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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

— vs. —

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

Case No. 10010

BRIEF OF RESPONDENT

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

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TABLE OF CONTENTS

AUTHORITIES CITED

Constitutions Cited:

Statutes Cited:

Cases Cited:

TABLE OF CONTENTS — (Continued)

Treatises Cited:

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STATEMENT OF THE NATURE OF THE CASE

Appellant's statement as to the nature of the case is accurate, but there is more involved than a strict application of monetary figures. The real question is whether Section 63-11-19A should be strictly, narrowly and rigidly construed without regard to legislative intent, thereby perpetuating a legislative error, or whether it should be liberally and fairly construed, thus giving effect to the legislative intent.

The Legislature in 1963 intended to amend the 1961 enactment of Section 63-11-19A so as to *increase* the authorization for Wasatch Mountain State Park land

purchase contracts by the sum of $150,000.00, thereby increasing the 1961 authorization of $1,173,648.57 to a total of $1,323,648.57. But the Legislature erroneously amended the 1961 act to show a total authorization of $150,000.00, seeming to be a *decrease* of $1,023,648.57, rather than an *increase* of $150,000.00.

Thus, the nature of the case is a judicial determination of whether the present Section 63-11-19A means $150,000.00 as it was erroneously and inadvertently enacted, or whether it means $1,323,648.57 as the Legislature intended.

DISPOSITION IN THE LOWER COURT

The trial judge, considering the questions of law pursuant to a stipulation of facts and upon respondent's motion for summary judgment, ruled that Section 63-11-19A authorized the sum of $1,323,648.57 for Wasatch Mountain State Park land acquisition.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the judgment of the lower court.

STATEMENT OF FACTS

Respondent does not dispute the facts recited in appellant's brief. It might be helpful, however, to supplement that statement of facts with a more complete explanation of what happened in the enactment of the 1963 statute.

Dwight Freeman, assistant director of the Park and Recreation Commission, who had been in charge of Wasatch Mountain State Park development from its inception to the time of the hearing in the lower court (T. 6), was called and testified. He explained that the Commission had under option land which it wanted to acquire for addition to the park, but that the dollar volume would exceed the 1961 authorization, and it was thereupon determined to request the Legislature to authorize an additional $202,000.00 in land acquisition contracts (T. 6-8).

Mr. Freeman explained that Senate Bill No. 218 (Ex. P-2) was introduced to accomplish such purpose, and that he appeared before the Senate, sitting as committee of the whole, and used maps to indicate the specific acreage held under option and which would be acquired if the additional authorization were granted (T. 9). The bill passed the Senate, but in the House Rep. Robert F. Clyde from Heber City objected to the purchase of a particular piece of property held under option and succeeded in amending the bill down from $202,000.00 to $150,000.00 (Ex. P-1, T. 9-11). The property in question belonged to Alfred Lippold and was held under option for $52,000.00, which accounted for the difference between the $202,000.00 as requested and the $150,000.00 as granted (T. 10). Rep. Clyde informed Mr. Freeman that he objected to purchase of the Lippold property under options:

> Q. Did Mr. Clyde tell you in advance of the amendment, that he objected to acquisition of the Lippold property?
>
> A. Yes.

Q. Did he tell you that he thought that the additional acquisition should be limited to those acquisitions which should (sic) (could) be acquired for $150,000.00?

A. That is true. (T. 11)

Exhibit P-1, which is an extract of page 733 from the official House of Representatives Journal (Day 59), contains the following:

> "On motion of Representative Clyde, the rules were suspended, and S. B. No. 218 was read the second and third time and placed on its final passage.
>
> On motion of Representative Clyde, the bill was amended as follows:
>
> > Page 1, line 9, delete '202,000.00' and insert '150,000'.
> >
> > Purpose of this amendment is to delete the purchase by the State Park and Recreation Commission of the Lippold property which comprises an area of approximately 1,420 acres."

The bill was thus amended down from $202,000.00 to $150,000.00 to authorize exercising options on additional land for the lesser sum.

Another fact which shows that the 1963 Legislature was interested in promoting, rather than restricting, the park is the fact that a bill was passed authorizing the issuance and sale of revenue bonds to construct an aerial tramway on land already being acquired by the Commission pursuant to the contracts authorized by the 1961 act. The 1963 aerial tramway bill was enacted into law

and codified as Chapter 11, Title 63, Utah Code Annotated.

Thus, the error is obvious. The Legislature could have increased the authorization by enacting a separate statute authorizing $150,000.00, or it could have increased the 1961 amount by $150,000.00. Rather than follow either such procedure, however, it amended the 1961 act by deleting that authorization of $1,173,648.57 and inserting $150,000.00. So, all that exists now by way of statutory authorization is the 1963 amendment to Section 63-11-19A reciting the figure of $150,000.00 rather than the intended combined total of $1,323,648.57.

It seems to be an incredible error. But error it is. At the same time the Legislature was passing the appropriations act to appropriate money to pay current installments on the 1961 contract authorization and to permit exercise of options pursuant to the 1963 increase (Appropriations Act of 1963, Item 126 on page 26), and at the same time it was passing the aerial tramway bill to permit the sale of revenue bonds to build a substantial recreational facility, it was also enacting into law an error that cast shadows of doubt on existing contracts, on existing options and on the validity of any revenue bond issue to build a facility on land which there seemed to be no authorization to buy. For this reason this declaratory judgment proceeding became necessary.

ARGUMENT

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED.

A. *The Legislative Error Is Obvious*

It is undisputed and indisputable that the Legislature in the 1963 act intended to authorize respondent Park and Recreation Commission to contract for the purchase of land in the principal amount of $150,000.00 in addition to the 1961 authorization of $1,173,648.57. The only question is whether the lower court was correct in giving effect to the legislative intent by holding that the present Section 63-11-19A authorizes the principal amount of $1,323,648.57 rather than the stated principal amount of $150,000.00.

B. *The Statute Should Be Liberally and Fairly Construed*

Few things could be clearer than this Court's consistent and perceptive practice of construing statutes so as to make them meaningful and effective in accomplishing the legislative intent. The cases are numerous, and the principle is so firmly established that the citation of authorities seems superfluous. As recently as *Smith* v. *Smith*, ... Utah 2d ....., 386 P. 2d 900 (decided November 20, 1963), Mr. Justice Crockett summarized many of the cases illustrating the rule of liberal construction of statutes, and quoted from *Johanson* v. *Cudahy Packing Company*, 107 Utah 114, 152 P. 2d 98:

> "By so holding we are cognizant of the fact that we are not following the literal wording of the statute, but such is not required when to do so would defeat legislative intent and make the statute absurd."

ACCORD: *Robinson* v. *Union Pacific R. Co.*, 70 Utah 441, 261 P. 9; ***Brackett*** v. *Chamberlain*, 115 Me. 335, 98 A. 933; *Nichols* v. ***Logan***, 184 Ky. 711, 213 S.W. 181; *Rogers* v. ***Wagstaff***, 120 Utah 136, 232 P. 2d 766; *Rowley* v. ***Public*** *Service Commission*, 115 Utah 116, 185 P. 2d 514; ***Peay*** v. ***Board of Education***, 14 Utah 2d 63, 377 P. 2d 490; *State* v. ***Bassett***, 14 Utah 2d 412, 385 P. 2d 334 (October 1, 1963); *Sutherland, Statutory Construction*, 3rd Ed., Vol. 3, Section 5501, 6007; *American Jurisprudence, Statutes*, Vol. 50, Sections 230, 240, 386.

In *Smith* v. ***Smith***, above cited, Justice Crockett stated that "the universally recognized doctrine" was well expressed in *Norville* v. *State Tax Commission*, 98 Utah 170, 97 P. 2d 937, 126 ALR 1318:

> "In the exposition of a statute the intention . . . will prevail over the literal sense of the term; and its reason and intention will prevail over the strict letter."

Since the intent of the Legislature is clear, the statute should be construed to give effect to such intent.

C. *The Literal Wording of the Statute Would Produce Harsh Results*

If this Court were to limit Wasatch Mountain State Park land purchase contracts to the principal amount of $150,000.00, as stated in the statute, no further payments could be made on existing contracts and the State would default and lose the equitable interest it now has acquired; and present options could not be exercised and much of such land could not later be acquired. The entire

Wasatch Mountain State Park program would collapse and the State would lose hundreds of thousands of dollars which it has already invested.

D. *The Literal Wording of the Statute Is Unconstitutional*

A literal limit of $150,000.00 on the total principal amount of land purchase contract for Wasatch Mountain State Park would violate both the federal and state constitutions. This is so because the 1961 act authorized contracts in the amount of $1,173,648.57, allowed the sellers to assign their contract interests, and made such contracts incontestable in the hands of good faith purchasers for value. The full faith and credit of the State was expressly pledged in support of such contract obligations. In reliance upon this statute, contracts totalling $1,151,663.38 were entered into, and the First Security Bank as a good faith purchaser for value has acquired $574,515.75 of that amount (T. 7, 8).

Thus, to attempt to reduce the total principal authorization to a mere $150,000.00, after the above contract rights had vested, would be an unconstitutional legislative attempt to impair the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States and in violation of Article I, Section 18 of the Constitution of Utah.

As to sub-points C and D, it is emphasized that the Legislature *did not* intend to reduce the 1961 authorization, but, *arguendo,* even if it had so intended, the statute would have been harsh, absurd and unconstitutional.

CONCLUSION

It is respectfully submitted that Section 63-11-19A should be construed to authorize land acquisition contracts for Wasatch Mountain State Park in a total principal amount not to exceed $1,323,648.57, as the Legislature intended, and that the judgment of the lower court be thus affirmed.

Respectfully submitted,

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