

1983

**Tom Snyder, Wendell K. Nash For Themselves And All Other
Uintah County Taxpayers Similarly Situated v. Roland Merkley,
Neal Domgaard, And Merrell Mecham, Uintah County
Commissioners, Morris R. Cook, Uintah County Clerk-Auditor, And
Western Surety Company : Brief of Respondents**

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IN THE SUPREME COURT OF THE STATE OF UTAH

TOM SNYDER, WENDELL K. NASH :
for themselves and all other :
Uintah County Taxpayers :
similarly situated, :
 :
Plaintiffs & Appellants, : Civil No. 18,979
vs. :
 :
ROLAND MERKLEY, NEAL DOMGAARD, :
and MERRELL MECHAM, Uintah :
County Commissioners, MORRIS R. :
COOK, Uintah County Clerk- :
Auditor, and WESTERN SURETY :
COMPANY, :
Defendants & Respondents. :

BRIEF OF RESPONDENTS

Appeal from the Judgment of the
Seventh Judicial District Court of Uintah County,
The Honorable Boyd Bunnell, Judge.

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Clerk, Supreme Court, Utah

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BRIEF OF RESPONDENTS

STATEMENT AND NATURE OF CASE

IN THIS ACTION Plaintiffs have filed a Complaint designated as a class action for and on behalf of themselves as taxpayers and the other taxpayers of Uintah County against the Defendants Merkley, Domgaard, and Mecham individually as County Commissioners and against Defendant Cook individually as Uintah County Clerk and Auditor and their respective bondsman seeking to recover certain attorney's fees paid for the investigation of a lawsuit that involved the County, alleging that such payment was illegal, because the County had no such authority to enter into the lawsuit.

DISPOSITION IN THE LOWER COURT

The Honorable Boyd Bunnell, Judge of the Seventh Judicial District Court for Uintah County, granted the Defendant's Motion for Summary Judgment on the pleadings and dismissed Plaintiff's Complaint for failure to state a cause of action.

RELIEF SOUGHT ON APPEAL

Respondents seek to have this Court affirm the Lower Court decision.

STATEMENT OF THE FACTS

In 1980, the Uintah County Sheriff's Department was experiencing problems with having its officers defamed, slandered, and otherwise having their reputations tarnished by parties who had been subject to investigation and arrest by the Sheriff's Department. This issue had been discussed several times with the Uintah County Commissioners. In early 1981, major problems occurred in the valley relating to pyramid schemes being conducted by various individuals. The Uintah County Sheriff's Department, in conjunction with the Vernal City Police, obtained informations and arrest warrants for the parties involved in that scheme. One of the parties arrested was Carol Newman. After her arrest, Ms. Newman, made derogatory comments to the press relating to the conduct of the officers involved in her arrest. Because of the viciousness of the comments that were made and the obvious falseness and malice involved, the officers decided to file an action for damages. Many of the comments made by Ms. Newman related to the Uintah County Sheriff's Department. Because of those comments the Uintah County Sheriff met with the

County Commissioners, the Vernal City Police Chief, and the County Attorney's Office to discuss what, if any, action could or should be taken on behalf of the County. Also several meetings were held with Mr. Lynn Lund, who was representing the individual officers involved. Because the derogatory comments was causing morale problems in the Sheriff's Department and also was causing a loss of public trust in the officers, the County Commissioners felt it to be in the best interest of the County to support the officers in their lawsuit. Therefore, Mr. Lund was requested by the Uintah County Commissioners to investigate whether any relief could be sought by the County, in the defamation action brought by the individual officers. Mr. Lund was advanced \$1,125.00 dollars by the County Commissioners to make this investigation. Eventually a lawsuit was filed by Mr. Lund, (See Civil No. 10,850, In The Fourth Judicial District Court of Uintah County, State of Utah), and a judgment by default has been entered therein. See affidavit of Uintah County Commissioner Neal Domgaard.

ARGUMENT

POINT I. THE LOWER COURT CORRECTLY GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS THERE IS NO GENUINE ISSUE OF A MATERIAL FACT AND THE DEFENDANTS ARE ENTITLED TO A JUDGMENT OF DISMISSAL AS A MATTER OF LAW.

In determining whether the Defendants had individual liability in a suit for the recovery of allegedly illegally expended funds, the lower Court applied the rule expressed by this Court Salt Lake County v. Clinton, 39 Utah 462, 117 P 1075, (1911).

where it was held that no individual liability could be found where there was no allegation of bad faith, fraud or corruption.

Upon finding the good faith rule of Salt Lake County v. Clinton, to have application in this case, the Lower Court looked to determine if there was any genuine issue or whether the Defendants' actions were in bad faith, fraudulent or corrupt.

The pleadings, discovery materials, and affidavits show there is no genuine issue as to that critical fact. It has been repeatedly held that summary judgment is proper only if the pleadings, depositions, and affidavits and admissions show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. In Re Williams Estate,¹⁰ Utah 2d 83, 348 P2d 683 (1960). It has further been held that bare allegations unsupported by affidavits present no question of fact. Trans America Title Insurance Company v. United Resources, Inc.,²⁴ Utah 2d 346, 471 P2d 165 (1970). The only affidavit in the file is that of Uintah County Commissioner Neal Domgaard where he states that the sums of money paid to the attorneys for the Uintah County's participation and lawsuit were paid only after much discussion and a determination by the board of commissioners that it was in the best interest of the county to have Mr. Lund investigate the possibility of pursuing legal action against Ms. Newman on behalf of the county. Plaintiffs have allowed this affidavit to go unchallenged and now can not properly assert that there is an issue as to a

material fact regarding good faith, fraud or corruption. Plaintiff's bare unsupported allegation can not raise an issue of fact in light of Defendant's affidavit.

POINT III. PLAINTIFFS DO NOT HAVE STANDING TO MAINTAIN AN ACTION TO RECOVER MONIES UNLAWFULLY PAID.

The procedure for recovering monies unlawfully paid or expended by a county commissioner is outlined in Section 17-5-12 U.C.A. as amended (1953). The Section specifies that the county attorney of such county shall institute a suit in the name of the county against such person or such officer and his official bondsman to recover the money paid. The Lower Court correctly held that this Section had application to injunctive relief as well. Appellant contends that citizens would be powerless under such a strict interpretation in the event the county attorney was derelict in his duty. Rule 65(b) of the Utah Rules of Civil Procedure indicates that in the event the county attorney's office will not act on the unauthorized expenditure of funds then the attorney general's office should be notified and asked to take appropriate action. If the attorney general refuses to do so then the Plaintiff might have some right to bring an action for unlawful expenditure of county funds. Taber v. Moore, 503 P2d 736 (Wash 1972). Even at that time the Plaintiffs would have to show direct injury to themselves different than that of the general public in order to have standing. In Beard v. State, 574 P2d 713 (Utah 1978), the Utah Supreme Court discussed the issues of standing, justiciability, and declaratory judgments. The Court held that in order for a Plaintiff to have standing, the

Plaintiff must plead concrete facts indicating a specific injury sustained by the Plaintiff which injury is different than that sustained by the public generally. The Court stated:

To invoke judicial power a claimant must show that he has sustained or is immediately in danger of sustaining a direct injury as a result of the action. It is insufficient to assert a general interest he shares in common with all members of the public, viz., a generalized grievance. Id. at 717.

The Court further held that a party could not assert another party's legal rights and try to base standing thereon. Finally the Court stated that the Trial Court, if it determines that standing does not exist, should on its own motion dismiss the action.

Why the Appellant seeks to draw an analogy to the Open and Public Meetings law is unclear since Section 52-4-9 U.C.A. (1953) as amended specifically provides that a person denied any right under that chapter may commence suit in a Court of competent jurisdiction to compel compliance with or enjoin violations of that chapter or to determine its applicability to discussions or decisions of a public body. Appellant's Complaint contains no allegations claiming a violation of the Open and Public Meeting statute. If there is a cause of action entitling Uintah County to recover a money judgment the suit has to be instituted by that corporate entity in its own name since it is a legal entity with the power to sue and recover for their own damage.

The Court is not called upon to declare that a citizen has no rights as a tax payer under any circumstances to bring suit to recover money illegally paid. This Court must only determine if

a tax payer should first pursue such a claim through the procedure set for by the Utah State Legislature in Section 17-5-12 U.C.A. (1953) as amended.

CONCLUSION

This Court should affirm the Lower Court Decision since Appellants have failed to state a cause of action against Defendants.

There is no material issue as to good faith, fraud or corruption.

Furthermore, Appellants do not have standing to bring this suit as they have failed to proceed according to Section 17-5-12.

The bare allegations contained in Appellant's Complaint are not sufficient to raise an issue of material fact in light of Respondents Affidavit. Without an issue regarding good faith, fraud or corruption the Lower Court was correct in granting his motion for new judgment.

Respectfully submitted this 30th day of March, 1983.

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