

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 Appellant**

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SUPERIOR COURT  
OF THE STATE OF UTAH

BARBARA Z. HARTILL, for herself and  
all other Vernal City Taxpayers  
vs. Earl, et al.,

Plaintiffs,

-vs-

SAM SNYDER, Mayor, JOHN STAGG,  
GENE ANEINSON, JACK SEITZ,  
EVEL MICHIORI, GREG HAWKINS,  
City Councilmen of Vernal  
City, DIXIE B. HACKING,  
City Recorder of Vernal City,  
and WESTERN SUPPLY CO.,

Defendants.

No. 18980

APPELLANTS' BRIEF

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STATEMENT OF THE KIND OF CASE

THIS action arose as taxpayer's suit wherein the Plaintiff for herself and all other taxpayers similarly situated brought an action against the Mayor of Vernal City, Vernal City Councilmen, the Vernal City Recorder and their bondsmen for misappropriating public moneys to hire an attorney for an action of defamation.

DISPOSITION IN THE LOWER COURT

THE case was brought before the Seventh District Court, Uintah County, Boyd Bunnell, District Judge, on a Motions by Defendants and Plaintiff for Summary Judgment, The Court after reviewing the Memorandums filed awarded Summary Judgment to the Defendants and Denied Summary Judgment to the Plaintiffs. On this ruling Plaintiffs appeal.

RELIEF SOUGHT ON APPEAL

Plaintiffs seek to overturn the the Order granting Summary Judgment to the Defendants, and if the facts on file warrant, request a Summary Judgment for Plaintiffs.

STATEMENT OF THE FACTS

THIS action arose on a Complaint filed by Plaintiff as a class action the Mayor, City Councilmen, City Recorder and their bondsmen alleging that the said Defendant city officials had illegally appropriated moneys to pay attorneys's fees for a lawsuit by the City and in behalf of its Policemen against a party in defamation. The Complaint alleged that the suit was illegal and a ruse in order to fund a private law suit, and therefore the moneys were misappropriated; the complaint prayed for the amount disbursed in the sum of \$1,345, for an an injunction

enjoining the officials from disbursing further funds for the Suit. Defendants answered denying Plaintiffs allegation that the suit was frivolous, and subsequently filed a Motion together with Memorandums in support of judgment. subsequently the Plaintiff filed also a Motion for summary Judgment. The Court awarded Defendants Summary Judgment, denied the Plaintiffs relief, and Plaintiffs appeal the same.

STATEMENT OF THE POINTS

- Point # 1: The Court erred in assuming and basing its decision upon the assumption that the Vernal City Officials were acting within the scope of their official duty.
- Point # 2: The court erred in its holding that there was no allegation of fraud, corruption, or that the officials were acting in bad faith included in the Complaint.
- Point # 3: The interocatories filed in the Pleading open issues of fact that entitle Plaintiffs to A Summary Judgment or if not, put a matter in issue that ought to require admission of evidence, thereby denying Defendants Summary Judgment.

ARGUMENT

- Point # 1: The Court erred in assuming and basing its decision on the the assumption that the Vernal City Officials were acting within the scope of their official duty.
- On this same point, the Court rather presumptively assumes that the Defendant officials were acting within the scope of their

their official duties, and he bases this assertion upon the flimsy assumption that because the City can sue and be sued that these officials have unlimited discretion in exercising this power,<sup>1</sup> the assumption does not hold. While the City can in its corporate capacity sue and be sued, the question as to whether they can undertake a law suit on any matter or support any cause of action is wholly another matter. The legal opinions extant hold quite conclusively that in its corporate capacity, the municipality can not maintain an action in defamation. Similarly there is a further question of whether it can fund with city funds a similar action for its employees.<sup>2</sup> And Defendants Answers to Interrogatories filed indicate that the action taken was in conflict with the Open Meetings law and thereby clearly beyond the orbit of their official duties.<sup>3</sup>

Point # 2: The Court erred in its holding that there was no allegation of fraud, corruption, or that the officials were acting in bad faith included in the Complaint.

Truly the Court in making this categoric assumption closed its eyes to the allegations contained in Paragraph # 7 of Plaintiffs' Complaint, if the words included in that paragraph do not comport are point categorically to something bordering on deceit or fraud, one has to stretch clearly out of context the meanings of plain words in the English language. Truly the allegation that appropriation of the moneys was "illegal" and a ruse to foist costs of a purely private action on to the taxpayers of Vernal City implies something almost identical with Fraud, and surely does not imply good faith.

1/ Chicago v Chicago Tribune, 307 Ill. 595

2/ 45 A.L.R. 3rd 1315;

3/ U. C. A. 52-4-4, 5, 7. , Defendant's Answer to Interrogatories, Interrogatory # 1.

"And when the Court chooses to close its eyes and muffle its ears  
 and when the Court is included in Defendant Officials' answers to  
 the Court's questions, the allegations of Plaintiff's Complaint  
 are not considered. The Answer to Interrogatory #1 of these  
 questions is that the counsel was engaged and all aspects of  
 the case were discussed in Executive Session in violation of the  
 law. Good faith, if the matter is a question of good faith so ob-  
 vious to all, what the secrecy? And did not any of the City  
 Council and officials involved consider the implications of law?  
 Consider the question in the larger context, here are public officials  
 conferring in a closed meetings, not only a strategy to appropriate  
 public funds to fund a private law suit in collusion with Uintah  
 County, but the contract and the authorizing the funds were made  
 in that session without any record vote being taken. Surely, if  
 such does not border on fraud, one needs to completely modify the  
 definition of that term as it is included in our lexicon.<sup>1</sup> And  
 outside the question there are other invidious implications that  
 need to be considered. Truly the gist, the crux of all the decisions  
 relating to the right of a public entity to sue in defamation hinges  
 on the Constitutional Question of Free Speech. What are we to say  
 when public officials behind the curtain of secrecy misappropriate  
 public funds to hit police officers in a coercive vendetta against  
 private citizens who has leveled the sting of criticism against them.  
 That which is wrapped up in "good faith" and intoned by "Judicial  
 immunity" has reached its suitability to the breaking point.<sup>2</sup>

1. Webster's World Dictionary defines "fraud" as follows: "Something  
 done with an intent to deceive" and lists as synonyms "trickery", a "rus-  
 sian" and "trick".

2. See Ill. Appellate Court, 307 Ill. 595: Times v Sullivan, 376

And be it further noted that the Court in its opinion and the case which it cites to uphold its ruling holds that fraud, lack of good faith or corruption is not the immunity of public officials from suit even when actions are within the scope of their authority.<sup>1</sup>

Point # 3: The interrogatories filed in the pleading open is of fact that entitle Plaintiffs to a Summary Judgment, or if not, put a matter in issue that ought require admission of evidence, thereby denying Defendants Summary Judgment.

The answers to Interrogatories propounded by Plaintiffs by Defendant City Officials clearly and openly indicate that the appropriation of the funds in question and the contract of the Attorney were both undertaken in Executive Session in violation of the Utah Open Meetings Law,<sup>2</sup> and under that law Plaintiffs would have the right of both money judgment they request and the injunctive relief.<sup>3</sup> At the mere minimum, the very response to these interrogatories when made under oath would raise an issue of fact, as well as one of law that would preclude the awarding of Summary Judgment.<sup>4</sup>

#### CONCLUSION

It is apparent from a perusal of the Decision of the Court, that the Court did not address itself either to the issues or the facts raised by the pleadings. The Opinion displays either a glibness or a bias to the facts included therewith. Indeed some of the statements included therewith indicate that the Court by a form of "Judicial New Open Meetings" seeks to rewrite the language and adopt a lexicon that avoids the plain words included in the pleadings.

1/ Self-Lake County v Clinton, 39 U.C. 402.

2/ U. C. A. 52-4-1 et. Seq.

3/ U. C. A. 52-4-8,9

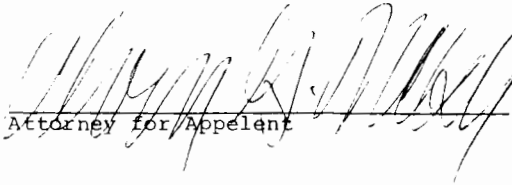
4/ Hatch v Sugarhouse Fin., 20 U2nd 154; Holbrook City v Adams, 542



Further all the retrospective apologies and excuses set forth, the bare recital of the case will not hide the fact that this case is a deliberate attempt to circumvent certain parties and prevent just criticism of the actions of the Defendant. This in itself ought to have alerted a reasonable person, the Mayor and Council, but when the action is taken in collusion with Wintah County Commissioners in an open and deliberate attempt to submit by the Defendant City Officials in their responses to the interrogatories, the flimsy curtain of rhetoric with which the Court deigns its ruling becomes palpably faracial. If the action taken was not "shady" verging on the definition of fraud, a new meaning needs to be conjured for that word in the English language. And this case with all of its delays and dilatory interruptions poses saliently the issue of whether the taxpayer has any action at all against the presumptive and illegal actions of public officials. Upon this issue the Appellant in this case rests.

DATED this 1st day of March, 1983.

Respectfully Submitted,

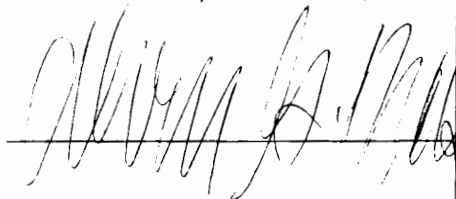
  
\_\_\_\_\_  
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CERTIFICATE OF MAILING

Two copies of the foregoing mailed, postage prepaid, this 1st day of March, 1983, as follows:

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