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 : Reply Brief of Appellants City Of Orem Payson City

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.		

REPLY BRIEF OF APPELLANTS CITY OF OREM AND PAYSON CITY

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, THE HONORABLE ALLEN B. SORENSEN, JUDGE

BRYCE D. MCEUEN
Orem City Attorney
56 North State Street
Orem, Utah 84057
Attorney for Appellant
City of Orem

DAVE MCMULLIN
Payson City Attorney
P.O. Box 176
Payson, Utah 84651
Attorney for Appellant
Payson City

NOALL T. WOOTTON
Utah County Attorney
51 South University Ave.
Provo, Utah 84601
Attorney for Respondent

RAY HARDING, JR.
35 South Main
Pleasant Grove,UT 84604
Attorney for Appellant
Pleasant Grove City

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.	:	

REPLY BRIEF OF APPELLANTS CITY OF OREM AND PAYSON CITY

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, THE HONORABLE ALLEN B. SORENSEN, JUDGE

BRYCE D. MCEUEN
Orem City Attorney
56 North State Street
Orem, Utah 84057
Attorney for Appellant
City of Orem

DAVE MCMULLIN
Payson City Attorney
P.O. Box 176
Payson, Utah 84651
Attorney for Appellant
Payson City

RAY HARDING, JR.
35 South Main
Pleasant Grove,UT 84604
Attorney for Appellant
Pleasant Grove City

NOALL T. WOOTTON
Utah County Attorney
51 South University Ave.
Provo, Utah 84601
Attorney for Respondent

TABLE OF CONTENTS

AUTHORITY CITED

CASES CITED

STATUTES AND ORDINANCES CITED

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.		

REPLY BRIEF OF APPELLANTS CITY OF OREM AND PAYSON CITY

NATURE OF THE CASE

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

DISPOSITION IN LOWER COURT

The Fourth Judicial District Court, Judge Allen B. Sorensen presiding, 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 trial court ruled that the cities have a duty to reimburse the County on the basis

of Sec. 10-8-58, Utah Code Annotated (1953, as amended), and in reliance upon 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 appellants seek to have this Court reverse the summary judgment granted below and instruct the trial court to enter summary judgment for the appellants.

STATEMENT OF FACTS

The facts of this case are as set forth in the statement of facts contained in appellants' original brief.

ARGUMENT

POINT I

THE RELEVANT UTAH STATUTES DEALING WITH RESPONSIBILITY FOR COUNTY JAIL COSTS, READ AS A WHOLE, INDICATE CLEAR LEGISLATIVE INTENT THAT SECTION 10-8-58, UTAH CODE ANNOTATED (1953, AS AMENDED), IS NOT TO BE INTERPRETED AS EMPOWERING UTAH MUNICIPALITIES TO CONTRACT FOR THE USE OF UTAH COUNTY JAILS.

In the trial court, Judge Sorensen granted the respondent's Motion for Summary Judgment, concluding that the "defendant cities have a legal duty" to pay the expenses of housing prisoners in the Utah County jail when such prisoners are confined there for violating appellants' municipal ordinances. The only explanation for this conclusion was that it was "in accordance with Section 10-8-58, U.C.A. (1953, as amended), and the case of Grand Forks County vs. City of Grand Forks,

123 N.W. 2d 42." Findings of Fact and Conclusions of Law at 3. Respondent Utah County extrapolates from that conclusion the theory that Sec. 10-8-58 "create[s] a municipal power to contract with a county for the use of its jail;" and, consequently, the appellant cities have become liable for the jail costs at issue under an implied contract, in that they have received services they could have legally contracted for. Brief for Respondent at 9-10. Appellants contend, for the reasons set forth below, that Sec. 10-8-58 does not enable municipalities to contract with counties for the use of the county jails and that there is no basis for finding an implied contract here, if that is indeed the basis for the judgment below.

The question of which Utah political subdivision is to bear the cost of incarcerating prisoners in a county jail is clearly addressed in various sections of the Utah Code. As stated in appellants' initial brief, Sec. 17-22-8 explicitly requires the county sheriff "to receive all persons committed to jail." The statute is mandatory; it provides no optional right of refusal. Both Sec. 17-22-8 and Sec. 17-15-17(3) designate the expense of housing prisoners in the county jail as a county expense. The respondent itself admits that, at least initially, counties are obligated to pay all jail costs, which admission implicitly acknowledges that counties cannot unreasonably refuse to accept prisoners committed to the county jail. Brief for Respondent at

5. The respondent county then asserts that the appellant cities should be liable for the "ultimate jail costs" because other Utah statutes require certain governmental entities to reimburse counties for the expenses incurred by counties in jailing persons incarcerated for violating state statutes or local ordinances. Brief for Respondent at 4-6. However, a careful review of these statutes will show that the counties are entitled to reimbursement only in a few limited circumstances. In addition, the 1983 amendment of Sec. 17-22-8 by the Utah Legislature indicates that the respondent's interpretation is incorrect and that a county's right to reimbursement has been expressly limited to a few specified circumstances. Section 17-22-8 presently reads:

> The sheriff must receive all persons committed to jail by competent authority and see that they are provided with necessary food, clothing and bedding in the manner prescribed by the board of county commissioners. The expense incurred in providing the above services to prisoners shall be paid out of the county treasury except as provided in Sections 17-22-8.5 and 17-22-10.

The relevant portion of Sec. 17-22-8.5, U.C.A., reads:

> The state shall reimburse any county for the actual costs of incarceration for a person convicted of any felony and sentenced to serve in a county jail as a condition of probation. . . .

This same requirement was previously found in Sec. 77-18-1, U.C.A., before being relocated and made a separate section by the same 1983 legislative act which amended Sec. 17-22-8. The other stated exception, Sec. 17-22-10, U.C.A., states that a sheriff is not required to receive or care for a

person committed upon process in a civil action or proceeding "unless security is given on the part of the party at whose instance the process is issued." As stated in the appellants' initial brief, an accepted rule of statutory construction regarding express exceptions to a general statutory rule is that the legislature creating such exceptions did not intend additional exceptions. Initial Brief for Appellant at 6-7. The Utah Supreme Court has previously recognized and applied this rule of construction in Broadbent v. Gibson, 105 Utah 53, 67-68, 140 P.2d 939, 943 (1943).

Appellants find it noteworthy that both Sec. 10-8-58 and Sec. 17-22-8.5 (in the prior language of Sec. 77-18-1) were in existence when the exceptions to Sec. 17-22-8 were amended by the 1983 Utah Legislature; yet, only Sec. 17-22-8.5 was added to the list of statutory exceptions. Appellants find this indicative of a clear legislative intent that Sec. 10-8-58 should not be interpreted as requiring cities to reimburse counties for the use of county jails, for that statute was not included as an exception to the obligation of counties to pay the expense of housing all county jail prisoners.

The respondent's interpretation of the relationship between Sec. 17-22-8 and 10-8-58 would require this Court to make the determination that the Utah Legislature did not intend to limit the stated exceptions in Sec. 17-22-8 to those found in Sections 17-22-8.5 and 17-22-10. However,

applying the rule of construction given above, the Legislature's failure to include "city prisoners" as an exception to the requirement of Sec. 17-22-8 indicates an intent that counties alone bear the ultimate expense in housing violators of appellants' ordinances in the county jail.

The appellant cities also cited the 1983 amendment to Sec. 32-1-24 in their initial brief as another statute indicating legislative intent that counties bear the sole responsibility for paying jail costs connected with housing violators of municipal ordinances in the county jail. Initial Brief for Appellants at 4-5. The respondent's attempt to explain the special appropriation to counties for jail expenses under Sec. 32-1-24, Utah Code Annotated (1953, as amended), (Brief for Respondent at 6-7), completely fails to meet the appellants' argument. Restating that argument here, appellants observe that the $1,087,500.00 (25% of $4,350,000) designated by Sec. 32-1-24(1) to be used specifically "for confinement and 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" is appropriated only to Utah counties. It is important to note the reference to "alcohol related offenses." This generic designation indicates that these funds are available not only for the confinement of violators of state DUI and intoxication laws, but also for the confinement of violators

of municipal DUI ordinances. Yet, only the counties receive the funds. It is unreasonable to argue, as the respondent does, that the State Legislature intended to aid the counties in paying the increased costs of incarcerating certain offenders, but did not intend to aid the cities who would, according to the counties' position, be required to pay such increased costs without financial assistance from the beer tax revenues. This is particularly true in light of the fact that the cities prosecute a great majority of the DUI offenders in the state. It is much more logical to conclude that the Legislature appropriated all of the beer tax incarceration money to the counties because they are the political entities required to bear these costs in Utah. The appellants' position that Sec. 32-1-24 indicates a legislative intent that counties in Utah are solely liable for jail costs does not, as the respondent fears, "decrease funding for those entities . . . 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." Brief for Respondent at 7. Rather, under the appellants' argument, such entities will still receive the total funds appropriated to them under Sec. 32-1-24. Contrary to respondent's belief that the appellants are seeking to have these funds replace money which respondent believes appellants owe to it, appellants do not seek to have these state funds

replace anything. One cannot replace something which never existed. The expenses incurred in housing prisoners is a charge against the county treasury. This appropriation should simply be added to the amount already budgeted from the general funds of the county, which funds are derived from taxes imposed county wide. If the cities were required to reimburse the county in addition to counties getting this money, the result would be an illogical windfall for the counties.

The mandatory nature of Sec. 17-22-8, coupled with the specific absence of any statutory right to reimbursement from cities for county jail costs, shed light on the proper interpretation of Sec. 10-8-58. Section 10-8-58 is simply an enabling statute to allow cities to choose between building their own jails to house violators of city ordinances or to use the county jail to house such prisoners. The geographical distance of a municipality from the county jail, as well as the personnel and transportation costs involved, may dictate that a city construct its own jail facility rather than transport prisoners to and from the county jail. Other reasons (including security, lack of manpower, etc.) may cause the governing body of a city to provide a jail facility for the incarceration of prisoners pursuant to commitment orders issued by competent authority. Such considerations explain the statutory option provided to

[illegible]

[illegible] all [illegible].

[illegible] Sec. [illegible]

[illegible] pursuant to the

[illegible] Sec. [illegible],

[illegible], and when that [illegible] purpose:

[illegible] statutes,

it will be clear that Sec. 17-[illegible] does not authorize or require Utah municipalities to "contract" with Utah counties for the use of the county jails. Because the appellant [illegible] does not have the power or duty to contract for such [illegible], the rationale applied in Grand Forks County, supra, is inapplicable in this suit, and the district court erred below in finding a legal duty for Utah municipalities to reimburse Utah counties for use of county jails based on the Grand Forks County rationale.

POINT II

THE CASES CITED BY RESPONDENT IN POINT I OF ITS BRIEF ARE BASED ON STATUTORY SCHEMES DIFFERENT FROM THAT OF UTAH AND THEREFORE ARE NOT PERSUASIVE IN UTAH.

As indicated in POINT I, supra, the responsibility [illegible] of incarcerating municipal [illegible] the county jails in Utah has been [illegible] statutes. The cases cited by [illegible] proposition that the law [illegible] housing prisoners

[illegible] North Dakota law [illegible] 17-11-13 and 17-22-8, [illegible] counties shall pay the [illegible] prisoners committed [illegible] jails. Nowhere in North Dakota law is there a mandate, as there is in Utah law, that counties pay the costs of housing inmates. Section 12-44-01 of the North Dakota Century Code requires counties to "establish" jails, and the court in Grand Forks County determined that to "establish" a jail means to construct it, not care for the prisoners housed in it. 123 N.W.2d at 46-47. However, Sections 17-15-17(3) and 17-22-8 do not speak in terms of "establishing" a jail. Rather, they explicitly require counties to pay for the costs of caring for all prisoners, including those convicted of violating municipal ordinances. As explained in POINT I, supra, the presence of this mandatory obligation on Utah counties makes the Grand Forks County rationale inapplicable in Utah.

Respondent also cites City of Grand Rapids v. County [illegible], 294 N.W.2d 47[illegible] Mich. App. 1980). That case also [illegible] statutes that differs from Utah statutes. [illegible] the Grand Rapids decision, it is important [illegible] that two district courts in Michigan are [illegible] Flows collected in district

courts of the first and second class for the violation of municipal laws are to be paid two-thirds to the county and only one-third to the political subdivision whose law was violated. Fines collected in districts of the third class are to be paid entirely to the political subdivision whose law was violated. Michigan Compiled Laws Annotated Sec. 600.8379 (Supp. 1980-1981). In turn, the county is required to pay all the expenses of prisoners convicted for violating city ordinances where courts of the first and second class have jurisdiction, M.C.L.A. Sec. 801.4a (Supp. 1980-1981), while the cities must pay for those expenses when courts of the third class have jurisdiction. Id. at 478. The payment of the expense of incarcerating prisoners in a county jail is dependent on which entity receives the benefit of the fines. Statutes regulating payment of fines in Utah are not so structured. Prior to the 1983 amendment of Sec. 78-4-22, Utah Code Annotated (1953, as amended), one-half of the fines and all of the bail forfeitures resulting from violation of Appellant City of Orem's ordinances were paid to the City. Following the 1983 amendment of this statute, the City retains no fines and only one-half of the bail forfeitures. Thus, the reasoning in City of Grand Rapids is unpersuasive in Utah, being decided under statutes not reflecting the legislative requirements established in Utah.

Respondent also cites two California cases in support of its position. In Sonoma County v. City of Santa Rosa, 102 Cal. 426, 36 P. 810 (1899), a city charter provision required that violators of state law be sentenced to the county jail and violators of city ordinances be sentenced to the city jail. In that particular case, the city recorder had erroneously committed "city prisoners" to the county jail. The city was held to be responsible for the payment of the expenses incurred in boarding them. There was no statute granting the city a permissive use of the county jail, but instead, the decision was based on the city charter provision expressly prohibiting the use of the county jail to house violators of city ordinances. Section 10-8-58 grants Utah municipalities a permissive use of the county jails, and hence, the holding of Sonoma County is inapplicable in Utah.

The respondent also cites Washington Township Hospital District of Alameda County v. County of Alameda, 263 Cal. App. 2d 272, 69 Cal. Rptr. 442 (1968), as authority for "the general rule that cities are liable for the cost of housing city prisoners in the county jail." Brief for Respondent at 3-4. However, the basis for that "general rule" was indicated in Washington Township Hospital District to be Cal. Gov't Code Sec. 36903 (West 1968), which read:

> Imprisonment for violation of an ordinance shall be in the city jail, unless by ordinance the legislative body prescribes imprisonment in the county jail. If city prisoners are imprisoned

> in the county jail the expense is a charge against the city.

Thus, the "general rule" relied on by respondent is only applicable in jurisdictions which, like California, have a statute expressly making the expense of imprisoning "city prisoners" a city charge. Utah is not such a jurisdiction. In fact, a California court in a decision rendered subsequent to Washington Township, set forth the "general rule" correctly when it stated:

> The general rule is that a public corporation 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 County, 118 Cal. App. 2d 497, 499, 258 P.2d 28, 30 (1953). Thus, the "general rule" is contrary to the respondent's position, there being no Utah statute imposing liability for prison expenses on Utah municipalities. Section 10-8-58 of the Utah Code simply enables cities to construct jails or use the county jail. It imposes no obligation on Utah cities to pay for the cost of incarcerating "city prisoners," and appellant is not aware of any other Utah statute which mandates such a requirement.

None of the cases relied on by the respondent were decided under a statutory scheme similar to that established in Utah. Because the determination of who is to pay the cost of incarcerating prisoners is based in statutory law, and not on any "general rule," the statutory differences

noted in the cases above make respondent's cases inapplicable in interpreting the Utah statutes. Contrary to respondent's allegation that "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," Brief for Respondent at 4, appellants have cited specific statutory authority, i.e. Sections 17-15-17(3) and 17-22-8, U.C.A. (1953, as amended), as such authority in Utah. Appellant cities have cited no cases in support of their position simply because the case law dealing with the issue at hand has not been decided under a statutory scheme similar to Utah's.

The key to all of the cases and statutes cited by all of the parties in this action is that each state has the right to define the duties and obligations of each of its political subdivisions. The cities and counties in Utah are controlled by state statutes and must follow the dictates of these laws. In this case, Utah County is attempting to avoid its responsibility under Utah law by reliance upon cases from other jurisdictions whose legislatures have enacted laws that establish different obligations as between cities and counties. The Court should not be misled by these decisions but should determine the responsibilities of the parties pursuant to the clear intent of the Utah statutes cited above.

POINT III

THE DISTRICT COURT AND THE RESPONDENT ERR IN CONCLUDING THAT AN IMPLIED OR QUASI CONTRACT EXISTS BETWEEN THE RESPONDENT AND APPELLANT, WHICH CONTRACT REQUIRES THE APPELLANTS TO REIMBURSE THE RESPONDENT FOR USE OF ITS JAIL.

Not only did the district court err in interpreting Sec. 10-8-58 as allowing cities to contract with counties for use of county jails, but it also erred if its cryptic conclusion is to be read to imply that any type of contract dealing with jail costs existed between appellant cities and the respondent.

Because the court below based its conclusion that the appellants are under a legal duty to reimburse the respondent on the case of Grand Forks County, supra, it is assumed that the district court was proposing that grounds existed to find an implied-in-law contract between the appellant cities and the respondent. The North Dakota Supreme Court stated in Grand Forks County:

> Decisions holding a municipality liable on implied contract for benefits received are based on the theory that a municipal corporation ought not to receive benefits which it can legally acquire by contract, but for which it has not contracted, and then avoid liability for the reasonable value of the benefits received on the plea that no contract had, in fact, been consumated.

123 N.W. 2d at 45. The court also noted:

> [W]here a municipality has the power to enter into an obligation and is not prohibited from creating a liability in any but a specified way, it may be held liable on an implied agreement, upon the principle of unjust enrichment for services rendered and for goods furnished.

Id. at 46. This language is similar to this Court's explanation of a "quasi contract" (synonym for implied-in-law contract) in Rapp v. Salt Lake City, 527 P.2d 651 (Utah 1974):

> [A quasi contractual obligation] is imposed by the law for the purpose of bringing about justice without reference to the intention of the parties. Such obligations are not true contracts but are based on unjust enrichment or restitution. . . . Where the facts indicate a duty of the defendant to pay, the law imputes to him a promise to fulfill that obligation.

Id. at 654-55.

Assuming that this implied-in-law or quasi contract theory was the basis for the district court granting the respondent's Motion for Summary Judgment, appellants argue here that it was error for the district court to so hold for five related reasons: (1) Utah cities cannot legally acquire by contract the use of county jails, (2) there can be no implied-in-law contract where such an agreement was not formally approved by the appellants, (3) there can be no consideration provided by counties in providing prisoners the use of county jails because the counties are legally obligated to provide such service, (4) there is no consideration by counties because cities receive no benefit unique to themselves, and (5) the appellants do not, in fact, "use" the county jail.

The first reason given has been explained in POINT I, supra. Summarized briefly, Sec. 10-8-58 only enables Utah cities to build their own city-operated jails or to use the county jails. Because counties are already obligated

under Sec. 17-22-6 to provide jail facilities and to pay the expense of housing all prisoners incarcerated therein, Sec. 10-8-58, properly interpreted, does not address or concern itself with contractual powers of cities.

Reason two is based on the rule enunciated in Rapp v. Salt Lake City, supra, where this Court said:

> Particularly in the case of public contracts, the requirement of certain formalities by law, such as a written contract, indicates . . . there is no contract until there has been compliance with the requisite formalities.

527 P.2d at 654. Both state and local legislation impose certain formalities on appellants here. For example, Appellant City of Orem operates under the "council-manager" form of local government. Section 10-3-1223, U.C.A., requires all contracts of the City to be executed on its benalf by its mayor. Section 10-6-138 of the "Uniform Fiscal Procedures Act for Utah Cities" (Chapter 6 of Title 10, U.C.A.), requires the city recorder to "countersign all contracts made on benalf of the city and . . . maintain a properly indexed record of all such contracts." Sections 2-35 and 2-73 of the Orem City Code impose parallel formalities upon contracts involving the City. Additionally, Sec. 10-6-123, U.C.A., specifically voids contracts entered into by Utah cities in excess of total appropriations for any department in a city budget. These requirements are in keeping with the legislative intent enunciated in Sec. 10-6-102, U.C.A., which lists one of the purposes of the

"Uniform Fiscal Procedures Act for Utah Cities" as ". . . to provide the public and investors with information about the financial policies and administration of cities . . . ." This Court in Rapp specifically found the plaintiff's claim in that case to "be directed towards enforcing a quasi contractual obligation," 527 P.2d at 654, but still held that ". . . plaintiff encounters the statutory requirements which mandate his contractual obligation is void without fulfillment of the requisite formalities." 527 P.2d at 655. Thus, the court below in the instant case erred in suggesting the existence of a quasi contract where the requisite statutory formalities were not observed between the respondent and appellants.

Reason three above is based on the statutory obligation of counties to house and pay the jail costs of all prisoners committed to the county jails. This statutory obligation amounts to a pre-existing duty, the presence of which vitiates any consideration on the part of counties. As this Court said in Baggs v. Anderson, 528 P.2d 141, 143 (Utah 1974): "[A]n agreement to do that which one is already required to do does not constitute consideration for a new promise." See also County of Clark v. Bonage No. 1, 615 P.2d 939 (Nevada 1980). Absent consideration, neither a quasi nor any other kind of contract can be found between the appellants and the respondent.

Not only can no consideration be found to have been

given by the County under the pre-existing duty rule, but there is no consideration given by the County in the instant case because the appellant cities receive no benefits from the use of the county jail which are not shared by Utah residents in general. The respondent enumerates in POINT II of its brief various benefits which it claims are received by the appellant cities when "city prisoners" are housed in the county jail. Brief for Respondent at 7-10. The respondent in turn argues that the alleged receipt of the benefits entitles it to compensation from the appellants on a quasi contract theory. However, close analysis of these benefits indicate that they are not received uniquely by the appellants, but are enjoyed by all state residents.

First, respondent implies that appellants receive a benefit from receipt of fine and forfeiture monies assessed against city ordinance violators. Brief for Respondent at 7-8. As noted at page 12, supra, Appellant City of Orem does not receive any money from the payment of fines when a prisoner is committed to the county jail. U.C.A. Sec. 78-4-22 now requires that all fines resulting from convictions in circuit courts be remitted to the state. Although it is true that the City may receive fifty percent of bail forfeitures, any time a prisoner is present before the court and is fined and sentenced to jail, the City receives nothing. When bail is forfeited, the arrestee is not before the court and no jail sentence is imposed; therefore, the

question of jail costs does not arise. The end result is that any time a prisoner is committed to the county jail, he or she will have been taken before a judge; and, at that point, the City receives no monetary benefit from the imposition of any fine.

Second, the respondent cites Utah Code Annotated Sec. 10-8-85 (1953, as amended), as bestowing on cities the benefit of using county jail prisoners on city projects. Brief for Respondent at 8. In the context given by respondent, it would appear that Sec. 10-8-85 is limited to permitting cities to use only "city prisoners" on city projects. However, the statute permits cities to use "any person committed to the county or municipal jail or other place of incarceration" on such projects (emphasis added). Cities, then, can command the work of a prisoner convicted of committing a criminal act in the unincorporated area of a county just as well as commanding the labor of a person imprisoned for violating a municipal ordinance. Similarly, under the statute a city could exercise the same privilege even if no "city prisoners" were in the county jail. Any benefit bestowed by Sec. 10-8-85 is available to cities whether "city prisoners" are housed by the county or not. Therefore, Sec. 10-8-85 benefits are not a function of counties housing "city prisoners," but are simply the result of cities being entitled to make use of any prisoner in the county jail. Appellants also note that Utah Code Annotated

Sec. 17-5-31 (1953, as amended), grants counties a similar right to have any jail prisoner work on county projects. It reads:

> [Counties] may provide for the working of prisoners confined in the county jail under convictions for misdemeanors . . . for the benefit of the county, upon public grounds, roads, streets, alleys, highways or public buildings, when under such judgment of conviction or existing laws such prisoners are liable to labor.

Thus, the benefits of prisoner labor are available to both counties and cities and is not an exclusive privilege of the entity whose law the prisoner happened to violate.

Third, respondent alleges that appellants receive a benefit from having "city prisoners" housed in the county jail by being relieved of an obligation which appellants are "under a duty" to provide. Brief for Respondent at 9. Because respondent does not cite the source of such a statutory duty, it is assumed that respondent finds such an obligation in Sec. 10-8-58. However, as noted previously, that statute is simply an enabling act permitting cities to build city jails or to use county jail facilities for incarcerating violators of city ordinances. It is not a mandatory statute requiring cities to jail such violators in city jails. Appellants, being under no statutory obligation to imprison "city prisoners" in city jails, are not relieved of any costs by respondent fulfilling the duty and obligation imposed upon it by Sec. 17-22-8.

Although the benefits discussed above are the only

ones mentioned by the respondent as being received by the appellants, appellants note that this Court may find appellants are benefited in the use of the county jail by the purposes behind incarceration, such as protection, deterrence, rehabilitation and punishment. While appellants do not deny the receipt of these benefits, as is explained in POINT IV, infra, they assert that such benefits are likewise enjoyed by county residents as well as Utah residents in general. Hence, appellants do not receive any unique benefits not conferred upon all state residents by law and, thus, are not liable to Utah County on any contract theory.

Finally, there is no factual basis for finding, nor was it ever stipulated, that appellants "use" the county jail within the contemplation of Sec. 10-8-58, at least for post-conviction detainees. As stated in appellants' initial brief, the prisoners sent to the county jail are ordered there by a judge of the Eighth Circuit Court. Initial Brief for Appellant at 10. The circuit court judges are officers of the state, not of the City. The City has no control over the prisoner at the time of sentencing and does not, therefore, control the use of the jail. The county sheriff, in turn, receives the prisoners at the county jail, not because the City expressly or impliedly asks him to, but because a state judge commits the prisoners to him and because he is required by law to receive them. The County Commissioners here have never made acceptance

of "city prisoners" at the jail contingent upon payment by the cities. The sheriff simply accepts the prisoners because the law says he must.

In summation, cities are not enabled to contract with counties for the use of the county jails, the requisite statutory formalities required in contracts with public entities were not observed, counties have a pre-existing duty to pay the expenses of housing prisoners in the county jail, cities receive no unique benefits to themselves by the county providing the jail and paying related housing costs, and the appellant cities do not in fact "use" the county jail within the contemplation of Sec. 10-8-58. This being true, it is clear that the district court erred in concluding that appellants here are liable to the respondent under any quasi contract theory. There is no equitable reason to find that cities should pay counties for the jail costs involved here.

POINT IV

THE INCARCERATION OF CONVICTED VIOLATORS OF MUNICIPAL ORDINANCES SERVES A VALID STATE PURPOSE FOR WHICH THE STATE MAY REQUIRE THE EXPENDITURE OF COUNTY REVENUES, WHICH REQUIREMENT DOES NOT CONTRAVENE THE UTAH CONSTITUTION.

Respondent and Amicus Utah Association of Counties contend that requiring counties to pay the cost of incarcerating convicted violators of municipal ordinances serves no valid county purpose and that such a requirement is, therefore, violative of Art. XIII, Sec. 5, of the Utah Constitution.

Brief for Respondent at 11-13, Brief for Amicus Association of Counties at 2-6. However, Utah case law indicates that the protection of the public through law enforcement and incarceration of convicted criminals is a valid public purpose for which the state can require the expenditure of county funds; and therefore, neither Sections 17-15-17(3) and 17-22-8 of the Utah Code nor appellants' position offend the Utah Constitution.

As stated by Amicus Utah Association of Counties, provisions like Art. XIII, Sec. 5, permit local taxation to advance statewide purposes. Brief for Amicus Association of Counties at 6. Thus, the State Legislature may require local governmental entities to pay the costs of providing a delegated state function. Such was the holding in Salt Lake County v. Salt Lake City, 42 Utah 548, 134 P. 560 (1913). The issue in that case was the constitutionality of Chapter 144 of the Laws of Utah 1907, as amended [now codified as Utah Code Annotated Sections 55-11-1 to -8 (1953, as amended)]. The Chapter required cities and counties to jointly provide for juvenile detention homes. Although such acts were found to be state functions, the requirements of Chapter 144 were found not to contravene any constitutional provisions because cities and counties are agents of the state, and the state was held to have the power to assign state functions to its agents for the good of the public. The Court explained:

> The state government, in the discharge of its functions, may, however, classify the counties and cities of the state, and may 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 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.

Id. at 554, 134 P. at 563. The Court also stated:

> What is required from Salt Lake City is required from it as an arm or agency of the state government. . . . Salt Lake City as a corporate body is in no way interested in the moral welfare of the delinquent children provided for in the juvenile court law of this state, but the people who live within the city of Salt Lake as well as those who reside elsewhere within the state are interested, and by reason of that fact the people of the state, through their government, may act in such matters and call upon both counties and cities as state agencies to assist the state in its effort to protect and enhance the educational and moral welfare of delinquent children under a certain age.

Id. at 554-55, 134 P. at 563. Thus, the Court not only found that the state may delegate the obligation of performing a state function to its political subdivisions, but also explicitly noted that such delegation does not alter the function's identity as a state concern. Similarly, in Denver and Rio Grand R.R. Co. v. Grand County, 51 Utah 294, 170 P. 74 (1917), this Court observed that requiring counties to provide funds to certain mothers with dependent children did not change the identity of that function to a strictly local one. The Court there concluded: "We are not prepared to hold that the [Dependent Mothers' Act], in effect, does not define and declare a policy of the state, nor that

it is not within the province of the Legislature to so define and declare a state policy." Id. at 301, 170 P. at 76.

Respondent claims that Salt Lake County actually supports its position by pointing out that the Legislature could not interfere with activities which are a function of city government. Brief for Respondent at 11. Appellants are not arguing that the Legislature is indeed interfering with either city or county government functions by requiring respondent to pay the jail costs involved here. Instead, they assert that the incarceration of prisoners, including those convicted of violating municipal criminal ordinances, is a statewide, public concern, in support of which the state can require the counties to expend funds.

The case of Salt Lake City v. International Association of Firefighters, 563 P.2d 786 (Utah 1977), also supports appellants' position that law enforcement is a state purpose.

> Police and fire protection are essential to the administration of state government, which has the duty to protect and defend the rights of its citizens to life, liberty, and property. The duty of the state cannot be circumscribed by city limits, particularly where uniform state action may be required. Police, fire, and health protection are matters of statewide concern.
>
> The exercise of the police power is an attribute of state sovereignty, a portion of which it may delegate, but not relinquish to municipalities, which have none of the elements of sovereignty. Since fire protection is a state affair, the legislature may withdraw its delegation of power to municipalities to determine the wages, hours, and other conditions of employment of fire fighters,

> and such action does not constitute an interference with a municipal function. (Emphasis added.)

Id. at 789. If the Legislature can keep the power itself to determine the wages, hours, and other conditions of local firefighters, and if police protection is also a state function, then certainly the state can assign the function of incarceration of prisoners to the county; and the requirement that the support of prisoners therein be a county charge does not run afoul of of Art. XIII, Sec. 5, of the Utah Constitution.

The fact that a city arrests and convicts a criminal offender under a municipal ordinance should not alter the fact that the city is fulfilling a state purpose in doing so. This is especially true in light of the fact that Appellant City of Orem's criminal and traffic code simply consists of a verbatim adoption of the state criminal and traffic code (U.C.A. Title 76 and Chapter 6 of Title 41, respectively and Sections 16-1, -8, -8.1, and -8.2, Orem City Code). These provisions of the state code reflect the Utah Legislature's determination of acts or omissions which constitute crimes throughout the State of Utah and for which imprisonment may be used to deter such conduct, to protect state residents from those guilty of such offenses, and to punish and rehabilitate the offenders. Imprisonment of these offenders, whether under the state code or the city code, benefits all state residents by either preventing

such conduct or by removing those guilty of the same from Utah society. The city's adoption of these state purposes does not magically cause the state's concern in these matters to disappear.

Further evidence that imprisonment of municipal code violators serves a state purpose is seen in the following example. Center Street in Orem is one of several state highways running through Orem city limits. Utah Code Annotated Sec. 27-12-42.1(4) (1953, as amended). When a Utah Highway Patrol officer arrests a driver for DUI on Center Street, the driver is charged under state law for a class B misdemeanor [Utah Code Annotated Sec. 41-6-44 (1953, as amended)]. The driver would be prosecuted by Utah County and any resulting incarceration of the driver would be a County expense. If an Orem city police officer makes the same arrest on the same street under the city code provision adopting Sec. 41-6-44, the same state purposes the Utah State Legislature desires to achieve in imprisoning the Highway Patrol arrestee are accomplished and fulfilled in imprisoning the city police arrestee. The state purpose is achieved regardless of the identity of the arresting agency or the statutory basis for the arrest. The imprisonment fulfills a state-designated purpose (i.e., the further prevention or punishment of DUI conduct), and U.C.A. Sec. 17-22-8 designates the County as the state entity responsible for providing and funding such state functions. The absurdity of respondent's

argument that incarceration of "city prisoners" at county expense fulfills no state purpose is shown further by the ease with which cities could circumvent jail costs under respondent's position. Cities could simply fail to adopt portions of the state criminal or traffic code which result in "city prisoners" being incarcerated. Cities are not required to regulate such conduct by state law, but are authorized to do so on a permissive basis. See Utah Code Annotated, Sections 10-8-47 to -51 (1953, as amended). The state criminal and traffic code would continue to prohibit the conduct the city no longer regulated. City police officers would still be required by state law to enforce these state criminal laws. Utah Code Annotated Sections 10-3-913 to -915 and -919 (1953, as amended). When arrests were made by city police officers for violations of state laws amounting to class B or C misdemeanors, it would fall on the county attorneys to prosecute the violators as required by Utah Code Annotated Sec. 17-18-1(1) and (2) (1953, as amended). The prisoners would then be "county prisoners" and the counties would, by the respondent's own arguments, be required to pay for their incarceration in the county jail.

Thus, it is clear that the statutory requirement in Title 17 that counties pay all expenses associated with housing prisoners in the county jail does not contravene

Sec. 5 of Art. XIII because such a requirement is a valid public and county purpose.

Respondent Utah County also contends that Sections 2 and 3 of Art. XIII are impinged if counties are required to house "city prisoners." These sections require the state to establish a uniform and equal property tax rate. The respondent believes that because residents in the unincorporated area of the County are required to pay a special law enforcement tax under Sec. 17-29-3 "over and above the taxes collected for general county purposes," use of general county funds "to pay for part of city law enforcement by housing city prisoners" results in unincorporated area residents being "doubly taxed." Brief for Respondent at 13. From this assumption, the respondent apparently concludes that the uniform and equal property tax rate requirements of Sections 2 and 3 of Art. XIII are being violated. The error of the respondent's analysis is seen in the following points. First, the State of Utah has not itself imposed any nonuniform or unequal tax rate or scheme. Instead, it has required by the relevant statutes of Title 17 that counties are to provide a county jail, are to receive all prisoners committed thereto by competent authority, and are to pay the expense of housing such prisoners, unless entitled to a statutory right of reimbursement. There does not need to be any "double taxation" of anyone in order to support the county jail. If there is double taxation,

it is imposed as a matter of the County's choice and not by the appellants nor by appellants' interpretation of Sections 17-15-17(3) and 17-22-8 of the Utah Code. The County could easily impose a uniform county wide tax for the housing of inmates in the county jail. Citizens of appellant cities would bear the burden equally with all other County residents. Any violation of Sections 2 and 3 of Art. XIII stems from the County's improper taxation of the unincorporated county areas and not from state law.

Secondly, Sec. 17-29-3 of the County Service Area Act, Utah Code Annotated (1953, as amended), does not set up a "double taxation" with respect to the incarceration of inmates at the county jail. That provision states, in part, as follows: "Whenever an unincorporated area in a county requires one or more of the following extended services which are not provided on a county-wide basis: extended police protection . . . such services may be supplied by a county service area." (Emphasis added.) The County Service Area Act provides solely for services which are not provided county wide. The Act cannot refer, then, to the county jail, which is a service provided county wide, and the taxes imposed under the Act cannot be applied towards incarceration of prisoners in the county jail. The extended police protection referred to in Sec. 17-29-3 can only refer to extended patrol and protection by the county sheriff and his deputies, who in those unincorporated

areas are the chief law enforcement officers assigned to patrol and respond to emergency calls. This point similarly answers Amicus Utah Association of Counties' contention that Sec. 17-36-9(2)(a) requires costs for "incarcerating violators of county ordinances [to] be budgeted separately" from general county funds. Brief for Amicus Association of Counties at 10. That statute merely enables certain counties to establish a "Municipal Services Fund" and a "Municipal Capital Projects Fund" from which municipal services and municipal capital projects are to be appropriated. Again, if the County is using this statute to impose any additional taxes on special county service districts, the responsibility for any resulting "double taxation" lies with the County. Appellants do note that nothing in the record supports either the respondents' or Amicus Utah Association of Counties' assertion that the unincorporated county areas are being separately taxed for jail costs.

Thirdly, respondent's and Amicus Utah Association of Counties' argument herein would actually result in "double taxation" upon city residents. Such residents are taxed as county residents for county services provided to them, including the provision of a jail as required by Title 17. Respondent and the Utah Association of Counties would then have city residents also pay a separate fee for costs incurred in housing "city prisoners" in the county jail, and cities would be paying twice for the same service.

Thus, the arguments put forth by the appellants do not result in any violation of Art. XIII of the Utah Constitution, but indeed, such constitutional provisions require the conclusion that the court below erred in finding cities liable for costs of housing "city prisoners" in the county jail.

CONCLUSION

The appellants have attempted to show that the authority cited by the district court below in granting the respondents's Motion for Summary Judgment does not support that conclusion. Contrary to both the conclusion of the court below and the respondent's position, Sec. 10-8-58, read togetner with the other Utah statutes dealing with the responsibility for county jail costs, does not empower or require Utah municipalities to contract with Utah counties for use of the county jails. Rather, Sec. 17-22-8 requires the counties to bear the cost associated in housing prisoners in the county jails, including prisoners incarcerated for violating municipal ordinances. Utah counties cannot legitimately condition incarceration of some prisoners in county jails on reimbursment from the cities for jail costs.

Similarly, the court below and the respondent in its brief erred in finding the basis for any contract between the appellant cities and the County. First, Utah cities are not enabled to enter into any such contract. Second, contracts with cities are void where, as here, the requisite

statutory contract formalities were not observed. Third, the respondent cannot be said to furnish any consideration for this alleged contract when it is under a pre-existing statutory duty to pay county jail costs. Fourth, the respondent does not provide any benefits unique to the appellants, and thus, no grounds exist for finding consideration from the county. Fifth, the appellants do not "use" the county jail in that it is state judicial officers that are committing "city prisoners" to the county jail. These numerous points clearly indicate that no legal grounds exist to find any contract between the parties relative to jail cost liability.

Finally, the arguments put forth by the appellants in their initial brief do not contravene any provision of the Utah Constitution. Rather, the Legislature's requirement that counties provide a jail for county wide use and pay associated expenses from taxes collected county wide serves a valid public purpose and also produces the most equitable approach for providing jail facilities for state, county and city misdemeanants.

Appellants respectfully request this Court to reverse the court below and to grant appellants' Motion for Summary Judgment.

Bryce McEuen
Orem City Attorney

Dave McMullin
Payson City Attorney

D E L I V E R Y C E R T I F I C A T E

I hereby certify that I delivered a true and correct copy of the foregoing Brief of Appellants City of Orem and Payson City to: Noall T. Wootton, Utah County Attorney, 51 South University Avenue, Provo, Utah 84601; and Ray Harding, Jr., Pleasant Grove City Attorney, 35 South Main, Pleasant Grove, Utah 84604.

Delivered this 11th day of April, 1984.