IN THE UTAH COURT OF APPEALS

UTAH SAGE, INC. a Utah corporation dba HOBBY TRACTORS & EQUIPMENT, LARKIN TIRES, INC. a Utah corporation, GARY LARSON, an individual, FRATERNAL ORDER OF EAGLES #3372, a non-profit organization, Appellees/Cross Appellants, v. PLEASANT GROVE CITY, Appellant/Cross Appellee.	**CROSS APPELLANTS' REPLY BRIEF** Appellate Case No. 20200290

Appeal from the Order on Cross Motions for Summary Judgment in Case No. 190300164, of the Fourth Judicial District Court, Utah County, Judge Jared Eldridge Presiding

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INTRODUCTION

Utah's general welfare clause does not give municipalities *carte blanche* to pass any and all legislation they deem appropriate. The City seems to understand in theory that there are limitations to the power granted municipalities under the general welfare clause, but summarily rejects the case law on the issue.

Further, the City relies on inapposite case law, specifically *Hutchinson* and *South Jordan Dist*. Indeed, both cases support the conclusion that the City lacked any statutory authority to create a transportation utility.

Finally, the plain language of Utah Code 11-26-301 prevents the City from finding authority in the code to create a transportation utility.

Accordingly, the City has no statutory authority for implementing its TUF, whether through the general welfare clause, the Utah's Municipal Code, or Utah Code 11-26-301. This Court, therefore, should reverse the district court's ruling on the issue.

ARGUMENT

I. *Hutchinson* Argues Against the City's Alleged Authority to Create a Transportation Utility

In deciding *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980) the Utah Supreme Court was addressing a fact pattern in which a county government passed an ordinance requiring electoral candidates to disclose campaign contributions. There was no power under state law permitting counties to enact such legislation and there was no state law which would otherwise empower a county to serve as a watchdog over the finances of its

own electoral process. The Court found that the powers of the state's general welfare clause could be substituted to fill this statutory void not specifically authorizing the county to oversee campaign contributions in its electoral process.

Hutchinson sought to ensure that a municipality has "sufficient power to deal effectively with the problems with which it must deal," that it is entrusted "with the full scope of legislatively granted powers to meet the needs of their local constituents." *Id*. at 1120-1121. The Court decided this decision in a time when the Utah State Legislature met once every 60 days biennially. Thus, it did not want municipalities to be "paralyzed and critical problems should not remain unsolved while officials await a biennial session of the Legislature in the hope of obtaining passage of a special grant of authority." *Id*. at 1126. It wanted to avoid a municipality being unable to pass "needed or appropriate" legislation when such legislation may fail due to the "press of other legislative business or the disinterest of [state] legislators" who may be dealing with their own more pressing issues important to their constituents. *Id*.

In other words, *Hutchinson* disposed of the handicap from which cities and counties suffered under *Dillon*'s rule of having to rely on the state legislature for "special grants of authority." *Id*. Without such grants, the county or city could not act—at all.

Here, the City is not "paralyzed" from being able to maintain its road system, it does not need a "special grant of authority" from the state legislature to do so, and it is fully empowered under current law to "deal effectively" with financing it without a TUF. The city suffers from no legislative void which the general welfare clause needs to fill

and even if there were such a void, the general welfare clause is preempted by the specific grants of power given cities by the state legislature to create utilities.

Further, the City too quickly dismisses the applicability of *Harding v. Alpine City*, 656 P.2d 985 (Utah 1982). In that case the statute at issue provided that "Any city or town may…" force buildings within 300 feet of a sewage line to hookup to that line and charge the building owner a fee for its use. *Harding*, 656 P.2d at 986. The power to establish and maintain a sewer system was undisputed, but the power to force it upon city residents only extended to those buildings within 300 feet.

Likewise, "A municipality may construct, maintain, and operate…" a variety of utilities but a transportation utility is not listed in Utah Code 10-8-14. *Harding* at least involved a utility that the city was authorized to create and maintain but the extend of its being a mandatory service was limited by the 300 feet language. Here, the City is limited in its ability to even create a transportation utility by the language of Utah Code 10-8-14.

II. *Jordan School Dist.* Is Inapplicable to the Issue of Whether the City Has Authority to Create a Transportation Utility

The City relies heavily on *Jordan School Dist. V. Sandy City Corp*., 94 P.3d 234 (Utah 2004) as an example of the Utah Supreme Court having "expressly approved the establishment of a utility" that is not listed in Utah Code 10-8-14 or other statutes relating to utilities. *See* Appellant's Combine Reply Brief, p. 12. The City misreads and misapplies this case.

Contrary to the City's representation, the Court in *Jordan School Dist*. did not review a challenge to Sandy City's authority to adopt a storm sewer drainage utility

ordinance – such a question was not even before the Court. Instead, the Court addressed whether Sandy City could charge the Jordan School District a fee for removing storm water runoff from the District's property, and whether that fee was an "impact fee" or a "service fee."

The question of Sandy City's power to create a storm sewer drainage utility was not a question because such a utility was authorized by statute at that time. *See* Utah Code 10-8-38(1)(a) (1997)(Authorizing cities to create and maintain sewer systems…drains...and all systems…necessary to the proper drainage, sewage, and sanitary sewage disposal requirements of the city..." Pleasant Grove City has no such statutory authorization to create a transportation utility. It is only after a municipality legally creates a utility that it is then "entitled to deference" for the decisions it makes "regarding the structure, operation, and funding" of that utility. *Jordan School Dist*., 94 P.3d at 241.

III. The Plain Language of Utah Code 11-26-301 does not Authorize Municipalities to Implement A Transportation Utility

"The best evidence of the legislature's intent is 'the plain language of the statute itself.' We 'presume that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning.'" *State v. Stewart*, 438 P.3d 515, 518 (Utah 2018) (citations omitted). The City ignores this axiom of determining legislative intent when looking at Utah Code 11-26-301 and instead focuses only on the perceived omissions of the statute.

The statute was passed in 2018, several years after Utah cities first began creating transportation utilities. R570. It specifically prohibits the application of TUFs to local governments, but such prohibition, contrary to the City's argument, is not an implication of the Legislature's authorizing transportation utilities. Indeed, the plain language of the statute argues otherwise: "This section does not grant to a municipality any authority not otherwise provided for by law to impose a transportation utility fee." Utah Code 11-26-301(3). There is no omission in the statute to consider.

The City, therefore, cannot rely this statute for even implied authority as that argument is contradicted by subsection 3. As the statute directs, the City must find its authority to implement a transportation utility elsewhere "provided for by law," which takes us back to the preceding arguments on the City's statutory authority to create utilities.

CONCLUSION

The City had no legal authority to create a transportation utility under Utah's general welfare clause or otherwise. Accordingly, the district court's order to the contrary should be reversed.

DATED this 10th day of February, 2021.

SALCIDO LAW FIRM, PLLC

__/s/ Gerald M. Salcido_____
Attorney for Cross Appellants/Appellees

CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. App. P. 24(11), counsel certifies this brief complies with Utah R. App. P. 24(g) page limitations. It also complies with Utah R. App. P. 21 record restrictions.

DATED this 10th day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2021, two true and correct copies of the foregoing **CROSS APPELLANTS' BRIEF**, were mailed, postage prepaid, to the following:

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