

1980

Robert B. Hansen, Attorney General v. Utah State Retirement Board, Et al. : Respondent University Medical Center Trust Fund, First Security Bank of Utah, Trustee : Brief of Respondent Utah State Insurance Fund

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

ROBERT D. MOORE, WILLIAM T. EVANS, MERLIN LYBBERT, FRANK V. NELSON, MARK A. MADSEN; Attorneys for Respondents; ROBERT B. HANSEN, WILLIAM GIBBS, BERNARD M. TANNER; Attorneys for Appellant

Recommended Citation

Brief of Respondent, *Hansen v. Utah State Retirement Board*, No. 16851 (Utah Supreme Court, 1980).
https://digitalcommons.law.byu.edu/uofu_sc2/2093

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

ROBERT B. HANSEN,	:	
Attorney General,	:	
	:	
Plaintiff-Appellant,	:	
	:	Case No. 16851
vs.	:	16714
	:	16560
UTAH STATE RETIREMENT BOARD,	:	
et al.,	:	
	:	
Defendants-Respondents.	:	

BRIEF OF RESPONDENT UTAH STATE INSURANCE FUND

Appeal from the Decision of the Third Judicial
District Court for Salt Lake County, State of Utah
The Honorable Christine M. Durham

ROBERT D. MOORE
Black & Moore
500 Ten Broadway Building
Salt Lake City, Utah 84101
Attorney for Respondent
State Insurance Fund

WILLIAM T. EVANS
Assistant Attorney General
25 South Wolcott
Salt Lake City, Utah 84112
Attorney for Respondent
University of Utah

MERLIN LYBBERT
Attorney at Law
701 Continental Bank Building
Salt Lake City, Utah 84101
Attorney for Respondent University
Medical Center Trust Fund

FRANK V. NELSON
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorney for Respondent Utah
State Industrial Commission

MARK A. MADSEN
Assistant Attorney General
540 East 200 South
Salt Lake City, Utah 84102
Attorney for Respondent Utah
State Retirement Board

FILED

JUL 28 1980

Clerk, Supreme Court, Utah

ROBERT B. HANSEN
Attorney General

WILLIAM GIBBS
BERNARD M. TANNER
Assistant Attorneys General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Appellant

ROBERT B. HANSEN,	:	
Attorney General,	:	
	:	
Plaintiff-Appellant,	:	
	:	Case No. 16851
vs.	:	16714
	:	16560
UTAH STATE RETIREMENT BOARD,	:	
et al.,	:	
	:	
Defendants-Respondents.	:	

BRIEF OF RESPONDENT UTAH STATE INSURANCE FUND

Appeal from the Decision of the Third Judicial
District Court for Salt Lake County, State of Utah
The Honorable Christine M. Durham

ROBERT D. MOORE
Black & Moore
500 Ten Broadway Building
Salt Lake City, Utah 84101
Attorney for Respondent
State Insurance Fund

WILLIAM T. EVANS
Assistant Attorney General
25 South Wolcott
Salt Lake City, Utah 84112
Attorney for Respondent
University of Utah

MERLIN LYBBERT
Attorney at Law
701 Continental Bank Building
Salt Lake City, Utah 84101
Attorney for Respondent University
Medical Center Trust Fund

FRANK V. NELSON
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorney for Respondent Utah
State Industrial Commission

ROBERT B. HANSEN
Attorney General

MARK A. MADSEN
Assistant Attorney General
540 East 200 South
Salt Lake City, Utah 84102
Attorney for Respondent Utah

WILLIAM GIBBS
BERNARD M. TANNER
Assistant Attorneys General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Appellant

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
FACTS	2
ARGUMENT	8
POINT I. SECTION 35-3-1 OF THE UTAH CODE ANNOTATED AUTHORIZES THE STATE INSURANCE FUND TO HIRE PRIVATE COUNSEL AND SAID STATUTE IS NOT CONTRARY TO THE UTAH CONSTITUTION	8
POINT II. TO ALLOW THE ATTORNEY GENERAL TO REPRESENT THE STATE INSURANCE FUND WOULD BE A VIOLATION OF THE STATE INSURANCE FUND'S RIGHT TO EQUAL PROTECTION UNDER THE LAW AS GUARANTEED BY ARTICLE I, SECTION 2 OF THE UTAH CONSTITUTION, AND AMENDMENT 14 OF THE CONSTITUTION OF THE UNITED STATES	13
CONCLUSION	15

CASES CITED

<u>Chez v. Industrial Commission</u> , 67 P.2d 549, 90 U 447 (1936)	6, 11, 12
<u>Gronning v. Smart</u> , 561 P.2d 690 (Utah 1977)	6, 12, 14
<u>Hansen v. Barlow</u> , 23 U.2d 47, 456 P.2d 177	8
<u>Hansen v. Legal Services Committee of the Utah State Legislature</u> , 19 U.2d 231, 429 P.2d 979	9, 10
<u>Hern v. Utah Liquor Control Commission</u> , 549 P.2d 242 (Utah 1976)	12
<u>Intermountain Smelting v. Anthony Capitano</u> , Sup. Ct. No. 16530 (March 24, 1980)	6

	<u>Page</u>
<u>State v. Yelle</u> , 329 P.2d 841 (Wash. 1958)	10
<u>State Tax Commission of Utah v. Department of Finance</u> , 576 P.2d 1297 (Utah 1978)	2, 3, 4,
<u>White, et al. v. Industrial Commission</u> , 604 P.2d 478 (Utah 1979)	6

STATUTES CITED

Section 35-1-1, U.C.A. (1953), as amended	2, 14
Section 35-1-68, U.C.A. (1953), as amended	5
Section 35-1-69, U.C.A. (1953), as amended	5
Section 35-2-1, U.C.A. (1953), as amended	2
Section 35-3-1, U.C.A. (1953), as amended	4, 8, 10

CONSTITUTIONAL PROVISIONS CITED

United States Constitution, Amendment 14	13
Utah Constitution, Article I, Section 2	13
Utah Constitution, Article VI, Section 27	11
Utah Constitution, Article VII, Section 18	9
Utah Constitution, Article XXIV, Section 12	9, 10
Washington Constitution, Article II, Section 21	10
Washington Constitution, Article III, Section 1	11

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT B. HANSEN,	:	
Attorney General,	:	
	:	
Plaintiff-Appellant,	:	Case No. 16851
	:	16714
vs.	:	16560
	:	
UTAH STATE RETIREMENT BOARD,	:	
and UTAH STATE RETIREMENT	:	
FUND; UTAH STATE INDUSTRIAL	:	
COMMISSION, and UTAH STATE	:	
INSURANCE FUND; and UNIVERSITY:	:	
OF UTAH, for and in behalf of :	:	
the UNIVERSITY OF UTAH	:	
HOSPITAL for the UNIVERSITY	:	
MEDICAL CENTER; UNIVERSITY	:	
MEDICAL CENTER TRUST FUND,	:	
FIRST SECURITY BANK OF UTAH,	:	
TRUSTEE,	:	
	:	
Defendants-Respondents.	:	

BRIEF OF RESPONDENT UTAH STATE INSURANCE FUND

STATEMENT OF THE NATURE OF THE CASE

The plaintiff, Robert B. Hansen, Attorney General of the State of Utah, filed numerous complaints against State agencies and what he refers to as "quasi-state entities and funds" (R. 16560, p. 3), claiming that each of these entities has retained legal counsel. He contends that such action is improper under the Utah Constitution and that the statutory provisions allowing such (which in the case of the Respondent have been in existence for some time) are unconstitutional.

DISPOSITION IN THE LOWER COURT

The Plaintiff-Appellant appeals from the District Court's granting Defendant-Respondent Utah State Insurance Fund's Motion

for Summary Judgment. This case is part of a consolidated appeal wherein both Judge Christine M. Durham and Judge Homer F. Wilkinson granted summary judgment to various Defendants.

RELIEF SOUGHT ON APPEAL

The Utah State Insurance Fund seeks affirmance of Judge Christine M. Durham's Order of October 24, 1979, granting a summary judgment.

FACTS

Throughout the pleadings in this case and in Appellant's brief, many different statements are made attempting to characterize the State Insurance Fund. One need not conjecture as to its nature and status because this Court in numerous opinions, which will be delineated herein, has described the nature of this Fund. In essence, the Fund is nothing more than an insurance company authorized to collect premiums from employers to provide insurance coverage for injuries and diseases of employees that are work related and are covered by the Utah Workman's Compensation Act, Section 35-1-1, et seq., U.C.A., 1953, as amended, and the Utah Occupational Disease Act, Section 35-2-1, et seq., U.C.A., 1953, as amended. (See State Tax Commission of Utah v. Department of Finance, 576 P.2d 1297 (Utah 1978)).

The Appellant strains in contending that the State Insurance Fund is a typical state agency operated by a state officer in performing a traditional function of government. The fact of the matter is that the Fund is totally financed, not only in its administration but in the benefits paid, by private funds of premium paying employers. There is no liability on the

part of the State and no public money whatsoever is used by the Fund either in its operation or in the benefits given to eligible employees. Any debt owed by the Fund is not subject to reimbursement or indemnification by the State. (State Tax Commission v. Department of Finance, supra.) The Fund was established in this state (as in most states) to provide a vehicle for employers to insure themselves against compensation and occupational disease claims. The employers voluntarily entered into their agreement with the State Insurance Fund by the contribution of their premiums. The State Insurance Fund is in competition with many private insurance companies who afford compensation benefits. (R. 16560, pp. 82-84)

Historically the State Insurance Fund has been administered by different entities. For example, during a period of its history, it was administered by the Industrial Commission. Because of the inherent conflicts in such administration, the Legislature determined it appropriate to be administered by the Commission of Finance and subsequent to its abolishment by the Director of Finance. The Director of Finance administers said Fund as a custodian and/or trustee of the State Insurance Fund.

The appellant begrudgingly admits to the holdings of the Supreme Court by stating that, ". . . this court has referred to the State Insurance Fund as being analagous to private insurers" (Brief, p. 20), but then blithely states without any supporting authority that, "A fundamental difference, however, between the State Insurance Fund and private insurance enterprises is that the latter enjoys legal standing while the former does not.

Private insurers are generally corporations or partnerships with legal standing, but the State Insurance Fund . . . is little more than an inanimate collection of funds." From this statement, appellant indicates that the State Insurance Fund thus has no legal capacity. Such unsupported assumption is negated in State Tax Commission v. Department of Finance, supra, which states

The assets of the Fund exist only to cover the identical obligations covered by private insurers. The Fund has the same administrative costs as private insurers: establishment of premium and hazard rates, procedures for analyzing claims and making disbursements, reinsurance considerations, Fund investment decisions, collection procedures, legal fees and policy issuance. These administrative costs, and other expenses are deducted from the Fund by legislative appropriations of Fund money. The Fund has the same rights to sue and be sued and make contracts that a private insurer has. The Fund enjoys no immunities not provided to private insurers."
(Empahsis added)

For a long period of time, the State Insurance Fund has been represented by private counsel. When a dispute arises as to whether or not an employee is entitled to benefits, a hearing is held before an Administrative Law Judge of the Industrial Commission. There are in excess of 200 such hearings yearly involving claims against employers who have coverage with the Fund. (R. 16560, p. 82-83) In all of these hearings, the Fund, as other insurance companies in their hearings, has been represented by private counsel. The authority for the employment of counsel is granted by Section 35-3-1, U.C.A., 1953, as amended. Such statute provides as follows:

There shall be maintained a fund, to be known as the state insurance fund, for the purpose of insuring employers against liability for compensation based upon compensable accidental injuries and against liability for compensation on account of occupational diseases, and of assuring to the persons entitled thereto the compensation, provided by law. Such fund shall consist of all premiums and penalties received 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 upon money belonging to the fund and deposited or invested as herein provided. There shall be no liability on the part of the state beyond the amount of such fund. 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. The administrative expenses required in administering this act shall be provided for by legislative appropriation from the resources of the state insurance fund. The commission shall prepare and submit to the governor, to be included in his budget to the legislature, a budget of the requirements in carrying out the provision of law for the biennium next following the convening of the legislature. In the conduct and administration of the business of said fund the commission of finance may appoint with the approval of the governor, a manager, and may employ accountants, inspectors, attorneys, physicians, investigators, clerks, stenographers, and such other experts and assistants as it deems advisable. (Emphasis added)

In addition to the hearings, a number of the decisions by the Industrial Commission are reviewed by the Supreme Court. Also, at many of the hearings a claim is asserted either by the applicant or by the insurance carrier against the so-called "Special Fund" or Second Injury Fund which is provided for in Sections 35-1-68 and 35-1-69, U. C. A., 1953, as amended. At either of these junctions in the proceedings, the Attorney General's office is legal counsel for and on behalf of the Industrial Commission. If the Attorney General is successful

in his allegations in this case, he would be representing both sides of the action; that is, the Special Fund or Second Injury Fund and the Utah State Insurance Fund, which are in a contrary position. (As an example, see Intermountain Smelting v. Anthony Capitano, Sup. Ct. No. 16530 (March 24, 1980) and White et al. v. Industrial Commission, 604 P.2d 478 (Utah 1979))

As mentioned earlier, much comment and theory as to the nature of the Fund is made by Appellant. However, the nature of the Fund has been settled by decisions of this Court. In an early decision which has been cited with approval in recent cases (see Groning v. Smart, 561 P.2d 690 (Utah 1977)) is Chez v. Industrial Commission case, 67 P.2d 549, 90 U 447 (1935). Chez defines the State Insurance Fund in very clear terms and its relationship to the State. The Court stated:

. . . (t)he nature of the fund (is) one derived from premiums and penalties payable by employers. And what is it expended for? It is paid on account of the employer for compensation for which he is primarily liable. 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. It is therefore not derived from anything owing to the state nor paid out on behalf of any state obligations. The coming into the fund is voluntary. If employers band together and form their own fund with a management selected by them, which fund would pay their compensation liability, there would be no question as to the nature of the fund. It would not then even be public moneys in the sense that it was in custody of and managed by a public body or held by a public official. Change the situation somewhat. The Legislature provides for workmen's compensation, a social and public purpose. The end it desired to accomplish was to see that workmen incapacitated by industrial

accidents or their dependents in case of an industrial death were paid something to live on. Not so much to accomplish this end as to assure its accomplishment, the Legislature required the compensation risk to be insured. It provided in cases of financially able employers for self-insurance. Those not obtaining the privilege of self-insurance could either insure in a private carrier or in a fund which the Legislature provided for, consisting of employers' contributions or premiums.

* * * * *

But basically it is no different than if the state and a number of private employers agreed to establish their own fund.

* * * * *

It was a venture by the state as an employer and certain private employers who choose 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.

* * * * *

If the Legislature decided to discontinue the State Fund, upon liquidation anything not needed to pay contingencies would be returned to the contributing employers. The fund is publicly administered, but its debtors are not debtors to the contributing employers for their mutual benefit. It constitutes a pooling of risks under the auspices of the state.

* * * * *

It is an insurance business for the benefit and accommodation of the contributing employers. It provides a means for meeting an obligation placed on them by the Legislature. . . (Emphasis added) (Citations omitted)

ARGUMENT

POINT I.

SECTION 35-3-1 OF THE UTAH CODE ANNOTATED AUTHORIZES THE STATE INSURANCE FUND TO HIRE PRIVATE COUNSEL AND SAID STATUTE IS NOT CONTRARY TO THE UTAH CONSTITUTION.

Section 35-3-1, U.C.A., 1953, as amended, specifically allows the State Insurance Fund to appoint its own counsel. The issue presented by this case is whether or not said statute is unconstitutional. The Appellant first bases his argument on the theory that Hansen v. Barlow, 23 U.2d 47, 456 P.2d 177, gives him some aid and comfort in asserting the unconstitutionality of the specific statutory authority to hire counsel.

Much to do is made of the fact that the Attorney General of the State of Utah has certain common law powers and duties, and as such, it is urged that that is germane to the issue on appeal. Respondents respectfully suggest that they have no quarrel with this legal proposition but suggest that it is immaterial here since the issue facing the court in Hansen v. Barlow, supra, was whether or not the Attorney General has inherent standing to test the constitutionality of newly enacted statutes. The Court held that he does. No one has claimed in this case that the Attorney General did not have standing to bring this lawsuit. The citing of Hansen v. Barlow, supra, therefore, is not helpful in deciding the issue presented in this case.

The Appellant, however, cites as his most persuasive authority that the statute in question is unconstitutional based upon the case of Hansen v. Legal Services Committee of the Utah State Legislature, 19 U.2d 231, 429 P.2d 979. It is the position of the State Insurance Fund that this case does not sustain the proposition urged for it, but rather supports Respondent's position that the statute in question is constitutional. In that case, the Supreme Court in a rather cryptic opinion was faced with the issue of whether or not a statute creating a legal adviser for the legislature was constitutional. The Court held that said statute was unconstitutional for the following reasons: Article VII, Section 18, under "Duties of Attorney General" states, "The Attorney General shall be the legal adviser of the State officers, and shall perform such other duties as may be provided by law". Article XXIV, Section 12, states as follows:

The State Officers to be voted for at the time of the adoption of this Constitution, shall be a Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Public Instruction, Members of the Senate and House of Representatives, three Supreme Judges, nine District Judges, and a Representative to Congress.

The Court held, "That these two provisions are crystal clear and effectively should dispose of the matter." The Court by referring to Article XXIV, Section 12, of the Constitution for the definition of State Officers negates the claim of Appellant because it is clear that legal counsel

for the Fund does not represent or purport to represent any of the above enumerated elected offices. The constitutional provision cited above does not say that the Attorney General will be the legal adviser of the State boards, state agencies and trust funds, let alone the Director of Finance acting in his capacity as custodian or trustee for the State Insurance Fund.

In order to sustain the position that the statute in question is unconstitutional, one is required to enlarge the definition of State officers to a category not mentioned and not included in the Constitution. The validity of §35-3-1, supra, is not reasonably subject to such an attack. It is clear that Hansen v. Legal Services, supra, sustains Respondent's position in its holding that State officers are defined in Article 24, Section 12, of the Utah Constitution.

An interesting case in this regard is State v. Yelle, 329 P.2d 841 (Wash. 1958), wherein the issue presented to the Supreme Court of Washington was whether or not the constitutional provision making the Attorney General legal adviser for state officers and the further provision requiring State officers to be qualified electors were sufficient to negate a warrant for the payment to the Western Interstate Commission for Higher Education. Article II, Section 21 of the Washington Constitution is the same as the Utah Constitution, and it provides as follows:

The Attorney General shall be the legal adviser of the state officers, . . .

Article III, Section 1, of their constitution provides as follows:

The executive department shall consist of a governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and a commissioner of public lands, who shall be severally chosen by the qualified electors of the state * * *.

The Washington Supreme Court held that Constitutional references to "State officers" applied only to elective officers and that since Interstate Higher Educational Commissioners were appointed positions they would not be considered state officers within the contemplation of the Washington Constitution. In essence, the Washington Court in dealing with similar constitutional provisions did not feel it appropriate to enlarge a definition of state officers specifically named in the precise language of the Constitution.

The Respondent believes that the above argument is sufficient to be dispositive of the issue here in this case. It is submitted, however, that the State Insurance Fund's position is stronger than other agencies or entities may be because of the applicable case law. We cite again Chez v. Industrial Commission of Utah, supra. It should be noted in this case that the Court was concerned about the effect of Section 27, Article VI, which states:

The legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or person to the state or to any municipal corporation therein.

In Chez there was an application to prohibit the cancellation of some municipal bonds of the State Insurance Fund. Justice Wolfe initially stated that this case would not be controlling regarding other governmental entities because of the nature of the Fund. The Court stated:

It was rather presumed that the decision in this case would be guidance to all officers, boards, departments and commissions . . . as will be seen by what is later set out hereunder, this decision rests on special facts and can form no such general rule of guidance.

The Court then went on to state that the constitutional prohibition was not controlling because the nature of the Fund is such that an obligation owing to it is not an obligation or liability of the state. Also see Gronning v. Smart, supra, that holds that the State Insurance Fund is a trust fund and may not be considered an arm of the state.

The Respondent feels it appropriate to point out that if the Attorney General prevailed in this instance that an intolerable condition would exist. The Attorney General would be representing both sides of a conflict, one involving an employer's trust fund, and one a state agency, i.e., the Industrial Commission and/or the Special Fund. Such a conflict of interest would at the very minimum be ill advised. See Hern v. Utah Liquor Control Commission, 549 P.2d 242 (Utah 1976).

POINT II.

TO ALLOW THE ATTORNEY GENERAL TO REPRESENT THE STATE INSURANCE FUND WOULD BE A VIOLATION OF THE STATE INSURANCE FUND'S RIGHT TO EQUAL PROTECTION UNDER THE LAW AS GUARANTEED BY ARTICLE I, SECTION 2 OF THE UTAH CONSTITUTION, AND AMENDMENT 14 OF THE CONSTITUTION OF THE UNITED STATES.

The cases cited previously and discussed more fully herein have struck down unconstitutional acts of the legislature that would treat the State Insurance Fund as a governmental entity. In construing the applicable provisions of the State Constitution concerning the Fund's legal representation, one must consider Article I, Section 2, of the Constitution of Utah. For example, in State Tax Commission v. Department of Finance, 576 P.2d 1297, (Utah 1978), the State Tax Commission brought an action for enforcement of a special tax imposed solely upon the State Insurance Fund. The District Court entered its summary judgment declaring the tax to be unconstitutional and the Tax Commission appealed. A unanimous Supreme Court sustained the lower court with the following language:

To assure the availability of funds when injury occurs, employers are required by law to secure compensation through one of three ways: (1) the State Insurance Fund; (2) private insurance carriers; or (3) self-insurance. Participation in the State Insurance Fund is therefore voluntary, and although publicly administered, it is a private trust fund to be used to meet liabilities of various employers when an employee is entitled to compensation. . .

(t)he State Insurance Fund is required to pay a tax of 1 percent of the total premiums it receives. This tax law was passed in 1971 and only to the State Insurance Fund.

The thrust of the Tax Commission's claim is that the Fund is different and therefore may be treated differently from other insurers. Equal protection protects against discrimination within a class. The legislature has considerable discretion in the designation of classifications but the court must determine whether such classifications operate equally on all persons similarly situated. The State Insurance Fund has been singled out from among a larger class of insurers to pay a tax imposed upon no one else which must be considered to be arbitrary and constitutionally prohibited. Examples of the similarities between the Fund and others within its class include the following. The assets of the Fund exist only to cover the identical obligations covered by private insurers. The Fund has the same administrative costs as private insurers: establishment of premium and hazard rates, procedures for analyzing claims and making disbursements, reinsurance considerations, Fund investment decisions, collection procedures, legal fees and policy issuance. These administrative costs, and other expenses are deducted from the Fund by legislative appropriations of Fund money. The Fund has the same rights to sue and be sued and make contracts that a private insurer has. The Fund enjoys no immunities not provided to private insurers.
(Emphasis added) (Citations omitted)

Also see Gronning v. Smart, supra, wherein the legislature attempted to appropriate funds from the State Insurance Fund for the use of a state agency; that is, the Industrial Commission. The Court held that this was improper because of the nature of the Fund and specifically held that the State Insurance Fund is not an arm of the state requiring it to provide for certain safety measures.

Therefore, in considering the constitutionality of 35-1-1, one should recognize that the State Insurance Fund is entitled to Equal Protection under the law, a proposition

reaffirmed by this Court. A conclusion that the State Insurance Fund is not entitled to its inherent and statutory right to its own counsel creates a distinction between the State Insurance Fund and other insurance carriers in the class of worker's compensation insurance provides that is not constitutionally supportable. Expressed in basic terms, the employers who have contributed to the trust fund would not be given the same right to counsel independent of the conflicts of interest inherent in having the Attorney General's office representing both sides of issues on both the administrative and appellate court levels in workman's compensation cases.

CONCLUSION

The State Insurance Fund has specific statutory authority to be represented by private attorneys. The Fund is uniquely not a governmental entity but rather a privately owned fund not subject to constitutional provisions that by definition apply only to governmental entities. It would be a denial of due process and equal protection to have the Attorney General act mandatorially as counsel for the Fund.

It is therefore submitted to the Court that Appellant's case is without merit and the decision of the court below should be sustained.

Respectfully submitted this ____ day of July, 1980.

BLACK & MOORE

By _____
ROBERT D. MOORE

By JAMES R. BLACK

Attorneys for Respondent Utah State
Insurance Fund