

STATE OF INDIANA)		IN THE MARION CO. SUPERIOR COURT
) SS:		CIVIL DIVISION, ROOM NO. 1
COUNTY OF MARION)		CAUSE NO. 49-D018901-CP0097

LINDBERG COE, JAMES W. JONES,)
 JOHN DOE, DAVID HENDLEY,)
 TERRI LAINGE, WILLIAM COLLINS,)
 RICHMOND MILLER, and)
 STEPHANIE STEWART-JACKSON,)
 On behalf of themselves and)
 all others similarly)
 situated,)

Plaintiffs,)

v.)

CENTER TOWNSHIP OF MARION)
 COUNTY, INDIANA, and)
 WILLIAM R. SMITH, in his)
 official capacity as Center)
 Township Trustee,)

Defendants.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY INJUNCTION

This case is before the Court upon plaintiffs' Motion for Preliminary Injunction, as filed January 25, 1989. The Court, having considered the motion, supporting memoranda and Affidavits, as well as plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, and having heard evidence and argument of counsel at the hearings on March 17, April 27, 1989, and May 19, 1989, finds that an order should be entered pursuant to Trial Rule 65(A).

The Court finds and concludes as follows:

1. The plaintiff class is likely to prevail on the merits of their statutory and constitutional claims because the Trustee is not sufficiently discharging his mandatory statutory obligation to provide the homeless poor in Center Township with emergency shelter assistance. See, Affidavit and testimony of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Affidavit of Roneal Booker (March 17, 1989), Affidavit and testimony of Deanna Cathcart (March 17, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavit of William Collins (March 17, 1989), Affidavit of Janet Cornfield (March 17, 1989), Affidavit and testimony of Linda Edington (March 17, 1989), Affidavit of Anne Farringer (March 17, 1989), Affidavit and testimony of Byron Fassett (March 17, 1989), Affidavit and

testimony of Terri Lainge (March 17, 1989), Affidavit of Modibo Lumumba (March 17, 1989), Affidavits and testimony of Richmond Miller (March 17, 1989, April 27, 1989), Affidavit and testimony of Arthur Sims (March 17, 1989), Affidavit of Stephanie Stewart-Jackson (March 17, 1989), Affidavit of Lora Thompson (March 17, 1989), Affidavit and testimony of Dr. Matias Vega (March 17, 1989), Affidavit of Kevin Gard (April 27, 1989), Affidavit of James Miller (April 27, 1989), Deposition of William Smith, 50, 89-94, 105, (filed on April 28, 1989), Deposition of Dwight Gaines, 6, 21 31, (filed on April 28, 1989), Deposition of Mary Holland (filed on April 28, 1989), Deposition of Denisa Wilson, 31-38, (filed on April 28, 1989).

2. The Trustee is obligated under I.C. 12-2-1-6, 10 (b) and 20 (a) to provide the plaintiff class with emergency shelter assistance. State ex rel. Van Buskirk v. Wayne Township (1981) Ind. App., 418 N.E.2d 234; Nidor v. Center Township of Marion County, No. S285-632, Room No. 2, (Dec. 19, 1988); Deposition of William Smith, 6-7.

3. The homeless poor people of Center Township have an urgent need for transportation assistance and emergency daytime and nighttime shelter assistance which the Trustee is not adequately providing. See, Affidavit of Peggy Angleton (March 17, 1989), Affidavit of Roneal Booker (March 17, 1989), Affidavit and testimony of Deanna Cathcart (March 17, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavit of William Collins (March 17, 1989), Affidavit of Janet Cornfield (March 17, 1989), Affidavit and testimony of Linda Edington (March 17, 1989), Affidavit and testimony of Linda Frick (March 17, 1989), Affidavit and testimony of Mary Hoffman (March 17, 1989), Affidavits and testimony of Terri Lainge (March 17, 1989, April 27, 1989)), Affidavit of Modibo Lumumba (March 17, 1989), Affidavits and testimony of Richmond Miller (March 17, 1989, April 27, 1989), Affidavit of Roger Outcalt and report of the Homeless Task Force (March 17, 1989), Affidavit and testimony of Bob Ryan (March 17, 1989), Affidavit and testimony of Cathy Scott

(March 17, 1989, April 27, 1989), Affidavit and testimony of Arthur Sims (March 17, 1989), Affidavit of Stephanie Stewart-Jackson (March 17, 1989), Affidavit and testimony of Dr. Marcie Taylor, "March 1988 Survey of Homeless Persons Utilizing Shelters in Indianapolis," (March 17, 1989), Affidavit of Lora Thompson (March 17, 1989), Affidavit and testimony of Dr. Matias Vega (March 17, 1989), Affidavit of Kevin Gard (April 27, 1989), Deposition of William Smith, 50, 94, Exhibit F, 105, (filed on April 28, 1989), Deposition of Dwight Gaines, 6, 9-10, 21, 31, (filed on April 28, 1989), Deposition of Mary Holland, 11, 21, (filed on April 28, 1989), Deposition of Denisa Wilson, 31-38, (filed April 28, 1989).

4. The Trustee partially discharges his mandatory obligation to provide emergency shelter by reimbursing private religious mission shelters for the feeding and sheltering of the homeless, however, the shelters become full, have numerous restrictions on their services and require those people staying there to attend religious services. See, Affidavit of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Affidavit of Roneal Booker (March 17, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavit of Anne Farringer (March 17, 1989), Affidavit and testimony of Linda Frick (March 17, 1989), Affidavit and testimony of Mary Hoffman (March 17, 1989), Affidavit of Modibo Lumumba (March 17, 1989), Affidavit of Dave Rock (March 17, 1989), Affidavit and testimony of Bob Ryan (March 17, 1989), Affidavit and testimony of Cathy Scott (March 17, 1989, April 27, 1989), Affidavit of Kevin Gard (April 27, 1989), Affidavit and testimony of Arthur Sims (March 17, 1989), Affidavit and testimony of Dr. Marcie Taylor, "March 1988 Survey of Homeless Persons Utilizing Shelters in Indianapolis," (March 17, 1989, April 27, 1989), Affidavit and testimony of Dr. Matias Vega (March 17, 1989), Deposition of William Smith, 33-36, (filed on April 28, 1989); Deposition of Dwight Gaines, 5-6, 17, 21, 26-28, 31, (filed on April 28, 1989), Deposition of Mary Holland, 11, 21, 24, 25, (filed on April 28, 1989), Deposition of Denisa

Wilson, 26-27, 29-30, (filed April 28, 1989), Nidor v. Center Township, No. S285-632 (Dec. 19, 1988) Finding No. 13.

5. There are insufficient emergency family shelters in Center Township, with the result being that many families, including children, are turned away. See, Affidavit of Peggy Angleton (March 17, 1989); Affidavit and testimony of Deanna Cathcart (March 17, 1989), Affidavit of Janet Cornfield (March 17, 1989), Affidavit and testimony of Linda Edington (March 17, 1989), Affidavit and testimony of Byron Fassett (March 17, 1989), Affidavit and testimony of Linda Frick (March 17, 1989), Affidavit and testimony of Mary Hoffman (March 17, 1989), Affidavit and testimony of Terri Lainge (March 17, 1989), Affidavit of Roger Outcalt, 1987 Report of the Homeless Task Force, (March 17, 1989), Affidavit of Lora Thompson (March 17, 1989), Deposition of Dwight Gaines, 21, (filed April 28, 1989); Deposition of Mary Holland, 11, (filed April 28, 1989), Nidor, Finding No. 13.

6. There are insufficient emergency shelter facilities in Center Township for those homeless who have had any alcohol to drink or who are in need of detoxification and medical treatment for substance abuse problems. See, Affidavit and testimony of Linda Frick (March 17, 1989), Affidavit and testimony of Mary Hoffman, (March 17, 1989), Affidavit and testimony of Linda Edington (March 17, 1989), Affidavit of James Miller (April 27, 1989); Deposition of Mary Holland, 22 (April 28, 1989).

7. The Trustee recognizes that he has a statutory obligation to provide emergency shelter assistance, but claims that he lacks the funds necessary to sufficiently discharge his obligation. See Deposition of William R. Smith, 50, 94, Exhibit F, 105, (filed on April 28, 1989); Deposition of Dwight Gaines, 4, (filed on April 28, 1989); Affidavit and testimony of Linda Frick (March 17, 1989); Affidavit and testimony of Bob Ryan (March 17, 1989).

8. The Trustee has not yet exhausted his statutory remedies to obtain more funding. Deposition of William R. Smith,

50, 94, Exhibit F, 105, 52-61, (filed on April 28, 1989); Nidor v. Center Township, No. S285-632, (Dec. 19, 1988), Finding No. 94.

9. Numerous members of the plaintiff class, especially women and children, and those individuals with substance abuse problems, are unable to obtain overnight and daytime shelter. See, Affidavit and testimony of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Affidavit of Roneal Booker (March 17, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavit of William Collins (March 17, 1989), Affidavit and testimony of Linda Edington (March 17, 1989), Affidavit of Anne Farringer (March 17, 1989), Affidavit and testimony of Byron Fassett (March 17, 1989), Affidavit and testimony of Linda Frick (March 17, 1989), Affidavit and testimony of Mary Hoffman (March 17, 1989), Affidavits and testimony of Terri Lainge (March 17, 1989, April 27, 1989), Affidavit of Modibo Lumumba (March 17, 1989), Affidavits and testimony of Richmond Miller (March 17, 1989, April 27, 1989), Affidavit of Stephanie Stewart-Jackson (March 17, 1989), Affidavit of Lora Thompson (March 17, 1989), Affidavit and testimony of Dr. Matias Vega (March 17, 1989), Affidavit of Kevin Gard (April 27, 1989), Affidavit of James Miller (April 27, 1989), Deposition of Dwight Gaines, p. 21, (filed April 28, 1989); Affidavit of Mary Holland, 11, 22, 24-25 (April 28, 1989).

10. The Trustee's failure to adequately discharge his statutory duty to provide for the shelter needs of the plaintiff class violates the due process rights of the plaintiff class. See Plaintiffs' Memorandum In Support Of Preliminary Injunction, 7-8.

11. The Trustee's provision for the emergency shelter needs of those homeless individuals who are able to secure space in the shelters and lack of provision for the emergency shelter needs of those homeless who are unable to gain admittance to the shelters violates the latter classes' rights to the equal protection of the law as guaranteed by the fourteenth amendment to the U.S.

Constitution and Art. I, Sec. 23 of the Indiana Constitution.
See Plaintiffs' Memorandum In Support Of Preliminary Injunction,
8.

12. The Trustee's use of religious missions which require attendance at religious services as a condition of shelter, violates the rights of those individuals who object to attending such services to the free exercise of religion, their rights to freedom of conscience and belief, their right to worship according to the dictates of their own conscience, and their right not to be compelled to attend any place of worship, as guaranteed by the first amendment to the U.S. Constitution, and Art. I, Sections 2, 3 and 4 of the Indiana Constitution. This practice may also violate the establishment clause of the first amendment to the U.S. Constitution and the prohibition against any public monies being spent for the benefit of any religious institution, as prohibited by Art. I, Section 6 of the Indiana Constitution. See Plaintiffs' Memorandum In Support Of Preliminary Injunction, 8-10.

13. The Trustee has an obligation to provide any necessary deposit or security payments for long-term housing and is presently fulfilling that obligation. See, Deposition of William Smith, Exhibit A, p. 15 (Trustee standards: "The Trustee does not pay security and/or damage deposits[.]"); Affidavit and testimony of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Testimony of Deanna Cathcart (March 17, 1989), Affidavits and testimony of Terri Lainge (March 17, 1989, April 27, 1989), Affidavit and testimony of Arthur Sims (March 17, 1989), Affidavit of Kevin Gard (April 27, 1989), Affidavit and testimony of Jerry Gorup (April 27, 1989); The Second Affidavit of Richmond Miller (April 27, 1989); Affidavit of Jeannette Spencer (April 27, 1989); Affidavit of Paul Spoonamore (April 27, 1989).

14. The Trustee inadequately discharges his obligation to provide shelter assistance by substantially limiting the stock of long-term housing available to qualified applicants for such

assistance to those rental units and landlords willing to accept the Trustee's "Landlord's Agreement" as it now exists. See, Affidavit and testimony of Jerry Gorup (April 27, 1989), Affidavit of Paul Spoonamore (April 27, 1989); Affidavit of Jeannette Spencer (April 27, 1989); Deposition of Dwight Gaines, 23, (filed April 27, 1989); Deposition of William Smith, 90; Affidavit and testimony of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Affidavit and testimony of Deanna Cathcart (April 27, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavit and testimony of Terri Lainge (March 17, 1989, April 27, 1989), Affidavits and testimony of Richmond Miller (March 17, 1989, April 27, 1989), Affidavit of Lora Thompson (March 17, 1989).

15. The Trustee inadequately discharges his obligation to provide shelter assistance by refusing to provide applicants for shelter assistance with a list of landlords with vacancies and willing to accept the "Landlord's Agreement." This substantially limits the ability of applicants to secure such housing. See, Affidavit and testimony of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Affidavit and testimony of Deanna Cathcart (March 17, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavits and testimony of Terri Lainge (March 17, 1989, April 27, 1989), Affidavits and testimony of Richmond Miller (March 17, 1989, April 27, 1989), Affidavit and testimony of Arthur Sims (March 17, 1989), Affidavit of Lora Thompson (March 17, 1989), Affidavit and testimony of Jerry Gorup (April 27, 1989), Affidavit of Jeannette Spencer (April 27, 1989), Affidavit of Paul Spoonamore (April 27, 1989); Deposition of Mary Holland, 23, 25 (filed April 28, 1989).

16. The provisions in the Trustee's "Landlord's Agreement" that provide that the Trustee may cancel the agreement upon ten days written notice; that the landlord must waive legal rights to eviction for untimely rental payments; and that rental payments are not to be made until the agreement is received back into the Trustee's office, rather than when the tenant takes possession of

the premises; are unreasonable and work to substantially limit by ninety-percent or more the otherwise available housing for qualified applicants for shelter assistance from the Trustee. See Affidavit and testimony of Jerry Gorup (April 27, 1989), Affidavit of Paul Spoonamore (April 27, 1989), Affidavit of Jeannette Spencer (April 27, 1989); cf Deposition of William Smith, 89, (filed April 28, 1989).

17. The failure of the Trustee to discharge his statutory and constitutional duties to provide shelter to the homeless poor places member of the plaintiff class in grave risk of physical and emotional harm, including:

- (a) greater susceptibility to physical ailments, infirmities and life-threatening weather conditions; and,
- (b) greater risk of physical assault by others, (over one-third of the homeless have been victims of physical assault while homeless).

See, Affidavit and testimony of Dr. Matias Vega (March 17, 1989), Affidavit and testimony of Dr. Marcie Taylor and accompanying "March, 1988 Survey of Homeless Persons Utilizing Shelters in Indianapolis," (March 17, 1989, April 28, 1989), Affidavit and testimony of Cathy Scott, M.S.W. (March 17, 1989, April 28, 1989), Affidavit and testimony of John Doe (March 17, 1989), Affidavit of Peggy Angleton (March 17, 1989), Affidavit of Roneal Booker (March 17, 1989), Affidavit and testimony of Deanna Cathcart (March 17, 1989), Affidavit of Lindberg Coe (March 17, 1989), Affidavit of William Collins (March 17, 1989), Affidavit and testimony of Linda Edington (March 17, 1989), Affidavit of Anne Farringer (March 17, 1989), Affidavit and testimony of Linda Frick (March 17, 1989), Affidavit and testimony of Terri Lainge (March 17, 1989, April 27, 1989), Affidavits and testimony of Richmond Miller (March 17, 1989, April 27, 1989), Affidavits of Kathy Petrere and accompanying photographs (March 17, 1989), Affidavit of Dave Rock (March 17, 1989), Affidavit and testimony of Bob Ryan (March 17, 1989), Affidavit and testimony of Arthur

Sims (March 17, 1989), Affidavit of James Miller (April 27, 1989), Affidavit of Kevin Gard (April 27, 1989).

18. Members of the plaintiff class will suffer immediate and irreparable physical and emotional harm if a preliminary injunction is not granted ordering the Trustee to provide for their emergency shelter needs. See, evidence listed in support of Finding No. 17.

19. The plaintiff class' remedies at law are inadequate because no money damages can insure that the Trustee will follow his statutory and constitutional obligations, and because no amount of money damages can adequately compensate the plaintiffs for the severe, life-threatening effect of the Trustee's failure to provide them emergency shelter.

20. The public interest would be served by the issuance of a preliminary injunction because the health and safety of the homeless poor would be protected and because the will of the people of Indiana, as expressed through the laws passed by their elected representatives, and by the Indiana and United States Constitutions, would be served.

21. The balance of harm weights in the plaintiffs' favor. The harm of not issuing an injunction is great because of the severe life-threatening conditions suffered by plaintiffs; the harm to the Trustee of issuing an injunction is minimal because all that is required is that the Trustee perform his statutory and constitutional obligations and because the Trustee has not exhausted his statutory sources of revenue.

Based on the foregoing conclusions, it is hereby ORDERED as follows:

1. Plaintiffs' Motion for Preliminary Injunction pursuant to Trial Rule 65(A), is hereby GRANTED.
2. Plaintiffs' Motion To Certify Class Action is GRANTED.
3. Defendant's Motion to Dismiss and Motion to Stay Discovery are DENIED.
4. The Center Township Trustee shall provide emergency

daytime and evening shelter for those class members who are unable to secure such space in the existing private shelters or who object to participating in the mandatory religious services of the private religious missions. It is clear that increased shelter capacity for families and individuals with substance abuse problems is required, as is twenty-four hour availability of such shelter. The Trustee retains the discretion in determining whether to provide this shelter by maintaining a public shelter or by contracting with private shelter operator(s) or other shelter providers, such as motels or hotels.

5. The Center Township Trustee shall provide transportation assistance to class members to seek and accept employment. The Trustee retains discretion in determining whether this aid is to be provided by contacting with the Metro Bus public transportation system or some other private vendor. However, those class members who are not physically able to take the bus must be provided an alternative mode of transportation.
6. The Center Township Trustee shall pay rental deposits for those class members who have located housing but who are unable to pay any required deposits themselves. The Trustee may retain the right to collection of the deposit from the leasee and/or the landlord upon termination of the lease or upon the ability of the leasee to pay the deposit themselves.
7. The Center Township Trustee shall cease to limit the housing otherwise available to qualified applicants by the requirement of the landlord signing the Trustee's present "Landlord's Agreement." If a Landlord's Agreement is to be used, such an agreement shall include a 30-day cancellation notice provision instead of the present 10-day cancellation notice provision,

shall not require a landlord's waiver of a right to evict for non-payment and shall provide that the rent shall be due when the tenant takes possession of the premises.

8. The Center Township Trustee shall continue shelter assistance, including rental payments, so long as the recipient remains eligible under Indiana law for such assistance.
9. The Center Township Trustee shall request that the Marion County Health and Hospital Corporation make inspections no less than twice a year of all facilities that the Center Township Trustee reimburses for the sheltering of class members. These inspections shall document the cleanliness of the premises, the services available to residents, the restrictions, if any, placed upon the residents and the nutritional quality of the food served. The Trustee shall keep records of these requests and reports and shall not refer applicants for assistance to those facilities that the Trustee believes and/or these reports indicate do not meet basic standards of health, safety, and cleanliness.

Date: 8/21/59



Anthony J. Metz, III, Judge
Marion Superior Court
Civil Division, Room No. 1

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