

1983

Tom Snyder, Wendell K. Nash For Themselves And All Other Uintah County Taxpayers Similarly Situated v. Morris R. Cook, Uintah County Clerk-Auditor, Arden W. Stewart Sheriff Of Uintah County And Western Surety Company, A Corporate Bonding Company : Brief of Appellants

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ALVIN G. NASH, RICHARD E. NASH,
for themselves and all other
Uintah County Taxpayers sim-
ilarly situated,

Plaintiffs & Appellants,

No. 18,981

-vs-

WOPPIE R. COOK, Uintah County
Clerk-Auditor, ARDEN W. STEWART,
Sheriff of Uintah County and
WESTERN SURETY COMPANY, A Cor-
porate Bonding Company,

Defendants & Respondants.

APPELLANTS' BRIEF

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Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF THE FACTS-----	2
STATEMENT OF THE POINTS-----	3
ARGUMENT-----	3
Point 1. The Court Erred in holding that an action to enjoin illegal expenditures of moneys by the County-Clerk-Auditor lies exclusively with the County Attorney-----	3
Point 2. The Court erred in holding that failure to post a Bond is ground for dismissal-----	4
Point 3. The Court erred in holding no action will lie be- cause therre is now showing of fraud or corrup- tion-----	5
<u>Authorities Cited</u>	
Winn v Parker, 48 Calif. 2nd 890-----	3
Blair v Pitches, 5 Calif.2nd 258-----	3
Barry v Dowd, 89 Calif. 215-----	3
Samis v King, 40 Conn. 298-----	3
74 Am. Jur. 2nd 209-210-----	3,4,6
<u>Statutes Cited</u>	
U.C.A. 17-5-12-----	3
U.C.A. 52-4- 1 et. seq.-----	4
U.C.A. 78-11-10-----	5
U.C.A. 17-30-1 et. Seq.-----	6
U. S. Constitution-----	5
Amendments Art. XIV	
Utah Constitution	
Art. I, Sect. 24-----	5

STATEMENT OF THE KIND OF CASE

THIS case arose in an action by the Plaintiffs as a class action in two separate causes of action, the first against, Morris R. Cook, individually, and a second cause of action against Arden Stewart Sheriff of Uintah County and the said Clerk Auditor, in the First Cause of action the Plaintiffs seek to enjoin the Clerk-Auditor from disbursing funds to Deputy Sheriffs allegedly illegally hired, the second cause of action seeks recovery for Moneys so allegedly illegally paid.

DISPOSITION IN THE LOWER COURT

Both Causes of action came before the Seventh Judicial District Court, Uintah County, Boyd Bunnell, District Judge on Defendant's Motion to Dismiss on both causes of action. The Court ruled that the actions be dismissed because Plaintiffs lacked a cause of action in both causes for relief, in the first ruling that injunctive remedies solely with the County Attorney, in the Second as relates to the Sheriff that the Plaintiffs failed to post a Bond as required by Law, and in addition that action against both defendants does not lie for their is a lack of showing of fraud and corruption.

STATEMENT OF THE FACTS

THIS action arose on a complaint filed by the above Plaintiff against the Clerk-Auditor and the Sheriff of Uintah County as a result of the hiring of Deputy Sheriffs without Merit approval as required by law. The suit embraced two causes of action, one praying for an injunction preventing the Clerk-Auditor from paying salaries to such officers illegally appointed, and the second seeking recovery of money's so spent against the Clerk-Auditor and Sheriff together with their bondsmen. Defendants moved for a dismissal on the ground

that the Complaint did not state a cause of action against Defendants for the reason that the injunctive remedy belonged solely to the County Attorney and that an action for money recovery could not be warranted, first that the suit could not be maintained against the Sheriff because a bond had not been posted as required by law, and secondly that there was no showing of fraud or corruption whereby a money action could be had against the Sheriff and Clerk on the other cause. From this ruling Plaintiffs appeal.

STATEMENT OF THE POINTS

- Point 1: The Court erred in holding that an action to enjoin illegal expenditure of moneys by the County Clerk-Auditor lies exclusively with the County Attorney.
- Point 2: The Court erred in holding that the failure to Post a bond is grounds for dismissal.
- Point 3: The Court erred in holding no action will lie because there is no showing of fraud or corruption.

ARGUMENT

Point 1: The Court erred in holding that an action to enjoin illegal expenditure of moneys by the County Clerk-Auditor lies exclusively with the County Attorney.

In ruling for a dismissal on the First Cause of Action praying for injunctive relief, the Court holds that U. C. A. 17-5-12¹ precludes the County Attorney from bringing injunctive action to prevent the illegal expenditure of public funds by a county official, this ruling is at variance with the facts and laws in point. While

Point 1: The above section affords the County Attorney that U. C. A. 17-5-12 ; 74 Am. Jur. 209-210, Taxpayers' Actions, Sec. 16, Wynn v Barber, 48 Calif. 2nd 890; Blair v Pitches, 5 Calif.2nd 258; Wynn v Barber, 48 Calif. 2nd 890; Samis v King, 40 Conn. 298.

it is true that the section of the Code also cited does give the County Attorney that authority, it in no way, either by implication or by express language precludes other parties that remedy when aggrieved. Indeed Am. Jur. in a section previously cited observes that the taxpayers are "equity owners" of the funds expended by public officials, and further notes that actions to enjoin illegal expenditures will lie even in the absence of statutory authorization for the same, that they will lie no matter how small the loss and will even lie to prevent where exercise of the expenditure might result in loss to the taxpayers¹. Surely a prima facie case is shown for possible loss to the taxpayers wherein illegal payments are made to deputy sheriffs not qualified by law. And to dismiss the action without a chance to show such a loss, or to withdraw the injunctive remedy is denying plaintiffs their proper remedy under the law. Similarly other portions of the Utah Code, by implication the Open Meetings law grants to the Attorney General and County Attorney power to enforce by injunction, but also accords the right of injunctive relief to other aggrieved persons. Surely, in view of the fact that the County Attorney, not only did not enforce the provisions of 17-5-12, but is actually the attorney for the offending parties, intones loudly against this recourse for remedy and reinforces a case of Equity of allowing the same to Plaintiffs.²

Point 2: The Court erred in holding that failure to post a Bond is ground for dismissal.

^{1/74} Am. Jur. 2nd, op cit., p. 210.
^{2/} U. C. A. 52-4-8,9.

1

In construing the provisions of U. C. A. 78-11-10 rigorously to apply to the facts in the present case the Court is in error. A reading of that indicates that it applies to the law-enforcement function of the Sheriff's duties and certainly does not relate to the instant case of a taxpayer's action for the misapplying of public funds. This is reinforced if we apply the principle of ejusdem generis to the section and note that it applies to "any Sheriff, constable, peace officer, state road officer, or any other person charged with enforcement of the criminal laws of this state ". Certainly this enumeration relates to causes of action a world away from the present case. And in this regard, a Constitutional issue may be raised on the ground to preclude a taxpayer of a cause of action without posting a bond would deny such a person equal protection as afforded by the Equal protection provisions of both the U. S. Constitution and the State Constitution.²

But even assuming that the bonding provision does apply, the matter is curative by allowing the Plaintiff to post such a bond and surely does not merit dismissal. In fact the law indicates the bond is "to be fixed by the Court"³ and how beforehand, before filing will the Court know what the bond will be.

Point 3: The Court erred in holding no action will lie because there is no showing of fraud or corruption.

The Court in an amazing exercise of intuition holds that no action will lie because there is no showing of fraud or corruption. Such an observation is indeed presumptuous when one notes that there has been no evidence or affidavits to base that conclusion upon.

1. U. C. A. 78-11-10

2. U. S. Constitution, Amendments Article XIV, Utah Constitution, Article Art. I, Section 24.

And certainly the allegation that the Sheriff of Union County has absolutely ignored a previously associated Merit Council and appointed Deputy Sheriffs using his own presumption in instances where the law mandated the same; and the Clerk has approved salaries for the same creates a very strong presumption of fraud.¹ Surely in view of the above facts, the possibility of law suits, losses and other actions, the taxpayers of the County and the individual taxpayers have a equitable remedy for redress.

CONCLUSION

The dismissal of both the above causes of action without an answer being filed or any affidavits relating to the same is presumptive. And noting the broad and all encompassing right of action given in taxpayers' actions, the potentially possible loss of moneys, the overt, open defiance of a clearly written law for more than four years, and similarly fact that both the Clerk and Sheriff charged with their duties with respect to the same, to warrant at least pleadings on this case.

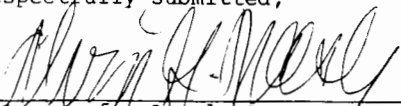
The dismissal for failure to post a bond in unduly rigorous if a cause of action truly lies, especially when the same can be curative with the filing of that bond. And the Complaint makes allegations that will support a charge of loss by the taxpayers hence the action to Dismiss on both Counts should be overruled.

1/ U. C. A. 17-30-1 et. seq.

2/ 74 Am. Jur. pp 209-210

DATED this 1st day of March, 1983.

Respectfully submitted,



Attorney for Appellant

CERTIFICATE OF MAILING

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

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