

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

IN THE MARION COUNTY SUPERIOR COURT
CIVIL DIVISION, ROOM NO.
CAUSE NO.

LINDBERG COE,
JAMES W. JONES,
JOHN T. ABRAMS, and
DAVID HENDLEY,
On behalf of themselves and
all others similarly
situated,
 Plaintiffs,

vs.

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

FILED

JAN 25 1969

Sup. Ct. Clerk

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

I.

INTRODUCTION

The Plaintiffs in this case are poor homeless citizens of Center Township, Marion County, Indiana, and are in need of emergency shelter and housing assistance. The Defendant in this case is the Center Township Trustee, who is mandated by statute and case law to provide for the emergency shelter and long term housing needs of the poor people located in his Township.

Plaintiffs have moved this Court to issue a preliminary injunction ordering the Center Township Trustee to devise and implement a plan to discharge his obligation to provide emergency shelter and housing assistance to the Plaintiffs. The relevant facts are contained in Plaintiffs' Complaint and in their Motion for Preliminary Injunction, and will be further developed at a hearing on Plaintiffs' motion. All documents accompany this memorandum and are incorporated by reference.

II.

FACTS

The Plaintiffs are individuals and a class of people in Center Township, Marion County, Indiana who are in need of emergency shelter and

long term housing assistance. The Trustee is not providing this necessary assistance as required by law.

Although the Plaintiff class is by nature a population which is impossible to precisely count, studies and surveys have been conducted regarding the number of homeless people in Marion County and their need for emergency shelter. In a 1987 study done at the request of Indianapolis Mayor William Hudnut, the Community Service Council's Homeless Task Force concluded that an estimated 1,546 people are homeless in Indianapolis on any given night and that 30,000 individuals are homeless in Indianapolis annually. The survey showed that 631 beds were available at local private shelters and that 278 people were "on the streets" on an average night. The study concluded that the number of private shelter beds was grossly inadequate to meet the needs of Indianapolis homeless.

The Homeless Network of Indianapolis Incorporated, a private, not for profit corporation consisting of service providers, homeless advocates and homeless people, estimates that as of December 1, 1988, there are 2,000 to 2,200 homeless people in Indianapolis. The number of private shelter beds has increased since the 1987 Community Service Council survey, but is still grossly inadequate to meet the demand for emergency shelter. There has only recently been private day-time shelter made available (the Indianapolis Day Center), but that facility is located over a mile and a half from the center of town and even farther away from the majority of private night shelters.

Because of a lack of adequate space and other restrictions, there are many poor, homeless individuals who are denied admittance to these private shelters, especially in the winter months when the need is greatest and the demand is highest. The shelters that turn away the highest proportion of applicants are the private shelters that accept homeless families. According to reliable studies, families with children comprise the largest growing segment of the homeless population.

Although the above-quoted figures are Marion County estimates, the evidence will show that the majority of homeless people in Marion County are located within the boundaries of Center Township. These homeless people in Center Township are not able to receive emergency shelter assistance from the Center Township Trustee.

The Trustee provides long term shelter assistance to qualified applicants who, at the time of application, have an established residence that is declared "fit", and which is owned by a landlord willing to take Trustee vouchers in lieu of rent payment. The Trustee also provides long-term shelter assistance to approximately 270 people who reside at the Marion County Healthcare Center, formerly known as the Marion County Home. However, the Trustee has no program for emergency shelter assistance, and is in fact not even available for processing applications on evenings or weekends, which is often the time when the demand is the greatest.

To obtain emergency shelter, plaintiffs are forced to seek help from privately-run shelters, some of whom receive reimbursement from the Trustee. However, because the number of available spaces at these privately-run shelters is inadequate, the Trustee cannot adequately discharge his statutory and constitutional duties to provide emergency shelter through them. Additionally, the privately-run shelters often require attendance at religious services, do not provide day-time shelter, and have restrictive and unreasonable admission and departure regulations.

Many of the plaintiffs are not able to find emergency assistance even in the privately-run shelters. As the above-quoted figures from the Community Service Council survey demonstrate, there is a serious shortage of available shelter space. Most of the private shelters have limited periods of stay and do not accept applications for shelter after the early evening hours or when the applicants are intoxicated. Additionally, many of the plaintiffs object to participating in the religious services required at some of the private shelters.

For those plaintiffs who can not stay at the private shelters or do not wish to do so, the alternatives are limited and harsh. Some people sleep in abandoned houses, cars, doorways, heating grates or park benches. These people face not only exposure to the elements, but possible charges of trespassing or violation of Indianapolis Municipal Code #22-15 (prohibition of sleeping in public parks) for their efforts to find a place to sleep. Other people go to the Indianapolis Police Department Headquarters in a deliberate attempt to get arrested and thus receive a warm place to sleep. Other people, unwilling to challenge the elements

or spend time at the Marion County Jail, simply spend a sleepless night loitering in all-night fast food restaurants and hoping the next day's search for shelter is more successful.

The claims of plaintiffs Coe, Jones, Abrams and Hendley are typical of the claims of the class. These individuals are all homeless residents of Center Township who have sought emergency shelter and long term housing assistance from the Trustee and who have been denied or prevented from receiving such assistance. They have found themselves under-employed or unemployed, without means of subsistence and subjected to the harsh realities of being homeless. They, like hundreds of others, are in need of emergency assistance from the Trustee in locating and securing emergency shelter and long-term housing. They petition the Court to order the Trustee to provide them and other homeless individuals with such assistance.

III.

ARGUMENT

Plaintiffs should be granted a preliminary injunction under Ind. R. Trial P. 65(B) if they establish that:

- (1) They have at least a reasonable likelihood of success on the merits;
- (2) They have no adequate remedy at law and will be irreparably harmed if an injunction is not issued;
- (3) The threatened injury to the plaintiffs outweighs the threatened harm injunctive relief may impose on the defendants;
- (4) The granting of a preliminary injunction will not disserve the public interest.

See e.g., American Can Co. v. Mansukhani, 742 F.2d 314, 325 (7th Cir. 1984); In re Uranium Antitrust Litigation, 617 F. 2d 1248, 1261 (7th Cir. 1980); Steenhoven v. College Life Insurance Company of America, 458 N.E. 2d 661, 664 (Ind. App. 1984); Indiana Pacers L.P. v. Leonard, 436 N.E. 2d 315, 318 (Ind. App. 1982).

Each of these requirements for immediate injunctive relief is met in this case.

A. Plaintiffs Will Succeed on the Merits of Their Claims

Plaintiff's complaint presents four separate causes of action. If

they are likely to succeed on the merits of any one of these claims, they satisfy this requirement for injunctive relief.

1. Plaintiffs are Entitled to Relief Under I.C. 12-2-1-10(b) and I.C. 12-2-1-20(a).

The Plaintiffs' entitlement to relief on statutory grounds is apparent. Indiana Code sections 12-2-1-1, 12-2-1-10 and 12-2-1-20 specifically recognize a state duty to provide relief, including shelter, to the state's poor through the township trustee program. Indiana Code section 12-2-1-1 designates the township trustees as "the overseers of the poor." Indiana Code section 12-2-1-20(a) establishes the trustee's duty:

It shall be the duty of the overseer of the poor, on complaint made to him that any person within his township is lying sick therein or in distress, without friends or money, so that the person is likely to suffer, to examine into the case of said person and grant such temporary relief as may be required.

The plaintiffs and the plaintiff class are in distress, are without friends or money, and are likely to suffer. The Trustee has not examined into their cases, and has not granted any temporary relief. Indeed, the Trustee has specifically refused relief that is required, which is providing the homeless with emergency shelter or with referrals to landlords with vacancies and who will accept the Trustee's vouchers for rent.

Indiana Code section 12-2-1-10(b) requires the Trustee to provide, inter alia, shelter assistance to the poor:

Public aid by an overseer of the poor may include and shall be extended only when the personal effort of the applicant fails to provide one (1) or more of the following items: food, including prepared food, clothing, shelter, light, water, fuel for heating and cooking, household supplies for minor injury and illness, household necessities which shall include basic and essential items of furniture and utensils, heating and cooking stoves, and transportation to seek and accept employment. (emphasis added)

The personal efforts of the individual plaintiffs and the plaintiff class have failed to secure emergency shelter or long term housing. The plaintiffs have attempted to locate landlords with vacancies and who are willing to accept the Trustee's vouchers, but have been unsuccessful. The assistance of the Trustee in providing and/or locating and securing such emergency shelter and long term housing is required.

The above statutory language is clear, and the Indiana Court of

Appeals has acknowledged the mandatory nature of this duty to provide poor relief, including, and specifically, shelter assistance. State ex-rel. Van Buskirk v. Wayne Township (1981), Ind. App., 418 N.E.2d 234. The Court of Appeals specifically stated that the purpose of the poor relief laws is "to provide necessary and prompt relief to the citizens and residents of this state." Id. at 242. (emphasis added). The Court further stated that the available relief includes shelter and is not limited to temporary relief. Id. at 242.

The Marion County Superior Court, Civil Division, Room No. 2, Judge Kenneth Johnson presiding, recently held in the case of Nidor v. Center Township Trustee, Cause No. S285-632, that the class of people in need of rental assistance in Center Township were entitled to Trustee assistance at the fair market value level for rental units in Center Township. The December 19, 1988 decision was based on the Trustee's poor relief duties set out in I.C. 12-1-1-1 et seq., as is shown by the following excerpt from the Court's Conclusions of Law:

"1. This action is properly brought as a class action pursuant to Rule 23(A) and (B)(2) of the Indiana Rules of Trial Procedure, in that all the requirements of that Rule are met here. The class is defined as:

all persons who are eligible, or will be eligible for township trustee poor relief assistance for shelter in Center Township, Marion County, Indiana.

2. The Center Township Trustee (hereinafter "Trustee") is under a mandatory duty to provide shelter assistance to those eligible persons who are in need. Ind. Code 12-2-1-10(b); State ex rel. Van Buskirk v. Wayne Township (1981), Ind. App., 418 N.E.2d 234."

The plaintiffs in the instant case allege and will show that they, like the plaintiff class in Nidor, supra, are located in Center Township and are qualified to receive Trustee shelter assistance. (Indeed, the plaintiff class is in actuality a subclass of the class as defined in Nidor.) The plaintiffs in the instant case will also present evidence that despite efforts they have not received from the Trustee the relief called for in I.C. 12-2-1-10(b). Since the plaintiffs will be able to show that they are a class entitled to the relief of locating and securing emergency shelter and long term housing assistance, and that they are in fact not receiving such relief from the Trustee, the plaintiffs will prevail on the merits of their claim based on I.C. 12-2-1-10(b) and I.C. 12-2-1-20(a).

2. The Plaintiffs are Entitled to Relief Under Constitutional Due Process Guarantees.

The Trustee's failure to follow the Indiana statutory law entitling plaintiffs to emergency shelter assistance deprives the plaintiffs of state-created liberty and property interests in an arbitrary and capricious manner, and hence denies the plaintiffs due process of law as guaranteed to them by Art. I, Sec. 12 of the Indiana Constitution and the fourteenth amendment to the United States Constitution.

Since the state has assumed a duty through statutory law to provide shelter and food to the needy, the state has an affirmative obligation to ensure that such benefits are adequately administered in an equal manner to all individuals requiring such assistance. The United States Supreme Court has recognized that state-created liberty interests are entitled to the protection of the federal due process clause:

Within our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution... If so, the broader state protections would define the actual substantive rights possessed by a person living within that State... Because state-created liberty interests are entitled to the protection of the federal Due Process Clause, the full scope of a patient's due process rights may depend in part on the substantive liberty interests created by state as well as federal law. Moreover, a State may confer procedural protections of liberty interests that extend beyond those minimally required by the Constitution of the United States.

Mills v. Rogers (1982), 457 U.S. 291, 102 S.Ct. 2242, 2448-49 (citations omitted). See, State ex rel. Van Buskirk v. Wayne Township (1981), Ind. App. 418 NE 2d 234, 246 (Trustee's failure to provide statutorily-mandated services violates due process); See also, Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare benefits are rights protected against arbitrary governmental withdrawal).

This Court in Nidor v. Center Township Trustee, supra, specifically found that the Center Township Trustee had a duty to provide shelter and that due process requires the Trustee to administer to shelter needs in a rational and non-arbitrary way. See, Nidor v. Center Township Trustee, Marion County Superior Court Civil Division, Room No. 2, Cause No. S285-632, Findings of Fact, Conclusions of Law, p.11. The policy of the Trustee of not providing for the emergency shelter needs of the plaintiffs and in not locating and securing housing for the plaintiffs is an arbitrary and capricious violation of its statutory duty to provide

such relief and hence violates the due process rights of the plaintiffs.

3. The Plaintiffs are Entitled to Relief Under Constitutional Equal Protection Guarantees.

The Trustee's system of providing for the emergency shelter needs of only some of the homeless poor by reimbursing private shelter operators for those homeless fortunate enough to obtain shelter there and by maintaining the Marion County Healthcare Center denies the equal protection of the law to those homeless poor who are unable to obtain admission into a private shelter or the Marion County Healthcare Center because of a lack of space or other restrictions. This violates the equal protection of the laws guidelines contained in the Indiana Constitution, Art. I, Sec. 23, and the fourteenth amendment to the U.S. Constitution, which guarantee that the government will equally grant all privileges and immunities to all citizens. See, e.g., Scalf v. Berkel, Inc. (1983), Ind. App., 448 NE 2d 1201, 1206 n.8 and Shapiro v. Thompson (1969) 394 U.S. 618, 633, 89 S.Ct. 1322, 1330. (A State may not limit its public assistance expenditures by invidious distinctions between classes of its citizens.)

4. The Plaintiffs are Entitled to Relief Under Constitutional Freedom of Religion Guarantees.

The only program the Trustee has to discharge his statutory obligation to provide emergency shelter assistance to the homeless is to reimburse private shelter operators. The majority of these private shelters are operated as "missions" by various religious organizations. Plaintiff Abrams and many members of the class object to participation in the daily religious services and worship that the majority of the private mission shelters require as a prerequisite to providing shelter. Thus, the Trustee's practice violates federal and state constitutional requirements of separation of church and state, as well a freedom of conscious and belief, and should be prohibited by this court.

The first amendment to the U.S. Constitution provides, inter alia, that the government "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech(.)" This amendment applies to the states through the fourteenth amendment. Everson v. Board of Education, 330 U.S. 1 (1947), and provides that the government may not "force (or) influence a person to go to or remain away from church against his will or force him to

profess a belief or disbelief in any religion." Id at 15. Additionally, if the government provides benefits to individuals, such as textbooks to students, it must provide such benefits directly to the individual, rather than a religious organization. Compare Board of Education v. Allen, 392 U.S. 236 (1968) (textbooks to parochial students permissible) with Lemon v. Kurtzman 403 U.S. 602 (1971) (state may not subsidize parochial education by reimbursing parochial schools for a portion of teachers salaries, even where reimbursement is for the teaching of secular subjects); See also, Thomas v. Review Board, 450 U.S. 707 (1981) (state must modify its unemployment compensation requirement of "good cause" in order to accomodate free exercise views of individuals who refused to work in production of weapons); Bowen v. Roy, 106 S.Ct. 2147 (1986) (majority of Court indicated they would create an exemption from the requirement that applicants for welfare benefits must provide their social security numbers, where applicant objected on religious grounds); West Virginia Board of Education v. Barnette, 319 U.S. 624 (1945) (State may not condition benefit of education on participation in religious or nationalistic ritual).

The Indiana Constitution is even more explicit with respect to separation of church and state. Four specific provisions of Article One prohibit the form of shelter assistance the Trustee is presently providing:

2. Right to Worship. - All people shall be secured in the natural right to worship ALMIGHTY GOD, according to the dictates of their own consciences.

3. Freedom of thought. - No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

4. No preference to any creed. - No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

6. No money for religious institutions. - No money shall be drawn from the treasury, for the benefit of any religious or theological institution."

The question of whether an institution is religious is determined by control, and where the control is by a private religious order, public funds cannot be paid to the institution. State ex.rel. Johnson v. Boyd (1940) 217 Ind. 348, 28 NE 2d 256. Furthermore, where the state is

responsible for the provision of a public benefit, such as education, it would violate the recipient's freedom of conscience and thought to be required to submit to religious instruction. See, Lynch v. Indiana State University Board of Trustees, (1978) Ind. App. 378 N.E. 2d 900, 908; see also, Bureau of Motor Vehicles v. Pentecostal House of Prayer, Inc., (1978) 269 Ind. App. 361, 380 N.E. 2d 1225, 1227 (state may not condition benefit of driver's license on photograph on license where photography violates religious beliefs of individual).

Clearly the current scheme of the Trustee to partially discharge his statutory obligation by reimbursing private religious missions for sheltering the homeless violates both the federal and state constitutions. Plaintiffs are extremely likely to prevail on the merits of this claim.

While the law unquestionably establishes that the Trustee has a duty to provide emergency shelter assistance, the evidence will conclusively demonstrate that the Trustee does not adequately provide this assistance. The Trustee has no program or facilities to discharge his statutory and constitutional duties to provide either daytime or evening shelter assistance to the Township's poor and homeless. The Trustee in fact does not even accept applications for assistance on evenings or weekends when many of the plaintiffs are in need of emergency shelter. The Trustee does not refer homeless individuals to specific shelters or rental units where they can find shelter. The Trustee does not maintain a list of approved landlords with vacancies and which are willing to accept the Trustee's vouchers. Representatives of the homeless have attempted to meet with the Trustee to devise a plan to provide adequate emergency shelter and long term housing to the homeless and have been rebuked in their efforts.

When the Trustee is faced with an application for emergency shelter assistance, his usual practice is to refer the applicant to the private shelters regardless of the restrictive conditions on assistance that those shelters mandate and regardless of whether those shelters have vacancies or not. Unfortunately, there is a serious shortage of private shelter space. Further, those private shelters are often inadequate substitutes for the statutory and constitutionally required Trustee assistance. Mandatory religious services, limited lengths of stay, early

evening closings, and refusal to allow for daytime shelter needs are characteristic of many of the private shelters which the Trustee reimburses.

It is clear that the plaintiffs will prevail on the merits of their claims. The Trustee has a statutory duty to provide emergency shelter to the plaintiffs, and the evidence will show that the Trustee currently fails to adequately perform this duty. The evidence will show that the Center Township Trustee's system of providing minimal shelter assistance in an arbitrary and capricious fashion and only to a select few people violates the Indiana and United States Constitutional guarantees to equal protection of laws and entitlement to due process of law. Finally, the evidence will show that the Trustee partially discharges his duty to provide emergency shelter in violation of the Indiana and United States Constitutional guarantees of freedom of conscience and religious expression and prohibition of intermingling between church and state.

B. Plaintiffs Will Be Irreparably Harmed if a Preliminary Injunction is Not Issued and This Irreparable Harm Outweighs Any Potential Harm Injunctive Relief May Impose on the Defendants.

Plaintiffs are engaged in a daily fight for their survival. Every day that passes is potentially the day that causes irreparable harm, even death, to one or more of the plaintiffs. In the worst case scenario, one of more of the plaintiffs could be killed or injured by exposure to the elements or by increased exposure to physical attack. A March, 1988 survey of Indianapolis homeless showed that over 35% of the homeless had been victims of assault on the street as a result of being homeless. Homeless persons have died in this city and others as a result of prolonged exposure to harsh weather conditions.

Every day in Center Township, members of the plaintiff class have their families broken apart and/or their individual lives taken one step further down a path of physical and mental destruction. These people are destitute and in serious need of emergency assistance. The status of being homeless has adverse effects on people's physical health, mental health, ability to obtain employment, ability to obtain governmental benefits and ability to obtain emergency shelter and permanent housing. There is no question that the plaintiffs suffer irreparable harm each day that the Trustee fails to meet his statutory and constitutional obligation

to provide emergency shelter and permanent housing assistance.

In contrast to the irreparable harm faced by the plaintiffs, the grant of a preliminary injunction simply requiring the Trustee to consult with plaintiffs and experts on the homeless problem for the purpose of developing a plan to discharge the Trustee's legal duties would cause the Trustee no harm.

C. The Granting of a Preliminary Injunction Will Serve the Public Interest.

The public interest would be served by a preliminary injunction requiring the Trustee to devise and implement a plan to discharge his obligation to provide emergency shelter and permanent housing assistance to the plaintiffs. The plight of Indianapolis' homeless people has been a well-documented public concern for some time, and it is certainly in the public's interest to see that its disadvantaged citizenry are cared for in the manner that the Legislature intended when it enacted its public assistance statutes.

IV.

CONCLUSION


This case presents the classic scenario for a preliminary injunction. The law and the facts can not seriously be disputed. The Center Township Trustee has a clear legal obligation to provide emergency shelter assistance to the plaintiffs, and the Trustee certainly does not meet this obligation. Plaintiffs are faced with irreparable harm and no harm would befall the Trustee from an order requiring him to discharge his statutory duties. The public interest would be served by such an order. Accordingly, this Court should issue a Preliminary Injunction ordering the Center Township Trustee to consult with representatives of the plaintiffs and experts on the homeless problem in Center Township with the purpose of developing a plan to discharge his obligation to provide emergency shelter assistance to the plaintiffs. Such a plan, at a minimum, should include:

- a. Twenty-four hour referral to emergency day time and evening shelters;
- b. Twenty-four hour transportation for homeless individuals to emergency daytime and evening shelters;

- c. An updated listing and referral service to Trustee approved permanent housing;
- d. The provision of emergency daytime and evening shelter space for those individuals who are unable to secure such space in private shelters or who object to participating in the mandatory religious services of the private religious shelters;
- e. A twenty-four hour staffed emergency telephone number; and,
- f. A publicity campaign to publicize the Trustee's emergency shelter and permanent housing assistance programs targeted to the homeless and service providers to the homeless.

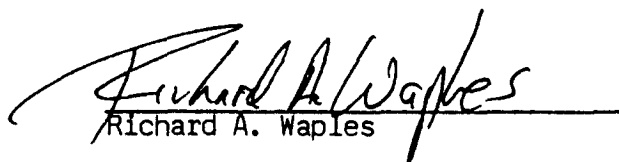
Respectfully submitted,


Richard A. Waples


Fran Quigley
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was personally served upon the defendant along with the complaint in this action by U.S. certified mail, postage prepaid, on the date of filing.


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