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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

BREITLING BROTHERS CONSTRUCTION, INC.	:	
	:	
Plaintiff and Respondent,	:	
vs.	:	Case No. 15945
UTAH GOLDEN SPIKERS, INC. and THE STATE OF UTAH,	:	
	:	
Defendants and Appellant.	:	

RESPONDENT'S BRIEF

Appeal from the Third Judicial District Court
of Salt Lake County, State of Utah
The Honorable Bryant H. Croft

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FILED

DEC 15 1978

Clerk, Supreme Court, Utah

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IN THE

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BREITLING BROTHERS CONSTRUCTION, INC. Plaintiff and Respondent, vs. UTAH GOLDEN SPIKERS, INC. and THE STATE OF UTAH, Defendants and Appellant.	:	Case No. 15945

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IN THE

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STATE OF UTAH

BREITLING BROTHERS CONSTRUCTION, INC.	:	
	:	
Plaintiff and Respondent,	:	
vs.	:	Case No. 15945
UTAH GOLDEN SPIKERS, INC. and THE STATE OF UTAH,	:	
	:	
Defendants and Appellant.	:	

RESPONDENT'S BRIEF

STATEMENT OF KIND OF CASE

This is an action brought by the Plaintiff against the State of Utah under the Public Bonding Statute and for unjust enrichment in quantum meruit to recover the reasonable value of labor and materials furnished in connection with the construction of improvements at the State Fairgrounds.

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DISPOSITION IN THE LOWER COURT

The Trial Court awarded Plaintiff Judgment against the State of Utah for the reasonable value of the labor and materials furnished by Plaintiff under the provisions of the Public Bonding Statute (14-1-7, Utah Code Annotated (1953), as amended), and in quantum meruit, in that, the State of Utah had received a benefit at Plaintiff's expense and was thereby unjustly enriched.

RELIEF SOUGHT ON APPEAL

Respondent requests this Court to sustain the Judgment awarded against the State of Utah by the Trial Court.

STATEMENT OF FACTS

In order to supplement the Defendant-Appellant's, State of Utah, Statement of Facts, Plaintiff-Respondent submits the following:

During March of 1976, Milton L. Weilenmann, Executive Director of the Department of Developmental Services of the State of Utah, was approached by representatives of the Utah Golden Spikers who desired to lease or enter into an agreement with the State of Utah to provide professional soccer in the Salt Lake valley (R.111,112). The representatives of the Golden Spikers also contacted Mr. Hugh C.

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Bringhurst, Director of the Division of Expositions who has the responsibility for the management of the State Fairgrounds (R.135,136). Both Mr. Weilenmann and Mr. Bringhurst negotiated and discussed with representatives of the Golden Spikers the terms contained within Exhibit 1P, and Mr. Weilenmann discussed with the Governor of the State of Utah the preparation of the lease (R.113,114,144). Mr. Weilenmann, Mr. Bringhurst, and counsel from the Attorney General's Office incorporated their ideas into Exhibit 1P (R.113). The Lease Agreement referred to as Exhibit 1P was signed by Mr. Weilenmann, Mr. Bringhurst, and by William G. Gibbs of the Attorney General's Office (R.112,143, Exhibit 1P). Mr. Weilenmann was agreeable to all of the terms contained within Exhibit 1P, and Mr. Bringhurst was satisfied with the terms of Exhibit 1P and considered it to be a final agreement (R.123,162). At the time that Mr. Weilenmann signed Exhibit 1P, representatives of the Golden Spikers, Mr. Bringhurst, and a representative of the Attorney General's Office were present (R.119). Mr. Bringhurst made no attempt to have the Golden Spikers sign Exhibit 1P (R.161). Mr. Weilenmann did not submit Exhibit 1P to the Budget Officer of the State of Utah nor to the Director of Finance (R.120). Mr. Weilenmann testified that it was necessary for the Board of Examiners to approve Exhibit 1P because of a

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policy established by Governor Rampton; however, Mr. Weilenmann testified that to the best of his knowledge Exhibit 1P was never submitted to the Board of Examiners (R.120,121). Prior to the time that Exhibit 1P was signed by Mr. Bringhurst, Mr. Bringhurst and William G. Gibbs of the Attorney General's Office were advised by a representative of the Golden Spikers, Bill Hesterman, that it would cost approximately Twenty Thousand Dollars ($20,000.00) to install the soccer field at the State Fairgrounds (R.143, Exhibit 4P). On March 30, 1976, representatives of the Golden Spikers requested a written authorization from Mr. Bringhurst so they could commence installing the soccer field (R.159). Mr. Bringhurst signed Exhibit 1P after the Golden Spikers had requested a written authorization (R.161).

On March 31, 1976, Weyher Construction Company, at the request of the Golden Spikers, entered upon the State Fairgrounds and began to remove the existing race track without the permission of Hugh C. Bringhurst. When Mr. Bringhurst discovered that the race track was being removed, he decided not to stop the removal of the race track (R.164,165). Mr. Bringhurst informed Mr. Weilenmann that Weyher Construction was removing the race track at the State Fairgrounds, and Mr. Weilenmann instructed Mr. Bringhurst to stop any further development until such time as Mr. Weilenmann had had an

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opportunity to get counsel. However, Mr. Bringhurst did not stop the construction activities because Mr. Weilenmann was immediately able to secure counsel from William G. Gibbs from the Attorney General's Office, and based upon the advise from the Attorney General's Office that a contract could be negotiated, the construction work for installation of the soccer field at the State Fairgrounds was allowed to continue (R.114,115,122,123,125,126,166).

Both Mr. Weilenmann and Mr. Bringhurst informed Governor Rampton that the soccer field was being installed at the State Fairgrounds and that a contract had not been fully completed (R.125,126,190,191).

During the time that Plaintiff and other subcontractors were working on the soccer field, Both Mr. Weilenmann and Mr. Bringhurst learned that the electrical contractor, Midwest Electric, had not been paid by the Golden Spikers although Midwest had demanded payment. In spite of this knowledge, neither Mr. Weilenmann nor Mr. Bringhurst informed the other subcontractors that the electrical contractor had not been timely paid (R.115,116,154).

The fact that private contractors were doing work at the State Fairgrounds with no assurance of payment, did not concern either Mr. Weilenmann or Mr. Bringhurst (R.116,154).

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Mr. Bringhurst assisted the Golden Spikers in laying the lawn for the soccer field and furnished them with tools (R.166).

Mr. Weilenmann attended the first soccer game, Mr. Bringhurst gave the Golden Spikers assistance in promoting the soccer games, and the soccer field was named "Bringhurst Field" (R.117,166,167, Exhibit 6P).

It took over a month to install the soccer field (R.125, Exhibit 3P).

As a result of the soccer games that were played at the State Fairgrounds, the State received income from the concessions and the parking (R.176).

The race track that was partially removed by the Golden Spikers had been installed by the previous lessee at the lessee's own expense, and had the State installed the race track at the State's expense, the State would have charged a higher rental fee. This same arrangement was followed in the transaction between the State of Utah and the Golden Spikers (R.137,138,139).

Shortly prior to the trial of this matter, Mr. Bringhurst had again entered into an agreement with a professional rodeo franchise, which agreement provided that the rodeo franchise would provide for improvements to be made at the State Fairgrounds, again at the lessee's expense (R.176).

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The parking lot installed by Plaintiff at the State Fairgrounds has been used and is a benefit to the State (R.182).

Breitling Brothers Construction, Inc. is a duly licensed contractor and has been in business since 1953 (R.127). Breitling Brothers Construction, Inc. performed the work and supplied materials to the State Fairgrounds in connection with the installation of the soccer field and parking lot, which work and materials are represented by Exhibit 3P (R.127,128). The work performed and materials supplied to the State Fairgrounds by Breitling Brothers Construction, Inc. totaled Eleven Thousand Eight Hundred Seventy-Four Dollars and 49/100 ($11,874.49) (R.130, Exhibit 3P).

The work performed by Breitling Brothers Construction, Inc. at the State Fairgrounds included the following: The installation of a parking lot; the removal of asphalt from the race track; delivery to the soccer field of topsoil valued at Four Thousand Six Hundred Twenty-Five Dollars and 25/100 ($4,625.25) and sandy fill material valued at Two Thousand Five Hundred Eighty-Seven Dollars and 20/100 ($2,587.20); and equipment work (R.131). The amount that Breitling Brothers Construction, Inc. charged for the topsoil and sandy fill material was the reasonable value thereof (R.188).

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The work performed by Breitling Brothers Construction, Inc. at the State Fairgrounds commenced approximately April 10, 1976, and continued for approximately one (1) month to May 10, 1976, and no representative from the State Fair ever informed Breitling Brothers Construction, Inc. not to do the work at the State Fairgrounds (R.130,132).

ARGUMENT

POINT I

THE STATE OF UTAH IS LIABLE TO THE PLAINTIFF UNDER THE PROVISIONS OF 14-1-7, UTAH CODE ANNOTATED (1953), AS AMENDED.

The Appellant-State of Utah asserts in its Brief that a contract for the improvements constructed at the State Fairgrounds was not "awarded" to the Golden Spikers within the meaning of the Section 14-1-5, Utah Code Annotated because no express contract was entered into between the State of Utah and the Golden Spikers, and for the further reason that the Division of Expositions and the Department of Developmental Services failed to comply with statutes governing expenditures by the State, specifically Section 63-2-1, Section 63-2-2, and Section 64-1-4, Utah Code Annotated (1953), as amended. The position of the State of Utah set forth above is not supported by the law or the facts involved in this matter.

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The Division of Expositions of which Hugh C. Bringhurst was the Director had the authority to enter into contracts for the purpose of leasing property located within the boundaries of the State Fairgrounds. Such authority is derived from 64-4-7.5, Utah Code Annotated (1953), as amended, which provides:

> "...The Division of Expositions shall have the authority to use and to lease the property of the Division during any portion of the interval between the holding of annual or biannual exhibitions for private stock exhibitions, shows, racing meets, and other legitimate purposes, upon terms and conditions to be prescribed by the Division. All monies received from such leases shall be paid to the State Treasurer for deposit in the general fund."

Presumably, under this authority, a portion of the State Fairgrounds, upon which the race track that was partially removed by the Golden Spikers, had been leased to a previous lessee, and at the lessee's own expense, the race track was installed in consideration for the lessee paying to the State of Utah a smaller rental fee. It was the intention of the representatives of the State of Utah that this same transaction would be followed with the Golden Spikers and that the Golden Spikers would install the soccer field at their own expense in consideration for a smaller rental fee. Again, after the State's venture with the Golden Spikers failed, the State entered into a similar

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transaction with a professional rodeo franchise.

Prior to the time that the Golden Spikers commenced installing the soccer field at the State Fairgrounds, Mr. Bringhurst as well as William G. Gibbs of the Attorney General's Office were advised that it would cost approximately Twenty Thousand Dollars ($20,000.00) to install the soccer field, and with this knowledge, Milton L. Weilenmann, Hugh C. Bringhurst, and William G. Gibbs signed Exhibit 1P which, according to the testimony of Hugh C. Bringhurst, was intended to be the final agreement between the State of Utah and the Golden Spikers. Although it appears that the Golden Spikers never signed Exhibit 1P, after it was signed by representatives of the State of Utah, the Golden Spikers were allowed to employ subcontractors to install the soccer field, and the soccer field was installed with the knowledge of Mr. Bringhurst, Mr. Weilenmann, William G. Gibbs of the Attorney General's Office, and Governor Rampton. Mr. Bringhurst even assisted and supplied the Golden Spikers with tools for the purpose of laying the lawn on the soccer field. Mr. Bringhurst promoted the soccer games at the State Fairgrounds and the State of Utah received income as a result of the soccer games that were played at the State Fairgrounds. The State of Utah authorized the improvements at the State Fairgrounds and accepted the benefits of the improvements installed at the State Fairgrounds.

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In spite of the facts set forth above, the State of Utah now asserts that there was not an express contract awarded to the Golden Spikers to install the improvements at the State Fairgrounds within the meaning of Section 14-1-5, Utah Code Annotated (1953), as amended. Plaintiff-Respondent submits that the facts involved in this case clearly show that the State of Utah awarded to the Golden Spikers a contract to install improvements at the State Fairgrounds. An express contract may be either written or oral. Express contracts are those in which the terms of the agreement are fully and openly incorporated at the time the contracts are entered into, while implied contracts are such as arised by legal inference and upon principals of reason and justice from certain facts, or where there is substantial evidence showing that the parties intended to make a contract. (McDonald v. Thompson, 184 U S 71, 46 L ed. 437, 22 S Ct. 297.)

The terms of the agreement between the State of Utah and the Golden Spikers are clearly established by the conduct of the State of Utah and the memorandum of the agreement between the State of Utah and the Golden Spikers.

The State of Utah strenuously argues that Exhibit 1P was not a binding contract between the State of Utah and the Golden Spikers because it was not signed by the Golden

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Spikers. However, the conduct of the representatives of the State of Utah clearly established that the State acquiesced and accepted the Golden Spikers' performance of its obligations under Exhibit 1P. In the absence of a statute requiring a signature or an agreement that a contract shall not be binding until it is signed, parties may become bound by the terms of a contract, even though they do not sign it, where their ascent is otherwise indicated, such as by the acceptance of benefits under the contract (17 Am Jur 2d Contracts, Section 70).

Although a written contract was not finalized in the sense that there was no evidence that the Golden Spikers had signed the written Lease Agreement (Exhibit 1P) prepared and signed by William G. Gibbs of the Attorney General's Office and signed by Mr. Bringhurst and Mr. Weilenmann, the testimony of Mr. Bringhurst that Exhibit 1P was a final agreement to his satisfaction, the circumstances, and the conduct and the acts of Mr. Weilenmann, Mr. Bringhurst, and the Attorney General's Office clearly show that an express agreement was reached between the State of Utah and the Golden Spikers whereby the Golden Spikers were awarded a contract to install the soccer field at the State Fairgrounds.

A contract implied, in fact, is an agreement which depends for its existence on some act or conduct of the

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parties sought to be charged, and arises by inference or implication from circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intention by the parties to contract with each other. (Ross v. Raymen, 32 Wash. 2d 128, 201 P.2d 129).

This Court held that the doctrine of estoppel may be applied to governmental agencies in the case of Rice v. Granite School District, 23 Utah 2d 22, 456 P.2d 159 (1969), wherein this Court cited, with approval, language from a State of Washington Supreme Court Decision, which stated:

> "The modern trend in both legislative and judicial thinking is towards the concept that the citizen has a right to expect the same standard of honesty, justice, and fair dealing in his contact with the State or other political entity, which he is legally accorded in his dealings with other individuals..." (emphasis added)

Mr. Weilenmann testified that he did not discuss with the Utah Golden Spikers posting a bond to guarantee payment to subcontractors for the installation of the soccer field at the State Fairgrounds, and both Mr. Weilenmann and Mr. Bringhurst testified that it did not concern them that private contractors were doing work on the State Fairgrounds with no assurance of payment. Further, during the period of time that Plaintiff and other subcontractors were doing work at the State Fairgrounds, both Mr. Weilenmann and Mr.

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Bringhurst knew that the Golden Spikers had not been able to pay the electrical contractor, and in spite of having this knowledge, they failed to inform the subcontractors that they may not be paid. Had Mr. Bringhurst or Mr. Weilenmann informed the Plaintiff that it may not be paid for the work it was doing at the State Fairgrounds, Plaintiff could have taken action to prevent its loss.

> "...An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. To create an estoppel, it is enough if the party has been induced to reframe from using such means or taking such action as lay in his power, by which he may have retrieved his position and saved himself from loss." (Rice v. Granite School District, supra.)

Under the facts of this case and the standard set forth in Rice above, the State of Utah should be estopped to assert that a contract or installation of the soccer field at the State Fairgrounds was not awarded to the Golden Spikers within the meaning of Section 14-1-5, Utah Code Annotated (1953), as amended. (See Annotation: Estoppel-Governmental Bodies, 1 ALR3d 338 and Estoppel Against Federal Government, 27 ALR Fed. 702.)

The Appellant-State of Utah also asserts in its Brief that the State of Utah is not liable under the Bonding Statute or on a theory of unjust enrichment because the Division of Expositions and the Department of Developmental

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Services did not have the authority to bind the State for the purchase of services and supplies since such power is vested with the Director of Finance, pursuant to Section 63-3-23, Utah Code Annotated (1953), as amended. The Appellant-State of Utah also asserts in its Brief that the State of Utah is not liable under the Bonding Statute because the Division of Expositions and the Department of Developmental Services failed to comply with the requirements of Section 64-1-4, Utah Code Annotated (1953), as amended.

The facts involved in this case simply do not support the Appellant-State of Utah's position. The foregoing statutes contemplate expenditures by the State and provide a system of accountability for State expenditures, and a method to control such expenditures. In the instant case, there is absolutely no evidence that the State of Utah was obligated to make expenditures under its agreement with the Golden Spikers. To the contrary, under its agreement with the Golden Spikers, the State of Utah contemplated receiving an income had its venture with the Golden Spikers been successful. The Judgment of the Trial Court does not represent unauthorized expenditures for services and supplies, it represents a liability imposed against the State of Utah as a result of its failure to obtain the delivery of a

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payment bond from the Golden Spikers as required by Section 14-1-5, Utah Code Annotated (1953), as amended.

Subcontractors, such as the Plaintiff, do not have mechanics' lien rights against public buildings and improvements, and in lieu of this right and to protect subcontractors such as the Plaintiff, the legislature of this State has inacted the Public Contracts Statute. The purpose of the statute requiring delivery of a payment bond is to provide the same protection to laborers and materialmen on public works as is provided to those involved in private contracts (Flynn v. W. P. Harlin Construction Company, 559 P.2d 356, 29 U.2d 327, 1973). The statute is highly remedial for the benefit of and to provide security for all persons furnishing labor and materials on public works (Campbell Bldg. Co. v. District Court of Millard County, 90 U. 552, 63 P.2d 255, 119 ALR 250).

Statutes and ordinances requiring contractors to give bonds have usually been, and should be, given a liberal construction so as to carry out the legislative intent and to effect the purpose contemplated by the law (17 Am Jur 2d Contractors' Bond, Section 46, page 225).

The transcation between the State of Utah and the Golden Spikers was not a situation where the State of Utah was involved in a purely governmental function, such as

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furthering and exercising its powers of health, police, and safety. In its transaction with the Golden Spikers, the State was in effect entering into a business venture with the purpose of generating income. Under the facts of this case, the State should be held to the same standard of honesty and fair dealing as are private citizens, and Plaintiff should be afforded the protection that the legislature intended to affect with the Public Bonding Statute.

POINT II

UNDER THE FACTS OF THIS CASE, IT WAS APPROPRIATE FOR THE TRIAL COURT TO FIND THE STATE OF UTAH LIABLE TO THE PLAINTIFF UNDER QUANTUM MERUIT.

The Trial Court found that during the time that Plaintiff was supplying labor and materials in connection with the improvements being made upon the State Fairgrounds, the State of Utah had full knowledge that such work was being performed and consented to and accepted the improvements with full knowledge that Plaintiff expected to be paid for the labor and materials supplied in connection with making said improvements. The Trial Court also found that the State of Utah had not paid the Golden Spikers, or any other person, for the improvements made at the State Fairgrounds by Plaintiff, and that the State of Utah has accepted and been benefitted by the value of such improvements

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at Plaintiff's expense. Further, the Trial Court found the reasonable value of the labor and materials supplied by Plaintiff in connection with the improvements installed at the State Fairgrounds was Eleven Thousand Eight Hundred Seventy-Four Dollars and 49/100 ($11,874.49) (Findings, R.34,35).

The fact that Plaintiff did not have a contract with the State of Utah and was not in privity of contract with the State of Utah, does not preclude the Judgment of the Trial Court being affirmed on the basis of implied contract and unjust enrichment.

> "Where a materialman or subcontractor furnishes labor or materials which benefit the property of a person with whom there is no privity of contract, an action on quantum meruit may lie against the land owner to recover the reasonable value of such labor and materials so furnished where the essential elements of quasi contract are present, the most significant being that the enrichment to the Defendant is unjust." (66 Am Jur 2d, Restitution and Implied Contracts, Section 16, page 960.)

The principal set forth above that a subcontractor may recover the reasonable value of labor and materials from a property owner where the essential elements of quasi contract are present is also the subject of an ALR Annotation, which states:

> "...In most instances in which the Courts have carefully analyzed the problems presented

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by such a claimed cause of action, they have generally concluded, first, that the fact of lack of privity as between the subcontractor and the land owner should not, in and of itself, be determinative of the subcontractor's right to recovery; secondly, and as sort of a correlary to the first conclusion, that quasi contract may be the, or an, appropriate form of action for presentation of the subcontractor's claim; and thirdly, that determination for or against recovery under such an asserted cause of action is dependent essentially upon whether or not the facts disclosed by the evidence in each particular case are sufficient to establish that the land owner was, in fact, unjustly enriched at the loss and expense of the subcontractor."

> "In resolving such issue of unjust enrichment, the Courts have generally looked to what they consider to be the 'equities' in each case." (Annotation: Subcontractor's Recovery Against Owner, 62 ALR 3d, Section 3, page 294.)

The facts before the Court in this matter clearly show that the State of Utah (land owner) has been unjustly enriched at the expense of the Plaintiff. The State of Utah had full knowledge the Plaintiff was supplying materials and labor for the construction of improvements at the State Fairgrounds, and the State of Utah consented to and accepted the improvements with full knowledge that Plaintiff expected to be paid for the labor and materials. Also, the State of Utah has accepted and been benefitted by the value of the labor and materials, and the State of Utah has not paid the Golden Spikers, or any other person, for the value of the

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labor and materials supplied by the Plaintiff. The 'equities' clearly show that the State of Utah has been unjustly enriched at the expense of the Plaintiff.

The State of Utah contends that it has not received a benefit in an "economic manner" as a result of the labor and materials furnished by the Plaintiff at the State Fairgrounds. However, the fact remains that Mr. Bringhurst testified that the parking lot had, in fact, been a benefit to the State of Utah and was used by the State of Utah; the State of Utah has in its possession Four Thousand Six Hundred Twenty-Five Dollars and 25/100 ($4,625.25) of Plaintiff's topsoil and Two Thousand Five Hundred Eighty-Seven Dollars and 20/100 ($2,587.20) of Plaintiff's fill material, together with the value of Plaintiff's other labor and materials used in connection with the installation of the soccer field at the State Fairgrounds.

Although the above references involve transactions between private individuals, recovery based upon unjust enrichment and quantum meruit has been applied to governmental bodies. In <u>Wilson v. Salt Lake City</u>, 174 P 847 (1918), this Court held that a contractor could recover against Salt Lake City for the reasonable value of work performed by the contractor, even though the work performed by the contractor was not performed under the written

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contract and was totally outside of the written contract since the City representatives had demanded that such work be performed and had accepted the benefit of the work.

Some jurisdictions have allowed suppliers and contractors to recover against governmental bodies on the basis of quantum meruit for the reasonable value of labor and materials used in public works, even though competitive bidding statutes were not complied with (Capital Bridge Co. v. Saunders County, 164 Neb. 304, 83 NW2d 18 (1957), Green v. Okanogan County, 60 Wash. 309, 111 P 226 (1910).

Jurisdictions that have allowed recovery against a governmental body based on unjust enrichment and quantum meruit have generally looked at the immediate fact situation and based their decisions upon considerations of the equities, the most compelling equity being that a governmental body, in fairness and justice, should pay the reasonable value of benefits received and accepted by it (Annotation: Implied Public Contracts, 154 ALR 358; Annotation: Municipality-Quasi Contract Liability, 33 ALR3d 1164).

CONCLUSION

The Trial Court in this case entered its Judgment against the State of Utah based upon the State's neglect

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and failure to obtain delivery of a payment bond as required by 14-1-7, Utah Code Annotated (1953), as amended. Also, the Trial Court based its Judgment on quantum meruit because it found that the State had knowingly received, accepted, and been benefitted by Plaintiff's labor and materials, thus unjustly enriching the State at the expense of the Plaintiff.

The Judgment of the Trial Court in no manner negates or compromises the statutes of the State intended to control expenditure of State funds. The liability which the Judgment imposes upon the State does not result from the State's failure to comply with the expenditure statutes, it results from the State's failure to require a payment bond, for which such failure the legislature has provided a remedy.

An affirmance of the Trial Court's Judgment will reaffirm a standard previously espoused by this Court, that is, the State should be held to the same standard of honesty, justice, and fair dealing as are its citizens--especially should this be true where the State, as here, engages in business ventures for profit.

The Judgment of the Trial Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I hand delivered three (3) copies of the foregoing Respondent's Brief to William G. Gibbs, Assistant Attorney General, 351 South State Street, Salt Lake City, Utah 84111, this 15th day of December, 1978.

MARK C. McLACHLAN

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