1983

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

IN THE SUPREME COURT OF THE STATE OF UTAH

KENNECOTT CORPORATION, a
New York corporation,

Plaintiff,

vs.

SALT LAKE COUNTY, et al., Case No. 18972

Defendants.

SALT LAKE COUNTY, et al.,

Cross-claimants,

vs.

THE STATE TAX COMMISSION
OF UTAH, et al.,

Cross-defendants.

BRIEF OF DEFENDANT/CROSS DEFENDANT UTAH STATE TAX COMMISSION

Appeal from the Decision of
The Third Judicial District Court
Honorable Philip R. Fishler, District Judge

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NATURE OF THE CASE

This case involves an action by plaintiff, Kennecott Corporation, challenging the constitutionality of two tax statutes passed by the Utah Legislature in 1981. Defendant, Salt Lake County, counterclaimed against plaintiff, alleging that plaintiff's mining property had been undervalued and that some of its property had escaped valuation. Salt Lake County also filed crossclaims against the Utah State Tax Com-

mission in which it contested certain valuation techniques employed by the Commission and in which it sought review of confidential Commission records.

DISPOSITION BY THE LOWER COURT

Following a hearing on motions for summary judgment filed by plaintiff and the State Tax Commission with respect to Salt Lake County's counterclaim and crossclaims, the lower court granted judgment in favor of plaintiff and the Commission. The court ruled that Salt Lake County did not have standing to maintain any of its causes of action and dismissed the county's claims against respondents.

RELIEF SOUGHT ON APPEAL

Respondent, Utah State Tax Commission, seeks affirmance of the lower court's judgment of dismissal.

STATEMENT OF FACTS AND NATURE OF CLAIMS

For purposes of appeal, the facts in the present case are essentially as set forth in appellants' brief and relate primarily to the claims asserted by the parties and the proceedings before the lower court. However, some clarification is necessary in order to summarize fully the position of the State Tax Commission before the lower court.

Appellants, Salt Lake County, the Salt Lake County Treasurer and the Salt Lake County Assessor (hereinafter the "County"), asserted two claims for relief against the Utah Tax Commission (hereinafter the "Commission"). Their first cause of action alleged that the Commission had undervalued plaintiff's mining properties and that the court should issue an order requiring the Commission to disregard the provisions of Utah Code Annotated § 59-5-57 (1953, as amended), relating to the procedures for valuing certain mining properties, and to revalue the property of Kennecott Corporation (hereinafter "Kennecott") for each of the past five years. The County further sought a judgment declaring that Section 59-5-57 of the Utah Code was unconstitutional. The second cause of action requested the court to order the Commission to maintain a book of mines and to supply to the County, upon request, all information relating to the valuation of state-assessed property within the County. Appellants' counterclaim against Kennecott alleged that Kennecott's property had been undervalued by the Commission and that Kennecott should be ordered to pay an additional tax based upon a proper value. The basic issues raised by this appeal, therefore, are whether a county has standing to challenge a property valuation required by statute to be made by the Commission and to audit Commission records in cases where a taxpayer

appeals to the courts from that valuation, and whether a county has the right to seek a court order requiring the Commission to increase the assessed value of the taxpayer's property.

In this regard, the Commission took the position before the lower court that the counties and their agencies and officers, as well as other political subdivisions and agencies of the state, could sue only within the framework of specific powers granted to them by the Utah Constitution or by the legislature. Since there is no specific grant of power to the County to assert the above claims, the Commission maintained that appellants had no standing to assert them in this or any other action. The Commission also contended that the County was not entitled to maintain its second cause of action for the additional reason that both the taxpayer's constitutional right of privacy and the Utah Archives and Records Service Information Practices Act precluded disclosure to the County of the above information. The Commission did not assert that the relationship between the Commission and the County was equivalent to that of a "servant-master" as stated by the County in its brief. (Brief of Appellants, page 7).

ARGUMENT

POINT I

THE COUNTY LACKS STANDING TO MAINTAIN ANY CAUSE OF ACTION AGAINST THE UTAH TAX COMMISSION IN THE PRESENT ACTION.

A. Utah Constitution and Statutes.

With respect to each of the County's causes of action, a review of applicable law shows that to grant the relief requested by appellant would give powers to the counties, which neither the framers of the Utah Constitution nor the legislature ever intended the counties to have. It would further usurp express constitutional and statutory powers of the Tax Commission. Article XIII, Section 11, of the Utah Constitution provides for the creation of the Commission and requires the Commission to administer and supervise the tax laws of the state, to assess or value mines and public utilities, and to adjust and equalize the valuation and assessment among the several counties. Section 59-5-3 of the Utah Code Annotated also specifically requires the Commission to assess pipelines, power lines and plants, canals and irrigation works, bridges and ferries, car and transportation companies operating in more than one county, and mines and mining claims. (These classes of property will be referred to throughout this brief as "state-assessed property".) It then provides that taxable property not required by the Constitution or by

law to be assessed by the Commission must be assessed by the county assessor of the county in which the property is situated. (Such property is hereinafter referred to as "county-assessed property".) Thus, the Constitution and state law specifically provide that certain kinds of taxable property, including property owned by Kennecott, is to be assessed by the Commission, and that the duty of the counties with respect to assessment of taxable property is limited to assessment of those properties within their boundaries, which is not assessed by the Commission.

With respect to the Commission's constitutional duty to administer and supervise the tax laws of the state, Utah Code Annotated, § 59-5-46(9) (1953, as amended) requires the Commission to exercise general supervision "over assessors and over county boards in the performance of their duties as county boards of equalization and over other county officers in the performance of their duties in connection with the assessment of property and collection of taxes." The nature and extent of the Commission's power and authority are also seen in Section 59-5-47, which provides:

> The State Tax Commission shall adjust and equalize the valuation of the taxable property in the several counties of the state for the purpose of taxation; and to that end it may of its own initiative order or make an assessment or reassessment of any property which it deems to have been overassessed or underassessed or which it finds has not been

> assessed. . . . [N]o county board of equalization or assessor shall have any power to change any assessment so fixed by the State Tax Commission.

The overall responsibility for administration of the state's tax laws and, in particular, for assessment of taxable property, therefore, rests with the Commission. It is the only state agency that is charged with the statutory responsibility of ensuring that the counties carry out their duties properly in this regard. The reasons for this distinction between the constitutional and statutory powers of the Commission and the counties are based on a clear legislative recognition of a need for administrative efficiency and order in the taxation of all property throughout the state. The procedures for taxing real property could not be carried out effectively or economically if the counties had the right to sue the Commission or challenge its action in all cases where a county disagrees with the Commission's valuations, policies or procedures. Only the legislature can grant such a right after careful review of appropriate safeguards, the need to provide funding for additional personnel and expert witnesses, and similar considerations.

In contrast to the above specific constitutional and statutory requirements, the County now seeks to turn the above procedures and laws upside down and to supervise and direct the Commission in the performance of its constitution-

al and statutory duties with respect to the assessment of all taxable property throughout the state. Its approach first is to require not only reassessment of state-assessed properties in Salt Lake County, but a change in the statutory method set forth in Section 59-5-57 by which certain mining properties are assessed statewide. Second, the County seeks access to all information relating to such assessments required to be made exclusively by the Commission so that it can look over the shoulder of the Commission as it performs its constitutional duties. In short, as reflected by its brief, the County seeks a court appointment as "watchdog" over the Commission. (Brief of Appellants, pages 19-20).

Under state law governing appellants' claims, there are only two avenues by which parties may challenge assessments made by the Commission on property which it is required to assess by law. First, Utah Code Annotated, § 59-11-11 (1953, as amended) provides that a taxpayer may pay under protest a tax with which he disagrees and then bring an action in court to recover the amount paid under protest. Kennecott's action in the present case was brought under this provision. The provision would also permit an owner of county-assessed property or a group of such owners to bring an action in district court to challenge valuation procedures of the Commission and to obtain a refund if those procedures result in the payment

of a greater tax due to undervaluation of state-assessed property. Alternatively, a property owner dissatisfied with an assessment made by the Commission may apply to the Commission for correction of the assessment, and the Commission will then set a time to hear the objection. Utah Code Annotated, § 59-7-13 (1953, as amended). If a taxpayer is dissatisfied with the decision of the Commission, he may then appeal to the tax division of the appropriate district court for review of the Commission's decision or, in the alternative, may apply for a writ of certiorari to the Supreme Court. Id. § 59-24-2. Under both procedures, the only party for whom provision is made for appeal of an assessment made by the Commission on state-assessed property is the taxpayer himself; there is no provision made for such an appeal by a county, its officers or agencies.

Additionally, state law provides no rights to the counties and their officers and agencies with respect to the book of mines referred to in Section 59-5-56 of the Utah Code, and makes no provision for any person or entity, other than the Commission, to have any access whatsoever to the information sought by appellants' second cause of action. Indeed, as will be discussed below, the Archives and Records Service Information Practices Act expressly prohibits the dissemination of such information.

In summary, the Commission is vested with the exclusive constitutional and statutory power and authority to value state-assessed property. As to such property, neither the Utah Constitution nor state statutes give the counties any responsibility, powers or authority whatever. Section 59-5-46(9) expressly grants to the Commission general supervisory powers over the administration of the tax laws of the state, including assessors and county boards in the performance of their duties, and over other county officers in connection with the assessment of property and collection of taxes. Section 59-5-47 of the Utah Code states specifically that the counties have no power to change any reassessments made by the Commission of county-assessed property. A similar limitation should apply to cases in which a county claims it has power to challenge the Commission's valuation of state-assessed property.

B. The Courts Have Refused to Grant Standing to Counties to Sue Under Similar Circumstances.

Counties and other political subdivisions of a state have only such powers as are expressly conferred upon them by statute or by the state constitution and those which are reasonably and necessarily implied therefrom. State v. Hutchinson, 624 P.2d 1116 (Utah 1980); Gardner v. Davis County, 523 P.2d 865 (Utah 1974); Cottonwood City Electors v.

Salt Lake County Bd. of Com'rs, 499 P.2d 270 (Utah 1972); see also, Johnson v. Sandy City Corp., 497 P.2d 644 (Utah 1972); Ritholz v. City of Salt Lake, 284 P.2d 702 (Utah 1955); Salt Lake City v. Revene, 124 P.2d 537 (Utah 1942). This rule is particularly applicable where the public treasury is directly affected. Barendregt v. Walla Walla School District No. 140, 611 P.2d 1385 (Wash. App. 1980); State ex rel. Bain v. Clallam County Board of County Commissioners, 463 P.2d 617 (Wash. 1970). In addition, county commissions and county officials have only such powers as are specifically enunciated by law and those which are reasonably and necessarily implied in order to discharge their responsibilities. Gardner v. Davis County, 523 P.2d 865 (Utah 1974); Cottonwood City Electors v. Salt Lake County Board of Commissioners, 499 P.2d 270 (Utah 1972).

While it may be argued that Utah Code Annotated, § 17-4-3(1) (1953, as amended) grants counties power to sue and be sued, this is not a blanket power to sue under all circumstances. As stated by this Court in Shaw v. Salt Lake County, 224 P.2d 1037, 1038 (Utah 1950):

> Section 19-4-3, U.C.A. 1943 [the predecessor of U.C.A., § 17-4-3], covering the general powers of counties indicates that "A County has power: (1) To sue and be sued." This, however, is but a general grant constituting the county an entity to sue and be sued, where it may under other applicable statutes or principles, properly be sued or sue.

Accordingly, without specific constitutional or statutory power to sue for a particular kind of relief, the counties and their officials have no standing or authority to do so.

The specific question of whether a county has standing to sue the Commission to challenge an assessment made by the Commission or to test the constitutionality of a statute under which the Commission has performed its constitutional duties does not appear to have been raised in any reported decision of this Court. However, the question of standing was addressed by the Court briefly in response to a recent petition filed in the cases of Beaver County, et al. v. Utah State Tax Commission, Case Nos. 18672, 18673, and 18674 (1982), in which all 29 Utah counties sought an order of this Court, requiring the Commission to permit the counties to intervene in several taxpayer appeals before the Commission. In each of those cases, a railroad company had appealed from the Commission's valuation of its property. The Commission moved to dismiss the counties' petitions because the valuation of state-assessed property was the exclusive statutory responsibility of the Commission and the counties lacked standing to challenge those valuations. In a notice of decision dated October 22, 1982, the Court stated that "defendant's motion to dismiss is granted, petitioners being without standing to intervene."

The Court's ruling in Beaver County is consistent with court decisions of neighboring states, which have held unanimously that counties and their officials have no standing or authority to bring such lawsuits. In Board of County Commissioners of County of Delores v. Love, 470 P.2d 861 (Colo. 1970), for example, the plaintiffs, who were county officials, claimed that the State Board of Equalization and the Colorado Tax Commission had abused their discretion in reviewing property appraisals of the Delores County Assessor and in ordering reappraisals of county properties. The Colorado Supreme Court dismissed plaintiffs' complaint, holding that the plaintiff county officials had neither standing nor legal authority to maintain their action.

The principles relied upon by the Court in Board of County Commissioners in reaching its decision are generally the same as those set forth under Point I above and apply equally to the County's claims in the present case. First, the Court noted that a county is not an independent governmental entity, but rather a political subdivision of the state, existing only for the convenient administration of state government and created to carry out the will of the state. Further, the counties and their agencies and officers, as political subdivisions of the state, possess only such powers as are expressly conferred upon them by the

constitution and statutes and such incidental and implied powers as are reasonably necessary to carry out their express powers. The Court found that in Colorado (as in Utah) no statutory or constitutional provision grants any express or implied powers to counties or county agencies or officials to challenge the findings, orders or other action of a State Tax Commission. Therefore, the Court held that the counties had no standing to maintain such action.

The second point made in Board of County Commissioners is that the general grant of power to the counties to sue relates to the county's function as a body corporate and can only be exercised within the framework of the specific powers granted counties and boards of county commissioners. It does not grant a general power to sue in all situations. The position of the Colorado Supreme Court in this regard is consistent with the holding of the Utah Supreme Court in Shaw v. Salt Lake County, 224 P.2d 1037, 1038 (Utah 1950), as discussed above.

Third, the Court in Board of County Commissioners held that county commissioners or agencies do not have authority to sue as representatives of the taxpayers of their counties. The Arizona Supreme Court in Town of Chino Valley v. State Land Department, 580 P.2d 704 (Ariz. 1978), also stated that municipalities were a creation of the state and were not

empowered to invoke the personal rights of its citizens against the state.

Finally, the Court in Board of County Commissioners emphasized that a ministerial officer, such as an assessor, is required to obey the act of a tribunal in directing his action, and may not question or decide upon its validity. The Court stated that an assessor has no more standing to question the validity of the action of a state board of equalization than a lower court has to question the validity of the mandate of a reviewing Court. That principle should apply with equal force in the present case to prevent the counties from challenging the action of the Commission, particularly in view of Utah Code Annotated, Section 59-5-46(9), which expressly provides that the Commission is to exercise general supervision over county assessors and county boards of equalization.

In the later case of Adams County Board of County Commissioners v. Union Pacific Railroad Company, 525 P.2d 1202 (Colo. App. 1974), the Colorado Court of Appeals held that a county assessor and a county board of commissioners had neither standing nor authority to seek review of a decision of the State Board of Assessment Appeals (the successor agency to the Colorado Tax Commission). As in Board of County Commissioners, the Court explained that the county

assessor and county board of commissioners were precluded from challenging a decision of the State Board of Assessment Appeals without specific legislation granting them the power to do so. Although Adams does not deal specifically with the question of whether a county has standing to challenge valuation procedures used by a State Tax Commission, the principle that counties cannot exceed their statutory authority is equally applicable to the present case.

In Petit v. Board of Tax Appeals, 538 P.2d 501 (Wash. 1975), the Supreme Court of Washington also held that a county assessor was not entitled to judicial review of a decision of the State Board of Tax Appeals. The Court explained that parties entitled to such review were limited to those expressly given that right by statute. Therefore, only taxpayers and not tax assessors were entitled to seek judicial review of a Board of Tax Appeals decision. Similarly, in King County v. Washington State Board of Tax Appeals, 622 P.2d 898 (Wash. App. 1981), the Washington Court of Appeals held that a county and its assessor lack standing to seek a statutory writ of certiorari to challenge a Board of Tax Appeals decision. Again the Court reached this decision on the ground that a county's powers are limited to those expressly or impliedly derived from the legislature:

> The appellants argue that the BTA [Board of Tax Appeals] rulings infringe on the county's constitutionally recognized power to collect taxes. The appellants concede that this taxing power is derived only from legislative grant. They contend, however, that, once this grant has been made, the county has a sufficient interest in defending its taxing power to allow it to seek review of BTA decisions that limit it. Appellants do not mention that a grant of taxing power does not confer an absolute right to collect property taxes free from state interference. The actions of the assessor are subject to state supervision. Furthermore, the State "can take away not only the power to tax, but the subjects of taxation as well. No person or municipality can acquire, as against the state, a vested right to tax. . . ." Authority to make omitted value assessments, the primary issues in these cases, is not a constitutional right of the assessor, but is derived from [state statutes]. The BTA has authority to decide appeals from a county board of equalization under [a state statute] and was thus empowered to rule against the appellants in these cases. [Citations omitted]

Id. at 901.

Other courts, based on similar considerations, have held that a county and its officers may not challenge the constitutionality of a state statute without specific statutory authority to do so. Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374 (Colo. 1980); Board of County Commissioners of Boulder County v. 51st General Assembly of the State of Colorado, 599 P.2d 887 (Colo. 1979); Denver Association for Retarded Children, Inc. v. School District No. 1, 535 P.2d 200 (Colo. 1975). This rule was explained in Denver Urban

Renewal Authority v. Byrne, 618 P.2d 1374, 1379 (Colo. 1980) as follows:

> A longstanding rule of law is that political subdivisions of the state, and the officers thereof, lack standing to challenge the constitutionality of a state statute directing the performance of their duties. This rule has been applied to counties, county officials, and county agencies; and also has been applied with respect to school districts. The rationale for this rule is that [p]ublic policy and public necessity require prompt and efficient action from [ministerial officers of the state.] It has similarly been noted that subordinate state political subdivisions, or their officers, may not challenge a state statute unless expressly or impliedly empowered to do so. Board of County Commissioners v. Love [discussed above], wherein it also stated that such political subdivisions of the state exist only for the convenient administration of the state government, created to carry out the will of the state. [Citations omitted]

For the reasons stated by the courts in the above decisions, appellants in the present case lack standing to challenge not only the valuations made by the Commission, but also the constitutionality of Section 59-5-57 of the Utah Code. The same reasoning compels a finding that the County lacks standing to maintain its second cause of action, which seeks an order requiring the Commission to maintain a book of mines and to give Salt Lake County all information, including informational returns filed by plaintiff and all other owners of state-asessed property located in Salt Lake County. Appellants have not cited any cases or other authority in which the issue of standing was raised and in which a county

or county official was granted standing to challenge in court a State Tax Commission decision or procedure, absent a specific statutory grant of power to do so.

The Utah Constitution and state statutes expressly provide that the Commission has exclusive authority to value state-assessed property. County-assessed properties, in contrast, are valued by the counties. Again, it is significant for purposes of this appeal, that the Commission is required by law to supervise the counties in the performance of their tax responsibilities. At the time the County filed its crossclaim in the present action, the counties had no statutory right to challenge any decisions or procedures of the Commission. It was only after the lower court ruled in respondents' favor that the counties submitted proposed legislation to obtain standing to get involved in appeals before the Commission and subsequent court proceedings based on those appeals. Even then, the legislature limited the standing of the counties to certain situations and did not grant a broad power to challenge all Commission decisions or proceedings. See copies of Senate Bills Nos. 184 and 208 attached hereto as Appendix "A". Passage of these bills constitutes legislative recognition that counties can operate only within the scope of powers granted to them by the legislature and that the counties did not have power or standing

to challenge Commission valuations of state-assessed properti in any way prior to adoption of these limited standing statutes.

It would be improper in light of the Utah constitution and statutes in existence when the present action was filed to conclude that the counties had a right to sue the Commission to contest its valuation procedures. The legislature, as seen from a reading of applicable tax statutes as a whole, clearly intended and recognized that the Commission could carry out its supervisory functions without the direction, supervision and second guessing of the counties, each of which could be motivated by very different and conflicting interests and objectives. Under existing statutes, the counties also had no power to gain access to information used by the Commission in discharging its constitutional duties, including the valuation of state-assessed properties. Nor did they have any statutory right to file legal proceedings to challenge the record-keeping practices and procedures employed by the Commission. The County's allegation that they have the right and duty to make such challenges and to obtain such information is founded on a misunderstanding of their constitutional and statutory powers and is not supported by the law. Only with full consideration by the legislature of the questions of adequate safeguards, funding,

scope of involvement, efficiency of administration and other factors, should the counties be granted standing to get involved in state-assessed property functions of the Commission. Such questions were reviewed by the 1983 session of the legislature when it granted the counties limited standing to file court action against the Commission, only after the counties had exhausted their administrative remedies before the Commission and only within specific time limitations. In the absence of such legislation, the courts should not grant standing to the counties to permit them to challenge actions expressly required of state agencies and in which the counties have no statutory responsibility.

POINT II

THE AUTHORITIES CITED BY APPELLANTS DO NOT SUPPORT THEIR POSITION THAT THEY HAVE STANDING TO CHALLENGE VALUATIONS MADE BY THE STATE TAX COMMISSION.

Appellants have cited several early Utah cases in support of their position that they have standing to challenge action taken by the Commission. The issue of standing, however, was not raised or discussed in any of those cases and, in any event, all of the cases involved procedural issues arising out of tax matters subject to concurrent state-county jurisdiction. Several of the cases also involved taxpayers who were parties to the action.

Appellants contend initially that the Commission's standing argument relies on "Dillon's Rule," which was abrogated by this Court in State v. Hutchinson, 624 P.2d 1116 (Utah 1980). (Brief of Appellants, page 30). Hutchinson, however, does not apply to the issues before the Court in the present case, since it holds only that when the state by statute grants general welfare power to local governments, those governments have authority beyond specific grants of power to pass ordinances reasonably related to the objectives of the general welfare power. Id. at 1126. In contrast, the present case calls into question the counties' standing to take legal action to challenge the Commission's exercise of its statutory and constitutional duties to value specified classes of property where no statute gives the counties any power or responsibility with respect to the valuation of those properties.

Appellants also cite Salt Lake County v. State Board of Equalization, 55 P. 378 (Utah 1889), Juab County v. Bailey, 140 P. 764 (Utah 1914), Rich County v. Bailey, 154 P. 773 (Utah 1916), and Mammoth City v. Snow, 253 P. 680 (Utah 1926), in support of their position that local governments have been permitted to challenge the validity of the Commission's actions. Each of the above cases involved a challenge by the plaintiff county to the Commission's apportionment of

state-assessed property from one county to another, and such apportionment was then used by the counties, as required by statute, to apportion the taxpayer's property among taxing districts within the counties. The issues, therefore, were strictly procedural and related to tax questions that involved concurrent state-county jurisdicton. In contrast, the issues in the present case do not involve such concurrent jurisdiction and do not have an impact on the performance by the counties of their statutory duties. The Juab County case is also distinguishable on the ground that it involved a request by the county to force the Commission to grant it a hearing. Again, and most importantly, the issue of standing to sue was not raised or discussed in any of the above cases.

Appellants also rely on a number of cases in which counties or local officials appealed to this Court from decisions of the Commission which reversed decisions made by local boards of equalization. See, e.g., Board of Equalization of Kane County v. State Tax Commission, 50 P.2d 418 (Utah 1935); Baker v. State Tax Commission, 520 P.2d 203 (Utah 1974); Salt Lake County v. State Tax Commission, 532 P.2d 680 (Utah 1975). These cases, however, are distinguishable on the grounds that the question of standing was never raised and each of them involved taxpayer appeals to the Commission in connection with property valued and assessed by the counties

and for which the counties had specific statutory duties observed by the Court in Salt Lake County v. Tax Commission "these matters had their beginnings in applications filed [by county-assessed property owners] with the Salt Lake County Board of Equalization." 532 P.2d at 680. When the Commission ruled in favor of the taxpayers, the counties appealed to the courts, seeking to uphold the county board of equalization decisions. The present case on the other hand, involves property required by statute and the Constitution to be valued by the Commission only; the counties have no statutory involvement or responsibilities in connection with such valuations or subsequent appeals therefrom.

In Harmer v. State Tax Commission, 452 P.2d 876 (Utah 1960), cited by appellants before the lower court but not in their brief on appeal, elected county officers, in their capacity as taxpayers and county officials, brought a declaratory action against the Commission for a determination, among other things, of whether the Commission's method for revaluing county-assessed properties was valid. As far as the claims of the plaintiffs as taxpayers were concerned, the challenge of the Commission's revaluation procedures was consistent with the statutory rights granted to taxpayers. In addition, the issues in the case related to matters subject to concurrent state-county jurisdiction, since the subject

properties were initially valued by the counties. The plaintiffs also asked the Court to delineate the powers of local officials and the general powers of the Commission to supervise local officers and boards, matters that are easily distinguishable from those before the Court in the present case.

In the remaining case of Washington County v. State Tax Commission, 133 P.2d 564 (Utah 1943), cited by appellants, the standing issue again was not raised. The case involved a writ of prohibition relating to a property tax exemption, and several taxpayers were also parties to the action. As with other cases cited by appellants, this case does not deal with a county's right to challenge action, which by statute and the Constitution, is required to be taken exclusively by the Commission, and for which the only statutory right of appeal is granted to the taxpayer, not the counties. It dealt solely with the constitutionality of a tax statute and was in the nature of a declaratory judgment.

In summary, the County has not cited any Utah cases in which this Court has reviewed the question of whether or when a county or its officials have standing to sue the Commission and, more particularly, whether a county has standing to sue the Commission to challenge its valuation of those properties which fall under its exclusive jurisdiction. When courts of neighboring states have confronted these and similar issues,

they have held unanimously that absent a statute to the contrary, counties lack standing to challenge Commission action.

Finally, as a matter of policy, the counties and the Commission should not be adversaries in the administration of the tax laws. Both are charged with specific responsibilities relating to valuation and assessment of certain classes of taxable property in the state, and the Commission is specifically charged with overseeing the counties in the performance of their duties with respect to property valuations and assessments. A reading of the tax statutes in effect when Salt Lake County commenced the present action shows that the legislature concluded that it was neither necessary nor desirable for the counties to attempt to reverse those statutory roles. Even with the passage of Senate Bill 208 in 1983, the legislature did not intend that the counties have wholesale authority to challenge all Commission action. It limited the counties' rights in this regard and provided specifically that an owner of state-asessed property or a county dissatisfied with a valuation made by the Commission could seek a hearing before the Commission on or before April 10th of the current tax year. If the taxpayer or the county disagreed with the Commission's decision, it could appeal that decision to the district court. It does not give a county the right to file counterclaims and crossclaims like

those asserted by the County in the present action where a taxpayer challenges the constitutionality of its property tax, nor does it grant the right to a county to initiate court proceedings before the matter is submitted to the Commission for a hearing. To hold now that the appellants have standing to maintain their crossclaims would be contrary to the express statutory provisions in effect when those crossclaims were filed, and would not even be supported by the new legislation. It would also go against the position adopted by this Court that assessments are susceptible of correction only where the legislature has provided a remedy by statute. See Juab County v. Bailey, 140 P.764, 766 (Utah 1914). The state law in effect at the time of commencement of the present action provided a judicial remedy for correction of assessments and valuations and assessments to taxpayers only, not to the counties and their political subdivisions. The counties had other means of input into Commission procedures and decisions, including annual seminars and other meetings to which county representatives were invited, committees or panels appointed by the Governor to review valuation procedures, and various informal meetings. Neither Salt Lake County nor other counties within the state took advantage of those opportunities to offer suggestions as to how they felt certain classes of state-assessed properties should be

valued. The County, therefore, should not now be granted standing to maintain legal action to challenge such valuations.

POINT III

APPELLANTS' CROSSCLAIM WAS PROPERLY DISMISSED BECAUSE IT WAS NOT FILED TIMELY.

In Juab County v. Bailey, 140 P.764, 766 (Utah 1914), cited by appellants in their brief, this Court held that the counties were barred from bringing an action challenging county by county apportionments made by the Commission of state-assessed property, where the action had been brought "after the apportionments [had] been made, the rate of taxation [had been] fixed in accordance with such apportionments, and all levies [had] been made pursuant thereto." Based on this holding, appellants in the present case should be barred from bringing any crossclaim to challenge property valuations made by the Commission for 1981, since that crossclaim was not filed until June 25, 1982, long after the valuations had been made, the tax rates had been fixed, and the taxes had been levied in accordance therewith. See Utah Code Annotated § 59-10-26 (1953, as amended) (Property taxes to be paid by November 30 of each calendar year).

This Court further held in Juab County that the counties cannot commence action under the tax statutes after the

limitations period applicable to property owners has run. 140 P. at 766. In this regard, Section 78-12-31 of the Utah Code requires that all actions for taxes paid under protest be commenced within six months after payment of the tax. Kennecott, the taxpayer in the present case, paid its tax under protest on November 30, 1981. Nearly seven months passed, however, before appellants filed their crossclaim. That crossclaim is therefore barred by the statute of limitations.

POINT IV

THE UTAH CONSTITUTION AND STATUTES PRECLUDE APPELLANTS FROM OBTAINING THE INFORMATION SOUGHT BY THEIR SECOND CAUSE OF ACTION.

Appellants' second cause of action is legally defective on the further ground that it seeks to have the Court interfere with the taxpayers' constitutional right of privacy and it violates the Archives and Records Service Information Practices Act. In Redding v. Brady, 606 P.2d 1193 (Utah 1980), this Court recognized a constitutionally based right of privacy with respect to records maintained by governmental agencies. In defining the scope of that right, the Court stated:

> It seems sufficient for our purpose herein to say that what the right of privacy protects is to be determined by applying the commonly accepted standards of social propriety. This includes those aspects of an individual's activities and manner of living that would generally be regarded as being of

> such personal and private nature as to belong to himself and to be of no proper concern to others. The right should extend to protect against intrusion into or exposure of not only things which might result in actual harm or damage, but also to things which might result in shame or humiliation, or merely violate one's pride in keeping his private affairs to himself.

Id. at 1195. In a concurring opinion in California Bankers Association v. Schultz, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812, Justice Lewis F. Powell indicated that financial information should be protected by the constitutional right of privacy:

> Financial transactions can reveal much about a person's activities, associations and beliefs. At some point, governmental intrusion upon these would implicate legitimate expectations of privacy.

The Commission has taken the position that the records furnished to it by property owners, particularly information relating to income, are most confidential and private. To release such information to political subdivisions and their officers who have no right to value or supervise the valuation of property assessed by the Commission, would have a detrimental effect on the Commission's ability to carry out its assessment work and would needlessly reveal to the various county officials and employees information obtained in confidence, without any reasonable purpose being served. Based upon the taxpayer's legitimate expectation of privacy with regard to certain financial information furnished to the

commission, the confidentiality of that information should be upheld in order to prevent its dissemination to those who do not need it for the performance of their duties. In this regard, the records sought by appellants have no bearing on the county's ability to carry out its assessments and should be used only by the Commission absent a specific statute to the contrary.

Utah State law in effect when the County filed its cross-claim also precludes the disclosure of the information sought by the County's second cause of action. The Archives and Records Service Information Practices Act found in Utah Code Annotated, § 63-2-59, et seq. (1981 Supp.), governs the maintenance and retention of state records and documents. The legislative intent behind the Act, among other things, is to prevent abuse of personal or confidential information. Id. § 63-2-6. With respect to individual rights under the Act, Section 63-2-85.4(4) provides:

> No confidential or private data shall be used other than for the stated purposes nor shall it be disclosed to any person other than the individual to whom the data pertains, without express consent of that individual, except that next of kin may obtain information needed to acquire benefits due a deceased person.

Tax returns and other tax data furnished to or gathered by the Commission are classified as private data and, accordingly, may be used by the Commission only for the purpose of

assessing taxes. Appellants in the present action have presented no evidence that such records have not been so classified. Since the counties have no statutory or constitutional duties or responsibilities with respect to the valuation of state-assessed properties, they are prevented by the Act from having access to such data without the express permission of the person supplying the data or to whom it pertains. In short, the constitutional right of privacy and the Utah Archives and Records Service Information Practices Act bar disclosure to appellants of the information sought by their second cause of action.

CONCLUSION

In conclusion, the crossclaims of the County and the other appellants in this case represent a serious attempt to challenge the authority of the Commission, as well as the entire system developed by the Commission under existing statutes over a period of many years, for the valuation of state-assessed properties. Appellants seek through the litigation process to participate in all matters involving the authority, functions, policies and procedures of the Commission with respect to state-assessed properties, whereas Utah statutes in effect when the crossclaim was filed grant exclusive responsibility to the Commission in that area. To per-

mit appellants to become participants in the valuation of state-assessed properties, without a statutory right to do so, by means of the litigation process would make it impossible to carry out the Commission's functions without very substantial costs, inefficiencies and other problems. It would also overburden the courts with issues that should properly be addressed by the legislature after full consideration of necessary safeguards and other matters, as was done in the 1983 legislative session.

In short, the courts are not a proper forum for the claims of a few county officials who are trying to assail the general procedures and methods used by the Commission in valuing state-assessed properties. Other avenues of input by the counties were available when the crossclaim was filed and should have been utilized if appellants had wished to challenge the procedures, policies and valuation techniques of the Commission. Appellants' claims are matters to be considered by the legislature, as is well illustrated by the limited standing laws passed by the legislature in 1983, or to be handled by administrative procedures expressly provided for by regulation or by special hearings conducted under order of the governor's office. Appellants chose not to

avail themselves of those opportunities and should not now be considered to have standing to pursue those claims in court.

Respectfully submitted this 29th day of July, 1983.

SNOW, CHRISTENSEN & MARTINEAU

By 
Reed L. Martineau

By 
Rex E. Madsen

Special Assistant Attorneys General and Attorneys for Respondent Utah State Tax Commission

CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing Brief of Defendant/Cross Defendant Utah State Tax Commission by mailing the same, postage prepaid, respectively, to Theodore Cannon, Bill Thomas Peters and John G. Avery at 10 Exchange Place, Suite 1000, Salt Lake City, Utah 84111; and to Keith E. Taylor and John F. Waldo at Parsons, Behle & Latimer, 185 South State #700, Salt Lake City, Utah 84111.

Dated this 29th day of July, 1983.

Alice McCandless

APPENDIX "A"

ASSESSMENT OF PROPERTY AMENDMENTS

1983

GENERAL SESSION

Enrolled Copy

S. B. No. 184

By Cary G. Peterson
K. S. Cornaby
Jack M. Bangerter
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AN ACT RELATING TO PROPERTY TAX ASSESSMENTS; REQUIRING THE STATE TAX COMMISSION TO FURNISH INFORMATION RELATING TO THE ASSESSMENT OF STATE ASSESSED PROPERTIES AND SALES RATIO STUDIES TO COUNTY ASSESSORS.

THIS ACT AMENDS SECTION 59-5-52, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 71, LAWS OF UTAH 1982, SECTIONS 59-5-54, 59-5-55, AND 59-5-56, UTAH CODE ANNOTATED 1953, AND SECTION 59-5-109.6, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 233, LAWS OF UTAH 1981.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 59-5-52, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1982, is amended to read.

59-5-52. By the first day of April the state tax commission shall assess, as valued of January 1, all property required by law to be assessed by it. Immediately thereafter the owner, or operator as provided in section 59-5-65 (2), of property so assessed and the assessor for the county in which the property is located shall be notified of such assessment.

Section 2. Section 59-5-54, Utah Code Annotated 1953, is amended to read:

59-5-54. The state tax commission must prepare each year a book, to be called "Record Assessment of Railroads and Other Companies," in which must be entered each assessment, except assessments of mines, made by it, either in writing or both in writing and printing, and the apportionment thereof to the several counties. In such book must be entered the names of the railroad, car, street railroad, telegraph, telephone and other lines and of all public utilities assessed by the tax commission, the names of the corporations to which, or the name of the person or association to whom, the same were assessed, the whole number of miles of the person or association to whom, the same were assessed, the whole number of miles of the railroad, car, street railroad, telegraph, telephone lines and other lines in the state, the number of miles in each county, the total assessment of all such property, and the amount of the apportionment of such total assessments to each county. The record assessment books and the information upon which the assessments and apportionments are calculated shall be available for review by a county assessor, upon request. Each agent, employee, or other person acting under the control of a county assessor is subject to the standards and requirements of confidentiality in effect for the state tax commission and may not release any confidential proprietary information about a taxpayer if such person knows, or has reason to believe, that release of the information would significantly competitively disadvantage the taxpayer. Any person who violates the confidentiality requirements of this section may be imprisoned for a period not to exceed six months, fined in an amount not to exceed $500, or both. In addition, such person shall be dismissed from county office or employment, as the case may be, and is disqualified from holding county office or employment for a period of five years.

Section 3. Section 59-5-55, Utah Code Annotated 1953, is amended to read:

59-5-55. The state tax commission must prepare each year a book to be called "Record Assessment of Utility Companies," in which must be entered the names of every person, organization or corporation engaged in any utility business, the value of all the tangible and intangible properties of said persons or companies doing business within the state of Utah upon which they are entitled to earn a fair return; together with such other information as the state tax commission may determine.

The value of the tangible properties of the public utilities within the state of Utah which are to be recorded in the book to be called "Record Assessment of Public Utilities," shall be determined as follows: The commission shall each year copy in said book from the last volume of the book known as "Record of Valuation of Utility Companies," prepared by the public service commission, the valuations of the tangible properties of every public utility doing business in this state which said properties are located within the boundaries of Utah. Said valuation so recorded in the record of valuations of utility companies and copied by the commission in the book known as "Record of Assessments of Utility Companies," shall be accepted as the true and actual value of the tangible properties of said utilities in Utah, and the commission shall assess the properties of each public utility from the valuations so recorded in the same proportion to the recorded valuation as the assessed valuation of other tangible properties similarly assessed bear to their actual value. The record assessment books and the information upon which the assessments and apportionments are calculated shall be available for review by a county assessor, upon request. Each agent, employee, or other person acting under the control of a county assessor is subject to the standards and requirements of confidentiality in effect for the state tax commisaion and may not release any confidential proprietary information about a

taxpayer if such person knows, or has reason to believe, that release of the information would significantly competitively disadvantage the taxpayer. Any person who violates the confidentiality requirements of this section may be imprisoned for a period not to exceed six months, fined in an amount not to exceed $500, or both. In addition, such person shall be dismissed from county office or employment, as the case may be, and is disqualified from holding county office or employment for a period of five years. [~~Said~~] The commission shall [~~furthermore copy from~~] consider the record of valuations of utility companies prepared by the public service commission [~~the valuations of all tangible (intangible) properties of every public utility doing business in Utah which is located within the state, and shall assess said intangible properties in the same manner as it assesses the intangible properties of the citizens of the state of Utah~~] in determining utility rates in valuing the property for tax purposes.

Section 4. Section 59-5-56, Utah Code Annotated 1953, is amended to read:

59-5-56. The state tax commission must prepare each year a book called the "Occupation Tax and Assessment Book of Mines," in which must be entered all occupation taxes fixed and the assessment of all mines in the state subject to assessment by it and in which book must be specified in separate columns and under appropriate heads:

(1) Owner of mine.

(2) Name and description and location of the mine.

(3) County in which it is situated.

(4) Net proceeds in dollars, if a metalliferous mine.

(5) Number of tons of ore mined whether by the owner, lessee, contractor or otherwise.

(6) Amount received for ore and metal if sold; if not sold the value thereof.

(7) Value of mine.

(8) Value of the machinery.

(9) Value of supplies and other personal property.

(10) Value of improvements.

(11) Value of machinery, property and surface improvements having a value separate and independent of all such mines or mining claims assessed by the state tax commission, and the names of the owners of the same.

Together with such other information as the tax commission may determine.

The record assessment books and the information upon which the assessments and apportionments are calculated shall be available for review by a county assessor, upon request. Each agent, employee, or other person acting under the control of a county assessor is subject to the standards and requirements of confidentiality in effect for the state tax commission and may not release any confidential proprietary information about a taxpayer if such person knows, or has reason to believe, that release of the information would significantly competitively disadvantage the taxpayer. Any person who violates the confidentiality requirements of this section may be imprisoned for a period not to exceed six months, fined in an amount not to exceed $500, or both. In addition, such person shall be dismissed from county office or employment, as the case may be, and is disqualified from holding county office or employment for a period of five years.

Section 5. Section 59-5-109.6, Utah Code Annotated 1953, as enacted by Chapter 233, Laws of Utah 1981, is amended to read:

59-5-109.6. (1) Each year, to assist it in the [adjustment and equalization of valuation and assessment] evaluation of appraisal performance of taxable real property, the state tax commission shall conduct studies and publish and distribute to each county assessor and others the results of studies of the relationship between the assessed and market

values of property to determine assessment-sales ratios for each type of taxable real property within taxing districts. Every sales-ratio study shall use the statistical method known as the "weighted mean" to determine the cental tendency of values, and the "weighted coefficient of variation" to determine the degree of dispersion or variation about the "weighted mean." Assessors may provide sales information.

(2) The state tax commission shall, before December 1 of each even-numbered year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in section 59-5-1. Such adjustment or factoring may include an entire county, geographical areas within a county and separate classes of properties. The state tax commission shall also order corrective action where significant value deviations occur as indicated by the coefficient of dispersion.

COUNTY STANDING IN HEARINGS AND SUITS

INVOLVING STATE ASSESSMENTS

1983

GENERAL SESSION

Enrolled Copy

S. B. No. 228

By Cary G. Peterson

Charles W. Bullen

Brent C. Overson

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AN ACT RELATING TO HEARINGS BEFORE THE TAX COMMISSION AND TAX APPEALS FROM DECISIONS OF THE STATE TAX COMMISSION TO THE DISTRICT COURT OF THE SUPREME COURT; PROVIDING THAT A COUNTY WHOSE TAX REVENUES ARE AFFECTED BY THE DECISION MAY BE PARTY IN THE HEARING AND MAY APPEAL OR PETITION FOR REVIEW OF THE DECISION.

THIS ACT AMENDS SECTION 59-7-12, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 71, LAWS OF UTAH 1982, AND SECTION 59-24-2, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 80, LAWS OF UTAH 1977.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 59-7-12, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1982, is amended to read:

59-7-12. If the owner of any property assessed by the state tax commission [~~is dissatisfied with~~] or any county with a showing of reasonable cause objects to the assessment [~~made by it, such owner~~], either may, before the tenth day of April, apply to the commission [~~to have the same corrected in any particular, and it shall set a time~~] for a hearing [~~such objections, between the tenth day of April and the twenty-second day of April, inclusive, and may correct and increase or~~

~~lower any assessment made by it, so as to equalize the same with the assessment of other property in the state~~]. Both the owner or the county upon a showing of reasonable cause shall be allowed to be a party at any hearing under this section.

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.

Section 2. Section 59-24-2, Utah Code Annotated 1953, as enacted by Chapter 80, Laws of Utah 1977, is amended to read:

59-24-2. (1) Within 30 days after notice of any decision by the state tax commission rendered after a formal hearing before it, any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may appeal or petition for review to the tax division of the district court located in the county of residence or principal place of business of the affected taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to the tax division of the third judicial district court in and for Salt Lake County.

(2) In all cases, whether or not proper under subsection (1), any aggrieved party appearing before the state tax commission or county whose tax revenues are affected by the decision may appeal or petition for review a decision rendered after a formal hearing of the commission to the tax division of the third judicial district court in and for Salt Lake County within the specified 30 days following notice of such decision.

(3) In the alternative, a taxpayer may waive review and trial de novo in the tax division of the district court and, within the specified 30 days following the required notice, may seek review by the Utah Supreme Court upon writ of certiorari.

If a taxpayer or any affected county chooses to waive right of review by the tax division of the district court and applies for a writ in the Supreme Court, the taxpayer or affected county must (a) state in the application for the writ that the taxpayer or affected county is waiving the right of review and trial de novo in the tax division of the district court and (b) comply with the provisions of sections 59-5-76, 59-13-46, 59-14A-77, 59-15-16 and/or 59-16-13 as though seeking review in the tax division of the district court. A county whose tax revenues are affected by the decision being reviewed shall be allowed to be a party in interest in the proceeding before the Supreme Court.