

1983

**Jack Allen Olson, et al. v. Salt Lake City School District, et. al. :  
Memorandum Of Defendants-Appellants In Support of their  
Appeal**

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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JACK ALLEN OLSON, et al., :  
 :  
 : SUPREME CT. NO. 19055  
 Plaintiffs-Respondents, :  
 :  
 : APPEAL FROM THE TAX  
 : DIVISION OF THE THIRD  
 vs. :  
 : JUDICIAL DISTRICT  
 : COURT OF SALT LAKE  
 : COUNTY  
 :  
 SALT LAKE CITY SCHOOL :  
 DISTRICT, et al., : (Civil No. C-81-5668)  
 :  
 Defendants-Appellants. : (Hon. Kenneth RIGTRUP)

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MEMORANDUM OF DEFENDANTS-APPELLANTS\*  
IN SUPPORT  
OF THEIR APPEAL

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\*Salt Lake City School District, the Board of Education of Salt Lake City, Board members Kump, Warner, Walker, Carman, Keene, Evans, Matheson, Superintendent Donald Thomas and Clerk Treasurer W. Gary Harmer.

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MEMORANDUM OF DEFENDANTS-APPELLANTS  
IN SUPPORT OF THEIR APPEAL

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	iii
Statement of Points	iv
THE NATURE OF THE CASE	1
DISPOSITION OF THE LOWER COURT	2
NATURE OF THE RELIEF SOUGHT	2
STATEMENT OF FACTS	2
1.    The Plaintiffs.	2
2.    The Allegations.	3
3.    The Trial and the Record.	3
4.    Definition of Terms.	4
a.    Reserve.	4
b.    Undistributed Reserve.	4
c.    The Contingency Appropriations Account.	5
d.    Unexpended Fund Balances.	6
ARGUMENT	
I.    THE TWO MILL LEVIES MADE BY THE DISTRICT FOR THE MAINTENANCE AND OPERATIONS BUDGET ARE SEPARATELY AUTHORIZED.	7
II.   THERE WAS NO ILLEGAL MILL LEVY.	9
III.  THE TRIAL COURT'S DECISION RESTS ON ERRONEOUS ASSUMPTIONS.	11
1.    The Budget Process.	11
2.    The Use of the Contingency Appropri- ations Account.	14

3. The Undistributed Reserve.
    - a. Legislative History and Purpose.
  4. The Trial Court Has Ignored the Statutory Limits on the Undistributed Reserve in U.C.A. §53-20-2.
  5. The Unexpended Fund Balances.
  6. The Respondents' Admissions.
- IV. THE TRIAL COURT CONFUSED ITS TERMS AND RELIED ON EXTRA-RECORD MATERIAL
1. Since There Is No Exclusive Reserve, Reserves Cannot Be Distinguished by the Trial Court.
  2. The Court Went Outside the Record In Making Its Decision.
  3. The Contingency Appropriations Account Is Not Secretive or Mysterious.
- V. THE REMEDY GRANTED BY THE TRIAL COURT IS IMPROPER AND INAPPROPRIATE.
1. Attempts to Enjoin Taxation.
- VI. COURTS SHOULD NOT MANDATE ACCOUNTING OR BUDGETING METHODS FOR THE DISTRICT.
- VII. SCHOOL BOARD DECISIONS SHOULD BE UPHELD UNLESS THERE IS AN ABUSE OF DISCRETION OR CLEAR ILLEGALITY.
- VIII. THE CREDIT RATING OF THE DISTRICT IS PLACED AT RISK BY THE INCORRECT DETERMINATION OF THE TRIAL COURT.
- CONCLUSION

TABLE OF AUTHORITIES

	<u>Page</u>
I. STATUTES	
UTAH STATE CODE ANNOTATED	
§53-7-9	6, 7, 11, 42
§53-7-16	7
§53-7-18	8
§53-7-19	8
§53-20-1	6
§53-20-2	1, 3, 4, 5, 6, 7, 10, 11, 12, 16, 18, 19, 20, 21, 23, 24, 25, 32, 34, 42
§59-11-10	38
II. CASES	
<u>Beard v. Board of Education</u> 81 Utah 51, 16 P. 2d 900 (1932)	43
<u>Board of Education of Salt Lake City v.     Burgon</u> , 62 Utah 162, 217 P. 1112 (1923)	44
<u>Penelke, Inc. v. John Price Associates, Inc.</u> , 642 P. 2d 1229 (Utah 1982)	40
<u>Petty v. Utah State Board of Regents</u> , 595 P. 2d 1299 (Utah 1979)	44
<u>Pull v. Board of Education of Salt Lake City</u> , 344 P. 2d 294 (Utah 1930)	40, 41

STATEMENT OF POINTS

- I. THE TWO MILL LEVIES MADE BY THE DISTRICT FOR THE MAINTENANCE AND OPERATIONS BUDGET ARE SEPARATELY AUTHORIZED.

The state requires a levy of 23.25 mills, and the voters have directed a levy of 9 mills, both of which levies were essential to prevent the District from incurring an unlawful deficit.

- II. THERE WAS NO ILLEGAL MILL LEVY

The District did not exceed the limits of the two mill levies and did not collect or receive excess amounts of tax money. Courts are not permitted to enjoin taxes, and their injunctive power should not be used in an effort to do indirectly that which cannot be done directly.

- III. THE TRIAL COURT'S DECISION RESTS ON ERRONEOUS ASSUMPTIONS.

The trial court incorrectly concluded that an accounting method (which is designed for the appropriation of uncertain revenues) was a funded reserve, that the so-called reserve was equivalent to unexpended fund balances and that a reserve of that sort would not be proper, even though there are no statutory provisions requiring school districts to maintain only a single, exclusive reserve. (See U.C.A. §53-20-2)

1. The Budget Process.

The budgeting process requires estimates to be made and involves discretion. Both revenue and expenditures involve unpredictable events which cannot be known when the budget is adopted before the beginning of the coming school year. Provisions must be made to meet the needs and uncertainties of budgeting.

2. The Use of the Contingency Appropriations Accounts 14

Knowing that some revenues can only be hoped for but not relied upon to materialize, the District uses the Contingency Appropriations Account to appropriate uncertain revenue. As the year progresses, if those revenues do in fact come in, then the District will commit them. It will not spend against them until it is certain they are there, even though the District has many meritorious programs which could use such funds.

3. The Undistributed Reserve 19

Section 53-20-2 Authorizes districts to create an undistributed reserve (in specified amounts) which cannot be used in the negotiation or settlement of contract salaries. The purpose of the limitation is to isolate some revenue for the salary negotiation and settlement process.

4. The Trial Court Has Ignored the Statutory Limits on the Undistributed Reserve in U.C.A. §52-20-2. 21

If the undistributed reserve can (as the trial court allowed) be used for contract salaries once they are settled, then that reserve is no longer isolated from the salary bargaining process. Those negotiating for salaries will know that the District has more funds available; they can force their release and require their use for their benefit.

5. The Unexpended Fund Balances 23

Unexpended fund balances are cash and inventory which have not been expended and are thus still available at the end of the budget year. The law provides for their carry-over to the next year's budget. They are not reserves or excessive

collection of revenue; they occur in the fortunate circumstance that costs and expenditures fell below estimates or that revenue exceeded expectations.

6. The Respondents' Admissions.

The Respondents have admitted all the crucial points about budgeting and the budgeting process; they have in fact admitted their case away.

IV. THE TRIAL COURT CONFUSED ITS TERMS AND RELIED ON EXTRA-RECORD MATERIAL

1. Since There Is No Exclusive Reserve, Reserves Cannot Be Distinguished by the Trial Court.
2. The Court Went Outside the Record In Making Its Decision.
3. The Contingency Appropriations Account Is Not Secretive or Mysterious

The trial court, confusing terms and misconstruing a statutory provision, ignored the factual record and relied on material outside the record in reaching its conclusions. It failed to understand the use of accounting methods, and thus incorrectly thought them unavailable for scrutiny.

V. THE REMEDY GRANTED BY THE TRIAL COURT IS IMPROPER AND INAPPROPRIATE.

1. Attempts to Enjoin Taxation.

By law, courts cannot enjoin taxes; they should not exercise their equitable powers in such a way as to accomplish the

same result in other ways, especially when the relief they grant is ineffective and meaningless.

- VI. COURTS SHOULD NOT MANDATE ACCOUNTING OR BUDGETING METHODS FOR THE DISTRICT. 40

Budgeting is an exercise of discretion; the courts should not try to mandate particular budget accounts in the absence of ministerial duty or illegality.

- VII. SCHOOL BOARD DECISIONS SHOULD BE UPHELD UNLESS THERE IS AN ABUSE OF DISCRETION OR CLEAR ILLEGALITY. 43

There is no abuse of discretion and no reason to require the Appellants to use one account and refrain from using another. There is no justification whatsoever for the use of the injunctive power of the trial court.

- VIII. THE CREDIT RATING OF THE DISTRICT IS PLACED AT RISK BY THE INCORRECT DETERMINATION OF THE TRIAL COURT 45

An improper and incorrect exercise of the trial court's injunctive power should not be permitted to jeopardize the District's favorable credit rating.

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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, :  
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 vs. : Supreme Court No. 19055  
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 : SALT LAKE CITY SCHOOL : (Civil No. C-81-5668)  
 : DISTRICT, et al., :  
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 : Defendants-Appellants. :  
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MEMORANDUM OF DEFENDANTS-APPELLANTS  
IN SUPPORT OF THEIR APPEAL

---

NATURE OF THE CASE

The case involves claims that the defendants-appellants assessed the mill levy at too high a rate, incurring unexpended funds so that those few taxpayers who paid under protest should receive a refund; that the defendants-appellants have created an illegal reserve prohibited by U.C.A. §53-20-2 which allegedly creates an exclusive reserve; and that use of the undistributed balance authorized by U.C.A. §53-20-2 should be mandated.

### DISPOSITION OF THE LOWER COURT

The lower court granted injunctive relief to prohibit the use of the particular accounting method, the "Contingency Appropriations Account" (referred to as Item 0210.99 in the budget) and ordered that expenditures be made from undistributed reserve. The lower court reserved until after an appeal on the injunctive relief the amount, if any, of a tax refund.

### NATURE OF THE RELIEF SOUGHT

The defendants-appellants request that this Court dissolve the permanent injunction and declare that they could in the past and may in the future use the contingency appropriations account. They also seek declarations 1) that the mill levy was proper, 2) that the undistributed reserve may not be used in the payment of contract salaries, even after salary negotiations have been completed and salaries have been settled for the forthcoming school term, and 3) that the undistributed reserve is not an exclusive reserve.

### STATEMENT OF FACTS

#### 1. The Plaintiffs

The plaintiffs-respondents (the "Respondents") are individual property owners or business and other entities who own property in the Salt Lake City School District (the "District"). They paid their property taxes for 1981-82 under protest. Many of the respondents are members of the Utah Taxpayers Association (the "UTA"), which prepared the suit and

solicited both plaintiffs and contributions to support the suit. (Record ["R."] 297, 298) Lead plaintiff Jack Allen Olson ("Olson") is the executive vice president of the UTA; Howard Stephenson ("Stephenson") is a research analyst for U.T.A. (Stephenson's name was transcribed "Stevenson" at his deposition.) (Olson Deposition ["Olson:"] 3; Stevenson Deposition ["Steph."] 3)

## 2. The Allegations

The Respondents allege that the Board of Education (the "Board") and the District have set the mill levy too high for fiscal year 1981-82 and have created an unlawful reserve account in derogation of U.C.A. §53-20-2, which authorizes school districts to create an undistributed reserve. The Respondents allege that unexpended fund balances evidence the over-collection of tax revenue from the mill levies. They sought injunctive relief to prevent use of the Contingency Appropriations Account in the budget and to compel the Respondents to use the undistributed reserve. They also seek a refund of the alleged over-collections in amounts which have not been determined by the trial court.

## 3. The Trial and the Record.

By stipulation, the trial court decided the case on the admitted papers in the record, including deposition transcripts, documents and exhibits. No live testimony was presented to the trial court. That court permitted its ruling on the injunctive relief to be appealed as a final order.

#### 4. Definition of Terms

##### a. Reserve

A reserve is a funded account held in the ready to meet expenses which are frequently unpredictable. Thus, for example, the District has been a self-insurer for health, accident and unemployment insurance. (See R. 266, 237 [backs], 336, Goldsberry Deposition ["Golds."] 101) Since no one can predict what accidents will occur during the forthcoming year or the costs of the accidents which do happen, the budget is designed to set up a reserve available to cover accidents if they occur.

##### b. Undistributed Reserve

The undistributed reserve is a funded reserve authorized by U.C.A. §53-20-2 which can be used for limited contingencies. It is undistributed in the sense that it is not allocated to a particular item or function of the budget, but may be used in any area permitted by the statute. U.C.A. §53-20-2 provides that the undistributed reserve:

"may not be used in negotiation or settlement of contract salaries for school district employees."

The District has followed this mandate and has never at any time used any part of its undistributed reserve for contract salaries. Contract salaries are primarily the negotiated, contract salaries for teachers.

The undistributed reserve is limited by statute to a maximum of 5% of a school district's maintenance and operation ("M. & O.") budget; the amount permitted each district is determined by the State Superintendent of Public Instruction (the "State Superintendent"). U.C.A. §53-20-2. That figure has been set at 1-1/2% of the M. & O. budget for Salt Lake.

c. The Contingency Appropriations Account.

The budget account in question is a designated account in the Instruction part of the District's budget. Its sub-number and title have varied somewhat during the years covered by the complaint. In 1980-81 it was an account assigned the number 0210.99 (the "Contingency Appropriations Account"). Regardless of its subnumber or name, its function has been the same each year. (R. 484 at 80)

The Contingency Appropriations Account (sometimes referred to as the Line Item in the Record) represents an accounting method used by the District to facilitate handling of uncertain revenues. Uncertain revenues are appropriated through the Contingency Appropriations Account, but the District does not commit them to particular programs and accounts until the funds are actually received. When and if those revenues do materialize, they are redistributed to specific needy accounts in the budget, most frequently within the Instruction area of the budget (where contract salaries are handled). As an example of the uncertain revenue, the District may anticipate

receipt of a particular type of federal grant, but until the grant is actually made and the funds are present, the Appellants have been unwilling to spend against it. The money is hoped for but not certain; therefore, it is not committed until it is actually in hand. The Contingency Appropriations Account permits the District to plan for the grant (taking the optimistic view that it will materialize). (R. 484 at 80, 80-1)

d. Unexpended Fund Balances

By law, a school district's budget must be prepared in June, prior to the forthcoming school year. The budget consists of estimates of revenues and expenditures. U.C.A. §§53-20-1, 53-20-2, 53-7-9. As the school or fiscal year unfolds, the budget figures may be revised to account for actual events. (See R. 19-20, 31-36) For each of the years mentioned by the complaint, the District's initial budget planned for estimated expenditures to equal estimated revenues. (R. 484 at 51, 16-62, 65, 67) As those years developed, there were some expenditures which did not prove to be as large as estimated, and some accounts showed revenue exceeding costs at year-end. Such left over revenue is called an unexpended fund balance or unexpended funds. The unexpended fund balances may consist of cash or inventory.

Section 53-20-2 of the U.C.A. provides, in part, that

All unexpended balances of appropriations at the end of the fiscal year shall revert to the funds from which they were appropriated and shall be set up as revenue in the budget of the following year.

In other words, the law has recognized that unexpended funds may be incurred and has provided for their carry-over to the next fiscal year. In 1981-82, the District allegedly had an unexpended fund balance of approximately \$2.8 million (unaudited figure) consisting of cash and inventory. (R. 100) The audited figure for school fiscal year 1981-82 was \$1,078,909, less than half the amount alleged by the Respondents. (R. 231)

It shall be unlawful for any board of education to make any appropriation in excess of the estimated expendable revenue, including undistributed reserves, for the ensuing fiscal year. U.C.A. §53-20-2.

The Respondents contend that the fact that the District has year-end fund balances demonstrates two things: first that the mill levies set by the District have been too high and have resulted in collection of too much money (which the plaintiffs seek to be refunded) and second, that the unexpended fund balances are a hidden or secret reserve kept in the Contingency Appropriations Account in derogation of the provisions of U.C.A. §53-20-2. Analysis demonstrates that these contentions are totally lacking in merit.

THE TWO MILL LEVIES MADE BY THE DISTRICT FOR THE MAINTENANCE AND OPERATIONS BUDGET ARE SEPARATELY AUTHORIZED.

The District levied only two mill levies. One is mandated by the State and the other is directed by the voters of the District. U.C.A. §§53-7-9, 53-7-16. Neither of these mill levies is part of the budgeting process.

The budget provisions in U.C.A. §53-20-2 do not authorize any tax levy; the levies are separately mandated. Section 53-7-18 defines the minimum school program to include a basic, mandatory levy of 23.25 mills.

In order to qualify for receipt of the state contribution toward the basic program and as its contribution toward its costs of said basic program, each school district shall impose a minimum basic tax levy of 23.25 mills. U.C.A. §53-7-18.

The second levy is the "voted leeway" which is authorized by the voters in the district. The voted leeway levy is now nine mills for the District. U.C.A. §53-7-19. The Code specifically excludes these two levies from being determined by reference to budget estimates. Since these were the only two levies in the District, there is no way that the Respondents can be entitled to a refund because of an allegedly excessive collection or levy.

The District by state law must make the first levy; it has a voter mandate to assess up to nine mills on the second levy. So long as it operates within the legal limits of the mill levies, it cannot collect excessive revenue. State law and the voters in the District have authorized its actions; regardless of the budget estimates, the full legal authority is there and has never been exceeded by the District.

Taxpayers dissatisfied by the leeway level may initiate an election to modify or decrease the leeway upon petition. Thus, the law has already provided the remedy to a taxpayer.

alleges that the leeway has been set at too great a level. Taxpayers have their legal remedy and the power to control the leeway. Their remedy is not a suit to collect alleged over-payments or to mandate budget processes. So long as collections of taxes fall within the limits of the state mandated levy and the voter-directed leeway, there can be no illegal mill levy subject to challenge by Respondents.

The Respondents thus have no reason to sue, and no claim which is cognizable in a court of law. Their complaints about the mill levy set by the Board under the leeway approved by their fellow taxpayers and property owners are not properly addressed to the courts of this state; they should be addressed to the voters by petition and through the electoral process. An injunction should not replace the electoral process or the law.

## II. THERE WAS NO ILLEGAL MILL LEVY.

The Respondents have asserted that the District needed only \$22,247,476 from property tax revenue to cover the M. & O. budget for fiscal 1981-82. This figure is \$2,774,709 less than the \$25,002,185 which was certified by the Board. Both the Respondents' claim and the amounts they use are incorrect.

Had the Board accepted the Respondents' figures in setting the mill levy for 1981-82, and had the Board assessed a higher mill levy amount, the District would have incurred an

illegal deficit of \$1,695,800. By law, school districts may not incur a deficit. U.C.A. §53-20-2. Thus, in estimating the budget for the next school year, the District must be exact to the penny (an almost impossible task, given the fact that the budget is a plan for events which have not yet occurred) or else come out ahead; it must not come out behind. As shown by the comparative revenues, expenditures and changes in fund balances for fiscal years ending in 1981 and in 1982, the revenue raised through property taxes (based on the mill levy) and from other sources (interest on investments, other local revenue, state funds, federal revenue) for 1981-82 fell short of the year's expenditures by almost \$350,000. The District fortunately had for use an unexpended fund balance from the previous year to avoid a deficit. (R. 244) The same was true for 1980-81 when expenditures exceeded tax and other revenues by almost \$2.5 million. A lower assessment would have caused a deficit. (R. 244) The District used all of the money raised by the tax levy and needed more money on top of that. Thus, the contention of the Respondents that there was an overly large levy and an excessive collection of tax revenue is totally inaccurate; the tax revenue was all used. At the proposed lower levy, the District would have incurred an <sup>unavoidable</sup> deficit. The Appellants did not over-tax. The courts should not attempt to tamper with the mandated and authorized levies required for and essential to the school programs.

III. THE TRIAL COURT'S DECISION RESTS  
ON ERRONEOUS ASSUMPTIONS.

The Respondents have based their case on erroneous assumptions, incorrectly equating three separate and distinct things and concocting a theory of statutory interpretation to justify their claims. They have misinterpreted the Contingency Appropriations Account and unexpended fund balances as being reserves. The Respondents have next argued that by law the District may have only one reserve, the undistributed reserve authorized by U.C.A. §53-20-2. Since there are statutory limitations on the use of that reserve (that it cannot be used in the negotiation and settlement of contract salaries), they have reinterpreted this statutory limit to mean that the undistributed reserve can be spent on such salaries once negotiations end. The trial court accepted most of these notions, but it did not find the undistributed reserve to be exclusive. In its opinion, some reserves are good, although not spelled out by statute, but the Contingency Appropriations Account is not a good or lawful reserve. These conclusions misapprehend the nature of the budget process, misuse terms and rest on definitions and analysis which are incorrect and unsupported. Some background is necessary to explore the problem.

I. The Budget Process.

The school districts in this state use accrual method accounting. A budget, which is, by statutory definition, a series of estimates, (U.C.A. § 53-7-9) is adopted in June,

before the school's fiscal year begins. U.C.A. §53-20-2 The Appellants collect whatever data is available and examine previous experience. They make the best and most accurate estimates they can of revenues and expenditures, making appropriations and commitments in accord with the needs of the pupils to be served. When the budget is adopted in June, there is no way of knowing what events will occur; no one knows how many pupils will enroll, and so the number of teachers and the exact inventory needs cannot be known. Teacher salary negotiations are almost never completed by that time, so the Board can only estimate what will be required after negotiations are concluded. (R. 484 at 39) As time progresses, the estimates change. Salaries and benefits will be settled, and school will start so the students can be counted. Other new information becomes available. The Board considers new figures and new estimates, and the budget may be revised. (R. 484 at 20, 31-34) It is only when the previous year's budget can be audited that the actual revenues and expenditures can be determined; the June budget invariably differs from the auditor's budget completed over a year later.

Budgeting is thus performed in an atmosphere of uncertainty and contingency. Both revenues and expenditures are subject to imponderables and changes. (See Golds. 37, 49-50, R. 315, 319-20) No one can predict what success the County will have in collecting tax revenue; the difference between

94% collection and a 95% collection will have a serious impact on the District. Interest rates vary, federal and state aid programs may be cut. In 1981-82, more than \$1.8 million of expected revenue failed to materialize:

3-1/2% reduction of state aid	\$ 886,000
Estimated \$6 reduction in weighted pupil unit ("WPU") because of state appropriation shortfall	
Estimated 1980-81 budget WPU total of all \$27,702	166,212
Property tax collection short	519,281
Interest earnings short of estimate	<u>240,000</u>
Total amount not allowed to be committed	\$1,811,493

(R. 236)

On the expenditure side, there can be no foreknowledge of the number of accidents or their gravity, the number of pupils at what school level, the affects of weather on utilities or snow removal. The Board must contend with variables which include at least the following:

- Total property assessed valuation
- Percentage collection of taxes assessed
- County charges for tax collection
- Time taxes collected
- Shortfall in state contributions
- Governor's across-the-board cutbacks
- Shortfall in federal funds
- Title I funds
- Expected interest income
- Carry over funds
- Student enrollment
- Number of teachers
- Teacher salary negotiations
- Inventory and supplies
- Self insurance needs
  - Health and accident claims
  - Unemployment
  - Workmen's compensation and industrial accidents

[continued]

Sick leave  
Substitute teacher costs  
Contributions to retirement  
Extreme weather (utility bills, snow removal)  
(R. 333)

With so many variables to contend with, the budget can only be a plan and a prediction based on prior experience; budgeting is not an exact science.

## 2. The Use of the Contingency Appropriations Account.

In such a context of unpredictability and with the legal requirement that there can be no deficit, some orderly method for accounting must be developed. During the course of the year, adjustments must be made, and some programs must be kept waiting or held in abeyance until it becomes more clear that they can be funded without incurring deficits. One such accounting method is the Contingency Appropriations Account: it performs a "service" or "function" in the budget by permitting the Board to anticipate uncertain revenues and to make appropriations of that revenue -- actual spending will occur only when the funds materialize.

There are always meritorious programs waiting for funds; in 1981-82 the Board had almost \$9 million in program requests which were waiting for approval and funding. These included restoring cuts in programs, \$1.6 million; hiring teachers for the gifted students, \$.759 million; returning services to the handicapped to pre-1980-81 level, \$1 million; increased library book appropriations, \$.15 million; increase

secretarial help for elementary and intermediate schools, \$.27 million; reducing pupil-teacher ratio by 3 students, \$3.988 million; and a number of other projects totaling \$8,804,776 million. (R. 240-41) If uncertain revenues come in, then the Board can consider such programs and implement the most important ones.

In any school budget, the Instruction expenditures are among the largest; they cover teacher salaries and are approximately 75% of the total M.& O. budget. Contingencies invariably arise in those accounts so the Board placed the Contingency Appropriations Account in the salary portion of the Instruction budget. When particular accounts have need for increased revenue or when revenue has fallen below expected levels, the Board turns first to the Contingency Appropriations Account to see if funds are available there; if they are, those funds will be used first. They will be redistributed within the budget framework and spent under a particular descriptive detail. (R. 451-52) The Respondents have failed to understand this relatively simple accounting method, alleging that the Contingency Appropriations Account is a "dummy" account and that no expenditures (or only one small one) have ever been made from the Contingency Appropriations Account. In the audited budget figures for 1980-81, more than \$1.5 million was spent from the Contingency Appropriations Account. This means that \$1.5 million of uncertain revenue materialized and

was thus available for spending during the fiscal year:

Employee insurance and other fringe costs	\$ 433,113
Consultant and supervisor salaries	23,088
Teacher salaries	449,013
Sabbatical leave salaries	8,376
Substitute teacher salaries	36,567
Tutor salaries	49,262
Aide salaries	100,373
Teaching supplies	104,843
Consultants	62,614
Other numerous small amounts	<u>294,290</u>
	\$1,561,533

(R. 337) In 1976-77, \$1,820,824 was distributed from the Contingency Appropriations Account; \$1,646,650 in 1977-78; \$1,731,856 in 1978-79; and \$1,289,531 in 1979-80. (The figures are detailed at R. 243-46; 248-50; 252-54; 256-58.) The account is far from a dummy; the redistributions are duly set forth in revised and audited budget details for the District.

The Contingency Appropriations Account has been used in the salary portion of the budget because of the provision in U.C.A. §53-20-2 that the undistributed reserve cannot be used in the negotiation and settlement of contract salaries. Like other areas of the budget, contract salaries are plagued by uncertainties which cannot be predicted in June when the budget must be adopted.

There are other reasons why the Contingency Appropriations Account serves useful purposes in the budget. One is that funds appropriated to particular accounts within the budget cannot be transferred at will and convenience. The computerized budget control system is specifically programmed

so that no expenditure will be approved unless there is a corresponding authorized appropriation to back the expenditure.

(R. 452) Categorical revenues cannot be redistributed.

(R.452)

As a matter of prudent management, the Board has committed to certain of its department heads or management personnel, called budget managers, that if they can end the fiscal year under budget (that is, if they can carry out their responsibilities but still economize), any unexpended funds left in the accounts they administer will be applied toward their budget appropriations for the following year. The budget managers are thus given an incentive to economize; they know that if they manage efficiently, their own departments will benefit in the coming year; any savings which they effect will help them and will not be used to bail out a less efficient department which has refused to economize or to help one which has met unforeseeable cost increases. (R. 452) The reverse technique is to cushion each account for contingencies, giving the budget manager more to work with than the minimum and raising the possibility of overspending. The cushion method is disapproved not only by the Appellants but by the Respondents. (R. 323-24; Golds. 64-65. Steph. 54)

The Contingency Appropriations Account, when funds come in, helps with the management of unforeseeable contingencies without requiring excessive administrative costs and without

disrupting budget commitments and management incentives. It provides a practical and widely used accounting technique for managing uncertain revenues. The same accounting methods and experiences are common, if not universal, among Utah school districts. (See, e.g. R. 304, reproduced on the following page)

The Appellants requested an opinion from the State Superintendent about the propriety of the budget methods being used. Upon review of the budget process and the law, the State Superintendent has concluded that the Appellants are acting lawfully.

After reviewing §53-20-2 Utah Code Ann. (1953), it is my opinion that the Salt Lake City School District's budgetary actions and fiscal policies regarding the handling of fund balances and undistributed reserves have been in compliance with provisions of §53-20-2 Utah Code Ann. (1953) during each year since the 1976-1977 school year until the present [July 29, 1981]. (R. 296)

The State Superintendent and school board are required by law to prescribe uniform accounting procedures for the school districts and to audit their accounts.

The District's budgets have received national awards as examples of good accounting principles. (R. 412-14) The budgets are audited annually, and no fault has ever been found and no illegality or questionable practice has ever been identified by an auditor with respect to the use of the Contingency Appropriations Account. (R. 415, 416, 448)

UTAH SCHOOL DISTRICTS FUND BALANCE  
AS A PERCENT OF TOTAL EXPENDITURES

6/30/81

<u>SCHOOL DISTRICT</u>	<u>M &amp; O EXPENDITURE</u>	<u>FUND BALANCE</u>	<u>PERCENT OF EXPENDITURE</u>
Alpine	39,021,581	2,699,246	6.92%
Beaver	1,975,204	254,660	12.89
Box Elder	-	-	-
Cache	12,924,201	1,127,149	8.72
Carbon	7,933,974	275,131	3.47
Daggett	718,029	14,856	2.07
Davis	60,966,154	727,444	1.19
Duchesne	6,797,847	117,016	1.72
Emery	5,557,873	691,298	12.44
Garfield	2,357,865	148,609	6.30
Grand	2,844,814	76,690	2.70
Granite	97,732,710	6,142,011	6.28
Iron	-	-	-
Jordan	71,359,161	2,234,088	3.13
Juab	-	-	-
Kane	1,945,560	205,182	10.55
Killard	4,325,946	326,317	7.54
Morgan	2,333,937	97,929	4.20
Nebo	18,938,383	1,234,849	6.52
North Sanpete	3,111,220	323,734	10.41
Piute	990,693	143,085	14.44
San Juan	9,218,619	1,779,728	19.31
Sevier	6,969,966	113,926	1.63
Tintic	786,250	231,299	29.42
Uintah	8,814,942	723,290	8.21
Washington	9,523,381	317,460	3.33
Wayne	1,192,874	106,929	8.96
Murray	9,145,800	243,436	2.66
North Summit	1,408,403	206,636	14.67
Tooele	11,979,558	449,918	3.76
Wasatch	3,679,418	893,626	24.29
Weber	30,366,285	2,398,830	7.90
Salt Lake	48,504,696	3,053,399	6.30
Ogden	20,350,333	1,161,822	5.71
Provo	18,204,918	641,038	3.52
Logan	6,269,567	309,336	4.93

(Previous page: EXHIBIT, UTAH SCHOOL DISTRICTS FUND BALANCE AS  
A PERCENT OF TOTAL EXPENDITURES, from Record 304)

3. The Undistributed Reserve

a. Legislative History and Purpose

When Harmer was employed by the Utah Education Association, he suggested that school districts should be using accrual method accounting. He and others familiar with such accounting and with problems which had developed in the course of teacher salary negotiations agreed that school districts needed to have a reserve fund which would not be available for teacher salaries and which would assist school districts in handling their budgets under the accrual method. Harmer worked with legislators to introduce and enact the statutory provisions necessary to the accrual method. One of the resulting provisions is contained in U.C.A. §53-20-2, which authorizes an undistributed reserve to be isolated from the negotiation and settlement of contract salaries. Harmer helped frame the language and attended sessions on the bill. It was not his intent or that of the bill's legislative sponsors to make this undistributed reserve the sole and exclusive reserve which a school district could have; rather, it was the intent to reserve or isolate some money from teacher salaries. When the bill was enacted, it was routine practice for school districts to have other reserves. (See R. 446-47) Respondent Olson testified at his deposition that Harmer was "instrumental in framing that amendment to the law, and getting it introduced." (Olson 6.)

The legislative history of U.C.A. §53-20-2 gives no indication that the reserve there provided was to be exclusive or that it would change existing budget practices to prevent the use of reserves. The provision was passed with the simple recognition that employees seeking favorable wage and salary contracts would push for every possible penny from the budget; some funds needed to be excluded from the salary negotiations and contract settlements if the districts were to handle their budgeting smoothly and efficiently.

The statute is silent as to exclusivity; it simply permits school districts to create such a reserve with amounts not exceeding certain levels. Respondents' expert Goldsberry and Respondent Stephenson both admitted that the reserve is not an exclusive one. (Golds. 101, Steph. 75, R. 336) The trial court did not find it exclusive. (See R. 485-98)

It has been the Appellants' position and their practice not to use the undistributed reserve in connection with contract salaries, it is reserved for contingencies in non-salary portions of the budget. Given this strict observance of the law, the Appellants must look elsewhere to meet contingencies which arise as to salaries which are three-quarters of the budget. It is here that the Contingency Appropriations Account comes into use. It has also been the policy of the Appellants to look for funds in that account first; if those uncertain revenues have come in, the District uses them before it turns

of the undistributed reserve, leaving that funded reserve intact whenever possible.

4. The Trial Court Has Ignored The Statutory Limits On The Undistributed Reserve In U.C.A. §53-20-2.

The Respondents have argued for, and the trial court has apparently concurred in, an incorrect interpretation of the undistributed reserve provisions in U.C.A. §53-20-2. In the process, the trial court has actually amended the statute.

The statute's purpose was to permit school districts to reserve some funds which would be isolated from the contract salary portion of the budget and which would not be available for salary increases. Nonetheless, the trial court stated from the bench:

It appears that the language of the statute about wages is reasonably clear in its context to relate to the labor negotiating process, and it's talking about settlements of contract negotiations and settlement of the contract, and once that is arrived at, salaries ordinarily might be one of the more predictable kind of items in a budget. And once that's 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. (R. 491)

The salary portion of any school district budget is one of the largest. In this District it represents almost three-quarters of its expenses. Like any other item in a school budget, contract salaries are uncertain and subject to

unforeseeable variables. Since the Board has followed the language and intent of the statute by isolating and keeping isolated the undistributed reserve from contract salaries, the Contingency Appropriations Account has aided the District in meeting contingencies in this area.

Negotiations for contract salaries are almost never concluded by the time the budget must be adopted; the Board must make its budget with the negotiations incomplete and must estimate what it believes it can afford and can negotiate successfully at the bargaining table. The one thing which was considered certain (until this decision was rendered) was that the employees' salary negotiators could not rely on or dip into the undistributed reserve. The District had 1-1/2% of its M. & O. budget which was isolated from contract salaries. Now that limitation has been effectively amended out of the statute. By the trial court's interpretation, the teachers know that the reserve is not truly unavailable to them. They can hold out for greater increases because they know that as soon as the negotiations end, the money from the undistributed reserve will be released and can be spent for contract salaries. Not only is the statutory exception ignored, but the teachers and others with contract salaries know that they can force the Board to use that money; the undistributed reserve is right back in the negotiations and settlement of contract salaries. The Board no longer has lines beyond which salary

negotiators cannot push. The Board is no longer bargaining with a protected revenue to meet other needs. The trial court was clearly incorrect in its interpretation of the statutory conditions imposed upon the expenditure of the undistributed reserve. This Court should declare that the statute means what it says: that the undistributed reserve is not to be used in contract salary negotiations or settlements.

5. The Unexpended Fund Balances.

An unexpended fund balance means that the actual expenses have fallen short of predicted levels or else revenue has exceeded expectations, so that some funds or some inventory has been left at year-end. State law requires such funds to be carried over to the next year's budget. U.C.A. §53-20-2. Some of these funds will be earmarked into particular categories because they derive from categorical revenue; some are earmarked because of the management commitments made by the Board to its budget managers. These fund balances do not derive only from or equate to funds set forth in the Contingency Appropriations Account.

Facing the next page is a Comparative Statement of Revenues, Expenditures and Changes in Fund Balance, comparing the years ending June 30, 1982 and June 30, 1981. (R. 234)

The District had, as of July 1, unappropriated fund balances of \$4,571,294 -- funds carried over from the prior fiscal year according to the requirements of U.C.A. §53-20-2. In that same year, the District received revenues of \$46 million, but incurred expenses of over \$48.5 million -- an excess of expenditures in the amount of \$2.4 million over that year's revenues. That deficiency was in effect covered from the fund balances; at the end of the fiscal year, the District was able to carry over, for the 1981-82 fiscal year, a fund balance of \$2,173,885. Thus, by the end of that fiscal year, there was a fund balance slightly over \$1 million to be carried over to the next budget. Even with that balance, the District spent more than it received from taxes, so there was no excessive levy.

The unexpended fund balances can be traced from year to year. Their amounts are reported in the budget estimates and in the audited reports. They are not evidence of a reserve or of a hidden Contingency Appropriations Account account; they simply show that the District was able to end the year without spending every penny that it had available; it carried over some funds for the next year. Unexpended fund balances are in no way improper or unlawful; they are contemplated by the law which has made provision for them. U.C.A. §53-20-2.

MAINTENANCE AND OPERATION FUND  
(The General Fund)

Comparative Statement of Revenues, Expenditures and Changes  
in Fund Balance

Years Ended June 30, 1982 and 1981

	1982	1981
Revenues:		
Property taxes	\$24,865,914	\$22,240,934
Interest on investment	2,321,115	1,240,934
Other local revenue	748,724	786,699
State of Utah	19,898,891	16,923,733
Federal government	<u>3,699,906</u>	<u>4,613,702</u>
Total Revenues	<u>51,504,550</u>	<u>46,128,666</u>
Expenditures:		
Administration	657,143	615,194
Instruction	31,202,383	29,463,761
Attendance-Health Services	412,815	393,715
Pupil Transportation	659,390	597,151
Operation of plant	4,544,643	4,066,039
Maintenance of plant	1,617,376	1,571,105
Fixed Charges	11,000,905	9,652,838
Student body activities	72,204	67,704
Community services	<u>1,683,702</u>	<u>2,136,458</u>
Total Expenditures (Note )	<u>51,850,552</u>	<u>48,563,965</u>
Excess (deficiency) of Revenues over Expenditures	(346,002)	(2,435,299)
Fund Balances Unappropriated - July 1	<u>2,173,855</u>	<u>4,571,294</u>
Decrease in reserve for encumbrances	1,343	15,571
Decrease in P.L. 874 Revenue reserved for succeeding year's budget	53,356	22,319
Increase in inventory reserve	(833,673)	-
Fund Balances Unappropriated - June 30	<u>\$1,078,909</u>	<u>\$2,173,885</u>

As noted on financial statements.

(Previous page: EXHIBIT, COMPARATIVE STATEMENT OF REVENUES,  
EXPENDITURES AND CHANGES IN FUND BALANCE, Record 234)

6. The Respondents' Admissions.

One peculiar aspect of this case is the extent to which the Respondents, particularly by their expert witness, have admitted away their case. They have admitted that budgeting involves discretion, that contingencies can and do occur in every aspect of the revenue and expenditure sides of the budget, that the undistributed reserve is not exclusive, that budgeting through the Contingency Appropriations Account is more prudent than cushioning accounts, that the District's budgets have been reasonable when the amounts of any unexpended fund balances are compared to the total budget and, significantly, that the Respondents are unable to suggest alternative methods which the District could adopt to get better budgets or more accurate estimates in June for the events of the coming year.

Goldsberry, a certified public accountant specializing in municipal accounting, testified at a deposition as an expert on behalf of the plaintiffs. His credentials are impeccable.

The Respondents contend that the undistributed reserve fund (1-1/2% of the M. & O. budget) described in U.C.A. §53-20-2 is the exclusive reserve fund that the District can have. Goldsberry's initial position was:

Q. It's your position or your opinion that any fund balance in excess of one and a half percent would be unauthorized and illegal?

A. Yes. (Golds. 14, R. 309)

However, shortly after setting forth this position, Goldsberry began admitting exceptions to it, and before his deposition was finished, his admissions were so broad and so numerous that he had made a full-scale retreat from the Respondents' basic premise.

Q Under the law, in your opinion, can the district create a reserve for inventories?

A Yes.

Q Under the law, in your opinion, can they create a reserve for self insurance?

A Yes.

Q Do you know of any other reserves that they might create that would be admissible under the law?

A I believe they've been using public law 874 money in the reserve.

Q When we said that they could have a reserve for inventories and self insurance, can that be in part of the one or is that in addition to?

A No. I believe that's in addition to.  
(Golds. 101, R. 336, emphasis added)

Goldsberry also admitted that the Board must deal with many variables on both sides of the ledger. Federal aid is imponderable, the number of pupils who will attend, thus affecting state aid, is unpredictable, and even interest income is not fixed. (Golds. 48 R. 318) The Board would not even know in May, when it is working on the tentative budget, how much revenue it could carry over to the next fiscal year. (Golds. 49 R. 319) Expenditures, he agreed, also vary.

Q Are you familiar with the fact that in the Salt Lake City School District that they are self-insurers for health and accident, industrial

accident and unemployment payments?

A Yes, I believe I knew that.

Q And aren't those variables that no one can tell what will happen in a particular year?

A Yes. (Golds. 49-50, R. 319-20)

Goldsberry agreed that the Board could not know in advance about unemployment compensation, inventory changes based on pupil enrollment, teachers' sick leave, the number of substitute teachers that would be needed. (Golds. 50, R. 320) In sum:

A Okay. Expenditure side, variables [,] weather could be a factor, maybe snow removal would be a factor, maintenance could be a factor. You could have variables in every one of your accounts, revenue and expenditures.

(Golds. 37, R. 315, emphasis added). He also says the Board has discretion in dealing with the budget.

Q Well, do they have some discretion? That's different.

A They have some discretion when they make the budget, that is correct. (Golds. 29, R. 311, emphasis added)

Q My question is, was it appropriate for the board to make some allowances for those kind of unforeseen contingencies?

A Yes. To weight that budget for that possibility (Golds. 38, R. 316)

The question then, is how can they exercise their discretion?

They should not increase the budget for separate items and

increase cushion in the accounts.

Q So it isn't really a very good policy to put a cushion in a budget and say, "I want you to come in under budget," it's better to have a tight budget and say to them, "I want you to come in on budget." Isn't

that the way to approach it?

A Ideally, yes. (Golds. 64-65, R. 323-24)

Nonetheless, some provisions need to be made for the imponderables of budgeting, and Goldsberry himself would probably try to make provision for them. (Golds. 38-39, R. 316-17, emphasis added.)

Q The concept, without defining reasonable, are you willing to agree that there can be some reasonable percentage of tolerance that the school board can exercise?

A Yes. Without calling for a conclusion on my part, yes, I can say that. (Golds. 32-33, R. 313-14, emphasis added.)

Q If the estimated revenues is within a range of 0 to 5 percent, wouldn't you think that that's showing some responsibility? . . .

Q From a hindsight standpoint and, again, forgetting about the technicality of the one and a half percent thing, let's just talk about a budget that may be 62 million dollars, and if they come in within three or four percent of having appropriated and spent within three or four percent of the revenues which, in fact, came in, would you say that that would be within reasonable limits? . . .

A Okay. You're also allowed approximately one and a half percent of that 62 million dollars or \$900,000 in that reserve account. I would say for a specific time frame that probably the two and a half million dollars as a result of the events is reasonable. Your question is, is what we do with that two and a half millions when we budget that the following year. (Golds. 32-33, R. 313-14, emphasis added)

The contested amount in this suit is approximately \$2.8 million dollars in the pre-audit unexpended fund balance or \$1 million audited, an amount well within Goldsberry's reasonable figures. The question is still how to deal with those unexpended fund balances.

Q If the school district doesn't know for sure how much money it's going to receive, don't you think it would be proper not to allocate in advance those funds, but if the funds do, in fact, come in, then utilize them for projects that are standing in the wing ready to be implemented?

A Surely. (Golds. 72-73, R. 325-26, emphasis added, see also R. 243-46)

Goldsberry has now fully agreed with the position of the school defendants.

After all of these admissions, Goldsberry admitted even further that he does not know a method which the school defendants could use to handle the budget better.

Q (BY MR. BUSHNELL) You talk about a fund. I call it contingency appropriated funds. It's a contingency because they don't know what money they're going to get and the expenses they're going to have. Don't you think they have the right to provide some mechanism for those eventualities, regardless of whether you like the term; don't you think they have the right to provide for those eventualities. . . .

THE WITNESS: They have the right in their individual line items to provide for that.

Q (BY MR. BUSHNELL) You're talking about the mechanics of how they do it. Let's take it a step at a time. Do you agree that the Board of Education has the right, and I'll go so far as the duty, to provide for eventualities of overexpenditures and underreceipt of income?

A Yes. . . .

Q (BY MR. BUSHNELL) It would be a responsible thing for the board to do, isn't that true?

A It would be a responsible thing.

Q Let's go the next step where you want to go and, that is, that you don't agree with the mechanics which they did it, isn't that right?

A That's correct. (Golds. 59-60, R. 321-22, emphasis added)

Goldsberry's testimony shows that there is no substance to the Respondents' complaint; there is only a question of accounting form.

Q How do they do that, then, to do it properly, in your opinion?

A Well, I think I've referred to that in earlier testimony, based on their history of events.

Q Let's take the history that every year there's things that they didn't anticipate both as to expenditures and as to revenue. One year it might not be Federal funds, one year it may be the Governor cutting it back, one year it might be lack of collections, another year it might be utilities running over, another year, it might be teachers, but the history has been that there has been some of those items each year.

Starting with that assumption, you told us you don't want it in a particular line item and you don't want across the board percentage increase in all of the accounts. Tell me how they can properly work it out so that they don't fall short?

A Well, you know, I feel like the criteria that has developed over the years in performing that budget is the criteria that you use in preparing that budget.

Q And the criterion has said we have to do it. But I'm asking you mechanically how they do that.

A That's how they do it. They evaluate that criteria.

Q We're talking about the need and method that we carry it forward. I'm having you assume that there's a need based upon the criteria from prior years and I'm now asking you to tell me how is the proper method to do it since you don't like the one we've already talked about, one, a contingency factor in every account or a contingency account. What is there left that we can do to guard against that?

A I've already gone on record as saying the contingency account to me is misleading and improper disclosure.

Q I've said that. You said it would be improper to take a certain percentage and apply it all

over the accounts?

A I said that. You would have to look at the specific account you're budgeting for and look at the criteria that makes that account out. You're asking me to be specific, you know, asking me to be specific for a specific budget item or something.

Q No, I'm not. I'm going to do it again because I think you're really -- at this point you've said what we do is wrong, but you haven't told us what we can do to make it right. Let me give you the hypotheticals. The hypotheticals are that the history has been that we'll have shortfalls in various accounts and we'll have overexpenditures sometimes in various accounts and they don't consistently follow to be the same one. One time it might be teachers, public utilities, one time it might be supplies on what we were overexpending and on the other side sometimes the money is collections from the county, sometimes it's failure to get the State funds, sometimes it's the Governor arbitrarily cuts everything off through there. That's the history. As a responsible school board they have said, "I don't know what it's going to be this year, but we need to protect ourselves so that we don't violate the law and spend more money than what we have appropriated." My question is, with that problem presented, how is a proper way to do it?

A Well, I guess I can't answer your question. All I know is what has transpired, that they have actually collected more than they have spent. (Golds. 93-96, R. 329-32, emphasis added)

In other words, Respondents' expert does not know how else the School Board can handle the budget; he cannot offer a better method or a clearer form. With such admissions, there is no issue for the Court to resolve. The Appellants face contingencies on both sides of their balance sheet, they have discretion; they are not confined to a 1-1/2% total fund balance, the 1-1/2% is not exclusive, they should not cushion budgets, they face next contingencies as they arise. They have a method for handling the budget which Respondents dislike but do not know

how to improve. Apparently, the Appellants just do not make their estimates as accurately as the Respondents would like, although the unexpended fund balances are reasonable in amount given the uncertainties and the size of the budget. Respondents' expert admits that there is no substance or merit to the complaint; this case is all a matter of form.

IV. THE TRIAL COURT CONFUSED ITS TERMS AND RELIED ON EXTRA-RECORD MATERIAL

1. Since There Is No Exclusive Reserve, Reserves Cannot Be Distinguished by the Trial Court.

The trial court accepted the Respondent's unsupported assertion that the Contingency Appropriations Account is a reserve, but it rejected the Respondents' argument that the District may maintain only one reserve, the undistributed reserve authorized by U.C.A. §53-20-2. The trial court is correct that the undistributed reserve is not exclusive; legislative history, school practice before and since authorization of the undistributed reserve and the State Superintendent all show the propriety of other reserves.

However, the trial court made an unsupported choice among reserves, designating some as good and others as not. The trial court decided that the Contingency Appropriations Account is not a good reserve; it felt it had been created by the Appellants in excess of their authority. That supposed reserve is allegedly different from reserves for inventory and self-insurance because the trial court considers them to be

somehow more open to public scrutiny than the Contingency Appropriations Account: (R. 488-89)

The striking thing to the Court in terms of the account that we're talking about is that even those that are not specified by statute, namely the reserve for inventory and the reserve for self-insurance, notwithstanding that they are not in the statute, they are not contingent kinds of items, as such, and they are identified kind of expenditures. (R. 488-89, emphasis added)

The Contingency Appropriations Account, assuming that it is a reserve (which the School Appellants do not concede), had been used to cover contingencies when uncertain revenues had come in. But distinguishing reserves for inventories and self-insurance from that Account because they are not "contingent" is fallacious. Inventory is not a stable, predictable item. The items in inventory vary according to changes in the curriculum, the number of students, the number of teachers and the costs of the items themselves. Costs vary with inflation, scarcity of materials and other factors. Such factors vary over time; they raise contingencies, and a reserve for inventory must manage contingencies and be operated in a context of change, much of it unforeseeable.

Self-insurance deals with even greater numbers of imponderables. No one knows which teachers will fall ill or be injured, necessitating expenditures from the self-insurance reserve. No one knows when an ankle will be broken rather than sprained or why a cut on a teacher's hand needed ten stitches

but missed an artery or a tendon. Insurance, by its very nature, deals with probabilities and contingencies, not with certainties. The trial court's distinction between different kinds of reserves simply does not bear analysis. If these other reserves for inventory and insurance are legal though not specified by statute, then the undistributed reserve cannot be exclusive. Surely the statute does not permit trial courts to accept or reject reserves on the basis of their unsupported views that some things are contingent and others are not (though common sense says those things are in fact contingent). The Contingency Appropriations Account, not being a reserve, cannot be prohibited by the trial court's analysis; U.C.A. §53-20-2 does not prohibit contingency appropriations and does not create an exclusive reserve. It does not permit the trial court to approve some reserves, misclassify an accounting method as a reserve and then enjoin its use. The trial court recognized that it was dealing with an accounting case (R. 486) but failed to recognize and distinguish accounting principles, methods and terms. The trial court said:

At the outset, the Court observes that this is an accounting case, not a levy case, not a tax case, not an assessment case.... (R. 486, emphasis added)

Despite this, the trial court ignored accounting terms and methods. The trial court disregarded the only factual evidence in the record - that of Goldsberry and Harmer. Harmer is an expert in the field; he is a member of the National

Council of Governmental Accountants ("NCGA") - the group which sets the standards for generally accepted accounting principles for governmental agencies. Harmer is also chairman of the NCGA's Technical Guidance Committee which routinely provides technical advice on handling difficult problems of accounting to governmental agencies. (R. 484 at 49)

2. The Court Went Outside the Record  
In Making Its Decision.

In its oral decision, the trial judge, a former Public Service Commissioner, commented that Emery County's school board had accumulated reserves of several million dollars from mines and from utilities, and that other school districts had created reserves and were less responsible than this District. The trial court said:

In Emery County I don't know where they got their reserve, but they gave testimony before the Public Service Commission that they had a reserve figure of, it seems to me, six or eight or ten million dollars, a fairly significant amount of money which could have built more school space, to be sure, without having to rely on capital funds or on bond issues at all. And they profited from the mines and from the Utah Power & Light plants and so forth, and then were screaming at the Public Service Commission because we were going to take part of the tax base away by letting Utah Power & Light sell it to the municipalities that weren't subject to taxes. But I think you see examples in various districts where they have developed very significant reserves which exceed Salt Lake City's and really don't have the responsibilities that the Salt Lake City board has.

So I sort of think that the legislature intended that there be something more consistent about how school boards operate than what's being accomplished in terms of the current budgeting process. (R. 496)

Thus, the trial court was influenced by the testimony of a different school board before a different public agency on a different matter. This case was apparently used as a vehicle for rectifying another grievance from another time and place. Such should not be the basis for or an influence upon injunctive relief against these Appellants.

3. The Contingency Appropriations Account Is Not Secretive or Mysterious.

The trial court was also incorrect in believing that the Contingency Appropriations Account was not open to public scrutiny in the same way that a reserve for self-insurance or inventory would be available. There is no evidence in the record to support such a conclusion. There are no allegations of any procedural irregularity other than the creation of the Contingency Appropriations Account.

The Contingency Appropriations Account was present in the budget during each of the years mentioned by the complaint. Each budget was adopted after public hearing. There is uncontradicted evidence of public scrutiny of the budget each year. Indeed, UTA itself, sponsor of the suit, has analyzed the budgets each year; UTA was represented by its executive director Olson or research analyst Stephenson at the budget hearings. In both

written and oral statements, they commended each year's budget and concurred or supported adoption of the budgets. (See Olson 13, 15; Steph. 47) They scrutinized and approved the budget each year until 1981-82: the fiscal year when the Board imposed its first increase in the mill levy in three years. (See R. 301)

When the 1982-83 budget hearings were held, after the commencement of this suit, Olson again appeared on behalf of the UTA, and he again complimented the Board on its budget. At the hearing, Olson questioned Harmer about the Contingency Appropriations Account (account 0210.99). Olson asked:

What is the purpose of 0210.99? Maybe I've never understood the definition of that.  
(R. 411, emphasis added)

In a nutshell, that is the problem with this case: the executive director of UTA, the UTA and the parties it has solicited have sued because of confusion about an accounting method, an undistributed reserve and an unexpended fund balance. Injunctive relief to interfere with the discretion of a school board in preparing and operating its budgeting must rely on something more than misunderstanding and confusion. There is nothing whatsoever in this record to meet the criteria for injunctive relief. (See Rule 65 of the Utah Rules of Civil Procedure) The trial court's decision must be reversed; it rests on incorrect assumptions and incorrect analysis.

V. THE REMEDY GRANTED BY THE TRIAL COURT IS  
IMPROPER AND INAPPROPRIATE

1. Attempts to Enjoin Taxation.

When the Respondents originally commenced this action, they obtained a temporary restraining order to restrain the Appellants from setting the mill levy for the coming fiscal year at their proposed level and to require the mill levy to be set at a lower rate. Because U.C.A. §59-11-10 prohibits courts from enjoining taxes, the Respondents were denied a preliminary injunction. They amended their complaint, stating their new theory about the impropriety of the Contingency Appropriations Account, still seeking to interfere with the District's taxing and budgeting procedures.

The trial court has granted two forms of injunctive relief: a prohibitory injunction to prevent the Appellants from using the Contingency Appropriations Account and a mandatory injunction to require that the Appellants make expenditures from the undistributed reserve.

The object of these injunctions is still to interfere with taxing by the Appellants. The Respondents' theory, like their use of fundamental terms, is somewhat roundabout and of questionable effectiveness. Apparently the Respondents believe that if there is no Contingency Appropriations Account there will be no reserve and no unexpended fund balances. Requiring the District to use its undistributed reserve instead of the Contingency Appropriations Account (despite statutory limita-

tions on the fund) is apparently designed to reduce unexpended fund balances and to reduce mill levies. Respondents' attack on the Contingency Appropriations Account, their theory of exclusive reserve and their concern with unexpended fund balances demonstrate one thing: they are trying to do indirectly what the law prohibits them from doing directly. They still want to enjoin taxing authority.

In point of fact, part of the injunctive relief is meaningless. The budget can be designed without the Contingency Appropriations Account. Since the budget adopted each June is an estimate, and since the Contingency Appropriations Account lists revenue the Board hopes for but cannot count on, the budget can simply be drafted without appropriation of such revenues. If those revenues later materialize, the Board can revise the budget, appropriate the newly arrived funds and commit and expend them for needy accounts. The Contingency Appropriations Account will be absent and will affect the mill levy no more than it does now (which is not at all). Once it is understood that the Contingency Appropriations Account is merely an accounting methodology to provide an orderly way to anticipate and appropriate uncertain revenues, the injunctive relief becomes meaningless. The Board cannot rely on uncertain revenues to cover the heart of its programs; it must seek more definite, more certain revenue from its levying mandates in order to meet the needs of the District and to prevent a

deficit. Courts should not involve themselves in meaningless exercises such as enjoining the use of the Contingency Appropriations Account.

Injunctive relief...is not appropriate where there would be little or no benefit to the complainant. Penelke, Inc. v. John Price Associates, Inc., 642 P.2d 1229, 1235 (Utah 1982)

The mandatory injunction to require expenditures from undistributed reserve is relief of a somewhat different nature and will be discussed below.

#### VI. COURTS SHOULD NOT MANDATE ACCOUNTING OR BUDGETING METHODS FOR THE DISTRICT

It is well settled in this state that courts should not issue mandates to compel administrators to perform in a specific manner first, absent a clear ministerial duty or second, when discretion is involved. The instant decision violates this principle on both counts. The trial court has ordered the Appellants to make expenditures for contingencies from the undistributed reserve, regardless of circumstances and without regard to statutory limitations on that reserve. It has also enjoined the use of an accounting technique in a budgeting process which must cope with estimates and which must rest on discretion. Neither is the proper subject of injunctive relief.

Utah law was restated in Tuttle v. Board of Education of Salt Lake City, 294 P. 294 (Utah 1930). Plaintiff there sought a writ of mandate to compel the Board to use certain

titles or categories in the school budget which had been used in previous years. The Supreme Court denied the relief, concluding that the budget categories were substantially equivalent to those used in prior years. The Supreme Court stated:

There is a further question involved. Mandate does not lie unless the relator or petitioner shows a clear legal right to the performance of the act demanded and a plain duty of the officer, board, or other tribunal to perform it as demanded, and where the duty to perform the act is doubtful, or where a discretion is imposed or involved in the performance of it, mandate ordinarily will not compel the performance of it in a particular way or manner. We have held that many times. That in making and adopting a budget some discretion and judgment is imposed on and is required by the board may not well be doubted. 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 particular 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. From all this it is apparent that to compel the board to make a particular kind of budget, or one as specifically demanded by the plaintiffs, or to direct what subjects or statements or enumerations or details are to be stated in the budget and to compel or coerce the board to make such or any particular kind of budget, is, to say the least, of very doubtful propriety. Tuttle, supra, 294 P. at 100. emphasis added.

The Tuttle decision determined that accounts are general statements or summaries; petitioner in Tuttle had no right to mandatory relief to compel the use of or supervise the administrative details of the District's budget.

Here, the trial court has imposed a mandate or injunction to require spending from the District's undistributed reserve. Such relief is not justified by the tests of the law. Section 53-20-2 does not require a school district to create an undistributed reserve; the statute has "authorized" the District to "adopt a budget containing an amount known as the undistributed reserve." If a school district exercises this authority, the reserve must meet the statutory limitations provided. But that reserve arises in a climate of discretion: the Appellants prepare the budget to meet the needs of the population they serve. As Respondents admit, budgeting involves discretion; budgeting rests on estimates which inherently involve discretion and choices. (See U.C.A. §53-7-9) It is not for courts to impose mandates on the Appellants about what funds to spend; it is equally improper for a court to prohibit the Appellants from using a specific account item or a particular accounting method, especially when the technique follows generally accepted accounting principles approved by the State Board of Education. The trial court erred in both its injunctive orders, and it erred in its assertion that this was not an area of discretion. The injunctive relief must be dissolved.

VII SCHOOL BOARD DECISIONS SHOULD BE UPHELD  
UNLESS THERE IS AN ABUSE OF DISCRETION  
OR CLEAR ILLEGALITY

The Respondents have failed to show that there has been any abuse of discretion on the part of the Appellants or any one of them. The only suggestion of abuse came from Olson who found the Appellants "ultra-conservative" in their approach to the budget. (Olson 40-41) Not only is "ultra-conservative" difficult to define in the context of the budget process, it has nothing to do with abusing discretion or violating the law. Injunctive relief is not justified.

It is now well settled in this state that the courts will not interfere with the actions taken by school boards unless an action clearly abuses discretion or violates the law. The Utah Supreme Court set the standard of judicial review in Beard v. Board of Education, 81 Utah 51, 16 P.2d 900, 903 (1932):

It is well established that, if the action of the board of education is within the powers conferred upon it by the Legislature, and pertains to a matter in which the board is vested with authority to act, the courts will not review the action of such a board or substitute its judgment for that discretion... "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. So the courts are usually disinclined to interfere with regulations adopted by school boards, and they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board.

Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order, and discipline of the schools and the rules required to produce these conditions. The presumption is always in favor of the reasonableness and propriety of a rule or regulation duly made. The reasonableness of regulations is a question of law for the courts." (Citations omitted, emphasis added)

This standard was reaffirmed in Petty v. Utah State Board of Regents, 595 P.2d 1299, 1302 (Utah 1979), in which certain assessments made by that Board had been questioned:

Applicable to this review, it is appropriate to reaffirm our commitment to these general propositions: that an administrative agency should be allowed a comparatively wide latitude of discretion in performing its responsibilities and that 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. Consistent with that policy we are not persuaded to disagree with the view of the trial court that assessment of the \$105 student fee was within the power of the Board of Regents. (Citation omitted, emphasis added.)

In applying this standard to the School Board's taxing authority, the Utah Supreme Court concluded in Board of Education of Salt Lake City v. Burgon, 62 Utah 162, 217 P. 1112, 1114 (1923):

The board of education is invested with the exclusive control of and responsibility for the public school system, independent of the county government, and, if the amount required by the board of education to be raised by local taxation is within the maximum limit

provided by law, it is the duty of the county taxing officers to levy such per cent on the assessed property of the city as will raise the amount.

The Board has adopted cautious budget practices; it will not commit to spend money until it is certain it is there. Respondents have faulted the Board for being "ultra-conservative", but the Respondents cannot argue that being cautious abuses discretion. Caution does not violate the law.

VIII. THE CREDIT RATING OF THE DISTRICT IS PLACED AT RISK BY THE INCORRECT DETERMINATION OF THE TRIAL COURT

For the past several years the District has received highest ratings from the entities which rate credit-worthiness, (the "rating agencies"). These high ratings influence the investment market and have permitted the District to enter the bond and other borrowing markets at favorable rates. One significant factor in such ratings is the soundness of the budget of the District; its favorable funds balances have not gone unnoticed by the commercial world. Interest rates are heavily influenced by prevailing conditions and any applicable legal limits, but they are also influenced by the financial strength of the District. (R. 230-31, 453)

When the District's favorable fund position allowed for fully authorized expenditures, the rating agencies threatened to lower the District's top rating. It was the efforts of Harner which prevented any change in rating. The Board contends that the kinds of rulings and relief the

Respondents seek, by trying to reduce the District's unexpended fund balances, will have an adverse impact on the credit worthiness of the District. (R. 230-31)

Each year the District borrows up to \$7 million on tax anticipation notes to finance its M. & O. budget. The notes are redeemed as tax revenues are collected. (R. 453)

The Respondents' argument below did not address annual borrowings for the M. & O. budget. Changes in the District's budget techniques, court findings of illegality and injunctive control of the budgeting process can only injure and confuse the District's actual financial standing. The trial court's conclusion that the financial standing of the District is not at risk is unsupported on the record; the only evidence presented was that of the Appellants who recounted the status of the District's rating and its fragile nature.

If the District is forced by injunction to dip into reserves which it has previously left intact because it has been able to use contingent revenues through the Contingent Appropriations Account before using those reserves, then it can anticipate an adverse reaction from the rating agencies, a drop in its credit rating and a corresponding increase in the cost of borrowing money. The District faces harm which it cannot repair because of the relief granted by the trial court. The balance of hardship between the few disgusted taxpayers and the District clearly tilts away from a grant of injunctive relief.

CONCLUSION

The District has made only the two mandated leeways and has expended all the tax monies collected from those levies. Both the taxing and budgeting actions taken by the Appellants have been lawful and proper. Consequently, there is no basis for a refund to the Respondents or for any other relief. The Appellants respectfully request that this Court dissolve both parts of the injunction that has been granted against them and that it make such declarations as it may deem necessary to permit the continued use of the Contingency Appropriations Account, to declare that the undistributed reserve in U.C.A. §53-20-2 is not the exclusive reserve which the District may have in its budget, and to declare that the undistributed reserve in U.C.A. §53-20-2 shall not be used at any time for the negotiation, settlement or payment of contract salaries.

Dated: Salt Lake City, Utah  
July 8, 1983

Respectfully submitted,

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DELIVERY CERTIFICATE

Delivered two copies of the foregoing Memorandum of Defendants-Appellants in Support of Their Appeal to counsel for the Respondents as follows on the 8th day of July, 1983:

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