

MINUTES OF A REGULAR COUNCIL MEETING
HELD AT CITY HALL
ON JANUARY 3, 1989

The meeting was called to order by Mayor D. Lynn Crook at 7PM. Councilmembers present: Marilyn Clayson, Max Holman, Sherman Jones and Dennis Lamb. The Invocation was offered by Councilwoman Clayson and the Pledge of Allegiance was led by Councilman Holman. Councilman Openshaw was absent.

Approval of the Minutes for December 20, 1988: Council reviewed the Minutes for December 20, 1988. There was one date correction. Councilwoman Clayson made the motion that these Minutes be approved as corrected. Councilman Lamb seconded the motion and the voting was unanimous in favor.

CDBG Hearing & Resolution: Recorder/Clerk, Elaine Tasker, stated that two requirements in obtaining a CDB Grant were to advertize a PUBLIC HEARING to be held during two regular scheduled Council Meetings and for the Council to pass a resolution of support for a Grant. She stated that the Hearings had been advertized in the Daily Herald and posted in the three established places. Councilwoman Clayson read the attached Resolution and made the motion that it be approved. Councilman Lamb seconded the motion and the voting was "AYE": Councilwoman Clayson, Councilman Lamb, Councilman Jones and Councilman Holman. Councilman Openshaw was absent. Motion carried. No public response.

Report on Repair of Tank Truck: Councilman Lamb stated that he had not contacted Payson Diesel regarding the bills accrued on the new fire truck due to their negligence in replacing anti-freeze after repairing the truck. Councilman Lamb said he would send a letter to Payson Diesel within a week.

Update of Senior Citizens Center: Councilman Jones reported that there wasn't much work done during the Holidays. He said the gas line was in and it would be ready to paint within a week. Mayor Crook reported that Norris Perry's brother, who lives in California, was donating 2,000 gallons of paint to the Museum Committee and if they could wait until it came up from California they could possibly buy it for \$1 a gallon. Berk Peterson, representing the Senior Citizens, reported that the frozen rain gutters were causing the Senior Center to leak. Councilman Holman stated that the same problem existed at the City Hall and he was in favor of removing the gutters except over the doorways. Councilman Holman said he and Wade would take care of this problem. Mayor Crook suggested to Berk Peterson that a meeting be called with Senior Citizen Board Members and Councilman Jones to discuss possible changes in the new Center.

Utah Valley Community College Invitation: Mayor Crook discussed the invitation from U.V.C.C. for Councilmembers and their partners to attend a dinner and basketball game on January 14, 1989. Councilmen Lamb and Holman stated they would attend.

Report on Meeting on Underground Fuel Tanks: Mayor Crook stated that a meeting on underground fuel tanks, sponsored by Chen-Northern Inc., would be held in Salt Lake January 20, 1989. After discussion, Mayor Crook encouraged Councilmembers to attend. Mayor Crook also stated that there would be a D.O.T. meeting in Provo on January 11, 1989 at 10AM to discuss possible Grants for roads and bridges. Councilman Holman said he would attend this

meeting with Mayor Crook.

Business License: Councilwoman Clayson stated that Ferral Evans, of Payson, had bought Mendenhalls' Market and requested a Business License to include a License to sell beer. Councilwoman Clayson made the motion that Mr. Evans' License be approved, Councilman Holman seconded the motion and the voting was unanimous in favor.

Bills: The following bills were reviewed by the Council:

Save-A-Dollar.....	\$284.75	Marilyn Clayson.....	\$54.21
Chris Radio.....	\$8.33	Storehouse Marke.....	\$34.56
Leasing Service.....	\$88.00	Save-A-Dollar.....	\$9.65
Motorola.....	\$1660.00	The Eagle Co.....	\$67.26
Maceys.....	\$118.75	AT&T.....	\$16.90
Guy Wall.....	\$350.00	Utah Power & Light.....	\$32.02
The Literary Guild.....	\$6.15	Double Day Book Club.....	\$6.69
Cotter Charge.....	\$62.83	Job Service.....	\$512.35
Telamerica	\$18.30	U.S. Post Office.....	\$17.00
Hanks' Signs.....	\$350.00	Tischner Ford.....	\$10.25
The Daily Herald.....	\$17.70	Total.....	\$3725.80

Councilwoman Clayson made the motion that these bills be approved with the addition of \$38,097.00 to Hales-Warner Construction and \$365.70 to the Family Tree bringing the Total to \$42,188.50. Councilman Holman seconded the motion and the voting was unanimous in favor.

Miscellaneous: Councilwoman Clayson reported that she had obtained bids to carpet the City Hall. She said Bruce Hymus agreed to move the computer in order to lay the carpet. Councilwoman Clayson made the motion that the low bid, of approximately \$1300, be approved to carpet the City Hall. Councilman Jones seconded the motion and the voting was unanimous in favor.

Councilman Lamb made the motion that Paul Gonzales' application to be a Volunteer Fireman be approved. Councilman Jones seconded the motion and the voting was unanimous in favor. Councilman Lamb stated that the Fire Department keeps their membership at thirty, that one member was quitting and Ryan Peterson moved.

Councilman Lamb ask Kent Wilkerson, the Animal Control Officer, to report his progress to the Council. Mr. Wilkerson stated that he had canvassed about one third of the town checking on unlicensed dogs, that he did not work during the Holidays but would start working again.

Mayor Crook stated that the City should take advantage of the two bulletin boards to advertize City business. It was felt that the Santa Party should have been advertized better.

Councilman Jones reported that a ruling from Judge Park regarding the water case with Genola had been recieved. Councilman Jones read the following Ruling and asked that the entire opinion be attached to the Minutes. Judge Boyd L. Park's Ruling: Defendant's Motion to Dismiss is granted in part to all causes of action, except as to the annual cost of maintenance and repair of that portion of Santaquin's water system needed to deliver water to Genola, together with related costs occassioned by rules and regulations requiring added costs for culinary water, such as chlorination. The Court would allow plaintiff to

present evidence at the time of trial on the matter of the cost of maintenance of that part of the Santaquin water system needed to deliver water to Genola, and related such costs.

Dated at Provo, Utah this 7th day of December, 1988.

Councilman Jones said he felt confident that they could now meet with Genola and work out a financial arrangement more fair to the Citizens of Santaquin and settle this matter out of Court.

Adjournment: Councilman Lamb made the motion that they adjourn and meet in an Executive Session to discuss: Water System and Law Suit and also Property Acquisition and Disposal. Councilwoman Clayson seconded the motion and voting was unanimous. The Mayor and Council went into Executive Session at 8PM and returned at 10PM.

Approved this ____ day of January, 1989.

D. Lynn Crook
D. Lynn Crook, Mayor

Elaine Tasker
Elaine Tasker, Recorder/Clerk

JOHNSON AND JACKMAN
ATTORNEYS
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

RICHARD B. JOHNSON, P.C.
FREDERICK A. JACKMAN, P.C.
MICHAEL K. BLACK

1327 South 800 East
Suite 300
Orem, Utah 84058
(801) 225-1632

December 20, 1988

Santaquin City
68 East Main
Santaquin, Utah 84655

Re: Santaquin City vs. Genola Town

Gentlemen:

Enclosed please find a copy of the Ruling entered by Judge Park with regard to the contract for water between Santaquin City and Genola Town. The Judge has determined that there is a factual issue as to whether Genola should pay more than \$30.00 for maintenance and upkeep of the Santaquin water system and has determined that said matter should be resolved by the Court by way of trial.

Judge Park has, however, determined that relative to the other issues i.e. enforceability or voidability of the contract between Santaquin City and Genola Town, that said issue has been previously ruled upon by the Utah Supreme Court and is unwilling to modify the prior rulings of the Supreme Court and, consequently, has dismissed those portions of our Complaint against Genola Town.

The Utah Rules of Civil Procedure provides for interlocutory appeals which means that once a District Court Judge has made a final determination as to part of a case but has not resolved all issues, that a party may take an interlocutory appeal which, in effect, allows an appeal only on those issues which the Court has finally decided. In the case at hand, the interlocutory appeal would be made on the issues of whether the contract is enforceable or should be deemed void.

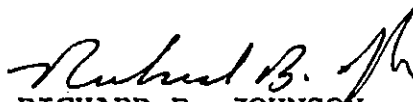
I need to make you aware that the Supreme Court is somewhat reluctant to grant interlocutory appeals, however, in appropriate cases, they will do so. I would appreciate it if you would review the Ruling entered by Judge Park and get back with me as to whether you would like for me to go forward with an interlocutory appeal or wait until the completion of this case and then determine whether an appeal is appropriate. One advantage of doing an interlocutory appeal at this time is it may avoid having a trial on the issue of whether the \$30.00

Santaquin City
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maintenance fee is appropriate then having the appeal to the Supreme Court who may, at that time, remand back to the District Court for further hearing or trial on the merits.

I look forward to hearing from you at your earliest convenience.

Respectfully,



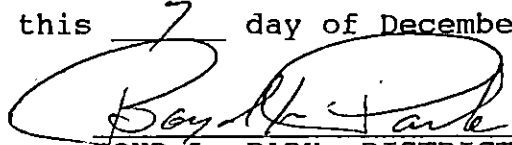
RICHARD B. JOHNSON
Attorney at Law

RBJ:cr

R U L I N G

Defendant's Motion to Dismiss is granted in part to all causes of action, except as to the annual cost of maintenance and repair of that portion of Santaquin's water system needed to deliver water to Genola, together with related costs occasioned by rules and regulations requiring added costs for culinary water, such as chlorination. The Court would allow plaintiff to present evidence at the time of trial on the matter of the cost of maintenance of that part of the Santaquin water system needed to deliver water to Genola, and related such costs.

Dated at Provo, Utah this 7 day of December, 1988.


BOYD L. PARK, DISTRICT JUDGE

cc: Richard B. Johnson, Esq.
Dallas Young, Esq.

IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH, UTAH COUNTY

SANTAQUIN CITY,)	R U L I N G
Plaintiff,)	CASE NUMBER: CV 86 2330
-vs-)	DATE: DECEMBER 7, 1988
GENOLA TOWN,)	BOYD L. PARK, JUDGE
Defendant.)	

This matter is before the Court on defendant's Motion to Dismiss. The Court read defendant's Motion, Memorandum In Support of said motion, plaintiff's Memorandum In Opposition to Defendant's Motion to Dismiss and defendant's Reply Memorandum. The Court further heard oral arguments on said Motion on July 16, 1987 and advised counsel that it's only concern about the contract between Santaquin City and Genola Town (which has been three times to the Supreme Court of the State of Utah regarding its validity and enforcibility, and was deemed valid and enforceable) was the provision of the agreement which states, "it is further understood and agreed between the parties hereto that the Town of Genola will pay to the City of Santaquin annually the sum of \$30.00 for the maintenance and upkeep of the said Santaquin water system." The Court requested that the parties, in light of the increased cost to maintain the Santaquin water system and the requirements of chlorination of culinary water, to try and resolve their differences. The Court further allowed Mr.

Young, Esq., ten days to submit additional memorandum, if he desired to do so, regarding the \$30.00 annual maintenance fee. The Court further allowed Mr. Johnson, Esq., ten days in which to respond to the additional memorandum.

Counsel have now advised the Court that despite efforts to settle the difference between the parties, there is no agreed resolution. Counsel has further not elected to supply the Court with additional memorandum.

The Court now having considered the matter finds and rules as follows:

(1) Genola Town brought a suit against Santaquin City, et al., in the Fourth Judicial District Court for Utah County, seeking specific performance by Santaquin City to a contract entered into by plaintiff and defendant. The Court, Judge Dallas H. Young, ruled on September 13, 1937 in pertinent part as follows:

(a) Genola Town is the owner of a perpetual right to the use of a flow of one hundred gallons of water per minute of the waters which are now or heretofore have been flowing in the pipeline of Santaquin City so long as the flow in Summit Creek equals or exceeds six cubic feet per second and to a flow of so much water equal to $1/36$ of the flow of said Summit Creek when the flow thereof falls below six cubic feet per second.

(b) Santaquin City was ordered to deliver such water to Genola Town at the Santquin intersection of Second North and Third West Streets.

(c) The Clerk of the Court deliver to Santaquin City for it's use and benefit a Genola Town's purchase of a \$2,500.00 cashier's check and Genola Town owned sixty shares of the capital stock of Summit Creek Irrigation and Canal Co., as Genola Town's consideration for the agreement.

(d) That Genola Town pay Santaquin City \$30.00 annually for the maintenance and repair of that part of the water works system of Santaquin City through which water is conveyed to Genola Town.

(2) The decision of Judge Dallas H. Young was appealed to the Utah Supreme Court which affirmed Judge Young's decision on July 6, 1938 (Genola Town v. Santaquin City 80 P2d 930) and held in pertinent part as follows:

(a) The agreement was not indefinite and uncertain.

(b) The agreement was clearly not a lease of the waterworks system.

(c) The \$30.00 annual payment is part of the consideration for receiving the water.

(d) The agreement is in effect a parting by Santaquin City of its water right pro tanto. There is no real difference in parting with a water right which yields 100 gallons per minute by transfer and obligating one's self to deliver from a water right 100 gallons per minute in perpetuity. No violation of Sec 6, Article 11 of the Utah State Constitution.

(3) A petition for rehearing the above decision of the Utah Supreme Court was filed and the petition for rehearing was denied December 24, 1938 (Genola Town v. Santaquin City, 85 P2d 790).

(4) The agreement which is the subject of this law suit was further considered in a suit by Genola Town against Santaquin City, et al., alleging contempt by the defendants. Judge Dallas H. Young found certain of the defendants guilty of contempt for violating the judgment entered September 13, 1937 and affirmed by the Utah Supreme Court July 6, 1938. This case was appealed to the Utah Supreme Court and the decision affirmed. (Genola Town v. Santaquin City, et al., 110 P2d 372, February 19,

1941). The Supreme Court found and held in pertinent part as follows:

(a) The defendants at the outset disclaimed any attempt by the appeal to litigate this matter a second time. They alleged their purpose of the appeal was to procure from the Court an adjudication of the meaning of the original decree in the light of the constitutional provision of the state touching the matter of culinary water supply of a municipality.

(b) The defendants contended two matters: (1) "The original decree as affirmed by this Court, only requires Santaquin to make delivery from it's excess water." (2) "If the decree provides otherwise, it is void as a violation of Sec. 6 of Article 11 of the State Constitution."

(c) The Supreme Court ruled: "By the contract, specific performance of which was decreed, Santaquin obligated itself to deliver to Genola from any waters in it's system certain definite and specified quantities. That contract we held to be definite and binding, and decreed specific performance thereof. The Courts cannot rewrite a contract for the parties or enforce upon them one of it's own making."

(d) "As to the second contention, we held in the opinion on the former hearing that the contract there involved, and thereby enforced, was not in violation of Section 6 of Article 11, of the Constitution of Utah.

(5) Plaintiff in the captioned matter now seeks:

(a) First Cause of Action: Amendment of the Contract to reflect defendant is obligated for it's pro-rata share of expenses and costs of plaintiff's water system.

(b) Second Cause of Action: For a Declaratory Judgment, that the terms of the Contract are void, as ultra vires or in the alternative unreasonable and plaintiff has a right to terminate the agreement or modify the terms in light of existing economic circumstances.

(c) Third Cause of Action: For inclusion in the Contract certain cost items which were not bargained for initially and assess a pro-rata share to the defendant.

(d) Fourth Cause of Action: The cost of plaintiff to maintain the defendant's portion of the water system is such an economic hardship due to changed circumstances that it is impossible for plaintiff to perform.

(e) Fifth Cause of Action: The change of circumstances since the agreement of 1936 entitle plaintiff to reformation of the agreement based on mutual mistake as to the increased cost of maintaining and supporting the water system.

(6) This Court agrees with the Utah Supreme Court, the Contract was an exchange of water rights, and to that extent cannot be declared void or be modified.

(7) This Court does not find that it is impossible for the plaintiff to perform, or that there was a mutual mistake in the Contract to the extent of finding the Contract void.

(8) This Court does not find that it would be appropriate to allow a modification of the agreement to the extent that Genola should pay a pro-rata amount to Santaquin of the total cost of the Santaquin water system, based on the percentage of water delivered to Genola to the whole of the water in the Santaquin water system.

(9) This Court does find that the \$30.00 annual fee from Genola to Santaquin for the maintenance and upkeep of that portion of the water systems conveying water under the agreement to Genola should be examined. That this Court is not intending to rewrite the Contract of the parties, but in view of the rising costs of maintenance over the past 52 years and other costs of delivery including chlorination of culinary water, that it is manifestly unjust and unfair to have the taxpayers of Santaquin subsidize the taxpayers of Genola.

SANTAQUIN CITY
68 East Main

Resolution # 89-01

A resolution to approve a Community Development and Housing Needs Plan.

Whereas, the City Council of Santaquin, Utah has received the city master plan on various occasions and updated certain parts and discussed update to all facets to the master plan and

Whereas, the public needs, facilities, and utilities are of continuing concern and under constant review and update and

Whereas, several projects are planned to fill the various needs that are and will be deficient at certain times in the future.

Now therefore, be it resolved that the City Council of the City of Santaquin, Utah accepts and approves the Community Development and Housing Needs Plan as submitted.

Effective Date.

This resolution will take effect immediately upon its passage.

Councilmen Voting "AYE"

Councilmen Voting "Nay"

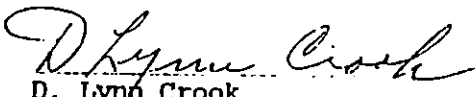
Marilyn Clayson

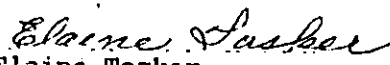
Sherman Jones

Max Holman

Dennis Lamb

Passed, adapted, and approved by the City Council of the City of Santaquin, Utah this 3rd day of January, 1989.


D. Lynn Crook
Mayor


Elaine Tasker
City Recorder