1983

Kennecott Corporation, A New York Corporation v. Salt Lake County, et al. : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

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KENNECOTT CORPORATION, a New York corporation, Appellant, vs. SALT LAKE COUNTY, et al., Respondent.	)	Case No. 18972
SALT LAKE COUNTY, et al., Cross-claimants, vs. THE STATE TAX COMMISSION OF UTAH, et al., Cross-defendants.	)	

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STATEMENT OF THE CASE

Plaintiff Kennecott Corporation, an owner of property and a taxpayer in Salt Lake County, Utah, brought the present action against Salt Lake County, its treasurer and assessor (hereinafter "County defendants"), and the State Tax Commission of Utah, its Board of Commissioners and the members thereof (hereinafter "State Tax Commission") challenging the constitutionality of Utah Code Ann. § 59-5-4.5 (Supp. 1981), repealed (Interim Supp. 1983) and seeking a refund of a portion of its 1981 property taxes paid under protest pursuant to Utah Code

Ann. § 59-11-11 (1974 & 1981 Supp.). Kennecott claimed that Section 59-5-4.5's directive that county assessors "take 80% of the value based on comparable sales or cost appraisal of the property as its reasonable fair cash value for purposes of assessment" violated the mandate of Article XIII, Section 3 of the Utah Constitution, which required "a uniform and equal rate of assessment and taxation on all tangible property in the state, according to its value in money."[1] Because Section 59-5-4.5 did not apply to property such as Kennecott's that is assessed by the State Tax Commission, Kennecott claimed that the resulting disparity in rate of taxation was unconstitutional.

In response, the County defendants filed a counterclaim againt Kennecott, alleging that Kennecott's property has been assessed at less than fair cash value. The County defendants also filed two cross-claims against the State Tax Commission. The first cross-claim alleged that the State Tax Commission failed to assess plaintiff's property at its full cash

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[1]In 1982, the Utah electorate passed Proposition 1, which amended Article XIII, § 2 to provide that the Legislature could exempt up to 45 percent of the value of county-assessed property from taxation. There is no question but what Proposition 1 has sanctioned precisely the kind of tax reduction at issue in this case. Thus, this case is limited to the question of whether Kennecott will or will not be able to get a refund on portions of its 1981 and 1982 taxes, which were paid prior to the effective date of Proposition 1.

value. Although the County defendants admit that the Commission complied with the statutory formula for assessing mining properties contained in Utah Code Ann. § 59-5-57 (1974 & 1981 Supp.) in making those assessments, they assert that Utah Code Ann. § 59-5-57 (1974 & 1981 Supp.) is unconstitutional because it does not arrive at the full cash value of plaintiff's mining properties.[2] The second cross-claim sought access to certain assessment records of the State Tax Commission.

DISPOSITION OF THE CASE IN THE LOWER COURT

The claims came before the Third Judicial District Court, the Honorable Judge Phillip A. Fishler presiding, on cross motions for summary judgment on Kennecott's claim, and for dismissal of County defendant's counter and cross-claims. Judge Fishler rejected Kennecott's claim, and found Utah Code Ann. § 59-5-4.5 constitutional as a "legitimate attempt by the legislature to increase the 'uniformity' of all property valuation methods," since the "purpose . . . was to correct the

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[2]Utah Code Ann. § 59-5-57 reads, in pertinent part:

> all metalliferous mines and mining claims . . . shall be assessed at $10.00 per acre and in addition thereto at a value equal to two times the average net annual proceeds thereof.

That section further provides that "machinery used in mining and all property or surface improvements" are assessed based on their reasonable fair cash value, just as is non-mining property generally.

tendency of the comparable sales method and the cost appraisal method to 'overvalue' property, in comparison with other methods of valuation." The District Court also granted Kennecott's and the State Tax Commission's motions to dismiss the County defendants' counter and cross-claims, finding that the County lacked standing to maintain those claims.

RELIEF SOUGHT ON APPEAL

Kennecott and the County defendants both filed Notices of Appeal from Judge Fishler's decision. In a stipulation dated January 31, 1983, all of the parties to this action agreed that the issues relevant to Kennecott's claim that Utah Code Ann. § 59-5-4.5 (Supp. 1981), repealed (Interim Supp. 1983) is unconstitutional have been fully and fairly presented to this Court in the case of Rio Algom Corporation, et al. v. San Juan County, et al., No. 18782 (hereinafter "Rio Algom case"). Pursuant to that stipulation, this Court ordered that the pending decision in the Rio Algom case would control the appeal of Kennecott's claim. For this reason, this appeal is limited to the District Court's dismissal of the County defendants' counter and cross-claims.

The County defendants seek somewhat inconsistent relief on appeal. On the counterclaim against Kennecott, they seek a judicial determination of the value of Kennecott's property, while on the first cross-claim against the State defendants, they seek an order directing the State Tax Commission to assess Kennecott's property without reference to Utah Code Ann.

§ 59-5-57 (1974 & 1981 Supp.). Implicitly thereby the County defendants ask this Court to declare Utah Code Ann. § 59-5-57 (1974 & 1981 Supp.) unconstitutional. The relief sought on the second cross-claim is moot, because the Legislature has by statute given the County defendants the relief they seek herein.

STATEMENT OF FACTS

Appellants' "Statement of Facts" is a fair representation of the procedural history of this case insofar as that statement is confined to facts. However, Kennecott cannot accept the County defendants' characterizations of Kennecott's legal arguments. Kennecott's disagreements with the County defendants on those matters will be dealt with supra as "Arguments."

ARGUMENT

I. KENNECOTT HAS PLACED NEITHER ITS VALUATION NOR ITS ASSESSMENT AT ISSUE IN THIS LITIGATION, BUT ONLY ITS RATE OF TAXATION.

Perhaps the County defendants' major argument in appealing from the dismissal of their counterclaim against Kennecott is the notion that by instituting this litigation, Kennecott has somehow put its own valuation at issue, and has opened the door for a judicial re-inquiry into that valuation. That argument, however, proceeds from a false premise.

To understand the flaw in the County defendants' argument, it is necessary to look at some of the basic procedures in Utah property taxation. Most property is assessed by the

several county assessors, who commonly use such methods as the comparable sales method, which values properties according to contemporary sales prices for similar property. Certain other property, principally mines and public utilities, are required by the Utah Constitution to be assessed by the State Tax Commission. Utah Const., art. XIII, § 11. Because each mine is a unique property, the sales price, if any, of a particular mine might well not bear any relationship to the fair value of a nearby mine. Hence, the Utah Legislature long ago decided that mining properties would be assessed according to a "net proceeds" formula, which based the fair cash value of a mine upon the mine's profitability. The "net proceeds" method was once required by the Utah Constitution, but is now statutory in nature. Utah Code Ann. §§ 59-5-57 to -59 (1974 & 1981 Supp.).

Irrespective of which entity does the assessing or which method is used, taxation is a multi-step process. First, a determination is made of the actual value of the property. Second, the property is assessed at 20 percent of that actual value. Utah Code Ann. § 59-5-1 (1979, as amended). Once a county has adopted a budget, it determines the total assessed value of property subject to taxation within its borders. It then simply divides the budget amount into the assessed valuation in order to determine what tax must be collected from each parcel of property.

That brief description of the taxation process is crucial to understanding precisely what Kennecott did and did not put into issue in this litigation. Kennecott challenged the constitutionality of Utah Code Ann. § 59-5-4.5 (Supp. 1981), repealed (Interim Supp. 1983) on the basis that its directive that county assessors arbitrarily reduce their assessments by 20 percent violated the requirements of uniform assessment and taxation contained in art. XIII, § 3.

A hypothetical example may help illustrate the exact nature of Kennecott's legal challenge. Let us suppose that in a mythical Utah county, there were only two pieces of taxable property, a ranch and a mine. Let us suppose that the county assessor determined that the ranch was worth $100,000 on the current market, based upon the recent sale of a similar ranch just across the county line. Now let us suppose that the State Tax Commission, applying the net proceeds formula required by Utah Code Ann. § 59-5-57 (1974 & 1981 Supp.), determined that the mine was also worth $100,000.00. Under Utah Code Ann. § 59-5-4.5 (Supp. 1981), repealed (Interim Supp. 1983), the county assessor would then have to arbitrarily take 80 percent of the value of the ranch, or $80,000.00, as its value for purposes of assessment. Then, the assessor would multiply the resulting cash values of each property by 20 percent to determine assessed valuation under Utah Code Ann. § 59-5-1 (1979, as amended). The result would be that the mine would then be taxed on an assessed value of $20,000.00, while the ranch would

be taxed on an assessed value of $16,000.00. No matter what mill levy were applied, the mine would pay 20 percent more in taxes than would the ranch because of the reduction in valuation mandated by Utah Code Ann. § 59-5-4.5 (Supp. 1981), repealed (Interim Supp. 1983). Without that reduction, of course, the mine and ranch would pay the same amount of tax. Thus, the lowering of the ranch's tax accomplished by Section 59-5-4.5 would inevitably raise the mine's tax.

It was that statutory manipulation of valuation, and the resultant disparity in taxation, that Kennecott challenged. Kennecott did not challenge the dollar amount at which anyone's property was valued. Rather, it challenged the constitutionality of a statute which had the effect of assessing county-assessed properties at 16 percent of cash value, while assessing State-assessed property at 20 percent of cash value. Conceptually, Kennecott's case is no different than it would have been had a statute directed counties to arbitrarily impose a 20 percent higher mill levy on certain properties than on others. The legality of such a statute could be challenged without challenging the underlying valuation processes, and that is precisely what Kennecott has done in this case.

The County defendants' assertion that Kennecott has placed its value in issue is an argument that could cut both ways, and with a vengeance. To see why, let us look again at our mythical county. Suppose that our miner, believing it unfair that he should have to pay 20 percent more tax on a

$100,000 mine than his neighbor paid on a $100,000 ranch, filed a lawsuit. If the mythical defendants took the same position as these real ones have done, they would "defend" the suit by asserting that the mine was in fact worth more than $100,000.00, and demanding that the miner refute those assertions before proceeding. But why could not the miner then ask the defendants, in turn, to prove that the ranch was worth only $100,000.00?

Kennecott could, logically, file the same "counter-counterclaim" in this real lawsuit. If the County defendants claim that Kennecott is "under-assessed" Kennecott's answer must be, "compared to what?" That would bring the County's valuation of hundreds of thousands of properties into issue. Such a result obviously flies in the face of common sense. Fortunately, however, such a result is also highly unnecessary, because Kennecott's case can be decided without reference to questions of valuation, and was indeed so decided below.

For all of the foregoing reasons, Kennecott has not placed its valuation at issue by instituting this litigation. The counterclaim against Kennecott cannot be maintained on that ground.

II. THE COUNTY DEFENDANTS LACK STANDING TO BRING THEIR COUNTERCLAIM AGAINST KENNECOTT, AND EVEN IF THEY HAD STANDING, THEY SEEK RELIEF THAT THIS COURT CANNOT GRANT.

The County defendants seek not only to place Kennecott's valuation at issue, but seek to recover any taxes that

may be due as a result of such a re-valuation. The State defendants argued persuasively below that the County defendants lack standing to challenge the assessments of the State Tax Commission. Kennecott agrees with those arguments. If the County defendants cannot challenge the State Tax Commission's valuation of Kennecott's property directly, then they plainly cannot do so indirectly by bringing a claim against Kennecott, because Kennecott is entitled to rely on the legality of the State Tax Commission valuations.

The relief County defendants seek on their counterclaim is simply not available to them. They ask this Court to remand the matter, and direct the trial court to determine Kennecott's proper valuation for 1981. However, such an order is beyond the powers of this Court. The State Tax Commission's duties of assessing mines and public utilities are Constitutional, mandated by Utah Const. art. XIII, § 11. That Constitutional delegation of function exclusively to the Tax Commission must be respected.

In State ex rel. Public Service Comm'n v. Southern Pacific Co., 95 Utah 84, 79 P.2d 25 (Utah 1938), the Utah Supreme Court overturned two statutes that effectively removed the function of assessing utilities from the State Tax Commission and assigned that function to the Public Utilities Commission. In interpreting Article XIII Section 11 of the Utah Constitution, this Court said:

> If the discretion and power of the Tax Commission had been given it by the Legislature under its plenary power over taxation, then the legislature could withdraw part or all of the authority which it had delegated, but in this state, the State Tax Commission has vested in it by the State Constitution the power to assess utilities. To the extent that such power depends on constitutional provision, the legislature is without power to deprive the Tax Commission of any of its authority.
>
> . . . .
>
> . . . [T]he provisions of § 11 [of article XIII of the Utah Constitution] specifically vests the power of assessing utilities in the State Tax Commission. Therefore, that specific provision must be considered as a limitation on the power of the legislature to place the assessing power in any other office or commission.

Id. at 38. Thus, even the Legislature, which has otherwise plenary power over taxation, cannot strip the State Tax Commission of its constitutionally vested power to assess utilities. The same constitutional provision granting the Tax Commission the exclusive power to assess utilities also applies to mines. If the Legislature cannot alter that jurisdictional grant in the absence of a constitutional change, neither can this Court. Thus, it would be unconstitutional for the trial court to value Kennecott's properties. Because the County defendants seek unconstitutional action by way of relief on their counterclaim, this Court should affirm the trial court's dismissal of the counterclaim.

III. THE COUNTY HAS NO IMPLIED OR INHERENT RIGHT TO CHALLENGE KENNECOTT'S VALUTION BY COUNTERCLAIM.

The County defendants' argument that they have an implied or inherent right to contest Kennecott's valuation by means of a counterclaim appears to follow primarily from the false premise that Kennecott has placed its valuation at issue. The County defendants' argument is that if Kennecott can come into court and challenge the State Tax Commission's valuation of Kennecott's property, which challenge, if successful, could be detrimental to County revenues, then the County must be empowered to not only defend the State's valuation but to seek a higher valuation. That argument is seriously flawed in several respects.

First, as has been pointed out, Kennecott has not placed its valuation or anyone else's valuation at issue. The County is not being required to defend any of its actions. Rather, Kennecott is challenging the constitutionality of a tax statute. The County defendants were named only because they were recipients of the tax money in question, and Kennecott's prayer for relief would operate against the County. In essence, the County is something of a bystander. Although Kennecott does not dispute the County's genuine interest in the outcome of this litigation, Kennecott's dispute is not really with the County, but rather with the Legislature. Hence, the County's argument that if it is put on the defensive it must be

...ed to fight back is inapplicable because the premise is ...rue.

Second, the County's argument that it has implied power to raise the issue of Kennecott's valuation via counterclaim is poorly taken. That argument appears to be based entirely on an Arizona case, Pima County v. Cyprus Pima Mining Co., 119 Ariz. 111, 579 P.2d 1081 (1978). In that case, the Arizona Supreme Court held that the State Department of Revenue could not seek to have the taxpayer's valuation increased in a court appeal from an administrative decision because the State did not file a notice of appeal from that decision. The County defendants read that case as holding that a judicial appeal was dissallowed only because the proper appellate procedure was not followed. They then asked this Court to reason negatively that if there is no statutory appeal procedure by which the County can seek an increase in the State Tax Commission's valuation, it must therefore be allowed to do so judicially.

The County defendants are asking this Court to engage in some imaginative mental gymnastics. This Court would first have to agree that the County defendants lack standing to initiate a protest of the State Tax Commission's valuation, because if the County has standing to initiate a protest, the Pima County case holds that the valuation issue cannot be raised by a counterclaim. If the County lacks standing, then the Court would have to reason that by denying the County the

standing to initiate review of a State Tax Commission valuation, the Legislature had somehow implicitly granted the County standing to raise such issues by way of counterclaim. Kennecott believes it would be far more sensible to hold that if the Legislature meant to deny the County standing to initiate a protest of State valuation, the Legislature also meant to deny the County standing to do so in the context of a counterclaim.

The County also argues that in the absence of express legislation of the contrary, it is inherently entitled to challenge Kennecott's valuation simply because it has inherent power to protect its fiscal interests. The County defendants cite State v. Hutchinson, 624 P.2d 1116 (Utah 1980) for the proposition that all county powers should be liberally construed. Kennecott does not believe the Hutchinson case goes that far. In that case, this Court liberally interpreted a county's statutory power to pass ordinances. The case did not deal with the taxing power, which, as a general proposition, is strictly construed against the taxing authority and in favor of the taxpayer.

Moreover, the Hutchinson case did not involve a conflict between county and state authority. It must be remembered that counties are nothing more than political subdivisions of the state, and that it is the state and not the county that possesses inherent powers of sovereignty. When the state has reserved to itself or to an agency such as the State Tax

Commission a function such as assessing mines, it does not follow that a county has inherent power to challenge the state's exercise of that reserved power. Rather, it is far more sensible to suppose that the state placed such power where it deemed appropriate, and meant for that power to be exercised in plenary fashion except as otherwise provided by law. (The 1983 Legislature did otherwise so provide in enacting S.B. 208, the legislation discussed infra.) In the absence of a specific statute, it does not follow that the County has inherent power to challenge the decisions of the State Tax Commission either directly or indirectly through a counterclaim against the taxpayer.

Finally, the County defendants argued that justice demands that they be able to bring a counterclaim against Kennecott. Their argument is that otherwise, Kennecott would be in a "no-lose" position in this litigation. However, there is nothing particularly unusual about that situation. In constitutional litigation such as this, governmental entities are virtually always in the posture of defending an enactment, with no possibility of gain. In a typical tax case, where, unlike here, valuation is at issue, the judicial proceedings are basically appeals from an administrative decision. An appellant in any judicial proceeding is virtually always in a "no-lose" position--the appellate body may affirm the decision or grant relief to the appellant, but would not, under ordinary

circumstances, both affirm and grant even further relief to the party that prevailed originally. Thus, the County defendants must do more than simply argue that they are entitled to increase the stakes whenever a citizen brings a lawsuit. Modern litigation, especially against a governmental entity, is not merely an intellectualized version of trial by combat in which "fairness" demands that both parties have an equal risk of loss.

For all of the foregoing reasons, the County defendants' arguments that they must be allowed to bring a counterclaim against Kennecott should fail. The counterclaim was correctly dismissed below, and this Court should affirm that dismissal.

IV. THE FIRST CROSS-CLAIM SHOULD BE DISMISSED BECAUSE THE COUNTY DEFENDANTS ARE NOT ENTITLED TO THE RELIEF THEY SEEK.

Under the first cross-claim, the County defendants asked this Court to direct the State Tax Commission to determine the proper valuation for Kennecott's property during 1981. The State defendants argued persuasively below that the County defendants lacked standing to bring such a claim, and the trial court agreed. Kennecott concurs with those arguments respecting standing, but defers to the State defendants' brief and arguments on that point.

For the future, the standing issue has been resolved by the 1983 Legislature. It did so through the enactment of

B 208, which amends Utah Code Ann. § 59-7-12 (Interim Supp.) to read as follows:

> If the owner of any property assessed by the state tax commission or any county with a showing of reasonable cause objects to the assessment, either may, before the 10th day of April, apply to the commission for a hearing . . .
>
> The tax commission shall set a time for hearing the objection from April 10 until April 22. At the hearing the tax commission may increase, lower or sustain the assessment, if the commission finds an error in the assessment or if it is necessary to equalize the assessment with other similarly assessed property.

Utah Code Ann. § 59-7-12 (1983, as amended) (underscored portions added by 1983 amendments). The new legislation then, gives counties the same rights taxpayers have always had to protest assessments of the State Tax Commission. But the legislation also imposes the same time limitations on counties as have always been imposed on taxpayers.

The County defendants in this case have argued that even prior to the passage of S.B. 208, they enjoyed implicit standing to challenge State Tax Commission assessments. While a contrary interpretation of legislative intent would be more sensible, particularly because taxing statutes are to be strictly construed, Kennecott would also point out that the County defendants are seeking implicit rights without corresponding implicit obligations. If, prior to the passage of S.B. 208, the counties have always implicitly enjoyed the same

standing as taxpayers to challenge State Tax Commission assessments, then it should follow that the counties have also implicitly been under the same time limitations. Because the County defendants made no protest of Kennecott's 1981 assessment by the 10th day of April, they cannot now do so. The relief the County defendants seek in their first cross-claim is not legally available, and this court should affirm dismissal of that cross-claim.

V. THE COUNTY DEFENDANTS MAY NOT SEEK RE-VALUATION OF KENNECOTT'S PROPERTY FOR PRIOR YEARS.

In addition to seeking reassessment of Kennecott's property for 1981, the County defendants also seek a re-valuation and re-taxation for the five preceding years. That request is based on Utah Code Ann. § 59-5-17 (1974), which provides:

> Any property discovered by the assessor to have escaped assessment may be assessed at any time as far back as five years prior to the time of discovery . . .

Kennecott does not believe that provision applies to this case. There is no meaningful allegation that any of Kennecott's property has escaped assessment at any time notwithstanding what County defendants claim in their brief to be "uncontroverted evidence" to the contrary. The County defendants contend that Kennecott's ore production has escaped taxation, and that much of its land simply must have escaped taxation because it is valued at $10 per acre. Those assertions, however, flatly ignore the fact that Kennecott is valued at $10

acre plus two times "net proceeds," which, as explained, is a measure tied to profitability. While it may be true that the owner of any other property, such as our hypothetical rancher, would not have his land assessed at $10 per acre, it is also true that the income of that property owner would not be taken into consideration in determining the valuation of his property. Thus, certain factors may appear to have been "omitted" from Kennecott's assessment had that assessment been made by the method the County uses. But it does not follow at all that Kennecott's property escaped assessment under the totally different method statutorily mandated for assessing mines that was applied.

It is clear that Section 59-5-17 applies only to actual omissions, and does not apply to underassessments of known property. The statute was held applicable in the case of Union Portland Cement Co. v. Morgan County, 64 Utah 335, 230 P. 1020 (1924) because in that case, the taxpayer completely omitted a substantial structure from the affidavit it submitted for purposes of taxation. However, in the case of Ririe v. Randolph, 51 Utah 274, 169 P. 941 (1917), the assessor used a wholly erroneous formula for assessing coal lands. There, the Supreme Court tersely held that the escaped-property provision did not apply.

Reading Section 59-5-17 as applying only to omitted property, not to property that may have arguably been assessed

incorrectly, is necessary to harmonize the Portland Cement and Ririe cases. Moreover, such a reading is necessary to give meaning to the provisions of S.B. 208, supra. In this case, the County defendants are apparently arguing that Section 59-5-17 gives the State Tax Commission carte blanche to correct assessments that the County contends may have been erroneous for a period of up to five years. But if that is so, then the limited protest period provided for in S.B. 208 is either meaningless or it has repealed Section 59-5-17. Kennecott suggests, of course, that this Court construe the two statutes so as to give meaning to both, which can be done by holding that the five-year provision in Section 59-5-17 applies only to escaped property.

VI. THE SECOND CROSS-CLAIM IS NOW MOOT, AND SHOULD BE DISMISSED.

In their second cross-claim, the County defendants requested access to certain assessment books required to be kept by the State Tax Commission. S.B. 184, enacted by the 1983 Legislature, specifically granted counties the right to look at those books. That provides the counties with the full relief they seek in all the future cases. If such information becomes necessary in the context of this litigation, the information would be obtainable through normal discovery procedures. Thus, there is no need to maintain the second cross-claim, and it should be dismissed as moot.

SUMMARY AND CONCLUSION

This litigation began when Kennecott challenged the constitutionality of Utah Code Ann. § 59-5-4.5, which directed county assessors to base taxation on 80 percent of the fair cash value of county-assessed property, rather than on 100 percent of that fair cash value. Because the provision did not apply to state-assessed property, such as Kennecott's, Kennecott's taxes were increased. The statute was upheld below. While Kennecott has appealed that decision, the issue was already under submission before this Court in an identical case. This action is an appeal by the County defendants from the lower court's dismissal of their counterclaim and two cross-claims.

The counterclaim against Kennecott is based in significant part on the notion that Kennecott placed its valuation at issue by initiating this lawsuit. Such is not the case. Kennecott is not contesting anyone's valuation or appraisal, but is contesting its taxation. Thus, Kennecott is not required to justify the State Tax Commission's valuation of its property in order to bring this lawsuit any more than the County defendants need to justify all of their valuations in order to defend against Kennecott's claims. Nor do the County defendants have an implied or inherent right to bring the counterclaim. As the State defendants argued below, the County lacks standing to do so. Even if it had such standing, the counterclaim must be dismissed because the relief sought --

judicial valuation of Kennecott's property -- is unavailable. Utah's Constitution makes the State Tax Commission responsible for valuing mines, and that constitutional provision cannot be ignored by this Court.

The first cross-claim should be dismissed for similar reasons. The 1983 Legislature amended Utah's tax statutes to specifically give counties the right to protest a taxpayer's valuation to the State Tax Commission. However, the statute also imposes upon the County the same rigid time requirements for bringing such a protest as have always been imposed on taxpayers. The County made no protest in this case. Arguably, the legislation is a recognition that prior to its adoption, the counties had no standing to protest valuations. But if the legislation were merely a codification of pre-existing implied powers, and if the counties have always been on an equal footing with the taxpayers, then the counties must also have been implicitly bound by the same time limitations as the taxpayers, as was made explicit in the statute. Thus, if the County defendants ever had standing to seek State Tax Commission re-valuation of Kennecott's property, the time for bringing such an action has passed. Because of relief sought on the first cross-claim is not legally available, its dismissal should be affirmed.

Finally, the relief sought in the second cross-claim has been provided by recent legislation, and the issue is now moot.

For all of the foregoing reasons, this Court should affirm the lower court's dismissal of the County defendants' counterclaim and cross-claims.

RESPECTFULLY SUBMITTED this 29th day of July, 1983.

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CERTIFICATE OF MAILING

I hereby certify that on this 29th day of July, 1983, I caused two true and correct copies of the foregoing Brief of Plaintiff Kennecott Corporation to be mailed, postage prepaid, to:

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