

1972

**Electors of the Proposed Body Corporate, of the Town of Cottonwood City v. Board of County Commissioners of Salt Lake County And William E. Dunn, Phillip R. Bwmquist, And Ralph Y. McClure, Constituting The Members of Said Commission And Walker E. Anderson For Himself And All Persons Similarly Situated And Those Opposed To The Petition, Mandamus, Writ, And Town Incorporation : Brief of Intervenors And Respondents**

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Walker E. Anderson; Attorney for Respondents

---

**Recommended Citation**

Brief of Respondent, *Cottonwood City v. Salt Lake County*, No. 12748 (1972).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/5566](https://digitalcommons.law.byu.edu/uofu_sc2/5566)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

# IN THE SUPREME COURT OF THE STATE OF UTAH

MEMBERS OF THE PROPOSED  
BODILY CORPORATE OF THE  
OF COTTONWOOD CITY

*Plaintiffs*

BOARD OF COUNTY COMMISSIONERS  
OF SALT LAKE COUNTY  
E. DUNN, PHILLIP T. DUNN,  
RALPH Y. McCLURE, DEAN  
THE MEMBERS OF SAID COUNTY

and

WALKER E. ANDERSON  
AND ALL PERSONS SUCCESSORS  
AND THOSE WHO MAY BE  
PETITION, MANIPULATION  
TOWN INCORPORATION

*Defendants*

## Brief of Defendants

Appeal from the Supreme Court  
said action

*Filed*

Robert Crofts  
Deputy County Attorney  
C-220 Hall of Justice  
Salt Lake City, Utah 84111  
*Attorney for Respondents*

Hunt, Walker & Hines, Inc.  
Suite No. 275, Cottonwood  
4835 Highland Drive  
Salt Lake City, Utah 84117  
*Attorneys for  
Plaintiffs and Appellants*

## INDEX

|   | Page |
|---|------|
| NATURE OF CASE .....  | 1    |
| DISPOSITION IN LOWER COURT .....  | 2    |
| RELIEF SOUGHT ON APPEAL .....   | 2    |
| STATEMENT OF FACTS .....  | 2    |
| ARGUMENT .....  | 3    |
| POINT I   |      |
| THE INCORPORATION OF A TOWN, UNDER SECTION 10-2-6, IS A DISCRETIONARY MATTER WITH THE COUNTY COMMISSIONERS AND NOT BY MANDAMUS .....  | 3    |
| POINT II  |      |
| THE LEGISLATURE MAY DELEGATE TO THE COUNTY COMMISSIONERS FOR COUNTY PURPOSES, LEGISLATIVE POWER .....   | 9    |
| POINT III   |      |
| THE COUNTY COMMISSIONERS REGULARLY AND PUBLICLY HEARD THE PETITION AND OPPOSITION THERETO AND DENIED THE PETITION IN THEIR DISCRETION AND THERE IS NO VIOLATION OF THE CONSTITUTION. .... | 13   |
| CONCLUSION .....  | 16   |

## CASES CITED

|   |    |
|---|----|
| Aherns v. Kirby, 37 P2d 375, 44 Ariz. 269 .....   | 6  |
| Board of Commissioners v. Schmidt,<br>157 P.1073, (Nev. 1916) .....                                   | 11 |
| City of Eureka v. Wilson, 48 P.41 .....   | 10 |
| Cottonwood Mall v. Utah Power and Light Company,<br>U.S. Dist. Ct. for Utah, Civil No. C-229-68 ..... | 6  |
| 440 F.2nd 36, 10th CA .....   | 6  |
| U.S. Sup. Ct. No. 71-179, Vol. 30 L.Ed2d, No. 1, p99,<br>Nov. 15, 1971 .....                          | 6  |

## INDEX (Continued)

|   | Page |
|---|------|
| Goodman v. Meade, 162 Pa. Super. 587, 60 A.2d 577 .....                 | 4    |
| Green v. Village of Riezi, 40 So. 17 .....                              | 5    |
| Harrison v. Board of Commissioners,<br>68 Idaho 463, 198 P2d 1013 ..... | 5    |
| Haslam v. Morrison, 113 U. 14, 190 P2d 520 .....                        | 3    |
| Hornsbrook v. Elk Grove, 21 SE 581 .....                                | 12   |
| Maguez v. School District,<br>128 P2d 480, 109 Colo. 551 .....          | 5    |
| Murphy v. Grand County,<br>1 U2d 412, 268 P2d 677 .....                 | 11   |
| Row v. Ray, 231 NW 689 .....  | 6    |
| School District v. Cook, 424 P2d 751 .....                              | 5    |
| Smyth v. Buttars, 38 U. 151, 112 P. 809 .....                           | 4    |
| State v. Bunge, 73 P2d 516 .....  | 3    |
| Taylor v. Robertson, (1898) 16 U. 330, 52 P. 1 .....                    | 9    |

### UTAH CODE

|                      |                            |
|----------------------|----------------------------|
| Section 10-2-6 ..... | 1, 2, 4, 5, 10, 11, 12, 14 |
| Section 54-2-1 ..... | 6                          |

### U. R. C. P.

|                        |   |
|------------------------|---|
| Rule 65 B (b)(2) ..... | 4 |
|------------------------|---|

### 1884 LAWS OF UTAH

|                         |   |
|-------------------------|---|
| 1884 Laws of Utah ..... | 4 |
|-------------------------|---|

### 1898 REVISED STATUTES OF UTAH

|   |   |
|---|---|
| 1898 Rev. Stat. of Utah (Section 299) ..... | 5 |
|---|---|

### UTAH CONSTITUTION

|                           |   |
|---------------------------|---|
| Article I Section 7 ..... | 5 |
|---------------------------|---|

## INDEX (Continued)

Page

### U.S. CONSTITUTION

|                         |       |
|-------------------------|-------|
| Amend. XIV Sec. 1 ..... | 5, 14 |
|-------------------------|-------|

### TEXTS

|  |      |
|--|------|
| 14 Am. Jr. Sec. 33 .....                                       | 11   |
| 52 Am Jr. 2d.  |      |
| Sec. 76 .....  | 3    |
| Sec. 78 .....  | 3, 4 |
| Sec. 79 .....  | 3    |
| 56 Am. Jr. 2d.   |      |
| Sec. 28 .....  | 12   |
| Sec. 193 .....   | 15   |
| Sec. 196 .....   | 12   |
| Sec. 199 .....   | 12   |
| Sec. 227 .....   | 12   |
| Sec. 229 .....   | 13   |
| Sec. 230 .....   | 13   |
| Sec. 371 .....   | 13   |
| Sec. 437 .....   | 13   |
| Sec. 438 .....   | 14   |
| Sec. 490 .....   | 15   |
| Sec. 560 .....   | 15   |
| Lewis' Sutherland, Statutory Construction, Vol. 2 p. 732 ..... | 10   |
| Utah Legis. General Session of 1971, S.B. No. 128 .....        | 6    |

# IN THE SUPREME COURT OF THE STATE OF UTAH

---

ELECTORS OF THE PROPOSED  
BODY CORPORATE, OF THE TOWN  
OF COTTONWOOD CITY,

*Plaintiffs and Appellants,*

vs.

BOARD OF COUNTY COMMISSIONERS  
OF SALT LAKE COUNTY and WILLIAM  
E. DUNN, PHILLIP R. BLOMQUIST, and  
RALPH Y. McCLURE, CONSTITUTING  
THE MEMBERS OF SAID COMMISSION,

*Respondents,*

and

WALKER E. ANDERSON FOR HIMSELF  
AND ALL PERSONS SIMILARLY SITU-  
ATED AND THOSE OPPOSED TO THE  
PETITION, MANDAMUS, WRIT, AND  
TOWN INCORPORATION,

*Intervenors and Respondents.*

Case No.  
12748

---

## Brief of Intervenors and Respondents

---

### NATURE OF CASE

This is Appellants action in *mandamus* to compel the Salt Lake County Commissioners to approve Appellant's petition for incorporation, under the Utah Code, Section 10-2-6.

## DISPOSITION IN LOWER COURT

Appellants filed a Petition for Writ of Mandamus (R 54) and the Court issued its Alternative Writ of Mandamus (R 1). Intervenor intervened (R 15), by Court Order. The matter was *argued* to the Court *without* any testimony being taken. The Petition for a Writ of Mandamus and Alternative Writ of Mandamus *was denied* and said action *dismissed* with prejudice (R 9).

## RELIEF SOUGHT ON APPEAL

Intervenor and Respondents, respectfully request this Court to sustain the Lower Court's Decision, dated November 29, 1971 (R 16) and affirm the Lower Court Decree, dated December 10, 1971, (R 9).

## STATEMENT OF FACTS

Appellants, 17 registered voters, (R 33) filed and petitioned the Salt Lake County Commissioners (R 34, 35, 36) for the incorporation of the Town of Cottonwood City, being *mainly* the Cottonwood Mall and a *few* surrounding streets. The Petition and Opposition, (R 50, 51, 52, 53) were *publicly heard* by the Commissioners. About October 4, 1971, the Commissioners in their *discretion* denied the Petition for incorporation, Utah Code Sec. 10-2-6. Their AFFIDAVIT regarding their reasons for denial is on file, (R 32).

## ARGUMENT

### POINT I

THE INCORPORATION OF A TOWN, UNDER SECTION 10-2-6, IS A DISCRETIONARY MATTER WITH THE COUNTY COMMISSIONERS AND NOT BY MANDAMUS.

The Writ of Mandamus will issue *only* where there is a showing of abuse of *discretion* and that the abuse of *discretion* must appear very clearly before the Court will interfere by Mandamus, 52 Am. Jur. 2d, Section 79, *State v. Bunge*, 73 P2d 516. Also from 52 Am. Jur. 2d the following is cited: the Writ of Mandamus will not issue to compel the performance of discretionary acts, Section 76, *Haslam v. Morrison*, 113 U.14, 190 P2d 520; and that *discretion* means the power or right conferred upon Respondents by law of acting officially under certain circumstances according to the dictates of *their own judgment and conscience*, and not controlled by the judgment or conscience of others, and even when an act is ministerial in character, it has been said that if the proper performance thereof involves *discretion*, the Writ will not direct a decision in a particular way, Section 76; and the use of the Writ *will not* ordinarily be extended so as to interfere with the manner in which the *discretion* is exercised or to influence or *coerce* a particular determination, Section 78; and Mandamus is not an instrument for the *instruction of public officers* as to the manner in which they shall discharge duties which call for the exercise of *discretion*, as distinguished from the performance of ministerial duties, Section 78; and where, as to the *facts*, there exists any ad-



missible doubt, or where *reasonable* men might conscientiously differ with respect to *discretion* or the absence thereof, the Courts have with practical unanimity *declined* to interfere by mandamus, and whenever an element of *discretion* enters into the duty to be performed, the functions of mandatory authority are short of their customary *potency* and become *powerless* to dictate terms to that *discretion*. *The Court is without power* to substitute its *discretion* for that of Respondents, or where the act is *discretionary*, to direct that it be performed in a specified manner, Section 78. Mandamus will not issue to compel the revision or modification of a decision of the Respondents in the exercise of their *deliberative* and *discretionary* powers. *Goodman v. Meade*, 162 Pa. Super 587, 60 A2d 577. It has been reiterated that in the absence of a capricious or arbitrary act, Mandamus will not issue to control the exercise of *official discretion* or to alter or review acts taken in the proper exercise of such *discretion* of Respondents, *Smith v. Butters*, 38 U. 151, 112 P. 809. Mandamus will not lie and *is never issued* in doubtful cases and no abuse of *discretion* by Respondents has been *shown* by Petitioners, Rule 65 B(b) (2).

The Legislature *intended* that the Respondents use their *discretion* as Section 10-2-6 provides “on approval of such petition by said board.”

The 1884 Laws of Utah provide among other things “which being approved by said *Court*”, as in 1884 Utah was under the jurisdiction of the Federal Courts.

The 1898 Revised Statutes of Utah, Section 299 provides, among other things, "a majority of the electors of any town" . . . . "and to be approved by said *board*".

The opponents to the Petition and all others in Salt Lake County similarly situated would be denied their right to be heard, and due process of law, if the Court should enforce such Writ, as the Utah Constitution provides in Article 1, Section 7 that "no person shall be deprived of life, liberty or property without due process of law," also the United States Constitution, Amendment XIV, Section 1, provides, among other things, that the state shall not deprive any person of life, liberty or property without due process of law.

Section 10-2-6 provides, among other things, "Whenever a majority of the electors". Until a person qualified to exercise the privilege of *voting* actually takes advantage of his franchise, *he does not become an elector* as that term is used in the Wyoming Constitution and laws, *School District v. Cook*, 424 P2d 751. A person may be a *taxpayer* and yet not be an *elector*, *Harrison v. Board of Commissioners*, 68 Idaho 463, 198 P2d 1013. The ordinary meaning of *elector* does not include taxpaying as one of its elements, *Maguez v. School District*, 128 P2d 480, 109 Colo. 551. The word *elector* in a Statute in relation to bond issuance, providing that they shall not be issued unless authorized by a *majority of electors*, means *voters* who have *registered* so as to be entitled to vote at any election held under the Constitution or laws of the State, *Green v. Village of Riezi*, 40 So. 17. *Elector* used throughout the constitutional and statutory provisions governing

*initiative petitions* require all persons signing the *initiative petition* to comply with regulation laws before doing so, *Abrens v. Kirby*, 37 P2d 375, 44 Ariz. 269.

The incorporation of a municipality is purely a *legislative function* and the power to create municipalities cannot be delegated to the *judicial branch* of government, 57 N.W.2d 66. An Act which permits a *few* petitioners to *fix* the boundaries of a *new* municipal corporation and to determine the *electorate* to pass upon its creation is invalid as a delegation to provide *individuals* of legislative function, *Row v. Ray*, 231 NW 689.

The overriding and paramount reasons for the Petition for incorporation of the Town is so that the *owners* of the *power plant* at the Cottonwood Mall can *sell the power plant* to the Town to sell electricity. The power plant is *not* in operation at this time, see U.S. District Court Decree, Civil No. C-229-68, *Cottonwood Mall v. Utah Power & Light Company* which was *affirmed* by the U.S. Court of Appeals 10th Circuit, 440 F.2d 36. The United States Supreme Court denied Cottonwood Mall's Petition for Writ of Certiorari, U.S. Sup. Ct. No. 71-179, Vol. 30 L.Ed2d, No. 1, p. 99, Nov. 15, 1971. A copy of the Petition for Writ of Certiorari is on file with the Clerk of the Utah Supreme Court.

During the Utah Legislative General Session of 1971 there was an *attempt* by S. B. No. 128 to amend the Electrical Corporations Section 54-2-1 of the Utah Code, however, *the attempt* was unsuccessful.

The Tenth Circuit, in Cottonwood Mall, supra, stated among other things,

\* \* \* \* "The basic question is put in issue by the defense that Cottonwood lacks the necessary Certificate of Public Convenience from the Utah Public Service Commission and therefore cannot challenge these economic activities of Power Company. The Court below gave Summary Judgment to Power Company on the ground that Cottonwood would need a Certificate before it could press its claims, for if it had no right to sell electricity, then by definition Power Company could not interfere with this "right".

Mr. Sidney M. Horman has *veto* power at and over the Cottonwood Mall Shopping Center and he would probably have *veto* power over any Town Council and Mayor of Cottonwood City as Mr. Horman's Group apparently owns the Cottonwood Mall and controls most of the property on the Streets within the proposed Town.

In the Petition for Writ of Certiorari in the U.S. Sup. Ct. by *Cottonwood Mall Shopping Center, Inc.*, supra, there is stated on page 8,

\* \* \* \* "The board of directors of this association consists of persons elected by the merchants and of Mr. Sidney M. Horman, president of petitioner corporation. All of the activities held at the mall must have the approval of the board of directors of the association *and* of Mr. Horman" \* \* \* \*.

The foregoing matters were *cited* and *argued* to the County Commissioners and Lower Court.

To allow the incorporation of this Town, which is mainly for the purpose of *buying the power plant* from the owners at the Cottonwood Mall would open the door to indiscriminate *cropping up* of Towns all over Salt Lake County and this would *almost destroy* county government.

The constitutional rights of the people of Salt Lake County are paramount and greater than the rights of the *few* Petitioners who purport and desire to incorporate a Town so as to *accommodate the owners* of the power plant at Cottonwood Mall, by the Town purchasing the power plant. The rights of all people to be protected from this Town incorporation *intrusion*, are greater than the privilege conferred by Statute for incorporation.

There was and is *no showing* by appellants that they have made *provisions* for fire protection, sewage, water, lights, police protection, upkeep of public roads, and there is *no assurance* by them that any agency, party or person will furnish necessities.

The *arbitrarily* drawn boundaries, by the Petitioners for the Town, *show* that there is no liquor stores within the boundaries, no churches in the boundaries, no schools in the boundaries, no fire department within the boundaries, no boarding houses within the boundaries, no night clubs in the boundaries, no motels or hotels within the boundaries and no taxi service within the boundaries. This was shown to and known by the Commissioners and Lower Court.

Respondents did not approve the Petition for the Town, among other things, because there was no *showing* that Petitioners were a *majority of the electors* and they did not demonstrate that they were *qualified electors*.

The Master Plan of Salt Lake County Planning & Zoning in the area would be *disrupted* as there are numerous *planning and zoning problems* presently in the area such as *traffic* and its *attendant hazards*. Towns cannot be incorporated whimsically as these *few Petitioners* seem to thrust themselves, for a Town, on the rest of the County.

Respondents heard *annexation* as a problem if the Town is incorporated.

There is *no showing* that there is proper flood control for the Town, upkeep and expenses for water channels and boundary, public aid for welfare cases, jail house, public buildings and upkeep and hospital facilities. In fact the County jail is approximately 10 miles away from the proposed Town.

## POINT II

### THE LEGISLATURE MAY DELEGATE TO THE COUNTY COMMISSIONERS FOR COUNTY PURPOSES, LEGISLATIVE POWER.

*Taylor v. Robertson* (1898), 16 U.330; 52 P.1 was an Assessment case. "The *discretion* must be exercised in a reasonable manner, and not maliciously, wanton and arbitrarily to the wrong and injury of another. This is held to be the *rule* applicable to public officers who are bound

to exercise their *deliberate judgment* in the discharge of their official duties, and is applicable to all inferior magistrates and *others* called to the performance of functions *in their nature and character quasi judicial*, while acting within their jurisdiction and the legal scope of their powers as fixed by law". An ordinance may, like a *statute*, "affect property rights and individual liberty; and the framers of the constitution evidently intended, by the use of the word "statutes" to include "ordinances" and that the appellate Court should have power to determine the validity of any law, whether of local or general application, and whether *enacted* directly by the law-making power or by a municipality through a *delegation of power* by the legislature, *City of Eureka v. Wilson*, 48 P.41, and while the lawmaking power of the state is vested in the legislature, yet it is competent for the legislature to *delegate power* to municipal corporations to pass ordinances which shall have the same force, within the municipality, *as a statute, to control its municipal affairs.*

The legislature, by Section 10-2-6, delegated to the County Commissioners the authority to decide in their *sound discretion* (R 32) when a "Town" could be incorporated, as said Section is *not self executing* as Petitioners argue. "On approval of such petition by said board" vests *discretion* (R 32) in the County Commissioners.

"The law will not allow a revocation or alteration of a statute by construction when the words may have their proper construction without it", Lewis' Sutherland Statutory Construction, Vol. 2, p. 732.

Section 10-2-6 provides, among other things, whenever a *majority of the electors* of any "unincorporated town"; therefore,

"The term "unincorporated town" was one created by legislative enactment. It was a term intended to apply to the establishment of town government for certain communities which, acting under the provisions of the Statute of 1879, petitioned the board of County Commissioners that the Act *might become* operative. In our judgment it is clear that the term "unincorporated towns", as used in the provisions to subdivision 9 of Section 1, referred specifically to those towns which *had assumed* a form of town government under the Act of 1879 entitled, "An Act to provide for the government of unincorporated towns in this state", (Nevada 1916) Board of Commissioners v. Schmidt 157 P.1073. That 1879 Act was repealed by the Nevada Legislature in 1881."

We see from 14 Am Jur, *Counties*, Section 33, the *rule* is laid down regarding the *separation of powers* that Courts, "is such that they cannot perform executive duties or interfere with the performance of legislative duties. They are not endowed with visitorial powers to approve or disapprove the manner in which County Commissioners exercise the powers conferred upon them," \* \* \* "So long as the Commissioners act honestly and in good faith", \* \* \* and the "Courts have no authority to interfere with or control their legitimate discretion", (R 32).

In *Murphy v. Grand County*, 268 P2d 677, 1 U2d 412, the Commissioners in their broad *discretion* could fix the salary of the County Attorney at \$10.00 per year.



Neither the judiciary nor the executive *can create* or destroy a municipality which is but a *subdivision* of the state government, *Hornsbrook v. Elk Grove*, 21 SE 851.

In Am Jur 2d Vol. 56, *Municipal Corporations*, we report the following: The governmental functions of the County Commissioners are those *conferred* upon them as a local agency, to be exercised not only in the interest of the people, but also in the advancement of the public good or welfare as affecting the *public generally*, and this includes the promotion of public peace, health, safety and morals, as well as the expenditure of money, Section 199, and the power to create or establish municipal corporations is a *political function* which rests *solely* in the *legislative* branch of the government, Section 28; as in Section 10-2-6, the legislature provided for the County Commissioners to exercise their *discretion* and it is a *political function* for them to create or *deny* (R 32) the incorporation of the Town of Cottonwood City. Section 10-2-6 is not self executing and the County Commissioners are within their discretionary powers in properly denying the incorporation of the Town of Cottonwood City. So far as the functions of the County Commission are legislative, they *rest in the sound discretion* and judgment of the Commissioners, Section 196, Am. Jr. 2d Vol. 56; also where power over a particular subject matter has been delegated to a municipal corporation by the legislature without any express limitations, the extent to which that power shall be exercised *rests in the discretion* of the *municipal authorities, and as long as it is exercised in good faith and for a municipal purpose*, the Courts have no ground upon which to interfere, Section

227; and the powers which a municipal corporation may exercise are *intended* to be used for the advantage of the public and the inhabitants *generally* and not for the particular advantage of one individual or *group of individuals*, Section 229; and generally a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and *contentment of all* the inhabitants of the County, Section 230.

The County Commissioners (R 32) properly exercised their *discretionary power* in denying the Petition and the Lower Court (R 16) properly *sustained* such denial.

### POINT III

**THE COUNTY COMMISSIONERS REGULARLY AND PUBLICLY HEARD THE PETITION AND OPPOSITION THERETO AND DENIED THE PETITION IN THEIR DISCRETION AND THERE IS NO VIOLATION OF THE CONSTITUTION.**

From 56 Am. Jur. 2d, an exercise of police power is unreasonable where it permits control of the property of one set of private owners by other owners of property, Section 371; and it is well settled that the possession and enjoyment of all private rights are subject to a reasonable exercise of *municipal police power* and where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare, Section 437, and it has frequently been noted that every citizen holds its property subject to a reasonable exercise of the police power of a municipality and that the use of

property shall not be injurious to the equal rights of others to the use and benefit of their own property, and that the *public interest* is paramount to property rights.

In the present case, the property rights of all *opponents to the incorporation* of the Town are paramount to the proposition that the *power plant* at the Cottonwood Mall *must be sold* to the Town, if incorporated. The personal rights and liberties of the *opponents* to the Town cannot be *arbitrarily invaded* under the guise of a Town being incorporated so as to purchase the *power plant* at the Cottonwood Mall.

Threatened *condemnation* was represented to the County Commissioners and on file by Affidavit (R 47) by an opponent to the proposed Town.

Some of the property owners, within the proposed Town boundaries, *struck* their names from the petition to incorporate, (R 37, 38, 39) and *oppose* any incorporation of the Town.

If Section 10-2-6 is an absolute mandate to the County Commissioners to incorporate the Town of Cottonwood City, then Section 10-2-6 violates the XIV Amendment Section 1, U.S. Constitution and should be declared void.

The police power exercised by the County Commissioners extends to the reasonable protection of the opponents of the proposed Town, 56 Am. Jur. 2d Sec. 438, and the County Commissioners have in the exercise of their

*police power* a wide discretion in determining what *precautions* in the county interest are necessary and appropriate under the circumstances, and the Courts should not interfere, Section 490; and it is well settled that the *legislature may delegate* to the County Commission *for County purposes*, to be exercised within the *County limits*, three *essential* branches of legislative *power* and that is police power, power of taxation, and the power of eminent domain, Section 193.

The Petition by Petitioners propose "block busting" the County.

Respondents have not authorized the *arbitrarily drawn boundary lines* for the "Town" and Respondents had no part in the proposal of the *arbitrarily drawn boundary lines*, (R 32) and Respondents and intervenors have not and do not sanction this *detachment* of property from the County, and Respondents oppose this attempted *detachment* of property from the County. This attempted town *detachment* of property from the County is not in the best public interest. This proposal to carve out and *detach* property from the County, into a town, will greatly injure the people and Salt Lake County.

Salt Lake County *has not and is not* committed to furnish public services to the proposed Town of Cottonwood City, and the County *cannot be compelled* to undertake such, Section 560, 56 Am. Jur. 2d.

## CONCLUSION

That this Court affirm that the County Commissioners had *discretion* and properly *denied* the petition for a Town incorporation, and affirm the Lower Court.

Respectfully submitted,

WALKER E. ANDERSON

*Attorney for Intervenors  
and Respondents.*