

**MINUTES OF THE
SPECIAL DISTRICTS SUBCOMMITTEE
OF THE POLITICAL SUBDIVISIONS INTERIM COMMITTEE**

Tuesday, August 22, 2000 - 9:00 a.m. - Room 414 State Capitol

Members Present:

Sen. R. Mont Evans, Co-chair
Rep. Joseph G. Murray, Co-chair
Rep. Marda Dillree
Rep. David L. Gladwell

Members Excused:

Sen. Scott N. Howell
Rep. Loretta Baca

Members Absent:

Rep. Eli H. Anderson

Staff Present:

Mr. Joseph Wade,
Research Analyst
Mr. Robert H. Rees,
Associate General Counsel
Ms. Joy L. Miller,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order and Committee Business - Rep. Murray called the meeting to order at 9:20 a.m.

2. Property Owner Interests vs Resident Voter Interests - Mr. Roland Hall, representing concerned property owners in Hurricane, Utah, discussed a special service fire district that his property was annexed into. The district was created on November 10, 1997 under Section 17A-2-1301 after publishing a notice of intent in the local paper. Mr. Hall stated very few people saw the notice and the protest period passed with no one coming to oppose it. No public vote was taken to create the district. Contained in the district is one subdivision located within an unincorporated area. The remainder of the property is privately held dry farm land, range land, and some small forested areas. Mr. Hall stated the board of directors of the district can charge whatever fees it considers necessary to operate the district. He explained that he lives in Hurricane which is not within the boundaries of the district. A full 50 percent of the property owners in the district do not reside within the district and thus have no vote in electing board members. He said he would like to see better property owner representation in special service districts.

Mr. Ralph Ballard, resident of Hurricane, explained that some property owners within the special service fire district are having to pay more in fire protection fees than property taxes. Organizers of the district were concerned with gathering more revenue and purposely tried to figure ways to go around the greenbelt provisions in the tax law by charging a fee rather than a tax. He noted the annexation created a situation where some residents live next to a large, professional city fire department yet receive fire protection from a volunteer fire department 10-12 miles away.

Mr. Rees pointed out that current statute requires an individual be a resident within the special service district to be a qualified voter in electing board members.

Mr. Jan Furner, Utah Association of Special Districts, stated he was asked by the county commission to mediate the dispute going on in the area in question. This district is one of five fire districts in that area. He stated there is a real conflict between residents of the district and non-residents who own property within the district.

Mr. Mark Anderson, Utah Association of Special Districts, mentioned that under state law the only power and authority that an administrative control board of a special service district has is the power and authority delegated by the creating county commission or creating municipal legislative body. A special service district cannot assess a property tax without holding an election of the people and getting the electorate's approval. If the fee in question were taken to court and the court determined it was not a legitimate fee, it would be an illegal tax. Mr. Anderson stated he was not sure it is necessary to have a provision in statute for dissolution given the ultimate control the county has. Mr. Anderson indicated the idea of one person/one vote and only registered residents of an area being allowed to vote permeates throughout all levels of government. He asked the subcommittee to use caution in considering giving non-resident property owners a right to vote in special district elections.

Mr. Rees clarified that special service districts have not been part of the recodification effort thus far. Special service districts are subject to the control of the creating entity and to that extent are not independent. However, in the code they are listed as one of the independent special districts. Mr. Rees pointed out that there is a provision for dissolution in the code, however, it puts it exclusively in the control of the governing body. He stated the concept of one person/one vote is generally true, but there is case law that seems to make an exception for special service districts where features of the district, in terms of services it provides or the people served, can be an exception to the one person/one vote rule.

Mr. Anderson stated their working group has not addressed special service districts because they have been outside of the scope of the subcommittee's focus. He said they are working on legislation for independent special service districts that will provide uniform withdrawal and dissolution procedures.

Sen. Evans asked if there is a better way of defining a distinction between what is a tax and what is a fee.

Mr. Anderson responded that the courts have pretty well defined that issue. The problem is having to go to court. He said he researched the issue a year ago and would make that

information available to the subcommittee.

Mr. Rees stated the imposition of a fee that is actually a tax is not necessarily illegal. A fee has to be related to some type of service. To the extent the fee exceeds the amount reasonably charged for that type of service, it becomes a tax.

Mr. Anderson commented that special service districts are extremely unique and have their own section in the Utah Constitution. Being a constitutional entity rather than just a statutory entity, whatever action is taken would involve reviewing the constitution to ensure it is not being violated. When the uniform creation procedures were established, special service districts were carved out intentionally to halt or slow what was viewed as a proliferation of independent districts.

MOTION: Rep. Dillree moved to approve the minutes of August 1, 2000. The motion passed unanimously.

3. Annexation - Mr. Anderson reviewed the working group's suggested procedures relating to annexation that were distributed to the subcommittee. It is suggested that the annexation process be administered by the special district board of trustees. Initiation of the annexation process would be by petition or resolution. All public hearings would have public notice both posted and placed in a newspaper. He briefly reviewed the suggested protest procedure. Mr. Anderson stated all registered voters within the affected area would be entitled to vote in the annexation election. If the annexation is initiated by petition and the petition is signed either by the owners of 67 percent of the affected land or by 67 percent of the registered voters, certain steps would be bypassed. The annexation process would be completed or terminated, as applicable, through a resolution adopted by the board of trustees either approving or rejecting the annexation. Annexed areas need not be contiguous to each other or to the district. Appropriate state and county officials must be notified of the annexation. Suggested exceptions to the annexation procedure include drainage, irrigation, fire protection, and metropolitan water districts. Mr. Anderson reviewed the suggested procedures where a municipality is located entirely within a district and where a "retail" special district is located entirely within a larger "wholesale" district. He noted that special districts, regardless of type, that provide the same service or services may adjust common boundaries.

Mr. Paul Ashton, White City Water Improvement District, commented that special improvement districts can petition for annexation of a territory to which it has already been providing service.

The subcommittee discussed the issue of notification and expressed concern that an

adequate notification process be provided.

Mr. Fred Finlinson stated one of the standards that could be considered when structuring the notice requirement is to look at the process cities have for annexation.

Mr. Ballard relayed his experience of an effective way to notify affected parties. His group obtained names and address of all property owners from the county tax rolls and mailed a notice to each property owner. He indicated that this was an effective and efficient way to contact affect parties. He said the cost for postage was near or less than the cost to place a notice in the newspapers.

Mr. Anderson indicated that for some annexations mailing a notice to all property owners would be very simple and inexpensive. However, for other annexations it would be a more costly process. Most of the annexations that take place are relatively small. He noted a high percentage are signed by all of the property owners affected by the annexation.

Mr. Shawn Draney, Metropolitan Water District of Salt Lake and Sandy, emphasized that the subcommittee also focus on making sure that with respect to some kinds of districts, the district's board of trustees have the ability to say no to servicing an area if resources are not available.

Mr. Rex Ausburn, Snyderville Basin Sewer Improvement District, said there are scenarios where it simply makes sense to the special district to annex some piece of property within the improvement district. The board of trustees in those situations need to have the right to at least initiate the process.

Mr. Finlinson pointed out that it is important to remember that the biggest public involvement is going to be in the creation of the district, not in an annexation. The flexibility to deal with the variety of circumstances is critical.

Rep. Gladwell suggested that something be done to ensure that every effected party is notified of the pending annexation and that they have the right to initiate a protest. If the requisite number of citizens do not protest, the annexation will take place. He said this would not include the 67 percent super majority.

Mr. Anderson indicated that with respect to municipal annexations, all the notice is required to do is let people know of the proposed annexation; the date, time, and place of the public hearing; and their right to protest.

Mr. Ashton discussed property owner rights. He indicated there may be situations where property owners would like to receive service from a district rather than a city because the connection fees and impact fees are significantly less than what a city would charge.

Mr. Draney explained there is an area of Sandy City that is not yet developed that White City Water Improvement District wants to annex. When a city plans for water service, it plans 20–50 years into the future. A municipality's governing body may have already made a lot of decisions that impact whether or not they serve a particular area. If a part of a city is going to be annexed into a special district, there needs to be some mechanism for that city to have a say in the matter.

4. Special Districts Eminent Domain - Mr. Spencer Stokes, representing UTA, said eminent domain becomes a major issue during the acquisition of a commuter rail corridor between Ogden and Salt Lake. UTA has not had a large need for using eminent domain while running buses because stations can be moved. With light rail lines, it is more difficult to move the rail station. Mr. Stokes commented that UTA is the only special service district in Utah that does not have the power of eminent domain. He noted cities have been willing to use their power of eminent domain to help obtain property when necessary.

5. Withdrawal and Dissolution - Mr. Anderson distributed the proposed procedures for special district withdrawal. The withdrawal process should be administered by the special district board of trustees subject to statutory constraints and requirements. Initiation of the process would be by petition or by resolution adopted on the board of trustees' own motion. They are suggesting a higher threshold on withdrawal because they are not proposing an election. Mr. Anderson reviewed the detailed criteria for approving or denying a proposed withdrawal and the circumstances under which withdrawal could be denied. Approval of the withdrawal may state conditions which must be satisfied for the withdrawal to be effective. After a hearing, and subject to the conditions outlined, the board may by resolution either reject or approve the withdrawal, or approve the withdrawal of a portion, but not all, of the proposed area with or without conditions. He said the working group felt judicial review was the preferable option to maintain checks and balances concerning withdrawal. Exceptions to the basic withdrawal procedure include drainage and irrigation districts.

Sen. Evans stated his concern with withdrawal procedures is that the district is still financially solvent and that the people who receive the service are paying for it.

Mr. Anderson stated independent districts with withdrawal provisions have procedures that have to be followed. He noted certain types of districts could be totally excluded if the committee felt they did not apply. There should be a mechanism for areas to withdraw from a

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district if it is not receiving service. Mr. Anderson said his working group would look at drainage, irrigation, and cemetery districts to determine if it is necessary to have withdrawal procedures for them.

Sen. Evans stated that due to lack of time the committee would continue the discussion of withdrawal, dissolution, and adjusting common boundaries at the next meeting.

The next meeting of the subcommittee was scheduled for Tuesday, September 5 at 9:00 a.m. in Room 414.

Sen. Evans adjourned the meeting at 11:50 a.m.