1983

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 Respondent

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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. 19,138
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 RESPONDENT

NATURE OF THE CASE

This is an appeal from a decision granting respondent's Motion for Summary Judgment.

DISPOSITION IN LOWER COURT

The Fourth District Court granted respondent, Utah County's, Motion for Summary Judgment on the issue of whether the appellant cities have a duty under Utah law to reimburse the respondent for the costs incurred in housing violators of municipal ordinances in the county jail. The Court ruled that the cities do have a duty to

reimburse the county on the basis of Section 10-8-58, U.C.A. (1953, as amended), and the case of Grand Forks County v. City of Grand Forks, 123 N.W.2d 42 (N.D. 1963).

NATURE OF RELIEF SOUGHT ON APPEAL

The respondent seeks to have this Court affirm the judgment below.

STATEMENT OF FACTS

The respondent agrees with the Statement of Facts set forth in appellants' Brief.

ARGUMENT

POINT I

UNDER UTAH LAW, APPELLANTS ARE REQUIRED TO PAY THE COST OF HOUSING THEIR RESPECTIVE PRISONERS IN THE UTAH COUNTY JAIL.

Section 10-8-58, U.C.A. (1953, as amended), relating to the duties of cities, provides as follows:

> They may establish, erect and maintain city jails, houses of corrections 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 imposed by law, and with the consent of the board of county commissioners. (emphasis added)

In [illegible] statute, the Utah County Board [illegible] its counsel contends upon the payment by [illegible] of costs incurred by Utah County in the [illegible] prisoners charged with violating city ordinances.

The rule set forth in other states with similar permissive use statutes is clear with respect to which governmental entity is responsible for the cost of maintaining prisoners convicted of violating city ordinances. In a case nearly identical to the one at hand, the Supreme Court of North Dakota ruled that based on a statute similar to Section 10-8-58 U.C.A., a municipality was liable to the county for the cost of housing municipal prisoners in the county jail despite the fact that the municipality had never been billed. Grand Forks County v. City of Grand Forks, 123 N.W.2d 42, (N.D. 1963). It is important to note that the above Court was not persuaded by the argument that Section 12-[illegible] of the North Dakota Century Code, requiring the establishment of a county jail "at the expense of the county", required the county to pay the cost of housing city prisoners.

Other jurisdictions have adopted the same general rule. City of Grand Rapids v. County of Kent, Mich. App., 292 N.W.2d 475, (1980); Sonoma County v. City of Santa Rosa, 36 P. 810, (Calif. 1899).

The Court in Washington Township Hospital District of Alameda County v. County of Alameda, 69 Cal. Rptr. 442, 263 C.A. 272, (1968), stated the rule as follows:

> It has been settled that liability for the cost of maintaining a prisoner in a county jail is dependent upon the basis of the prisoner's detention, and that where a prisoner is committed to the county jail for a violation of a city ordinance, the cost of such imprisonment must be borne by the city.

Although it is true that no state has a statutory scheme identical to that of Utah, appellants have failed to cite any authority contrary to the general rule that cities are liable for the cost of housing city prisoners in the county jail.

Sections 17-15-17(3) and 17-22-8, U.C.A., (1953, as amended) are relied upon by appellants to demonstrate Utah County's liability for providing free food and housing to any person committed by competent authority. Such an interpretation directly conflicts with other related statutes which without exception indicate a legislative intent to place ultimate liability on those entities which impose a burden on the incarceration system. With respect to towns, Section 10-13-23 U.C.A., (1953, as amended) provides as follows:

> 10-13-23. Ordinances--Punishment for violation.--To enforce obedience to the ordinances of the town the board of trustees may ordain and provide such fines, forfeitures and penalties as it may deem proper; provided, that the fine or penalty for any offense shall be less than $100, and the imprisonment shall not exceed three months. All expenses incurred in prosecutions for the recovery of any fine, forfeiture or penalty shall be paid by the corporation. In case any person is committed to the county or municipal jail or other place of incarceration as punishment or in default of the payment of a fine, or fine and costs, he shall be required to work for the town at such labor as his strength will permit not exceeding eight hours in each working day. And a judgment that the defendant pay a fine, or a fine and costs, may also direct that he be imprisoned until the amount thereof is satisfied, specifying the extent of imprisonment, which cannot exceed one day for each $2 of such amount. The

> expense of boarding prisoners shall be paid by the corporation. The board of trustees may erect a jail for the town, and persons committed for violation of town ordinances may be imprisoned therein. (emphasis added)

Section 77-18-1(4), U.C.A. (1953, as amended) requires reimbursement from the State of Utah for the costs of housing a convicted felon sentenced to serve in the county jail as a condition of probation. Section 17-22-9, U.C.A. (1953, as amended) requires the Federal government to reimburse the county for the cost of housing Federal prisoners at the county jail. And, as heretofore stated, Section 10-8-58 requires that cities reimburse the county for the cost of housing municipal prisoners in the county jail.

The rule is well settled that statutes which treat the same subject matter should be interpreted as if they were intended to be consistent.

> Under this rule, each statute or section is construed in light of, with reference to, or in connection with, other statutes or sections. The object of the rule is to ascertain and carry into effect the intention of the legislature. It proceeds upon the supposition that the several statutes were governed by one spirit and policy, and were intended to be consistent and harmonious in their several parts and provisions. Section 348, 50 Am. Jur. 393-345.

The proper interpretation of Sections 17-15-17(3) and 17-22-8 is not that these statutes impose ultimate financial liability, but rather that they generally impose the duty of initial payment on the plaintiff, and are silent as to ultimate liability which in accordance with Sections 10-8-58, 10-13-23, 77-18-1 and 17-22-9 is placed upon the responsible political entity. Such an interpretation would be in accordance with the

above-stated rule and would create a system by which immediate expenses can be met, thus insuring a workable and efficient incarceration system and a method by which those imposing the burden on the system must bear the ultimate financial liability for the related cost. An example of this would be Section 17-15-17(11), U.C.A. (1953, as amended) which states that the county is liable for all expenses necessarily incurred by the county sheriff in his civil duties. Section 21-2-4, U.C.A. (1953, as amended), however, requires that many, if not most of these expenses, are to be collected as fees from those persons requesting the sheriff's services, thereby imposing ultimate liability on the responsible entity.

Appellants also cite Section 32-1-24, U.C.A. (1953, as amended) recently enacted during the 1983 General Session of the Utah Legislature, as lending weight to its argument. The new enactment provides in part that a portion of revenue from a beer excise tax shall be allocated to the counties for confinement or rehabilitation or both, and construction and maintenance of facilities for confinement or rehabilitation or both of persons arrested for or convicted of alcohol related offenses. Guidelines for the use of such funds are set forth as follows:

> The appropriation provided for by this section is intended to supplement the budget of the law enforcement agencies of each city, town, and county within the state and not to replace funds which would otherwise be allocated for law enforcement or confinement or rehabilitation or both of persons arrested for or convicted of alcohol related offenses. [Section 32-1-24, U.C.A. (1953, as amended)]. (emphasis added)

The above guidelines evidence a legislative intent that said monies are not to be used to replace funds which have already

been allocated by law. Inasmuch as the 1983 General Session of the Utah Legislature did not repeal Sections 10-13-23, 10-8-58, and 77-18-1(4), it logically follows that the legislature did not intend these monies to replace the funds which by law towns, cities, and the State of Utah are required to provide when housing their respective prisoners in the county jail.

Section 32-1-24 is a legislative reponse to the increased costs associated with more stringent drunk-driving laws. It should not be interpreted as lending weight to an argument which would decrease funding for those entities such as Utah County which are legally required to shoulder the cost of both construction and maintenance of jails and rehabilitation centers as well as the confinement of both county and state alcohol offenders.

POINT II

CITY USE OF THE COUNTY JAIL IS STRICTLY CONTINGENT ON THE APPROVAL OF THE COUNTY COMMISSION. THE PERMISSIVE NATURE OF SUCH USE CREATES A MUNICIPAL POWER TO CONTRACT WITH THE COUNTY FOR THE BENEFIT OF JAIL USE AND THE CITIES ARE OBLIGATED ON IMPLIED CONTRACT TO PAY THE REASONABLE VALUE OF THE BENEFITS THEY RECEIVE, ACCEPT, AND APPROPRIATE.

As noted above, the legislature has devised a scheme of local criminal justice administration which allows each unit of local government to adopt and enforce ordinances applicable to local needs. With the exception of Circuit Court locations, it has also granted local governments the use of all fine and forfeiture money. Those cities with a Circuit Court are granted 50% of all forfeitures, the remaining monies going to the

State of Utah to pay the Circuit Court's expenses. The legislature has also granted local governments the power to levy and collect taxes to support its municipal functions including criminal justice costs. In keeping with this principal, Sections 10-8-58 and 10-13-23 allow municipalities to establish, erect, and maintain city jails, houses of corrections, and working houses for the confinement of persons convicted of violating city ordinances. Such provisions indicate that the legislative intent was to create in cities, under local control and financing, the means for punishing violators of city ordinances. In addition, under Section 10-8-85, U.C.A. (1953, as amended), the legislature granted cities the power to command the labor of individuals committed to the county jail on city projects. This grant confers a substantial benefit to cities in reduced labor costs. In discussing a similar statute, the Court in Grand Forks County v. City of Grand Forks stated that:

> Thus we see that the legislature provided that fines imposed for violation of a city ordinance, as well as work performed by a prisoner during his confinement, all inure to the benefit of the city. Surely, the legislature would not have intended that the expense of maintaining a city prisoner during his confinement in the county jail should be paid by the county, but that all of the benefits which might be derived from the imprisonment of offenders should inure to the benefit of the city.

In granting the above powers and benefits to municipalities, the legislature also recognized that in some instances it may be uneconomical for all cities and towns to establish municipal jails. In response to this, the legislature allowed municipalities to make other arrangements for the incarceration of city prisoners.

As previously stated, Sections 10-8-58 and 10-14-23 contain the legislative response to this problem. These provisions create a municipal power to contract with a county for the use of its jail. The issue at hand is whether the appellant municipalities have become liable under implied contract for the expense of incarcerating municipal prisoners.

The rule is well settled that a municipality or other political subdivision may become obligated on an implied contract to pay the reasonable value of benefits which it receives, accepts and appropriates, where the municipality has the power to contract for such benefits. 38 Am. Jur., "Municipal Corporations", Sec. 515, p. 193; 84 ALR, p. 937. It was decreed in Grand Forks County that:

> While there was no express agreement between the governing body of the city and the governing body of the county touching upon the care and maintenance of city prisoners in the county jail, the statute authorized such an agreement. Under such circumstances, an implied contract arose from the request of the city that its prisoners be confined in the county jail.

Appellants do not dispute the validity of such a rule but argue that it does not apply in the instant case inasmuch as no benefit is conferred upon the city when the county sheriff is legally required to accept all duly committed prisoners. Where a municipality is under a duty to either house its own prisoners or pay to house them in the county jail, a benefit is received when the county provides food and lodging for said prisoners, regardless of whether or not the county sheriff is required by law to accept the prisoner. This position was upheld by the

California Supreme Court in Sonoma County where the Court stated:

> A commitment by the judicial officer of the city . . . to have at least the force of a request; and the expense of enforcing its ordinances being imposed upon the city by law, a promise to pay therefore is implied.

Appellants also argue that they in fact do not use the Utah County Jail inasmuch as the commitment papers are signed by a Circuit Court Judge, rather than a City Judge. This argument would not apply to appellants, Pleasant Grove City and Payson City, which are not Circuit Court locations. Appellant, Orem City, has been a Circuit Court location since the creation of a Circuit Court system in 1977. However, it is Orem City which enacts the ordinances, arrests the violator, requests that the alleged violator be held in the Utah County Jail when bail is not posted, prosecutes the violator, and requests that the Judge enter a guilty plea with the resultant fine or jail time. Surely, it is in reality an Orem City prisoner, not a state prisoner who is thereafter confined in the Utah County Jail.

The argument for establishing a basis for municipal liability under an implied contract in the instant case is further strengthened by the fact that until 1977, appellants' practice was to reimburse the respondent for the use of its jail to house municipal prisoners, thereby demonstrating an awareness by appellants of their contractual obligations.

POINT III

APPELLANTS' [illegible] OF SECTIONS 17-15-17(3) AND 17-22-6 WOULD RESULT IN AN UNCONSTITUTIONAL APPLICATION OF LEGISLATIVE POWER IN VIOLATION OF ARTICLE XIII, §§ 2, 3 AND 5 OF THE UTAH CONSTITUTION.

The Utah Supreme Court In State v. Stanford, 66 P. 1061 (1901), interpreted Article XIII, §5 as requiring that county taxation be limited to county purposes. The Court also ruled that:

> Under the constitution the state has no power to make a disposition of county funds, and require that they be appropriated for other and different purposes than those for which by authority of the county they were collected.

It has been appellants' position that the enforcement of city ordinances is a "state" purpose, for which the state can require the use of county funds. Appellants rely on the case of Salt Lake County v. Salt Lake City, 134 P. 560 (1913), as authority for such a position. A careful reading of this case indicates that the Court actually supports plaintiff's position that the enforcement of city ordinances is not a state-wide or even county-wide concern for which county funds may be exper In Salt Lake County v. Salt Lake City, the Court upheld a statute which provided that both the city and the county share the cost of maintaining a juvenile center. The Court declared that to protect, care for, and educate the indigent and delinq children who would someday assume the responsibilities of citi ship was a "public duty" and ". . . one in which every taxpaye of the State of Utah was interested in".

As a result, the legislature could require both county and city as "state agencies" to fund the program. The Court was careful to point out, however, that the legislature could not interfere with activities which are a function of city government; and that the law in question did not affect local self government.

As was pointed out in respondent's initial memorandum, by no stretch of the imagination could the enforcement within a city of violations pertaining to Class "B" and "C" misdemeanors be considered a state-wide public purpose, or one in which every taxpayer in the State of Utah is interested. To the contrary, both the legislature and the Supreme Court have indicated that law enforcement within a political subdivision is not a county-wide concern.

The Utah Supreme Court in Salt Lake City Corporation v. Salt Lake County, 550 P.2d 1291 (1976), upheld the language of Section 17-34-1-5 U.C.A. (1953, as amended) which required that services provided by a county to its unincorporated area were to be paid from special service districts which collect taxes only from property in the unincorporated area of the county. The Court declared that: "To hold that the county may provide services without attempting to collect money to defray the cost would serve as an unjust burden upon the city residents."

It follows, therefore, that taxpayers in the unincorporated area of the county should not be required to help pay the cost of housing violators of city ordinances.

Requiring respondent to pay for housing city prisoners would also violate Sections 2 and 3 of Article XIII. The Utah Supreme Court in McCormick and Co. v. Bassett, 104 P.2d 892 (1917), interpreted Sections 2 and 3 of Article XIII of the Utah Constitution as follows:

> These provisions (Sections 2 and 3, Article XIII) of the constitution in plain and explicit terms provide that there shall be a uniform rate of taxation in this state so that every person, company, and corporation will be compelled to bear, as nearly as may be, his, her, or its pro-rata of the burdens of general taxation according to the value of the taxable property of such person or corporation.

Section 17-29-3 U.C.A. (1953, as amended), requires that residents of the unincorporated area of Utah County pay a special tax for law enforcement over and above the taxes collected for general county purposes. If county funds are used to pay for part of city law enforcement by housing city prisoners, then the residents of the unincorporated area are being doubly taxed. Therefore, appellants' interpretation of Sections 17-15-17(3) and 17-22-8 would result in an unconstitutional application of the law.

CONCLUSION

Defendants' interpretation of the law would result in conflicting laws and their unconstitutional application. Plaintiff's interpretation of the law would result in a fair and constitutional process for meeting the expense of housing municipal violators in the county jail. The rule has always been to interpret a statute so as not to conflict with other statutes, and to maintain its constitutional validity. For all the

Foregoing reasons, the judgment entered by the District Court should be affirmed.

RESPECTFULLY SUBMITTED this 8th day of July, 1983.

NOALL T. WOOTTON
Utah County Attorney

STERLING B. SAINSBURY
Deputy County Attorney

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the foregoing, postage prepaid, to Bryce 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, this 8th day of July, 1983.

Secretary