

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 Industrial Commission

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 B. HANSEN, BERNARD M. TANNER, WILLIAM GIBBS; Attorneys for Appellant
Robert B. Hansen ROBERT B. HANSEN; Attorneys for Respondent

Recommended Citation

Brief of Respondent, *Hansen v. Utah State Retirement Board*, No. 16851 (Utah Supreme Court, 1980).
https://digitalcommons.law.byu.edu/uofu_sc2/2095

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.

IN THE SUPREME COURT
OF THE STATE OF UTAH

ROBERT B. HANSEN,
Attorney General,

Plaintiff-
Appellant,

-vs-

UTAH STATE RETIRE-
MENT BOARD, et al.,

Defendants-
Respondents.

:
:
:
:
:
:
:
:
:

Case Nos. 16851
16714
16560

BRIEF OF RESPONDENT
UTAH STATE INDUSTRIAL COMMISSION

Appeal from the Decisions of the Third Judicial
District Court for Salt Lake County, State of Utah
The Honorable Christine M. Durham, and
The Honorable Homer F. Wilkinson

ROBERT B. HANSEN
Attorney General

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

ROBERT B. HANSEN
Attorney General

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

FILE

AUG 28 1980

TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE.	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL.	2
STATEMENT OF FACTS	2
ARGUMENT:	
POINT I.	3
CONCLUSION	4

TABLE OF AUTHORITIES

Cases Cited:

<u>Hansen v. Legal Services Comm.</u>	
19 Utah 2d 231, 429 P.2d 979 ()	3

Statutes and Constitutions Cited:

§ 35-1-32 Utah Code Ann., 1953, as amended	2
§ 35-4-9 Utah Code Ann., 1953, as amended	4
§ 35-4-11 Utah Code Ann., 1953, as amended	2,4
§ 67-5-5 Utah Code Ann., 1953, as amended	4
Art. VII § 18 Utah State Constitution.	3
Art. XXIV § 12 Utah State Constitution.	3

IN THE SUPREME COURT
OF THE STATE OF UTAH

ROBERT B. HANSEN,
Attorney General,

:

Plaintiff-Appellant,

:

Case Nos. 16851
16714
16560

:

-v-

UTAH STATE INDUSTRIAL
COMMISSION, et al.,

:

:

Defendants-Respondents,

:

BRIEF OF RESPONDENT
UTAH STATE INDUSTRIAL COMMISSION

STATEMENT OF NATURE OF CASE

This is a lawsuit filed by the Attorney General of the State of Utah against various state agencies including the Utah State Industrial Commission claiming that each of these entities has retained legal counsel and that such action improperly usurps the constitutional and statutory duties and functions of the Attorney General.

DISPOSITION IN LOWER COURT

On four different occasions, two trial court judges (Judge Christine Durham and Judge Homer F. Wilkinson) granted summary

judgments to the defendants. Plaintiff appeals from these four orders. The appeals have been consolidated.

RELIEF SOUGHT ON APPEAL

The Utah State Industrial Commission seeks affirmance of Judge Homer F. Wilkinson's Order of December 31, 1979, granting summary judgment.

FACTS

The Utah Industrial Commission, by legislative enactment, has various duties and responsibilities involving labor. The Appellant has cited two statutes which empower the Commission to appoint legal counsel. The first is 35-1-32 U.C.A. 1953 which reads:

The commission may with the approval of the governor appoint a representative to act as special prosecutor or to defend in any suit, action, proceeding, investigation, hearing or trial relating to matters within or concerning its jurisdiction.

In recent years the only occasion when this provision was used was when an attorney, approved by the governor, was retained to handle an employee discrimination suit against the commission. The Appellant, Attorney General, concurred in that action.

The other statute cited by Appellant relates to the Employment Security Act which operates entirely without state funds and is largely controlled by federal law. The Employment Security Act is, by statute, 35-4-11 U.C.A. 1953, under the administration of the Industrial Commission. Section (d) of that section reads in part:

(d) The commission shall appoint on a nonpartisan merit basis, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other personnel as may be necessary in the performance of its duties.

ARGUMENT

POINT I.

ARTICLE VII § 18 OF THE UTAH CONSTITUTION ALLOWS LEGAL COUNSEL OTHER THAN ATTORNEY GENERAL FOR STATE AGENCIES.

The wording of the constitutional provision, Art. VII Sec. 18, "The Attorney General shall be the legal advisor of the state officer, and shall perform such other duties as may be provided by law," cannot possibly be broadened to mean that the Attorney General, and only the Attorney General (and his office) is to be the legal advisor to any state agency or quasi-state agency.

If the framers of our constitution had the desire to bestow such encompassing duties upon the Attorney General it would have been so easy to have accomplished that purpose. But they didn't. The constitution provides specifically for the Attorney General to be the legal advisor of the state officers. The state officers to the framers of the constitution meant only those contained in Art. XXIV, Sec. 12. See Hansen v. Legal Services Comm. 19 Ut.2d 231, 429 P.2d 979.

It is admitted that for many purposes the term "state officers" now include many in the operation of state government not included

in the definition of the Constitution. And it is therefore important that the framers of the Constitution wisely provided that that the Attorney General "shall perform such other duties as may be proscribed by law."

The legislature, with the blessing of the Constitution, did pass laws detailing such other duties of the Attorney General. One such law which gives broad powers to the Attorney General is 67-5-5 U.C.A. 1953, which states: Except where specifically authorized by the Utah Constitution, or statutes, no agency shall hire legal counsel and the Attorney General alone shall have the sole right to hire legal counsel for each such agency." This statute specifically provides for the legislature to pass laws which provide for a state agency, not one of the identified state officers of the constitution, to have legal counsel aside from the Attorney General, if so provided by law.

Therefore sections 35-1-32 and 35-4-11(d) are valid legislative enactments under the Utah Constitution.

The validity of the appointment of legal counsel under the Employment Security Act, 35-4-1(d) supra, is additionally valid for the purpose expressed in the briefs of the other Respondents pertaining to trust funds. No state funds are used by or in the administration of the Act (See 35-4-9 U.C.A. 1953)

CONCLUSION

The Industrial Commission has under two separate statutes the authority to be represented by counsel other than the Attorney

General. The statutes are in conformance with the constitutional and statutory power of the Attorney General.

The trial court's order dismissing Appellant's Complaint should be affirmed.

DATED this 26 day of August, 1980.



FRANK V. NELSON
Assistant Attorney General
Attorney for the
Utah State Industrial Commission

M A I L I N G C E R T I F I C A T E

A copy of the foregoing brief was mailed, postage prepaid, this 28 day of August, 1980, to the following:

William T. Evans
Assistant Attorney General
25 South Walcott
Salt Lake City, Utah 84112

Barney Tanner
Assistant Attorney General
Attorney for Plaintiff
236 State Capitol
Salt Lake City, Utah 84114

Mark A. Madsen
Assistant Attorney General
Attorney for Utah Retirement Board
540 East 200 South
Salt Lake City, Utah 84102

Robert Moore, Esq.
Attorney for Utah State Insurance Fund
10 Broadway Building, #400
Salt Lake City, Utah 84101

Merlin Lybbert, Esq.
Attorney for U of U Medical Center Trust Fund
701 Continental Bank Building
Salt Lake City, Utah 84101

