

1976

# Kohler v. The Industrial Commission of Utah : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Frank V. Nelson, Esq.; Assistant Attorney General; Attorney for Defendant-Respondent the Industrial Commission of Utah; Robert D. Moore, Esq.; Attorney for Defendants-Respondents, State Insurance Fund and Midway City.

Van Cott, Bagley, Cornwall & McCarthy; Alan F. Mecham; Attorneys for Plaintiff-Appellant.

---

## Recommended Citation

Brief of Respondent, *Reba Kohler v. The Industrial Commission of Utah*, No. 197614506.00 (Utah Supreme Court, 1976).  
[https://digitalcommons.law.byu.edu/byu\\_sc1/316](https://digitalcommons.law.byu.edu/byu_sc1/316)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH  
DOCUMENT  
KFU  
45.9  
\$9  
DOCKET NO.

UTAH SUPREME COURT

BRIEF

145-06 R

OF THE STATE OF UTAH

REBA KOHLER, Widow of )  
Harry L. Kohler, deceased, )  
 )  
Plaintiff-Appellant, )  
 )  
vs. )  
 )  
THE INDUSTRIAL COMMISSION )  
OF UTAH, MIDWAY CITY and )  
STATE INSURANCE FUND, )  
 )  
Defendants-Respondents. )

Case No. 14506

BRIEF OF DEFENDANT-RESPONDENT

Appeal from the Order of The Industrial Commission of the  
State of Utah

Robert D. Moore, Esq.  
Suite 400, Ten West Broadway  
Salt Lake City, Utah 84101  
Attorney for Defendants-  
Respondents, State Insurance  
Fund and Midway City

Frank V. Nelson, Esq.  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114  
Attorney for Defendant-  
Respondent The Industrial  
Commission of Utah

VAN COTT, BAGLEY, CORNWALL &  
McCARTHY  
Alan F. Mecham  
141 East First South  
Salt Lake City, Utah 84111  
Attorneys for Plaintiff-Appellant

FILED

JUN -1 1976

Clerk, Supreme Court, Utah

## TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF NATURE OF CASE . . . . .	1
DISPOSITION OF THE INDUSTRIAL COMMISSION OF UTAH . . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	2
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	2
POINT I. THE PROVISIONS OF SECTION 35-1-73, UTAH CODE ANNOTATED, AS AMENDED AND IN EFFECT DURING THE PERIOD HERE IN QUESTION, REPRESENT AN UNDER-INCLUSIVE CLASSIFICATION OF DEPENDENTS ESTABLISHED BY THE LEGISLATURE AND BASED UPON REASONABLE GROUNDS AND EXPECTATIONS. AS SUCH, THIS CLASSIFICATION IS NOT UNCONSTITUTIONAL, ARBITRARY OR UNREASONABLE.	
CONCLUSION . . . . .	9

## CASES AND AUTHORITIES CITED

### Statutes

Utah Code Annotated, 1953, §35-1-73 . . . . . 1,2,4,5,7,

### Cases

<u>A.F. of L. v. American Sash</u> , 335 U.S. 538, (1949) . . . . .	8
<u>Park Utah Consolidated Mines v. Industrial Commission</u> , 84 Utah 481, 36 P2d 979, (1934) . . . . .	3
<u>Semler v. Dental Examiners</u> , 294 U.S. 608, (1935). . . . .	8
<u>Sizemore v. Industrial Commission</u> , 4 U.2d 126, 288 P.2d 788, (1955). . . . .	6
<u>Tigner v. Texas</u> , 310 U.S. 141, (1940) . . . . .	8
<u>Williamson v. Lee Optical Inc.</u> , 348 U.S. 483, (1955). . . . .	8, 9

Other Authorities

Larsen, <u>The Law of Workmen's Compensation</u> , \$64.40, Vol. 2, (1973) . . . . .	5
Schneider, <u>Workmen's Compensation</u> , Perm. Ed., Vol. 1, Section 11, (1953) . . . . .	10
Tussman & tenBrcek, "The Equal Protection of the Law", 37 Calif. L. Rev. 341, (1949) . . . . .	7
"Developments in the Law -- Equal Protection", 82 Harv. L. Rev. 1065, (1969) . . . . .	8

IN THE SUPREME COURT OF THE STATE OF UTAH

---

REBA KOHLER, Widow of )  
Harry L. Kohler, deceased. )

Plaintiff-Appellant, )

vs. )

Case No. 14506

THE INDUSTRIAL COMMISSION )  
OF UTAH, MIDWAY CITY and )  
STATE INSURANCE FUND, )

Defendants-Respondents. )

---

---

BRIEF OF DEFENDANT-RESPONDENT

---

STATEMENT OF NATURE OF CASE

This case is an appeal from an Industrial Commission order reducing an award to a widow-dependant pursuant to Section 35-1-73, Utah Code Annotated, 1953, as in effect on April 16, 1973, which questions the constitutionality of said statute.

DISPOSITION BY UTAH INDUSTRIAL COMMISSION

Upon remarriage of plaintiff-appellant, the Industrial Commission reduced her death benefit award pursuant to 35-1-73, Utah Code Annotated, 1953, as it was in effect at the time of her former husband's death.

### RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks an affirmation of the award modification by the Industrial Commission and a finding upholding the constitutionality of the statute under which such award was made.

### STATEMENT OF FACTS

Defendant-Respondent agrees with and accepts plaintiff-appellant's factual statement.

### ARGUMENT

#### POINT I.

THE PROVISIONS OF SECTION 35-1-73, UTAH CODE ANNOTATED, 1953, AS AMENDED AND IN EFFECT DURING THE PERIOD HERE IN QUESTION, REPRESENT AN UNDER-INCLUSIVE CLASSIFICATION OF DEPENDENTS ESTABLISHED BY THE LEGISLATURE AND BASED UPON REASONABLE GROUNDS AND EXPECTATIONS. AS SUCH, THIS CLASSIFICATION IS NOT UNCONSTITUTIONAL, ARBITRARY OR UNREASONABLE.

The purpose and objectives of the Workmen's Compensation Act are well stated in the brief of Plaintiff-Appellant.

[The Workmen's Compensation Act] . . . is a beneficent law, passed to protect employees and those dependent upon them; to damnify certain persons because workmen cease to earn wages, and to provide workmen's dependents with something in substitution for what they lost by the workmen's death. The clear intention of the Legislature was "to substitute a more humanitarian and economical system of compensation for the injured workmen or their dependents in case of their death," which the more humane and moral conception of our time requires. The Act affords, through administrative bodies, injured industrial workmen or their dependents simple, adequate and speedy means of securing

compensation, to the end that the "cost of human wreckage may be taxed against the industry which employs it," which tax or burden is added to the price of the produce and is ultimately paid by the consumer. Thus the Legislature sought to promote the public welfare by relieving society of the support of unfortunate victims of industrial accidents, and to avoid the necessity of the employee's dependents becoming objects of public charity. Park Utah Consolidated Mines Co. v. Industrial Commission, 84 Utah 481, at 485 to 486, 36 P.2d 979, at 981, (1934)

Several parts of the foregoing quotation should be emphasized. First, the act is a beneficent one. If it were completely and totally beneficent, one would, upon being adjudged a dependent of an injured or deceased workman, receive complete compensation forever. No limitation as to amount, duration of payments or percentage of the workman's income would exist. Obviously this act is not completely beneficent. The Legislature recognized such charity cannot exist due to expense, which raises the second point of emphasis. Compensation to dependents is, according to the quotation, to be adequate, as opposed to being complete or total.

The third point of emphasis is legislative recognition of the fact that the expense incurred to support this beneficent law would ultimately fall on the consumer. This was felt to be a better remedy, keeping in mind the public welfare, than to allow dependents to become "objects of public charity." The expense mentioned above was limited, however, by the legislature. Some of those limitations have been mentioned already i.e. amount of

compensation is based on a percentage of the workman's salary as opposed to being equal to the workman's salary and time limitations. The result being that "consumers" are not required to support dependents completely or forever. They are only required to "adequately" support dependents.

In Section 35-1-73, Utah Code Annotated, 1953, as amended and in effect, we are dealing with another limitation upon the expense of supporting dependents:

. . . should a widow, who is the sole dependent . . . and who is receiving the benefits of this title, remarry during the period covered by such weekly payments, her sole right after such remarriage, to further payments of compensation shall be the right to receive in a lump sum 1/3 of the benefits remaining unpaid at the time of such remarriage.

It is obvious that the Legislature elected to limit the "expense" burden on the "consumer" by saying that once a sole-widow-dependent remarries, most, but not all, of the burden to support that dependent goes to the new spouse.

It should be kept in mind that the purpose of this section of the Act is conceptually at odds with the "beneficent" character mentioned above. It is in keeping with the concept of "adequate" benefits to dependents, however. Any discussion of the purpose of this particular section should be in the context of its specific purpose rather than the overall beneficent purpose of the Act.



Keeping in mind the burden on the consumer, the remaining part of the statute goes on:

After deduction of the 1/3 payable upon remarriage, there being no dependents, one-half of the sum of the benefits remaining shall be paid by the employer into the special injury fund as defined in Section 35-1-68.

This entire section is completely compatible with the statement of the purpose of the act cited above and in plaintiff-appellant's brief.

Larson's, Workmen's Compensation Law §64.40, Revision or Termination of Benefits, states:

Once rights as a dependent under an award have been acquired, they are not lost by a subsequent change in the dependent's financial position, nor by any change short of the events, such as remarriage or attainment of a specified age, expressly terminating compensation by statute. (Emphasis added)

It is apparent from this quotation that such limitations are practically universal in workmen's compensation laws. The quotation mentions the specific limitation discussed in plaintiff-appellant's brief. That brief goes on to point out that because "sole-widow" dependents are not treated the same as "minor child" dependents, in that "a subsequent change in the dependent's financial position" is not measured with the same ruler, then equal protection is denied and the classification so established is arbitrary. This idea as expressed by plaintiff-appellant assumes that the Workmen's Compensation Act equates "sole widow" dependents and "minor child" dependents when in fact the Act does not do this, and does not purport to do this. The Act

creates two classifications which are separate and distinct. To compare two classifications to each other, then to arrive at the conclusion that equal protection under the law is violated when members of one classification are not treated the same as those of another classification is a worthless exercise producing irrelevant results, yet this is what is done in plaintiff-appellant' brief.

It is, of course, understood that one cannot avoid equal protection challenges to a classification simply by stating that it exists, in contrast to another classification. It should be important to note that "reasonableness" enters into any analysis of a legislative classification. In order to understand the bounds which the Legislature intended to create when writing this particular section of the Act, it is important to read Sizemore v. Industrial Commission, 4 U.2d 126, 288 P.2d 788, (1955). The case itself differs factually from that presented here, but an important statement is made as to the purpose of this specific code section, (at 789):

This statute clothes the Commission with broad powers to distribute the award in such manner as it deems will best serve the interests, needs and welfare of the parties. These matters must, of course, be considered in the light of, and bear proper relationship to, the legal or moral obligations deceased had to the dependents in question.

Two tools given the Industrial Commission as part of the "broad powers" mentioned are, inter alia, the powers to reduce benefits to a sole-widow dependent upon her remarriage and to end benefits should any dependent die.

Equal protection cases have always recognized that governments cannot function without classifying its citizens and constituents for a variety of reasons and, when this classification is complete, treating some groups differently from others. These classifications may be challenged as denying equal protection, but validity is usually established if the classification includes "all [and only those] persons who are similarly situated with respect to the purpose of the law". Tussman & tenBrock, The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 346 (1949).

As discussed above, the purpose of this law, specifically Section 35-1-73, U.C.A., 1953, as amended and in effect is, obviously, to provide some reasonable and acceptable limitations upon what might become an overly heavy financial "burden." The next step in a proper analysis of the constitutionality of this section is to determine the reasonableness of the Legislature's method of limitation. At the time of the occurrences here considered, the Legislature apparently felt that sole-widow dependents would not be overly penalized if their awards were reduced upon remarriage. This conclusion was undoubtedly based upon the fact that a new spouse could and would substitute support for the benefits originally awarded. In the case of minor-child dependents however, marriage, generally, would not represent an opportunity to substitute one form of support for another. In many cases, marriage for a minor-child dependent represents a greater financial burden to them. Since those

minor children might have looked to the deceased workman for some type of help, why not continue their award, in a larger amount than that of a widow-dependent.

Since the limitation placed on sole-widows might have been placed upon minor children, it is evident that this specific provision is under-inclusive in nature. Under-inclusion occurs when a state benefits or burdens persons in a manner that furthers a legitimate public purpose, but does not confer the same benefits or burdens on others who may have similar characteristics or be in a similar situation. The U.S. Supreme Court has held that under-inclusion does not deny equal protection under the law. This position is founded on the holding that the Legislature is free to resolve problems, correct mischief or to recognize degrees of evil and to do so by rectification where the problems are most concentrated. This may be done even if other areas causing the same problem are ignored. Williamson v. Lee Optical, Inc. 348 U.S. 483, 488, (1955); 82 Harvard Law Review 1065, 1084.

In Williamson v. Lee Optical, Inc., supra., the Court said:

The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the Legislature may think. Tigner v. Texas, 310 U.S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the Legislative mind. Semler v. Dental Examiners, 294 U.S. 608. The Legislature may select one phase of one field and apply a remedy there neglecting the others. A.F. of L. v. American Sash, 335 U.S. 538.

In many situations, toleration of under-inclusion may simply be a recognition of the fact that persons similarly situated with respect to one set of circumstances, may be differently situated with respect to another set of circumstances. This is certainly the situation with the case at bar. Sole widows and minor children may both be similar in dependency on a deceased workman. When it comes to modifying or limiting the expense burden their dependency creates, however, they are different. The Workmen's Compensation Act recognizes this difference by saying that a sole-widow's benefits should be reduced to decrease the financial "burden" upon "consumers", discussed above. To do the same for minor-child dependents, however, might, due to the financial burden which marriage represents to them, increase the burden on "society." In weighing the burden on consumers as opposed to society, in the case of minor children, the Legislature has left the burden with the consumer. To quote again from Williamson, supra., at 487:

. . . the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that a particular Legislative measure was a rational way to correct it.

#### CONCLUSION

It should be remembered that the general rule holds a legislative act constitutional unless its invalidity appears beyond a reasonable doubt. This applies to workmen's compensation acts generally. Any allegation to the contrary places the burden on him who asserts it. Further, any construction which reasonably

favors constitutionality should be accepted over one which does not. Schneider, Workmen's Compensation, Perm. Ed., Vol. 1, Section 11.

The legislative pronouncement in Section 35-1-73, Utah Code Annotated represents a valid treatment of the legislative problem of giving adequate benefits to dependents without creating an unbearable financial burden. It is reasonable and based upon legitimate expectations. As such, the constitutionality of this section should be established and the modification of award by the Industrial Commission should be affirmed.

DATED this 26<sup>th</sup> day of May, 1976.

Respectfully submitted,

Robert D. Moore /s/ RDM  
ROBERT D. MOORE  
Attorney for Defendant-Respondent  
400 Ten Broadway Building  
Salt Lake City, Utah 84101