

1984

Utah County, A Body Corporate And Politic of the State of Utah v. Orem City, A Municipal Corporation of the State of Utah; Payson City, A Municipal Corporation of the State of Utah; And Pleasant Grove City, A Municipal Corporation of the State of Utah : Brief of Amicus Curiae Salt Lake City Corporation

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IN THE SUPREME COURT
OF THE STATE OF UTAH

UTAH COUNTY, a body corporate)	
and politic of the State of)	
Utah,	)	Case Nos. 19,108
	)	19,131
Plaintiff-Respondent,	)	19,138
)	
vs.)	
)	
OREM CITY, a municipal)	
corporation of the State of)	
Utah; PAYSON CITY, a)	
municipal corporation of the)	
State of Utah; and PLEASANT)	
GROVE CITY, a municipal)	
corporation of the State of)	
Utah,)	
)	
Defendants-Appellants.)	

BRIEF OF AMICUS CURIAE
SALT LAKE CITY CORPORATION

Appeal from the Judgment of the Fourth Judicial
District Court of Utah County,
The Honorable Allen B. Sorensen, Judge

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FILED

MAR 2 1984

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

State of Utah, Plaintiff,)	
vs. The State of Utah,)	BRIEF OF AMICUS CURIAE
	)	SALT LAKE CITY CORPORATION
)	
State of Utah, Defendant,	)	Case Nos. 19,108
	)	19,131
	)	19,138
)	
SALT LAKE CITY, a municipal)	
corporation of the State of)	
Utah; WAYSON CITY, a)	
municipal corporation of the)	
State of Utah; and PLEASANT)	
DAVE CITY, a municipal)	
corporation of the State of)	
Utah,)	
)	
Defendants-appellants.)	

INTEREST OF THE AMICUS CURIAE

This Brief Amicus Curiae is submitted in support of the defendant-appellants by Salt Lake City, a municipal corporation of the State of Utah.

Salt Lake City and Salt Lake County settled a similar lawsuit in 1977 by stipulation. Under this judicially accepted disposition, the County acknowledged that it accepted the operation and maintenance of the jail as a county-wide financial responsibility. The ultimate decision in the above captioned case could greatly affect the interest of Salt Lake City and its taxpayers in such a judicial modification of this previously stipulated liability by altering the legal premises upon which it was

based. Therefore, this Brief is not intended to get into the ramifications of the issue of the relationship between urban and rural components of Utah.

DISPOSITION IN DISTRICT COURT

By action filed in the District Court for Utah County, the Court (Judge Sorensen) awarded plaintiff's summary judgment. That decision held that Utah cities have a legal duty to reimburse county government for the costs incurred in the incarceration of municipal ordinances in the Utah County jail, under public law or implied contract.

ISSUES

The issues before the Court in this case are as follows:

1. Did the Fourth District Court err in concluding, as a matter of law, that Section 10-8-58 Utah Code Annotated 1953 (Utah Municipal Code) requires cities to share county jail costs?
2. Did District Court err in imputing to counties the power to make financial assessments or impose fees against cities under principles of unjust enrichment?
3. Did the District Court err in imputing a financial liability upon cities contrary to explicit statutes restricting budgetary and contractual authority of cities?
4. Did the District Court Sorensen err in concluding, as a matter of law, that incarceration by the county sheriff, of persons convicted under municipal ordinance, constituted a legal duty on cities?

5. From the above and the factual development below, that the County is not to rely on, upon which to rule on issues involving the County's financial relationships and the way in which the County is to spend their funds.

6. What is the lower court's findings of law and fact adequate to support its decision?

4. FINDINGS OF FACTS

The facts, as set out to the within concise brief, are as follows:

1. The County Commissioners have enabling power to operate the County Jail and have the right to use the County's jail facilities with the consent of the County Commission, subject to the conditions imposed by law. 10-3-58 Utah Code Ann., 1953.

2. State law specifically requires the sheriff to keep a "house of jail" for detention of persons: (a) charged with a crime and awaiting trial, (b) for persons committed by authority of law, and (c) for confinement of persons sentenced to imprisonment upon conviction of a crime. 17-22-4(2), (3), (4) Utah Code Ann., 1953. It further specifically requires that: "The sheriff must receive all persons committed to jail by authority of law, and see that they are provided with necessary food, clothing, and shelter." 17-22-8 Utah Code Ann., 1953; and Sec. 17-22-45 U.C.A. for County enabling power to construct County Jail. 17-22-3 Utah Code Ann.

3. The County is to be responsible for the costs of such operation of the County Jail.

incarceration are directed to: "The . . . of the county treasury," except for three enumerated exceptions, and in this case. Sections 17-15-17(11), 17-22-8.5 U.C.A., 1953; see also; §17-22-9 U.C.A., providing for reimbursement for housing federal prisoners; §17-22-8.5 U.C.A., providing for reimbursement for housing state felons; and §17-22-10, compelling civil process detainees from county duty, unless payment is by party issuing process.

4. No State law requires Cities to pay for County jail incarceration of misdemeanants charged under City law. Rather, the applicable law says that it is a County financial obligation to pay: "The necessary expenses of the sheriff . . . , and all other expenses necessarily incurred by the sheriff and his deputies in the performance of the duties imposed upon them by law." §17-15-17(11) Utah Code Ann., 1953.

5. Utah is a broadly divergent state with a mixture of essentially urbanized counties and those whose towns and cities are widely separated in rural counties. The enabling power given to Utah municipalities and counties is read in that factual context; the application of enabling powers in a rural setting need not be forced on an urban one, where it may make little or no sense. State v. Hutchinson, 624 P.2d 1116 (Utah, 1980).

6. An isolated Utah municipality may have need for a separate jail facility maintained through its own financial resources, where it is not close to the county seat. Also, a

6. Many are finding it difficult to maintain control over a jailing process, particularly where previously it had its own Justice of the Peace and district court. However, in a highly urbanized county, like Salt Lake County, problems in the political subdivision of Utah are not as acute as in another. Fixing costs and local responsibilities for their payment are often unclear. For example, a truck driver may have been drinking at a bar in an unincorporated area and is now driving through a municipality on his way home to another town, city or unincorporated area.

7. Liquor, theft, code enforcement, health issues, public education and most other problems have complex political, social and economic interrelationships that are, at least, countywide in scope and another who is the apprehending jurisdiction. This fact is more apparent in highly urbanized counties like Salt Lake and is legislatively recognized as evidenced by the legislature converting City Courts to State designed and operated circuit ones. (Judicial Knowledge; cf. §78-4-32 Utah Code Ann. 1953 (Repl.Vol.9A, 1983 Pocket Supp.).

7. Salt Lake County is a first class county of the State. Section 17-16-13 Utah Code Ann., 1953.

8. County governments collect taxes on a county-wide basis and finance county wide services from its general fund. However, in a highly urbanized area like Salt Lake County many municipalities are of the opinion that no liability exists; that is, county-wide taxes are not assessed to fund or subsidize municipal-type services.

services provided solely to a municipality, and not exclusively to its residents. For example Salt Lake County Sheriff's 1983 budget is a general fund item,¹ but that office provides virtually no service to citizens, except civil process and the operation of the jail.

In view of a municipality's expense in providing separate police force, the statutes requiring jail services to be paid from the county treasury, together with §17-34-1 et seq. U.C.A. 1953 are seen as the legislature's attempt to address the complex financial and political interrelationships in urbanized counties and address "double taxation" inequities. Salt Lake City v. Salt Lake County, 550 P.2d 1291 (Utah, 1976) (double tax); Salt Lake County v. Salt Lake City, 3rd District Court Case No. 242664; Salt Lake County Sheriff Budget, Appendix A-1.

9. In Salt Lake County (like the case at bar), these frictions and competing political views on the role and function of county government produced a lawsuit over the duties of the County to finance a "common" jail. Filed in 1977, this suit spanned four years of contest and collaterally involved nearly all municipalities in the County. At one time, the County issued an order refusing to receive City misdemeanants, unless payment arrangements were made; later, they retreated in face of complex

¹In 1984 Sheriff Patrol's \$7,768,543 was included in general fund, see Appendix A-1, but jail remains in general fund according to Salt Lake County budget.

and political entities. (Salt Lake County v. Salt Lake City, Id.)

10. The aforesaid dispute was resolved in a Stipulated Judgment of Settlement. In partial consideration of the County's legal duty to operate the jail and receive persons charged under municipal ordinances, without charge, the City dismissed counter claims in excess of \$1,400,000, transferred title to land and buildings it owned for jail purposes and gave a 30 year (rent free) lease to other property. This stipulation specifically states that Salt Lake County, "recognizes and accepts as a county-wide responsibility the care of persons incarcerated in the county jail." (Stipulation and Order in Third District Court Case No. 242664, Appendix A-2).

11. Since at least 1971, some 13 years, Salt Lake County has assessed and paid for the incarceration of all misdemeanants housed in the jail apprehended under ordinances of cities and unincorporated areas within the County. Id.

12. Over the years Utah County, has housed prisoners in its jail, convicted of municipal ordinances. This was not done pursuant to any written agreement; however, until 1977, appellant cities had paid for these costs.

13. Salt Lake City is the capitol city of the State and the core city of urbanized Salt Lake County. It views many of many criminal and criminal problems, resulting in misdemeanor and city, as county-wide ones which merely manifest themselves

within City boundaries. Constitution requires only one-third of the assessed value of Salt Lake County and having already been paid for 51% of the jail's construction costs, it vests the county-wide maintenance of the jail for all felons and misdemeanants as a proper County function. (Stipulation and Record in Third District Case No. 242664; see Appendix A-2.)

14. Salt Lake City is concerned that Salt Lake County is attempting to vitiate its stipulated settlement, sub silentio, by appearing as amicus counsel for the Association of Utah Counties. (Amicus Brief of the Association is represented solely by Salt Lake County Attorney's office).

ARGUMENT

POINT I

UTAH STATUTES EXPLICITLY DIRECT COUNTIES TO
PAY ALL EXPENSES FOR HOUSING PRISONERS
COMMITTED TO THE COUNTY JAIL UPON CONVICTION
OF CITY ORDINANCE VIOLATIONS.

A legislative enactment should not be applied other than in accordance with its literal wording unless it is so unclear as to be wholly beyond reason, or inoperable, or it contravenes some basic constitutional right.² Utah statutory law, without ambiguity, imposes the duty on the County to receive and provide for all violators, regardless of the committing jurisdiction and excepting only three classes of prisoners. It provides:

"The sheriff must receive all persons committed to

²Gord v. Salt Lake City, 20 U.2d 138, 434 P.2d 149 (1967).

...shall be provided with food, clothing and bedding . . . the same incurred . . . shall be paid out of the County Treasury . . ." 17-22-8 Utah Code Ann. 1953 (Emph. Vol. 2P, 1983 Pocket Supp.) (Emphasis added); see also 17-22-4(2), (3) Utah Code Ann. 1953 and Statement of Fact 1, 2 and 3, p. 12.

Utah Code Ann. gives three exceptions to that duty, the last one added in 1983. These provisions exclude: civil action detainees, state felons and federal prisoners, each of whom are required to pay for the costs of incarceration of their prisoners.

This legislative intent that the County resources are to pay jail costs is again stated in the statute that requires the county sheriff to keep a "common jail"; it provides:

"The common jails in the several counties shall be kept by the sheriffs, and shall be used as follows:

"(1) . . .

"(2) For the detention of persons charged with crime and committed for trial.

"(3) . . .

"(4) For the confinement of persons sentenced to imprisonment therein convicted of crime." 17-22-4 Utah Code Ann. 1953 (Emphasis added).

Lastly, the law clearly provides that the expenses of the incarceration of such criminals are a County financial obligation; it states:

"The following are county charges:

. . .

"(3) the costs necessarily incurred in support of persons charged with or convicted of crime and

committed therefore to the county jail.

. . . .

"(11) The necessary expenses of the sheriff and his deputies incurred in . . . official expenses arising in the county, and all other expenses necessarily incurred by the sheriff and his deputies in the performance of the duties imposed upon them by law." 17-15-17 Utah Code Ann. 1953 (1977 Amendment Repl.Vol.28 1983 Pocket Supp.) (Emphasis added).

Read together, these statutes, without qualification, provide that the sheriff shall keep a "common jail", receive "all" persons in that jail committed by competent authority and (with three specifically enumerated exceptions, not applicable to the case at bar) and pay the costs of the jail's operation.

Of interest is the fact that no exception exists which requires payment by cities, even though it was amended in 1983 to provide that the State would pay for State felons incarcerated in county jails. Importantly, there is no language limiting that obligation to those offenders apprehended in state felony matters or only to those arrested on county ordinances.

Thus, Title 17 of the code dealing with county government clearly requires that misdemeanants may be incarcerated in the "common" county jail, at county expense, if surrendered there by competent authority. The statutes are clear and should, therefore, be applied as stated.

POINT II

THE DISTRICT COURT ERRED IN CONCLUDING THAT
STATE LAW REQUIRES CITIES TO SHARE COUNTY
JAIL COSTS.

The District Court did not apply the clear wording of the Utah statutes. Instead, it concluded that Utah cities have no obligation to share county jail expenses. The Court based its conclusion in part on Section 10-2-18 of the Utah Municipal Code which states as follows:

"[C]ities may establish, erect and maintain city jails, houses of correction and workhouses for the confinement of persons convicted of violating any city ordinances, make rules and regulations for the government of the same, appoint necessary jailers and keepers, and use the county jail for the confinement or punishment of offenders, subject to such conditions as are provided by law, and with the consent of the board of county commissioners."

It is obvious from the foregoing that cities are not obligated to use county jails. Rather, they have statutory enabling power to build, operate and maintain jail facilities if they choose. As discussed earlier, the law is explicit that if city jails are not constructed, persons convicted under city ordinances are to be confined in the county jail.

An issue is raised as to whether the two caveats contained in the above statute concerning "conditions imposed by law" and "consent" give the County authority to impose costs or charges on cities as a condition precedent to incarceration of city ordinance violators. An answer, of course, turns on legislative intent as appropriately determined by legislative history, pertinent statutory language, other related enactments, and canons of statutory construction. When applied, these help demonstrate

that there exists no legislative intent to require cities to share county jail costs.

1. City enabled power to incur a liability and incur a financial obligation to pay for the County's "county jail."

It must be acknowledged that the State of Utah is diverse in its composition. Large areas are rural and sparsely populated, with cities and towns widely separated and distant from county seats and county jail facilities. Others, like Salt Lake County are almost totally urbanized, with little separation between cities and virtually no distinctions between unincorporated and incorporated areas.

Salt Lake County, with almost one-half of the State's total population,³ has interdependencies and interrelationships which make separation of the social, economic, political and demographic aspects of criminal activity by City/County components, virtually impossible. For example, the arrest and incarceration of a County transient for public intoxication or some other misdemeanor occurring within City limits could as reasonably be construed to be a County problem merely evidencing itself in the core area of the County, Salt Lake City, as that of a City problem, solely the financial responsibility of City residents.

Likewise, the arrest of a resident of an incorporated Salt

³1980 decennial census shows Salt Lake County to have a population of 619,066 persons and the State to be 1,751,137. By comparison, Utah County only has a 1980 population of 213,136.

city's duty for drunk driving, while traveling through Salt Lake County, is not conflicting here to a different city need not be viewed, particularly, as solely that Salt Lake's responsibility to pay for transportation costs.⁴ The contrary may, arguably, be true for a city located in a sparsely populated rural county.

These differences between such areas of the State vis a vis, the enabling powers of local units of government, has been recognized by this Court. State v. Hutchinson, 624 P.2d 1116 (Utah, 1980). Thus, it is respectfully submitted that the

enabling power given to cities in Title 10 to build and maintain a jail is not compulsory. Rather, it merely recognizes that a city (particularly one located at a distance from a county seat or for various other political reasons), may need or want its own jail.

It may want it for convenience. It may need it to avoid transportation costs or for security reasons. It may, because of the uniqueness of its location or situation, view its

⁴Contrarywise, note that the Utah legislature apparently recognizing, this fact through its funding allocation of moneys for controlling drunk driving. This statute provides that cities get liquor money for prosecution and counties "FOR COURT FINTE." 32-1-24 Utah Code Ann. 1953 (Repl.Vol.4A, 1983 Pocket Supp.). Also note the change of court financing, then under State took 100% of the money that previously went to cities from the City Court system (except 50% bail forfeit) to the Circuit Court system. 78-4-22 Utah Code Ann., 1953 (Repl.Vol.9A, 1983 Pocket Supp.). However, jurisdictions which retained justice courts keep 50% and the balance is submitted to the county treasurer. 78-5-3 Utah Code Ann., 1953 (Repl.Vol.9A, 1983 Pocket Supp.).

misdemeanants as solely the City's responsibility. Therefore, no inference can be drawn from this judicial authority to infer that the County is excused from the duty to receive and pay the cost of housing prisoners expressly provided under Title 17, simply because the arrestee is charged with municipal ordinance violation.

2. No conflict exists between Titles 10 and 17 and none need be judicially created.

The statutory responsibility for jail maintenance, assigned to the County, must be read in context of the 1898 statutory provision that cities have enabling power to construct their own jails and may use county jails with the "consent" of the county. See 10-8-58 Utah Code Ann. 1957 quoted supra at p. 11. If "consent" means unlimited right of refusal, as Utah County suggests, it appears in direct conflict with the directives of Title 17, quoted in Point I. One issue for this Court, then, is to determine legislative intent regarding the provisions of Title 17 and the "consent" language in Title 10.

Standard principles of legislative construction direct that where there exists two facially conflicting statutes, it is the court's duty to construe them, if possible, to give each a meaning that will render both operative. Stahl v. Utah Transit Authority, 618 P.2d 480 (Utah, 1980).

The "consent" language of Title 10 can reasonably be read, as the term is in other contexts, to comply with possible

relative intent. That is the "common" county jail must be viewed, particularly with reference to meeting federal and constitutional requirements in reference to over-crowding, etc. The incarceration of misdemeanants, on occasion, may need to be related to accommodate the larger public interest, of jailing the serious offenders. Giving the County Commission power to manage the jail through "consent" control gives meaning to the duties of Title 17 for County payment and, also, meaning to Title 10, particularly if the Court construes the "consent" language to be modified by the implied term: "which cannot be unreasonably withheld."

Thus, Title 10 "consent" language and the clear directive of county maintaining and paying for the "common jail" in Title 17 cases, can be accommodated, without conflict. This interpretation seems particularly compelled in light of the express language in Section 10-8-58 U.C.A. that a city's use of the common county jail was subject to the other conditions "imposed by law", here respectfully submitted to include the county financing obligations of Title 17.

An analogy may be drawn to similar language in real estate dealings. In rental arrangements or contract sales, it is common to give the landowner the right to "consent" before a tenant is substituted, premises sublet or a sales contract assigned. The courts have uniformly construed these requests to not be without limit; rather, they are read to mean that "consent" may not

"unreasonably be withheld," in the context of a person's legitimate interest. Additionally, a landlord can, for the most part, charge the purchase price or charge the tenant's interest with such "language," but he can verify the creditworthiness, responsibility or otherwise determine if the new occupant will honor the contract terms and not damage the premises. *Park v. Park*, 133 P.2d 586 (Ida., 1981) citing: *Declaration of Property* (Second) §15.2(2) (1977); 55 *Calif. Bar J.* 108 "Calif. Landlord's Arbitrary Refusal to Consent to an Assignment" (1980).

Likewise, in this case it is respectfully submitted that the legislature clearly intended that the County could maintain a "common jail" and house, at its expense all persons brought by a committing authority. However, the County may not restrict that access for detainees or incarcerated persons for other than good cause shown. That is, the County could not withhold "consent" unreasonably and could not violate its otherwise delegate responsibility to finance the jail from its countywide treasury.

Such a construction renders all of the statutes operable and not to be in conflict. As such, the construction now urged fulfills the express legislative intent to create "common jails" operated and funded by the County.

3. Legislative intent is shown by latest legislative acts.

A standard canon of construction provides that where two legislative acts are in apparent conflict, the later supersedes the

1. Generally, the literal expression of legislative intent.

2. Public Emp., 433 P.2d 146 (Utah, 1969); Public Emp., 433 P.2d 146 (Utah, 1969); Public Emp., 615 P.2d 657 (Cal., 1980); Pride, 472 P.2d 385 (Utah, 1977).

In 1972, for example, the legislature amended the law concerning the County's responsibility for payment of the education of felons in 1983; in doing so, it added a new Section 17-22-8.5 and amended Section 17-22-8. These amendments increased the duty of the County supporting state felons by free education in county jails. However, it is significant that no amendment was made at this same time for city misdemeanants.

Further, in 1977 the legislature amended Section 17-15-17, but even then it retained the broad language requiring counties pay for all jail inmates. See quote, supra at p. 9.

4. Statutes dealing with specific subject matter take preference over those dealing generally with same subject matter.

The rule in Utah regarding interpretation of statutes is the same as in other jurisdictions. A preference for specific subject matter must be given over that more general in nature. The courts will also attempt to construe apparent conflicting statutes, on the same subject, so as to achieve harmony and uniformity. This Court has observed:

"... statutes relating to a specific subject ... should be given preference over those dealing generally to subject ..." Cannon v. Utah, 611 P. 1207, 1209 (Utah, 1980).

"... in the operation of two statutory

provisions is in conflict that provision which is more specific in its application will prevail over that which is more general." Willett v. Clark Clinic Corporation, 409 P.2d 934, 936 (Utah 1960).

"It is our duty to construe a statutory provision so as to make it harmonious with other statutes relevant to the subject matter. Stahl v. Utah Transit Authority, 618 P.2d 480, 481 (Utah, 1980).

Regarding the duty of the Court to determine legislative intents Sutherland observed:

"Modern cases also indicate that the courts today, rather than getting their inquiry by considering only the language of the act, are coming more and more to consider other indicia of intent and meaning from the start. The literal interpretation of words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read and so to conform with the spirit of the act.

'While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and the obvious purpose of the law should not be sacrificed to a literal interpretation of such words.' Thus words or clauses may be enlarged or restricted to harmonize with other provisions of the act." Sutherland on Statutory Construction (4th Ed., Vol. 2A) §46.07 at p. 65-66 (Emphasis added).

This Court summarized these principles in Osuala as follows:

"If there is doubt or uncertainty as to the meaning or application of the provisions of an act, it is appropriate to analyze the act in its entirety, in the light of its objective, and to harmonize its provisions in accordance with the legislative intent and purpose. A further basic rule to be applied in connection therewith is that specific provisions prevail over more general expression." Osuala v. Alpha Life & Cas., 608 P.2d 242, 243 (Utah, 1980) (Emphasis added).

There are statutes which specifically make jail expenses a county charge.⁵ On the other hand, Section 10-8-58 deals with the same subject of jails, but contains only the generalized phrase: "consent of the commissioners." It is respectfully submitted that the general phrase must yield to the specific directive for county-wide financing, under these principles of statutory construction.⁶

It is also submitted that these amendments, particularly when viewed in the context of the highly publicized Salt Lake County Jail suit (which dragged on over four years and was finally resolved with the County imposing a county-wide mill levy increase, supported by city mayors to fund the "common jail")⁷ demonstrates that there was no legislative intent to require misdemeanants apprehended by municipal authorities to be incarcerated in county jails, only at the expense of the

⁵See Statement of Facts Nos. 2, 3, and 4; Argument at Point I, supra.

⁶Also note that to argue that the "consent" phrase gives the power to impose charges the County must take the position that it has implied powers for such an assessment because it is not explicitly granted. Such powers of taxation cannot be inferred, but must be expressly granted. See discussion in Point II, supra.

⁷See Salt Lake County v. Salt Lake City, 3rd District Court Case No. 242664; however the fact of political consensus for the tax increase is not of record in the instant case. It is, however, a demonstrable fact; amici submits it as a profer and refers the Court to Point II, infra regarding the inadequate record for a decision adverse to Salt Lake City's interests.

apprehending municipality. Further, also, the intent to require county-wide funding is manifest by every recent legislative act, including State formulas to dilute fines for drunk driver incarceration.⁸

The legislative intent as manifest in Title 17 is clear: Utah counties must establish, maintain and operate a "common jail." This facility has a duty to accept misdemeanants convicted under municipal law and care for them through County-wide financing resources. Utah municipalities may (for their own reasons) provide their own jail facilities or use the common county jail. If they use the county facility, they must submit to a County's reasonable conditions or limitations concerning procedures and priorities, which condition do not include the payment of incarceration costs. The County's control is limited to reasonable conditions of procedure, controlling population and complying with legal and constitutional restraints.

POINT III

THE DISTRICT COURT ERRED IN IMPUTING TO
COUNTIES THE POWER TO MAKE FINANCIAL
ASSESSMENTS OR IMPOSE FEES AGAINST CITIES
UNDER PRINCIPLES OF UNJUST ENRICHMENT.

The County argues that, while Title 17 makes it mandatory upon them to pay these costs of maintaining the "common" County jail from the general County treasury, the word "consent" contains the implied power of the County to tax the cities to

⁸See discussion of legislative changes in Note 4, *supra*.

to the County Treasury for City detainees. That argument would be persuasive, if counties had the implied power to tax; but that position is not the case and has uniformly been rejected. A good summary of the law is as follows:

"... that the 'power to levy a tax is never implied, but must directly and specifically be granted.'" Maricopa County v. Southern Pacific Railway, 162 P.2d 619 (Ariz., 1945).

Antieau correctly summarized this law as follows:

"Counties have NO inherent power to tax . . . [T]he power to tax is never implied, but must be directly and specifically granted. 4 Antieau, Local Government Law, County Law, "County Taxation," §41.00 at 263 (1983) (Emphasis added).

While the counties may rely upon the Utah authority of Hutchinson, supra, it must be remembered that this is strictly a "police power case." It should not be extended so as to imply powers of taxation which do not exist by explicit legislative authorization.

Alternatively, Utah County asserts that the proposed charge for jail inmates is not a tax, but a "fee" for service.⁹ However, this position fares no better because Utah law clearly prohibits one political subdivision from charging such fees or charges for performing governmental services to another such entity, without specific legislative authorization. The law states that no official of the County may perform his duties, unless the fees prescribed for that service are first paid;

⁹ See page 6 Respondent's Brief.

however, it expressly prohibits fees from cities. It provides in pertinent part:

" . . . provided, that no fees shall be charged . . . any subdivision [of the State], or any public officer acting therefore . . ." 21-2-2 Utah Code Ann., 1953 (Emphasis added).

This Court has had occasion to interpret this statute in a case very similar to the one at bar. Here, the County Sheriff attempted to force Salt Lake City to pay fees for service of civil process. The only difference between that case and this one was the stronger legal position in the former that there existed a statute specifically setting fees that a sheriff could charge for making service of process;¹⁰ whereas, in the instant case, there is no such authorization. However, the Court in construing the above quoted statute held that the legislature intended that no fees should be charged between cities and counties for official acts. It held:

" . . . the purpose of the statute is to exempt public entities from paying such fees, . . . [T]he phrase, 'or subdivision thereof' refers back to and modifies both the state and county, and thus exempts each of them and their subdivisions (including cities) from the payment of such fees." Salt Lake City v. Salt Lake County, 568 P.2d 738, 741 (Utah, 1977) (Emphasis added).

Therefore, it is respectfully submitted that the lower court erred in ruling that there can be some implied contract for a city to pay for the official duties of the county and its

¹⁰21-2-4 Utah Code Ann., 1953, as amended.

sheriff. Further, it erred in ruling that the term "consent" in §10-8-58 Utah Code Ann., 1953 can be judicially expanded to "imply" a right in the sheriff to charge a city for performing statutorily mandated functions.

To rule otherwise, of course, would create unrestricted billing wars between political subdivisions of the state, as each claimed they were providing benefits to the other by, for example, police back-up or direct support in crime detection, suppression or apprehension. The statute and wise judicial interpretation thereof was to require the State, through its subdivisions, to do the State's business of serving the public interest; it was to do so without inter-agency billings and charges, unless specifically directed otherwise.

Therefore, the lower court erred in not considering this law and policy. It should be reversed and this Court should again reaffirm that the political subdivision of this State should perform their legislatively assigned tasks, without inter-agency billings. It should, further, reaffirm its statement that such changes should be directed to the legislature and not through the courts. Id. at p. 742.

POINT IV

THE DISTRICT COURT ERRED IN IMPUTING A FINANCIAL LIABILITY UPON CITIES CONTRARY TO EXPLICIT STATUTES RESTRICTING BUDGETARY AND CONTRACTUAL AUTHORITY OF CITIES.

The trial court (Judge Sorensen) decided for respondent, Utah County, by relying on two authorities: the Utah Code

Annotated Section 10-8-58 and Grand Forks County v. City of Grand Forks, 123 N.W.2d 42 (N.Dakota, 1963).

Section 10-8-58 states the following:

"They [cities] may establish, erect and maintain city jails, houses of correction and work houses for the confinement of persons convicted of violating any City ordinances, make rules and regulations for the government of the same, appoint necessary jailers and keepers, and use the county jail for the confinement and punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners." (Emphasis added).

The lower court concluded that, since 10-8-58 establishes the permissive right of cities to "establish, erect, or maintain a city jail," they must do so or pay the county for the use of their jail facilities in lieu of erecting their own jail.¹¹

The lower Court, however, failed to follow the rule as stated in State v. Hutchinson, Utah, 624 P.2d 1116, which recognizes because of the differences in population, wealth and other factors that each municipality may exercise enabling power differently. Further, the lower court (without citation of authority or articulated reason), converted a "may" into a "shall" maintain a jail by imposing costs on the apprehending municipality. In doing so, the lower court failed to appropriately give consideration to other explicit provisions of the code which imposes jailing costs of the "common" county jail

¹¹District Court opinion, p. 3.

in the county.¹²

Further, in reaching its conclusion, the lower court and respondents relied chiefly on a 20 year old North Dakota case, Grand Forks County v. Grand Forks City, supra.¹³ This case is a decision imposing municipal liability for jailing costs based on implied contract. However, the Grand Forks opinion is confusing because it does not clearly indicate whether the contract was implied-in-fact or implied-in-law.

Likewise, the trial court's decision in the present case is equally unclear because it relied on a case which improperly failed to explain its rationale and did not make a finding-of-law on whether the court found a contract implied-in-fact or one implied-in-law. As stated in Williston on Contracts: "The expression 'implied contract' has given rise to confusion in the law."¹⁴

The frequent confusion noted by Williston over "implied contract" is apparent and is classically illustrated by the Grand Forks opinion. However, before examining that opinion and its irrelevance to the present case, it is helpful to first articulate the correct meaning of implied-in-law and implied-in-

¹²See discussion of all relevant sections and legislative intent in Point I, supra.

¹³See respondents Brief at p. 8 and the District Court opinion at p. 3.

¹⁴Williston, A Treatise on the Law of Contracts (3rd Edition Vol. 3 p. 9).

fact contracts.

An implied in law contract is often referred to as a "quasi contract" or an obligation and based on "unjust enrichment." This kind of obligation requires one party to repay another for benefits conferred, even if neither party intended to enter into any agreement. Williston states: "Quasi contractual obligations are imposed by law for the purpose of bringing about Justice without reference to the intention of the parties."¹⁵

Thus, while the contract implied-in-law is nothing more than a legally imposed duty to compensate another party for benefits unjustly received, a contract implied-in-fact is an actual contract inferred from the conduct and acts of the parties. Instead of arriving at an agreement by oral or written words, the parties to a contract implied-in-fact imply their agreement by their acts and conduct.

As stated above, the Grand Forks court alluded to a contractual obligation implied-in-fact as well as a quasi contractual relationship based upon unjust enrichment. One of the certified questions before the Grand Forks court was whether the "defendant city impliedly agreed to pay".¹⁶ This is an apparent implied-in-fact issue. This legal theory and analysis is supported in another allusion by the Court to the notion of a

¹⁵Id. at p. 10 (Emphasis added).

¹⁶Id., p. 44.

contract implied-in-fact, the Court stated: "If the county is to recover . . . it must be on the basis of an implied agreement"17

However, the court's confusion in analysis is apparent from a conflicting declaration that a municipality may: "be held liable on an implied agreement . . . upon the principle of unjust enrichment."¹⁸ Throughout the opinion, the court alluded to the "benefit" to the city on element of quasi contract; thus, confusing and obscuring the legal basis for its ruling. Although it alluded to both types of implied contracts (in-fact and in-law), the Grand Forks court never finally specified the nature of the implied contract it found actually existing in that case and never referenced a factual record to justify the use of alternative theories.

Thus, aside from the fact that there is no similar legislative mandate in North Dakota as in Utah for the county to operate a county jail,¹⁹ the case is of little assistance and of no precedent value to this Court. This fact is true because it is so poorly reasoned. Further, the lower court based its decision on Grand Forks, without analysis, and this decision

¹⁷Id., p. 45 (Emphasis added).

¹⁸Id., p. 46.

¹⁹See discussion of four separate statutes imposing on the County the financial obligations of operating a "common" jail and receiving misdemeanants charged under City ordinance, at County expense in Point I, supra.

leaves unanswered the question of whether a contract was found to exist for a reasoned appealable review.

Such liability and collection have also been levied as early as 1898 for theoretical and legal analyzing purposes. The Federal Circuit Court for the District of Utah declared:

"It does not promote clear thinking to embrace in one classification two things so essentially different as an obligation based on the consent of the parties and one imposed by law."²⁰

Williston on Contracts states:

"It is important to distinguish between quasi contracts and contracts implied in fact, not only because it is desirable for clear theoretical analysis, but also because of the difference in the legal relations which may be involved under a true contract and those imposed by law under the name of quasi contract."

It is respectfully submitted that it was reversible error for the lower court to fail to provide adequate legal basis for its ruling and clearly articulate those in its finding to permit a reasoned appealable review. Rule 52, Utah Rules of Civil Procedure; Romrell v. Zions First National Bank, N.A., 611 P.2d 392 (Utah, 1980). However, more importantly, it must be noted that the lower court is in error (regardless of whether it found a contract implied-in-fact or a contract implied-in-law), because neither theory is supported by the facts of this case.

Generally speaking, "to make out an implied-in-fact contract what must be shown is 'mutual intent . . . manifested by

²⁰Nevada Company v. Farmers' Inv., 89 P. 164 (CC D. Utah 1898).

particular facts and attendant circumstances.'" Matter of Estate of Orris, 622 P.2d 337 (Utah, 1980), quoting Gleason v. Salt Lake City, 74 P.2d 1225 (Utah, 1937). With regard to municipalities, however, this Court has made clear the rule that proposed contracts have no binding affect, until they are formally approved by the city. Thatcher Chemical Company v. Salt Lake City Corporation, 445 P.2d 769 (Utah, 1968).

In another case, this Court rejected claimed implied-in-fact contractual claim of the plaintiff against a municipality where compliance with statutory prerequisites of executed written contracts was not met; it stated:

"Additionally, plaintiff's theory (implied contract) must fail since no contractual liability can be created without compliance with the previously cited ordinances [ordinances governing the method of contracting with the city]." Rapp v. Salt Lake City Corporation, 527 P.2d 651, 654 (Utah, 1974) quoting Thatcher Chemical Co. v. Salt Lake City Corp., 21 Utah 2d 355, 445 P.2d 769 (1968).

Under Utah law, to be a valid contract of a city, it must have the approval of the Mayor or executive officer, be in writing and countersigned by the City Recorder, and be within budgeted appropriations. These formalities are explicitly required, unless it is a routine utility type expense or otherwise authorized, under City ordinance, for contracting and purchasing. Otherwise, no contractual liability, expressed or

implied-in-fact, will be found to exist.²¹

Of course, any rule to the contrary is pregnant with dangers to the taxpaying public. Government is not a business or a profit venture, with its market-place checks and balances. Rather, it is an agency of the people to perform the commonwealth services and functions. Would be suppliers of services or goods are charged with a knowledge of State law and City ordinances, designed to protect the appropriation and spending of public resources through a formalized contracting process.

These procedures assure a recordable transaction which is subject to public scrutiny. It also prevents manipulation, by design or otherwise, by municipal officials or vendors and allows a verification that budgeted appropriations are sufficient to pay for the services ordered.

The suggestion of the lower court is that Rapp is not good law and that, contrary to state and city budget and contracting legislation, implied contracts are enforceable cannot and should not be allowed to stand. Thus, to the extent that Grand Forks is

²¹See §10-3-1219(10) Utah Code Ann., 1953 (Repl.Vol.2A, 1983 pocket supp.) for council manager cities like Salt Lake giving duty to mayor or deligee to execute contracts within budgeted appropriations; §10-6-13 U.C.A. requiring recorder counter signatures; §10-6-158, 159 U.C.A. for limited exceptions when adopted standards are in city law; §10-6-123 U.C.A., making it illegal and void any expense or encumbrance being in excess of budgeted appropriations; and Art. XIV §3 Constitution of Utah. Also, although not part of the record of this case, Salt Lake has ordinances which prohibit the creation of implied contracts, specific contracting formalities are required as acknowledged as binding in the Rapp decision.

Based on an implied-in-fact contract, the lower court's reliance on that case is clearly in error.

The other possible basis of municipal liability in Grand Forks is that of implied-in-law contractual liability, quasi contractual liability or the theory of just enrichment (three names for the same theory). If quasi contract is, in fact, the basis of the Grand Forks holding and correlatively, if quasi contract is the basis for the trial court's decision in the present case, the trial court is likewise in error. No cause of action based on quasi contractual liability may be brought against the city "without fulfillment of the requisite formalities" necessary to create a binding contractual obligation with the City. Rapp v. Salt Lake City, supra at p. 655. This merely is an extension of the rule governing implied-in-fact contracts discussed in Rapp.

After rejecting plaintiff's implied-in-fact theory for failure to comply "with the previously cited ordinance," the Rapp court acknowledged that "in effect, plaintiff's argument on appeal is directed towards forcing a quasi contractual obligation." Id. p. 654. This Court, then, expanded upon the rules governing quasi contracts with respect to municipalities, stating that they are imposed "by the law for the purpose of bringing about justice, without reference to the intention of the parties." Id. Further, the court stated:

"Such obligations are not true contracts but are based on unjust enrichment or restitution. The

promise is purely fictitious and is implied in order to fit the actual case of action to the remedy. The liability exists from an implication of law that arises from the facts and circumstances independent of consent and presumed intention. Where the facts indicate a duty of the defendant to pay, the law imputes to him a promise to fulfill that obligation." Id. p. 654-655.

The court, however, recognized that a quasi contractual claim, being a proceeding "at law for restitution," is, in the final analysis, still an action of contract. Id. at 655. With this in mind, the court rejected the plaintiff's quasi contractual claim. The court ruled:

"Thus again, plaintiff encounters the statutory requirements which mandate his contractual obligation is void, without the requisite formalities." Id.

Thus, with regard to the theory of quasi contract, the trial court erred in imposing liability upon appellants based on the Grand Forks case.

POINT V

THE DISTRICT COURT ERRED IN CONCLUDING THAT THE INCARCERATION OF CONVICTED CRIMINALS BY THE COUNTY SHERIFF UNJUSTLY BENEFITED CITIES.

- A. CITIES AND COUNTIES ARE BOTH AGENTS OF THE STATE, HENCE THEORIES OF UNJUST ENRICHMENT DO NOT APPLY.

Before considering any argument that it is unfair for the state legislature to require counties to provide services to municipalities, it must be remembered that both counties and cities are mere agents of the same principal, namely the state itself. Salt Lake City v. Salt Lake County, 568 P.2d 738 (Utah,

1977). Essentially, the present case is nothing more than a claim that the state of Utah, by and through its agents, Utah County, has unjustly enriched itself, by and through its agents Green, Payson, and Pleasant Grove cities.

In State v. The Board of Commissioners, the Nebraska Supreme Court denied a fairness argument similar to the respondent county in the instant case. It ruled that the county in question was required, by law, to provide office space for personnel working in the city municipal court. The court then declared:

"It must be remembered that a county does not possess the double governmental and private character that the cities do. It is governmental only, and in that capacity acts purely as an agent of the state . . . While it is no doubt true that the legislature has not such transcendent and absolute power over these bodies that it can apply property held by them to private purposes or to public purposes wholly disconnected with the community embraced within their limits, still it is likewise true that a purely public corporation, like a county, cannot acquire any vested interest that will preclude the legislature from directing the application of all its property and rights to the performance of those governmental functions which pertain to the community embraced within the corporation . . . If it were otherwise, counties, instead of being agencies of the state for administering the government, would be petty sovereignties, to impede and defeat the state with claims of local interest in authority." Id. 18 N.W. 639, (Neb., 1922).

With regard to counties, the Utah Supreme Court similarly has stated:

"The county is a political subdivision of the state whose creation and powers and duties are derived from the constitution and statutory law." Cottonwood City Electors of Proposed Town v. Salt Lake County Board of Commissioners, 499

P.2d 270 (Utah, 1972).

A county is but an agent of the state and subservient to it. Salt Lake County v. Liquor Control Commission, 357 P.2d 488 (Utah, 1961). A county is a part of the state is subject to control of the legislature and has no rights or immunities which it may claim against the state, unless expressly so provided by the state constitution. Hansen v. Public Employment Retirement System Board of Administration, 246 P.2d 591 (Utah 1952). This Court has also repeatedly acknowledged that cities are also agencies of the state. See Salt Lake City v. Tax Commission of Utah, 359 P.2d 597, Salt Lake City v. Revenue Board, 124 P.2d 532, modified 127 P.2d 254, Nance v. Mayflower Tavern, 150 P.2d 773.

Regarding the power of the State to assign duties to its city and county agents this Court has held:

"The state government, in discharge of its functions, may . . . classify the counties and cities of the state and pay, for the purpose of augmenting the public good and welfare, treat both counties and cities as state agencies, and may even impose additional duties upon their officers or additional burdens upon the residents and taxpayers, and especially so when the latter have a special as well as a general interest in the thing the state is seeking to effectuate for the public good." Salt Lake City v. International Assn. of Firefighters Local 1645, 563 P.2d 786, 788 (Utah, 1977) quoting Salt Lake County v. Salt Lake City, 134 P. 560, 563 (Utah 1913).²²

²²In the 1913 case the court ruled that the city had to pay the expenses of housing city juvenile delinquents in the county detention home. However, the distinguishing factor in that case (footnote continued)

Thus, while the state may not direct Utah County resources to the benefit of cities in another county, it may certainly assign to the county the responsibility of maintaining a "common" jail and pay for incarceration costs of public offenders apprehended by municipalities residing within the taxing district of Utah County. There are merely assignments of responsibilities by the principal (the State of Utah) and cannot be the basis of a claimed "unjust enrichment" by one of that principal's own agencies. Such a claim assumes a false sense of autonomy and self-determination which actually is only vested in the State, itself.

This fact is illustrated in a recent suit brought by Salt Lake County against the Granite School District.²³ In this case, the County sought sums for property tax collections representing the purported actual costs, but in excess of those permitted by statute on an unjust enrichment theory.

The Court rejected Salt Lake County's unjust enrichment claim, it held:

"We have recognized the rights of the legislature to impose a duty upon city and county officers to collect taxes for purposes other than county

is the fact that the county was expressly entitled, by statute, to recover such expenses from the city. No such statutory provision exists in the present Utah Code Annotated which would entitle counties to recover expenses from cities for maintaining a county jail.

²³The Board of Education of Granite School District v. Salt Lake County, 659 P.2d 1030 (Utah, 1983).

purposes and to do so with or without compensation for the expenses incurred. (emphasis added) . . . It therefore was not error . . . find that Granite was not unjustly enriched despite the fact that in collecting and distributing tax apportionment for Granite exceeded the amount imposed by the statute and paid by Granite. On appeal to a question of equity cannot overcome the express provisions of our statutes on the subject." Id. at p. 1037 (Emphasis added).

This argument is similar in principle to that presented by the Respondent-County in the present case. Both the Granite School Board case and the present case present a fact situation where a county is providing a service under legislative mandate. In both cases, the respective counties complain that some other political subdivision of the State is benefiting from that county service and that the servicing county, in equity, should be paid differently than provided in statute.

However, as correctly held by this Court, a maximum of equity will not support Utah County's unjust enrichment claim. If Utah County is to collect from appellants, it can only be by the provisions of statute and not by any notion of implied contract, be it implied-in-fact or implied-in-law. As stated by the California Supreme Court:

"The general rule is that a public corporation [an apprehending city] is liable for prison expenses when, and only when, such liability is imposed by statute, and that in no case may a public corporation be held liable for prison expenses merely by implication." City of Pasadena v. Los Angeles Co. 258 P.2d 28 (Cal., 1953) quoting 72 C.J.S. "Prisons" §26 p. 909.

It is respectfully submitted that the State's directive that

...all costs of all prisoners committed by competent authority
in a county expense bars, as a matter of law, any unjust
enrichment claim by a county.

P. CITIES HAVE NOT BEEN UNJUSTLY ENRICHED SINCE
JAIL SERVICES HAVE NOT BEEN WRONGFULLY OR
ILLEGALLY APPROPRIATED.

The whole idea of quasi contract is more than just the
simple notion of enrichment. Rather, it one is of unjust
enrichment. C.J.S. states that rule as follows:

"No cause of action can lie in quasi contract
against one not shown to have been enriched
wrongfully at plaintiff's expense. And the mere
fact that a person benefits another is not of
itself sufficient to require the other to make
restitution therefor. The person receiving the
benefit is liable to pay therefor only if the
circumstances of this receipt or retention are
such that as between the two persons, is unjust
for him to receive it." 17 C.J.S. Contracts §6
pp. 572-573 (Emphasis added).

It may be argued that the County of Utah has aided
appellants Orem, Payson, and Pleasant Grove in their law
enforcement efforts; however, the factual record is absent as to
verify this assumption. It may just as well be argued that the
County was served by City apprehension efforts regarding county-
wide social and criminal problems.²⁴ However, for this point
that benefit to cities will be assumed arguendo. The issue, then
is whether the cities have appropriated the service wrongfully or
illegally.

²⁴ See discussion at Point II, supra.

Utah County has undoubtedly benefited by the cities' adoption of ordinances and prosecuting crimes such as driving under the influence and other misdemeanors which have saved the county dollars that they would have had to expend to prosecute the crimes, if the cities did not. It, also, should be remembered that although they may be prosecuted by city prosecutors, some of the prosecutions take place in the state courts (Circuit Court) and the sentences are imposed by state judges.

On balance it is reasonable to believe that the benefits to the counties, by having the cities apprehend and prosecute, outweighs the costs to the counties for the incarceration of these offenders. That assumption is just as reasonable as the one indulged in by the lower court (without factual development) that the apprehending city has been benefited. For example, it is generally recognized that the problem of drunk driving is a nationwide one; however, the brunt of apprehension and prosecution falls upon the cities. Illustrative of this fact is Salt Lake City's experience. In 1982-83 Salt Lake City prosecuted 1478 DUI's and for the same periods, Salt Lake County prosecuted approximately 637, less than half as many.²⁵

If the counties prevail, the cities as a matter of economic necessity, may be forced to repeal many criminal ordinances which are the same as the state laws. Thereafter, they can merely

²⁵See Appendix A-3 and A-4.

crime enforcement or cite offenders under state law and, thus, require the counties to bear all the costs of the prosecution and incarceration of these offenders. Not only is this likely to result in less enforcement, but in a diminishing of local control. In reality, nothing has been accomplished by such an artificial and forced assignment of "benefit" or "enrichment" to municipalities in apprehending such law breakers, as was done by the lower court.

Rather, the kind of benefit necessary to constitute "unjust enrichment" must be something that is a factually established benefit and the cities would not have a right to receive; that is, something which the law says ought to be paid for because appellant-cities were never meant to receive it otherwise. In other words, in the instant suit it must be shown that the county is not already under a legal duty to provide the services in question, no matter how beneficial they may be to appellants. There is no factual basis to show such a benefit to cities; to the contrary, it is clear that the County is compelled, by law, to provide the service.²⁶

If such a duty does exist, the counties' performance of that duty does not unjustly enrich appellants. Receiving something which they deserve as of right may constitute a benefit or enrichment to appellants, but such receipt does not constitute an

²⁶Point I and II, supra.

unjust enrichment. With respect to the latter, there is no contractual relationship between the city and the respondent.²⁷

Respondent-County seeks to support its argument of unjust enrichment by quoting out of context, the 1899 case of People's County v. The City of Santa Rosa, 36 P. 810 (Cal.S.Ct. 1899). In Sonoma County, the California Supreme Court decided it was not the sheriff's duty to accept city prisoners; this was true because under existing law it was illegal in 1899 for the city to commit its prisoners to anything but a city jail. Id., 36 P. at p. 811. The thrust of the Sonoma County court's decision was that, even if it was illegal for the city to commit city prisoners to county jails, the city could not escape compensating the county for those city prisoners who had previously been committed to the county jail, before the time of the ruling.

However, the Sonoma County court did not even address a factual scenario where a county has a duty imposed by statutory law, to accept city prisoners, as is the fact in the case at bar. Therefore, respondent's claim that cities are "benefited", regardless of the county's duty, is simply not supported by the Sonoma County decision. Sonoma County did not deal with the

27 Respondent-County's reasoning with respect to this particular argument must fail. At page 9 of its brief, respondent first states that municipalities have an obligation to pay when they receive a benefit. Then, on the next page respondent asserts that municipalities receive a benefit by having an obligation to pay. Respondent's argument that the latter reasoning is true "regardless of whether or not the county sheriff is required by law to accept prisoners,"

and before this Court and is of no precedent value.

Additionally, the portion in Sonoma County referred to in Plaintiff's brief at page 10, is not fully and completely cited by respondent. The quote actually reads is as follows:

"A commitment by the judicial officer of the city court, though erroneous, to have at least the force of a request, and the expense of enforcing its ordinances imposed upon the city by law, a promise to pay therefor is implied." *Id.* at p. 812 (Emphasis added to indicate portion omitted by respondent).

However, even when fully quoted, the passage is not correctly understood, until placed in its true context. In language immediately preceding the above passage, the California Supreme Court acknowledged and addresses an argument that the city never requested the county to receive the city prisoners. It was this assertion to which the court replied that, even an erroneous commitment of a city prisoner to the county jail, has the force of "a request".

However, it must be noted that the committing authority in Utah is not an officer of the city; rather, it is a State Circuit Judge. Obviously, no such City "request" can be deduced from an independent state official making a jail commitment.

In any event, this California ruling is not one holding that the city "benefits" from county jail service, regardless of the county's statutory duty to provide such service. Contrarywise, contract law requires that, for unjust enrichment to apply, the plaintiff-cities must receive some kind of benefit for which the

law infers a duty in equity to pay. Whether or not appellants have received such a "benefit" does, indeed, hinge on whether the county is already under a duty to provide the services in question. Williston clearly states:

"If a promisee is already bound by official duty to render service, it is no detriment to him and no benefit to the promisor---for him [the promisee] to do or agree to do the service on request . . . therefore, no contract can be based on such consideration. This principle is applicable whether the character of the official, whether a sheriff, constable, or police officer, an inspector, customs officer, or a director of a bank or other corporation . . ."²⁸

In Bags v. Anderson, 528 P.2d 141 (Utah, 1974), this pre-existing duty rule is stated as follows:

"An agreement to do that which one is already required to do does not constitute consideration for a new promise."

In 17 C.J.S. Contracts §111, the rule is stated as follows:

"Where a party is under a duty created or imposed by a law to do what he does or promises to do, his act or promise is clearly of no value and is not a sufficient consideration for a promise given in return. Thus, since a public officer [for example the Utah County Sheriff] is at law required to perform his duties for his salary or other stated compensation, a promise to pay him more than this [or so-called implied promise by cities to additionally pay to house city prisoners] is founded on no consideration, for he is simply promising in return to do or is actually doing what he is bound to do." See also Restatement of Contracts 2nd Edition §73 and Contracts by Calameri & Perillo (West 1981) §§4-7 p. 145.

²⁸Williston on Contracts, §132 pp. 557-558. See also Van Tassell v. Lewis, 222 P.2d 350, 355 (Utah, 1950).

It is respectfully submitted that the duties imposed upon the Sheriff and County in Title 17 prevent any claim of unjust enrichment by this compliance. There is no consideration for an implied-in-fact contract and no "unjust benefit" to justify an implied-in-law obligation. The County's claims are without merit and must be dismissed.

- C. CITY RESIDENTS ARE ALSO RESIDENTS OF THE COUNTY AND PAY FOR COUNTY-WIDE SERVICES. THEY WOULD BE SUBJECT TO "DOUBLE TAXATION" SINCE THEY MUST PAY TWICE FOR THE SAME SERVICES.

City residents are also residents of the County. County governments collect taxes from both city and unincorporated areas on a county-wide basis and finance services from these funds. When such services benefit County residents generally, taxation inequities are minimized. However, when counties limit their services to unincorporated areas only and exclude municipal residents from services funded from the county-wide mill levy, double taxation results. The Salt Lake County Government Study Commission has found such double taxation to exist in Salt Lake County:

"The cities suffer 'double taxation.' That is to say, the city residents pay the general county mill levy but the County provides certain services only to the unincorporated areas. The cities, however, provide their own services and necessarily tax their residents again. The prominent services thus paid for twice are fire, police, streets, traffic engineering, and solid

waste collection."²⁹

The position urged by Utah County in this action would permit it to fund exclusively unincorporated-area jail services from county-wide taxes. Unincorporated-area residents would pay only once - for unincorporated area misdemeanants. However, City residents would pay twice - once for unincorporated-area misdemeanants, and once for city-area convictions. By definition, double taxation would result.

In this context, the County's "unjust enrichment" argument is exposed. In reality, taxation inequities will result if cities are required to subsidize county-wide jail services. The legislature intended to avoid these inequities by adoption of statutes expressly requiring all jail services to be funded from the county treasury. It would be a travesty if these plain statutes were to be vitiated and citizens double-taxed, based upon the fictitious characterizations of taxation equities urged by Utah County.

POINT VI

THERE WAS NOT AN ADEQUATE FACTUAL DEVELOPMENT BELOW, THAT THIS COURT MAY COMFORTABLY RELY ON, UPON WHICH TO RULE ON ISSUES MATERIALLY ALTERING INTERGOVERNMENTAL RELATIONSHIPS AND THE WAY LOCAL OFFICIALS MAY CONTRACT AND BIND THEIR BUDGETS.

For the reasons discussed in Point II, above, any perceived

²⁹The Salt Lake County Government Study Commission Report to the People of Salt Lake County, March 4, 1974, Volume I (Findings).

conflict between statutes regarding county jail financing and in Title 17 and the term "consent," in Title 10 requires that the phrase be read to include the understood condition that "consent could not be unreasonably withheld."³⁰

This conclusion seems particularly compelling in the instant case because it has been so construed by the capital city of this State and its most populous county. In a judicial settlement, Salt Lake City and County acknowledges county jail to be a financial responsibility of the entire county.³¹ This judicially approved acceptance of the jail as a county-wide financial responsibility should not lightly be set-aside by a narrowly based local decision in Utah County. This conclusion is especially true when the decision and case failed even to consider the many other factors which are relevant to a State-wide policy in allocating jail costs.

Such factors may, indeed, compel different results in different counties, rather than holding ipse dixit that a "common" County jail need not receive misdemeanants, convicted under municipal law, without that apprehending jurisdiction paying incarceration costs. Relevant questions and evidence may

³⁰Supra at p. 15.

³¹See Statement of Fact Nos. 9-15; note that the settlement was signed by the Mayor and the County Commission, together with their legal counsel.

include:³²

1. Is there double taxation in a given county; that is, do City residents have a reasonable expectation that some of their County paid taxes are returned in services, such as the sheriff's costs in operating a jail? Alternatively, is the sheriff merely an unincorporated area police force, paid by a county-wide mill levy?

2. Is the County essentially urbanized so that the socio-economic and other factors regarding crime are not easily fixed within the geographic boundaries of an apprehending municipality?

3. Has the County been allocated federal or State funding to cover costs of incarceration on some charges? For example, even if cities should pay for jailing violators of local concerns should they pay for laws implementing state or national policy, for which grants or moneys have been provided to counties to cover jailing costs such as drunk driving enforcement?

4. Are some misdemeanor charges of County-wide or even

³²In a somewhat analogous situation this Court has upheld the principle of tax equities and held that property owners or developers could not be forced to subsidize general or established governmental entities through the guise of impact fees, utility connection charges or property dedications. Rather, an accounting was required to compute the relative burdens of a development imposed on the existing municipality. Call v. City of West Jordan, 614 P.2d 1257 (Utah, 1980) Banbury Dev. Corp. v. South Jordan, 631 P.2d 899 (Utah, 1981). Similarly, unjust enrichment (if applicable at all) in this jail case, cannot be computed in a factual vacuum, without balancing all the competing factors, financial equities and political realities.

State-wide concern. That is, are some misdemeanants charged not to enforce purely local policy; rather, does the enforcement effort represent a municipality's response to broader state policy concerns? For example: theft; drunk driving; and status type offenses (such as committed indigents or itinerants) may occur within core urbanized city, but be crimes that are only a manifestations of an area-wide social responsibility. Should the cost of jailing these offenders be borne by the county-wide tax base?

5. Has the County previously, by its conduct, given its consent, which it may not now withdraw, under other applicable legal or equitable principles. For example: would it not be appropriate to consider the fact that Salt Lake County negotiated for and received a dismissal of claims in excess of one million dollars, received fee title to City property, and a free leasehold use of City property (in addition to political support for a county-wide mill levy increase) in consideration for assuming the cost of incarceration of all misdemeanants in the County.³³

6. Which governmental entity retains the fines and forfeitures; that is, where does the fine money go? Is it predominately to the State, under the Circuit Court Act, or the city, town or county, under the Justice Court system?

³³See Statement of Fact Nos. 10-14.

It is respectfully suggested that the County Board has an inadequate record of the County's past performance that all kind of county, city, and village prisoners, who are incarcerated at that city's expense, are not allowed to appeal and reject that decision as contrary to law, as in the cases of I and II, above, or to send the case to the County Board of Prisoners. That development should consider the proposed "County Board" terms proposed by the County, which would include a comprehensive evaluation of which charged are essentially local, which are predominately benefits (financially only, property, etc.) and the taxing equities between that state and county.

LEGISLATIVE INTENT

Legislative intent, as manifest in former Chapter 100, Title 17, is clear that State contract and the county's duty to build and maintain a "detention" cell. The county's duty to operate that facility and, at County expense, to house all persons charged with criminal offenses and to accept therein by competent authority, excepted only, State felony, civil process detainees and federal prisoners. There are no exceptions for violators of municipal ordinances.

This legislative amendment of the County Board of Prisoners cities are not simply authorized to accept persons charged with ordinances. Rather, to accept and house persons charged with, not State-wide crimes. In fact, the County Board of Prisoners component of the County Board of Prisoners is not authorized to

the State of Maryland. The majority is primarily of local origin, and the majority of the assessed polling costs to the State are borne by the local jurisdiction in either and/or both of the following ways: (1) the local jurisdiction would appear double the assessed polling costs to the State, who already support the State's share of the cost of the Statewide mill levy.

The majority of the local jurisdiction in the legislative process is the majority of the local jurisdiction in rendering a decision on the proposed Statewide mill levy. Its findings are binding on the Statewide mill levy. The majority of the local jurisdiction in the legislative process is the majority of the local jurisdiction in rendering a decision on the proposed Statewide mill levy. Its findings are binding on the Statewide mill levy.

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This Court should, further, reject the premises of the lower court decision that taxing or other revenue raising powers of a county are implied and need not be specifically granted by the legislature.

The implications of such rulings of the lower court transcend the instant case; they must be reversed to preserve the integrity of sound fiscal policy, implicit and explicit in Utah statutory law dealing with local government.

Respectfully submitted,

ROGER F. CUTLER
Salt Lake City Attorney

ARTHUR L. KEESLER, JR.
Assistant City Attorney
Counsel, Amicus Curiae

cc84

APPENDIX A-1

1984 ADOPTED BUDGET
(GENERAL FUND EXPENDITURE DETAIL)

	1983 Budgeted Expenditures	1984 Budgeted Expenditures Request	Adopted
Commission	445,271	421,350	421,350
Clerk	1,866,545	1,788,188	1,785,588
Functions Clerk	450,313	949,544	946,944
Auditor	1,452,377	1,696,911	1,650,911
Recorder	1,289,528	1,267,865	1,270,865
Attorney	5,236,609	5,572,572	5,338,572
Treasurer	776,800	925,069	769,131
Assessor	3,576,651	3,586,532	3,502,815
Surveyor	658,746	662,114	627,114
Sheriff Patrol	7,394,086	-0-	-0-
County Jail	4,760,901	5,096,272	4,963,841
Sheriff Admin	8,749,048	9,046,329	8,696,329
3rd District Court	584,164	733,173	669,173
J.P. Court	1,295,548	-0-	-0-
Circuit Courts	329,244	349,244	349,244
Human Services	1,678,825	1,591,229	1,584,529
Extension	2,000,552	1,996,845	1,996,845
Youth Services	668,060	676,725	676,725
Animal Control	644,048	-0-	-0-
Alcohol & Drugs	3,372,310	4,033,451	3,514,451
Division of Aging	4,127,139	4,260,882	3,924,882
Dietary Service	50,437	56,288	43,288
Pre-Trial	815,923	857,089	827,089
Mental Health	14,075,454	14,950,435	14,750,435
Recreation	2,919,925	3,015,032	2,552,572
Multi Purpose	3,649,141	3,312,817	3,237,817
Meadow Brook Golf	267,856	256,456	266,456
Milk Riley Golf	215,884	224,650	224,650
Admin Service	544,553	521,390	521,390
Data Processing	2,983,886	3,148,260	3,155,611
Purchasing	425,275	476,142	446,142
Personnel	545,576	591,778	553,178
Merit Systems	19,578	86,508	85,308
Printing	153,141	371,792	322,792
Real Estate	203,081	225,291	225,291
Facilities & Maint	3,218,394	3,183,262	3,062,122
Extension Services	146,359	153,129	153,129
Emergency Services	280,512	299,296	285,336
911 System	457,434	-0-	-0-
Fine Arts Operation	1,201,090	1,163,218	1,163,218
JTPA - Admin	813,874	790,024	776,824
JTPA - Title II	3,468,268	3,038,739	3,009,161
JTPA - Summer Youth	1,733,622	1,360,850	1,291,047
JTPA - SEEC	90,494	106,650	106,650
JTPA - Displaced Worker	-0-	300,758	300,758
Community Development	4,931,428	5,199,315	4,989,982
Public Works Admin	1,020,512	1,000,866	954,822
Building Inspection	748,139	-0-	-0-
Business License	194,365	-0-	-0-
Agricultural Inspection	98,720	87,192	80,192
Paramedics	2,946,217	3,007,052	2,948,936
Highway	7,316,577	-0-	-0-
Engineering	1,343,151	-0-	-0-
Traffic Engineering	957,391	-0-	-0-
Stat & General	8,866,093	10,182,785	10,331,943
GENERAL FUND TOTAL	117,440,255	102,583,359	99,275,448

1983
1984

	1983	1984	1985
Sheriff Patrol	0-	1,800,000	2,200,000
J.P. Court	0-	1,000,000	1,000,000
Animal Control	0-	100,000	100,000
911 System	0-	100,000	100,000
Building Inspection	0-	1,000,000	1,000,000
Business License	0-	100,000	100,000
Planning	1,000,000	800,000	800,000
Street Lighting	743,000	600,000	600,000
Fire	8,100,000	8,100,000	8,100,000
Highway	0-	8,100,000	8,100,000
Engineering	0-	750,000	750,000
Traffic Engineering	0-	900,000	900,000
Public Works Fleet	0-	3,100,000	3,100,000
Municipal Services Gen.	0-	800,000	800,000
Capital Improvements	0-	1,000,000	1,000,000
Total Municipal Services	9,500,000	37,000,000	37,000,000
Flood Control Fund	21,200,000	25,000,000	27,000,000
Planetarium	1,500,000	1,700,000	1,700,000
Exhibits	100,000	60,000	60,000
Star Projector	100,000	500,000	500,000
Total Planetarium Fund	2,000,000	2,600,000	2,600,000
Class B Roads Fund	5,600,000	5,200,000	5,200,000
Develop & Fringe Fund	3,400,000	2,700,000	2,700,000
Literary Fund	6,000,000	6,000,000	6,000,000
Admin	2,600,000	2,600,000	2,600,000
Environmental Health	1,800,000	2,300,000	2,300,000
Public Health Nursing	2,300,000	2,600,000	2,600,000
Gen Fund Support	270,000	400,000	400,000
Total Health fund	7,100,000	7,600,000	7,600,000
Governmental Incom Fund	1,900,000	900,000	700,000
Bond Interest & Sink Fund	800,000	4,000,000	4,000,000
Capital Improvements Fund	2,900,000	7,900,000	1,000,000
Salt Palace Fund	3,900,000	4,500,000	4,500,000
Mtn. View Golf Fund	300,000	300,000	300,000
Bond Construction Fund	12,600,000	250,000	250,000
Landfill Fund	2,150,000	2,400,000	2,400,000
Sanitation Fund	3,000,000	3,000,000	3,100,000
Fleet Maintenance	3,900,000	3,700,000	3,700,000
Public Works Fleet	3,000,000	0-	0-
Total Vehicle & Maint.	7,000,000	3,700,000	3,700,000
Employee Insurance	4,500,000	4,500,000	5,600,000
Zoo Fund	1,400,000	1,600,000	1,400,000

TED L. CRONIN
 Salt Lake County Attorney
 By: Gary J. Fredman
 County Attorney
 6-120 Metropolitan Hall of Justice
 Salt Lake City, Utah 84111
 Telephone: 363-7900

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

SALT LAKE COUNTY, a body)	
corporate and politic of	)	STIPULATION AND ORDER
the State of Utah,	)	OF DISMISSAL
)	
Plaintiff,	)	Civil No. 242664
)	
vs.)	
)	
SALT LAKE CITY, a municipal)	
corporation of the State of)	
Utah,)	
)	
Defendant.)	

WHEREAS, there have arisen disputes and Counterclaims
 between the parties concerning the costs of incarceration and
 care of persons placed in the premises known as the Salt Lake
 City and County Jail; and

WHEREAS, the plaintiff, Salt Lake County, has acknowledged
 and accepted as a county-wide responsibility the function of care
 and incarceration of persons submitted to said jail facility; and

WHEREAS, the parties are desirous of the City deeding to the
 County its 51% ownership of said jail facility located in the
 Metropolitan Hall of Justice at 240 East 400 South, Salt Lake
 City, Utah. The City is willing to permit the use of a holding
 area in the City facility known as the Circuit Court Building,
 pursuant to the Lease attached hereto as Exhibit "A", to
 facilitate resolution of the within dispute and as a community
 service; and

WHEREAS, the parties are mutually desirous of resolving the
 conflicts evidenced by the within action; and

NOW, THEREFORE, in consideration of the premises, the

parties mutually agree and stipulate that the above captioned matter, including the counterclaims of the defendant, may be dismissed with prejudice, each party bearing its own attorney fees and costs.

DATED this 17th day of May, 1981.

SALT LAKE COUNTY

By [Signature]
CHAIRMAN

SALT LAKE CITY CORPORATION

By [Signature]
MAYOR

By [Signature]
TED CRONIN
Salt Lake County Attorney

By [Signature]
ROBERT E. CHILFER
Salt Lake City Attorney

ATTEST:

[Signature]
CITY RECORDER

ORDER

Based upon the stipulation of the parties and for good cause appearing therein and upon the joint motion of the parties through their counsel, the Court

HEREBY ORDERS, ADJUDGES AND DECREES as follows:

1. The above captioned matter should be and the same is hereby dismissed with prejudice, each party bearing their own costs and attorney's fees.
2. The parties will hereafter agree on a deed form to transfer the City's interest in the 1st level of the Metropolitan Hall of Justice currently used for the incarceration of prisoners, which preserves the City's use of the 3rd floor area of said building.

DATED this _____ day of _____, 1981.

BY THE COURT:

JUDGE

ATTEST
W. B. KING
CLERK

EXHIBIT "A"

LEASE AGREEMENT

THIS LEASE is made and entered into this 30th day of April, 1981, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter referred to as "Lessor," and SALT LAKE COUNTY, a body corporation and politic of the State of Utah, hereinafter referred to as "Lessee".

RECITALS:

WHEREAS, Lessor is the owner of certain real property located in Salt Lake City, commonly known as the Fifth Circuit Court Building located in Block 37, Plat A, Salt Lake City Survey; and

WHEREAS, Lessee desires to lease a portion of the above described property for the use as jail facilities; and

WHEREAS, the parties mutually concur that such a use of the above described facilities will be of benefit to the residents of Salt Lake City and Salt Lake County.

LEASE PROVISIONS

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

1. DEMISED PREMISES:

Lessor hereby leases to the Lessee and Lessee leases from Lessor the holding cells, and the immediately-adjacent hallways and offices located in the central eastern portion of the first floor of the Fifth Circuit Court Building consisting of approximately 1843 square feet, for the term and rental and under the covenants and agreements of the respective parties herein set forth, including rights of ingress and egress.

2. ACCEPTANCE:

Tenant has inspected the premises and agrees to accept possession of same. Lessee agrees to accept the same in their current condition as satisfactory.

3. TERM:

The term of this lease shall be for thirty years, commencing on the date hereof and shall remain in full force and effect for the term hereof. At the expiration of this term, the Lessee shall have the option of renewing this lease under the terms and conditions of this original lease agreement for one or more twenty year terms.

4. RENT:

Lessee agrees to pay as rental to Lessor at its address or at such other place as Lessor may from time to time designate in writing, the sum of \$1.00 per year.

5. APPROPRIATED USE:

Lessee shall use the leased premises for the purpose of maintaining County wide jail facilities. Said facilities shall be made available to all political subdivisions of the County without cost to lessor. No other use will be made of the premises without the written consent of the City, which consent will not be unreasonably withheld so long as these facilities are used for County governmental purposes.

6. ASSIGNMENT AND SUB-LETTING:

Neither this Lease nor any interest herein may be assigned or otherwise encumbered by the Lessee and neither all nor any part of the Leased Premises shall be sub-let by the Lessee without written approval of Lessor.

7. SURRENDER OF PREMISES:

Lessee agrees to surrender the leased premises at the expiration, or termination of this Lease, in the same condition or as altered, pursuant to the provisions of this Lease, ordinary wear, tear and damage by the elements excepted.

8. HOLDING OVER:

Should Lessee hold over the Leased Premises or any part thereof, after the expiration of the term of this Lease or be otherwise agreed in writing, such holding over shall constitute a tenancy from month to month only, and Lessee shall pay accordingly

rented the then fair market value of the use and occupation of the leased premises as determined by Lessor until terminated on 15 days notice by either party.

9. QUIET ENJOYMENT:

If and so long as the Lessee pays the rent reserved by this Lease and performs and observes all the covenants and provisions hereof, the Lessee shall quietly enjoy the demised premises, subject, however, to the terms of this lease.

10. COSTS - REPAIRS:

Lessee agrees to pay and be responsible for all charges for the water, sewer, heat, gas, electricity and other public utilities used on the lease premises. The Lessee shall further be liable for maintenance, all necessary repairs, and all alterations of the premises required by use of the Lessee.

11. TIME:

Time is of the essence of this Lease and every term, covenant and condition herein contained.

12. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement and understanding between the parties. It may only be modified on the express written approval of both the Lessor and Lessee herein.

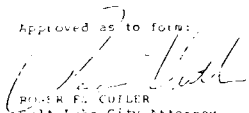
13. CONTROLLING LAW:

This Agreement is made in and shall be construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first written above.

Approved as to form:

SALT LAKE CITY CORPORATION


ROBERT F. CUTLER
Salt Lake City Attorney

By 
MAYOR

ARTICLES

William Marshall
SALT LAKE CITY RECORDER

SALT LAKE COUNTY

Ted L. Cannon
TED L. CANNON
Salt Lake County Attorney

BY *William Marshall*
CHAIRMAN

ATTEST
WILLIAM MARSHALL
SALT LAKE CITY
CLERK

STATE OF UTAH)
: ss.
County of Salt Lake)

On the 20th day of May, 1981, personally
appeared before me TED L. WILSON and KATHARIN MARSHALL, who being
by me duly sworn, did say that they are the MAYOR and SALT LAKE CITY
RECORDER, respectively of SALT LAKE CITY CORPORATION, and said
persons acknowledged to me that said corporation executed the
same.

Christina O'Leary
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

11/8/82

STATE OF UTAH)
: ss.
County of Salt Lake)

On the _____ day of _____
appeared before me _____

personally _____
who being by me duly

Sworn, did say that he is the Chairman of SALT LAKE COUNTY and
said person acknowledged to me that said County executed the
note.

NOTARY PUBLIC, residing in _____
Salt Lake City, Utah

My Commission Expires:

SALT LAKE CITY PROSECUTOR'S OFFICE

D.U.I. DISPOSITIONS

<u>NUMBER OF CASES</u>		<u>PERCENT OF TOTAL</u>	
<u>7/1/81 - 6/30/82</u>	<u>7/1/82 - 6/30/83</u>	<u>7/1/81 - 6/30/82</u>	<u>7/1/82 to 6/30/83</u>
<u>JURY TRIALS</u> 82	<u>JURY TRIALS</u> 90	<u>JURY TRIALS</u> 15.2%	<u>JURY TRIALS</u> 13.2%
CONVICTIONS 60	CONVICTIONS 67	CONVICTIONS 11.1%	CONVICTIONS 9.9%
ACQUITTALS 22	ACQUITTALS 23	ACQUITTALS 4.1%	ACQUITTALS 3.3%
CHANGE OF PLEA 459	CHANGE OF PLEA 580	CHANGE OF PLEA 84.8%	CHANGE OF PLEA 84.8%
AS CHARGED 242	AS CHARGED 286	AS CHARGED 44.7%	AS CHARGED 41.8%
LESSER 217	LESSER 294	LESSER 40.1%	LESSER 43 %
DISMISSALS 0	DISMISSALS 14	DISMISSALS 0	DISMISSALS 2%
TOTAL 541	TOTAL 684	TOTAL 100%	TOTAL 100%
<u>NON-JURY TRIALS</u> 200	<u>NON-JURY TRIALS</u> 75	<u>NON-JURY TRIALS</u> 19.9%	<u>NON-JURY TRIALS</u> 9.4%
CONVICTIONS 184	CONVICTIONS 61	CONVICTIONS 18.3%	CONVICTIONS 7.7%
ACQUITTALS 16	ACQUITTALS 14	ACQUITTALS 1.6%	ACQUITTALS 1.7%
CHANGE OF PLEA 776	CHANGE OF PLEA 691	CHANGE OF PLEA 77.3%	CHANGE OF PLEA 87%
AS CHARGED 465	AS CHARGED 414	AS CHARGED 46.3%	AS CHARGED 52 %
LESSER 311	LESSER 277	LESSER 31 %	LESSER 35 %
DISMISSALS 28	DISMISSALS 28	DISMISSALS 2.8%	DISMISSALS 3.4%
TOTAL 1004	TOTAL 794	TOTAL 100%	TOTAL 100%
TOTAL DUI DISPOSITIONS 1,545	TOTAL DUI DISPOSITIONS 1,478		

Office of the Salt Lake County Attorney

TED CANNON

County Attorney

P R E S S R E L E A S E

FOR IMMEDIATE RELEASE

JANUARY 10, 1984COUNTY ATTORNEY OBTAINS 91% TRIAL CONVICTION RATE
IN DRUNK DRIVING CASES

Salt Lake County Attorney, Ted Cannon, today released statistics summarizing DUI (Driving Under the Influence) cases for the year 1983. Mr. Cannon stated that he was particularly gratified with the fact that during 1983 prosecutors in his office obtained guilty verdicts in more than 90% of all the drunk driving trials handled by his office. Mr. Cannon praised the extraordinary efforts of his staff in achieving this remarkable result. "The 90% DUI trial success rate is extremely high," stated Mr. Cannon, "and compares with a trial success rate of approximately 88% for all criminal cases handled by his office. This compares very favorably," stated Mr. Cannon, "with a national average of about 70% success rate for all criminal cases."

During 1983 the County Attorney's Office handled 637 DUI cases of which 512 (80.4%) pled guilty to the DUI or a lesser charge. Of the 105 DUI trials handled by the County Attorney's Office, 95 resulted in a guilty verdict while only 10 cases resulted in verdicts of not guilty.

Larry Bench, Research Manager of the Salt Lake County Attorney's Office, compiled the DUI data. Mr. Bench indicated that an overwhelming percentage of defendants (95.4%) in DUI cases either pled guilty or were found guilty. Only a small percentage of defendants (01.5%) had dispositions resulting in a finding of "not guilty" or had their cases dismissed (03.0%).

(For further information or comment, please contact Larry Bench, Research Manager, at 363-7900.)

231 East 4th South Salt Lake City, Utah 84111 (601) 363-7900

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County Attorney
231 East 4th South
Salt Lake City, Utah 84111

Mr. Larry Bench
Research Manager
County Attorney's Office
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Mr. Larry Bench
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