

1980

Utah State Department of Social Services v. Salvador P. Toscano, Sr : Brief of Appellant

Utah Supreme Court

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UTAH LEGAL SERVICES, INC.; Attorney for Defendant-Appellant;

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IN THE SUPREME COURT

of the

STATE OF UTAH

UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and
Respondent,

vs.

SALVADOR P. TOSCANO, SR.,

Defendant and
Appellant.

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Case No. ¹⁶²²²~~67678~~

APPELLANT'S BRIEF

An Appeal from the Second Judicial District Court
of Davis County, the Honorable Judge Calvin Gould

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FILED

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TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE.....	1
DISPOSTION BY SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH.....	2
RELIEF SOUGHT ON APPEAL.....	2
STATEMENT OF FACTS.....	2
ARGUMENT	
POINT I. APPELLANT WAS AT THE TIME IN QUESTION, ELIGIBLE FOR FINANCIAL ASSISTANCE BECAUSE HIS HOME IS EXEMPT UNDER VOLUME II SECTION 4.10.1 OF THE UTAH RULES.....	4
POINT II. APPELLANT DID NOT UNDERSTAND THAT HE HAD TO REPORT OWNERSHIP OF HIS HOME IN TEXAS, DID NOT WILLFULLY WITHHOLD THE INFORMATION, AND SHOULD NOT BE LIABLE THEREFOR.....	9
POINT III. THE DOCTRINE OF EQUITABLE ESTOPPEL PRECLUDES THE STATE'S COLLECTION ACTION.....	14
POINT IV. AN INTERVIEW IN ENGLISH WHICH DETER- MINED APPELLANT'S ELIGIBILITY FOR FINANCIAL ASSISTANCE, BY AN ASSISTANCE PAYMENTS ADMINISTRATION REPRESENTATIVE WHO SPOKE ONLY ENGLISH AND WHO KNEW APPELLANT WAS LITERATE ONLY IN SPANISH, WAS A VIOLATION OF EQUAL PROTECTION AFFORDED BY THE UTAH CONSTITUTION AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.....	18
CONCLUSION.....	24

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
Independent Fire Insurance Company v. Butler, 362 So. 2d 980 (1978).....	5,6
National Security Fire and Casualty Company v. Richard Lee James, 358 So 2d 737 (1978).....	6
Macomber v. State Social Welfare Board, 346 P. 2d 808 (1968).....	6,7
United States v. Sullivan, 332 U.S. 689 (1948).....	7
Brazons River Conservation and Reclamation Dist. v. Costello, 135 Tex 307, 143 SW 2d 577 (1940).....	7
Jacobo Garcia v. Califano, (No. 77-422 D.N.J. 1977)...	10
Lucide v. Rippato, 73 Cal. App. 3d 1, 140 Cal. Rptr. 535, 542 (1977).....	14
Strong v. County of Santa Cruz, 15 Cal. 3d 720, 725, 543 P. 2d 264 (1975).....	14
Paramount Film Distributing Corp. v. State, 30 N.Y. 2d 415, 285 N.E. 2d 695, 699 (1972).....	16
Indian Towing Co. v. U. S. 350 U. S. 61 (1955).....	17
Dahelite v. U. S., 346 U.S. 15 (1953).....	17
Canfield v. Prof, 67 Cal. App. 3d 722, 137 Cal. Rptr. 27 (1977).....	17
Gruber v. Mayor and Township Committee of the Township of Raritan, 39 N.J. 1, 186 A.2d 489, 495 (1962).....	17
City of Long Beach v. Mansell, 3 Cal. 3d 462, 476, P. 2d 423, 448 (1970).....	18
Stahelin v. Board of Education, 87 Ill. App. 2d 28, 230 N.W. 2d 465 (1967).....	18
Ford v. Bellingham Whatcum County District Board of Health, 83 Wash. 2d 618, 521 P.2d 736 (1974).....	18
State v. Cotton, 516 P. 2d 715, 717 (1973).....	18
Hawkins v. Superior Court of the City and County of San Francisco, 586 P. 2d 916, 921 (1978).....	19,21 22

De La Cruz v. Tormey, 582 F. 2d 45, 52 (9th Cir. 1978).....	20
Goldberg v. Kelly, 397 U. S. 254 (1970).....	22, 23 24

Regulations

Vol. II UDSS Assistance Payments Administration Manual.....	1,4,9, 20,24
Vol. IV UDSS Food Stamp Manual.....	8

Other

28 Am. Jur. 2d Estoppel §28 (1966).....	14,15,18
Restatement of Restitution §142..	16, 17
URCP 54 c(c) (1).....	1

IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and
Respondent,

vs.

SALVADOR P. TOSCANO, SR.,

Defendant and
Appellant.

Case No. 67678

APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

This is an action before the Utah Supreme Court to review a decision of the Second Judicial District Court of Weber County, State of Utah, which held that Aid to Families with Dependent Children (AFDC) payments of \$2,921.00, given to the Appellant by the Respondent, were the result of factual error since the payments would not have been made had the Respondent known that the Appellant in fact owned a home and real property in Texas; and which entered judgment against the Appellant in accordance with Rule 54(c)(1) of the Utah Rules of Civil Procedure. Appellant contends that he properly received the AFDC and that the State of Utah does not have the right to collect it back. Appellant was legally entitled to AFDC from the State of Utah under Respondent's own regulations, Volume II Section 410.1, and to deny Appellant that legal entitlement is a violation of Appellant's due process and equal protection rights under the Utah Constitution and the Fourteenth Amendment of the United States Constitution.

DISPOSITION BY
SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

The Defendant was ordered to pay back assistance he received from the State of Utah in the amount of \$2,921.00. Case No. 67678 in the Second Judicial District Court of Weber County.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the decision by the Second Judicial District Court of Weber County and, in addition, an award of retroactive benefits due.

STATEMENT OF FACTS

Appellant, Salvador P. Toscano, Sr., is a migrant farm-worker from Muleshoe, Texas. In June of 1975 Appellant brought his wife and eight of his eleven children to work in the onion fields of Davis County, Utah. Subsequently, Appellant suffered a torn medial meniscus of the left knee during his employment and was unable to pursue further work in the onion fields or any other substantially gainful employment. Appellant was later in serious financial difficulty and went to the Assistance Payments Administration Office in Davis County to apply for aid. An interview was held between Appellant and an Assistance Payments Administration non-Spanish speaking representative concerning Appellant's eligibility for AFDC benefits. At this interview it was not asked whether Appellant owned a home. Appellant was given financial assistance which subsequently totaled \$2,921.00.

On June 15, 1977, Appellant was sued by the State of Utah to collect the \$2,921.00. The Complaint stated that Appellant had received the financial assistance by fraudulently misrepresenting to Plaintiff that he did not have a home in which he was not residing.

Appellant filed an Answer with the Second District Court challenging the allegations made by the State of Utah. On September 27, 1979, and October 1, 1979, Appellant appeared with counsel at hearings before the Honorable Judge Calvin Gould. At those proceedings Appellant, through an interpreter stated that he could not understand the English language, much less read or write in English. Throughout the hearings an interpreter translated for the court and counsel, communicating with Appellant and his family in Spanish. Appellant stated that he was a migrant farmworker and that he stayed in the State of Utah for the year of 1975 because of the injury he sustained, but that in 1976 and the years that followed, he migrated back and forth from Texas to Utah, and to other states as well. When questioned by counsel for the State, Appellant stated that he did not understand most of the questions asked by the Assistance Payments representative; he was certain, however, that he was not asked whether he owned a home in Muleshoe, Texas. Appellant stated that he did not misrepresent any issue to the Assistance Payments Administration and that he did not know about the rules and regulations with regard to financial assistance.

On October 1, 1979, Judge Calvin Gould rendered his decision holding that the failure of Appellant to report the

ownership of his home in Texas was not the result of fraud or misrepresentation by Appellant. The court found that Appellant's primary language was Spansih and that his ability to communicate in and understand English was severely limited; that Appellant's failure to report ownership of the home and real property in Texas was the result of lack of communication; that Appellant's home in Texas was not an exempt asset or resource under Assistance Payments regulations; that Appellant's ownership of the same made him totally ineligible for the financial assistance he received;and that Respondent was entitled to judgment against Appellant in accordance with Rule 54(c)(1) Utah Rules of Civil Procedure, on the basis of factual error in the payment of monies, by Respondent, to Appellant in the amount of \$2,921.00. This appeal to the Utah Supreme Court followed.

ARGUMENT

POINT I

APPELLANT WAS, AT THE TIME IN QUESTION, ELIGIBLE FOR FINANCIAL ASSISTANCE BECAUSE HIS HOME IS EXEMPT UNDER VOLUME II SECTION 410.1 OF THE UTAH RULES.

Section 410.1 of Volume II states:

§ 410.1 Exempt Assets

1. One home and lot owned or being purchased and occupied by the applicant or recipient, including a mobile home.
 - a. If the home is owned or being purchased, the lot on which the home stands shall not exceed the average size of residential lots for the community in which it is located. The amount of property exceeding an average-size lot shall not be considered

- b. When an individual owns but does not occupy a mobile home, the equity value of the mobile home shall not be considered exempt personal property.

It is important to note that for financial assistance a home and lot must be occupied by the applicant before it is exempt. There has never been any question as to Appellant's occupying his home in Muleshoe, Texas. Appellant is a migrant farmworker and uses his home in Texas as a home base when he travels all over the Southwest and Northwest to do agricultural work. He is required to travel great distances from his home base in Texas, however, he does leave his home occupied. Appellant owns only one home and pays taxes on it. Because he and his family return to their home periodically during the year, he does not rent his home and does not collect any income from it. In December, 1975, when Appellant applied for financial assistance and during the months Appellant received the financial assistance, Appellant occupied the home and lot in Muleshoe, Texas, although he was not temporarily there. It is pointed out that Volume II does not define the term occupied, but it is submitted that the general dictionary definition is applicable and Appellant did "occupy" the home.

The case of Independent Fire Insurance Company v. Butler, 362 So. 2d 980 (1978), held that "occupancy" was largely a matter of intent and that a home did not need a continuous bodily presence of individuals in order to be occupied. Furthermore, the case of Independent

Fire Insurance Company defined the term "occupied" to mean a dwelling in actual use by human beings who lived therein as their place of habitation. In the case of National Security Fire and Casualty Company v. Richard Lee James, 358 So. 2d 737 (1978), the court stated that "unoccupied" means without occupants or animate objects; a dwelling is unoccupied when it is ceased to be used as a place of abode or residence by people. The Appellant in the case at bar legally "occupied" his home in Texas under the elements set out in aforementioned cases.

The Appellant is a migrant farmworker and at all times intended his home to be located in Muleshoe, Texas, and although there was not a continuous bodily presence of Appellant in his home, his home was and continues to be occupied by his children and Appellant; and at all times Appellant's home in Muleshoe, Texas, has been used as the Appellant's place of abode and residence.

In the case of Macomber v. State Social Welfare Board, 346 P.2d 808 (1968), the court held that under statutes providing that real property owned but not occupied by a state old age security recipient shall be utilized to provide for the recipient's needs, regulations which required the recipient to sell a lot next to her home were void in that "utilize" did not include a sale; the recipient was entitled to retain real property even though it was not feasible to utilize it for her needs, and her transfer of that property to charity, with retention of life estate, did not render her ineligible to receive payments. In the case at bar, the

court should take a liberal approach in determining whether Appellant in fact "occupied" his home in Muleshoe, Texas, and find as the court did in Macomber.

The Utah law regulating public financial assistance was enacted for the purpose of promoting the general welfare of all individuals. Appellant was working in the fields of Utah doing agricultural work when he was injured.

This injury subsequently forced him to seek financial assistance.

At all times he "occupied" his home in Muleshoe, Texas, and this court should find accordingly. Although the line of demarkation is incapable of precise definition, the courts have given general welfare laws a liberal construction with a view toward accomplishing its highly beneficent objectives. United States v. Sullivan, 332 U.S. 689 (1948). Brazons River Conservation & Reclamation Dist. v. Castello, 135 Tex.307, 143 S.W. 2d 577(1940).

It is important to note that for food stamp assistance purposes the Appellant's home was exempted and he was able to receive public assistance. Basically, public financial assistance and food stamp assistance are the same, both are governed by federal and state regulations together, which may often be integrated and cross-applied. Where general financial assistance regulations do not adequately define the situation at hand, the food stamp assistance regulations may provide guidance that is equally applicable to financial assistance, since the two different forms of assistance and their governing regulations are so much alike.

Food stamp assistance is governed by Volume IV of the state regulations, and the applicable Sections in this case are 304.21 and 680.3 (presently 680.5). They state:

\$304.21 (Exempt Resources) Home and Lot.
The home and lot normal to the community.

\$680.3 Verification of Migrant Resources:

Special care should be taken in dealing with migrants to determine if there are out-of-State resources or income from real property in the home-base area. For example, a Migrant who claims Texas as a home-base area and who is applying for food stamps in Utah, should be questioned as to the availability of resources in Texas as well as Utah.

Particular attention should be paid to real property in the home-base area. Each applicant household is permitted one home and lot as an exemption from resources. If the applicant has a home and lot in Texas and does not own a residence in Utah, the Texas home will be exempted as a resource....

As noted, Volume IV of the food stamp regulations provide specific rules for migrant workers. As transients, migrant farmworkers can readily apply for food stamp assistance, and the policy of the welfare laws and regulations is to expedite their receiving this type of public assistance benefit. Hence, special sections are promulgated in Volume IV which apply only to migrants. The intent of the Volume IV regulations is to allow migrants the right to own a home in another state and consider it an exempt resource. Appellant was legally entitled to receive food stamps under the Utah rules because his home was considered an exempt resource; the same should hold true for the financial assistance that Appellant received.

For both food stamp assistance and financial assistance the home and lot belonging to Appellant was exempt; for financial assistance purposes the home and lot were occupied by the applicant as required under the Utah rules. Since the financial assistance rule does not specifically treat the situation of a migrant, but the goal of both rules is the same, therefore, the example of a migrant who owns a home in Texas and works in Utah (Volume IV §680.3) provides applicable guidance in defining the meaning of "occupied" in this situation, for purposes of financial assistance as well. Although Volume II does not have any special regulation covering migrants, migrant status is relevant in determining financial assistance. Whether an applicant was a migrant is therefore an issue. As a migrant farmworker, Mr. Toscano was eligible for the financial assistance that he received.

POINT II

APPELLANT DID NOT UNDERSTAND THAT HE HAD TO REPORT OWNERSHIP OF HIS HOME IN TEXAS, DID NOT WILLFULLY WITHHOLD THE INFORMATION, AND SHOULD NOT BE HELD LIABLE THEREFOR.

Appellant did not understand the questions concerning his resources because of his limited ability to communicate in the English language. The District II-A office of the Assistance Payments Administration was not staffed with personnel who spoke fluent Spanish, and one of its staff did assist Appellant in filling out his application for assistance. Appellant did not understand the questions he was being asked by Respondent's representative at the time he applied for benefits. The Appellant did not withhold information material to his eligibility; and the Appellant received

financial assistance because of a lack of communications as found by the lower court. The case of Jacobo Garcia v. Califano, No. 77-422(D.N.J. 1977), should therefore apply. That case involved a Spanish-speaking individual who received Social Security Disability benefits and an attempt by the government to recover an overpayment. Whether the recipient of an overpayment of Social Security Disability benefits was at fault and could be required to repay the extra funds depended upon whether he knew or should have known that he was receiving an overpayment. Within a period of several weeks, the recipient had accepted two checks, each for \$3,138, one of which constituted an overpayment. Although the overpayment and the recipient's entitlement in general had been explained in letters sent to him by the Social Security Administration, he was unable to read them because he was literate only in Spanish. The court held that the government could not recover an overpayment of disability benefits from any recipient who was found without fault in regard thereto.

The record in the case at bar shows that Appellant was without fault in regard to overpayment of benefits, and he should not be required to pay back those payments he received from the Assistance Payments Administration.

On a further note, it is against the public interest to congest the courts with trivial, perhaps meaningless, and even counterproductive lawsuits like the one presented by Respondent in this case.

The attempts to collect the \$2,921.00 overpayment from Appellant have continued for almost three years, at considerable

expense to the public. The Court should rule in Appellant's favor if for no other reason than to provide an example for those with authority to decline collection of future overpayments in similar circumstances. At least a future waste of public money could be avoided.

Not only is it highly questionable whether collection efforts recover enough overpayments to pay for the administration and legal costs involved in such activity, it is all the more questionable whether blameless households are a desirable target of collection proceedings. In proceeding against those households, the State is treating those innocent of any wrongdoing exactly the same as the outright welfare chisler. This indiscriminate grouping breeds disrespect for the law and the State agency, which will ultimately hinder enforcement not only of recovery provisions, but of the underlying provisions for proper receipt of financial assistance. A previously innocent recipient could easily be converted into a welfare chisler. When one realizes that by coming forward with information indicating an overpayment he may precipitate his own prosecution and repayment obligation, he could very well feel compelled to remain silent. Then the error might never be corrected, and overpayments might continue indefinitely. Until the blameless are encouraged to come forth with material information, rewarded rather than being punished equally with the blameworthy, public officials cannot assume to build respect for the law or the governmental agency charged with its enforcement.

A further policy reason for exercising power to decline collection carries greater weight than the State's interest in cutting costs - the need to permit recipients to become self-supporting. Collection robs those with only enough income to meet fixed living expenses of their only chance to achieve a standard of living that approximates minimum subsistence. Having relied on financial assistance later claimed as an overpayment, a household has spent that money on medical bills and other necessary living expenses, not incurred because of the receipt of the financial assistance. To then require repayment means that the household will incur further debts for living expenses. Therefore, a primary and overriding consideration relative to the public interest in exercising the power to decline collection is the balance of costs involved in attempting to collect from faultless households and the benefits derived from such attempts. The State will pursue an innocently overpaid household through legal proceedings at great expense in time, effort, other resources, and ultimately money to both parties, the courts, and ultimately the public, when the net result is but an unenforceable judgment against a household with little resources. Even if a repayment agreement can be structured to a household's marginal income, this too involves the expense of monitoring and enforcement. Furthermore, it may stretch the household's budget to a breaking point, jeopardizing its ability to secure the basic necessities of life.

Indeed collection punishes the wrong party, such that

principles of equity compel the declination of collection. It must be remembered that the Appellant who has been overpaid due to innocent error never requested, either expressly or impliedly, financial assistance to which he was not entitled. He did not apply for financial assistance to which he was not entitled nor even assent to, financial assistance to which he was not entitled when he received it, because he did not know he was not entitled to the assistance when he received it. Therefore the Defendant was not put on notice when he received the financial assistance that he would be obligated to repay it.

Nor did the State expect to be repaid when it issued the financial assistance. When the household is without fault, the agency must accept responsibility for an erroneous overpayment. Placing the obligation on recipients for overpayments reduces the agency's motivation to correct or eliminate errors, since the agency knows it can require the recipients to repay. Accountability should be placed where fault lies, so that the problem can be arrested at its source. Stopgap measures will never be totally effective in eliminating mistakes.

To summarize, those who are currently subject to recovery or recoupment are perhaps the most faultless: those who have made an effort to become self-supporting, to have enough income other than public benefits from which the State can recover; and those who have been persuaded by moral compulsion to agree to repay from their current benefits. Then remain those from whom recovery is impossible. If the

agency were encouraged to prevent errors, however, rather than discovering errors after the fact, then the State would not suffer the loss in these situations. Therefore the public interest requires that the Plaintiff decline collection from faultless households such as Appellant.

POINT III

THE DOCTRINE OF EQUITABLE ESTOPPEL PRECLUDES THE STATE'S COLLECTION ACTION.

The doctrine of equitable estoppel is based upon public policy, fair dealing, good faith, and justice. 28 Am. Jur. 2d Estoppel §28 (1966). Generally, the doctrine holds a person to a representation made or position assumed where otherwise inequitable consequences would result to another, who, having the right to do so, has in good faith relied on the representation or position and been misled to his injury.

Traditionally, the doctrine has been involved in circumstances of fraud, been characterized as very harsh, and consequently not been favored. But recently the technicalities incident to estoppel have given way to practical utility, and the doctrine has been extended to unconscionable or inequitable situations, as a means of preventing injustice.

The elements of equitable estoppel are set forth in Lucide v. Rippato, 73 Cal. App. 3d 1, 140 Cal. Rptr. 535, 542 (1977), quoting from Strong v. County of Santa Cruz, 15 Cal. 3d 720, 725, 543 P.2d 264 (1975). The facts of the present case satisfy those elements.

(1) The party to be estopped must be apprised to the

facts. The State's Assistance Payments Administration was unaware of all relevant facts or could have been through reasonable diligence. The Appellant supplied all information that the State requested of him.

(2) The party to be estopped must act so that the party asserting estoppel has a right to believe the action was intended to be relied upon. The State's Assistance Payments Administration should reasonably have expected the Appellant to rely on its determination of his eligibility.

(3) The party seeking estoppel must be ignorant of the facts. The Appellant acted conscientiously, in good faith, yet without any knowledge of administrative error.

(4) The party seeking estoppel must rely on the action to his injury. The Appellant did rely on the State's determination of his eligibility and will be injured if forced to repay the overpayment.

It has been held that an act done or representation made through innocent error cannot be grounds for estoppel. 28 Am. Jur. 2d Estoppel §44 (1966). It could be contended that either the State's Assistance Payments Administration or Appellant committed an innocent error making equitable estoppel inappropriate. But general principles of equity hold that when one of two innocent parties must suffer a loss it must be borne by the one who has rendered the injury possible or who could have prevented it. 28 Am. Jur. 2d Estoppel §62 (1966). The State determined the Appellant's eligibility for financial assistance so that the Appellant reasonably believed the determination was to be relied upon, see (2),

supra; the Appellant did rely on the State's determination, by acquiring the financial assistance for which he was determined eligible, so that now he may suffer injury, see (4), supra. Moreover, the State should reasonably have expected the Appellant to rely on its determination of his eligibility, see (2), supra, so that it could have prevented any resultant injury by making a correct determination. It can also be argued that the State was negligent and must take any consequences of its own acts, because Appellant is non-English speaking, yet the interview by the Assistance Payments Administration was conducted in English.

The Restatement of Restitution §142 states in addition that if a right to recover payment made through error does exist, it may be defeated by a change of circumstances on the part of the recipient. As the New York Court of Appeals stated:

Generally courts will look to see if a benefit has been conferred on the Defendant under mistake of fact or law, if the benefit still remains with the Defendant, if there has been otherwise a change of position by the Defendant and whether the Defendant's conduct was tortious or fraudulent.

Generally if a Plaintiff's recovery will lead to an undue net loss to the Defendant by reason of a changed position, as will often be the case when the funds have been disbursed, then the parties being equally innocent, recovery may be denied.

Paramount Film Distributing Corp. v. State, 30 N.Y. 2d 415, 285 N.E. 2d 695, 699 (1972), cert. den., 414 U.S. 829 (1973). Here the financial assistance has been long since spent, and Appellant changed his position by spending the assistance.

Respondent is to blame for the overpayment, and it would be inequitable for it to take advantage of this situation.

Comment(c) to Restatement §142 also supports this conclusion, by disallowing recovery where an erroneous payment has been spent for living expenses and "such payment was of such size that considering the financial condition of the payee it would be inequitable to require repayment."

In the past, the use of equitable estoppel against the government was held inappropriate or at best was severely limited. However, the trend is to accept application of the doctrine against the government. Traditionally, whether the doctrine was usable was dependent upon whether governmental or proprietary functions were involved. Equitable estoppel was applicable against the state only when it acted in a proprietary capacity. However, the United States Supreme Court has recognized that the governmental-proprietary distinction is difficult to apply and therefore rejected use of the governmental-proprietary distinction. Indian Towing Co. v. U.S., 350 U. S. 61 (1955); Dahelite v. U.S., 346 U. S. 15 (1953). Even in jurisdictions that still maintain the governmental-proprietary distinction, the trend is away from denying use of equitable estoppel against government, even when it is performing a "governmental" function. The trend is toward applying the doctrine against public bodies where the interests of justice, equity, or common fairness dictate. Canfield v. Prof., 67 Cal. App.3d 722, 137 Cal. Rptr. 27 (1977); Gruber v. Mayor and Township Committee of the Township of Raritan, 39 N.J. 1, 186 A.2d 489, 495 (1962).

The modern cases hold that equitable estoppel may be applied against the state acting in its governmental capacity.

City of Long Beach v. Mansell, 3 Cal. 3d 462, 476 P.2d 423, 448 (1970); Stahelin v. Board of Education, 87 Ill. App.2d 28, 230 N.W.2d 465 (1967).

The only precondition to applying the doctrine against a state acting in a "governmental" capacity is that the estoppel not impair governmental functions or proper discharge of governmental duties. Ford v. Bellingham-Whatcum County District Board of Health, 83 Wash.2d 618, 521 P.2d 736 (1974). Application of equitable estoppel against Plaintiff-Respondent does not impair it in discharging its duties. Recovery in this case would defeat equity and good conscience and thus result in manifest injustice.

POINT IV

AN INTERVIEW IN ENGLISH WHICH DETERMINED APPELLANT'S ELIGIBILITY FOR FINANCIAL ASSISTANCE, BY AN ASSISTANCE PAYMENTS ADMINISTRATION REPRESENTATIVE WHO SPOKE ONLY ENGLISH AND WHO KNEW APPELLANT WAS LITERATE ONLY IN SPANISH, WAS A VIOLATION OF EQUAL PROTECTION AFFORDED BY THE UTAH CONSTITUTION AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The protection afforded under the equal protection guarantees was set forth by the Hawaii Supreme Court in State v. Cotton, 516 P. 2d 715, 717 (1973). In examining the constitutionality of an ordinance requiring a motorcycle operator to wear head protection equipment the court held:

The general principle stated by the courts in the interpretation of the equal protection clause is that all persons shall be treated alike under like circumstances and conditions, both in privileges conferred and in liabilities imposed.

The California Supreme Court in Hawkins v. Superior Court of the City and County of San Francisco, 586 P.2d 916, 921 (1978), confronted the equal protection issue where the defendant was denied a postindictment preliminary hearing. The court acknowledged the classical test for examining whether the State has violated the equal protection clause. The court stated:

Under the traditional two-tier test of equal protection a discriminatory legislative classification that impairs fundamental rights will be subjected to strict scrutiny by the courts, and the state will be required to bear the heavy burden of providing not only that it has a compelling interest which justifies classification but also that discrimination is necessary to promote that interest.

Since the equal protection clause is applicable only to State action, to establish a violation thereof, it is necessary to show:

- (1) State action;
- (2) discriminatory classification;
- (3) impairment of fundamental rights; and
- (4) no compelling State interest.

In the present case State action is manifest in the promulgation of Volume II of the Assistance Payments Administration regulations for the State of Utah. It is Volume II that does not require the Assistance Payments Administration to conduct interviews in Spanish for non-English speaking individuals to determine if they qualify for financial assistance. Since State action is involved the first element to establish a violation of equal protection is satisfied.

The essence of any discriminatory classification finds substance in its discriminatory effect. A law may appear to be nondiscriminatory on its face; however, it is the discriminatory impact of that law upon a protected minority that renders it illegal. In De LaCruz v. Tormey, 582 F.2d 45, 52 (9th Cir. 1978), a case involving the alleged denial of equal educational opportunities, the Court of Appeals held:

Discriminatory effect and its paraphrases simply serve to capture the sense of differential, disparate, or disproportionate consequences which facially nondiscriminatory laws, decision, or other actions may have upon a member of a particular protected minority and as such they operate only to signal the beginning of the equal protection analysis....

Volume II of the Assistance Payment Administration appears nondiscriminatory on its face. When any individual goes into an Assistance Payment Administration Office to apply for assistance, he is interviewed by an English speaking representative. It is the "discriminatory effect" that an interview in English has upon the Spanish speaking recipient whose literacy in English is limited that creates the constitutional violation. In order that he might understand the contents of the interview the Spanish speaking recipient is burdened with seeking out a translator. The recipient may be unable to obtain a translator. If he does not find one he faces the risk of not being given aid or in the alternative being given aid outside the regulations. In any event the risk is great that because of the interview being in English the Spanish speaking recipient may be denied financial assistance without ever being able to communicate

essential information to the Assistance Payments Administration representative or in the alternative be given benefits only to have an overpayment collection proceeding against him later.

The discriminatory effect is therefore that the Spanish speaking recipient is shouldered with the burden and expense of seeking out a translator. The English speaking recipient is of course not faced with this problem. If the Spanish speaking recipient is unable to obtain a translator he would probably be denied benefits or in the alternative be granted benefits only to face legal action to collect those benefits back at a later time. The risk is substantial that the recipient will suffer overpayment proceedings or denial of aid. The English speaking recipient is not faced with these risks in receiving financial assistance. Having, therefore, established the discriminatory effect of Volume II of the Assistance Payments Administration regulation, the second element necessary to show a violation of equal protection has been met.

Absent a suspect classification, discriminatory State action must impair a fundamental right to constitute a violation of equal protection. Hawkins v. Superior Court, supra. It is clear that when a person is denied financial assistance, either outright or through subsequent overpayment collection proceedings, without an opportunity to present the facts, fundamental due process rights have been impaired. The critical importance of financial assistance to a person

unemployed and injured and without any alternative source of income is self-evident. "Since he lacks independent resources his situation becomes immediately desperate" Goldberg v. Kelly, 397 U.S. 254 (1970). Until the recipient is able build up his health and secure new employment, the general welfare-food, clothing, housing, medical care, transportation, for him and his family - is dependent upon the receipt of financial assistance.

Discriminatory State action denying the opportunity to present one's case for financial assistance not only impairs the right to exist, as secured through retention of financial assistance benefits, but violates the most fundamental right to due process. Goldberg v. Kelly, supra. Since due process is a fundamental right, the element of State impairment of a fundamental right is satisfied.

Even though it has been established that Volume II of the Assistance Payments Administration is State action, discriminatory in nature, and impairing a fundamental right, this regulation may not be violative of the equal protection clause if it is justified by a compelling State interest. Hawkins, supra. The primary State interest in this case would be the cost of hiring Spanish speaking individuals to conduct interviews with Spanish speaking individuals.

The State has a legitimate concern in preventing any increase in its administrative budgets. However, the number of persons actually entitled to interviews in Spanish would be comparatively few. The cost to the State would therefore

be minimal -- a liberal approximation would estimate the total number of Mexican-Americans in the State of Utah at 60,000 or 6% of the total State population. Interviews in Spanish would only be required for those persons identified in their interview with an Assistance Payments Administration representative as being literate only in Spanish. The number of Mexican-Americans falling into that category would be minimal. In Goldberg, supra, the competing interests were quite similar to the present case, i.e., cost to the state and importance to the individual in receiving public assistance. The cost to the state in Goldberg was the expense in providing the recipient a hearing. That administrative cost was vastly greater than the cost to the State of Utah in hiring Spanish speaking individuals when required. The United States Supreme Court in Goldberg held:

The interest of the eligible recipient in the uninterpreted receipt of public assistance which provides him with essential food, clothing, housing and medical care, coupled with the State's interest that his payment not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative budgets.

Id. at 264-66. The interest of the State in preventing any increase in its budget does not rise to the level of a compelling interest. There are a multitude of ways that a cost-conscious State agency can maintain a lean budget. In the present case the competing interest of the Spanish speaking recipient and all other persons similarly situated is too great a price to pay for one means of cost conservation. All the essential elements have therefore been met to constitute a violation of equal protection.

CONCLUSION

This Brief assumes all of the facts that would be necessary to support Respondent's position and shows that even based on those facts Respondent is entitled to no relief.

The Appellant during the time in question "occupied" his home in Muleshoe, Texas, and was therefore eligible for financial assistance because his home was exempt under Volume II Section 410.1 of the Utah Rules.

The interview in English which was conducted by the Respondent with the Appellant, who is non-English speaking, was a violation of the Utah and the United States Constitutions. Furthermore, the Respondent is estopped from collecting any overpayments to Appellant, if in fact there were any.

More compelling is an analysis of the competing State and private interests. The number of Spanish speaking recipients justifying interviews in the Spanish language would be relatively minimal. The small percentage of Mexican-Americans living within the State of Utah coupled with small percentage of Mexican-Americans requiring interviews in Spanish because of their limited literacy in English along with the low welfare rate less than 3% justifies these conclusions. Consequently the cost to the State would be comparatively low.

In contrast the nature of the interest to the recipient is critical. AFDC benefits may likely be the recipient's sole source of income and support for him and his family. A balancing of the interests weighs heavily in favor of the recipient. Goldberg v. Kelly, supra.

The Appellant having been erroneously subjected to a collection proceeding, improperly denied adequate notice and an opportunity to present the facts properly to the Respondent in the interview, brings us to the conclusion that Appellant should not be the subject of collection proceedings any longer.

Respectfully submitted this 31st day of March, 1980.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed copies of the foregoing Appellant's Brief to Stephen G. Schwendiman, Assistant Attorney General, 150 West North Temple, Suite 234, Salt Lake City, Utah 84103.

DATED this 31st day of March, 1980.

Jean Milner