

1961

Mary Amelia Wood et al v. Walter L. Budge : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

MARY AMELIA WOOD, HAZEL
STEVENS, LLOYD WARNER —
Guardian at Litem for Nancy Louise
Ovard, WAYNE JOHN STERLING
and DEAN J. HADFIELD,

Plaintiffs and Respondents,

vs.

WALTER L. BUDGE, Attorney
General of Utah,

Defendant and Appellant.

FILED

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Clerk, Supreme Court, Utah

No.
9541

BRIEF OF RESPONDENTS

C. N. OTTOSEN

Attorney for May Amelia Wood

EDWARD F. RICHARDS

Attorney for Hazel Stevens

QUENTIN L. R. ALSTON

*Attorney for Lloyd Warner—
Guardian for Nancy Louise Ovard*

JOHN L. BLACK

Attorney for Wayne John Sterling

J. LAMBERT GIBSON

Attorney for Dean J. Hadfield

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IN THE SUPREME COURT of the STATE OF UTAH

MARY AMELIA WOOD, HAZEL
STEVENS, LLOYD WARNER —
Guardian at Litem for Nancy Louise
Ovard, WAYNE JOHN STERLING
and DEAN J. HADFIELD,

Plaintiffs and Respondents,

vs.

WALTER L. BUDGE, Attorney
General of Utah,

Defendant and Appellant.

9541
No.

BRIEF OF RESPONDENTS

NATURE OF THE CASE

This is an appeal by the Attorney General, Walter L. Budge, from the judgment and mandate of the District Court of Salt Lake County ordering him to pay certain moneys to plaintiffs and respondents.

DISPOSITION OF THE CASE

The District Court of Salt Lake County had granted respondents' petition for writ of mandamus and issued a writ compelling the defendant and appellant, Walter L. Budge, Attorney General of Utah, to pay them the sums appropriated for their benefit by the Utah Legislature.

RELIEF SOUGHT

That the judgment and mandate of the District Court be affirmed.

STATEMENT OF FACTS

The statement of facts set forth by appellant is substantially correct. However, respondents disagree with certain things therein set forth and feel that certain other material facts are omitted.

Appellant asserts throughout his brief that the claims of plaintiffs and respondents were denied by the Board of Examiners. This is not so. The fact is that the Board of Examiners, after it examined each claim, merely transmitted it to the Legislature with the recommendation that the claim be denied. R. 4, 5, 6, 7, 8, 40, Finding of Fact No. 5, and, Exhibit D-2.

It is important also for this Court to consider the following additional facts clearly evidenced in the record but which were not set forth in the Statement of Facts of appellant: That no part of these claims had ever been paid by the State (R. 39); that the State of Utah is immune from suit (R. 39); and, that the Attorney General did issue an opinion concerning the

applicability of Article VII, Section 13 of the Utah Constitution, which fact, however, has no materiality or relevancy to this appeal.

STATEMENT OF POINTS

POINT I

THE ONLY PROPER AND ADEQUATE REMEDY AVAILABLE TO PLAINTIFFS AND RESPONDENTS WAS MANDAMUS.

POINT II

NO REASONABLE INTERPRETATION OF THE CONSTITUTIONAL PROVISION INVOLVED JUSTIFIED THE ATTORNEY GENERAL'S REFUSAL TO PAY THE CLAIMS OF PLAINTIFFS AND RESPONDENTS.

POINT III

THE CONSTITUTIONAL POWER OF THE BOARD OF EXAMINERS TO "EXAMINE ALL CLAIMS" IS A PREREQUISITE TO BUT SUBORDINATE TO THE SOVEREIGN POWER OF THE LEGISLATURE TO "PASS UPON" CLAIMS.

POINT IV

LEGISLATIVE ENACTMENTS APPROPRIATING MONEY IN A GENERAL APPROPRIATIONS ACT TO SATISFY CLAIMS DOES NOT CONSTITUTE THE EN-

ACTMENT OF A PRIVATE LAW GRANTING ANY PRIVILEGE, IMMUNITY OR FRANCHISE TO AN INDIVIDUAL, ASSOCIATION OR CORPORATION AS PROHIBITED BY THE CONSTITUTION.

ARGUMENT

POINT I

THE ONLY PROPER AND ADEQUATE REMEDY AVAILABLE TO PLAINTIFFS AND RESPONDENTS WAS MANDAMUS.

The Appropriation Act of 1961, H.B. No. 282, Chapter 185, Laws of Utah, 1961, appropriated money to the Attorney General for the benefit of plaintiffs and respondents and directed the Attorney General to pay them upon their signing releases prepared by the Attorney General. Plaintiffs and respondents offered to sign such releases. The only action required of the Attorney General then was the purely ministerial act of handing the vouchers to them. (See Petition for Writ of Mandamus, paragraphs 5 and 8, R. 2; Answer, paragraph 1, R. 16; Findings of Fact and Conclusions of Law, paragraphs 6 and 9, R. 40).

The Utah Rules of Civil Procedure clearly indicate that mandamus was the appropriate remedy in such a situation by providing in part in Rule 65B (b) (3) as follows:

“(b) Grounds for Relief. Appropriate relief may be granted:

* * * *

- (3) Where the relief sought is to compel any * * * * person to perform an act which the law specially enjoins as a duty resulting from an office; or to compel the admission of a party to the use and enjoyment of a right * * to which he is entitled and from which he is unlawfully excluded by such * * * person; * * .”

The only thing which was required of the Attorney General was a mere ministerial act, and plaintiffs and respondents, by the Appropriations Act, were clearly entitled as of right to receive payment but were unlawfully excluded therefrom by the Attorney General.

It is provided in 55 C.J.S. 206 that:

“ * * * Mandamus will lie to compel the attorney general to perform a ministerial duty, * * *. In addition, it has been held that mandamus will lie in cases where there is no other adequate remedy.”

See also 34 Am. Jur. 922 providing in part that:

“ * * * If the act sought to be coerced is purely ministerial, the attorney general having no discretion or right to exercise his judgment in the matter, the writ may issue against him * * .”

In his brief the Attorney General asserts at page 7 that “there is a serious question * * * whether the Attorney General has the right to pay claims * * * denied by the Board of Examiners and subsequently approved by the Legislature,” which question “should be resolved by the courts” and “this is the only reason why he has refused to pay the claims.”

In the first place, the Attorney General is wrong when he asserts that the claims of plaintiffs and respondents were

denied by the Board of Examiners. (See Statement of Facts in Respondents' brief). In the second place, if the Attorney General is sincere, why did he force plaintiffs and respondents to bear the trouble and expense of bringing an action against him? He could have brought some other remedy himself. Since he claims to be interested only in clearing up the legal questions involved, why does he question the propriety of a mandamus proceeding which will effectively determine the legal questions involved?

POINT II

NO REASONABLE INTERPRETATION OF THE CONSTITUTIONAL PROVISION INVOLVED JUSTIFIED THE ATTORNEY GENERAL'S REFUSAL TO PAY THE CLAIMS OF PLAINTIFFS AND RESPONDENTS.

In his Points II, III, IV and V the Attorney General asserts that the Utah Constitution vests great power in the Board of Examiners with reference to claims but that these powers are not clearly defined. There is no argument but that the Board of Examiners does have great powers. He then asserts at page 8 that the Constitution creates a Board of Examiners with power "*to examine, consider and act upon claims.*" (Emphasis supplied). Article VII, Section 13 of the Utah Constitution, contrary to what the Attorney General asserts, merely provides in part:

" * * * the Governor, Secretary of State and Attorney-General shall constitute a Board of Examiners, with power *to examine* all claims against the State * * * ."

The Attorney General then endeavors to torture the word "examine" to mean plenary power to dictate. See for example his statement at pages 16 and 17 of his brief where he says: "To allow the Legislature to pass claims which have previously been denied after careful scrutiny by the Board, or to disallow claims which have been allowed by the Board, is not only an interference with executive discretion, which does violence to the whole conception of the separation of powers, but also relegates the Board to a mere auditing body." His contention is that the Legislature has no discretion of its own with reference to claims but can do only what the Board of Examiners dictates. With due deference to the Attorney General we are unable to go along with him that the word "examine" embraces such all inclusive power.

In the case of *Bateman v. Board of Examiners*, 7 Utah 2d 221, 322 P. 2d 381, this Court had occasion to consider the powers of the Board of examiners as contrasted with the powers of the Board of Education. The Court had to decide whether the Board of Examiners or the Board of Education had superior power in controlling salaries and personnel practices of the Board of Education. The decision of the Court was in favor of the Board of Examiners based on the fact that the ultimate power of State government was in the Legislature, which, by statute, had vested the power in question with the Board of Examiners. In the course of its decision this Court said:

" * * Certain it is that one of the functions of Examiners is *to investigate and act as a fact finder and advisor to the legislature on claims of that nature, such as tort claims, or other claims* for damages or

compensation claimed for property, goods or services, by persons who would not otherwise have legal redress available.” (Emphasis supplied).

The Attorney General as chief legal officer of the State of Utah must certainly have been conversant with the fundamental and universally recognized principle involving the powers of state government that any restriction on the powers of the Legislature, which is the ultimate sovereign power of the state, must be strictly construed. As set forth in 16 C.J.S., Constitutional Law ss. 7, page 203:

“A state constitution is construed strictly in favor of the state, and as not divesting it or its government of any of the prerogatives, unless the intent to do so is clearly expressed, and, generally speaking, it should be given a liberal and broad construction in favor of the power of the legislature. So, while a constitutional restriction or limitation is not to be construed so as to nullify it, a provision limiting or restricting legislative power is strictly construed so as not to extend the limitation beyond its terms and so as to favor the power of the legislature.”

As this Court pointed out in the *Bateman v. Board of Examiners* case *supra*, at page 385 of 322 P. 2d:

“ * * the fundamental power of government rests in the legislature.”

It is difficult to conceive of any interpretation of the word “examine” which would support the position of the Attorney General that the constitutional power conferred upon the Board of Examiners to “examine” claims gives the Board of Examiners power to dictate to the Legislature and make the Legislature in essence a “rubber stamp” of the Board of

Examiners. When the word "examine," as used in the Utah Constitution, is interpreted in accordance with generally applicable rules of constitutional construction, no such interpretation would justify the position taken by the Attorney General.

POINT III

THE CONSTITUTIONAL POWER OF THE BOARD OF EXAMINERS TO "EXAMINE ALL CLAIMS" IS A PREREQUISITE TO BUT SUBORDINATE TO THE SOVEREIGN POWER OF THE LEGISLATURE TO "PASS UPON" CLAIMS.

Plaintiffs and respondents are well aware that this Court has held the State may not pay a claim until it has first been submitted to the Board of Examiners. It has never been held, however, that the power of the Board of Examiners to "examine" claims confers upon the Board of Examiners the power to proscribe the action which the Legislature may take in "passing upon" claims.

In the early case of *Thoreson v. State Board of Examiners*, 21 Utah 186, 60 P. 582, aff'g. 19 Utah 18, 57 P. 175, a case where the Legislature had enacted a law directing the Board of Examiners to pay the claims of lessees of state school lands for the money they had paid under void leases, this Court held that the duty of the Board of Examiners to receive, audit and allow the claims under that law was mandatory and not discretionary. It should be particularly noted that the Legislative enactment in the *Thoreson* case directed the Board of Examiners to pay those claims even though they had never

previously been submitted to the Board of Examiners. This Court said in the course of its opinion in 60 P. at page 582:

“ * * * mandamus lies to enforce the performance of that ministerial duty * * * .”

The holdings in *State v. Edwards*, 33 Utah 243, 93 P. 720, and *Uintah State Bank v. Ajax*, 77 Utah 455, 297 P. 434, are only that before a claim against the State may be paid it must first be submitted to the Board of Examiners.

The Supreme Courts of three other states having constitutional provisions similar to that of Utah conferring power upon the Board of Examiners to “examine” claims have interpreted such power as not superior to the power of the Legislature.

The Nevada Constitution, Article V, Section 21, reads exactly like Article VII, Section 13 of the Utah Constitution, providing in part that:

“The governor, secretary of state, and attorney-general shall constitute * * * a board of examiners with power to examine all claims against the state * * * .”

This was the earliest adoption of such a constitutional provision by any state, having been adopted by Nevada in 1864, which pre-dated the adoption of the similar Utah constitutional provision by approximately thirty years. At the time of the adoption of the Utah Constitution, the Supreme Court of Nevada had already had occasion to interpret the above - quoted provision of its Constitution and, since Utah adopted this particular provision of the Nevada Constitution after it had been interpreted by its Supreme Court,

the framers of the Utah Constitution are presumed to have adopted it as it had been interpreted by the Supreme Court of Nevada.

In the case of *State ex rel Ash v. Parkinson*, 5 Nev. 15 (Jan. 1869), the Supreme Court of Nevada held that the institution of the Board of Examiners was not intended as a check on legislative extravagance, but to secure, as a prerequisite to legislative action, an examination of claims against the state. The Supreme Court of Nevada said:

“The defendant contends that this section imposes the action of the Board of Examiners as a jurisdictional pre-requisite to any legislative action upon any real or assumed claim against the State. * * * One premise of the position is, that the section creates the Board of Examiners as a check to legislative extravagance. * * *. The Board of Examiners was intended to subserve an important purpose, but not that one which defendant insists. That it prescribes a prerequisite to legislative action is true * * * and for that reason can apply only to such claims as require legislative action upon them as claims—not creative action but adoptive or rejective action.”

* * * *

“The section, as has been said before, confers no power save that of examination upon the Board, there being no power of adjudication conferred, why not the Legislature, the ultimate tribunal, act without previous examination, that examination being of no binding force? While none of these considerations render it clear that the required pre-requisite of examination is of form rather than of substance, nor that the section, so far as the Legislature is concerned, is directory and not mandatory, yet it is impossible to

decide the contrary without a reasonable doubt. Such doubt existing, under the well-established rule of law, the statute cannot be declared unconstitutional, even as to the point now in question."

In the case of *State ex rel Lewis v. Doren*, 5 Nev. 399, the Supreme Court of Nevada pointed out that the power of the Board of Examiners with reference to the legislature was only advisory and stated:

" * * * when that instrument (the Constitution) empowers the Board of Examiners to examine all claims, he (the Auditor) must exercise his power subject to such examination. *What is this examination?* Confessedly, by the words used, and as admitted by counsel on the argument of this case, *with reference to the Legislature, only advisory.*" (Emphasis supplied).

* * * *

" * * such power is neither idle nor nugatory. It may and probably does materially assist both the Legislature and Controller. It serves to give a fuller airing and ventilation of claims, than might or probably would follow one examination—and to that extent, throws additional restraints and safeguards around the treasury."

* * * *

" * * * the investigation is double, consequently more searching and protective."

With reference to the State of Montana, in the case of *State v. Erickson*, 75 Mont. 429, 244 P. 287, the Montana Legislature made appropriations for specific purposes and the Board of Examiners attempted to scale down these appropriated funds. The Supreme Court of Montana in denying the Board of Examiners this power stated:

“ * * * Such attempted substitution of the judgment of executive officers for that of the legislative body constitutes a usurpation of legislative functions which cannot be permitted under our constitutional division of state government into its three co-ordinate departments * * * .”

See also *Mills v. Stewart*, 76 Mont. 429, 247 P. 262, and, *State ex rel Schneider v. Cunningham*, 39 Mont. 165, 101 P. 962.

Idaho also has a constitutional provision relating to the power of the Board of Examiners like that of Utah. The Attorney General in his brief at page 13 states that the Idaho Supreme Court has in substance ruled that the power of the Board of Examiners is “absolute”, citing the case of *Gem Irrigation District v. Gallet*, 43 Idaho 519, 253 P. 128 (1927). The cited case does not so hold as a careful examination of that case will reveal. In that case the Legislature had made an appropriation and pursuant to that appropriation the Board of Examiners had allowed a claim which the Auditor had refused to pay. A writ of mandamus was brought to force the auditor to pay the claim. The question with which the Supreme Court of Idaho was therefore concerned was not a question of the power of the Board of Examiners versus the Legislature but a question of the power of the Board of Examiners and the Legislature versus the Auditor. In disposing of the matter the Supreme Court of Idaho said:

“The state board of examiners having allowed the claim, it was the auditor’s duty to honor its action, unless he found the act authorizing such allowance invalid * * * .”

The Idaho Supreme Court said also at 253 P. at page 131 in regard to the Legislative Act:

“ * * * the Legislature has determined that the state shall receive its quid pro quo. The state gives nothing; it lends nothing; it recognizes and discharges a moral obligation for past benefits accrued and of necessity further to accrue. The sole object of the act was the creation and maintenance of a public use. Whether or not the Legislature acted wisely is beside the issue. It had the constitutional right to do as it did * * * .”

The case of Rich v. Williams, 81 Idaho 311, 341 P. 2d 432, was a mandamus action against the State Auditor to compel him to pay claims for the construction of a building for which an appropriation had been made by the Legislature. In the course of its decision the Supreme Court of Idaho said:

“We therefore hold that the claims involved in this case must be first presented to the Board of Examiners for examination, as well as all other claims against the Highway Fund, ‘excepting salary or compensation of officers fixed by law,’ as required by Idaho Const. Art. 4, ss. 18 * * * .”

“This does not mean, however, that the Board of Examiners is vested with authority by either the Constitution or statute to override the expressed will of the Legislature. By our Constitution the power to make and determine policy for the government of the State is vested in the Legislature, * * * .

“The Legislature having considered and determined the necessity for the building authorized by Chapter 83, and that its construction is in the interest of the people of the State, and having by the enactment of said Chapter approved the project by appropriating funds for its construction, the Board of Examiners is without

power to veto the act, or reverse the policy thus declared, by refusing to approve valid claims properly presented, in execution thereof. As to such claims, the authority of the Board of Examiners is limited to determining that the claims are in proper form, properly certified to the State Auditor by the Department of Highways, and chargeable against the appropriations."

In the case of Padget v. Williams, Idaho, 350 P. 2d. 353, the Supreme Court of Idaho again had occasion to consider the power of the Board of Examiners with reference to a claim which the Board of Examiners had refused to pay. The Supreme Court ordered the claim paid stating in the course of its opinion:

"In support of his motion made at the meeting of the board of examiners on February 26th, the attorney general cited a number of prior decisions of this court. All of these decisions have been heretofore considered by the court, a number of them being cited in Rich v. Williams, supra, and in this case. All but two of them were cited by the attorney general in the briefs submitted by him in these two cases. *In so far as any of those decisions may be in conflict with the decision in Rich v. Williams or the decision herein, the same are hereby overruled * * * .*" (Emphasis supplied.)

* * * *

"The absurdity of the attorney general's contention, and of any recognition by this court of the authority which he claims for the state board of examiners, become apparent when followed to its logical conclusion * * . In short, the attorney general's contention is reduced to the absurdity of an attempt to confer upon the state board of examiners power to overrule the will of the legislature, and to render nugatory any legislative act providing for the carrying on of any function

of the state government which requires the expenditure of money.

“True, the board of examiners is a constitutional tribunal, with the constitutionally vested power to examine all claims against the state. But, nevertheless, it is also only an arm of the executive department of the state government. *The authority now claimed would make it the supreme authority in state government, with power to control or nullify the acts and functions of all three of the major departments of the state government — executive, legislative, and judicial. Such power, the constitution does not confer upon it. The power to examine all claims against the state does not extend that far * * .*” (Emphasis supplied).

The aforesaid expressions by the Supreme Courts of all the states having constitutional provisions similar to Utah decisively establish that while the Board of Examiners has great powers, its powers are subordinate to those of the Legislature.

This fact is even more clearly so in Utah. The Utah Constitution is unique in that the provisions establishing the Board of Examiners is prefaced with the phrase “until otherwise provided by law.” Respondents respectfully submit that the Utah Legislature can completely abolish the presently constituted Board of Examiners. This being the case, it is utterly ridiculous to contend, as does the Attorney General, that the power of the Board of Examiners with reference to claims is superior to the power of the Legislature.

The Attorney General seeks to make much of the difference in the powers of the Board of Examiners in regard to “unliquidated” claims prior to a policy determination by the

Legislature as opposed to "liquidated" claims. Respondents fail to see how their claim can be more "liquidated" than in the present case where the Legislature, after hearings, made a policy declaration to pay the same and specified the amounts to be paid.

POINT IV

LEGISLATIVE ENACTMENTS APPROPRIATING MONEY IN A GENERAL APPROPRIATIONS ACT TO SATISFY CLAIMS DOES NOT CONSTITUTE THE ENACTMENT OF A PRIVATE LAW GRANTING ANY PRIVILEGE, IMMUNITY OR FRANCHISE TO AN INDIVIDUAL, ASSOCIATION OR CORPORATION AS PROHIBITED BY THE CONSTITUTION.

In his argument under Point VI of his brief at pages 14 and 15 the Attorney General asserts that when the Board of Examiners has denied claims "for the reason that there is no legal or moral obligation against the state," if the Legislature allows those claims, "it grants a special privilege immunity or franchise." May we point out again that the Board of Examiners never denied these claims. The record shows conclusively that the Board of Examiners transmitted each claim to the Legislature merely "with the recommendation that the claim be denied." The further statement by the Attorney General that the claims were denied "for the reason that there is no legal or moral obligation against the state" is purely a figment of his imagination without a scintilla of evidence in the record to support it.

The Attorney General paid many claims similar to those

of respondents which the Board of Examiners had transmitted to the Legislature with its recommendation that they be approved and many which the Board of Examiners had transmitted to the Legislature without any recommendation. The Attorney General apparently would have us believe that when the Board of Examiners transmits a claim to the Legislature without recommendation or with its recommendation that it be approved, a halo of righteousness is thus cast upon such claim, so that it does not bear the stigma of private legislation prohibited by the Constitution. If the Attorney General is not serious in this ridiculous assertion, he is faced with the other alternative of having knowingly paid out state money wrongfully pursuant to the terms of a statute which he contends is invalid as being private legislation.

Respondents submit that the act of the Legislature in making appropriations to satisfy claims against the State in a General Appropriations Act is general and not special or private legislation as prohibited by the Constitution. May it be noted that the General Appropriations Act made provision for payment for all members of that class who had claims against the State and whose claims the Legislature determined as a matter of policy should be paid. In 82 C.J.S. Statutes, Section 163, page 273, it is provided as follows:

“ * * * The test of whether a statute so operating falls within constitutional limitations and inhibitions on the right to enact special or local legislation becomes, ordinarily, the propriety of the classification resorted to by the legislature. Although the class must be legitimately constituted, it is competent for the legislature to classify objects of legislation. It has a large discretion in this respect, and, if the classification is reasonable, or

in accordance with the judicial decisions on the question is natural, and appropriate for the occasion, is single and not a double or reclassification, is not artificial or arbitrary, unjust or capricious, and rests on some substantial difference or situation or circumstances indicating the necessity or propriety of legislation restricted to the class created, it will be upheld."

Only by such legislation can the State meet its moral obligation to pay just claims against it.

In the case of *Mills v. Stewart*, 76 Mont. 429, 247 P. 332, the Montana Legislature had made an appropriation to recompense a student who was injured on bleachers at a State University. In its decision holding the appropriation valid the Supreme Court of Montana said:

"We do not discover any provision of our Constitution which forbids the Legislature to assume liability for injury resulting from the negligence of the State's agent, whether the liability is assumed before or after the injury occurs, and to say that the state may assume such liability but may not discharge it is simply to make the law ridiculous. *United States v. Realty Co.*, 163 U.S. 427, 16 S. Ct. 1120, 41 L. Ed. 215. Common sense is the essence of the law, and that which is not good sense is not good law."

While as pointed out above, the Utah Act was a general and not a special or private Act, the Supreme Court of Hawaii, held that even a private act which the Legislature of Hawaii had enacted making an appropriation to satisfy certain moral claims was not in violation of its organic act prohibiting grants of "special or exclusive privilege." In upholding the validity of that Act the Court said:

"No one questions the right and power of the legis-

lature to hold hearings for the purpose of eliciting facts so as to make a determination of appropriate legislative action. It does no more than that in the enactment of legislation recognizing moral obligations and necessarily so, since it alone possesses the power to grant such relief. * * * the legislature is the keeper of the State's conscience. It alone possesses the means to salve that conscience. * * * .”

See *Koike v. Board of Water Supply, City & Co. of Honolulu, Hawaii*, 352 P. 2d 835.

This Honorable Court has announced that any person having a claim against the State, the settlement of which is not otherwise provided by law, should present the same to the Board of Examiners and to the Legislature. See *Hjorth v. Whittenburg*, 121 Utah 324, 241 P 2d 907; *Campbell Building Co. v. State Road Commission*, 95 Utah 242, 70 P 2d 857; *Wilkinson v. State*, 42 Utah 483, 134 P. 626.

It would be the height of absurdity to recognize that a person having a claim against the State, the settlement of which is not otherwise provided by law, should present his claim to the Board of Examiners and to the Legislature, and, then, to hold that the legislative enactment making provision for the payment of that claim is unconstitutional because it is private legislation.

CONCLUSION

A careful consideration and analysis of the facts in this case and the law applicable thereto demonstrates that the Attorney General arbitrarily, capriciously and without right, refused to pay respondents the sums appropriated to them

by the Legislature as a valid and constitutional exercise of the legislative power. The judgment and mandate of the District Court that the Attorney General pay said claims forthwith should be affirmed.

Respectfully submitted,

C. N. OTTOSEN

Attorney for May Amelia Wood

EDWARD F. RICHARDS

Attorney for Hazel Stevens

QUENTIN L. R. ALSTON

Attorney for Lloyd Warner—

Guardian for Nancy Louise Ovard

JOHN L. BLACK

Attorney for Wayne John Sterling

J. LAMBERT GIBSON

Attorney for Dean J. Hadfield