

1964

# The Park and Recreation Commission of the State of Utah v. Department of Finance of the State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

FILED

THE PARK AND RECREATION  
COMMISSION OF THE  
STATE OF UTAH,  
*Plaintiff-Respondent,*

— vs. —

DEPARTMENT OF FINANCE OF  
THE STATE OF UTAH,  
*Defendant-Appellant.*

NOV 13 1964

Supreme Court, Utah  
Case  
No. 10010

BRIEF OF APPELLANT

Appeal From the Judgment of the  
Third District Court for Salt Lake County  
HONORABLE JOSEPH JEPSON, *Judge*

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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THE PARK AND RECREATION  
COMMISSION OF THE  
STATE OF UTAH,

*Plaintiff-Respondent,*

— vs. —

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THE STATE OF UTAH,

*Defendant-Appellant.*

Case  
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## BRIEF OF APPELLANT

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### STATEMENT OF THE NATURE OF THE CASE

This action was instituted in the lower court for a declaratory judgment construing the meaning and effect of Section 63-11-19A, Utah Code Annotated 1953, as amended. The specific question is whether said statute authorizes land purchase contracts for Wasatch Mountain State Park in a total principal amount of \$1,323,648.57 or of only \$150,000.00.

## DISPOSITION IN THE LOWER COURT

The lower court sustained the contention of plaintiff, holding that the statute authorized a total principal amount of \$1,323,648.57.

## RELIEF SOUGHT ON APPEAL

Appellant seeks review of the judgment of the lower court so that funds spent pursuant to the authority of Section 63-11-19A will be spent in accordance with law.

## STATEMENT OF FACTS

In order to permit land purchases for Wasatch Mountain State Park, the Utah Legislature in 1961 enacted Chapter 152, Laws of Utah 1961, codified as Section 63-11-19A, Utah Code Annotated 1953, as amended. This statute authorized the State Park and Recreation Commission to enter into land purchase contracts not to exceed a total principal amount of \$1,173,648.57, not to exceed ten years in the pay out period, and not to exceed 3% per annum interest on the deferred principal installments.

The statute further provided that such contracts were assignable by the seller, and, when assigned to a bona fide purchaser for value:

“\* \* \* the payment of the principal installments and interest remaining due at the time of such assignment, shall not be avoided or invalidated for any irregularity or defect in the proceedings for their execution and delivery or for failure of

compliance with any of the other terms or conditions of said contracts, but shall be incontestable in the hands of such bona fide purchasers for value.”

Subsection 5 of said statute further pledged the full faith and credit of the State of Utah to the payment of principal and interest on said contracts, and also levied on all taxable property a direct and annual tax sufficient to pay the principal and interest installments required under the terms of such contracts.

Acting pursuant to such statutory authorization, the Park and Recreation Commission entered into land purchase contracts for Wasatch Mountain State Park in a total principal amount of \$1,151,663.38 (T. 7), which was about \$22,000.00 less than the amount authorized. Further, pursuant to the statutory authority of assignment, many of the sellers assigned their installments receivable to the First Security Bank, in a total assigned principal amount of \$574,515.75 (T. 8).

The Park and Recreation Commission requested an additional \$202,000.00 authorization from the 1963 Legislature to permit the exercise of options on additional land for Wasatch Mountain State Park, since such options could not be exercised without exceeding the 1961 authorization of \$1,173,648.57. This request was in the form of Senate Bill No. 218 (Ex. P-2), and purported to amend Section 63-11-19A (the 1961 authorization) by deleting the figure \$1,173,648.57 and substituting in lieu thereof the figure \$202,000.00.

Senate Bill No. 218 was passed by the Legislature and was signed by the Governor, but the \$202,000.00 request was amended down to \$150,000.00, as it now appears in Chapter 152, Laws of Utah 1963, and as codified in the 1963 Code Supplement as Section 63-11-19A.

The singular fact emerging from all this confusion is that the only statute on the books which gives any authorization for Wasatch Mountain State Park land purchase contracts is the present Section 63-11-19A. And that section authorizes a total principal amount of only \$150,000.00, which is only a fraction of the land purchase contracts presently in force. Because of this situation, appellant refused to approve further payments on the land purchase contracts and refused to approve the exercise of any additional options. The District Court construed Section 63-11-19A as an authorization for a total principal amount of \$1,323,648.57, holding that the figure \$150,000.00 was an error and that the Legislature in fact intended to add the figure of \$150,000.00 to the earlier figure of \$1,173,648.57, rather than to reduce the previous authorization. From this decision the appellant has brought this appeal, seeking a determination by this Court.

## ARGUMENT

THIS COURT SHOULD CLARIFY SECTION 63-11-19A SO THAT APPELLANT DIRECTOR OF FINANCE CAN ADMINISTER PAYMENT OF FUNDS THEREUNDER.

Appellant does not not contend that the Legislature intended to reduce the 1961 authorization by the 1963

act. To the contrary, it is obvious to appellant that the Legislature in fact intended to increase the 1961 authorization by an additional \$150,000.00. This is apparent from, among other things, the fact that the Legislature received a budget request for Park and Recreation Commission land purchases based on existing contract obligations and on anticipated obligations if the options were exercised. The Legislature appropriated sufficient funds for payment of principal and interest on installments falling due during the present biennium and for installments which would fall due if the options were exercised (See Appropriations Act of 1963, Item 126 on page 26, appropriating \$400,000.00.) So, appellant admits that sufficient funds have been appropriated, budgeted and allotted for payment on the purchase contracts and options.

But appellant's concern is simply this: The statute in question authorizes a total principal payment of only \$150,000.00, and more than that has already been paid on existing contracts. The Director of the Department of Finance has furnished a bond to the State of Utah to assure his faithful performance of his duties, and would be liable thereon if he approved additional payments contrary to the clear wording of the statute.

Perhaps the statute does not mean what it says. But perhaps it does! The difference between respondent Park and Recreation Commission's request and the express authorization of the statute is \$1,173,648.57 (the amount of the deleted 1961 authorization). Respondent does not



wish to act arbitrarily, nor, on the other hand, does it wish to act in defiance of a statute.

## CONCLUSION

It is respectfully submitted that this Court should determine whether Section 63-11-19A authorizes the sum of \$150,000.00 or the sum of \$1,323,648.57, so that appellant can perform its duties in conformance with such determination.

Respectfully submitted,

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