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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 Cor-Poration of the State of Utah; And Pleasant Grove City, A Municipal Corporation of the State of Utah : Brief of Amicus Curiae Utah Association Of Counties

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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,	:	
Plaintiff-Respondent,	:	
-vs-	:	Case No. 19138
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
UTAH ASSOCIATION OF COUNTIES

Appeal from the Judgment of the 4th District Court
for Utah County, Honorable Allen B. Sorensen, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Defendants-Appellants.	:	

BRIEF OF AMICUS CURIAE
UTAH ASSOCIATION OF COUNTIES

NATURE OF THE CASE

Plaintiff-Respondent Utah County brought suit in the Fourth Judicial District Court against the named Defendant-Appellants to enforce an implied contract between the parties for the support and maintenance of inmates incarcerated in the county jail for violations of city ordinances.

DISPOSITION IN LOWER COURT

Upon the combined motions for summary judgment of the parties, the Honorable Allen B. Sorensen, Judge, Fourth Judicial District Court, granted summary judgment to Plaintiff-Respondent Utah County.

RELIEF SOUGHT ON APPEAL POSITION AS AMICUS

Amicus respectfully submits that the laws of the State of Utah require that cities bear their own costs for the incarcera-

tion of persons who violate city ordinances and therefore prays the Supreme Court affirm the lower court's judgment in favor of Plaintiff-Respondent.

STATEMENT OF FACTS

Amicus concurs in the statement of facts provided by Defendant-Appellants and hereby expressly incorporates it by reference.

ARGUMENT

The parties herein have carefully examined the possible interpretations of Section 10-8-58, Utah Code Annotated (1953, as amended), which conditions the use of a county jail for the confinement of city ordinance violators upon the consent of the county commission. Amicus concurs with the analysis set forth in respondent Utah County's brief, which concludes, based on the North Dakota Supreme Court's examination of a similar statute in Grand Forks County v. City of Grand Forks, 123 N.W.2d 42 (N.D. 1963), that such a provision has the effect of creating an implied contract wherein the city is liable for the maintenance and support of county jail inmates incarcerated for violating city ordinances. Amicus will not repeat that analysis here but will, rather, concentrate on the likely intent of §10-8-58's drafters, based on the Utah Constitution and upon principles of sound local government organization.

POINT I

THE ENFORCEMENT OF CITY ORDINANCES PROMOTES CITY PURPOSES AND ADVANCES NO SUBSTANTIAL COUNTY OR STATE-WIDE PURPOSE

The criterion by which governmental activities are judged

to promote either local government purposes or state-wide purposes has been variously stated. In one Utah case the test is defined in terms of the question: is a governmental activity strictly for local government purposes "for which the county or its inhabitants alone would benefit" or does the activity have broader state-wide benefits? Dissent of Justice Callister, Branch v. Salt Lake Co. Service Area No. 2, 23 Utah 2d 181, 460 P.2d 814, 825 (1969). A concise standard has been set by the Washington Supreme Court in which the issue is whether the activity is an incident of the existence of the municipality or is the activity one important to the existence of the entire state. State ex rel. Clausen v. Burr, 65 Wash. 530, 118 P. 639 (1911). American Jurisprudence has summarized the distinction as one in which "purposes and activities designed primarily for the exclusive or principal benefit of the inhabitants of a particular municipality" can be considered local corporate purposes. 71 Am.Jur.2d State and Local Taxation §64.

The issue of whether governmental activities are considered to have a local or a state-wide purpose is made more complex by the dual character of municipal corporations as both being representative of the interests of their local citizens and at the same time being arms or agencies of state government. Local governments in their role as representatives of and providers of necessities for their citizens can often find themselves in competition with one another for scarce resources; at the same time a local government's activities and purposes can be completely unrelated to the activities of its municipal neighbors, creating neither benefits nor detriments that cross municipal boundaries. By contrast, state-wide goals and

purposes which neither foster competition nor create distinctions based on local boundaries but which, rather, are of general concern to the people of the state at large are properly supported by the local governments in their capacity as arms of state government and by the local citizens in their capacity as citizens of the state. Thus, local governments can be required to financially support programs that have a true state-wide purpose, even though local benefits are not readily apparent. Salt Lake County v. Salt Lake City, 42 Utah 548, 134 P. 560 (1913). The reciprocal of this principle is that activities which have only a local purpose should be financed by the local government itself, not by its municipal neighbors at either the city or county level nor by the state.

The primary issue in this case is, therefore, whether the enforcement of city ordinances has as its exclusive or principal purpose the promotion of city goals or are county or state-wide purposes at stake.

The enactment of city ordinances is discretionary and no uniform ordinance scheme for cities is mandated by Utah law. Sections 10-3-702, 10-8-84, Utah Code Annotated (1953, as amended). City ordinances are enacted by the cities' governing bodies as the exercise of their legislative powers and the structure of ordinances is wholly within their discretion. No approval of city ordinances by state or county government is required. §10-3-701, Utah Code Annotated (1953, as amended). Ordinances are enforced by city police and actions for violations are brought in the name of the city. §10-3-914, 10-7-65, Utah Code Annotated (1953, as amended). The city attorney prosecutes violations of city ordinances and the

ity is responsible for providing defense counsel to indigents accused of city ordinance violations. §10-3-928, Utah Code Annotated (1953, as amended), Salt Lake City Corporation v. Salt Lake County, ___ Utah _____, 520 P.2d 211 (1974). City Justices of the Peace have exclusive and original jurisdiction over city ordinance violations. §78-5-5, Utah Code Annotated (1953, as amended). Penalties, bail, and fines for violating city ordinances are set by city officials. §§10-3-703, 10-3-920, Utah Code Annotated (1953, as amended). Fines for city ordinance violations are remitted to the city (or to the city and state in circuit court locations). §§10-3-716, 10-7-66, 78-5-6, 78-4-22(2), Utah Code Annotated (1953, as amended). Lastly, any pardon of city ordinance violators and remission of their fines is made by city officials. §10-3-809(3), Utah Code Annotated (1953, as amended). City ordinances are, in short, enacted and enforced wholly within the control and discretion of the city.

While it is clear that city ordinances, as the legislative expression of the will of city residents, directly and primarily promote city purposes, there is no indication of the achievement of significant county or state-wide goals through the enforcement of city ordinances, and indeed appellants have not suggested any. One could not legitimately expect that, if city ordinances did not exist or went unenforced, riot and discord would sweep across municipal boundaries and create a state-wide problem. This because state laws prohibiting much the same activities as those governed by city ordinance have effect and are enforceable within city boundaries by county and city police agencies. It therefore appears

clear that the enforcement of city ordinances, including the imprisonment of violators, is for the primary and principal benefit of city residents, is necessary to the existence of the city, and satisfies no county or state-wide purpose.

POINT II

A LOCAL GOVERNMENT ACTIVITY THAT PROMOTES NO STATE PURPOSE SHOULD BE FINANCED BY THAT LOCAL GOVERNMENT ALONE

The Utah Constitution, Article XIII §5, provides in pertinent part that:

> The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

Constitutional provisions such as the foregoing are common throughout the United States and have generally been construed to have three effects: they prohibit the imposition of state taxes to support local purposes, prohibit the delegation of taxation powers for local purposes to any body except the local municipal authorities, and permit local taxation to advance state-wide purposes. McQuillan, Municipal Corporations, Taxation §44.18.

In Utah, the effect of Article XIII §5, has been to secure the right of local self-government to the people. State ex rel. Wright v. Standford, 24 Utah 148, 66 P. 1061 (1901); State ex rel. Salt Lake City v. Eldredge, 27 Utah 477, 76 P. 337 (1904). In considering the effects of Article XIII §5, certain fundamental principles emerge:

> "The right of local self-government is guaranteed, and, although the exercise of municipal functions may be delegated, local government must retain control and responsibility for

> local affairs. If a matter is a state affair (a problem or interest which involves or affects the people beyond the corporate territorial boundaries), the state has an option to delegate the function to local authorities, as agencies or instruments of the state, or to establish a quasi-municipal corporation to administer the state function. The taxing power may not be delegated to an independent, appointive body organized for special purposes, but must be retained and exercised by the elected legislative body, whether state or local, which is subject to the control of the people. "* * * How sound and unchallengeable this latter ground is, must be evident to all those who recall that 'Taxation without representation' was the battle cry that precipitated the Revolution." Dissent of Justice Callister, Branch v. Salt Lake Co. Service Area No. 2, 23 Utah 2d 181, 460 P.2d 814 (1969).

A close corollary of the principle that only local authorities may levy local taxes is the notion that one local taxing district or government cannot be required to support another local taxing entity; rather, each must bear its own burdens. In Bromley v. Reynolds, 2 Utah 525, ____ P.____ (1880), the territorial Supreme Court held that a school district's taxes could not be lawfully diverted to the surrounding county, as local governments have no authority to levy taxes for purposes other than their own. In a similar case the Wyoming Supreme Court wrote:

> "It is not sufficient that a tax be levied for a public use; it must be levied for the use of the public of the district taxed. * * *
>
> "* * * It is clear that one taxing district, whether state, county, municipality, or district established for the particular purpose, cannot be taxed for the benefit of another district. One state cannot raise money by taxation to be expended for the benefit of the people of another state. Moreover, the people of a particular municipality cannot be taxed for a public purpose inuring equally to the benefit of the people of the whole state, and a municipal corporation cannot be compelled to turn over a portion of its

> funds to the county in which it is situated in order to pay the expense of a county function. Nor can the people of one municipality be taxed for the benefit of the people of another municipality * * *." Tennant v. Sinclair Oil & Gas Company, 355 P.2d 887 (Wyo. 1960).

The purpose of these two strands of legal thought is to safeguard local government against the unrestricted creation of financial burdens to which it has not consented. Constitutional provisions such as Article XIII §5 act "as a limitation upon the power of the legislature to grant the right or impose the duty of creating a debt or levying a tax to any person or body other than the corporate authorities of the county." State ex rel Wright v. Standford, 24 Utah 148, 66 P. 1061, 1063 (1901). "Corporate authorities" is defined as "those municipal officers who are either directly elected by the population to be taxed or appointed in some mode to which they have given their assent." Ibid, 66 P. at p.1063.

For the matter here at issue, therefore, Amicus would submit that because no county or state-wide purpose is furthered by the enforcement of city ordinances, Article XIII §5 of the Utah Constitution would prohibit a county, either in its own corporate capacity or as an agency of state government, from bearing the cost of incarceration of city prisoners. Appellants' interpretation of §§17-15-17(3) and 17-22-8, Utah Code Annotated (1953, as amended), as requiring the counties to bear those costs, regardless of whether that interpretation is correct, ought therefore be rejected as violative of the Utah Constitution. Furthermore, where a statute has two possible constructions, one which is constitutional and one which is not, the constitutional construction ought to be

followed to the exclusion of other interpreations. Gord v. Salt Lake City, 20 Utah 2d 138, 434 P.2d 449 (1967).

Two recent Utah cases have looked at another aspect of the problem of insuring that the costs of local government are tied as closely as possible to those local districts which receive the benefits of local government. In Utah the misnomer "double taxation" has been attached to this problem, though "double taxation" refers to the improper taxation of property more than once by the same government. 71 Am.Jur.2d State and Local Taxation §31, compare §§64-67. In the case of Salt Lake City v. Salt Lake County, ___ Utah ______, 550 P.2d 1291 (1976), this court condemned "the 'double taxation' which results when municipal residents are required, through county tax assessments, to finance services provided exclusively to residents of the unincorporated areas of the county." 550 P.2d at p.1292. This case, as did the Branch case (460 P.2d 814), examined the theme of requiring the taxpayers of one municipal entity to support public services provided to persons in another municipal entity through a specialized statutory scheme (Municipal Services Districts in the Salt Lake City case and Service Areas in Branch). In both cases this court upheld statutory plans in which municipal benefits can be more closely tied to the taxpayers who receive those benefits and condemned departures from those plans which tended to shift taxation away from the recipients of public expenditures to other non-recipients. The analogy of these two cases to the current issue is plain: if it is improper to charge city residents for services provided chiefly to the residents of the unincorporated county, it must likewise be improper to charge

unincorporated county residents for services provided chiefly to the cities. In 1983 the state legislature took a step closer to requiring completely separate county budgeting between services provided primarily to the unincorporated areas of a county and services provided county-wide, including to the cities. §17-36-9(2)(a), Utah Code Annotated (1953, as amended by Senate Bill 32, 1983) requires that certain first-class counties create separate budgets for services to unincorporated areas. Under this provision police costs for arresting, prosecuting and incarcerating violators of county ordinances must be separately budgeted from those for violators of state laws and of city ordinances. Thus, city residents are no longer required to bear the costs of county ordinance law enforcement in the unincorporated areas, but, under Appellants' interpretation of the matter here at issue, unincorporate residents would be required to support city ordinance violators in the county jail. Such a result is so manifestly unfair as to be wholly outside the intention of those who drafted the statutes in question.

CONCLUSION

The enforcement of city ordinances, including the incarceration of ordinance violators, advances city purposes and satisfies no substantial county or state purpose. Because incarceration of city ordinance violators primarily benefits city residents, those residents ought to bear the financial burdens of incarceration. Because the Utah Constitution prohibits the legislature from imposing upon the counties taxes to support city purposes, cities should bear their own costs of confining city ordinance violators.

Respectfully submitted this 13th day of January, 1984.

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CERTIFICATE OF MAILING

I hereby certify copies of the foregoing Brief of Amicus Curiae was mailed, postage prepaid, this 13th day of January, 1984, to Sterling B. Sainsbury, Deputy County Attorney, and Noall T. Wootton, Utah County Attorney, 51 South University Avenue, Provo, Utah 84601, Attorneys for Respondents; and to Bryce D. McEuen, Orem City Attorney, 56 North State Street, Orem, Utah 84057; Dave McMullin, Payson City Attorney, P.O. Box 176, Payson, Utah 84651; and John C. Backlund, Pleasant Grove City Attorney, 1021 North University, #200, Provo, Utah 84604, Attorneys for Defendants-Appellants.

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