

SPECIAL SERVICE DISTRICTS – INDEPENDENT POLITICAL SUBDIVISIONS OR JUST ANOTHER DEPARTMENT?

Utah Prosecution Council
Government Civil Practice Conference
16-19 October 2013 Springdale, Utah

I. The Historical Development of Local and Special Service Districts

Service districts have a long history in the United States, dating back almost to the country’s founding. Their history in Utah is similarly lengthy, beginning before statehood. They were first statutorily authorized in Utah in 1909, and have persisted in the state code ever since. They were initially individually authorized according to the particular service they provided. Early on, they unsurprisingly focused on water issues—the state’s first statutory service district was an irrigation district—but over the years districts were authorized for several other government services, including mosquito abatement, cemeteries, and fire protection. The state constitution was amended in 1974 to authorize a new service district category: special service districts. The Special Service District Act was passed the following year.

Starting almost twenty-five years ago, the legislature began consolidating the statutes dealing with the various service districts to attempt to create a coherent scheme. Initially, Title 17A was adopted to organize the enabling statutes for the various independent service districts into a single title. Unfortunately, the title confusingly adopted the term “special district” to mean all the service districts covered in the title, including both the historically independent service districts dedicated to specific services (e.g., drainage, fire protection, and mosquito abatement) as well as special service districts.

To alleviate that confusion and to add further coherence to Utah’s service district law, the legislature then separated the service districts into two categories and placed them in two different titles. Under the new scheme, all service districts were renamed “local districts,” with the exception of special service districts, which were moved to their own chapter in a separate title. Local districts are now found in Title 17B while special service districts appear in Title 17D.

Since their appearance in Utah's statutes more than 100 years ago, service districts have proliferated. There are now almost 400 service districts in the state, approximately a third of which are special service districts.

II. Differences between Local and Special Service Districts

Currently, the principal difference between local districts and special service districts is governance. Under the enabling act, a local district is governed by an, usually independent, board of trustees. [Utah Code § 17B-1-301\(1\)\(a\)](#). In contrast, a special service district is governed by the legislative body of the county or city that created it, although the county or city may delegate some authority to an administrative control board. [Utah Code § 17D-1-301](#). Even if a county or city delegates the special service district's governance to an administrative control board, the delegation is limited. Certain activities, like levying a tax or issuing bonds, are reserved for the county or city legislative body.

There are some differences between the statutorily enumerated services that local and special service districts are authorized to provide. Compare [Utah Code § 17B-1-202](#) with [Utah Code § 17D-1-201](#). For example, Title 17B authorizes local districts to operate airports, while those services are not authorized for special service districts. In practice, the distinctions appear to be more the result of historical carryover rather than legislative intent, as the legislature recently unanimously added cemetery services to the special service district list. [2013 Utah Laws ch. 448, S.B. 200](#).

III. Special Service District Liability

Is the local government that creates a special service district liable for its wrongful or negligent acts? That question would seem to be easily answered by the enabling act's explicit statement that a special service district is "separate and distinct from the county or municipality that creates it." They are quasi-municipal corporations that have the power to sue and be sued. [Utah Code § 17D-1-103\(1\)](#). Yet, in *Highlands at Jordanelle, LLC et al. v. Wasatch County et al.*, case no. 080500390, the Fourth District Court held Wasatch County liable for refunds it had ordered for fees it had determined were illegal, but were passed, billed, and collected by a special service district. The court's rationale was that, because the county council sat (pursuant to statute) as the special service district's governing board, it should be held jointly and severally liable for refunding the special service district's illegal fee.¹

¹ A copy of the ruling is attached.

The ramifications of such a holding, if affirmed², are substantial for all special service districts and the local governments that created them. Risk assessment would be reshuffled, along with its attendant insurance policies, coverage, and premiums. In addition to the statutory language quoted above, there are strong arguments and analogous precedent that cuts against the district court’s interpretation. In [*Municipal Building Authority of Iron County v. Lowder*, 711 P.2d 273 \(Utah 1985\)](#), the Utah Supreme Court quickly dispatched an argument that the county’s municipal building authority was a county subdivision, noting it was rather a quasi-municipal corporation. *Id.* at 277-78.³ In [*Tribe v. Salt Lake City Corporation*, 540 P.2d 499 \(Utah 1975\)](#), the supreme court explained that quasi-municipal corporations were arms of **state** government, even if, as in that case, the creating entity was a political subdivision whose board of commissioners made up the redevelopment agency at issue. *Id.* at 501-03.⁴ There is, moreover, a glaring practical problem with treating special service districts as alter egos of the local governments that create them. If the special service district serves only a portion of the larger governmental entity, then holding the larger entity responsible unfairly obliges citizens that did not receive the benefit of the services to nonetheless shoulder some portion of the financial burden.

Nevertheless, while the issue remains unsettled, there are some things local governments might wish to do, which could potentially reduce the risk of unexpectedly increased liability:

A. Stick with local districts

If a city or county can live with transferring authority over a local government service to an independent group that can impose fees and taxes without recourse to the

² The case is currently on appeal, [case no. 20130445-CA](#).

³ But note with caution that, while the court ultimately rejected the defendants’ alternative alter ego theory to support their claim that the debts of the building authority were the debts of the county, it did find that the first prong of the alter ego test—unity of interest and ownership that dissolves the corporations’ separate personalities—was satisfied. The court noted the identity of interests between the authority and the county, that the authority worked at the county’s behest, and that the county commissioners were the authority’s trustees. *Id.* at 278.

⁴ These decisions are attached.

city or county that created it, then that course may be the best way to avoid the entanglement that could give rise to expanded liability.

B. Convert special service districts into local districts

During this year's general session, the state legislature passed [HB334](#), which, among other changes, enacted [Utah Code § 17D-1-604](#). The statute allows counties and cities to reorganize the special service districts they created into local districts. Again, the counties and cities choosing this course must be comfortable with surrendering involvement in the district at issue.

C. Delegate governance to an administrative control board

[Utah Code § 17D-1-301](#) allows counties and cities to put some distance between themselves and the special service districts they create by delegating most of the everyday management of a special service district to an administrative control board. While doing so does not completely relieve the creating county or city from governing (e.g., the power to tax, bond, and levy assessments remains with the creating entity's legislative body), it does create a buffer of separation that might help avoid a finding of joint liability, particularly for claims not involving taxes, bonds, and assessments, etc.

D. Pass through certified delinquencies cleanly

Under [Utah Code 17B-1-902](#), local districts, including special service districts, may certify delinquencies to county treasurers, which then operate as tax liens on the customer's property. The statute appears to be mandatory once the district certifies the delinquency. If it is, then the best approach for counties seeking to avoid assuming the district's liability would be to assure that customers' payments of the delinquencies pass through the county to the district as quickly, cleanly, and transparently as possible.

E. Avoid making subdivision or other approvals contingent on requirements within a special service district's authority

Local governments' legislative bodies sometimes stray into setting conditions on subdivision or other approvals that are within the purview of a special service district. Doing so might blur the boundary between the county or city and the special service district. Instead, requiring the applicant to obtain the special service district's approval and relying on the district to make its approval contingent on the payment of its fees or assessments keeps that border clearer.

F. Confirm the special service districts have their own coverage

Finally, confirming the special service districts a local government has created have their own coverage will help limit the creating county's or city's exposure because a plaintiff will be less inclined to include them in a suit if it knows the service district is insured because the county's or city's additional deep pocket usually will not be worth the cost of litigation against multiple, separately represented parties.



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Joseph Gatton provided valuable ideas and research assistance for this project.