

1995

Joseph M. Wisden v. Dixie College Parking, Committee : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

UTAH
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IN THE UTAH COURT OF APPEALS

.A10

DOCKET NO. 950791 - CA

JOSEPH M. WISDEN,

Petitioner/Appellant,

- vs -

DIXIE COLLEGE PARKING ,
COMMITTEE

Respondent/Appellee.

Case No. 950791 CA

APPELLANT'S BRIEF

Priority #15

This appeal is taken from the 25 October 1995, ORDER OF
DISMISSAL pursuant to the courts' own motion, the Honorable James L.
Shumate, presiding.

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JURISDICTION

This appeal is taken from the 25 October 1995, ORDER OF DISMISSAL pursuant to the courts' own motion, the Honorable James L. Shumate, presiding.

Pursuant to the ORDER TO DISMISS from the District Court, Petitioner appeals to the Utah Court of Appeals, which has appellate jurisdiction over this matter pursuant to the Utah Judicial Code, U.C.A. §78-2a-3(2)(b)(i), also Article 8 Section 5, Utah State Constitution.

ISSUES PRESENTED ON APPEAL

POINT #1. WAS THE ADMINISTRATIVE FORUM OF THE DIXIE COLLEGE PARKING COMMITTEE AN INFORMAL ADJUDICATIVE PROCEEDING PURSUANT TO THE UTAH ADMINISTRATIVE PROCEDURES ACT?

STANDARD OF REVIEW

The Standard of Review considered for this issue on appeal appears to be an issue of first impression. However, issues regarding due process in the administrative forum as well as appeals to the judicial forum are well established. Appellant is unable to adequately research these matters due to his denial of access to the law library housed at the Washington County Attorney's offices in St. George, Utah. The district court below dismissed this case on its own motion and based on a question involving the district courts' own jurisdiction to hear Petitioner's grievance. Constitutional provisions and statutes which may provide a standard for review include:

1. Utah Constitution, Article I, Section 1
2. Utah Constitution, Article I, Section 24
3. Utah Constitution, Article 8, Section 5, Clause 4
4. Utah Code Annotated, §63-46b-1(1)(a)
5. Utah Code Annotated, §63-46b-1(1)(b)
6. Utah Code Annotated, §63-46b-1(2)(d)
7. Utah Code Annotated, §63-46b-2(1)(a)

POINT #2. WAS THE ADMINISTRATIVE PROCEEDING OF THE DIXIE COLLEGE PARKING COMMITTEE PROVIDED TO THE PETITIONER TO CONTEST THE ISSUANCE OF A PARKING CITATION AGAINST HIM, HIS "COURT OF ORIGINAL JURISDICTION?"

STANDARD OF REVIEW

The Standard of Review considered for this issue on appeal appears to be an issue of first impression. However, issues regarding due process in the administrative forum as well as appeals to the judicial forum are well established. Appellant is unable to adequately research these matters due to his denial of access to the law library housed at the Washington County Attorney's offices in St. George, Utah. The district court below dismissed this case on its own motion and based on a question involving the district courts' own jurisdiction to hear Petitioner's grievance. Constitutional provisions and statutes which may provide a standard for review include:

1. Utah Constitution, Article 8, Section 5, Clause 4

POINT #3. ARE THE PARAMETERS OF THIS CASE CIRCUMSCRIBED WITHIN PETITIONER'S RIGHT OF APPEAL FROM ANY COURT, PURSUANT TO UTAH CONSTITUTION, ARTICLE VIII, SECTION 5, CLAUSE 4?

STANDARD OF REVIEW

The Standard of Review considered for this issue on appeal appears to be an issue of first impression. However, issues regarding due process in the administrative forum as well as appeals to the judicial forum are well established. Appellant is unable to adequately research these matters due to his denial of access to the law library housed at the Washington County Attorney's offices in St. George, Utah. The district court below dismissed this case on its own motion and based on a question involving the district courts' jurisdiction to hear Petitioner's grievance. Constitutional provisions and statutes which may provide a standard for review include:

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own jurisdiction to hear Petitioner's grievance. Constitutional provisions and statutes which may provide a standard for review include:

1. Utah Constitution, Article 8, Section 5, Clause 4

**VERBATIM RECITALS OF CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, RULES AND REGULATIONS**

Utah Constitution, Article 1, Section 1

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Utah Constitution, Article 1, Section 24

All laws of a general nature shall have uniform operation.

Utah Constitution, Article 8, Section 5

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

Utah Code Annotated, §63-46b-1(1)(a) & (b)

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state of Utah and govern:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of all such actions.

Utah Code Annotated, §63-46b-1(2)(d)

(2) The provisions of this chapter do not govern:

(d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

Utah Code Annotated, §63-46b-2(1)(a)

(1) As used in this chapter:

(a) “Adjudicative proceeding” means an agency action or proceeding described in Section 63-46b-1.

Utah Code Annotated, §63-46b-2(1)(b)

(2) As used in this chapter:

(b) “Agency” means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

Utah Code Annotated, §63-46b-14

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that:

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

(i) the administrative remedies are inadequate; or

(ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63-46b-13(3)(b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter.

Utah Code Annotated, §63-46b-15

(1) (a) The district courts shall have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile court shall have jurisdiction over all state agency actions relating to removal or placement decisions regarding children in state custody.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

- (v) a copy of the written agency order from the informal proceeding;
 - (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
 - (vii) a request for relief, specifying the type and extent of relief requested;
 - (viii) a statement of the reasons why the petitioner is entitled to relief.
- (b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.
- (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Utah Code Annotated, §78-2a-3(2)(b)(i)

- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
- (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies;

Utah Code Annotated, §78-3-4(5)

- (5) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

STATEMENT OF THE CASE

Nature of the Case

Petitioner sought Judicial review of the adjudicative agency action of the Respondent Dixie College Parking Committee pursuant to Utah Code Annotated, §78-3-4(5) and the Utah Administrative Procedures Act, U.C.A. §§63-46b-14 & 15.

Course of the Proceedings and Disposition in the Court Below

1. A parking citation was issued against the Petitioner by a Dixie College security officer on 19 April 1995. (**Record, page 2**)

2. After the Dixie College security officer refused to resolve Petitioner's parking citation in Petitioner's favor, Petition proceeded through the administrative forum provided him by Dixie College. **(Record, page 2)**

3. On 17 May 1995, Petitioner was advised by the Dean of Students that the decision of the Dixie College Parking Committee to endorse and uphold the security officer's decision to write the parking citation referred to in ¶¶ #1 & #2 above, was final. **(Record, pages 2 & 5)**

4. On 30 May 1995, Respondent caused to be filed his PETITION FOR JUDICIAL REVIEW OF INFORMAL AGENCY ACTION. **(Record, page 1)**

5. On 30 May 1995, Petitioner also filed an IMPECUNIOUS LITIGANT AFFIDAVIT and a MOTION FOR STAY OF EXECUTION OF IMPOSITION OF FINE PENDING JUDICIAL REVIEW OF AGENCY ACTION. **(Record, pages 11 & 7 respectively)**

6. On 30 May 1995, Respondent was served SUMMONS and the PETITION FOR JUDICIAL REVIEW OF INFORMAL AGENCY ACTION. **(Record, pages 22 & 23)**

7. On 2 June 1995, Petitioner caused to be filed his PETITIONER'S FIRST (1ST) SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS. **(Record, pages 13 & 21)**

8. RETURN OF SERVICE was filed with the Court below on 6 June 1995. **(Record, page 23)**

9. On or about 14 June 1995, Respondent caused to be filed its MOTION TO DISMISS, together with its MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER'S [sic] MOTION TO DISMISS **(Record, pages 24 & 26)**

10. On 26 June 1995, Petitioner filed his OPPOSITION TO RESPONDENT'S MOTION TO DISMISS. (**Record, page 37**)

11. On 26 June 1995, Petitioner also submitted his MOTION FOR STAY OF EXECUTION OF IMPOSITION OF FINE PENDING JUDICIAL REVIEW OF AGENCY ACTION to the Court for decision. (**Record, page 41**)

12. On 29 June 1995, Judge Shumate caused to be filed an ORDER DENYING MOTION FOR STAY OF EXECUTION OF FINE. (**Record, page 46**)

13. On or about 28 June 1995, Respondent caused to be filed its NOTICE TO SUBMIT FOR DECISION, on its MOTION TO DISMISS (**Record, page 44**)

14. On 13 July 1995, Judge Shumate caused to be filed an ORDER denying Respondents' MOTION TO DISMISS (**Record, page 48**)

15. On or about 12 July 1995, Respondent caused to be filed its MOTION FOR STAY FROM RESPONDING TO DISCOVERY PENDING RESPONDENT'S MOTION TO DISMISS. (**Record, page 50**)

16. On 17 July 1995, Petitioner filed his OPPOSITION TO RESPONDENT'S MOTION FOR STAY FROM RESPONDING TO DISCOVERY PENDING RESPONDENT'S MOTION TO DISMISS. (**Record, page 54**)

17. On 18 July 1995, Petitioner filed a MOTION TO COMPEL DISCOVERY. (**Record, page 56**)

18. On or about 21 July 1995, Respondent caused to be filed its ANSWER. (**Record, page 58**)

19. On 31 July 1995, Petitioner filed his PETITIONER'S SECOND (2ND) SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS. (**Record, pages 63 & 68**)

20. On 3 August 1994, Petitioner caused a NOTICE TO SUBMIT to be filed for Respondent's MOTION FOR STAY FROM RESPONDING TO DISCOVERY PENDING RESPONDENT'S MOTION TO DISMISS. (**Record, page 69**)

21. On 3 August 1995, Petitioner also caused a NOTICE TO SUBMIT to be filed for his own MOTION TO COMPEL DISCOVERY. (**Record, page 72**)

22. On or about 2 August 1995, Respondent caused to be served on Petitioner its RESPONDENT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS. (**Record, page 75**)

23. On or about 7 August 1995, Respondent caused to be served on the Petitioner its RESPONDENT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PETITIONER. (**Record, page 76**)

24. On or about 8 August 1995, Respondent caused to be filed its OPPOSITION TO PETITIONER'S MOTION TO COMPEL. (**Record, page 77**)

25. On 10 August 1995, Petitioner caused to be filed his PETITIONER'S THIRD (3RD) SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS. (**Record, pages 79 & 80**)

26. On 22 August 1995, the Court entered its ORDER denying Respondent's MOTION FOR STAY FROM RESPONDING TO DISCOVERY PENDING RESPONDENT'S MOTION TO DISMISS. (**Record, page 81**)

27. On 22 August 1995, the Court entered its ORDER granting Petitioner's MOTION TO COMPEL DISCOVERY. (**Record, page 83**)

28. On 10 August 1995, Petitioner caused to be filed his PETITIONER'S FOURTH (4TH) SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS. (**Record, pages 87 & 88**)

29. On 29 August 1995, Respondent caused to be served on the Petitioner its RESPONDENT'S ANSWERS TO PETITIONER'S SECOND SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS. (*Record, page 104*)

30. On 29 August 1995, Respondent caused to be served on the Petitioner its RESPONDENT'S ANSWERS TO PETITIONER'S THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS. (*Record, page 105*)

31. On 8 September 1995, Petitioner caused to be served on the Respondent his PETITIONER'S ANSWERS TO RESPONDENTS FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS. (*Record, pages 116 & 130*)

32. On or about 7 September 1995, Respondent requested a hearing on Petitioner's motion to compel discovery. (*Record, page 114*)

33. On or about 7 September 1995, Respondent caused to be filed its RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION TO COMPEL DISCOVERY. (*Record, page 106*)

34. On or about 12 September 1995, Respondent caused to be filed its MOTION FOR PROTECTIVE ORDER. (*Record, page 135*)

35. On 15 September 1995, Petitioner filed his OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER. (*Record, page 137*)

36. On 18 September 1995, Petitioner submitted his MOTION TO COMPEL DISCOVERY to the Court for a hearing. (*Record, page 144*)

37. On 20 September 1995, the Court sent notice to the Parties of the date of the hearing set for Petitioner's MOTION TO COMPEL. (*Record, page 147*)

38. On 25 September 1995, Respondent caused to be filed its MOTION FOR ORDER COMPELLING DISCOVERY. (*Record, page 149*)

39. On 27 August 1995, Respondent caused to be served on the Petitioner its RESPONDENT'S ANSWERS TO PETITIONER'S FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS. (*Record, page 153*)

40. On 2 October 1995, Petitioner filed his OPPOSITION TO MOTION FOR ORDER COMPELLING DISCOVERY [sic]. (*Record, page 154*)

41. On 4 October 1995, the Court held a hearing on Petitioner's MOTION TO COMPEL DISCOVERY, and heard arguments regarding the jurisdiction of the District Court to conduct a judicial review of the Respondent's proceedings. (*Record, page 158*)

42. On 25 October 1995, the Court entered its ORDER and dismissed Petitioner's cause of action. (*Record, page 159*)

43. On 22 November 1995, the Petitioner filed his NOTICE OF APPEAL. (*Record, page 162*)

Statement of the Facts

1. Petitioner was a student at Dixie College. (*Record pp. 2 & 59*)

2. Petitioner is disabled, and is qualified for a disabled placard issued by the Utah Department of Motor Vehicles (DMV), pursuant to applicable law. (*Record pp. 2 & 119*)

3. Forgetfulness is a segment of Petitioner's disability. (*Record pp. 2 & 27*)

4. On 3 April 1995, Petitioner obtained a PERMANENT disabled placard from the Utah DMV. (*Record p. 2*)

5. On 19 April 1995, Petitioner traveled to Dixie College to attend school. He parked in a disabled parking spot at approximately 15 minutes to 9:00 o'clock a.m. He locked his car and proceeded to his first class of the day. (**Record p. 2**)

6. Petitioner forgot to hang his disabled placard on the rear view mirror of his automobile. (**Record pp. 2 & 27**)

7. Twice the same week, Petitioner had also forgotten to remove his keys from the ignition switch, and locked his keys in his car at the same location. (**Record p. 2**)

8. At approximately 9:30 o'clock a.m., one Don Reid, Head of Security at Dixie College, wrote a citation against the Petitioner, for "parking in a handicapped zone." (**Record pp. 2, 27, & 60**)

9. Petitioner **was not** cited for "Failure to Display Permit." (**Record pp. 2 & 60**)

10. Petitioner, upon returning to his car after classes, found a pink copy of the citation written against him, and proceeded to the Dixie College Security offices, with his disabled placard in hand. (**Record pp. 2 & 60**)

11. After an unfortunate display of miscommunication and misunderstanding, Mr. Reid changed his mind about dismissing the citation and also kept Petitioner's pink copy of the citation. (**Record pp. 2 & 60**)

12. Petitioner proceeded with his administrative remedies until they were exhausted, and the Dixie College Parking Committee's decision was final. (**Record pp. 2 60**)

13. The Parking Committee's final decision **was not** based on the allegation of the citation. (**Record p. 2**)

14. Petitioner sought judicial review in the 5th Judicial District Court, of the informal adjudicative proceedings in the administrative forum provided by the Dixie College Parking Committee. **(Record pp. 1 through 166)**

15. The District Court dismissed Petitioner's case on Respondents' challenge to jurisdiction, based on U. C. A. §63-46(b)-1(2)(d). Respondent claimed it is a political subdivision and therefore its administrative proceedings were not subject to judicial review. **(Record p. 159)**

SUMMARY OF ARGUMENTS

POINT 1. Petitioner argues that the Respondent Dixie College Parking Committee was an informal adjudicative forum and as such, the Utah Administrative Procedures Act governed its proceedings, process, and Petitioner's right to appeal to the district court below.

POINT 2. Respondent claims that Petitioner's aborted conversation with the Dixie College law enforcement agent was Petitioner's "court of original jurisdiction." Petitioner argues that it was not, arguing also that administrative procedure mandates notice and a fair hearing. Petitioner contends that his hearing before the Respondent Dixie College Parking Committee was in effect, his "court of original jurisdiction."

POINT 2. Petitioner argues that his rights to appeal are circumscribed within the Utah Constitution, Article VIII, Section 5, Clause 4.

ARGUMENT

POINT 1. WAS THE ADMINISTRATIVE FORUM OF THE DIXIE COLLEGE PARKING COMMITTEE AN INFORMAL ADJUDICATIVE PROCEEDING PURSUANT TO THE UTAH ADMINISTRATIVE PROCEDURES ACT?

Petitioner argues that the answer to this question is “Yes!” The proceeding before the Dixie College Parking Committee was an informal adjudicative proceeding. Likewise, as it was an administrative forum, its operation and procedures are subject to the Utah Administrative Procedures Act, U.C.A. § 63-46b-1 et seq.

Both the Petitioner and Respondent argue around the application of U.C.A. §63-46b-1(2)(d), which states in pertinent part:

63-46b-1. Scope and applicability of chapter.

- (2) The provisions of this chapter do not govern:
 - (d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

On this singular statement the Respondent rests its arguments that the district court below lacked jurisdiction to review its actions. If such mentality is valid, then due process is denied the Petitioner, he is unlawfully relegated to a status of inferior standing, and his constitutional rights of redress, equal protection, and appeal are stood on their head.

The Respondent desires this court to ignore the nature of the original proceedings and be strictly and exclusively influence by the fact that the Petitioner was a student so that the forum of original jurisdiction is examined in a light slanted to Respondent’s self-serving point of view.

It is a fact that Petitioner was a student at Dixie College. It is also a fact that Dixie College is a political subdivision and is entitled to handle its affairs of student discipline, etc. Indeed, Dixie College is entitled to enforce traffic and parking regulations in the normal course of its operation and function as an institution of higher learning. These facts are not disputed by the Petitioner, but they are absolutely irrelevant to the issues before this appellate court or the district court below.

Respondent has not disputed the fact, nor can it, that it was an informal adjudicative administrative forum. In addition, Petitioner takes issue that he was being disciplined as a student. His case was, in fact, being adjudicated as an alleged parking violation and not in reference to his conduct as a student matriculating within the Dixie College curriculum. He would have been cited for the alleged violation whether he were a student or not. The fact that he was a student is merely ancillary to the issue of the alleged parking violation.

Petitioner argues that the forum of original jurisdiction was that of an informal administrative adjudicative nature. It was administrative because of its makeup, conduct, and authority. It was adjudicative because of its function, conduct, and outcome resulting from its decision.

The fact that Petitioner was afforded the informal administrative adjudicative process provided by Dixie College, to the Respondent, as the issuing agency of the parking citation, is indicative of the status of the Petitioner which weights this argument in his favor.

Had the Petitioner not been a student, a St. George City citation would have been issued against him and he would then have been afforded the informal administrative adjudicative process provided by the political subdivision known as St. George City, whereupon he would have been afforded

the appropriated administrative forum for review and the **right** to appeal any detrimental decision against him in that forum, to the district court for review.

In this case, however, the Respondent wants this court to strip the Petitioner of his status and rights as a person in the community of St. George and relegate him to a second-class citizenship because he was a student affiliated within the political subdivision, Dixie College. Because of Petitioner's affiliation as a student with Dixie College, Respondent claims its conduct and adjudication of Petitioner's grievance is not subject to judicial review. Respondent's position does not stand the test of reason, nor does it comport with the doctrine of equal protection. See Utah Constitution, Article I, Section 24, while it most certainly stands Petitioner's rights to redress and appeal on their heads. See Utah Constitution, Article I, Section 1 and Article VIII, Section 5, Clause 4, respectively.

The Utah Administrative Procedures Act, U.C.A. § 63-46b-2(1)(a) states in pertinent part:

63-46b-2. Definitions.

(1) As used in this chapter:

(a) "Adjudicative proceeding" means an agency action or proceeding described in Section 63-46b-1;

The Utah Administrative Procedures Act, U.C.A. § 63-46b-1 states in pertinent part:

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state of Utah and govern:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of all such actions.

In this particular case, the Respondent's decision was to uphold the citation issued by the Dixie College law enforcement agent. Such action by the Respondent constituted the Respondent's determination of Petitioner's rights and other legal interests. Petitioner was ordered to pay a fine. As an informal administrative adjudicative agency the Respondent is not imbued with authority to take away the property of the Petitioner without a judicial review of its actions.

Being an informal administrative adjudicative proceeding, the original forum of the Respondent Dixie College Parking Committee, its conduct, procedures, and determinations are subject to the The Utah Administrative Procedures Act, and the district court below was fully empowered with subject matter jurisdiction to hear the matter before it.

POINT 2. WAS THE ADMINISTRATIVE PROCEEDING OF THE DIXIE COLLEGE PARKING COMMITTEE PROVIDED TO THE PETITIONER TO CONTEST THE ISSUANCE OF A PARKING CITATION AGAINST HIM, HIS "COURT OF ORIGINAL JURISDICTION?"

Petitioner argues that Utah Constitution, Article VIII, Section 5, Clause 4, which states in pertinent part, "Except for matter filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause."

Because of this argument, Respondent takes the tack that Petitioner's court of original jurisdiction was his aborted conversation with the individual who issued the Dixie College citation. "Petitioner took appeal to the Dixie College Parking Committee," (***see Record, page 33***) Respondent's use of the term "appeal" in this particular instance does not comport with the provisions of *Article VIII, Section 5*.

Petitioner contends that the issuance of the parking citation initiated an administrative action to which he was entitled a fair and impartial hearing in the normal course of administrative due process. Petitioner's forum for that fair and impartial hearing was before the Respondent Dixie College Parking Committee. As such, the Respondent became Petitioner's "court of original jurisdiction" and Petitioner was justly entitled to a judicial review of the Respondent's decision, particularly because a significant property right was at issue (the taking of \$20 from the Petitioner).

Because the Respondent Dixie College Parking Committee was Petitioner's "court of original jurisdiction" he is justly entitled to a judicial review of Respondent's decision as a matter of right in addition to the right of procedural due process of the administrative forum affording him a judicial review. On these basis this court should find that the lower court has jurisdiction to review the action of the Respondent.

**POINT 3. ARE THE PARAMETERS OF THIS CASE CIRCUMSCRIBED WITHIN
PETITIONER'S RIGHT OF APPEAL FROM ANY COURT, PURSUANT
TO UTAH CONSTITUTION, ARTICLE VIII, SECTION 5, CLAUSE 4?**

Petitioner's arguments regarding this point are fully presented in the arguments presented in the two previous points and Petitioner would submit this point based on those arguments.

CONCLUSION

Respondent wishes to diminish Petitioner's rights to redress and appeal, and reduce Petitioner's status as a person within the community simply because Petitioner is enrolled and matriculates at Dixie College.

Respondent skewers the meaning of the statutes and intent of the Legislature to claim that Petitioner, as a student, was being disciplined within the confines of Dixie College. Nothing could be further from the truth.

Petitioner is entitled to due process under the law, where his rights are in question and his government intends to deprive him of his property by way of fines levied against him.

No matter how this case is approached, Petitioner is entitled to judicial review of the administrative proceedings before the Respondent Dixie College Parking Committee.

WHEREFORE: Petitioner prays for relief in the following:

1. Reverse the decision of the district court below.
2. Determine that the district court has jurisdiction to hear Petitioner's

appeal from the decision of the Respondent Dixie College Parking Committee.

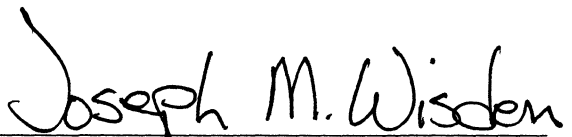
3. Remand the case back to the district court for further proceedings consistent with this Court's opinion.

4. Award costs and fees to the Petitioner, on appeal.

5. Award any other remedies this court deems just and appropriate.

DATED THIS ~~20th~~ day of June, 1996.

21ST


Joseph M. Wisden

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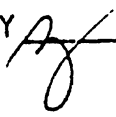
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ADDENDUM #1

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FILED
FIFTH DISTRICT COURT
'95 OCT 25 PM 2 17
WASHINGTON COUNTY
BY 

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IN THE FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

JOSEPH M. WISDEN,)	
)	
Petitioner,)	ORDER OF DISMISSAL
vs.)	
)	
DIXIE COLLEGE,)	Civil No. 950500843AA
)	Judge Shumate
Respondent.)	

This matter came for hearing before the Court on October 4, 1995, pursuant to Respondent's Request for Hearing on Petitioner's Motion to Compel Discovery. Petitioner was present representing himself Pro Per, and Respondent was represented by counsel of record, D. Michael Carter, Assistant Attorney General. As argument was proceeding on the issues before the Court, Respondent's counsel referred the Court to U.C.A. § 63-46b-1 (2) (d), raising the issue of the Court's subject matter jurisdiction of this case. The Court recognized that an issue of subject matter jurisdiction could be raised and heard at any time, and opened the issue for argument.

Respondent's counsel argued that the actual handling of Petitioner's dispute on the parking citation had been of an administrative, civil nature; Respondent having elected not to pursue available criminal proceedings and more extreme sanctions. And, that the Dixie College Parking Committee's authority and handling was in the express nature of a state agency action to review a student disciplinary action.

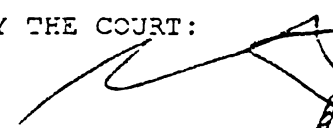
Petitioner argued that the statute's denial of subject matter jurisdiction to the court prevented him from any judicial review on the merits.

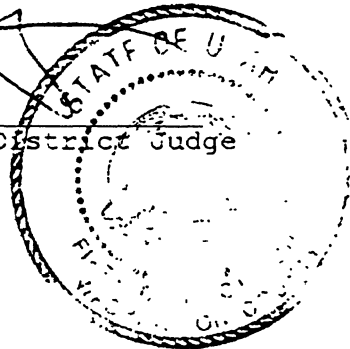
The Court having reviewed the cited statute, having heard the arguments of the parties, and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this case is dismissed for lack of subject matter jurisdiction.

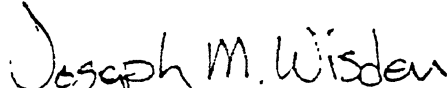
Dated this 23 day of Oct, 1995.

BY THE COURT:


JAMES L. SHUMATE, District Judge



Approved as to form:



JOSEPH M. WISDEN, Petitioner Pro Per

CERTIFICATE OF SERVICE

I, Joseph M. Wisden, do hereby certify that I mailed or hand delivered true and correct original copies of the foregoing ~~Petitioner's~~ ^{APPELLANT'S} BRIEF, by personal delivery, or by depositing same with the United States Postal Service, first class postage prepaid, this 16th day of ~~October~~, 199~~5~~, to the following:
21ST June 6

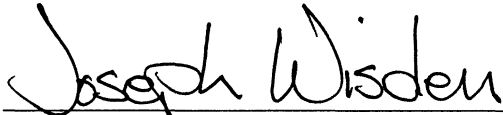
1 original & 7 copies

CLERK OF THE COURT
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Joseph Wisden

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