

1962

Intermountain Electronics, Inc. v. Board of Education, Tintic School District et al : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Intermountain Electronics, Inc. v. Board of Education*, No. 9676 (Utah Supreme Court, 1962).
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In the Supreme Court of the State of Utah

INTERMOUNTAIN ELECTRONICS, INC., a
corporation,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, TINTIC SCHOOL
DISTRICT, a body Corporate of the State of
Utah; BOARD OF COUNTY COMMISSIONERS
OF JUAB COUNTY, STATE OF UTAH; CITY
OF EUREKA, UTAH; and T.V. PIX, INC., a
corporation,

Defendants-Respondents.

No. 9676

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- 1982

BRIEF OF APPELLANT

Clerk, Supreme Court, Utah

Appeal from Judgment of the 4th District Court
Honorable Maurice Harding, Judge

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IN THE SUPREME COURT
of the
STATE OF UTAH

INTERMOUNTAIN ELECTRONICS,
INC., A corporation,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, TINTIC
SCHOOL DISTRICT, a body Corporate
of the State of Utah; BOARD OF
COUNTY COMMISSIONERS OF
JUAB COUNTY, STATE OF UTAH;
CITY OF EUREKA, UTAH; and T.V.
PIX, INC., a corporation,

Defendants-Respondents.

No. 9676

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an action to determine if on the 6th day of June, 1961 at the City of Eureka, Juab County, State of Utah, — “television reception was impossible without special equipment, and adequate economical and proper television was not available to the public by private sources.” 11-2-2 UCA 1953, as amended.

DISPOSITION IN LOWER COURT

“Ordered, adjudged and decreed that the complaint on file herein be, and hereby is, dismissed; and that

judgment be and hereby is, entered in favor of the defendants and against plaintiff, no cause for action." (No facts have been submitted to the Court.)

RELIEF SOUGHT ON APPEAL

Remand to the District Court for trial.

STATEMENT OF FACTS

In May, 1955, Eureka City granted plaintiff a franchise to construct and operate a television antenna distribution system in the city; terms for charges and rates established and ordered; plaintiff made a considerable financial outlay and the system was put in operation and continues to operate.

Defendants by expenditure of public funds are about to put a translator station in operation in competition with plaintiff.

Plaintiff asks the Court to show as a matter of fact that the service in place under private sources is "adequate, economical and proper."

ARGUMENT

POINT I.

THE COURT MUST CONSIDER THE ISSUES OF FACT SET FORTH IN THE COMPLAINT.

This Honorable Court has repeatedly held and recently stated: "****the privilege of presenting evidence should be denied only when, taking the view most favorable to the party's claims, he could not establish a right

to redress under the law; and unless it clearly appears, doubts should be resolved in favor of permitting him to go to trial.” *Tangren vs. Ingalls*, 12 Utah 2d 388 at 395, 367 P 2d 179.

The legislature set forth the conditions under which the Board of County Commissioners could act. Plaintiff requests the Court to determine if said conditions have been fulfilled.

POINT II.

PLAINTIFF IS ENTITLED TO NOTICE AND AN OPPORTUNITY TO BE HEARD.

In paragraph 7 of plaintiff’s complaint, it is alleged that the action of the Board of Commissioners was taken without notice to the plaintiff. Indubitably plaintiff was entitled to notice.

This Court holds: “The statute aside, it is axiomatic that the order of an administrative body issued without notice to affected individuals is violative of due process.” *D&RG vs. Industrial Commission*, 74 Utah 316, 379 Pac 612; *Fuller Toponce Trucking Co. vs. Public Service Commission*, 99 Utah 28, 96 Pac. 2d 722; *Morris v. Public Service Commission*, 7 Utah 2d 167, 333 Pac. 2d 258.

POINT III.

A BUSINESS IS A PROPERTY RIGHT.

The plaintiff built and operated the television business in keeping with the franchise, terms thereof and sanction of the citizens in the area. Plaintiff is entitled

to protection against arbitrary action of public officials.
12 Am. Jur. 344.

CONCLUSION

It is respectfully submitted that plaintiff is entitled
to its day in court.

Respectfully submitted,

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