

RESOLUTION 2014—003

(A) Resolution Title/Subject

Title: A Resolution of the Utah League of Cities and Towns Supporting a Bill to Amend Utah Code §78B-5-805 and Rule 62(e) of the Utah Rules of Civil Procedure.

Subject: In 2013, Utah Code §78B-5-805 & Rule 62(e) of the Utah Rules of Civil Procedure were amended to require Utah municipalities to post security for all judgment amounts in excess of \$5 million as a condition of obtaining a stay of judgment during the appeal of that judgment (hereinafter “appeal security”).

(B) We, the members of the Utah League of Cities & Towns find:

1. Utah municipalities should enjoy the same legal rights to appeal currently enjoyed by the State of Utah and its agencies, counties, school districts, special districts, local districts, and other Utah governmental entities.
2. Private litigants that obtain a judgment against a Utah municipality are not advantaged by a municipality posting an appeal security and are not disadvantaged by a municipality not posting an appeal security because of the Utah Governmental Immunity Act requirements for municipalities to pay judgments, the ability of municipalities to raise taxes to pay judgments, and the lack of Utah law enabling municipal bankruptcies, among other things. Also, a municipality cannot abscond, unlike a private litigant.
3. The bond and security markets do not make available traditional securities for the purpose of securing the payment of a judgment by a municipality, short of fully collateralizing the posted security, a proposition that is unaffordable and impractical for municipalities and other governmental entities.
4. Utah law does not allow Utah municipalities to sign a promissory note, to collateralize its assets, or to pledge its properties in order to secure a note or other obligation in order to obtain a convention security, such as, a supersedeas bond. (Tooele City has obtained the written legal opinion of the law firm of Ballard Spahr regarding these matters.)
5. The appeal security requirement conflicts with established Governmental Immunity Act provisions for the payment of judgments. For example, the appeal security requirement requires the posting of security for 100% of judgment amounts exceeding \$5 million, while the GIA allows municipalities to pay judgments in installments over 10 years.
6. Utah Code §10-6-116 prohibits Utah municipalities from accumulating fund balances exceeding 25% of its anticipated general fund revenues, which limits a municipality’s ability to post an appeal security from its accrued funds, similar to limiting a municipality’s ability to pay an entire judgment in one year.
7. Requiring Utah municipalities to post an appeal security is contrary to public policy for many reasons, including the above, and also including the adverse effects the requirement has on fiscal policy, budgeting, fund balances, capital facilities planning, municipal bond ratings, etc.
8. The 2013 amendments have the effect of leveraging Utah municipalities to pay judgments, even incorrect or illegal judgments, because the appeal security is prohibitively expensive, generally unavailable, and arguably illegal, and thus deprives municipalities of their constitutional right to access to the courts in violation of the Utah Constitution’s “Open Courts” provision.

9. The 2013 amendments, contrary to “leveling the playing field” in litigation, are punitive in nature toward Utah municipalities.
10. This resolution is necessary to protect the fiscal and legal interests of all Utah municipalities.

(C) Now, therefore, we, the members of the Utah League of Cities & Towns recommend that:

1. Utah Code §78B-5-805 and Rule 62(e) of the Utah Rules of Civil Procedure be amended to reinstate the protection for Utah municipalities enjoyed by the State of Utah and its agencies, counties, school districts, special districts, local districts, and other Utah governmental entities.
2. Utah Code §78B-5-805 and Rule 62(e) of the Utah Rules of Civil Procedure be amended to restore consistency with existing Utah law, including the Governmental Immunity Act.

Tooele City Corporation

City(s), Town(s), and/or Affiliate Group submitting this resolution

Roger Baker, Tooele City Attorney (as the request of the Tooele City Mayor and City Council)

Person preparing form