Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs

2001

CARLYLE F. GRONNING, in his official capacity as Chairman Commissioner of the Industrial Commission of Utah v. HERBERT F. SMART, in his -official capacity as Director of Finance, Department of Finance, State of Utah, and Administrator of the State Insurance Fund; DAVID S. MONSON, State Auditor; and DAVID L. DUNCAN, State Treasurer : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

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.

A. Wally Sandack; Special Assistant Attorney General; Attorneys for Respondents.
Vernon B. Romney; Attorney General; Joseph P. McCarthy; Assistant Attorney General; Attorneys for Appellants.

Recommended Citation
Brief of Appellant, *Gronning v. Smart*, No. 14846.00 (Utah Supreme Court, 2001).
https://digitalcommons.law.byu.edu/byu_sc2/1610

This Brief of Appellant 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE SUPREME COURT OF THE STATE OF UTAH

CARLYLE F. GRONNING, in his official capacity as Chairman Commissioner of the Industrial Commission of Utah,

Plaintiff-Respondents,

-vs-

HERBERT F. SMART, in his official capacity as Director of Finance, Department of Finance, State of Utah, and Administrator of the State Insurance Fund; DAVID S. MONSON, State Auditor; and DAVID L. DUNCAN, State Treasurer,

Defendants-Appellants.

Case No. 14846

BRIEF OF APPELLANTS

Appeal for a declaratory judgment by the Third Judicial District for Salt Lake County, State of Utah, Honorable Stewart M. Hanson, Sr., holding House Bill No. 373, 41st Legislature and House Bill No. 91, 41st Legislature 1976 constitutional.

FILED

DEC 13 1976

Clerk, Supreme Court, Utah

VERNON B. ROMNEY
Attorney General

JOSEPH P. McCARTHY
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Appellants

A. WALLY SANDACK
Special Assistant
Attorney General
370 East Fifth South
Salt Lake City, Utah 84111

Attorney for Respondents

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

Page

STATEMENT OF THE NATURE OF THE CASE 1

DISPOSITION IN THE LOWER COURT 2

RELIEF SOUGHT ON APPEAL 2

STATEMENT OF FACTS 2

ARGUMENT

POINT I: THE INDUSTRIAL COMMISSION IS A STATE AGENCY WHICH EXERCISES THE POLICE POWER OF THE STATE ENTIRELY WITHOUT REFERENCE TO THE FUND 3

POINT II: THE INSURANCE FUND IS A STATE ADMINISTERED MUTUAL INSURANCE PROGRAM AND THE MONEY OR ASSETS THEREIN ARE THE PROPERTY OF CONTRIBUTING EMPLOYERS 7

POINT III: THE TAKING OF ASSETS FROM THE INSURANCE FUND FOR THE OPERATION OF THE INDUSTRIAL COMMISSION VIOLATES THE PROVISIONS OF ARTICLE I SECTION 7 OF THE CONSTITUTION OF UTAH AND THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES 14

CONCLUSION 16

CASES CITED

Chez, Atty. Gen. v. Industrial Comm. of Utah, 90 U. 447, 62 P.2d 549, 108 A.L.R. 365 (1936) 10, 14, 16

Moran v. State, Okla., 534 P.2d 1282 (1975) 12

Golden R. Allen v. Glen Swenson, 3rd Dist, 1969, Case No. 187,703 14

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS CON'T.

Page

STATUTES CITED

H.B. No. 375, 41st Legislature 1975............. 1

H.B. No. 91, 41st Legislature 1976.............. 1

Chapter 263, L. 1969............................ 14

Section 34-20-3, U.C.A. 1953.................... 4

Section 34-20-10, U.C.A. 1953................... 4

Section 34-22-1, U.C.A. 1953.................... 4

Section 34-22-13, U.C.A. 1953................... 4

Section 34-22-14, U.C.A. 1953................... 4

Section 34-23-2, U.C.A. 1953.................... 5

Section 34-23-11, U.C.A. 1953................... 5

Section 34-28-9, U.C.A. 1953.................... 5

Section 34-29-21, U.C.A. 1953................... 5

Section 34-30-5, U.C.A. 1953.................... 5

Section 34-35-3, U.C.A. 1953.................... 5

Section 34-36-2, U.C.A. 1953.................... 5

Section 35-1-12, U.C.A. 1953.................... 5

Section 35-1-15, U.C.A. 1953.................... 5

Section 35-1-16, U.C.A. 1953.................... 5

Section 35-1-41, U.C.A. 1953.................... 5

Section 35-1-46, U.C.A. 1953.................... 5,7,9

Section 35-1-82.51, U.C.A. 1953................. 5

Section 35-2-2, U.C.A. 1953 6

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS CON'T.

	Page
Section 35-3-1, U.C.A. 1953.....................	8
Section 35-3-3, U.C.A. 1953.....................	8
Section 35-3-4, U.C.A. 1953.....................	9
Section 35-3-10(2), U.C.A. 1953.................	9
Section 35-3-10(4), U.C.A. 1953.................	9
Section 35-3-16, U.C.A. 1953....................	9

CONSTITUTIONS CITED

Article 1, Section 7, Constitution of Utah......	2, 14
14th Amendment, Constitution of United States...	2, 14

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

CARLYLE F. GRONNING, in his official capacity as Chairman Commissioner of the Industrial Commission of Utah, Plaintiff-Respondents, -vs- HERBERT F. SMART, in his official capacity as Director of Finance, Department of Finance, State of Utah, and Administrator of the State Insurance Fund; DAVID S. MONSON, State Auditor; and DAVID L. DUNCAN, State Treasurer, Defendants-Appellants.	:	Case No. 14846

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

This is an action for a declaratory judgment which declared constitutional Item No. 33, House Bill No. 373, 41st Legislature 1975 General Session, and Item No. 39, House Bill No. 91, 41st Legislature 1976

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Budget Session, which respectively appropriated $358,000.00 and $408,200.00 from the State Insurance Fund to the Industrial Commission.

DISPOSITION IN THE LOWER COURT

The District Court held that the two enactments were constitutional and did not violate the provisions of Article I, Section 7 of the Utah Constitution or the 14th Amendment of the Constitution of the United States.

RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the order and judgment of the District Court and declaration by the Supreme Court that the appropriations of money from the Insurance Fund to the Industrial Commission are unconstitutional.

STATEMENT OF FACTS

Since this case was decided on motions for summary judgment, there are no serious disputes as to the facts. The complaint, together with the attached documents, sets out the problem quite fully and also sets out the factual background.

To be quite brief, this action was filed after the Attorney General had issued an opinion dated

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

February 20, 1975, holding that the Legislature could not constitutionally appropriate Insurance Fund money to finance the programs of the Industrial Commission. [R. 3]. There were attempts made to seek a court determination of the question prior to the 1976 Budget Session, but this was not done, and with knowledge of the opinion the Legislature again appropriated Insurance Fund money to the Industrial Commission. [R.4-6]. It also appears that the practice existed before, apparently following a time when Insurance Fund inspectors were paid by the Fund but worked entirely for the Industrial Commission. The money so appropriated in 1975 and 1976 had not been released to the Commission and it became necessary for the Chairman to file this action for declaratory relief.

ARGUMENT

POINT I

THE INDUSTRIAL COMMISSION IS A STATE AGENCY WHICH EXERCISES THE POLICE POWER OF THE STATE ENTIRELY WITHOUT REFERENCE TO THE FUND.

In 1917, Utah recognized that the common law afforded little relief to an injured workman. It established the Industrial Commission to administer a no fault program for compensating workmen who were

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

injured in the course of employment. The cost of the program was to be carried by employers and was to be passed along to consumers as a part of production costs. The Commission was given authority in contested situations to determine whether the injury was in the course of employment and to determine the extent of injury and to determine the amount of the award.

Of course the Commission has a much broader scope of duty and authority than the administration and adjudication of claims of workmen, and these duties and areas of authority continue to increase as the Legislature and Congress become more and more concerned over the years about the life, health, welfare and conditions of employment of all classes of employed people.

The Commission is the labor relations board for the State of Utah (34-20-3) and is empowered to prevent unfair labor practices in intrastate commerce (34-20-10); it may permit mines or smelters to employ workers for more than eight hours per day if it certifies that such work is not detrimental to the life, health, safety and welfare of such men (34-21-2); it may regulate conditions involving employment of women and minors (34-22-1, et seq.), including the establishment of minimum wages (34-22-13) and maximum hours (34-22-14).

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

The Commission may permit exceptions in some cases for employment of youth under eighteen in hazardous occupations (34-23-2) and is to enforce the requirements of the chapter relating to school and age limitations placed on certain categories of employment (34-23-11). The Commission is to insure compliance with requirements for payment of wages (34-28-9). It must approve an applicant who wishes to operate an employment agency (34-29-21). It has jurisdiction to determine whether a contractor has violated provisions of law relating to public contracts (34-30-5). The Commission is to enforce the Anti-discrimination Act (34-35-3). It is to adopt rules and regulations relating to motor vehicles furnished by an employer to transport workers to and from places of employment (34-36-2). The Commission is to see that places of employment are safe and that safety devices and safeguards are employed (35-1-12) and may inspect to secure compliances (35-1-15) and to exercise the extensive powers of supervision and control set out in 35-1-16. It may require information from employers to carry out the purposes of the title (35-1-41) and may impose sanctions upon an employer who has not secured compensation (35-1-46). It must adjudicate claims for compensation (35-1-82.51, et seq.). The Commission administers the Occupational Disease Act

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

(35-2-2). It also administers the Unemployment Security Act.

The purpose of the enumeration of the duties and responsibilities of the Commission are simply to illustrate that it is responsible for the exercise of a great deal of the State's police power as it applies to employment.

As Plaintiff-Respondent pointed out in his memorandum in support of his motion for summary judgment [R. 73], after describing the enforcement for health, safety and welfare as the traditional role of the Industrial Commission says that, "The State Insurance Fund possesses no such power. It is consistent with the purposes behind all Workmen's Compensation Acts that the safety inspection program rests with the same agency that has the duty and power to enforce laws for the protection of an employee's life, health, safety and welfare. . ."

It is apparent that the Insurance Fund has no responsibility for the work of the Commission, has no enforcement power whatever and no duty to enforce laws, policies or rules of the State or the United States relating to the health, safety or welfare of employees.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

POINT II

THE INSURANCE FUND IS A STATE ADMINISTERED MUTUAL INSURANCE PROGRAM AND THE MONEY OR ASSETS THEREIN ARE THE PROPERTY OF CONTRIBUTING EMPLOYERS.

A. Nature of the Fund.

The Legislature imposed a duty upon employers to secure compensation to injured employees and imposed sanctions, both civil and criminal, for failure so to do, 35-1-46, U.C.A. 1953. This section permits employers to secure such compensation in one of three ways:

1. By insuring with the State Insurance Fund;
2. By insuring with a private insurer;
3. By being self-insured upon satisfactory proof of financial ability to the Industrial Commission.

The purpose of the insurance requirement is to guarantee recovery by the injured employee upon entitlement.

The State Insurance Fund was established ". . . for the purpose of insuring employers against liability for compensation . . . and of assuring to the persons entitled thereto the compensation provided by law. Such fund shall consist of all premiums and penalties received

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned. . . Such fund shall be applicable to the payment of losses sustained on account of insurance, to the payment of compensation, and to the payment of salaries and other expenses charged against it in accordance with the provisions of this title. . . . In the conduct and administration of the business of said fund the commission of finance may appoint . . . a manager, and may employ accountants, inspectors, attorneys, physicians, investigators, clerks, stenographers and such other experts and assistants as it deems advisable." (Section 35-3-1, U.C.A. 1953, emp. added.)

The commission of finance is to administer the fund, write compensation insurance, conduct all business ". . . and do any and all things in connection with all insurance business to be carried on . . . and is vested with full authority over said fund. It may do any and all things. . . which are necessary or convenient in the administration thereof or in connection with the insurance business carried on by it under the provisions of this title as fully and completely as the governing body of a private insurance carrier. . . ." (Section 35-3-3, U.C.A. 1953, emp. added.)

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

The commission must establish classes of employment and risks in order to determine proper premiums to get the lowest possible rate consistent with the maintenance of a solvent fund and the creation of a surplus and reserve. [35-3-4, 35-3-10(2)]. If a balance remains after making provisions required by law and the judgment of the commission to meet possible obligations of the fund, the commission is to declare a lump sum dividend for the benefit of policyholders [35-3-10(4)]. The Legislature also saw fit to impose a premium tax on the fund equal to that imposed on insurance companies [35-3-16].

It appears clear that the Insurance Fund is in effect a state sponsored insurance company by which employers can secure required coverage under Section 35-1-46, at the lowest possible rate, and if there is accumulated more money than required by the Fund, secure a dividend.

The Fund is not an arm of the State existing to enforce requirements calling for safe places to work or to eliminate hazards which result in occupational diseases. These functions of the Industrial Commission would exist quite independently of any provisions of law assuring recovery of monies due to injured workmen.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

B. The Fund Belongs to Contributing Employers.

The definitive case in Utah is Chez, Atty. Gen. v. Industrial Comm. of Utah, 90 U. 447, 62 P.2d, 549, 108 A.L.R. 365. The Fund had purchased bonds issued by the town of Scipio which sought to compromise an obligation of $7,517.40 for $7,200.00. The direct question was whether the debt was an "indebtedness to the State". The Court held that within the meaning of the Constitution it was not such a debt.

The Court determined to examine the nature of the State Insurance Fund to see what it really is. ". . . It will be noted that the basic source of the fund is the premiums and penalties -- nothing else. . . . It is paid on account of the employer for compensation for which he is primarily liable. (court's emphasis). See American Fuel Co. of Utah v. Industrial Comm., 55 U. 483, 187 P. 633, 8 A.L.R. 1342. The employer really pools his premiums in the State Fund to create a fund for the payment of an obligation for which it is liable. It is a common fund belonging to the participating employers. . ." (62 P.2d 549, 550 emp. added.)

The court pointed out that had employers so pooled their money under management which they selected, there would be no question as to the nature of the fund.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

". . . But basically it is no different than if the state and a number of private employers agreed to establish their own fund. It was made easier by setting up a skeleton fund to begin with, giving the Industrial Commission the administration of it and providing by law for rules and regulations to govern it. That reaches more quickly and more easily the same result as a mutual company would have reached. It served to give employers. . . a means to get the insurance practically for the costs of the compensation without charges for profits or acquisition and in addition gave it a public aspect and made its administration and management subject to public audit, inspection, and responsibility. But it did not change the essential nature of the venture. It was a venture by the state as an employer and certain private employers who chose to come in, in which they pooled their premiums to create a fund for the purpose of paying, not a state obligation or making expenditures on behalf of the state but of paying their own contingent compensation liabilities. . ." (62 P.2d 549, 550 emp. added.)

". . . Thus, the state in effect says: 'We will create, establish, manage, collect and administer through the Industrial Commission but as an agent and trustee only for the contributing employers' . . . .

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

balances earned and not needed as reserves are turned where? Not to the state but back to the contributing employers. . . <u>It belongs</u>, not to the state, but <u>to the contributing employers</u> for their mutual benefit. It constitutes a pooling of risks under the auspices of the state. (cites omitted.) . . ." 62 P.2d 549, 551.

What becomes obvious then is that the Fund is owned by contributing employers, held in trust by the State, established to cover liabilities of employers under the workmen's compensation laws of the state. The Fund may be charged for necessary expenses incurred in operation, but its nature is unchanged. c.f. <u>Moran v. State</u>, Okla. 1975, 534 P.2d 1282.

C. <u>Power of the Fund to Employ Necessary Personnel.</u>

Defendants-Appellants concede that the Insurance Fund was intended to sustain itself financially, and that it may be charged for necessary servies such as the costs of audits, and may employ sufficient people to perform services for its purposes, to include attorneys, claims adjusters, actuaries, secretaries and the like.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Assuming that the Fund is interested, as any insurer would logically be, in holding claims against the Fund to a minimum, it is apparently within the power of the Fund to employ inspectors either to make sure that proper premiums are charged for risks assumed or to eliminate or reduce hazards of employment for its policyholders. In the case of the Fund, such a program might well reduce premiums or cause higher dividends to be returned to contributing employers. In the case of a private insurer, the savings could result in a reduction of premium charges or in increased profits. It should be pointed out that in neither case could an employer be required to follow safety suggestions so made nor could the Fund or private insurer compel compliance by closing the plant or exercising other police powers. A decision by an insurer to deny coverage or to increase the premium to insure a particular employer does not constitute an exercise of State Police Power.

The program theorized above is quite different than a levy upon the assets of the Fund to support the general regulatory function of the Commission.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

POINT III

THE TAKING OF ASSETS FROM THE INSURANCE FUND FOR THE OPERATION OF THE INDUSTRIAL COMMISSION VIOLATES THE PROVISIONS OF ARTICLE I SECTION 7 OF THE CONSTITUTION OF UTAH AND THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

From what has already been reviewed above, the money in the Insurance Fund is not State owned funds subject to general appropriation by the Legislature. The money belongs to the employers who paid it into the common pool. Chez v. Ind. Comm., (supra).

The Third District Court in Golden R. Allen v. Glen Swenson, (1969), Case No. 187,703, has held that Chapter 263 L. 1969, which provided for transfer of $8,100,200.00 from the Fund to the General Fund for use by the State Building Board was void because of violation of the Due Process Clause of the 14th Amendment and Article I, Section 7 of the Utah Constitution. An appeal was filed in Allen v. Swenson, but was dismissed when the Legislature repealed the "appropriation".

The money in the Fund is not public money which can be used to meet expenses of government. It is a trust fund to be used to meet liabilities of

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

employers when an employee is entitled to compensation. The effort here is made to expend trust funds for governmental purposes.

The safety program is a general duty of the Industrial Commission and is not carried on at the request of or for the particular benefit of the Fund. It is no more the responsibility of the Fund than of self insuring employers or of private insurance companies to carry out inspection programs and it is obvious that no such "duty" exists. It is no answer to the expropriation of employers' money from the Fund to say that a certain percentage of employers satisfy their contingent obligation to pay for injury or disability by using the vehicle of the Fund whether the percentage is five, sixty or eighty five, and should therefor pay a cost which would be paid for by taxes; nor is it an answer to say that since the Fund may charge a lower premium than a private carrier, it should "contribute" in lieu of taxes paid by a private insurer a certain part of costs of the Commission, since it is rather apparent that a "self-insurer" as an insurer pays nothing at all, not even a premium tax imposed on private companies and on the Fund.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

The taking of the money from the Insurance Fund in such amounts as appear to be available without standards of any kind, without any representation of employers of any kind, without any kind of hearing or notice, as the Legislature has sought to do clearly constitute a taking of property in violation of the Constitution since there is no compensation to the owners, and the taking is from only one class of employers, those who insure with the Fund, as contrasted with those who insure with private carriers or those who are self insured. Such discrimination cannot be approved by this Court, no matter how worthy the purpose may be.

If the Fund in fact has had some Seven Hundred Thousand Dollars ($700,000.00) in unneeded funds, the amount should be returned to contributing employers. In fact the Legislature simply applied trust funds to its own use, a situation highly disapproved of in the case of private trustees.

CONCLUSION

Unless this Court overrules its decision in Chez v. Industrial Comm., (supra) it cannot escape the conclusion that the Fund belongs to contributing

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

employers who are entitled to receive dividends of money not needed by the Fund to meet its operating costs, claims against the Fund, and to provide a reserve against catastrophes if any should occur.

The appropriation of Insurance Fund moneys to the use of the Commission to perform its duties as a unit of government exercising state police power is an invasion of trust funds by the State as a trustee without any substantial claim of legal right. The taking also deprives the owners of the Fund of their property without due process of law.

The appropriation cannot be justified as an indirect employment of personnel to accomplish a direct benefit for the Fund, nor does the fact that the illegal practice may have existed for some time justify the continuance.

The unconstitutional use of trust funds by the Legislature should be called such by this Court, and the decision below should be reversed.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

JOSEPH P. McCARTHY
Assistant Attorney General

Attorneys for Appellants

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.