1984

Jack Allen Olson, et al. v. Salt Lake City School District, et. al. : Brief of Respondents

IN THE SUPREME COURT OF THE STATE OF UTAH

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JACK ALLEN OLSON, et al., Plaintiffs-Respondents, vs. SALT LAKE CITY SCHOOL DISTRICT, et al., Defendants-Appellants.	)	Case No. 19055

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BRIEF OF RESPONDENTS

* * * * * * *

Appeal from the Tax Division of the
Third Judicial District Court,
County of Salt Lake

Hon. Kenneth Rigtrup, Judge

* * * * * * *

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JACK ALLEN OLSON, et al.,	)	
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Plaintiffs-Respondents,	)	
	)	
vs.	)	
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SALT LAKE CITY SCHOOL DISTRICT, et al.,	)	Case No. 19055
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	)	
Defendants-Appellants.	)	

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STATEMENT OF THE CASE

This appeal arises from an action for injunctive relief and refund of property taxes paid under protest, predicated on appellants' adoption of a budget for the Salt Lake City School District containing a reserve used to meet unexpected contingency expenditures not otherwise provided for by specific accounts in the budget, and which reserve was in addition to that reserve authorized by Utah Code Ann. § 53-20-2 (1982).

DISPOSITION IN THE LOWER COURT

The matter was tried on January 20, 1983. The trial court awarded judgment to respondents and entered an order of permanent injunction. The trial court reserved the issue of respondents' entitlement to a refund of taxes paid under pro-

RELIEF SOUGHT ON APPEAL

Respondents seek an order of this Court affirming the Judgment and Order of Permanent Injunction entered by the trial court.

STATEMENT OF FACTS

Appellants, in the opening brief, have set forth a statement of the facts which contains assertions unsupported by the record as a whole and which omits to state certain material facts relied on by the trial court in making its award of judgment. The following statement of facts is set forth to explicate more fully and more accurately the record below. Specific note is made of appellants' assertions which are inconsistent with and unsupported by the record.

1. The Parties.

Respondent Utah Taxpayers Association, Inc. is a non-profit corporation organized under the laws of the State of Utah, and having as its membership in Salt Lake City approximately 415 businesses and 290 individuals who are property owners and taxpayers in Salt Lake City. The individual named respondents are residents of Salt Lake City or County, who are property owners and taxpayers in Salt Lake City. Respondents additionally include various business entities organized under the laws of the State of Utah, which own property and pay taxes in Salt Lake City. (Complaint at R. 96-97).

Appellant Salt Lake City School District (hereinafter the "School District") is a body politic existing pursuant to the laws of the State of Utah and the appellant Board of Education of Salt Lake City (hereinafter the "School Board") is its governing body. The individual named appellants are officers, members or agents of the Board of Education of the Salt Lake City District. (Complaint at R. 97).

2. The Statutory Undistributed Reserve.

Section 53-20-2 authorizes Utah school districts to maintain in their budgets an "undistributed reserve" (hereinafter the "statutory undistributed reserve"). The statute further provides, however, that this reserve "shall not exceed 5% of the maintenance and operation budget adopted by the Board of Education in accordance with the scale developed by the State Board of Education based upon the size of the budget of the school district." Utah Code Ann. § 53-20-2 (1982). In accordance with the reserve policy established by the State Board of Education, the School District was permitted to maintain an undistributed reserve not to exceed 1.5% of its maintenance and operations budget during all times material to this action. ("Stipulation" Ex. 12).

In fiscal year 1976-77 and continuing through fiscal year 1981-82, appellants adopted budgets for the School District containing undistributed reserves as provided by

Section 53-20-2. (Findings at R. 468; see Plaintiffs' Ex. 17, 19, 21, 23 and 25). At no time during those fiscal years, however, did appellants cause funds to be transferred from the undistributed reserve to meet unexpected contingency expenditures. (Findings at R. 468-69; Olsen Aff. at R. 360-61).

3. The Line Item Reserve.

In each fiscal year beginning 1976-77 through 1981-82, appellants adopted budgets for the School District containing a reserve separate and apart from the statutory undistributed reserve. This reserve was included in the School District's annual budgets as a line item and was designated as follows:

Year	Acct. No. & Name	Budgeted Amount
1976-77	0210.08 Salaries-Reserves-Teachers	$1,820,824
1977-78	0219.99 Salaries-Reserve	$1,646,650
1978-79	0219.99 Salaries-Reserve	$2,617,691
1979-80	0219.99 Salaries-Unallocated	$1,776,961
1980-81	0219.99 Salaries-Other Expenses	$3,120,408
1981-82	0210.99 Salaries-Other Expenditures	$2,774,77[illegible]

(Findings at R. 469; Plaintiffs' Exs. 16, 17, 19, 21, 23, and 25; these line items will hereinafter be referred to as the "line item reserve" to distinguish them from the statutory reserve permitted by Utah Code Ann. § 53-20-2 (1982)).

During its existence, the line item reserve was used by the School District to meet unexpected contingency expenditures not provided for by specific accounts in the School District's budget. (Findings at R. 469). Specifically, the line item reserve was used to cover such varying contingencies as increased electricity and fuel costs, school outings, student body activities, school supplies, retirement, insurance, garbage collection, professional meetings, grounds maintenance and legal services. (See Harmer Aff., Exs. D, E, F, and G at R. 243-58).

All funds not expended from the line item reserve were annually included in the School District's total maintenance and operation year-end fund balance.[1] (See Olson Aff. at R. 356-60). For fiscal year 1977-78, $1,646.650 was originally budgeted for the line item reserve (Plaintiffs' Ex. 11) and the School District's year-end fund balance was reported as $2,594,921. (Plaintiffs' Ex. 20). The School Dis-

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[1] In their brief, appellants have suggested that the legality of year-end balances is at issue. (See Appellants' Brief at 6-7). Respondents have made no claim that fund balances are per se unlawful. In the instant proceeding, however, respondents submit that fund balances are probative of appellants' maintenance of an unlawful line item reserve.

trict's 1978-79 budget included the line item reserve in the amount of $2,617,691 (Plaintiffs' Ex. 11) and the School District's maintenance and operation ending fund balance was reported as $3,919,362. (Plaintiffs' Ex. 20). For fiscal year 1979-80, the line item reserve was budgeted at $1,776,961 (Plaintiffs' Ex. 11) and the School District's maintenance and operation fund showed an ending balance of $4,571,294. (Plaintiffs' Ex. 22). The School District budgeted $3,120,408 for the line item reserve in its 1980-81 budget (Plaintiffs' Ex. 23) and ended the year with a fund balance of $2,173,885 in its maintenance and operation fund. (Plaintiffs' Ex. 24). For fiscal year 1981-82, $2,774,709 was budgeted for the line item reserve (Plaintiffs' Ex. 25) and the School District ended that fiscal year with a total fund balance of $1,078,909. (Plaintiffs' Ex. 26).

Appellants, in their brief, have persisted in their efforts to distinguish the line item reserve from the statutory undistributed reserve by asserting that the former was merely "an accounting method used by the District to facilitate handling of uncertain revenues." (Appellants' Brief at 5). In support of this assertion, appellants can muster only the deposition testimony of Mr. W. Gary Harmer, the School District's Clerk-Treasurer. (Id.)

Resort to the record below, as will be more fully explicated in the first point of argument herein, indicates

that the trial court properly concluded that the line item reserve was employed by appellants as a funded contingency reserve, similiar in nature but in excess of the limitation established by statute on the undistributed reserve. Mr. Harmer's own affidavit and accompanying exhibits indicate that the line item reserves were annually utilized by the School District to meet a wide range of contingencies. (See Harmer Aff. Ex. D, E, F, and G at R. 243-58). In addition, in candid discussions regarding the line item reserve at various School Board meetings between 1978 and 1981, Mr. Harmer and other board members indicated the line item at issue to be a funded reserve or surplus which, if unused, would revert to the next year's budget. (See Plaintiffs' Memorandum at R. 374-79 (summarizing plaintiffs' exhibits)). Finally, the School District's budgets do not indicate the line item to have been an unfunded account designed to allow for variations in anticipated revenues but rather treat the line items at issue as funded expenditures which are carried forward from year to year with the express purpose of covering contingencies. (See, e.g., Plaintiffs' Exs. 23 and 25). Thus, although appellants endeavor in their statement of facts to define the line item reserve out of existence by recharacterizing it as an unfunded "contingency appropriations account", appellants' claim is unsubstantiated by the record.

4. The Action and Trial.

On July 24, 1981, respondents commenced this action against appellants, alleging that appellants, since fiscal year 1976-77, had included within the budget for the School District an illegal line item reserve distinct from the statutory undistributed reserve authorized by Utah Code Ann. § 53-20-2 (1982). Respondents further alleged that appellants had included the illegal line item reserve in the School District's budget for fiscal year 1981-82, thereby increasing the property tax revenues required to be levied to meet the School District's budget expenditures for that fiscal year. Respondents accordingly sought injunctive relief to restrain appellants from certifying to the Board of County Commissioners of Salt Lake County the property tax revenue amount as it appeared in the School District's 1981-82 budget. (Complaint at R. 2-19).

The trial court issued a temporary restraining order, but, upon a hearing for a temporary injunction pending trial, the court dissolved the temporary restraining order and denied the temporary injunction. Because the case could not be set for trial prior to the deadline for the payment of their taxes, respondents paid their 1981 Salt Lake County property taxes under protest and amended their complaint to include a claim for a refund of a portion of their taxes paid under protest in

accordance with Utah Code Ann. § 59-11-11 (Supp. 1979). (Amended Complaint at R. 89-108).

The matter was tried on January 20, 1983. By stipulation of counsel, the trial court decided the case on the basis of all submissions in the record, deposition transcripts, and exhibits. Based upon this evidence,[2] the trial court found that appellants, from fiscal year 1976-77 through 1981-82, had adopted budgets for the School District containing a second and separate reserve to meet unexpected contingency expenditures in excess of the limitation established by Section 53-20-2. (Findings at R. 467-72). The trial court therefore entered an order of permanent injunction, prohibiting appellants from adopting a budget for the School District containing a reserve to meet unexpected contingency expenditures other than the statutory undistributed reserve and requiring it to utilize funds from the statutory undistributed reserve to meet unexpected contingency expenditures. (Judgment at R. 464-66).

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[2]Appellants have urged that the trial court "went outside the record" in making his determination in this case, pointing to the trial court's recollection of an Emery County schools [illegible] which arose in connection with a Public Service Commission proceeding. Even a cursory reading of the transcript indicates that the trial court's determination was not predicated on that past incident. Further, the trial court's Findings of Fact and Conclusions of Law form the basis of the final decision which is subject to appellate review, not the oral opinions at the conclusion of trial. Wheat v. Denver & R. G. W. R. Co., 122 Utah 418, 250 P.2d 932, 934 (1952).

The trial court expressly reserved for a later hearing the question of respondents' entitlement to tax refunds, pending the disposition of this matter on appeal.[3] (Findings at R. 470; Tr. at R. 493-94).

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[3]Appellants have asserted that this action is improper because the two mill levies made by the School District are separately authorized and that neither was illegal because the School District allegedly experienced a shortfall for fiscal year 1981-82. Because these claims are relevant only to the issue of respondents' entitlement to a refund and because that issue was reserved by the trial court, these claims are not properly before this Court.

However, to preserve their rights, respondents submit that appellants have misconceived their taxing authority. Although the minimum school program mandatory levy and the voted leeway constitute the maximum legal levy the School District may make, Utah Code Ann. § 53-7-9 (1982) permits a school board to certify for collection by means of taxation only "the amount of revenue required . . . to pay the cost of the district's program in excess of the minimum school program." Id. This limitation is consistent with the general rule that "public revenues be commensurate with public needs." Plutus Mining Co. v. Orme, 76 Utah 286, 289 P. 132, 139-40 (1930). Appellants similarly ignore settled principles in claiming that no refund may be made due to subsequent revenue shortfalls and excess expenditures. In determining whether a levy is excessive, a court must look to the facts existing at the time of the levy and not subsequent events. 84 C.J.S. Taxation § 361 (1954). Although appellants suggest that the reduction of their levy might have caused the School District to incur an illegal deficit, the provision relied on by appellants does not bar school districts from incurring deficits, but only precludes their adoption of a budget containing a deficit. See Utah Code Ann. § 53-20-2 (1982).

ARGUMENT

I.

THE TRIAL COURT CORRECTLY FOUND THE LINE ITEM AT ISSUE TO CONSTITUTE A RESERVE FOR CONTINGENCIES IN EXCESS OF THE LIMITATIONS IMPOSED BY SECTION 53-20-2.

In reviewing a trial court's findings, this Court will not substitute its own judgment for that of the trial court. Hidden Meadows Development Co. v. Mills, 590 P.2d 1244, 1250 (Utah 1979). Rather, this Court

> must consider all evidence in the light most favorable to the trial court's findings of fact. Those findings are entitled to a presumption of correctness and may not be overturned so long as they are supported by substantial evidence in the record.

Piacitelli v. Southern Utah State College, 636 P.2d 1063, 1067 (Utah 1981).

Appellants submit that the trial court erred in concluding that the line item at issue constituted a reserve for contingencies similar to that authorized and limited by Section 53-20-2. Assuming that this Court might uphold the trial court's finding, appellants next assert that the statute should not be construed to render that reserve exclusive.

In support of their initial claim, appellants seek to distinguish the line item reserve from the statutory undistributed reserve by claiming the line item merely to have been an accounting method "used by the District to facilitate handling of uncertain revenues." (See Appellants' Brief at 5). Unlike

of uncertain revenues." (See Appellants' Brief at 5). Unli the statutory undistributed reserve which is a funded reser appellants allege the line item reserve to have constitut only an accounting device enabling the School District to pl for uncertain revenues with the optimistic assumption that th would ultimately materialize.

The trial court, however, rejected appellants' characterization of the line item at issue upon a review of th evidence adduced for trial. Specifically, the trial cour found:

> Each fiscal year from fiscal year 1976-77 through 1981-82, defendants have adopted a budget for the Salt Lake City School District containing a reserve, which reserve has been used to meet unexpected contingency expenditures not otherwise provided for by specific accounts in the budget of the Salt Lake City School District, which reserve has been in addition to that reserve authorized by Section 53-20-2, Utah Code Ann., and which reserve has been codified in the budget of the Salt Lake City School District in the maintenance and operation fund under the instructional category. . . .

(Findings at R. 469). Thus, the trial court concluded that th line item, in fact, constituted a funded reserve for contin gencies and not merely an accounting method.

Appellants, in reasserting their claim that the li item at issue was not a funded reserve, can claim for suppo only the deposition testimony of Mr. W. Gary Harmer, the Sch District's Clerk Treasurer and a defendant in this ac Resort to the record as a whole clearly indicates that the li

items were intended to function as a reserve to meet contingencies. That the reserves were funded is further evident from the fact that appellants annually anticipated the unexpended portions of the line items to revert to the year-end balance of the School District's maintenance and operations budget.

Appellants cannot dispute that the line item reserves were utilized to cover contingencies and deficiencies in other line items. Mr. Harmer's own affidavit testimony and accompanying exhibits indicate that appellants employed the reserves to meet numerous contingencies, susceptible to no uniform classification. (See Harmer Aff., Exs. D, E, F and G at R. 243-58). Notwithstanding the suggestions in appellants' brief, those expenditures generally were not for contract salaries or for services normally funded by categorical grants. (See id.).

Significantly, appellants have not and cannot explain away the candid admissions of members of the School Board and its staff regarding the line item reserve which were relied upon by the trial court in making his finding. In a June 20, 1978, meeting of the School Board, Mr. Harmer explained the School District's procedure for the maintenance of the line item reserves:

> Harmer: Mr. Boren made reference to that fact earlier in this teacher salary account difference. And the thing that causes that variance that he was referring to there is the fund balance which we

> had budgeted but had not spent and in one year, it was in the original budget but not in the revised budget because it pulled out then and comes out in the ending fund balance and there is a chunk of one-time money there that we have not spent. We have been reluctant to build into programs. . . .

(Plaintiffs' Ex. 7). In other words, the School District maintained the reserve by listing it as a expenditure in its annual original budget, adopted in June, and then pulled out all unexpended funds from its revised budget, prepared subsequently during the fiscal year, placing those funds in its year-end fund balance. The purpose underlying the maintenance of the reserve account was succinctly stated by Board member John Crawford:

> Mr. Crawford: When I came to this Board, the School Board was in a terrible financial condition. . . . One of the purposes I have firmly set myself to as long as I sit on the Board is that this School District will never again run in a position where they were in violation of the law because we were not operating this District in a . . . a manner where we could provide the necessary educational opportunities. . . . One of the ways of doing that is make sure that build into the budget some reserve to take care of unexpected happenings or in the time when things would happen our special programs would be needed that we could take care of that.

(Id.)

At the beginning of the 1978-79 fiscal year, the School Board considered reducing its mill levy. The discussions which ensued concerning this possibility shed further light on the line item reserve. In a July 12, 1978 memorandum prepared for the Board, Mr. Harmer discussed the Board's options:

> If the budget projections are accurate, we will end 1978-79 with an accumulated fund balance of $2,596,300. A one-mill reduction in the levy would reduce this amount by $771,428, assuming that 98% of the taxes assessed will be collected. If the Board adopts this alternative, the District would end 1978-79 with an accumulated fund balance of $1,824,872.

(Plaintiffs' Ex. 1). The year-end balance projected by Mr. Harmer closely approximates the $2,617,691 line item reserve budgeted for fiscal year 1978-79. (See Plaintiffs' Ex. 11). That Mr. Harmer spoke with some certainty with respect to the anticipated year-end fund balance clearly belies any claim that the line item was a mechanism for budgeting uncertain revenues. Rather, the revenues were deemed to be available for the School District's use and were not tentatively allocated to other line items.

This conclusion is strengthened by the discussion at the board's July 18, 1978 meeting where the memorandum was presented. At that meeting, Superintendent M. Donald Thomas recommended "[T]he recommendation on the alternatives that Gary

is recommending is the one mill reduction which would reduce the fund balance and that would not cut out any programs and now if they went beyond that they would have to cut into programs." (Plaintiffs' Ex. 8). Later in that same meeting, the line item reserve was discussed by Board member M. Richard Maxfield and Mr. Harmer:

Maxfield: One other item. Gary can best answer this but, we have a fund balance in instruction. It is my understanding, that the guidelines suggest having that in a line item undistributed reserve. Is there a reason we don't use that particular classification rather than confusing the issue by putting it in instruction?

Harmer: Well, we have an undistributed reserve and always have had, but if you have . . . we only have two choices really, and that is, put it in instruction or put it in somewhere or build into programs. Build, . . . plan to spend it. You don't, it is just a matter of, taking, there is no other way to handle it . . . You can't put any more into undistributed reserve than what we have in undistributed reserve.

Maxfield: Oh, you can't?

Harmer: No.

Thomas: We have a maximum.

Harmer: We are not quite, we are not . . .

Maxfield: I thought there was a guideline but no maximum.

Harmer: No, there is a maximum, and well, we are maybe, likely could go $50,000 higher or something like that. Our budget, the maximum is 5% of your total budget, we are underneath 5% right now, but only about $50,000, or something like that. Undistributed reserve is no answer as far as having that fund balance.

Maxfield: No, it is just that matter clarifies for someone who doesn't know that looks at the budget would be confused with that.

Harmer: Of course we have only had this, we have had this for about the last, we had started building this here about five years ago, four years ago and each year it has been in the same place. The only problem is that when you compare, like if you compare next year's budget to this year's actual expenditures, that distorts it, the amount that we don't really plan to spend.

(Id. (emphasis added)).

The line item was recognized by the School Board and its staff to constitute a reserve whose funds, if unexpended, would be carried forward to the next fiscal year. Further, this reserve was placed in the instructional budget, since appellants recognized that it could not be included in the statutory undistributed reserve without violating the limitations imposed thereon. It cannot credibly be claimed that the line item at issue was unfunded; the statements of the School Board members and its staff indicate that appellants felt no

uncertainty whatsoever that revenues were available to expend funds from the line item should the need arise.

In a May 15, 1979, meeting of the School Board, for example, Mr. Harmer again addressed the line item at issue:

> The balance of it is budgeted in next year's budget. It would be my opinion that we would, could possibly end next year with $1.7 million of that left over.

(Plaintiffs' Ex. 9). This projected surplus of $1.7 million again is consistent with the amount budgeted for the line item reserve for fiscal year 1979-80, $1,776,961. (See Plaintiffs' Ex. 11).

Similarly, in a letter dated July 17, 1981, then School Board Member Wayne Evans stated:

> [A]s part of our budget for 1981-82, we are currently projecting a surplus of $2.774 million.
>
> As you see, we do feel the need to maintain a reserve, but we are trying to whittle it down so that it will eventually fall in the $1.5 to 2.0 million range.

(Plaintiffs' Ex. 4). The "surplus" or "reserve" identified by Mr. Evans again corresponds closely to the line item reserve budgeted for the 1981-82 fiscal year, $2,774,709. (See Plaintiffs' Ex. 25). That budgeted amount was again addressed in a June 16, 1981 public hearing on the adoption of the 1981-82 fiscal year budget. During that meeting, the following exchange between Board Member Tab Uno and Mr. Harmer occurred:

Pat Ono: Where is 210.99 in terms of the original tentative budget?

Gary (Harmer) It shows an estimated budget which is done from the previous year. In the revised budget we also clear that out and it goes back to fund balance. You have to handle this as an expenditure and the contingency reserve is the only reserve you have. . . .

(Plaintiffs' Ex. 3).

In sum, the evidence adduced for trial clearly dispels any illusion that the line item at issue was merely an accounting device intended to facilitate the budgeting of uncertain revenues. The School Board and its staff viewed the line item to be a funded reserve account available for contingencies and whose surplus would carry over to each new fiscal year.[4]

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[4]The disingenuousness of appellants' characterization of the line item reserve is evident in appellants' claim that affirmance of the trial court will result in a reduction of that School District's bond rating. If the line item at issue merely constituted an accounting device and did not represent a funded reserve, its discontinuance could not provide the basis for a reduction in the School District's rating. That appellants are concerned that their rating may be affected indicates that the trial court properly concluded the line item reserve to be funded.

The evidence in the record further indicates that appellan recognized this reserve account to be distinct from the stat tory undistributed reserve, limited to 1.5% of the Scho District's maintenance and operations budget. The recor alone, therefore, militates for an affirmance of the tria court's finding that the line item at issue as a contingenc reserve.

II.

THE TRIAL COURT PROPERLY RULED THAT THE SCHOOL DISTRICT'S MAINTENANCE OF THE LINE ITEM CONTRAVENED THE BUDGETARY PROCEDURES PRESCRIBED BY SECTION 53-20-2.

A. The Legislative History of Section 53-20-2 an Cardinal Rules of Statutory Construction Support th Trial Court's Ruling.

Utah Code Ann. § 53-20-2 provides, in pertinent part, that:

> The district shall be authorized to adopt a budget containing an amount known as the undistributed reserve. This reserve shall not exceed 5% of the maintenance and operation budget adopted by the Board of Education in accordance with a scale developed by the State Board of Education based upon the size of the budget of the school district. Appropriations may be made from the undistributed reserve to an expenditure classification in the maintenance and operation budget of the district by resolution adopted by a majority vote of the Board of Education setting forth the reasons for the appropriations of the reserve or any portion thereof and filed with the State Board Education and the State Auditor. The undistributed reserves may not be used in negotiation or settlement of contract salaries for school district employees.

Id. (1980)

Based upon that statutory provision, the trial court concluded:

> Defendants may, pursuant to Section 53-20-2 Utah Code Ann., adopt a budget for the Salt Lake City School District containing an amount known as the undistributed reserve for unexpected contingency expenditures not otherwise provided for by specific accounts in the budget.
>
> Defendants are limited to including in the budget of the Salt Lake City School District as a reserve to meet unexpected contingency expenditures not otherwise provided for by specific accounts in the budget only that undistributed reserve provided for in Section 53-20-2, Utah Code Ann.
>
> Defendants have exceeded their statutory authority in adopting from fiscal years 1976-77 through 1981-82 budgets for the Salt Lake School District containing a reserve which has been used to meet unexpected contingency expenditures not otherwise provided for by specific accounts in the budget and which reserve has been in addition to that reserve authorized by Section 53-20-2, Utah Code Ann.

(Findings at R. 470-71.)

Appellants urge that the trial court erred in construing the statute to preclude the School District's maintenance of the line item reserve, asserting that neither the statute's legislative history nor its express terms bar the maintenance of an additional reserve to meet contingencies not otherwise provided for by specific accounts. Reference to the provision's history and application of cardinal rules of statutory construction, however, vitiate this claim.

Discussions in the Utah State Senate prior to the measure's enactment indicate that its proponents desired to provide some mechanism within school district budgets to meet contingencies. Senator MacFarlane, who co-sponsored one of the bills containing the enactment, stated:

> The reason I guess Senator Preece is just that sometimes emergencies arise, conditions arise which cannot be predicted far ahead of time. I just think of our district for example not too long ago . . . We had two boilers go out in the district. . . . This meant that they had to take money from other sources of the budget and put it into this M+O fund. . . . Also . . . there have been cases in the state in the not too far past where they have been epidemics hit districts and they have been in real financial trouble because of the average daily attendance then dropping down and of course they have appropriated the money on the basis of that.
>
> * * * * * * *
>
> Now budgets of course you know school district's budgets are prepared in May or earlier - they have to be subject to a public hearing in June usually and then they are for the next year's expenditures and at this time a lot of things such as the set valuation for the district are not completely determined, the amount of federal assistance many times is not determined at that point, in fact, the funding sometimes takes place several months later and the fluctations that are possible such as attendance -- you know they receive the revenue based on the average daily attendance and if there is an epidemic that hits a district then average daily attendance can drop significantly and that can mean a significant drop of revenue and so they need to carry a reserve to meet such circumstances as that.

(Plaintiffs' Ex. 13). Senator MacFarlane's comments indicate that the measure was intended both to protect school districts from unanticipated budget expenditures as well as unanticipated revenue shortfalls. This purpose was accomplished by permitting the districts to maintain an account, denominated the "undistributed reserve", which constituted an exception to the general budgeting rule that requires detailed revenue and expenditure listings.

The Senate discussion of the bill, however, suggests that an additional purpose was intended by the legislature in enacting the measure. Senator MacFarlane further stated:

> . . . [T]hese budgets have to be built early, and so I am sure that school district budget builders tend to pad each budget item a little bit just in the event they do have an emergency comes up. They have no other recourse but to do that. So, having this reserve I think puts everything again on a good budgeting procedure; its over and above board; its out where it can be looked at; . . . and it does make sound business practice.

(Id.) Thus, the enactment served the additional purpose of restoring good budgeting practices to school districts by establishing an alternative to budget "padding" and by rendering a school district's reserves subject to public scrutiny. Certainly, the legislature, which sought to ameliorate the practice of budget padding by the enactment of this measure, would not countenance the inflation of a school district's budget by the maintenance of a deceptive line item reserve.

Appellants' reliance upon the statements of Mr. Harmer regarding the legislature's intent is misplaced. Although Mr. Harmer may have participated in the drafting the measure and may have lobbied for its enactment, his affidavit testimony, obtained ten years after the measure's enactment, is entitled to no weight. It is well settled that statements by a legislator after the enactment of a statute are entitled to little or no weight at all. E.g., Epstien v. Resor, 296 F. Supp. 214, 216 (N.D. Cal. 1969); Union Oil Co. of California v. Department of Revenue, 560 P.2d 21, 24 n. 9; (Alaska 1977); Hand v. State Farm Mutual Automobile Insurance Co., 2 Kan. App. 253, 577 P.2d 1202, 1205 (Kan. Ct. App. 1978). Certainly the subsequent statements of an individual not even a member of the legislative body are entitled to no more weight.

The trial court's construction of the statute additionally is supported by accepted rules of statutory construction. It is generally accepted that, in construing a statute a legislature will not be presumed to have done a useless act. See, e.g., Walker v. Nation Wide Financial Corp. of Idaho, 102 Idaho 266, 629 P.2d 662, 664 (1981); Thompson v. IDS Life Insurance Co., 549 P.2d 510, 513 (Or. 1976); United Pacific Insurance Co. v. Guaranty National Insurance Co., 97 Wash. 2d 139, 641 P.2d 173 (1982). Appellants' construction of the statute, permitting school districts to maintain reserves without limitation to meet unanticipated revenue shortfalls

expenditures, would render meaningless the section's express limitation provision.

Similarly, the rules of statutory construction provide that the inclusion of an authorization excludes any similar unauthorized act, as is expressed in the maxim "expressio unius est exclusio alterius". In Rio Grand Motor Way, Inc. v. Public Service Commission, 21 Utah 2d 377, 445 P.2d 990 (1968), this Court recognized the utility of that rule, stating:

> Whether it is helpful and understanding the intended effect of a statute depends upon the analysis of the legislative enactment to which it is sought to be applied.

Id. at 992. In the instant case, where it is evident that the legislature intended to authorize the inclusion of an undistributed statutory reserve in school district budgets where no such reserve had previously existed, where the legislature intended to avoid budget "padding" and to facilitate public scrutiny of the reserve, the maxim is clearly applicable and useful in interpreting the effect of the statute. The statute permits a school district to establish one reserve for contingencies not otherwise provided for by specific line items, but only one reserve.

The Trial Court's Construction of Section 53-20-2 Establishes a Proper Basis for Distinguishing Between Permissible and Impermissible Reserves.

Appellants assert that the trial court erred in finding the line item reserve unlawful, claiming that reserve

to be indistinguishable from permissible reserves. (See Appellants' Brief at 32-34). In support of this assertion, appellants quote the trial court out of context and attempt to misconstrue the clear import of his ruling. In rendering his oral decision, the court stated:

> The striking thing to the Court in terms of the account that we are talking about is that even those that are specified by statute, namely the reserve for inventory and the reserve for self-insurance, notwithstanding the fact that they are not in the statute, they are not contingent kinds of items, as such, and they are identified kind of expenditures. You have got a specific mandate under the statute to perform this function in the public sense and in the light of the public eye. And in the context of those two accounts you have identified specifically what those expenditures are, whereas, on the other hand, the Account 0200, with the Subaccount 0210.99, other expenditures, you haven't identified anything as to what the purpose of that account is. Other than in the pleadings and deposition and responses, that you recognize that that simply is to take care of unidentified contingencies. But there are specific accounts to take care of salaries, take care of snow removal, take care of any number of things which you have identified, and even though we have maybe a general perception of the weather not being perdictable, the U.S. Weather Service does make long-range predictions and tells us whether we are going to have a hard winter or whatever, and that gives some reliability.

(Tr. at R. 488-89 (emphasis added)).

The trial court's remarks clearly indicate that the distinction between appellants' impermissible line item reserv

and the permissible reserves is based on the specificity with which the purposes of the reserve are identified and the corresponding susceptibility of the reserve to public scrutiny. While the use of any reserve, by its very nature, will rest upon contingencies, the ease with which a reserve may be subjected to public oversight will vary depending upon the sufficiency of the identification provided the reserve. Where a reserve is established as a vaguely denominated line item and is intended to be utilized to meet any and all contingencies which may arise in a school district's budget, that reserve will be subject to little if any supervision. The Utah Legislature therefore has authorized the maintenance of only one undistributed reserve and has established limitations on the same.

C. The Trial Court's Construction of Section 53-20-2 does not Ignore the Limitations Established in That Statute.

Appellants further cannot predicate a claim of error on the trial court's construction of the provision that the undistributed reserve "may not be used in negotiation or settlement of contract salaries for school district employees." Utah Code Ann. § 53-20-2 (1982). Appellants submit that their line item reserve is permissible because the foregoing language severely restricts the use of the statutory undistributed reserve. In essence, appellants claim that no funds may be expended from the statutory reserve which might be

deemed to be in payment of teachers' contract salaries. Even assuming appellants' construction of the limitation to be true, it is unclear why the presence of that limitation on the statutory reserve would necessarily require a determination that a second similar, but unlimited, reserve should be found permissible.

The plain language of the statute and its legislative history, however, provide no basis whatsoever for appellants' construction of the limitation. The trial court utterly rejected that construction, stating:

> It appears that the language of the statute about wages is reasonably clear in its context to relate to the labor negotiating process, and its talking about settlements of contract negotiations and settlement of the contract, once that is arrived at, salaries ordinarily might be one of the more perdictable kind of items in a budget. And once that has been determined then it seems to the court that you are not going back and dipping into a fund that the legislature has put beyond the reach of the Board, then you are utilizing it for contingencies in a salary area, sickness, or any number of things, and that account would certainly be available to cover those contingencies.

(Tr. at R. 491). That construction of the limitation is supported by the plain language of the statute which merely bars the use of the undistributed reserve when a school district negotiates with its teachers or their bargaining unit to establish compensation for the ensuing school year. The statute, on its face, does not proscribe the use of the reserve to meet

unexpected expenditures for sick leave, payments to substitute teachers or other contingencies which may arise during the school year.

D. The Opinions of the State Superintendent and Other Third-Parties Do Not Render Legal Appellants' Illegal Budgetary Practices.

Appellants would have this Court believe that the determination of the trial court should be set aside, because appellants' budgeting procedures have the approval of the Superintendent of Public Instruction, national organizations and the School District's accountants. The conclusory statement of the Superintendent approving of the School District's "handling of fund balances and undistributed reserves" provides absolutely no guidance in this action; the statement on its face utterly fails to provide any basis for the Superintendent's opinion and flies in the face of Section 53-20-2's legislative history and purpose.

Although this Court has adhered to the proposition that the construction of statutes by governmental agencies charged with their administration should be given weight, the Court has further cautioned that "if it is made clearly to appear that a statute has been misconstrued or misapplied it is the duty of the Court to correct the same." McPhie v. Industrial Commission, 567 P.2d 153, 155 (Utah 1977). Significantly, the provisions which authorize the Superintendent to

render his opinions for the guidance of Utah school distric expressly provide that interpretations of the Superintende are subject to being set aside by a court of competent juris- dictions. See Utah Code Ann. § 53-3-4 (1982).

Appellants' reliance on the awards the School Distric has obtained from national organizations for adhereing to "goo accounting principles" and the annual statements of its accoun- tants manifests a complete misunderstanding of the nature o the instant proceeding. At issue is not the question o whether the budgetary procedures employed by appellants were advisable but rather whether those procedures, and specifically the maintenance of the line item reserve, were in accordance with Utah law. Thus, the opinions of the national organiza- tions and appellants' accountants are completely irrelevant i the instant proceeding. Those parties possess no authority t interpret the laws of this state and their sanction of appel- lants' budgetary procedures is of no probative value.

Similarly, appellants' can claim no benefit from th opinions of respondents' expert, Mr. Robert Goldsberry. A review of Mr. Goldsberry's deposition testimony, including tha quoted by appellants in their brief, indicates that Mr. Goldsberry did not waiver from his conclusion that appellants use of the line item reserve exceeded the authority given unde Section 53-20-2. (See Goldsberry Depo. at R. 309). Althou-

appellants submit that his further testimony suggested that appellants' maintenance of a line item reserve was the only practicable means of dealing with contingencies within the budget, this assertion again utterly ignores the fact that the issue in this proceeding is not the advisability of the budgetary procedure but its legality. Mr. Goldsbery certainly did not assume the role of a judge in this case; he is an accountant. As suggested by the trial court in rendering its oral decision, if the maintenance of an undistributed reserve in a greater amount is necessary to meet contingencies, appellants need only request that the Superintendent increase the limitation on the statutory reserve in accordance with his authority under the statute. (See Tr. at R. 495).

In conclusion, both its legislative history and general rules of statutory construction support the trial court's conclusion that Section 53-20-2 prohibited appellants' maintenance of the line item reserve separate and apart from the statutory undistributed reserve. Although appellants have attempted to engender confusion by characterizing the case as one concerning the relative merits of varying budgetary procedures, the trial court properly concluded that the true issue was the legality of appellants' utilization of the line item reserve. Appellants have raised and substantiated no ground for reversing the trial court's determination.

III.

THE TRIAL COURT'S GRANT OF PERMANENT INJUNCTIVE RELIEF CONSTITUTED AN APPROPRIATE EXERCISE OF THE COURT'S REMEDIAL POWERS.

A. The Trial Court Committed no Error in the Issuance of the Prohibiting Injunction.

The trial court, having concluded that the budgetary procedures used by appellants exceeded the authority given them by Section 53-20-2, entered judgment in favor of respondents and issued an order of permanent injunction, prohibiting appellants from adopting a budget containing "any reserve, however designated, which serves to meet unexpected contingency expenditures not otherwise provided for by specific accounts in the budget and which reserve is in addition to that reserve authorized by Section 53-20-2, Utah Code Ann." (Order at R. 465). The trial court further entered a mandatory injunction requiring appellants to utilize funds from the statutory undistributed reserve to meet unexpected contingencies not otherwise provided for by specific budget accounts. (Id. at 465-66).

Appellants do not claim that public officials may not be enjoined where they are acting in excess of authority or in violation of the law. That proposition is well settled. E.g. State ex rel. Burger v. Myers, 495 P.2d 844, 846 (Ariz. 1972); Hanson v. Mosser, 427 P.2d 97, 100 (Or. 1967). Instead, appellants assert that injunctive relief is improper, because it constitutes an indirect effort to enjoin the School District's taxing authority and that the relief "is meaningless" because

the School District's budget can be designed without the line item reserves.[5] (See Appellants' Brief at 38-40).

No basis whatsoever exists for the claim that the injunctive relief awarded will interfere with the School District's taxing authority. The injunctions, on their face, impose no limitations on that authority and no such limitations can be implied from them. Rather, they are addressed merely to the School District's method of accounting for and budgeting for expenditures. The School District may levy all taxes statutorily permissible to meet its legitimate revenue needs notwithstanding the imposition of the two injunctions.

That the School District's budget can be designed without the inclusion of the line item reserve both substantiates respondents' claims that such reserves should not exist in the first place and provides no basis for setting aside the trial court's prohibitory injunction. That injunction fulfills its essential purpose in precluding appellants from again establishing a line item reserve in controvention of Section 53-20-2. It therefore clearly cannot be deemed meaningless or to have failed of its essential purpose.

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[5] Respondents assume that appellants, in making this claim, did so in good faith to comply with the prohibitory injunction but do not mean to suggest that they will engage in the padding of their budget as condemned by the legislature.

B. Mandatory Injunctive Relief Is Appropriate Where an Administrator's Exercise of Discretion is Limited.

Appellants, relying on Tuttle v. Board of Education of Salt Lake City, 294 P.2d 294 (Utah 1930), assert that the trial court erred in granting mandatory injunctive relief, because "mandate ordinarily will not compel the performance of [a discretionary act] in a particular way or manner." (Appellants' Brief at 41 (quoting Tuttle v. Board of Education of Salt Lake City, 294 P.2d 294, 300 (Utah 1930)). The Tuttle case, however, is completely distinguishable from the instant proceeding.

In Tuttle, the plaintiffs sought mandatory injunctive relief to compel the school board to adopt a budget whose titles and accounts conformed precisely with those used in the prior year's budget. See id. at 295-97. In concluding that mandamus would be an inappropriate remedy, the Court noted that:

> The statute does not prescribe the kind of classification of titles and accounts to be made by the Board, or how full and complete it is to be made, whether by only a general classification or to what extent the classification is required to descend to particulars or details. The requirement of the statute in such particulars is that the classification shall be equivalent to the district's classification. But how or in what manner the district's classification is to be made, or how the classification is to be made to appear, or to be ascertained or determined, likewise is not prescribed.

Id. at 300. Thus, the Court's ruling in Tuttle rested upon the conclusion that the statute at issue provided the school board

generally unfettered discretion in the determination of its budget classifications, titles and accounts.

While it is well settled that mandamus may not issue to compel a public official to act where that official is afforded unlimited discretion, the courts have long recognized an exception to that rule where limitations are imposed upon the exercise of discretion. With respect to this exception, the Eighth Circuit Court of Appeals has stated:

> The rule is well settled and fully recognized by us that when discretion is conferred upon public agents or officers their acts in the lawful exercise of that discretion cannot be controlled by mandamus. The rule is also well settled that, although the exercise of discretion will not be controlled by mandamus, yet the writ will lie to compel the person or body in whom the discretion is lodged to proceed to its exercise. In view of these rules, we are of the opinion that the discretion that cannot be controlled by mandamus is that discretion, and that only, which the law has vested in the person to be exercised. If the law has pointed how or in what way the discretion shall be exercised, it is obviously not the exercise of the discretion imposed by a law to proceed in any other way. To so proceed would be contrary to the law and would be the exercise of arbitrary power rather than discretion. To decline or refuse to proceed according to law or in the way pointed out by law is in our opinion equivalent to not proceeding at all. In other words, the discretion which will withstand review by the courts must be exercised under law and not contrary to law.

Bullinger v. Hadley, 177 F. 1, 9 (8th Cir. 1910); see also 52 Am. Jur. 2d Mandamus § 79 (1970). Thus, where limitations are

imposed upon the exercise of discretion or the manner of its exercise is prescribed by statute, mandamus may issue.

Section 53-20-2, as construed by the trial court clearly restricts the discretion which may be exercised by a school district in meeting unexpected contingencies not provided for by a school district's budget. Where no specific line item reserves have been included in the budget, a school district is barred from maintaining general reserves other than the undistributed reserve to meet such contingencies. The trial court, upon recognizing this limitation on a school district's discretion, properly concluded that a mandatory injunction could issue to restrict the School District and its employees from illegally utilizing other funds to meet such contingencies. In light of the School District's prior abuse of the budgetary process, the mandatory injunction was essential to give effect to the prohibitory injunction additionally ordered by the trial court.

C. The Cases Cited By Appellants Support the Trial Court's Order of Permanent Injunction.

Appellants submit that the trial court erred in interfering with its budgetary procedures, because this Court has frequently stated that no such interference is permissible absent a showing that a school board has abused its discretion or violated the law. (See Appellants' Brief at 43-45). However, appellants' abuse of discretion and actions exceeding

authority given them under Section 53-20-2 having been clearly established, the cases raised by appellants support the trial court's order of permanent injunction.

In Beard v. Board of Education, 81 Utah 51, 16 P.2d 900 (1932), this Court stated:

> The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment, unless there is a clear abuse of the discretion, or a violation of law.

Id. at 903 (emphasis added). Significantly, in that case, the court further observed that:

> The powers of the Board of Education are statutory since the legislature may authorize the governing authorities of school districts as the State's agent to do anything not prohibited by the constitution. The Board of Education, being a creature of the legislature, has only such powers as are expressly conferred upon it and such implied powers as are necessary to execute and carry into effect its expressed powers.

Id. (emphasis added). Where a school board acts in contravention of its statutory authority a court clearly may exercise its remedial powers.

Similarly, in Petty v. Utah State Board of Regents, 595 P.2d 1299 (Utah 1979), this Court observed:

> [A]n administrative agency should be allowed a comparative wide latitude of discretion in performing its responsibilities and . . . the courts should not intrude or interfere therewith unless the action is so oppressive or unreasonable that it must be deemed capricious and arbitrary, or the agency has

in some way acted contrary to law or in excess of its authority.

Id. at 1302 (emphasis added). In Petty, the Court concluded that the Board of Regents possess statutory authority to assess a student fee as a part of a medical student's tuition and accordingly rejected the plaintiff's challenge to that action. Here, however, appellants have acted in controvention of their statutory authority and accordingly a similar result is not compelled.

In Board of Education of Salt Lake City v. Burgen, 61 Utah 162, 217 P. 1112 (1923), no question of the legality of the school board's budgetary procedures was raised. Accordingly, that case is inapposite to the instant matter. The case merely stands for the proposition that, between the school board and the county commissioners, the school board possesses the authority to determine the amount of its revenues to be raised so long as the limitation on the maximum mill levy is not exceeded. Nothing therein can be viewed as barring the trial court's order of permanent injunction.

D. Assertions Regarding the School District's Credit Rating Provide no Basis for Reversing the Trial Court.

Appellants have reasserted their claim that the credit or bond rating of the School District will go down if this Court sustains the ruling of the trial court. Appellants, however, have adduced no competent evidence to substantiate this

claim. Resort to the record below indicates that this assertion is predicated exclusively on hearsay contained in the affidavit of Mr. Harmer and the trial court properly chose not to issue a decision based on it. Certainly the claim cannot be evidenced or supported by the mere assertions of counsel for appellants in their brief. See Watkins v. Simonds, 14 Utah 2d 406, 385 P.2d 154, 155 (1963).

Even if competent evidence had been adduced to substantiate this claim, no rational basis exists for finding it credible. The trial court found that:

> It is doubtful that the bond rating of the Salt Lake City School District will be affected because of the fact that the school district cannot maintain, as a separate account a reserve to meet unexpected contingency expenditures not otherwise provided for by specific accounts in the budget since defendants adopt in the budget of the Salt Lake City School District a reserve for such unexpected contingency expenditures as provided by Section 53-20-2 Utah Code Ann.

(Findings at R. 469-70). As further noted by the trial court in rendering his oral decision, if the School District's bond rating will be adversely effected because of the unavailability of a sizeable reserve, the School District's recourse is to request that the limitation on its statutory undistributed reserve be increased by the Superintendent. (Tr. at R. 495). In light of appellants' claim that the line item reserve did not represent funds available to the School District but merely

was an accounting device for contingent revenues, it is difficult to conceive that its financial position can be deemed to have deteriorated by the mere discontinuance of that accounting device. The two positions are irreconcilable.

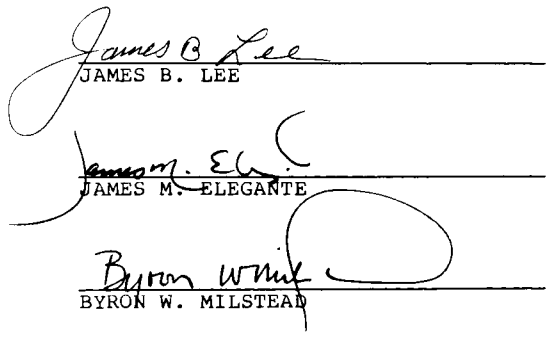
Further, appellants' assertions regarding the School District's bond rating are immaterial in this proceeding. This case involves a legal and not an equitable action. If this Court affirms the trial court, the School District must change its procedures regardless of the effect on its bond rating. The School District is bound by the laws of this State and may not circumvent them merely to satisfy bond rating services.

CONCLUSION

Substantial evidence appearing in the record compels the conclusion that the trial court properly found that appellants, beginning fiscal year 1976-77 and continuing through 1981-82, maintained a line item reserve similar to, but in addition to, the undistributed reserve authorized by Section 53-20-2. The plain language of the statute itself, bolstered by its legislative history and cardinal rules of statutory construction, support the trial court's conclusion that the section precludes appellants from including in the School District's budget a reserve, other than the statutory undistributed reserve, to meet unexpected contingency expenditures for otherwise provided for by specific accounts in the budget

ensure that the legislature's stated purpose of promoting good budgetary procedures and facilitating public oversight of the budgetary process is effected, this Court should affirm the trial court's judgment and its order of injunctive relief.

DATED this 25th day of August, 1983.



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MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, two true and correct copies of the foregoing BRIEF OF RESPONDENTS to the following on this 26th day of August, 1983:

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