

## Carter v. Lehi: Utah Supreme Court's New Framework for Initiatives and Referendums

In a recent opinion of the Supreme Court of the State of Utah (*Carter v. Lehi*, 2012 UT 2 (2012)), the court abandoned the prior framework it used for determining whether a matter is a proper use of the people's initiative power and set forth a new framework.

In the *Carter* case, a group of voters in Lehi sought to amend two city ordinances through two voter initiatives (one initiative sought to set maximum salary and compensation limits for salaried employees and the other initiative sought to impose a city residency requirement for certain employees). The city determined that the proposed amendments were not valid exercises of the voters' power to initiate legislation because they were administrative in nature.

The Supreme Court concluded that both initiatives involved the exercise of legislative power and were therefore proper uses of the people's initiative power. In reaching that conclusion, the court established a new framework for determining whether a matter or action involves the exercise of legislative power and is subject to an initiative or referendum. Under the new framework the court looks to see if the matter or action in question has either of the following:

- It involves the promulgation of laws of general applicability; or
- It is based on the weighing of competing policy considerations.

These two factors may be difficult to apply in certain circumstances, so the court said it would also look at history and longstanding parallels in statute to determine whether the matter in question is a traditional exercise of the legislative power.

Because the Supreme Court abandoned its prior framework in the *Carter* opinion, the court reviewed several of the opinions that were decided under the old framework to determine if the conclusion would be the same under the new framework. That review included the following cases:

- *Keigley v. Bench* (63 P.2d 262 (1936)) and *Keigley v. Bench* (89 P.2d 480 (1939)): In the original opinions, the court held that an ordinance authorizing the issuance of municipal bonds was legislative and subject to referendum. In *Carter*, the court determined the result would be the same under the new framework because the authorization of a bond is a generally applicable, policy-based decision. Furthermore, such decisions "have long been the province of legislative bodies, which approve bonds just as they approve new taxes."
- *Low v. Monticello* (54 P.3d 1153 (2002)): In the original opinion, the court held that a city council's decision to exercise an option to repurchase an electric distribution system was administrative and therefore not subject to referendum. "Exercising the option was more like making a contract with the seller than making a policy-based legislative decision to create the option in the first place." The court determined in *Carter* that the conclusion would be the same under the new framework. "Government decisions to enter into a contract with a specific entity or to exercise a specific option to purchase a power plant are not legislative. They do not involve the adoption of generally applicable rules in the implementation of public policy. They are instead executive acts involving specific individual parties and accordingly are outside the bounds of the legislative power."

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The Utah Legislature is currently considering legislation that would amend the referendum process in the Utah Code. We will provide an update of any changes to the laws relating to initiatives and referendums at the end of the legislative session.

For additional information on the matters described in this Client Alert, please contact your regular Chapman and Cutler LLP attorney or visit us at [chapman.com](http://chapman.com).

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