left the Church, or has been excommunicated, has no status to question the use being made of Church funds or property, nor can he stand for or represent those who are members. On this point we cite the following:

NANCE V. BUSBY, 91 Tenn 303, 14 LRA 801, 18 SW 874. Here property was conveyed to the Baptist Church with a specific trust to be devoted to a specific and definite faith and order. Plaintiffs, suing on behalf of themselves and members of the Church, charged that the property so conveyed was being used to teach principles contrary to the established order. The court says:

"There may be persons associated with them (plaintiff) in sympathy and interest, who are not expelled members of the church, but, if this is so, complainants cannot stand for or represent such persons. Excommunicated members, whose names have been by the valid action of the church expunged from the roll of members, cannot stand for and represent members. They are not of the same class."

"Not being members of this church, they are not beneficiaries under the conveyance by which the church holds its church. They have, therefore, no status as enables them to question the use of the property by the defendants. The result is that notwithstanding the force and effect of the verdict, the chancellor should have dismissed the bill."

This case is followed in *KITTINGER V. CHURCHILL*, 292 NYS 35, 51, the court holding that voluntary contributions are not impressed with any trust, express or implied.

The case of *Kittinger v. Churchill* is followed in *GETHESEMANE LUTHERAN CHURCH V. ZACHO*, 92 NW 2d 905, which quotes therefrom as follows:

"The usual rule applicable to religious societies is that the rights of a member are dependent on the continuance of his membership and when he ceases to be a member his rights and beneficial interest in the society's property ceases, and he no longer has standing to sue in relation thereto. Nor does the fact that plaintiff may have made contributions to this association give him any right after his withdrawal to sue in relation to its affairs."

STEWART V. JARRIEL, 59 SE 2d 368, 206 Ga. 855.
The court said:

“An expelled member of a church has no interest in the church property, and excommunicated members whose names have been expunged from the church membership roll by the valid action of the church cannot stand for and represent members of the church in an action to prevent the diversion of church property from its lawful uses.”

RODGERS V. BERNETT, 65 SW 410 and PARTIN V. TUCKER 172 So. 89. These cases cite and quote with approval from NANCE V. BUSBY, SUPRA.

THOMAS V. LEWIS 224 KY 307, 65 SW 2d 255. The court says:

“If the congregation has irregularly removed officers, excluded members, diverted funds, or been guilty of any other irregularity, the correction of such abuses rests with the body of membership of the church.”

See also APOSTOLIC HOLINESS UNION V. KNUDSEN 123 P 473.

From the foregoing authorities it is clear that plaintiff, not being a member of the Church, has no right or standing to question the right or authority of this defendant or Zions Securities Corporation to use funds to acquire a site to be sold to the Federal Government for a federal building site, or to represent members of the Church in such action. Consequently, the first cause of action fails to state a claim upon which any relief can be granted against this defendant.

POINT TWO

THE FIRST CAUSE OF ACTION FAILS TO STATE A CLAIM AGAINST THE DEFENDANT AS IT FAILS TO ALLEGE: (a) THAT ONLY TRUST FUNDS ARE AVAILABLE AND WILL NECESSARILY BE USED TO PURCHASE THE FIRST SOUTH PROPERTY; AND (b) THE NATURE OF THE TRUST UNDER WHICH THE FUNDS OF THIS DEFENDANT ARE CLAIMED TO BE HELD IN TRUST, THE PURPOSE OF THE TRUST OR WHEREIN THE CONTEMPLATED TRANSACTION WILL VIOLATE THE TRUST AS SO DEFINED.

(a) It is alleged that Zions Securities Corporation, hereinafter called Zions, is a corporation organized under the laws of the State of Utah, all its capital stock, except to qualify directors, being owned by this defendant. There is no allegation that Zions may not, under its articles of incorporation, engage in the ordinary commercial transactions. Nor are there any allegations to the effect that the only assets of, and only funds available to, Zions are trust res, or res impressed with a limitation of any kind. Nor are there any allegations that the only funds available to Zions in connection with the transaction under consideration must of necessity come from trust funds held by Corporation of the President.

It is not to be presumed that Zions can not hold or disburse money in the ordinary commercial sense. It is a corporation organized for profit under the laws of Utah. In the absence of any allegation to the effect that by its articles of incorporation it can only hold and disburse trust funds, the

inference must surely prevail that it holds and uses its property and funds in the ordinary commercial sense, the same as any other corporation organized for profit.

There being no allegation as above indicated the complaint fails to state a cause of action, for without such allegations there can be no basis upon which to restrain Zions, or this defendant, from purchasing or providing funds with which the Chamber of Commerce will purchase the property from the city. Plaintiff is a stranger both to Zions and this defendant. He owns no stock in Zions and he has no connection with this defendant. He has no standing to question the right of either to assist in the acquisition of a site for a federal building.

(b) As heretofore pointed out, nowhere in the complaint is there any attempt to define the so called trust fund, the purpose of the trust, the limitation of the trust, or the rights of beneficiaries in the trust. All that is alleged is that this defendant has a trust fund.

There is no allegation that the donors, in making their contributions to the Church, by tithes or otherwise, imposed any trust terms. There are no allegations that such tithes or contributions were donated to this defendant. The fact is they were not. They were contributed to the Church as such. This defendant being merely a legal instrument to hold title to such property as may come to it.

This defendant as a corporation and the Church as an unincorporated religious society are two separate and distinct entities. In *HUNDLEY V. COLLINS*, 131 Ala. 234, 32 So. 575, the court says:

"These provisions of the Code for incorporation of churches or religious societies, and all powers conferred thereunder, relate alone to their properties or temporalities, and have no reference to churches or societies as such, which bodies, as spiritual or ecclesiastical organizations, exist independent of their charters. A church or religious society may exist for all the purposes for which it was organized independently of any incorporation of the body under the statutes of the state.

"Wherever there is an incorporated church, there are two entities, the one the church as such, not owing its ecclesiastical or spiritual existence to the civil law, and the legal corporation, each separate though closely allied. . . . The foregoing is quite sufficient to show that the spiritual entity called a church, made up of members belonging to it, existing without any special law to that effect, is a different and distinct body in the contemplation of law, from the same body when incorporated under the statutes for the purpose—the two having different functions to perform the one religious and the other civil . . . 'The two bodies, viz: the corporation and the church, although one may exist within the pale of the other, are in no respect correlative. The objects and interest of one are moral and spiritual; the other deals with things purely temporal and material.' "

It is necessary to look to Church polity, rather than to this defendant's articles of incorporation to determine the nature and terms of any trust, if any trust exists. This is clearly illustrated in the case of *BENDEWALD V. LEY*, 39 N.D. 272, 168 NW 693, where the court sustained a general demurrer to the complaint, saying:

"The complaint contains no allegations of the ultimate facts, upon which the decision of the case upon its merits must be based. The complaint is wholly devoid of allegations as to church polity except as the constitution affords an indication of its principles of government, and without allegations supplementing the constitution in this particular and without evidence in support of such allegations, it cannot be determined ultimately whether or not the defendants have exceeded the powers vested in them as executive officers and members of the congregation. A plaintiff in an action of this character should not leave open to conjecture the matter of the minority right upon which the claim to relief is based."

The case of *WATSON V. JONES*, 13 Wall 679, 20 LEd 666, classifies the cases before the courts involving controversies over church property into three classes:

1. Property held under the terms of an express trust.
2. Property held by a religious congregation which by the nature of its organization is strictly independent of other ecclesiastical associations and so far as church government is concerned owes no fealty or obligation to any higher authority.
3. Property held by a religious congregation which in turn is a subordinate member of some general organization in which there are superior ecclesiastical tribunals having control.

It is obvious that the instant case involves the second classification. The court held that under this classification the property is not held under a specific trust or for a trust that can be controlled by a minority, or that may not be used for

such purposes as the majority, or the officers in whom have been invested the power of control, may determine even though they have in some respects changed their religious views.

Certainly the courts should not attempt to intrude into the manner in which a religious body may use its funds upon such scant and inadequate allegations as are contained in plaintiff's complaint. This would be real interference by the state into matters of religion. If a church member wants to have a civil court pass upon the polity of his church, the least that should be required is that he definitely alleged the facts upon which he claims a right to relief. Especially should this be true when he seeks to invoke the extraordinary power of injunction to restrain the Church in its activities.

POINT THREE

PARAGRAPH 20 OF THE FIRST CAUSE OF ACTION ATTEMPTS TO ALLEGE WHEREIN THE TRANSACTION COMPLAINED OF IS NULL AND VOID AS TO THIS DEFENDANT, BUT SUCH ALLEGATIONS FAIL TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE HAD AGAINST THIS DEFENDANT.

(a) Paragraph (a) recites that since this defendant, through Zions, already has a federal building site at the Lafayette School site, it is estopped to acquire another site, the First South Site. This objection is wholly specious and frivolous. It is predicated on the proposition that since there is only one federal building in contemplation, ipso facto,

there can not be two sites, hence one having been acquired by Zions, but not by the government, Zions may not obtain another in the hope that the second will be acceptable to the government in place of the first. The final decision in the matter is with the federal government. If it chooses to acquire the Lafayette site the First South site will not be used. If it chooses the First South site the Lafayette site will not be used.

In his complaint, Paragraph 11 and 12, first cause, plaintiff alleges that an action is pending to declare the acquisition of the Lafayette site illegal. If this proves correct there cannot be an estoppel to acquire the First South site. To claim an estoppel plaintiff must take a position contrary to that of his counsel, Mr. Musser, who brought the action to set aside the acquisition of the Lafayette site because certain members of the school board voting for the sale of that site to Zions were disqualified because of conflicting interests. Are plaintiff and his counsel trying to blow hot and cold?

Further, the plaintiff is in no position and has no status to plead an estoppel. The elements of an estoppel are not present.

19 AM. Jur. Page 732. Section 34:

“Not only must the party claiming an estoppel have believed and relied upon the words or conduct of the other party, but also he must have been thereby induced to act, or to refrain from acting, in such a manner and to such an extent as to change his position or status from that which he would otherwise have occupied.”

Section 35, Page 735:

“Estoppel rests largely upon injury or prejudice to the rights of him who asserts it. Since the function and purpose of the doctrine are the prevention of fraud or injustice, there can be no estoppel where there is no loss, injury, damage, or prejudice to the party claiming it.”

(b) Here plaintiff asserts this defendant and Zions have no right to use trust funds to pay for a site for a federal building. This point is covered by what has already been written and further discussion yet to be made.

(c) and (d) In paragraph 20 (c) and (d) plaintiff is complaining against the right and authority of the two church corporations to do the things alleged. In other words, plaintiff claims these corporations are exercising a franchise or privilege not conferred upon them by law. This is an attack in the nature of a quo warranto proceeding and comes under Rule 65B (b) 1. Rule 65B (c) requires the action be brought by the Attorney General in the name of the state. Rule 65B (d) permits a private person to bring the action only if the attorney general fails to do so after notice. It also requires the person to file an undertaking, upon filing the complaint, to pay any judgment for costs or damages recovered against him in such action. There is no allegations that notice has been given the attorney general to bring the action to test the right of these corporations to do the things complained of, nor has any bond been filed. Further, plaintiff does not show a special interest in the matters complained of.

STATE V. RYAN, 41 Utah 327, 125 P 666. Here the court held that a person could not bring quo warranto to

test the sufficiency of the organization of a high school district, showing no other interest than a resident and taxpayer in the district. Such an interest was common to all. He must have a special interest in the matter and the Attorney General must have refused to bring the action.

PEOPLE EX REL BYERS V. GRAND RIVER BRIDGE COMPANY, 13 Colo. 11, 21 P 898. Plaintiff brought suit to dissolve defendant corporation, alleging the district attorney refused to bring the action. He was not a stockholder and had no interest in the corporation other than the corporation had appropriated some of his land on the river bank on which to rest its bridge. The court says:

“If the defendant corporation has violated the law, either by doing some forbidden act or by neglecting to do some act enjoined upon it, it is not every person who may call it to account for such violation. As a general rule, prosecutions for wrong done to the public must be instituted by the state through its properly authorized agents, while the individual can only sue for injuries peculiarly affecting him, and the provision of the code permitting an action in the nature of a quo warranto to be brought by a purely private party, upon the neglect or refusal of the district attorney to bring such action, must be construed with reference to this general rule.”

PEOPLE V. BLEECKER ST. & F.F.R. CO. 125 NYS 1045, aff. 95 NE 1136, 201 NY 594. Action by the people to have certain parts of a special franchise to operate a street railway on streets of Manhattan forfeited and annulled because unlawfully held. On the matter of quo warranto the court says:

"At common law equity did not have jurisdiction in an action for relief such as that here demanded, but the Attorney General was vested with authority to maintain quo warranto for such relief at common law. The legislature, in abolishing the writ of quo warranto, did not intend to deprive the court of jurisdiction in cases of this kind. It was merely intended to change the form of procedure, and that relief which formerly was obtained by quo warranto and by scire facias, should be had in actions or by motions as prescribed by the Code of Civil Procedure. We should expect, therefore, to find by some appropriate provision of the Code of Civil Procedure authority conferred on the Attorney General to maintain such an action, and we think it was conferred by sec. 1948, subdivision 1: 'The Attorney General may maintain an action, upon his own information, or upon the complaint of a private person, in either of the following causes: (1) Against a person who usurpos, intrudes into, or unlawfully holds or exercises within the state a franchise, or a public office, civil or military, or an office of a domestic corporation.'"

The court held the word "person" in this section applied to a corporation, as the term "person" includes a corporation. This case was followed and quoted from in *STATE V. BURMINGHAM WATERWORKS COMPANY*, 185 Ala. 388, 64 So. 23, ANN CAS 1916 B 166.

51 CJ page 339, Sec. 47.

"Ordinarily a quo warranto proceeding to oust individual from exercising franchises and privileges of a corporation without authority of law, to forfeit the charter of a private corporation or to oust it from exercise of the powers or franchises not conferred by

law, may and should, be instituted by the attorney general or other appropriate officer, ex officio on behalf of the state, and not by a private citizen or relator who has no interest in the corporation."

The same is found in 74 CJS Page 229, Sec. 30 (2).

74 CJS Page 222, Sec. 28:

"Under the statutes of a number of jurisdictions, the institution of a quo warranto proceeding by a private citizen is authorized. Regardless of the variance in their language the statutes are generally construed not to authorize the institution or maintenance of a quo warranto proceeding by a private person unless, according to the decisions, he has a special or personal or peculiar interest which is distinct from that of the public."

(e) In this paragraph the plaintiff alleges that the purchase of the First South site will violate the provisions of Section 4, Articles 1 of the Utah Constitution which provides there shall be no union of church and state and shall not dominate the state or interfere with its functions. The question to be resolved is: wherein would the purchase by the federal government of a site for a federal building from this defendant or Zions violate this provision?

The term "state" must refer to the State of Utah. Certainly Utah was not legislating for the U.S. or for any of its states, except for itself. The text of the section shows this. If there is any union or domination or interference in this transaction it does not affect the State of Utah, as it is not acquiring the site and will not be affected by the transaction here involved.

To violate these provisions there must be shown something in the nature of a hazard tending toward breaking down the separation of the church and state. In *EWING V. HARRIES*, 68 Utah 452, 250 P 1049, where the election of Harries as sheriff was challenged on the ground that church officials had urged the church members to unite and elect Harries, which action, it was charged, constituted a violation of sec. 4, Art. I, the court says:

“It is pertinent to ask in what way, if at all, does the fact, if it be a fact, that a large number of church members unite or join their efforts in bringing about the election of a particular person to a particular office, in this case County Sheriff, dominate the state or interfere with its functions? The state itself is not concerned whether A or B is elected to a particular office; but the people may be greatly interested. It is not the function of the state either to nominate or to choose candidates. This is purely a political question entrusted to the people while acting in their political capacity as electors.”

Likewise, the state is not concerned in the selection by the federal government of a site on which to erect a federal building. It is not the function of the state to select or to control the selection of such site. That is the matter solely for the federal government.

THOMAS V. DAUGHTERS OF UTAH PIONEERS, 197 P2d 477. The court held that appropriation of \$150,000.00 by the state for erecting a Pioneer Memorial Building to be under the auspices of the Daughters of the Utah Pioneers did not violate this constitutional provision.

After reviewing the facts and history leading to the enactment by the legislature the court asks:

“Is the picture now submitted to us one that evidences a potential hazard in the nature of a step toward breaking down that separation of church and state.”

We also ask the same question.

(f) Here plaintiff pleads the due process clause of the Fifth Amendment to the Federal Constitution and Section 7, Article 1, Utah Constitution. We submit that these constitutional provisions have not the slightest application in the case now before the court, due process having been defined by this court in *RIGGINS V. DISTRICT COURT OF SALT LAKE COUNTY*, 89 Utah 183, 57 P2d 645 as follows:

“Due process of law requires that notice be given to the person whose rights are affected. It hears before it condemns, proceeds upon inquiry and renders judgment only after trial.”

How is plaintiff being deprived of due process? He has no interest in the so-called trust funds. He alleges the funds are held for the benefit of the members of the church and that he is not a member. What notice or process has he failed to receive? The principals to this transaction are not complaining about want of due process.

Next he invokes the constitutional provision against taking private property for public use without just compensation. Whose property is being taken and who is taking it? The Federal Government is not taking any of plaintiff's property

nor are the two church corporations. There is no element of taking involved. There is a sale which will have to be on terms agreeable to both buyer and seller.

TANNER V. PROVO BENCH CANAL AND IRRIGATION COMPANY 40 Utah 105, 121 P 534. The court held:

“The burden of showing the damage which the owner will suffer rests on him.”

Here the plaintiff sought to enlarge a canal and the owner of the canal easement sought right to compensation. The court held that he had not shown any damages and therefore could not complain.

EDEN IRRIGATION DISTRICT V. DISTRICT COURT WEBER COUNTY, 61 Utah 103, 211 P 957. Here it was held that a water user may not object to an act of legislature which empowers the State Engineer to adjudicate waste water. No one has a vested right in waste water. Hence, no one is deprived of any right when required not to waste water.

POINT FOUR

SINCE PLAINTIFF IS NOT A MEMBER OF THE CHURCH, AND SO HAS NO STATUS TO QUESTION THE USE PROPOSED TO BE MADE OF CHURCH FUNDS, THE FIRST CAUSE OF ACTION IS LIMITED TO A SUIT BY A TAXPAYER TO RESTRAIN A SALE OF CITY PROPERTY AND FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CLAIM UPON

WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

Since it is conceded that plaintiff is not a member of the Church and has no standing in court to question use of Church funds this at once eliminates all issues in relation to that feature of the case. All that is left of the first cause of action is an attack by a taxpayer upon the action of the city in selling or agreeing to sell the First South property. This being true there is no cause of action alleged against this defendant.

If this defendant is to be retained as a defendant at all it would only be on the remote, indirect, intangible interest that might be involved in the city being restrained from selling its property to be used as a federal building site. The first cause of action clearly fails to allege any pecuniary or property interest on the part of this defendant in the transaction that would be affected by restraining the city from selling. All that is alleged is that the "purported bid made by Gus P. Backman was so made at the solicitation of the defendant, Corporation of the President, and its agent and owned defendant, Zions Securities Corporation." Whoever takes title from the city is a mere conduit through which title will pass to Federal Service Administration. No beneficial interest will be acquired by such grantee. The conveyance can be made directly to the Federal Service Administration without invading any rights of this defendant.

The situation covered by the plaintiff's allegations is the same as if I were to become interested in seeing that "A" obtained a certain site for a home. I solicit "B" to submit a bid

to the seller to purchase the home and "B" in turn would see that "A" obtained the property for his home, or that the property was deeded directly to "A." I would not be a proper or necessary party to an action brought by "C" against the seller to prevent the sale nor would I have such an interest as would permit me to intervene in such action. Such a transaction would not give me any interest in the property. I would be a mere volunteer, pure and simple. All that could happen to me, if the seller were restrained, would be the personal disappointment arising from the fact that "A" did not get the home site involved. No property right of mine would be invaded or affected.

POINT FIVE

VOLUNTARY CONTRIBUTIONS FOR GENERAL RELIGIOUS PURPOSES CREATE NO TRUST OR BENEFICIAL INTEREST IN THE PERSON CONTRIBUTING.

As heretofore pointed out, there are no allegations in the complaint which explain or define the manner in which funds are received by the Church. Tithes and contributions are mentioned, both of which constitute voluntary contributions. There are no allegations that these are made by Church members with any specific restrictions as to the application or use to be made of them.

In CADMAN MEMORIAL CONGREGATIONAL SOCIETY V. KENYON, 306 NY 151, 116 NE 2d 481, affirming 111 NYS 2d 808, the court says:

"Gifts to religious or charitable corporations to

aid in carrying out the purposes for which they are organized, either by expending the principal of a bequest or the income of a bequest to be invested in perpetuity, does not create a trust in any legal sense."

It was pointed out in the decision in 111 NYS 2d 808, which decision was affirmed by the case above referred to, that if the religious body attempts to violate the charter powers the donors may protect themselves through an action by the attorney general to compel use of the funds for the purposes for which they were given.

CLARK V. SISTERS OF SOCIETY OF THE HOLY CHILD JESUS, 117 NW 107. The court held:

"The general rule appears to be that, where property is conveyed directly to a corporation to hold for purposes for which the corporation was created, no trust for the benefit of others arises.

"We are unable to see any legal principle upon which a charitable trust in this property can be established, and if no trust was created by the deed of conveyance, the plaintiffs in this action have no interest which qualifies them to maintain the action."

IN RE HENRIKSON'S ESTATE, 203 NW 778 (MINN.)

Decedent devised the residue of his estate to the Swedish Baptist General Conference in Sweden, the property to be reduced to cash and invested, the income to be used to pay the salary of a Baptist Minister in certain areas in Sweden, the principal not to be used to pay salaries. The court held:

"The bequest being to an entity having capacity to take and administer the same under the Laws of Sweden, it is not necessary to determine whether under our laws a void or illegal trust was attempted. But, the bequest being for missionary or charitable purposes to an organization created to carry out such purposes may be upheld under our statute as a bequest absolute to the agency as a gift upon condition.

"If the bequest in this case had been made to a corporation organized for the purpose for which the gifts were made, the education of a young men for the priesthood, the corporation would take the bequest absolutely, as the beneficiary, and not in trust."

Also IN RE HAVSGAARD'S ESTATE, 283 NW 130, the court says:

"A gift to a corporation or organization to enable it to carry out some or all the purposes for which it was formed does not create a trust."

Quoting from page on Wills, 2d ed., Volume 2, Sec. 1049, Second Edition and citing a number of cases.

The court goes on to use this language:

"The rule above announced has had a general application. The reason underlying the rule being that the purpose for which the property is left, being a part of the church and a department of the church itself, that both the legal and equitable title vests in the church and this being true the equitable title merges in the legal title. A person cannot be a trustee for himself."

ZABEL V. STEWART, 109 P 2d 177, Kansas; the court says:

"Generally it has been held that where a gift is given to a corporation for the accomplishment of a purpose for which the corporation was formed, the gift is absolute and not in trust, and more specifically, where a gift is made to a religious or charitable corporation to aid in carrying out the purposes for which it was formed, it does not create a trust in any legal sense and it is not to be judged by any of the well-known rules pertaining to the Law of Trusts as applied to individuals."

POINT SIX

THE TRIAL COURT COMMITTED NO ERROR IN REFUSING TO GRANT THE MOTION OF LYNN AND FIAMETTA FAUSETT TO INTERVENE IN THIS ACTION.

Appellant Stone argues that the Court erred in refusing to grant the motion of the Fausetts to intervene in this action. He is in no position to urge such error, if there is any error. It was not his motion. His right of action, if any, stands or falls upon his complaint, not upon the complaint in intervention. It may be comforting to have company in his anti-church crusade but he has no legal basis to assert error because the court failed to give him such companionship. Nowhere in the Appellant's brief is there any assertion of error on part of the Fausetts. Perhaps, since the trial court simply did not pass upon the motion to intervene, as there would be no cause of action in which to intervene when plaintiff's complaint was dismissed, there was no appealable judgment or order

from which the Fausetts could appeal. But this would not invest plaintiff with the right to substitute himself for the Fausetts to urge error.

In addition, neither plaintiff nor intervenors come within Rule 24 (a) (2), as a matter of right, or 24 (b) as a matter of discretion.

(a) To qualify for intervention as a matter of right, intervenor must come within this language of said rule:

“When representation of the applicant’s interest by an existing party is or may be inadequate and the applicant is or may be bound by a judgment in the action.”

The only area in which intervenors are not adequately represented by Stone in this action, is that involving use of the Church’s so-called trust fund, as alleged. Intervenors can not add anything to Stone’s interest as a tax payer and resident of Salt Lake City. They all have the same attorneys. Since Stone has no status to question the use of the trust fund, to allow Fausett to intervene would be the equivalent of bringing a new action upon an entirely new issue, wholly foreign to the issues in the pending action. The plaintiff, as a tax payer, is contesting the sale of City property. Intervenors seek to prevent the Church from using its funds in making the purchase, an entirely different and indirect approach to an effort to enjoin the sale.

Furthermore, intervenors will not be bound by the judgment dismissing the tax payer’s suit. He can still test the trust fund theory by separate action.

2 BARRON & HOLTZOFF, Section 597, p. 213:

“Intervention as of right is not allowed, regardless of adequate representation, if the judgment could not conclude the intervenors.”

To the same effect is *AR-TIK SYSTEMS, INC., V. DAIRY QUEEN* 22 FRD 122 and *SUTPHEN ESTATES V. UNITED STATES*, 342 US 19 LED, holding the decree or judgment must be res judicata of the rights sought to be protected by intervention.

(b) To qualify for permissive intervention, intervenors must show their claim and the main action have a question of law or fact in common. Intervenors do not come within this rule. The only reason for their intervention is to have a plaintiff who is a member of the Church to question the use of the trust fund. Stone has no standing to question such use and no question either of law or fact in that regard could be raised by him. To permit Fausett to intervene would be the equivalent of bringing in a new cause of action based upon issues of law and fact not involved in the main action. This may not be done, see *STRICKLER ENGINEERING CORP. V. MICHAEL FLINN MFG. CO.*, 23 FRD 12.

In *WILSON V. ILLINOIS CENTRAL RAILROAD*, 21 FRD 588, the Labor Union sought to intervene in an action by a re-employed veteran who alleged the defendant had failed to restore him to employment with full seniority. Intervenor claimed the bargaining agreement between it and the railroad was involved and might be interpreted adversely to employees. The Court refused intervention, saying:

"The pleadings of the original parties raise no issues pertaining to the collective bargaining agreement between the federation and the defendant. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objections, briefs, arguments, motions and the like, which tend to make the proceedings a Donnybrook Fair."

4 Moore Federal Practice p. 67:

"Interventions may be denied where the intervenor has an adequate remedy in another pending action or otherwise."

POINT SEVEN

THE FIRST CAUSE OF ACTION FAILS TO STATE FACTS SUFFICIENT TO WARRANT A DISREGARD OF THE SEPARATE CORPORATE ENTITY OF ZIONS SECURITIES CORPORATION AND TO MAKE THIS DEFENDANT ITS ALTER EGO AS A MATTER OF LAW OR FACT.

Plaintiffs seek, by the general allegation that this defendant owns all of the capital stock of Zions, and that Zions is the agent of this defendant, to fuse the two corporate entities in this defendant and to disregard the corporate entity and powers of Zions. We assert that such general allegations are wholly insufficient to sustain such a conclusion.

13 AM. JUR., Section 6, Page 159:

"The corporate entity is distinct although all its stock is owned by a single individual or corporation. Consequently, such concentration of stock ownership

does not alter the fact that title to the corporate property is vested in the corporation and not in the owner of the corporate stock. Likewise, the fact that the stockholders or officers in two corporations may be the same does not operate to destroy the legal identity of either corporation. Moreover, the fact that one corporation exercises a controlling influence over the other through the ownership of its stock or through the identity of stockholders does not make either the agent of the other, or merge the two corporations into one."

1 FLETCHER CYC. CORPORATIONS, Permanent Edition, Page 158-160, Section 43:

"It is not enough that the shareholders and officers or managers in the corporations are identical, and the mere fact that one owns all the stock of the other, or substantially all, is not enough to warrant disregard. Common officers and management is not incompatible with separate entities, or conclusive of identity. Even active management for a proper object does not always indicate identical entities. . . . A difference in corporate powers, the held corporation having power to do that which is beyond the powers of the other, is an obstacle to the complete disregard of the former's entity."

SURGICAL SUPPLY CENTER V. INDUSTRIAL COMMISSION, 118 Utah 632, 223 P 2d 593. The court says:

"Plaintiffs contend that the partnership owns all of the stock of the two corporations with the exception of five qualifying shares; that these corporations were organized merely to establish operating mediums of the two businesses of the partnership, and hence, the partnership, for the purposes of this statute should

continue to be regarded as the employer and the new companies should be entitled to the rate it has earned. In advancing this argument plaintiffs overlook well established principles of law relating to corporations. A corporation is a statutory entity which is regarded as having an existence and personality distinct from that of its members or stockholders. This is so even though the stock is owned by a single individual or different corporations. The fact that the stockholders of two corporations may be the same persons does not operate to destroy the legal entity of both corporations.

CLAUDE NEON LIGHT INC. V. FEDERAL ELECTRIC COMPANY INC. 236 NYS 692. Holds that a corporation formed by two others to do what neither could or would do without the other cannot be disregarded as a separate entity.

To the same effect is a CORSICANA NATIONAL BANK OF CORSICANA V. JOHNSON, 251 US 68, 64 LED 141, where it was held that a national bank and a loan company doing things the bank could not do maintain their separate identity.

H. E. BRIGGS AND COMPANY V. HARPER CLAY PRODUCTS COMPANY, 150 WASH. 235, 272 P 962. The court held:

"It is not enough to call for adjudicating two corporations to be in legal effect one, that it merely appears that one is owner of practically all of the stock of the other, and that they are very intimately related in jointly carrying on their business for the purposes of mutual benefit. It must also appear that their

property rights are so commingled and their affairs so intimately related in management as to render it apparent that they are, in fact and in interest, one, and to have them regarded otherwise would work fraud upon third persons."

NICHOLS AND COMPANY V. SECRETARY OF AGRICULTURE, 131 F. 2d 651. Here it was held that courts are hesitant to destroy the corporate separateness of parent and subsidiary where there is no evidence of evasion or where it is clear that both the parent and subsidiary have a legitimate separate existence.

GINAS V. LOEW'S INC. 75 NYS 2d, 421. Held that a subsidiary corporation is an entity independent and apart from its parent corporation and is not its alter ego.

LEDLOW V. GOODYEAR TIRE AND RUBBER COMPANY OF ALABAMA, 238 ALA. 35, 189 SO 78. The court held:

"Affiliates of a corporation may have separate identity though both are wholly owned by dominant corporation, as where business of latter justifies creation of each to serve separate and distinct functions, as where each aspect of its business is of such proportion and character as that it may be conducted to better advantage by separate corporations; and they each form essential features of a coordinated plan of operation, and have separate corps of employees and managers with separate facilities and arrangements, and there is no confusing relations to mislead the public and no other fraudulent or evasive result is thereby accomplished. They are not then identified as one."

DUARTE V. POSTAL UNION LIFE INSURANCE COMPANY, 171 P 2d, 574. The court held:

“Before the courts will disregard the corporate entity of one corporation and treat it as the alter ego of another, even though the latter may own all of the stock of the former, it must further appear that there is such a unity of interest and ownership that the individuality of the one corporation and the owner or owners of its stock has ceased, and further, that the observance of the fiction of separate existence would, under the circumstances sanction a fraud or promote injustice.”

In the light of the foregoing it is clear that Zions is not limited in its corporate powers and purposes to the corporate powers and purposes of this defendant, a corporation sole created under an entirely different and separate part of the code governing corporations.

POINT EIGHT

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION BECAUSE IT FAILS TO ALLEGE FACTS SUFFICIENT TO SHOW A BREACH OF TRUST.

Throughout his brief plaintiff repeats over and over again the idea that this defendant, and Zions, hold a trust fund and that this trust fund is being misused in the acquisition of a site for a federal building at First South Street. We feel we have demonstrated that there is no trust property involved and that plaintiff has failed to allege any facts which would involve misuse of a trust fund. Assuming, however, that this defendant holds trust property, and that plaintiff

and intervenors have such an interest that will allow them to sue this defendant for breach of trust, there is no breach of trust alleged.

All that is alleged is that (Paragraph 17) if the property is acquired by defendant Chamber of Commerce or Gus P. Backman, this, and the other defendants, plan to induce the General Service Administration to purchase the same for the erection of a federal building site thereon. It is then alleged (Paragraph 19) that under this plan it will be necessary for this defendant or Zions, to advance for the purchase price several hundred thousand dollars to pay for such site in excess of the amount that will be received from the federal government for the site so furnished. In Paragraph 20 (b) it is alleged this defendant nor Zions has any right to use trust funds held by them to pay for a site for a federal building.

Under its articles of incorporation the objects to be accomplished by this corporation are defined as follows:

“Second: The object of this corporation shall be to acquire, hold and dispose of such real and personal property as may be conveyed to or acquired 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. Such real and personal property may be situated, either within the State of Utah, or elsewhere, and this corporation shall have power, without any authority or authorization from the members of said Church or religious society, to grant, sell, convey, rent, mortgage, exchange, or otherwise dispose of any part or all of such property.”

This clearly indicates that it can acquire, hold and dispose of property for four separate purposes, namely:

1. For the benefit of the members of the Church, a religious society, which clearly indicates an entity separate and distinct from this corporation.
2. For the benefit of religion.
3. For works of Charity.
4. For purpose of worship.

The "works of charity," so authorized, need not be confined to Church members but may take any desired form within the meaning of these words. These are generic terms and must be given their usual meaning. The Church, over the years, has made contributions to all kinds of enterprises that are not restricted to its members. Its contributions to the federal government, during World War I, of a vast quantity of wheat, its donations to flood and disaster areas, its donations to the United Funds and to the Boy Scouts of America are classic illustrations.

According to Restatement of the Law of Trusts, Volume 2, Section 368, charitable purposes include:

"(a) Relief of poverty, (b) The advancement of education, (c) the advancement of religion, (d) The promotion of health, (e) Governmental or municipal purposes, (f) Other purposes, the accomplishment of which is beneficial to the community."

In Section 373, Restatement continues:

"A trust for the erection or maintenance of public buildings, bridges, streets, highways, parks or other public works or for other governmental or municipal purposes is charitable." See comment (a).

A lengthy discussion of the definition of charitable purposes or trusts is found in 12 ALR 2d at Page 855. As stated in *IN RE HART'S ESTATE*, 151 Cal App. 2d 271, 311 P 2d 605:

"Gifts in aid of governmental purposes are uniformly held to be for charitable purposes."

See also *SCOTT ON TRUSTS*, 2d Edition, 1956, Page 2665.

This court in *STAINES V. BURTON*, 17 Utah 331, 53P 1015, followed this same rule and quoted Lord Camden's definition of a charitable gift as "a gift to a general public use, which extends to the poor as well as the rich." See also 10 Am. Jur., Page 585, Section 3, and 10 Am. Jur., Page 647, Section 79, where it is stated that gifts to the government for its general benefit or for the reduction of the state or national debt are valid as charitable gifts. See also 50 ALR, Page 593-598 and cases therein cited.

The motive of the donor is immaterial, 10 Am. Jur., Page 594, Section 13; Restatement of Law of Trusts, Volume 2, Section 368, Comment (d).

There need not be a necessity for the charity sought to be established, 10 Am. Jur., Page 593, Section 12. The court will not inquire into the necessities. *WILSON V. FIRST*

NATIONAL BANK, 164 Iowa 402, 145 NW 948, Ann. Cas. 1916 D 481.

The Church, from its very beginning, has fostered and given financial support to all kinds of public endeavors. It has fostered and promoted many industries calculated to benefit non-members as well as members. For this it has a world wide reputation, not limiting its efforts in that regard to any particular area.

The Church, through its members, settled this valley, formed and built Salt Lake City, the recognized capital of its religious and welfare activities. The church is profoundly interested, and rightly so, in beautifying and improving its capital city. Because of the Church, and its far reaching activities and reputation, millions of people visit Salt Lake City. It has become one of the great tourist attractions of the nation.

Certainly the Church is deeply concerned and interested in Salt Lake City having governmental facilities worthy of its capital city. Certainly it is rightfully interested in seeing that the eye sores that now house the public safety departments of its capital city be replaced and new facilities acquired, with a new modern federal building rising to replace these obsolescent and inadequate facilities. Certainly it is within the term "works of charity," as above defined, to bring about such a result. Any money spent to accomplish that objective can not by any stretch of the imagination be termed a breach of trust. It is for the benefit, not only of Church members, but all of the citizens of Salt Lake City and the State of Utah.

Assuming, therefore, that there is a trust and that funds of such trust will be used to assist in accomplishing the above result, there is no breach of trust. The action of this defendant in so using its funds is still within the powers enumerated in its articles of incorporation and is within the purposes for which it holds its funds.

POINT NINE

THE TRIAL COURT DID NOT ERR IN DISMISSING THE SECOND CAUSE OF ACTION AS TO THIS DEFENDANT.

Plaintiff, in his second cause of action, adopts Paragraph 1, 2, 3 and 7 of the first cause of action. Paragraph 1 alleges that he was a tithe payer and a contributor to the Church and has an interest in the trust fund held by Zions and this defendant. In Paragraph 3 he alleges the corporate existence of this defendant. In Paragraph 7 he alleges the purposes of this defendant is to hold and disburse real and personal property for the benefit of the members of the Church, a religious society, for the benefit of religion, works of charity and purpose of worship.

There are no allegations in the second cause of action that involve this defendant in violation of a trust relationship or in any excess of corporate power or in any activity of any kind except it entered into a contract with Salt Lake City to buy the Forest Dale Golf Course. Accordingly, any allegations concerning plaintiff's former membership, former payment of tithes and contributions and the existence of a trust fund held by this defendant and plaintiff's interest therein

are wholly immaterial and redundant and add nothing to the second cause of action.

In final essence, this second cause of action is merely a taxpayers suit against the city for entering into a contract to sell the golf course because, first, all members of the city commission voting for the contract were members of the Church and so were disqualified from authorizing the contract, and, second, the city did not give any notice, did not pass any valid authorization for the execution of said contract or to declare said property was no longer useful for use as a city park, or otherwise informing the citizens of Salt Lake City that said park would be sold and abandoned as a park. Plaintiff prays that the contract be declared null and void. It thus appears there are no allegations stating a claim upon which relief can be granted against this defendant.

CONCLUSION

From the plaintiff's complaint it is apparent that this action is designed not to protect the public's interest in either the preservation of public property or in the selection of a public site for a federal building, but to serve some other purpose. The matter of the obsolescence of the police, fire and health department properties were fully and openly aired in a public hearing to which anyone could, and was invited to, be heard. Evidence was taken, experts were consulted, committees of citizens made recommendations, all to the effect that Salt Lake City was in urgent need of new facilities for its public safety departments. Plaintiff and intervenors were conspicuous by their absence. They now seek to litigate that which has been laid finally at rest by the very tribunal whose

sole jurisdiction it was to decide the matter, the city commission. There are no allegations of fraud, chicanery, capriciousness or other illegal aspects. Plaintiff simply denies that these properties are in fact sufficiently obsolete for the purposes for which they are used. That issue can not be re-hashed in an action such as plaintiff has brought. The court has no jurisdiction to substitute its discretion for that of the city commission in a matter of this kind.

The purchase of the Forest Dale Golf Course was widely publicized to provide a junior college site to be sponsored by the Church. The purchase price was paid and the funds derived therefrom were spent by the city in acquiring and improving a new golf course. More than a year passed before plaintiff brought his action to question that sale. He is guilty of laches.

No one having any standing in the Church has questioned the participation of the Church, whatever it may be, in the two transactions. Plaintiff's solicitation for the Church membership in his attempt to protect them from what he considers an unauthorized use of Church funds, is touching but of no legal efficacy. He has no interest. He has no standing in his self-appointed role of watchdog over Church funds. To permit him, or his companions, the intervenors, in their undisclosed purpose, to delve into the Church financial activities, its internal polity and to cast appersions upon its integrity and purposes, under the specious and wholly inadequate allegations of plaintiff's complaint would not in any manner promote justice or protect public interest, but would in fact do just the reverse.

We respectfully submit that no cause of action has been alleged against this defendant. The judgment of dismissal should be affirmed.

Respectfully Submitted,

Homer Holmgren
Attorney for Defendant and Respondents,
Corporation of the President of the Church
of Jesus Christ of Latter-day Saints.