

1968

Ludvig v. Mikkelsen, Marie Mikkelsen and Charles  
L. Johnson v. Utah State Tax Commission and  
Weber County Board of Equalization, William S.  
Moyes, Chairman : Brief of Appellants

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IN THE SUPREME COURT OF THE STATE OF UTAH

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LUDVIG V. MIKKELSEN, :  
MARIE MIKKELSEN and :  
CHARLES L. JOHNSON, :

Plaintiffs-Appellants : Case No.

VS :  
: 11,040

UTAH STATE TAX COMMISSION and  
WEBER COUNTY BOARD OF EQUALIZATION, :  
WILLIAM S. MOYES, Chairman. :

Defendants-Respondents.

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BRIEF OF APPELLANTS

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APPEAL FROM JUDGMENTS OF THE SECOND JUDICIAL DISTRICT  
COURT FOR WEBER COUNTY, HONORABLE JOHN F. WAHLQUIST  
PRESIDING.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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LUDVIG V. MIKKELSEN, :  
MARIE MIKKELSEN and :  
CHARLES L. JOHNSON for themselves and :  
for and on behalf of all others simi- :  
larly situated. :

Plaintiffs and :  
Appellants, :

VS :

UTAH STATE TAX COMMISSION and :  
WEBER COUNTY BOARD OF EQUALIZATION, :  
WILLIAM S. MOYES, Chairman, :

Defendants and :  
Respondents. :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF CASE

The appellants herein, pursuant to Section 59-7-2 UCA 1953, made application for a Real Property Tax Abatement. When County Board of Equalization indicated that for the year 1967 that Senate Bill 30, passed by the 1967 Utah Legislature, was to be the law applied for Tax Abatements rather than the prior section 59-7-2 UCA 1953, the appellants herein brought a petition for permanent injunction and restraining order, together with this class action for a declaratory judgment to have Senate Bill 30 declared unconstitutional; or, in the alternative, that the court clarify Senate Bill 30 in its application to the appellants. The State Tax Commission moved to have Senate Bill 30 sustained in its present form, and the

Weber County Board of Equalization requested clarification of Senate Bill 30.

DISPOSITION IN THE LOWER COURT

The case was tried to the court, Honorable John F. Wahlquist presiding, on the 19th day of June, 1967, at which hearing the court sustained the constitutionality of Senate Bill 30 (59-7-2 UCA 1967), dissolved the temporary restraining order, and issued judicial instructions for clarification of the statute. The Court signed its Finding of Facts and Conclusions of Law on September 23, 1967. The Court signed its decree on September 23, 1967, which decree was entered on the records of the County Clerk on September 27, 1967.

RELIEF SOUGHT ON APPEAL

The appellants herein submit that the decision of the District Court should be reversed and Senate Bill 30 (59-7-2 UCA 1967) should be declared unconstitutional, or that portions thereof should be declared unconstitutional; or, in the alternative, that the statute should be judicially determined to be applied to all persons of the class contained therein and the County Board of Equalization ordered to grant to all persons who qualify, without any arbitrary discretion.

STATEMENT OF FACTS

The appellants herein over the age of 65 years made application to the Weber County Board of Equalization for tax abatement pursuant to Section 59-7-2 UCA 1953. The County Board of Equalization, under instructions of the Utah State Tax Commission, applied 59-7-2 UCA 1953 as amended by the laws of the State of Utah 1967, which law did not become effective until May 9, 1967, even though the new law by its own terms required all applications for tax abatement to be filed with the County Board of Equalization prior to May 1, of each year. The appellants herein obtained a temporary restraining order, which temporary restraining order was dissolved at the June 19, 1967 hearing by Honorable John F. Wahlquist. The appellants Ludvig V. Mikkelsen receive as their sole means of sustenance the sum of \$1,656.00 per year, which equals \$138.00 per month. The sum of \$138.00 is the maximum total amount to be paid to two persons under the regulations of the Utah State Welfare Department. Mr. and Mrs. Mikkelsen receive \$90.63 from the Social Security Administration per month and \$47.37 per month from the Weber County Public Welfare Department, thus producing the sum

of \$138.00 per month.

Appellant Charles L. Johnson for the year 1966 received the sum of \$1,020.00, being computed at the rate of \$86.00 per month, the maximum living allowance prescribed by the regulations of the Utah State Department of Public Welfare. The \$86.00 monthly payment is composed of \$49.90 from Weber County Public Welfare, and the balance of \$36.10 comes from the Social Security Administration.

Section 59-7-2 as amended by the 1967 Legislature provides in substance that tax abatements may be made only to persons over the age of 65 years, except in cases of extreme hardship and if such person is totally disabled, and whose income is less than \$1,500.00 per year and whose property, where they reside, has a market or appraised value of less than \$10,000.00. Appellant Johnson has income of less than \$1,500 per year but he receives a major source of his income from Utah Public Welfare Grants. The appellants Mikkelsens have income in excess of \$1,500.00 per year their income is computed jointly, as was required by the Utah State Tax Commission's regulations in determining whether a person had income in excess of \$1,500.00 per year.



The Trial Court made specific finding that Mr. Johnson did not qualify for tax abatement, and that the matter of Mr. and Mrs. Mikkelsen should be referred back to Weber County Board of Equalization, even though the court specifically found all appellants to be indigent.

The Weber County Board of Equalization, after the court's bench ruling of June 19, 1967, proceeded to deny any tax abatement, not only to appellant Johnson, but also to appellants Mikkelsen even though the court specifically found that income of two persons should be apportioned in determining the \$1,500.00 per person limit on income.

Appellants Mikkelsen appealed the denial to the Utah State Tax Commission, which appeal was heard on August 23, 1967, at which hearing it was ruled that a recommendation be forwarded to Weber County Board of Equalization granting the tax abatement. This has never been accomplished by the Utah State Tax Commission.

### SUMMARY OF ARGUMENTS

#### POINT I

SENATE BILL 30'S CLASSIFICATION OF INDIVIDUALS ON THE BASIS OF WHETHER THEY RECEIVE A MAJOR PORTION OF THEIR INCOME FROM WELFARE GRANTS OR WHETHER THEY HAVE AN INCOME OF UNDER \$1,500.00 A YEAR IS ARBITRARY AND IN VIOLATION OF

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT  
AND THE CONSTITUTION OF THE STATE OF UTAH.

POINT II

SENATE BILL NO. 30 BY ITS TERMS IS INAPPLICABLE TO  
THE YEAR 1967.

POINT III

THE WEBER COUNTY BOARD OF EQUALIZATION REFUSED TO  
COMPLY WITH THE ORDER OF THE DISTRICT COURT IN APPORTIONING  
INCOME OF APPELLANTS LUDVIG V. MIKKELSEN AND MARIE MIKKELSEN  
BUT RATHER APPLIED THE STANDARDS OF THE STATE TAX COMMISSION  
REQUIRING ALL INCOME OF ALL PERSONS BE USED TO DETERMINE  
ELIGIBILITY FOR ABATEMENT

ARGUMENT

POINT I

SENATE BILL 30'S CLASSIFICATION OF INDIVIDUALS ON  
THE BASIS OF WHETHER THEY RECEIVE A MAJOR PORTION OF THEIR  
INCOME FROM WELFARE GRANTS OR WHETHER THEY HAVE AN INCOME  
OF UNDER \$1,500.00 A YEAR IS ARBITRARY AND IN VIOLATION OF  
THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT  
AND THE CONSTITUTION OF THE STATE OF UTAH.

Senate Bill 30 was passed as an Amendment to section  
59-7-2 Utah Code Ann 1953 and reads in a pertinent part as  
follows:

(The County Board of Equalization) may remit or abate taxes of any indigent person to an amount not exceeding \$40.00 but not more than 50% of the total tax assessed for the current year, whichever sum is less.

This Bill limits the class to which the abatement is

available by the following language:

Any person or persons under age 65 years, or whose principal income is derived from Utah public welfare grants, shall not be eligible for relief under this act, unless the county board of Equalization and Extreme Hardship might prevail should such grants not be made and such person or persons be totally disabled. (Emphasis supplied)

The Bill further limits the class who may claim relief

under the act by defining an indigent person as,

Any person whose total yearly income is less than \$1,500.00 and whose residence in which he or she resides for not less than ten months of each year for which he or she requests a property tax exemption has a market or appraised value of not more than \$10,000.00. (Emphasis supplied)

The Petitioners in the case at bar assert that the classification of individuals by the State Legislature on the basis of whether they receive a major portion of their income from public welfare grants or have an income of under \$1,500.00 is arbitrary and violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 24 of the Utah Constitution.

It has been repeatedly held that the guarantee of the equal protection of laws means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances, in their lives, liberty and property and in pursuit of happiness. Truax v. Corrigan 257 U.S. 312, 66 L. Ed. 254, 42 S. Ct. 124.

In Senate Bill No. 30 persons who receive a major part of their income from public welfare grants are automatically excluded from relief under the bill even though they are in the same monetary position as a person who receives any part of his income from public moneys, but is still on welfare.

In the case at bar, petitioners Charles Johnson testified that he had a yearly income of less than \$1,500.00. The major part of which came from public welfare grants (Tp. 29). Because of the fact that he received a major portion of his income in the form of grants from public welfare he was denied relief under the act.

Although the income of the petitioner is below that which the Utah legislature has deemed to be the indigent level he is precluded from relief under the act in circumstances in which this act was designed to provide relief merely because of the fact that he must rely on public

welfare for a major part of his sustenance.

The Supreme Court of the United States has held that the Equal Protection Clause requires that in defining a class subject to legislation, the distinctions that are drawn must have some relevance to the purpose for which the classification is made. Rinaldi v. Yeager, 384 U.S. 305, 16 L. Ed. 2d 377, 86 S. Ct. 1497 (1966); Baxstrom v. Herold, 383 U.S. 107, 15 L. Ed. 2d 620, 86 S. Ct. 760 (1966).

In the case at bar the obvious objective of the act is to provide financial relief for persons over 65 or for persons who are totally disabled, by way of an abatement of taxes assessed against property owned by these individuals.

In applying the test as set down in Rinaldi and Baxstrom, Supra, the author is unable to find any relevance between the purpose of the legislation, which is to provide relief for the aged in the low income brackets, and the exclusion of persons in these same income brackets who receive a major portion of their income from public welfare grants.

An individual who receives \$996.00 a year in income primarily from welfare, as does petitioner Johnson (Tp. 28), is in no better financial position than any other person receiving the same amount of income from other sources.

Both are destitute and the petitioner is just as much a member of the poverty class as is another who receives like amount from Social Security or from other sources.

The fact that the State is already contributing in a major way to the income of the petitioner is not a lawful basis for classification of individuals for Relief under Senate Bill 30. Several courts have held in reference to welfare laws,

That protection of the public purse is not a permissible basis under the equal protection clause for differentiating between persons who otherwise possessed the same status. Green v. Department of Public 270 F. Supp. 173 (1967); Smith v. Reynolds 277 F. Supp. 65 (1967).

The petitioner asserts that by limiting relief under the act to these persons who have an income of less than \$1,500.00 the legislature has made an unreasonable classification in violation of the Equal Protection Clause of the XIV Amendment and Article I, Section 7 of the Utah Constitution.

The Supreme Court of the United States in addressing itself to this question held,

. . . (That) the Equal Protection Clause requires more of a State Law than non-discriminatory application within the class it establishes, it also imposes a requirement of some rationality in the nature of the class singled out. Rinaldi v. Yeager 384 U.S. 305, 308, 16 L. Ed. 2d 577, 86 S. Ct. 1497 (1966).

The petitioners assert that there is no rational basis for the classification of individuals for relief under the act based on whether they have an income of less than \$1,500 per year. Petitioners Mikkelson's have an income of \$1,656.00 which they receive in the form of Social Security and public welfare grants.

Mr. Roylance, director of Public Welfare for Weber and Morgan Counties testified (Tp. 57) that the State Legislature through the Public Assistance Act made the determination that a family of two with an annual income of under \$1,656.00 was considered destitute and eligible for public welfare assistance.

Mr. Erikson, the field officer for the Dept. of Agriculture in the Consumer Marketing testified that the State of Utah in conjunction with the federal Government had determined that a family of two with an annual income of less than \$1,848.00 was considered as having an income below sustenance level and therefore qualified for the food stamp program (Tp. 58).

The petitioner asserts that in light of the Public Assistance Act and the state federal official determinations referred to above, the legislature had no reasonable basis

for establishing a \$1,500.00 income level limit on individuals eligible for benefits under Senate Bill 30, and that this classification is arbitrary with no rational basis in fact or law. As a result Senate Bill No. 30 is unconstitutional.

Art. 1, Section 24, Constitution of Utah, specifically provides that, "All laws of a general nature shall have uniform application." The Court has held,

(The) objects and purposes of law present touchstones for determining proper and improper classifications. State v. Mason 94 U. 501, 78 P2 920, 117 A.L.R. 330.

The avowed purpose of this act is to provide tax relief to indigent persons. The legislature after creating a broad group then attempts to subclassify various segments of the general group. It is unconstitutional to create two separate classes of welfare recipients based solely upon the source from which their money is received. The Act also creates separate classes of indigents by the unreasonable subclassification of persons who receive under \$1,500.00 and those who receive over \$1,500.00 but who are still none the less indigent. The Trial Court in its Findings of Fact and Conclusions of Law specifically found the Plaintiff to "be indeed indigent."



The Statute by its terms creates two classes of indigent persons, one who receives welfare, and one who receives other public funds for assistance such as Social Security, World War I widow allowance or other Veteran Benefits.

## POINT II

SENATE BILL NO. 30 BY ITS TERMS IS INAPPLICABLE TO THE YEAR 1967.

The County Board of Commissioners testified that they had denied applications for relief under Senate Bill No. 30 (Tp. 33, 41) even though it provided that persons applying for relief thereunder must make application before May 1, of the year for which the property tax abatement was sought. Since the Bill did not become effective until May 9 of 1967 (Tp. 20), it was impossible for proper legal application to be filed with the commissioners.

The petitioners assert that Senate Bill No. 30 was not in force in the year 1967 because its effective date prevented the filing of the application for relief as specifically required by the Bill. Consequently all applications denied under Senate Bill No. 30 are invalid and must be reconsidered under Section 59-7-2 of the Utah Code Annotated (1953), which was in force at that time.

## POINT III

THE WEBER COUNTY BOARD OF EQUALIZATION REFUSED TO COMPLY WITH THE ORDER OF THE DISTRICT COURT IN APPORTIONING INCOME OF APPELLANTS LUDVIG V. MIKKELSEN AND MARIE MIKKELSEN BUT RATHER APPLIED THE STANDARDS OF THE STATE TAX COMMISSION REQUIRING ALL INCOME OF ALL PERSONS BE USED TO DETERMINE ELIGIBILITY FOR ABATEMENT.

The District Court in its Finding of Fact and Conclusion of Law specifically found that the \$1,500.00 income limitation applied to an individual and where property was jointly owned the income must be apportioned. (Findings of Fact and Conclusions of Law para. 3b) The Decree then ordered the appellants Ludvig V. Mikkelsen and Marie Mikkelsen then be referred back to the Weber County Board of Equalization, which board then denied the abatement application.

The appellants, Mikkelsens, qualified in all categories except for the money limit. The Mikkelsen's were over 65 years of age; the home of the appellants Mikkelsen's was less than \$10,000.00 in value; the majority of their income was not received from Public Welfare; appellants resided in Weber County for at least 10 months of the preceding calendar year. (State Tax Comm. Affidavit)

The Weber County Board of Equalization followed the regulation of the State Tax Commission and denied the Tax Abatement for appellants Mikkelsens, which regulations are contrary to law and court order.

### CONCLUSION

The petitioners assert that based on the above points Senate Bill No. 30 is unconstitutional in that it violates the Equal Protection Clause of the Fourteenth Amendment and Article 1, Section 7 and Article 1, Section 24 of the Utah Constitution or in the alternative that it, by its terms was inapplicable to the year 1967 and therefore decisions made thereunder must be set aside and redetermined under 59-7-2 Utah Code Annotative (1963).

In the event the court fails to determine the law unconstitutional the Weber County Board of Adjustment should be ordered to grant to the appellants herein Tax Abatement for the year 1966 and specifically that appellants Mikkelsen's be granted their statutory abatement and the State Tax Commission be ordered to conform its Tax Regulations to the law.