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Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

WYLLIS DORMAN-LIGH, :

Defendant/Appellant, :

-v- : COURT OF APPEALS NO. 890482-CA
TRIAL COURT NO. 86-89411-CV

STATE OF UTAH, UTAH HIGHER EDUCATION ASSISTANCE AUTHORITY, :

Plaintiff/Respondent. :

REPLY BRIEF OF THE APPELLANT

Appeal from a Judgment of the Third Circuit Court, State of Utah,
Salt Lake County, Salt Lake Department, Honorable Dennis M. Fuchs

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ARGUMENT PRIORITY CLASSIFICATION: 14b

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MAY 21 1990

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IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

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JURISDICTIONAL AUTHORITY

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. Sec. 78-2a-3 (Repl. 1987).

ISSUES ON APPEAL
Statement of the issues presented for review.

Appellant agues that the lower court decision should be reversed for failure of UHEAA to follow statutory law enacted prior to 1986 as to the collection of student loans (CSL) and to the exhaustion of administrative remedies before resort may be had to judicial review. The question has never been whether appellant owed the monies due on her promissory notes but when they became due including deferment period, and, a formula for an equitable repayment based on hardship. Those issues of fact would have been discussed in adjudicative proceedings (hearings) between appellant and the UHEAA had statutory requirements of CSL Utah Code Ann. Sec. 53-47c-1,2,4, and, 5 (Suppl. 1985) been followed.

The administrative rules of the UHEAA must conform to rather than be contrary and inconsistent with statutory law on the collection of student loans, and, cannot be ignored or followed by an agency to suit its own purposes.

SUMMARY OF ARGUMENTS

Applicable and effective Utah Code statutes and administrative rules as to the collection of student loans and exhaustion of administrative remedies in effect prior to the litigation instigated herewith are (A) Utah Code Ann. Sec. 53-47a-1 to 9 (Suppl. 1985) governing agency action, agency review, and, judicial review of all UHEAA adjudicative proceedings (Section 10 of Laws of Utah 1982, Ch. 33 which provided that Utah Code Ann. Sec. 53-47a-1 to 9 take effect upon approval. Approval was Feb. 16, 1982.) and (B) administrative law and procedure stipulated in Utah 1982 appeal proceedings which state that administrative remedies must

first be exhausted before resort may be had to judicial review. State. Dept. of Social Services v. Higgs, 656 P.2d 998 (Utah 1982). (See Administrative Rule-Making Act pursuant to Utah Code Ann. Sec. 63-46-12, Title of Act and 63-46-13 (Suppl. 1978); 63-46a-3(2)(5), 63-46a-4 and 63-46a-10(k) (Repl. 1985); and, Higher Education Assistance Authority pursuant to Utah Code Ann. Sec. 53-47a-1, 53B-12-101, Compiler's notes, 53B-13-102 and 53B-13-111 (Repl. 1987).)

Not being an attorney I apologize to the court for referring to the replacement rather than the earlier applicable and effective Utah Code statutes and administrative rules as to the collection of student loans and exhaustion of administrative remedies.

Whereas respondent's summary argument states that appellant was not entitled to administrative remedies because Utah Code Ann. Title 63 Chapter 46b (Suppl. 1987) and Title 53B Chapter 14 (Repl. 1987) were not applicable to litigation instigated prior to their effective date, therefore, UHEAA could proceed directly to the courts, Utah Code Ann. Title 63 Ch. 46b and Title 53B Ch. 14 were replacements and/or supplements to statutes in effect prior to the instigation of litigation, namely: new Title 53B (Repl. 1987) was created using provisions from former Title 53 (Effective 1982) and some sections from Title 63; Title 53B Chapter 14 replaced Title 53 Chapter 47c (Suppl. 1985) with few changes; and, Title 63 Chapter 46b (Suppl. 1987) was promulgated to codify administrative procedures in effect to every agency of the state of Utah except for those exclusions set forth. Laws of Utah 1973, Ch. 172 enacted section 63-46-12 and 63-46-13, Utah Code Annotated 1953 which provided that rules made by boards, councils, and other agencies of internal governance within the system of higher education are in compliance with the Utah Rule-Making Act and Laws of Utah 1975, Ch. 193 provided that state archivist shall have the responsibility for administering the provision of the said act.

Ignorance of the statutory requirements and administrative rules and regulations in place before the litigation is instigated cannot be used as an excuse by the administrative agency for not following them:

> Administrative regulations are presumed to be reasonable and valid and cannot be ignored or followed by agency to suit its own purposes, and agency must be held to those regulations without compelling ground for not following them. State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259, 1262 (Utah 1980).

Further, the failure of the UHEAA to follow statutory requirements of CSL Utah Code Ann. Sec. 53-47c-1,2,4,5,7, and, 9 (Suppl. 1985) deprived appellant of her rights to due process of law.

Appellant believes, therefore, that presentation of the above facts along with what can be considered the arbitrary administrative action of the UHEAA requires the court to grant relief from judgment:

> Granting of relief from judgment generally depends upon occurance of later events or requires a showing of something that was unknown or not before the court originally. Stevens v. Murphy, 680 P.2d 78 (Wyo 1984).

The Court of Appeals is not being asked to review issues raised for the first time on appeal. But if issues not raised before administrative agency are waived on appeal (Gibson v. Board of Review of Industrial Com'n. of Utah, 707 P.2d 675 (Utah 1985), what is the law regarding the fact that there was no hearing before the administrative agency, therefore, these questions could not be raised in an administrative tribunal and should, therefore, be subject to judicial review as this is an exceptional case. Alvin G. Rhodes Pump Sales v Industrial Com'n. of Utah, 681 P.2d 1244 (Utah 1984).

Appellant was, therefore, not provided due process since (1) the UHEAA failed to follow statutory requirements of CSL Utah Code Ann. Sec. 43-47c-1,2,4,5, 7, and, 9 (Suppl. 1985) and (2) the UHEAA sought judicial review prior to the

exhaustion of administrated remedies. State, Dept. of Social Services v. Higgs, 656 P.2d 998 (Utah 1982).

And, therefore, due process demands a new trial when the unfairness is so plain that a reasonable person would find the hearing unfair (or lack of a hearing unfair). Bunnell v. Industrial Com'n. of Utah, 740 P.2d 1331 (Utah 1987).

Point I This court may determine the issue raised on appeal and is not bound by the trial court's conclusion.

This case involves an appeal of a trial court order for Summary Judgment on which facts are in dispute. Appellant believes the court must remand this case back to the UHEAA to comply with its statutory requirements for adjudicative proceedings (hearings) for the collection of student loans (CSL) before judicial review is permissable by statute in Utah Code Ann. Sec. 53-47c-1,2,4,5,7, and, 9 (Enacted 1982; Suppl. 1985).

Further, courts have no inherent appellate jurisdiction over official acts of administrative officials or boards except where Legislature had made some statutory provision for judicial review. Behrmann v. Public Emp. Relations Bd., 591 P.2d 173 (Kansas 1979).

Because there were no adjudicative proceedings for the trial court to review, the court could not discharge its statutory duties within the law and protect appellant from the arbitrary and capricious administrative action of the UHEAA.

> A court cannot discharge its statutory responsibility without making findings of fact on all necessary ultimate issues under the governing statutory standards. Therefore, in order for the court to perform its duty of reviewing agency's orders in accordance with established legal principles and to protect parties and the public from arbitrary and capricious administrative action, the administrative agency must provide the court with complete, accurate and consistent findings of fact to show proper determination by the administrative agency toward the appellant. Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 720 P.2d 1373 (Utah 1986).

Further,

> Findings of administrative agency should be sufficiently detailed to disclose steps by which ultimate factual conclusions or conclusions of mixed fact and law are reached to permit court to perform its duty of reviewing agency orders in accordance with established legal principles and protecting parties and public from arbitrary and capricious administrative action. Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 707 P.2d 675 (Utah 1985).

Since judicial review of the adjudicative proceedings was to be heard by the district court de novo, this statutory requirement of Utah Code Ann. Sec. 53-47c-7(2) (Suppl. 1985) was not followed since:

> "De novo" means literally "anew, afresh, a second time" and has at least two possible interpretations when applied to judicial review of administrative action: (1) a complete retrial upon new evidence, and (2) a trial upon the record made before the lower tribunal, and the meaning of "trial de novo" in each statute is dictated by the working and context of the statute in which it appears and by the nature of the administrative body, decision, and procedure being reviewed. Pledger v. Cox, 626 P.2d 415 (Utah 1981).

Appellant does not agree, therefore, that she was given the opportunity for a complete retrial "de novo" before district court.

Further, when a trial court's judgment is challenged on appeal, appellate court should be able to review the administrative decision which should be based on adjudicative proceedings of the UHEAA in Utah Code Ann. Sec. 53-47c-1,2,4,5,7, and, 9 (Suppl. 1985) as if the appeal had come directly from the agency:

> When a lower court has reviewed an administrative decision and that court's judgment is challenged on appeal, appellate court reviews administrative decision just as if the appeal had come directly from the agency; in this circumstance, appellate court gives no presumption of correctness to the intervening court decision, since lower court's review of the administrative record is not more advantaged than the appellate court's review. Bennion V. State Board of Oil, Gas and Mining, 675 P.2d 1135 (Utah 1983).

Point II Appellant's right to due process was curtailed by respondent's failure to exhaust administrative remedies in existence at the filing of this action.

1. In respondent's brief the UHEAA says that to require exhaustion of a source of review which neither side knew about when judicial review had begun seems absurd since the statutory requirements for collection of student loans

(CSL), Utah Code Ann. Sec. 53-47c-1 to 9 was enacted in 1982 -- four years prior to this instigation of this litigation. (See Utah Code Ann. Sec. 53B-14-1 to 9 (Repl. 1987) in Table of Corresponding Sections addendum p. c.)

Not only is it:

> ... the responsibility of administrative body to formulate, publish and make available to concerned citizens rules which are sufficiently definite and clear that persons of ordinary intelligence will be able to understand and abide by them. Athay v. State, Dept. of Business Regulations, Registration Division, 626 P.2d 965 (Utah 1981).

but ignorance of the statutory requirements and administrativd rules and regulations in place before the litigation is instigated cannot be used as an excuse by the administrative agency for not following them:

> Administrative regulations are presumed to be reasonable and valid and cannot be ignored or followed by agency to suit its own purposes, and agency must be held to those regulations without compelling ground for not following them. State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259, 1262 (Utah 1980).

The statutory requirements for the collection of student loans enacted in 1982, Utah Code Ann. Sec. 53-47c-1 to 9 directed the agency responsible for the collection of the loan to proceed under this act to collect the loan and followed with language providing for notice of default, providing for a hearing, providing for appeals, providing for a lien against tax refunds, providing for bonds, providing for rules and regulations, and, providing for an effective date.

2. Respondent further purports that the CSL statute does not establish an obligatory right to an administrative hearing; which is an incorrect interpretation of the statute. Utah Code Ann. Sec. 53-47c-1 (Suppl. 1985) for CSU is clear in that the agency responsible for collection of the loan may proceed under this act to collect the loan. There is no reference anywhere that the UHEAA can skip the adjudicative proceedings (hearings) and go direct to the courts. In fact the statute,

Utah Code Ann. Sec. 53-47c-7(1) (Suppl. 1985) is quite clear in that there can only be judicial review of an order of a hearing examiner.

Further, the board of regents may adopt administrative rules for the implementation of Utah Code Ann. Sec. 53-47c-4 and 53-47c-5, including administrative rules for the conduct of hearings and appointment of hearing examiners. And since the rules and regulations of an administrative agency must conform to rather than be contrary and inconsistent with statutory laws (McKnight v. State Land Bd., 382 P.2d 726 (Utah 1963), administrative remedies were in existence prior to the litigation but were ignored by the UHEAA.

It follows also that the UHEAA ignored both the statutory requirments and the administrative rules when it did not hold adjudicative proceedings (hearings) but proceeded directly to the courts. Administrative remedies must first be exhausted before resort may be had to judicial review. State, Dept. of Social Services v. Higgs, 656 P.2d 998 (Utah 1982).

3. Further, while Utah's Administrative Procedures Act (UAPA) Utah Code Ann. Sec. 63-46b-1 to 22 did not take effect until January 1, 1988 (1987 Utah Laws Ch. 161, Sec. 315), it was promulgated to codify and expand upon administrative procedures being followed by individual agencies of the state of Utah to every agency of the state except for those exclusions set forth in Subsection (b). Laws of Utah 1973, Ch. 172 enacted section 63-46-12 and 63-46-13, Utah Code Annotated 1953 which provided that rules made by boards, councils, and other agencies of internal governance within the system of higher education are in compliance with the Utah Rule-Making Act and Laws of Utah 1975, Ch. 193 provided that state archivist shall have the responsibility for administering the provision of the said act. According to Utah Code Ann. Sec. 63-46-13 (Repl. 1975):

> ... Any state agency which has not previously submitted rules to the archivist or is otherwise not in compliance with the terms of this act, shall do all things

> necessary to be in compliance with the terms of this act, on or before June 30, 1975. All rules which have been in use and practice by the state agencies prior to June 30, 1975, shall continue in full force and effect...

Point III Appellant has raised an issue of fact therefore the judgement should not be affirmed as a matter of law.

The issue of fact as to why the judgment should not be affirmed as a matter of law is that without following statutory requirements for adjudicative proceedings (hearings) under CSL Utah Code Ann. Sec. 53-47c-1,2,4, and, 5 (Suppl. 1985) there cannot be complete, accurate and consistent findings of fact in a case tried by a judge and which is essential to the resolution of dispute under the proper rule of law (Rucker v. Dalton, 598 P.2d 1336 (Utah 1979) and essential to a proper determination by an administrative agency (Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 720 P.2d 1373 (Utah 1986).

The failure of the UHEAA to follow statutory requirements of CSL Utah Code Ann. Sec. 53-47c-1,2,4,5,7, and, 9 (Suppl. 1985) deprived appellant of her rights to due process of law. Further appellant was not notifed along with notice of default sent by UHEAA that she had the right to an administrative hearing within 30 days after her written response pursuant to Utah Code Ann. Sec. 53-47c-1 and 2(e) (Suppl. 1985).

Therefore, the UHEAA by not following its statutory requirements in the collection of student loans acted in an arbitrary manner and the courts must interfere since:

> Courts indulge administrator considerable latitude in determinations he makes on questions of fact and also in exercise of his discretion with respect to responsibilities which law imposes on him, and court will not interfere with such determinations unless it appears that administrator acted in excess of his powers, or abused his discretion and his action was capricious and arbitrary. Central Bank & Trust Company v. Brimhall, Commissioner of Financial Institutions, et. al., 497 P.2d 638 (Utah 1972).

Further, since the decisions of the agency are subject to judicial review they can be reversed where they are inconsistent with governing legislation. West Jordan v. Dept. of Employment Security, 656 P.2d 411 (Utah 1982).

Point IV Appellant's arguments were not raised for the first time on this appeal but were cited in the record to the Circuit Court.

In Athay v. State, Dept. of Business Regulations, Registration Division, 626 P.2d 965 (Utah 1981) the court dismissed the action and remanded it back for further administrative review and stated:

> ... even though not raised on appeal, claim now made by appellant can be raised in answer to respondent's complaint in answer.

Further, the Court of Appeals is not being asked to review issues raised for the first time on appeal. But if issues not raised before administrative agency are waived on appeal (Gibson v. Board of Review of Industrial Com'n. of Utah, 707 P.2d 675 (Utah 1985), what is the law regarding the fact that there was no hearing before the administrative agency, therefore, these questions could not be raised in an administrative tribunal and should, therefore, be subject to judicial review as this is an exceptional case. Alvin G. Rhodes Pump Sales v Industrial Com'n. of Utah, 681 P.2d 1244 (Utah 1984).

The court can review in appellant's brief of Jan. 17, 1990 (p. 3 to 10) that appellant raised the issues of denyal of due process, and, requested a hearing and deferment throughout the process of written proceedings between appellant and the UHEAA and the district court acting for UHEAA and the appellant.

On June 17, 1985, the UHEAA sent appellant a deferment through Jan. 15, 1986 and revoked same in a letter dated March 20, 1986. (p. 4)

On Oct. 16, 1986 appellant received a letter from UHEAA stating that she had failed to respond to previous correspondence from this office regarind her defaulted student loan. (p. 4) Exhibits E, G, and H attached to appellant's answer to summons proves there was written correspondence to the UHEAA from the

appellant. However, appellant was never notified along with notice of default nor in subsequent court documents that in accordance with UHEAA CSL statutory requirements she had the right to adjudicative proceedings (hearings) if she responded in writing to the notice of default; however, there is reference to her deferment requests. Utah Code Ann. Sec. 53-47c-2(1)(2)(e) (Suppl. 1985).

Further, eight days after the summons and complaint was filed with the court on Feb. 23, 1987, the UHEAA wrote a threatening letter offering three options or else, none of which followed the statutory requirements of CSL:

> 1. Pay off the loan in its entirety.
> 2. Enter into an an agreement ("Stipulation" with us. This document would be filed with the court and would allow us to obtain a judgment against you if any monthly payment was missed.
> 3. The matter can be decided by the court. We will initiate further court action in seeking to have a judgment entered against you.
>
> Please contact Utah Higher Education Assistance Authority .. within ten (10) days from the date of this letter to let us know how you intend to proceed. If we have not heard from you within that time, or if you tell us that you cannot choose option one or two above, we will pursue further court action to have a judgment entered against you. (p. 5)

On May 20, 1987 appellant received a letter from the UHEAA stating that her loan had been correctly defaulted according to the information in her file. (p. 5) Appellant sent an answer to the UHEAA that a hearing between the student loan administering agency and myself should be the next step. (p. 6)

The above written statements of fact should provide proof that appellant did bring up the issues of a hearing and deferment prior to appellant's appeal dated Jan. 17, 1990.

Point V Appellant has not misinterpreted and mischaracterized the ruling granting UHEAA's motion for summary judgment.

Appellant reaffirms that the trial court based its ruling on UHEAA's motion for Summary Judgment solely on her admission of signing the promissory notes and her continued admission that she never intended not to pay her student loan. The

judge even made the comment to appellant that since she did not dispute that she owed the student loan he ruled in favor of UHEAA.

If the trial court made its judgment based on the record, how was it able to perform its duty of reviewing administrative agency orders in accordance with the statutory requirements of the UHEAA CSL Utah Code Ann. Sec. 53-47c-1,2,4,5,7, and, 9 (Suppl. 1985) without the findings of the adjudicative proceedings (hearings) and the order of the hearing examiner since a court cannot discharge its statutory responsibility without making findings of fact on all necessary ultimate issues under the governing statutory standards. Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 720 P.2d 1373 (Utah 1986).

Further, the findings must be articulated with sufficient detail so that the basis of the ultimate conclusion can be understood (by the appellant). Smith v. Smith, 726 P.2d 423, 426 (Utah 1986).

Point VI Appellant was not treated fairly throughout the legal proceedings and her rights to due process and hearing were infringed .

Appellant was neither treated fairly or given every opportunity to present her case, therefore, her rights to due process and hearing were infringed because UHEAA did not hold adjudicative proceedings (hearings) as required in the CSL statutes Utah Code Ann. Sec. 1,2,4,5,7, and, 9 (Suppl. 1985).

> In proceedings before an administrative agency a party is entitled to be treated with fairness, to have the opportunity to prepare and present his case and his contentions with respect thereto and have adjudication in conformity with law. Utah Gas Service Co. v. Mountain Fuel Supply Co., 422 P.2d 350 (Utah 1987).

Further, in accordance with the statutory requirements of the collection of student loans Utah Code Ann. Sec. 53-47-c-1 to 9 (Suppl. 1985) the title of the act reads:

> An act relating to the collection of student loans; providing for notice of default, proviiding for a hearing, providing for appeals, providing for a lien

against tax refunds, providing for bonds, providing for rules and regulations, and, providing for an effective date. Laws 1982, Ch. 33.

Appellant made no objection at trial level that the UHEAA was not following its statutory requirements or administrative rules as promulgated for the collection of student loans since she was not in possession of said statutes or administrative rules. Further appellant was never notificed along with notice of default sent by UHEAA that she had the right to an administrative hearing within 30 days after her written response pursuant to Utah Code Ann. Sec. 53-47c-1 and 2(e) (Suppl. 1985).

It is for the administrative agency to follow its statutory requirements and for the trial court to review those findings since it is the function of a court called on to review an order of an administrative agency to determine whether there has been due process of law. Vance v. Forham, 671 P.2d 124 (Utah 1983).

Further:

> Administrative regulations ... cannot be ignored or followed by agency to suit its own purposes, and agency must be held to those regulations without compelling ground for not following them. State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259 (Utah 1980).

Therefore, appellant was not treated fairly and her rights to due process and hearing were infringed since without statutory adjudicative proceedings (hearings) being followed under CSL Utah Code Ann. Sec. 53-47c-1,2,4, and, 5 (Suppl. 1985) appellant was not given the opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. This is necessary for appellant to maintain her rights and to test the sufficiency of the facts. State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1262 (Utah 1980).

And nature and extent of review of administrative decision depends on what happened as reflected by a true record of the proceedings, viewed in light of

accepted due process requirements. Xanthos v. Board of Adjustment of Salt Lake City, 685 P.2d 1032 (Utah 1984).

Her rights to due process were further infringed upon when UHEAA chose to ignore CSL Utah Code Ann. Sec. 43-47c-7 (Suppl. 1985) and it moved direct to the courts without following statutory requirments for adjudicative proceedings (hearings) before filing a complaint with the district court for a judicial review of an order of a hearing examiner; which was not available since there were no adjudicative proceedings (hearings) before a hearing examiner.

> Administrative remedies must first be exhausted before resort may be had to judicial review. State, Dept. of Social Services v. Higgs, 656 P.2d 998 (Utah 1982).

Therefore, due process demands a new trial when the appearance of fairness is so plain that a reasonable person would find the hearing unfair. Bunnell v. Industrial Com'n. of Utah, 740 P.2d 1331 (1987).

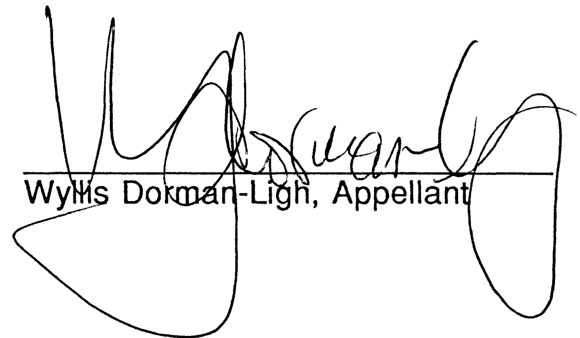
CONCLUSION

Failure of the UHEAA to follow statutory law enacted before litigation was instigated as to the collection of student loans and to the exhaustion of administrative remedies before resort may be had to judicial review deprived appellant of due process.

> Therefore, since
>
> Due process demands a new trial when the appearance of fairness is so plain that a reasonable person would find the hearing unfair. Bunnell v. Industrial Com'n. of Utah, 740 P.2d 1331 (1987).
>
> and,
>
> Granting of relief from judgment generally depends upon occurance of later events or requires a showing of something that was unknown or not before the court originally. Stevens v. Murphy, 680 P.2d 78 (Wyo 1984).

appellant asks this court to protect appellant from arbitrary action of the UHEAA (Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 707 P.2d 675 (Utah 1986) and to reverse the Summary Judment of the trial court and remand this case back to the UHEAA for statutory review as provided in CSL Utah Code Ann. Sec. 1 to 9 (Suppl. 1985).

Dated this 18th day of May 1990.



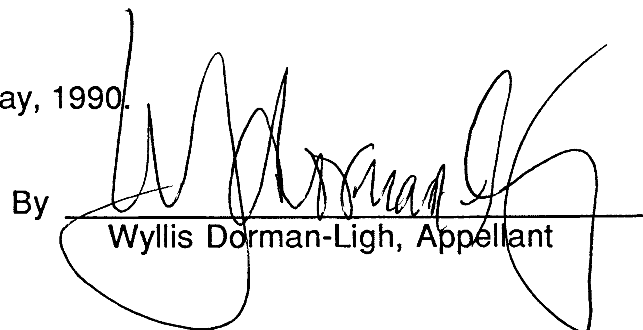
Wyllis Dorman-Ligh, Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing reply brief of appellant by depositing the same in the United States mail, postage prepaid to the following:

Jonathan K. Jensen, Asst. Attorney General
236 State Capitol
Salt Lake City, UT 84114

DATED this 18th day of May, 1990.



By ______________________
Wyllis Dorman-Ligh, Appellant

CASES CITED

Alvin G. Rhodes Pump Sales v. Industrial Com'n. of Utah, 681 P.2d 1244 (Utah 1984) 3,9

Questions not raised in an administrative tribunal are not subject to judicial review except in exceptional cases.

Athay v. State, Dept. of Business Regulations, Registration Division, 626 P.2d 965 (Utah 1981) 6,9

It is the responsibility of administrative body to formulate, publish and make available to concerned citizens rules which are sufficiently definite and clear that persons of ordinary intelligence will be able to understand and abide by them.

Behrmann v. Public Emp. Relations Bd., 591 P. 2d 173, 2254 (Kansas 1979) 4

Courts have no inherent appellate jurisdiction over official acts of administrative officials or boards except where legislature has made some statutory provision for judicial review.

Bennion V. State Board of Oil, Gas and Mining, 675 P.2d 1135 (Utah 1983) 5

When a lower court has reviewed an administrative decision and that court's judgment is challenged on appeal, appellate court reviews administrative decision just as if the appeal had come directly from the agency; in this circumstance, appellate court gives no presumption of correctness to the intervening court decision, since lower court's review of the administrative record is not more advantaged than the appellate court's review.

Bunnell v. Industrial Com'n., of Utah, 740 P.2d 1331 (Utah 1987) 4,13

Due process demands a new trial when the appearance of unfairness is so plain that a reasonable person would find the hearing unfair.

Central Bank & Trust Company v. Brimhall, Commissioner of Financial Institutions, et. al., 497 P.2d 638 (Utah 1972) 8

Courts indulge administrator considerable latitude in determinations he makes on questions of fact and also in exercise of his discretion with respect to responsibilities which law imposes on him, and court will not interfere with such determinations unless it appears that administrator acted in excess of his powers, or abused his discretion and his action was capricious and arbitrary.

Gibson v. Board of Review of Industrial Com'n. of Utah, 707 P.2d 675 (Utah 1985) 3,8,9

Issues not raised before administrative agency are waived on appeal.

McKnight v. State Land Bd., 382 P.2d 726 (Utah 1963) 7

Rules and regulations of an administrative agency must conform to rather than be contrary and inconsistent with statutory law.

Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 707 P.2d 675 (Utah 1986) 5,14

Findings of administrative agency should be sufficiently detailed to disclose steps by which ultimate factual conclusions or conclusions of mixed fact and law are reached to permit court to perform its duty of reviewing agency orders in accordance with established legal principles and protecting parties and public from arbitrary and capricious administrative action.

Milne Truck Lines, Inc. v. Public Service Com'n. of Utah, 720 P.2d 1373 (Utah 1986) 4,8,11

A court cannot discharge its statutory responsibility without making findings of fact on all necessary ultimate issues under the governing statutory standards. Therefore, in order for the court to perform its duty of reviewing agency's orders in accordance with established legal principles and to protect parties and the public from arbitrary and capricious administrative action, the administrative agency must provide the court with complete, accurate and consistent findings of fact to show proper determination by the administrative agency toward the appellant.

Pledger v. Cox, 626 P.2d 415 (Utah 1981) 5

"De novo" means literally "anew, afresh, a second time" and has at least two possible interpretations when applied to judicial review of administrative action: (1) a complete retrial upon new evidence, and (2) a trial upon the record made before the lower tribunal, and the meaning of "trial de novo" in each statute is dictated by the working and context of the statute in which it appears and by the nature of the administrative body, decision, and procedure being reviewed.

Rucker V. Dalton, 598 P.2d 1336 (Utah 1979) 8

...the importance of complete, accurate and consistent findings of fact in a case tried by a judge is essential to the resolution of dispute under the proper rule of law.

Smith v. Smith, 726 P.2d 423, 426 (Utah 1986) 11

The findings must be articulated with sufficient detail so that the basis of the ultimate conclusion can be understood.

State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259, 1262 (Utah 1980) 3,6,12

...Administrative regulations are presumed to be reasonable and valid and cannot be ignored or followed by agency to suit its own purposes, and agency must be held to those regulations without compelling ground for not following them.

... All parties must be fully appraised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding...

State, Dept. of Social Services v. Higgs, 656 P.2d 998 (Utah 1982) 2,4,7,13

Administrative remedies must first be exhausted before resort may be had to judicial review.

Stevens v. Murphy, 680 P.2d 78 (Wyo 1984) 3,13

Granting of relief from judgment generally depends upon occurance of later events or requires a showing of something that was unknown or not before the court originally.

Utah Gas Service Co. v. Mountain Fuel Supply Co., 422 P.2d 350 (Utah 1987) 11

In proceedings before an administrative agency a party is entitled to be treated with fairness, to have the opportunity to prepare and present his case and his contentions with respect thereto and have adjudication in conformity with law.

Vance v. Forham, 671 P.2d 124 (Utah 1983) 12

In case ... at hearing his rights under federal and state constitution were violated because the administrative law judge failed to provide him with an opportunity to cross examine the division's witnesses at the hearing. It is the function of a court called on to review an order of an administrative agency to determine whether there has been due process of law.

West Jordan v. Dept. of Employment Security, 656 P.2d 411 (Utah 1982) 9

Agency decisions are subject to judicial review and will be reversed where they are inconsistent with governing legislation...

Xanthos v. Board of Adjustment of Salt Lake City, 685 P.2d 1032 (Utah 1984) 13

Nature and extent of review of administrative decision depends on what happened as reflected by a true record of the proceedings, viewed in light of accepted due process requirements.

UTAH STATUTES

Utah Code Ann. Title 53B - State System of Higher Education (Replacement 1987)

Revision of Higher Education Law. -- Laws 1987, chapter 167 revised the state law relating to higher education, using provisions from former Title 53, Public Schools, and some sections from Title 63 to create a new Title 53B, State System of Higher Education, effective April 27, 1987. A table locating sections in Title 53B corresponding to those deleted from Titles 53 and 63 appears at the end of Title 53B.

Table of Corresponding Sections

Former Section	Present Section	Former Section	Present Section
53-47a-1	53B-12-101	53-47c-1	53B-14-101
		53-47c-2	53B-14-102
53-47b-2	53B-13-102	53-47c-3	53B-14-103
53-47b-11	53B-13-111	53-47c-4	53B-14-104
		53-47c-5	53B-14-105
		53-47c-6	53B-14-106
		53-47c-7	53B-14-107
		53-47c-8	53B-14-108
		53-47c-9	53B-14-109

Utah Code Ann. Section 53-47a-1 (4)(5)(6) (Supplement 1985)

53-47a-1. Utah higher education assistance authority designated.

The state board of regents is designated as the Utah higher education assistance authority and in relation thereto, may:

(4) Enter into contracts with eligible lending institutions, or with public or private post-secondary educational institutions, upon such terms as may be agreed to between it and any such institution, to provide for the administration by the institutions of any loan or loan guarantee made by it, including applications there____ repayment thereof;

(5) Participate in federal programs guaranteeing, reinsuring, or otherwise supporting loans to eligible borrowers for post-secondary educational purposes and agree to, and comply with, the conditions and regulations applicable to those programs;

(6) Adopt, amend, or repeal rules, in accordance with the procedure set forth in subsections 63-46-12(1), (2), and (3) for the purpose of governing the activities authorized by this chapter

Utah Code Ann. Section 53B-12-101(4)(5)(6) (Replacement 1987)

53B-12-101. Utah Higher Education Assistance Authority designated -- Powers and duties.

The board is the Utah Higher Education Assistance Authority and, in this capacity, may do the following:

(4) enter into or contract with an eligible lending institution, or with a public or private postsecondary educational institution to provide for the administration by the institution of any loan or loan guarantees made by it, including application and repayment provisions;

(5) participate in federal programs guaranteeing, reinsuring, or otherwise supporting loans to eligible borrowers for postsecondary educational purposes and agree to, and comply with, the conditions and regulations applicable to those programs;

(6) adopt, amend, or repeal rules, in accordance with Subsections 63-46-12(1), (2), and (3), to govern the activities authorized by this chapter.

Compiler's Notes. -- Section 63-46-12, referred to in Subsection (6), was repealed by Laws 1985, ch. 158, Sec. 2. For the present comparable provision, see Sec. 63-46a-4.

Utah Code Ann. Section 53B-13-102 (Replacement 1987)

53B-13-102. Definitions.

As used in this chapter:

(4) "Obligations" means student loan notes and other debt obligations reflecting loans to students which the board may take, acquire, buy, sell, or endorse under this chapter, and may include a direct or indirect interest in the whole or any part of the notes or obligations.

Utah Code Ann. Section 53B-13-111 (Replacement 1987)

53B-13-111. Loans or purchase of obligations -- Rules -- Options -- Repayment of federally insured loans.

(3) On obligations purchased or loans made by the board which are federally insured loans, the board may establish variable repayment schedules conforming to the need and documented income levels of borrowers, if the schedules are not inconsistent with federal laws, rules, or regulations governing the insured loans. A borrower making payments on a loan may request and be granted a revised repayment term or schedule based upon the established variable repayment schedules.

Utah Code Ann. Section 53-47c-1 (Supplement 1985)

53-47c-1. Student loan delinquent or in default -- Authority of college, university or board of regents to collect.

If a national direct student loan or a student loan made pursuant to chapters 47 or 48 of title 53 is delinquent or in default, the state college, university, or board of regents responsible for collection of this loan may proceed under this act to collect the loan.

Title of Act. An act relating to collection of student loans; providing for notice of default; providing for a hearing; providing for appeals; providing a lien against tax refunds; providing for bonds; providing for rules and regulations; and providing an effective date. -- Laws 1982, Ch. 33.

Utah Code Ann. Section 53B-14-101 (Replacement 1987)

53B-14-101. Student loan delinquent or in default -- Authority to collect.

If a National Direct Student Loan or a student loan made under Chapter 11 or 12 of Title 53B is delinquent or in default, the state college, university, or board of regents responsible for collection of this loan may proceed under this chapter to collect the loan.

Utah Code Ann. Section 53-47c-2(1) and (2)(e)(g) (Supplement 1985)

53-47c-2. Mailing of notice of default -- Contents of notice.

(1) Upon default in payment of any student loan or any installment, thereof, the entity responsible for collecting the loan may send a notice, by certified mail, to the borrower at the borrower's last know address.

(2) The notice shall state:

(e) The right of the borrower to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner.

(f) The time within which a written response must be filed; and

(g) The power of the college, university, or board upon the failure of the borrower to respond or upon a decision of the hearing examiner adverse to the borrower, to obtain an order under this act ...

Utah Code Ann. Section 53B-14-102(1) and (2)(e)(g) (Replacement 1987)

53B-14-102. Mailing of notice of default -- Contents of notice.

(1) Upon default in payment of a student loan or an installment payment on a student loan, the entity responsible for collecting the loan may send a notice, by certified mail, to the borrower at the borrower's last know address.

(2) The notice shall state the following:

(e) the right of the borrower to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner.

(g) the power of the college, university, or board upon the failure of the borrower to respond or upon a decision of the hearing examiner adverse to the borrower, to obtain an order under this chapter ...

Utah Code Ann. Section 53-47c-4 (Supplement 1985)

53-47c-4. Hearing set after receipt of written notice -- Notice of hearing.

If a written response is received by the college, university, or board, a hearing shall be set within 30 days of the receipt of the response and written notice of the hearing mailed to the borrower at least 15 days before the date for the hearing.

Utah Code Ann. Section 53B-14-104 (Replacement 1987)

53B-14-104. Hearing set after receipt of written notice -- Notice of hearing.

If a written response to the notice sent under Section 53B-14-102 is received by the college, university, or board, a hearing is set within 30 days of the receipt of the response, and written notice of the hearing is mailed to the borrower at least 15 days before the date for the hearing.

Utah Code Ann. Section 53-47c-5 (Supplement 1985)

53-47c-5. Hearing examiner designated -- Representation at hearing -- Findings and order of examiner -- Continuance of hearing.

(1) The hearing shall be held before a hearing examiner designated by the college, university, or board who shall not be an officer or employee of the division or office of the college, university, or board responsible for collecting or administering student loans.

(2) The borrower and college, university, or board may be represented at the hearing by an attorney or other person, and may present evidence, exhibits, testimony, witnesses, and other material relative to the student, and payment and default thereof, as are relevant.

(3) The hearing examiner shall make specific written findings regarding the student loan, payments, default, and the balance due and shall enter a written order thereon. If the hearing examiner finds that there has been a default, the order shall state the fact of default and the balance due on the loan including interest, otherwise the order shall dismiss the claim of default of the college, university, or board.

(4) The findings and order of the hearing examiner shall be filed with the college, university, or board and copies mailed to the borrower within 10 days after conclusion of the hearing.

(5) The hearing may be continued by agreement of the parties and approval of the hearing examiner or upon order of the hearing examiner.

Utah Code Ann. Section 53B-14-105 (Replacement 1987)

53B-14-105. Designation of hearing examiner -- Representation at hearing -- Findings and order of examiner -- Continuance of hearing.

(1) The hearing under Section 53B-14-104 is held before a hearing examiner designated by the college, university, or board.
(2) The examiner may not be an officer or employee of the division or office of the college, university, or board responsible for collecting or administering student loans.
(3) The borrower and college, university, or board may be represented at the hearing by an attorney or other person, and may present evidence, exhibits, testimony, witnesses, and other material regarding the student loan, payments, and default as are relevant.
(4) The hearing examiner shall make specific written findings on the student loan, payments,default, and the balance due and shall enter a written order.
(5) If the hearing examiner finds the borrower has defaulted, the order shall state the fact of default and the balance due on the loan including interest. If the examiner finds no default, the order shall dismiss the claim.
(6) The findings and order of the hearing examiner are filed with the college, university, or board and copies mailed to the borrower within ten days after conclusion of the hearing.
(7) The hearing may be continued by agreement of the parties and approval of the hearing examiner or upon order of the hearing examiner.

Utah Code Ann. Section 53-47c-7(1)(2) (Supplement 1985)

53-47c-7(1)(2). Judicial review of order -- Filing complaint -- Hearing by district court de novo -- Filing of notice of complaint stays action on lien by tax commission.

(1) Judicial review of an order of a hearing examiner may be obtained by any party by filing a complaint with the district court within 20 days after the date of the order.
(2) If a complaint is filed, the matter shall be heard by the district court de novo.

Utah Code Ann. Section 53B-14-107(1)(2) (Replacement 1987)

53B-14-107(1)(2). Judicial review of order -- Filing complaint -- Hearing de novo -- Stay of action on lien by tax commission.

(1) Judicial review of an order of a hearing examiner issued under Section 53B-14-1-5 is obtained by any party by filing a complaint with the district court within 20 days after the date of the order.
(2) If a complaint is filed, the matter is heard by the district court de novo.

Utah Code Ann. Section 53-47c-9 (Supplement 1981)

53-47c-9. Board of regents may adopt rules for hearings.

The board of regents may adopt rules for the implementation of sections 53-47c-4 and 53-47c-5, including rules for the conduct of hearings and appointment of hearing examiners.

Utah Code Ann. Section 53B-14-109 (Replacement 1987)

53B-14-109. Rules for hearings.

The board may adopt rules for the implementation of Sections 53B-14-104 and 53B-14-105, including rules for the conduct of hearings and appointment of hearing examiners.

Utah Code Ann. Sec. 63-46-12(3) (Supplement 1978) (Repealed 1985)

63-46-12. Prior or subsequent acts of boards--Requirements for compliance.

Notwithstanding any other provisions of this act, all actions heretofore or hereafter taken by the state board of regents, the state board of vocational education, the institutional council of any institution of higher education, or by any agency of internal governance of any institution in the system of higher education, to adopt, amend, or repeal any rule shall be deemed to be in full compliance with the provisions of this act if all of the following requirements are satisfied:

(3) The minutes and other records of actions taken under this section, and a copy of all rules currently in effect that have been adopted by the board, council, or agency, are maintained at its office and are available to the state archivist and open for inspection by any member of the public during normal business hours.

Title of Act. An act amending section 63-46-5, Utah Code Annotated 1953, as enacted by chapter 172, Laws of Utah 1973; enacting sections 63-46-12 and 63-56-13, Utah Code Annotated 1953; providing for exclusion of rule-making for public review where procedure has previously been established by federal government; providing that rules made by boards, councils, and other agencies of internal governance within the system of higher education are in compliance with this act if the rules were adopted at a regular meeting or public hearing and notice of this proposal was contained in the agenda for the meeting or hearing and records or copies of the rules are made available for public inspection; and providing that state archivist shall have responsibility for administering the provisions of "The Utah Administrative Rule-Making Act."--Laws 1975, ch. 193.

Utah Code Ann. Sec. 63-46-13 (Supplement 1978) (Repealed 1985)

63-46-13. Archivist responsibility and duty--Duty of agency not in compliance.

The Utah state archivist shall have the responsibility to administer the provisions of this act and to require state agencies to comply with its terms. The state archivist shall develop and implement procedures for rule-making hearings consistent with the purpose of this act. Any state agency which has not previously submitted rules to the archivist or is otherwise not in compliance with the terms of this act, shall do all things necessary to be in compliance with the terms of this act, on or before June 30, 1975. All rules which have been in use and practice by the state agencies prior to June 30, 1975, shall continue in full force and effect upon the filing of a certified copy of the rules with the state archivist on or before June 30, 1975.

Utah Code Ann. Sec. 63-46a-3(2)(5) (Replacement 1985)

63-46a-3. When rulemaking is required.

(2) Each agency shall make rules to fulfill the purposes of this chapter.
(5) Rulemaking is not required when:
(a) a procedure or standard is already described in statute

Utah Code Ann. Sec. 63-46a-4(1) (Replacement 1985)

63-46a-4. Rulemaking procedure.

(1) When making, amending, or repealing a rule, agencies shall comply with this section, consistent procedure required by other statutes, applicable federal mandates, and rules made by the office to implement this chapter, except ....

Utah Code Ann. Sec. 63-46a-10(k) (Replacement 1985)

63-46a-10. Office of administrative rules.

The Office of Administrative Rules shall:

(k) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

Utah Code Ann. Section 78-2a-3(2)(d) (Replacement 1987)

78-2a-3.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(d) appeals from the circuit courts ...

(iii) Third, to the department of finance for the state general fund.

(k) In any proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as the court deems just.

Section 10. Severability clause.

If any provision of this act or the application of the act to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provision or application and to that end, the provisions of this act are severable.

Section 11. Effective date.

This act shall take effect upon approval.

Approved February 19, 1982.

INSTITUTIONS OF HIGHER EDUCATION

CHAPTER 33

H B No 10 (Passed January 29, 1982 In effect February 16, 1982)

COLLECTION OF STUDENT LOANS

By Representatives Burningham, Walker, Reese, Richards

AN ACT RELATING TO COLLECTION OF STUDENT LOANS; PROVIDING FOR NOTICE OF DEFAULT; PROVIDING FOR A HEARING; PROVIDING FOR APPEALS; PROVIDING A LIEN AGAINST TAX REFUNDS; PROVIDING FOR BONDS; PROVIDING FOR RULES AND REGULATIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Utah:

Section 1. Student loan delinquent or in default—Authority of college, university, or board of regents to collect.

If a national direct student loan or a student loan made pursuant to chapters 47 or 48 of title 53 is delinquent or in default, the state college, university, or board of regents responsible for collection of the loan may proceed under this act to collect the loan.

Section 2. Mailing of notice of default—Contents of notice.

(1) Upon default in payment of any student loan or any installment thereof, the entity responsible for collecting the loan may send a notice, by certified mail, to the borrower at the borrower's last known address.

(2) The notice shall state:

(a) The date and amount of the loan;

(b) The balance of the loan;

(c) The amount of delinquent installments and the dates they were due;

(d) A demand for immediate payment of delinquent installments;

(e) The right of the borrower to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner;

(f) The time within which a written response must be filed; and

(g) The power of the college, university, or board upon the failure of the borrower to respond or upon a decision of the hearing examiner adverse to the borrower, to obtain an order under this act and to execute upon income tax overpayments or refunds of the borrower.

Section 3. Failure to receive response or payment after notice—Authority of college, university, or board to collect balance.

If a written response or payment of delinquent installments is not received by the college, university, or board within 15 days from the date of receipt of the notice by the borrower, the college, university, or board may determine the balance due and proceed to collect the balance as provided in section 6 of this act.

Section 4. Hearing set after receipt of written response to notice—Notice of hearing.

If a written response is received by the college, university, or board, a hearing shall be set within 30 days of the receipt of the response and written notice of the hearing mailed to the borrower at least 15 days before the date for the hearing.

Section 5. Hearing examiner designated—Representation at hearing—Findings and order of examiner—Continuance of hearing.

(1) The hearing shall be held before a hearing examiner designated by the college, university, or board who shall not be an officer or employee of the division or office of the college, university, or board responsible for collecting or administering student loans.

(2) The borrower and college, university, or board may be represented at the hearing by an attorney or other person, and may present such evidence, exhibits, testimony, witnesses, and other material relative to the student loan and payment and default thereof, as are relevant.

(3) The hearing examiner shall make specific written findings regarding the student loan, payments, default, and the balance due and enter a written order thereon. If the hearing examiner finds that there has been a default, the order shall state the fact of default and the balance due on the loan including interest, otherwise the order shall dismiss the claim of default of the college, university, or board.

K

(4) ·The findings and order of the hearing examiner shall be filed with the college, university, or board and copies mailed to the borrower within 10 days after conclusion of the hearing.

(5) The hearing may be continued by agreement of the parties and approval of the hearing examiner or upon order of the hearing examiner.

Section 6. Order stating default—Filing with state tax commission—Lien of order.

(1) An abstract of an order of a hearing examiner stating a default may be filed with the state tax commission and when filed, shall constitute a lien to the extent of the balance due plus interest against any state income tax refund or overpayment due or to become due the borrower for a period of eight years from the date of the order unless satisfied or otherwise released in writing by the college, university, or board.

(2) The lien created by this section shall, for the purposes of section 59-14A-80 only, be deemed a judgment, but no credit of a tax refund or overpayment shall be made on account of such lien until 20 days after the date of the hearing examiner's order.

Section 7. Judicial review of order—Filing complaint—Hearing by district court de novo—Filing notice of complaint stays action on lien by tax commission.

(1) Judicial review of an order of a hearing examiner may be obtained by any party by filing a complaint with the district court within 20 days after the date of the order.

(2) If a complaint is filed, the matter shall be heard by the district court de novo.

(3) A notice of the filing of a complaint may be filed with the state tax commission and if so filed, the tax commission shall take no action with respect to the lien created by section 6 of this act until the matter is finally disposed of by the district court or on appeal from the district court, except as provided in this act.

Section 8. Complaint filed—Bond furnished by borrower—Terms of.

(1) If a complaint is filed, the borrower may furnish to the tax commission a bond, with good and sufficient sureties, in the amount of the balance of the loan or the amount of any overpayment or refund due, whichever is less. The lien created by section 6 of this act shall thereupon be dissolved as to that overpayment or refund and the overpayment or refund released to the borrower.

(2) The bond shall provide that the surety will pay, upon a final determination adverse to the borrower, the amount of the bond, or such other lesser amount as the court may determine, to the tax commission for the use and benefit of the college, university, or board obtaining the order.

Section 9. Board of regents may adopt rules for hearings.

The board of regents may adopt rules for the implementation of sections 4 and 5 of this act, including rules for the conduct of hearings and appointment of hearing examiners.

Section 10. Effective date.

This act shall take effect upon approval.

Approved February 16, 1982.

CHAPTER 34

H. B. No. 103 (Passed January 30, 1982. In effect April 1, 1982.)

OUT OF STATE TUITION WAIVER

By Representative Hillyard

AN ACT RELATING TO RESIDENT AND NONRESIDENT TUITION AT INSTITUTIONS OF HIGHER LEARNING; PROVIDING THAT THE STATE BOARD OF REGENTS MAY WAIVE THE TUITION DIFFERENTIAL ACCORDING TO ESTABLISHED CRITERIA.

THIS ACT ENACTS SECTION 53-34-2.3, UTAH CODE ANNOTATED 1953.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section enacted.

Section 53-34-2.3, Utah Code Annotated 1953, is enacted to read:

53-34-2.3. Waiver of nonresident differential in tuition rates.

Notwithstanding any other provision of law:

(1) The state board of regents may determine when to grant a full or partial waiver of the nonresident differential in tuition rates charged to undergraduate students pursuant to reciprocal agreements with other states. In making this determination, the board shall consider the potential of the waiver to: (a) enhance educational opportunities for Utah residents; (b) promote mutually beneficial cooperation and development of Utah communities and nearby communities in neighboring states; (c) contribute to the quality of educational programs; (d) assist in maintaining the cost effectiveness of auxiliary operations in Utah institutions of higher education.

(2) Consistent with its determinations made pursuant to subsection (1), the state board of regents may enter into agreements with other states to provide for a full or partial reciprocal waiver of the nonresident tuition differential charged to undergraduate students. Each agreement shall provide for the numbers and identifying criteria of undergraduate students, and shall specify the institutions of higher education that will be affected by the agreement.

(3) The state board of regents shall establish policy guidelines for the administration by the affected Utah institutions of any tuition waivers authorized under this section, for evaluating applicants for such waivers, and for

7) To employ, compensate, and prescribe the duties and powers of such lividuals, subject to the provisions of this act relating to the advisor, as ıy be necessary to execute the duties and powers of the council; and
8) To prepare and lodge an annual report with the governor and with the islature.

:tion 6. **Section enacted.**

Section 63-45-6, Utah Code Annotated 1953, is enacted to read:

45-6. Advisor—Qualifications—Duties and powers.

1) The advisor shall be appointed by the council. The advisor shall be experienced or knowledgeable in the application of science and technology to iiness, industry, or public problems and shall have demonstrated his interest in or ability to contribute to the accomplishment of the purposes of ı act. The advisor shall be compensated pursuant to the wage and salary ısification plan for appointed officers of the State of Utah currently in ef- :.
2) The advisor shall have such duties and powers as the council may from e to time assign. The advisor, subject to the supervision of the council, is horized to enter into such contracts and agreements and to incur such enses as are necessary to fulfill the purposes of this act.
3) The council advisor shall be administratively responsible to the cutive director of department of development services.

tion 7. **Expiration date.**

his act shall expire July 1, 1975, unless re-enacted by the legislature.

pproved March 20, 1973.

CHAPTER 171

. No. 198 (Passed March 8, 1973. In effect May 8, 1973)

STATE DEPARTMENT OF VETERANS' AFFAIRS

Act Relating to Veterans' Affairs; Providing for the Creation of a State Office of Veterans' Affairs Within the Department of Social Services and a Director; Providing for the Duties of the Director; and 'roviding for Services to Veterans.

it enacted by the Legislature of the State of Utah:

·tion 1. **Purpose.**

t is the purpose of this act to provide assistance to **veterans** and their

dependents in determining and establishing their rights to benefits, compensation or privileges to which they are entitled under federal or state law.

Section 2. Office of veterans' affairs—Director.

There is created within the department of social services an office of veterans' affairs to be headed by a director appointed by the director of the department of social services.

Section 3. Services to veterans.

The office of veterans' affairs shall provide counseling on veterans' benefits; assistance to veterans or their dependents in presenting claims against the United States or in establishing their rights to benefits, compensation or privileges to which they are entitled under federal or state law; and informational and advisory services to agencies.

Approved March 17, 1973.

CHAPTER 172

S.B. No. 41 (Passed March 8, 1973 In effect July 1, 1973)

ADMINISTRATIVE RULE MAKING

An Act Enacting the Utah Administrative Rule Making Act; Relating to Procedures for Rulemaking and Disclosure of Rules by Administrative Agencies and Officers of the State of Utah; Requiring Certain Disclosure of Agency Organization, Procedures, Rules and Decisions; Requiring Agency Rulemaking in Specified Instances; Establishing Procedures for Adoption and Effectiveness of Agency Rules; Providing for Declaratory Judgments to Determine the Validity of Agency Rules; Providing an Effective Date; and Repealing Inconsistent Provisions.

Be it enacted by the Legislature of the State of Utah:

Section 1. Title.

This act shall be known and may be cited as "The **Utah Administrative** Rulemaking Act."

Section 2. Applicability of this act.

This act shall be applicable to every agency of the State of Utah except as specifically exempted by this act. All other provisions of law, to the extent they are inconsistent or in conflict with this act are repealed and superseded by this act. Provisions requiring additional or more extensive disclosures or

cedures for notice, hearing, consideration, or adoption of rules shall con-
ue in full force and effect; but provisions requiring additional or more ex-
sive procedures may be modified to an extent not inconsistent with this
by an agency's adoption of procedural rules in the manner required by
3 act.

tion 3. Definitions.

As used in this act:

1) "Agency" means each state board, commission, institution, depart-
nt, division, officer, or other state governmental entity other than the
islature (and its committees) or the courts, which is authorized, em-
vered, or required by law to make rules, adjudicate, grant or withhold
nses, grant or withhold relief from legal obligations or perform other
ilar actions or duties delegated by law. "Agency" does not include any
cer or entity whose authority, power or primary functions are based
n or exercised pursuant to an interstate compact adopted with the con-
t of the United States Congress.
2) "Party" means each person or agency named or admitted as a party,
roperly seeking and entitled as of right to be admitted as a party.
3) "Person" means any individual, partnership, corporation, association,
ernmental subdivision, or public or private organization of any charac-
other than an agency.
4) "Rule" means each statement of general applicability adopted by an
ncy that implements or interprets the law or prescribes the policy of the
ncy in the administration of its functions or describes the organization,
cedure, or practice requirements of any agency, including any amend-
t or repeal of a prior rule. "Rule" does not include: (a) rules or
ulations concerning only the internal management of an agency not af-
ing private rights or procedures available to the public including those
the state board of education in its relationships with local boards of
cation, or (b) declaratory rulings issued pursuant to section 10 of this
or (c) intra-agency memoranda.
5) "An adequate supporting reason" offered in support of an agency fin-
g or determination means a reason which has a rational basis in logical
uctions or logical inferences from stated policies, from established and
ed law, or from stated findings of fact based upon substantial evidence
record developed in compliance with applicable hearing procedures.

tion 4. Additional rule-making requirements for each agency.

1) In addition to other rule-making requirements imposed by law, each
ncy shall within six months after the effective date of this act:
a) File and maintain in the office of the state archivist a current
ement of the general course and method of its operations and the
hods whereby the public may obtain information or make submissions
equests;
b) Adopt rules of practice setting forth the nature and requirements of
formal and informal procedures available, including a description of all
ns and instructions used by the agency;
c) Make available for public inspection in the office of the state archivist
ules adopted or used by the agency in the discharge of its functions;

(d) Make available for public inspection in the office of the agency all of its final written orders, decisions, and opinions, except:

(i) An agency may adopt a rule authorizing the agency in its discretion to withhold from public inspection such final written orders, decisions, and opinions which contain or are based on information that is either: "privileged" by statute; or is of such a confidential nature that the rights or reputation of the person or persons subject to the order, decision, or opinion would be jeopardized and the public interest would not be served; or is restricted by the regulations of any federal agency participating in the program or functions of the agency.

(ii) An informal written advice or opinion given by the attorney general unless this advice or opinion is of general applicability and is adopted or used by the agency as its interpretation of the law.

(2) Except as otherwise provided in sub-section (1) (d) of this section, no agency rule, order, or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as required by this section. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

Section 5. Adoption, amendment, or repeal of any rule — Imminent peril.

(1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) Give notice of its intended action. This notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasons for the proposed rule, and the time when, the place where, and the manner in which interested persons may present their views regarding it. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings and shall be published in the bulletin to be published by the state archivist as provided in section 7 of this act. The state archivist shall maintain for notice of rule-making a list of names and addresses of persons who request mailed notice of agency rule-making as required by this act. Except as provided in subsection (2), (3), and (4) of this section, no action shall be taken by the agency until at least 20 days have elapsed following such mailing and publication of this notice.

(b) Afford all interested persons reasonable opportunity to participate in rule-making by submitting data, views, or arguments, either orally or in writing, as determined by the agency. In case of substantive rules, an opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or an agency, or by an association having not less than 25 members if requests are made in writing within 15 days after the mailing and publication of the last notice of rule-making. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise written statement of the principal reasons for and against its adoption, incorporating in this statement its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule without providing the notice required by subsection (1) of this section and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any ab-

·reviated notice and hearing that it finds practicable, to adopt an emergen-y rule. The rule may be effective for a period of not longer than 120 days, ·ut the adoption of an identical rule under subsection (1) of this section is ot precluded.

(3) If an agency finds that any of the rule-making procedures required by his section are impracticable, unnecessary, or contrary to the public in-erest with respect to the adoption and filing of a particular rule or a ·articular designated type or class of rules, it may, to the minimum extent equired by that finding, proceed without compliance with this section to dopt and file such rule or rules, if the agency adopts and files with the rule r rules a written statement of findings and reasons for such action which hall be published in the bulletin along with the rule or rules.

(4) A rule required to be adopted by an agency in order to comply with ederal law or to qualify for federal funding or for other federal participation equirements must be adopted in compliance with the requirements of this ection, except where the required rule-making procedures will disqualify he agency for federal funding or participation. In this case, the agency will eet the requirements prescribed by section 6 of this act.

(5) No rule hereafter adopted is valid unless adopted in substantial com-liance with this section. A proceeding to contest any rule on the ground of on-compliance with the procedural requirements of this section must be ommenced within two years from the effective date of the rule.

ection 6. Filing of agency rules.

(1) Each agency shall file in the office of the state archivist a certified opy of each of its rules as follows:

(a) Within 30 days after the effective date of this act, any rule in effect on he effective date of this act, which rule shall continue in force until amen-ed or repealed as provided by this act; or

(b) Within 10 days after adoption, if the rule is adopted after the effective ate of this act.

The state archivist shall keep a permanent register of all the rules open or public inspection.

(2) Each rule adopted after the effective date of this act is effective 20 ays after filing with the state archivist, except that:

(a) If a later date is required by statute or specified in the rule, the later ate is the effective date.

(b) Subject to applicable constitutional or statutory provisions, an mergency rule becomes effective immediately upon filing with the state rchivist, or at a stated date less than 20 days later, if the agency finds that his effective date is necessary. The agency's finding and a brief statement f the reasons therefor shall be filed with the rule. The agency shall take ap-ropriate measures to make emergency rules known to the persons who may e affected by them.

ection 7. Duties of the state archivist.

(1) The state archivist shall compile, index, and publish all effective rules dopted by each agency. Compilations shall be supplemented or revised as ften as necessary.

(2) The state archivist shall publish at least monthly a bulletin setting orth the text of all adopted rules filed since the last publication, excluding

rules in effect upon the adoption of this act. The bulletin shall also include the notices of proposed future agency action required by section 5 of this act.

(3) The state archivist may omit from the bulletin or compilation any rule the publication of which would be unduly cumbersome, expensive, or other-wise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the bulletin or compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

(4) Bulletins and compilations shall be made available to the state library, the state law library, each county library, each county law library, each law school library, the attorney general, the secretary of state, the clerk of the house of representatives and the secretary of the senate, each county clerk, and legislators upon request, free of charge and to other persons at prices fixed by the state archivist to cover actual publishing costs.

(5) The state archivist shall print or cause to be printed all rules of each agency, and no agency shall either print or publish any of its rules. An agen-cy desiring to distribute copies of its rules beyond that provided for in this section may contract with the state archivist for the copies desired, and the state archivist may charge the agency for each copy of an amount sufficient to cover the costs of printing it.

Section 8. Petition by an interested person.

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, con-sideration, and disposition. A statement must accompany the proposed rule demonstrating that the proposed rule is within the jurisdiction of the agen-cy and appropriate to the powers of the agency. Within 30 days after sub-mission of a petition, the agency either shall deny the petition in writing stating its reasons for the denial or shall initiate rule-making proceedings in accordance with section 5.

Section 9. Validity or applicability of a rule.

The validity or applicability of a rule may be determined in an action for declaratory judgment in any district court of this state (subject to the venue statute), if it is alleged that the rule, or its threatened application, in-terferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plain-tiff has requested the agency to pass upon the validity or applicability of the rule in question; provided, however, that the issue of validity or ap-plicability may not be determined by the district court while that issue with respect to the rule in question is under consideration in the same case by the agency during any proceeding pending before that agency or during the time the agency's decision concerning validity or applicability is subject to appeal or being considered on appeal.

Section 10. Filing and disposition of petitions.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the validity or applicability of any

statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in cases disposed of by the agency after hearing.

Section 11. Model set of formal procedural rules.

In order to obtain as much possible uniformity in formal procedural rules to be adopted by the agencies under section 4 of this act as may be consistent with the varying functions of the agencies, the attorney general is hereby directed to prepare and submit to the agencies within three months following the effective date of this act a model set of formal procedural rules governing the procedures for handling and disposition of proceedings in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing. This model set of formal procedural rules shall be adopted initially by the agency under sections 4 and 5 of this act unless for an adequate supporting reason the adopting agency modified such procedural rules after giving notice as provided in section 5 of this act.

Section 12. Effective date.

This act shall take effect on July 1, 1973.

Approved March 19, 1973.

CHAPTER 173

H.B. No. 213 (Passed March 8, 1973. In effect May 8, 1973)

GOVERNOR'S COMMISSION ON THE STATUS OF WOMEN

An Act Creating the Governor's Commission on the Status of Women and Providing for the Creation and Purpose of the Commission, Appointment of Members, Term of Office, Vacancies, Qualifications of Members, Election of Chairman, Meetings, Duties of the Commission, Authority to be Reimbursed for Expenses, the Appointment of an Administrative Assistant and Other Necessary Personnel, Authority to Accept Funds, and Authority to Create By-Laws.

Be it enacted by the Legislature of the State of Utah:

Section 1. Govenor's commission on the status of women.

There is hereby established the governor's commission on the status of women. The purpose of the commission shall be to advise and confer with the governor and state agencies concerning issues of importance to women

and families in Utah and to serve as a contact and coordinating group to analyze state and local programs to determine whether they adequately serve women and protect the rights of men, women and families.

Section 2. Appointment of members—Terms of office.

The commission shall consist of 15 members to be appointed by the governor for terms of four years, except that initially eight members shall be appointed for four years, and seven members shall be appointed for two years. Subsequent appointments shall be for terms of four years. Vacancies shall be filled for the balance of the unexpired term. Members may serve two consecutive appointments.

Section 3. Qualifications of members.

Not more than eight members of the commission may be from one political party. Members shall be appointed from persons with a demonstrated record of leadership and involvement, and a willingness to make a commitment to the furtherance of the purposes of the commission. The commission shall make recommendations to the governor concerning appointment of members.

Section 4. Chairman.

Commission members shall elect a chairman, and may appoint such other officers from its membership as is deemed necessary. The commission shall meet in regular meetings and may meet at special meetings at the request of the chairman or the governor.

Section 5. Duties of the commission.

The commission shall take action to carry out the following duties:

(a) Confer with and advise the governor and heads of various state departments regarding discriminatory legislation and practices, and the planning of programs of particular concern to women.

(b) Serve as a clearinghouse for coordination and evaluation of programs, services and legislation affecting women.

(c) Receive and refer complaints concerning alleged violation of women's rights and responsibilities and if necessary report such action to the governor.

(d) Conduct studies, workshops, or fact-finding hearings to develop recommendations for constructive action in all areas of interest to women.

(e) Conduct or participate in educational programs concerning issues of importance to women and families.

(f) Encourage community organizations and state and local units of government to institute activities designated to meet women's needs.

(g) Participate in gaining support of changes deemed necessary through the development of legislation and community education.

(h) Establish a liaison between the governor and national advisory organizations on the status of women, and represent the governor and the state at meetings of such national organizations.

of Interest by the Commission; and Providing a Date for Commencement for Construction.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 1, as enacted by Chapter 40, Laws of Utah 1974, is amended to read:

Section 1. Appropriation.

There is appropriated to the Utah American Revolution Bicentennial Commission from the general fund from otherwise unexpended funds the sum of $8,000,000 for the purposes of this act. The $8,000,000 shall be appropriated July 1, 1974, and deposited with the state treasurer. Any interest income, including interest income from federal sources, state funds, local funds, or foundation collections, shall accrue to the commission for use at its discretion throughout the state.

Section 2. Section amended.

Section 2, as enacted by Chapter 40, Laws of Utah 1974, is amended to read:

Section 2. Allocation of funds.

The commission, in accordance with its policy, shall allocate $6,500,000 for the construction of a fine arts center located at Salt Lake City, Utah and shall distribute $1,500,000 outside Salt Lake City, in its discretion and under such conditions as it prescribes to groups and local governments within the state to assist them with their plans and development for commemoration of the 200th birthday of the United States. The interest income may be used on projects approved by the Commission both within and outside Salt Lake County. Financial participation by private, local or federal government sources or some combination thereof at a ratio determined by the commission shall be required for all projects which receive state appropriated funds.

Section 3. Section amended.

Section 3, as enacted by Chapter 40, Laws of Utah 1974, is amended to read:

Section 3. Committment of funds—Lack of matching funds.

The State of Utah shall have title to an undivided interest in the fine arts center proportionate to its contribution. The state of Utah shall contribute $6,500,000 to the construction, operation and maintenance of the fine arts center and the commission may also use at its discretion the interest or any part of it, earned on the $6,500,000 for purposes of the construction, operation and maintenance of the center. If the commission is unable to commit the matching funds required by this act for construc-

tion of the fine arts center by January 1, 1976, the $6,500,000 allocated herein for the fine arts center, exclusive of the interest thereon, shall not be committed until further act of the legislature excepting $500,000 which shall be allocated by the Bicentennial Commission for the Bicentennial Ogden Union Station project.

Section 4. Section repealed and reenacted.

Section 64-12-5, Utah Code Annotated 1953, as enacted by Chapter 162, Laws of Utah 1973, is repealed and reenacted to read:

64-12-5. Date for commencement for construction.

Construction on the structures provided in connection with the bicentennial observance shall begin by December 31, 1976

Approved March 21, 1975.

CHAPTER 193

S. B. No 77 (Passed February 28, 1975 In effect May 13, 1975)

ADMINISTRATIVE RULE-MAKING ACT

An Act Amending Section 63-46-5, Utah Code Annotated 1953, as Enacted by Chapter 172, Laws of Utah 1973; Enacting Sections 63-46-12 and 63-46-13, Utah Code Annotated 1953; Providing for Exclusion of Rule-Making for Public Review Where Procedure has Previously Been Established by Federal Government; Providing that Rules Made by Boards, Councils, and Other Agencies of Internal Governance Within the System of Higher Education are in Compliance With This Act if the Rules Were Adopted at a Regular Meeting or Public Hearing and Notice of This Proposal was Contained in the Agenda for the Meeting or Hearing, and Records or Copies of the Rules are Made Available for Public Inspection; and Providing That State Archivist Shall Have Responsibility for Administering the Provisions of "The Utah Administrative Rule-Making Act."

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 63-46-5, Utah Code Annotated 1953, as enacted by Chapter 172, Laws of Utah 1973, is amended to read:

63-46-5. Administrative rule-making—Procedure.

(1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) Give notice of its intended action. This notice shall include a ıtement of either the terms or substance of the intended action or a scription of the subjects and issues involved, the reasons for the pro- ›sed rule, and the time when, the place where, and the manner in which terested persons may present their views regarding it. The notice shall mailed to all persons who have made timely request of the agency for vance notice of its rule-making proceedings and shall be published in e bulletin to be published by the state archivist as provided in section -46-7. The state archivist shall maintain for notice of rule making a t of names and addresses of persons who request mailed notice of agency le making as required by this act. Except as provided in subsections), (3), and (4) of this section, no action shall be taken by the agency ıtil at least twenty days have elapsed following such mailing and publi- tion of this notice.

(b) Afford all interested persons reasonable opportunity to participate rule making by submitting data, views, or arguments, either orally or writing, as determined by the agency. In case of substantive rules, an portunity for oral hearing must be granted if requested by 25 persons, governmental subdivision or an agency, or by an association having t less than 25 members if requests are made in writing within fifteen ys after the mailing and publication of the last notice of rule making. ›on adoption of a rule, the agency, if requested to do so by an interested rson either prior to adoption or within thirty days thereafter, shall ue a concise written statement of the principal reasons for and against adoption, incorporating in this statement its reasons for overruling the nsiderations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, fety, or welfare requires adoption of a rule without providing the notice ıuired by subsection (1) of this section and states in writing its reasons · that finding, it may proceed without prior notice or hearing, or upon y abbreviated notice and hearing that it finds practicable, to adopt an ıergency rule. The rule may be effective for a period of not longer than 0 days, but the adoption of an identical rule under subsection (1) of is section is not precluded.

(3) If an agency finds that any of the rule-making procedures re- ired by this section are impracticable, unnecessary, or contrary to the blic interest with respect to the adoption and filing of a particular rule a particular designated type or class of rules, it may, to the minimum :ent required by that finding, proceed without compliance with this :tion to adopt and file such rule or rules, if the agency adopts and files th the rule or rules a written statement of findings and reasons for such :ion which shall be published in the bulletin along with the rule or es.

(4) A rule required to be adopted by an agency in order to comply th federal law or to qualify for federal funding or for other federal rticipation requirements must be adopted in compliance with the re-

quirements of this section, except where the required rule-making procedures will disqualify the agency for federal funding or participation, or where the required rule-making procedure for public review has already been completed on an identical basis on the federal level. In this case, the agency will meet the requirements prescribed by section 63-46-6.

(5) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years from the effective date of the rule.

Section 2. Section enacted.

Section 63-46-12, Utah Code Annotated 1953, is enacted to read:

63-46-12. Rules in compliance with requirements.

Notwithstanding any other provisions of this act, all actions heretofore or hereafter taken by the state board of regents, the state board of vocational education, the institutional council of any institution of higher education, or by any agency of internal governance of any institution in the system of higher education, to adopt, amend, or repeal any rule shall be deemed to be in full compliance with the provisions of this act if all of *the following requirements are satisfied:*

(1) The action was taken at a regular meeting of or other hearing held by said board, council, or agency of internal governance that was open to the public and at which all interested persons were offered a reasonable opportunity to participate by submitting data, views, or argument either orally or in writing.

(2) Notice of the proposed action was given by listing it in the official written agenda for the meeting or hearing, and the agenda was available for public inspection at the office of the board, council or agency not less than five days prior to the meeting or hearing.

(3) The minutes and other records of actions taken under this section, and a copy of all rules currently in effect that have been adopted by the board, council, or agency, are maintained at its office and are available to the state archivist and open for inspection by any member of the public during normal business hours.

Section 3. Section enacted.

Section 63-46-13, Utah Code Annotated 1953, is enacted to read:

63-46-13. Administration of act.

The Utah state archivist shall have the responsibility to administer the provisions of this act and to require state agencies to comply with its terms. The state archivist shall develop and implement procedures for rule-making hearings consistent with the purpose of this act. Any state agency which has not previously submitted rules to the archivist

· is otherwise not in compliance with the terms of this act, shall do all ıings necessary to be in compliance with the terms of this act, on or ›fore June 30, 1975. All rules which have been in use and practice by ıe state agencies prior to June 30, 1975, shall continue in full force and fect upon the filing of a certified copy of the rules with the state archivist ı or before June 30, 1975.

Approved March 13, 1975.

CHAPTER 194

B. No. 238 (Passed March 11, 1975. In effect May 13, 1975)

UTAH INFORMATION PRACTICES ACT

ı Act Amending Section 63-30-10, Utah Code Annotated 1953, as Enacted by Chapter 139, Laws of Utah 1965, and Section 63-2-68, Utah Code Annotated 1953, as Enacted by Chapter 212, Laws of Utah 1969; Relating to Information Practices in State Government; Defining Safeguards for Privacy and Confidentiality in Relation to Information Systems; Establishing the Secretary of State as the Primary Protective Agency; Providing for Annual Reports for Presentation to the Legislature and the Governor; Providing for the Information to be Contained Therein; Providing for the Promulgation of Rules and Regulations by the Secretary of State; Establishing Standards for Such Information Systems; Establishing Rights of Individuals on Whom Such Data is Maintained; Providing for Responsibilities of the Responsible Authorities for Collection of Use of That Data; Waiving Governmental Immunity for Invasion of Rights and Privacy; and Providing Civil Remedies and Criminal Penalties for Violations of Provisions of This Act.

Be it enacted by the Legislature of the State of Utah:

ction 1. Title.

This act shall be known and may be cited as the "Utah Information actices Act."

ction 2. Purpose.

(1) It is the purpose of this act to establish fair information practices insure that the rights of persons are protected and that proper reme- ›s are established to prevent abuse of personal information.

(2) The legislature of the State of Utah finds that:

(a) The use of information for purposes other than those purposes which a person knowingly consents can seriously endanger a person's ht to privacy and confidentiality.

(b) In order to increase participation of persons in the prevention and correction of unfair information practices, opportunity for hearing and remedies must be provided.

(c) In order to insure that information collected, stored, and disseminated about persons is consistent with fair information practices while safeguarding the interests of the persons and allowing the state to exercise its proper powers, a definition of rights and responsibilities must be established.

Section 3. Definitions.

As used in this act:

(1) "Secretary" means the secretary of state.

(2) "Data on individuals" includes all records, files and processes which contain any data on any individual and which are kept or intended to be kept by state government on a permanent or semi-permanent basis, including, but not limited to, that data by which it is possible to identify with reasonable certainty the person to whom such information pertains.

(3) "Responsible authority" means any state office or state official established by law or executive order as the body responsible for the collection or use of any set of data on individuals or summary data.

(4) "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

(5) "Public data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be open to the public.

(6) "Confidential data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be available only to appropriate agencies for the uses specified in subsection (2) of section 6 and to others by express consent of the individual, but not to the individual himself.

(7) "Private data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be available only to the appropriate agencies for the uses specified in subsection (2) of section 6, to others by the express consent of the individual, and to the individual himself or next of kin when information is needed to acquire benefits due a deceased person.

Section 4. Identification of authorities included in collection of data on individuals.

The secretary is directed to identify responsible authorities in state government involved in the collection or use of data on individuals or sum-

UTAH GUARANTEED LOAN PROGRAM

(Includes the PLUS Program)

For loans guaranteed under the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.)

03001

Warning: Any person who knowingly makes a false statement or misrepresentation in this form shall be subject to a fine of not more than $10 000 or imprisonment for not more than five years or both, under the provisions of Sec 20 U.S.C 1097

REQUEST FOR DEFERMENT OF REPAYMENT

SECTION 1 TO BE COMPLETED BY BORROWER

WILLIS DORMAN-UGH
BORROWER NAME

634 E. 700 S.
STREET ADDRESS

SLC UT. 84102
CITY STATE ZIP

082-28-9672
SOCIAL SECURITY NUMBER

— CONTINUING GRAD. STUDENT THRU SUMMER 1985 —
Deferment requested for

UNTIL JAN 1986
MM/DD/YY TO MM/DD/YY

CERTIFY THAT I AM ELIGIBLE FOR DEFERMENT OF REPAYMENT BECAUSE I AM (circle one)

NO TIME LIMITATION

1. Pursuing full-time study at a school that is participating in the GSLP, a citizen or national of the United States and am studying at a school not located in the United States.
2. Receiving rehabilitation training under an approved program or scheduled to receive such training within 3 months Note: certification of your status is necessary from both the government agency which recognizes the training program and the program in which you are participating (See back of this form for additional eligibility requirements.)
3. Studying full time in an eligible graduate fellowship program. (See back of this form for additional eligibility requirements.)

3 YEAR LIMITATION

4. Serving on active duty status in the armed forces of the United States or an officer in the Commissioned Corps of the Public Health Service
5. Serving as a full time volunteer under the Peace Corps Act or in an Action program under Title I of the Domestic Volunteer Service Act of 1973
6. Serving as a full time volunteer in a tax exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in an Action administered program (See back of this form for additional eligibility requirements)
7. Temporarily totally disabled (or am unable to work because of the care required of a spouse who is temporarily totally disabled) (See back of this form for additional eligibility requirements)

2 YEAR LIMITATION

8. Serving an internship or residency program approved by the Secretary of Education which must be successfully completed in order to receive recognition required to begin professional practice or service I further certify that I have received a Baccalaureate or professional degree

1 YEAR LIMITATION

9. Conscientiously seeking but unable to find full-time employment in the United States for a single period not to exceed one year (See back for additional eligibility requirements)

I claim exemption from payment of the principal on my guaranteed loan(s) during the period indicated above I agree to notify the lender immediately upon termination of my claimed status I further agree to provide documentation annually to support my continued deferment status, unless I have an unemployment deferment, in which case I must provide documentation at least once every six months to support my deferment status.

Unless I have checked the box below if I am eligible for a post deferment grace period on some but not all my guaranteed loans, I agree to postpone repayment on the non-eligible loans, as described in the POST DEFERMENT GRACE PERIOD section on the back of this form

W. Dorman-Ugh
SIGNATURE OF BORROWER DATE

By checking the box below I do not agree to the terms set forth on the back of this form and agree that I will begin repayment of my loan(s) disbursed on or after October 1, 1981, immediately following the end of any period of deferment; I will begin repayment of my loan(s) disbursed before October 1, 1981, six months later

☐ I do not wish to postpone payments on my loans made on or after October 1, 1981, under the terms described on the back of this form

Per phone call by Maine

SECTION 2 CERTIFICATION OF STATUS

NOTE. See reverse side for the title of official authorized to certify

I certify that the above claimed status is correct for the period of JUNE 1985 to JAN. 1986 and that any additional conditions for eligibility as set forth on this form have been met F.T. **I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT.**

University of Utah
NAME OF ORGANIZATION

Geogr. Dept. OSH 270
ADDRESS
(SLC) Ut. 84112 (801) 581-8218

SIGNATURE OF OFFICIAL

Chairman, Geogr. Dept. (13 MAY)
TITLE (SEE REVERSE SIDE) DATE

ADDITIONAL REQUIREMENTS

SECTION 1, ITEM 2 PURSUING REHABILITATION TRAINING PROGRAM

In order to be eligible to receive this deferment Federal Regulations require the rehabilitation training program meet the following requirements

1) Be recognized by a government agency with specific responsibilities for rehabilitation programs in the borrower's area
2) Agree to provide services under a written individualized plan for the borrower s rehabilitation that is specific as to the date services are expected to end
3) Structured in a way that requires a substantial commitment by borrower to his or her rehabilitation

SECTION 1, ITEM 3: PARTICIPATING IN A GRADUATE FELLOWSHIP PROGRAM

In order to be eligible to receive this deferment Federal Regulations require that

1) The fellowship program
   - (i) Provide sufficient financial support to graduate fellows to allow for full time study for at least six months
   - (ii) Require prior to award of that financial support a written statement from each applicant which explains the applicant s objectives
   - (iii) Require a graduate fellow to submit periodic reports projects or other evidence of the graduate fellow s progress and
2) The borrower
   - (i) Hold at least a baccalaureate degree conferred by an institution of higher education
   - (ii) Is engaged in full time study that may be independent of an educational or cultural institution in an academic or professional subject area for which the borrower has shown an interest and ability
   - (iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program

SECTION 1, ITEM 6· SERVING AS A VOLUNTEER IN A TAX EXEMPT ORGANIZATION

In order to be eligible to receive this deferment Federal Regulations require that

1) The borrower serves in an organization which is exempt from taxation under Section 501 (C)(3) of the Internal Revenue Code of 1954
2) The borrower provides service to low income persons and their communities in order to assist them in eliminating poverty and poverty related human social and environmental conditions
3) The borrower s compensation does not exceed the compensation received by a full time volunteer in the Peace Corps or in a program administered by the Action agency Compensation includes a subsistence allowance necessary travel expenses and stipends
4) The borrower as part of his or her duties does not give religious instruction conduct worship services engage in religious proselytizing or engage in fund raising to support religious activities
(5) The borrower has agreed to serve on a full time basis for a term of at least one year

SECTION 1, ITEM 7 TEMPORARILY TOTALLY DISABLED

In order to be eligible to receive this deferment Federal Regulations require that

(1) The borrower who is temporarily totally disabled is one who by reason of injury or illness cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness or

(2) The borrower s spouse subject to the above definition requires continuous nursing or similar services

SECTION 1, ITEM 9 UNEMPLOYMENT

In order to be eligible to receive this deferment Federal Regulations require that

(1) The borrowers submit a written request signed and dated to the holder of the loan

(2) The request contains a statement describing the borrowers search for full time employment the borrower s latest permanent home address and or temporary address certification that the borrower has registered with a public or private employment agency the borrower s agreement to notify the lender promptly when he or she becomes employed

SECTION 2, TITLE: AUTHORIZED CERTIFYING OFFICIALS OR ORGANIZATIONS

(1) Registrar of School of Attendance

(2) A State vocational rehabilitation agency
A State agency for mental health services
A State agency for drug abuse
A State agency for alcohol abuse treatment or
The Veterans Administration

(3) Fellowship program official

(4) Commanding Officer

(5) Peace Corps or Action Agency official

(6) Tax exempt organization official

(7) Physician

(8) Internship program official

POST DEFERMENT GRACE PERIOD

If I am eligible for a six-month post-deferment grace period on some but not all of my GSLP loans, I agree that, following any deferment period the lender may postpone for six months my payments on loans made on or after October 1, 1981, which are not eligible for the post-deferment grace period Under this agreement the lender may consolidate my loans in a single repayment agreement and I will not be required to make payments on two separate accounts each month when repayment commences This means that for those loans for which payments are postponed

- No payment of either principal or interest will be required during the six months following a period of deferment and no bills or coupon books will be sent to me for those months
- Interest will accrue during the six-month period
- Unpaid accrued interest will be added to and become part of the outstanding principal balance of my loans at the end of the six month period

Any payments I may make during this post deferment grace period will first be applied to accrued interest and then to the principal