

1948

Roy D. Thatcher, LeRoy B. Young and Paul  
Thatcher, Thatcher & Young v. Industrial  
Commission of Utah and Bernice Y. Rosenbaum :  
Brief of Defendant

Utah Supreme Court

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Grover A. Giles; Attorney General; Zar E. Hayes; Assistant Attorney General;

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In the  
**Supreme Court of the State of Utah**

ROY D. THATCHER, LEROY B.  
 YOUNG and PAUL THATCHER,  
 co-partners, doing business under the  
 firm name and style of THATCHER  
 & YOUNG,

*Plaintiffs,*

vs.

INDUSTRIAL COMMISSION OF THE  
 STATE OF UTAH, and BERNICE  
 Y. ROSENBAUM, for herself as a  
 widow, and also as the mother of  
 JOAN B. ROSENBAUM and  
 ELYNOR K. ROSENBAUM, the  
 minor daughters of MORRIS DE-  
 WAYNE ROSENBAUM, deceased,

*Defendants.*

Case No.  
 7178

BRIEF OF DEFENDANT  
 INDUSTRIAL COMMISSION OF UTAH

GROVER A. GILES,  
*Attorney General,*

ZAR E. HAYES,  
*Assistant Attorney General.*

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STATEMENT OF FACTS

The Statement of Facts as set forth in the Plaintiffs' Brief is substantially in accordance with Defendant's understanding and hence nothing is added thereto.

## STATEMENT OF POINTS INVOLVED

Although the Plaintiffs have set forth their arguments under four points, it appears to us that these points essentially narrow themselves down to two, to wit:

## POINT NO. I.

SECTION 42-1-81, U. C. A., 1943, IS CONSTITUTIONAL AS A PROPER EXERCISE OF LEGISLATIVE POWER.

## POINT NO. II.

THE COMMISSION DID NOT ACT ARBITRARILY OR CAPRICIOUSLY OR IN ABUSE OF ITS DISCRETION IN FIXING A FEE OF THREE HUNDRED SEVENTY-FIVE (\$375.00) DOLLARS.

## ARGUMENTS

## ARGUMENT I.

SECTION 42-1-81, U. C. A., 1943, IS CONSTITUTIONAL AS A PROPER EXERCISE OF LEGISLATIVE POWER.

Section 42-1-81, U. C. A., 1943, reads as follows:

“In all cases coming before the industrial commission in which attorneys have been employed, the commission is vested with full power to regulate and fix the fees of such attorneys.”

Statutes similar to ours above quoted have on numerous occasions been questioned as regards the constitutionality thereof. In every case which we have been able to find

where the constitutionality of such a statute was questioned, it has been held without exception that such statutes are constitutional.

In the case of *Buckler vs. Hilt* (Ind.) 200 N. E. 219, the Court held that the Indiana statute which provided for the fixing of attorneys' fees by the Industrial Board of Indiana was valid and not a denial of due process of law nor a taking of property without just compensation, since it falls within police power. The case further held that such act was not unconstitutional as denying liberty of contract and depriving the attorney of compensation for property without due process of law, nor was it an unconstitutional grant of special privileges or immunities by imposing restrictions upon attorneys practicing before the board differing from those imposed upon attorneys generally.

This Court in the case of *Ellis vs. Industrial Commission*, 91 Utah 432, 64 Pac. (2d) 363, after thorough consideration of the matter and a review of authorities from other jurisdictions, held that the statute in question was valid and that the Industrial Commission of Utah had the authority to fix attorneys' fees in matters under the jurisdiction of that commission.

The ruling in the *Ellis* case was bolstered and reiterated in *re Hatch*, 108 Utah 446, 160 Pac. (2d) 961.

We feel that the rulings in the two cases above cited and previously decided by this Court are in themselves sufficient to sustain the position that the statute is constitutional and valid without further argument or citation of authorities. In order, however, to call the attention of the Court to the

uniformity of the decisions in connection with this matter we quote from the annotation in 69 A. L. R. at Page 1319, which reads as follows:

“Provisions of the act limiting the amounts which attorneys may charge claimants for services in connection with their claims, as, by requiring that such a charge must be approved by the board or commission to which is intrusted the administration of the act, or by a judge, have been held constitutional whenever questioned, upon the ground that they are a valid exercise of the police power, as well as upon other grounds.”

The annotation from which the above quotation is taken and a subsequent annotation in 103 A. L. R., Page 906 et seq. cite and discuss numerous cases upholding the validity of such statutes. No case is cited therein, nor do we find any cases where such statutes have been held unconstitutional.

Counsel for Plaintiff asserts that the act in question contravenes Article V, Section 1 of the Constitution of Utah in that it is an attempt by the legislature to permit the executive or administrative arm of the state to interfere with the State's judiciary. Counsel predicates this argument upon the fact that attorneys are officers of the Court and no one except the Courts of the state would have the right to dictate the terms upon which counsel might act.

We call attention to the case of *Yeiser vs. Dysart*, 267 U. S. 540, 45 Supreme Court 399, 400, 69 Lawyers Edition 775, quoted with approval in *Ellis vs. Industrial Commission*, supra, as follows:

“When we add the considerations that an attorney practises under a license from the State and that the subject-matter is a right created by statute it is obvious that the State may attach such conditions to the license in respect of such matters as it believes to be necessary in order to make it a public good.”

We submit further that, in appearing before the Industrial Commission, which is a quasi judicial body of the State of Utah, that attorneys are officers of the commission and by so appearing subject themselves to the rules and regulations of the commission, and particularly such rules and regulations as have been provided by statute.

In view of the foregoing we submit that the statute in question is constitutional and that the commission acted within its jurisdiction in fixing the attorneys' fees in this matter.

## ARGUMENT II.

THE COMMISSION DID NOT ACT ARBITRARILY OR CAPRICIOUSLY OR IN ABUSE OF ITS DISCRETION IN FIXING A FEE OF THREE HUNDRED SEVENTY-FIVE (\$375.00) DOLLARS.

We find it difficult as attorneys, to argue that the fee allowed by the Industrial Commission in this matter was adequate and in line with the services rendered by the Plaintiffs. If the prevailing opinion in the Ellis case means that the commission can determine the fee merely upon the record in the case and without any independent evidence on the question of the value of the attorneys' services, even where request is made to permit the production of such

evidence, then probably it can be said that the commission had before it sufficient information upon which to act and that there is nothing before this Court from which it could be said that the commission acted arbitrarily and capriciously.

On the other hand, it appears clear that no hearing was had or given to the Plaintiffs on the specific question as to the reasonableness of the fee which should be awarded for the services rendered. There are authorities to the effect that a proper and constitutional administration of a statute such as ours require the opportunity for a hearing on the question as to the reasonableness of attorneys' fees, particularly where such a hearing is requested. See *Shilling vs. Industrial Accident Commission* (Cal.) 190 Pac. 373. See also the opinion of Mr. Justice Wolfe in the Ellis case.

Under all of the circumstances and in the light of the authorities and good reason, we are inclined to feel that the better rule would require the commission to grant to the attorneys an opportunity to be heard on the question of reasonableness of fees in compensation cases. In this respect, in order to be honest with this Court in the presentation of our views to it, we must confess that in our opinion the Industrial Commission abused its authority and discretion in fixing the fees in this case without permitting the Plaintiffs an opportunity to present evidence with regard thereto.

Respectfully submitted,

GROVER A. GILES,  
*Attorney General,*  
ZAR E. HAYES,  
*Assistant Attorney General.*