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EQUITY—ESTOPPEL APPLIED AGAINST THE STATE. *Stuckey's Stores, Inc. v. O'Chesky*, 93 N.M. 312, 600 P.2d 258 (1979).

The New Mexico Supreme Court most recently applied the equitable estoppel doctrine against the state¹ in *Stuckey's Stores, Inc. v. O'Chesky*.² In that case the court held that the New Mexico Highway Department was equitably estopped from claiming that the plaintiffs' advertising signs were subject to removal without just compensation to the owners.³ The court could employ estoppel against the state in *Stuckey's* due to the doctrine's evolution in New Mexico during the past three decades. To understand that evolution, it is useful to examine previous New Mexico estoppel decisions. This Note analyzes *Stuckey's* and earlier New Mexico decisions in order to identify situations and circumstances which trigger judicial application of the doctrine of equitable estoppel against the state. It also discusses policy considerations concerning use of the doctrine against public bodies.

A BRIEF HISTORY OF ESTOPPEL AGAINST THE STATE

Equitable estoppel is

the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy.⁴

Historically, the doctrine of equitable estoppel was not applied

1. The words "state," "sovereign," and "public body" are used interchangeably throughout this Note to denote any governmental entity.

2. 93 N.M. 312, 600 P.2d 258 (1979).

3. *Id.* at _____, 600 P.2d at 270.

4. 2 J. Pomeroy, *Equity Jurisprudence* § 804 (4th ed. 1918).

against the sovereign in the absence of a statute to the contrary.⁵ The practical effect of this rule was to make equitable estoppel virtually inapplicable to the state because such statutes were rare. This traditional rule evolved from the doctrine of sovereign immunity.⁶ In many jurisdictions, however, courts have been persuaded by social policy arguments to replace the doctrine of sovereign immunity with a doctrine of sovereign responsibility.⁷ The traditional view has been eroded by changes in social philosophy. For example, it was once feared that the financial burden to the state would be intolerable if it were not protected by sovereign immunity against a claim of estoppel.⁸ Another argument in favor of sovereign immunity and against equitable estoppel was the belief that the state's taxpayers should not be responsible for the mistakes or misdeeds of its public officers or agencies.⁹ Both concerns can now be partially eliminated by means of adequate insurance coverage.¹⁰ Moreover, modern ideas of social justice will not allow the full misfortune from such a mistake or misdeed to fall on a single individual or small group.¹¹ As a result of this gradual shift in values, courts have begun to depart from the traditional position and have permitted application of equitable estoppel against the state when right and justice so demand.¹²

EVOLUTION OF THE DOCTRINE IN NEW MEXICO

The Supreme Court of New Mexico acknowledged in two early cases that equitable estoppel may be applied against the state under certain circumstances and when justice so requires.¹³ In *Westerman*

5. See *Ross v. Daniel*, 53 N.M. 70, 201 P.2d 993 (1949); *Jenness v. Payne*, 81 N.H. 308, 125 A. 679 (1924).

6. See *Hicks v. State*, 88 N.M. 588, 544 P.2d 1153 (1975).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *State Highway Dep't v. Shaw*, 90 N.M. 485, 565 P.2d 655 (1977); *United States v. Bureau of Revenue*, 87 N.M. 164, 531 P.2d 212 (Ct. App. 1975); *Silver City Consol. School Dist. No. 1 v. Board of Regents*, 75 N.M. 106, 401 P.2d 95 (1965). See also *National Advertising Co. v. State Highway Dep't*, 91 N.M. 191, 571 P.2d 1194 (1977); *Peltz v. New Mexico Dep't of Health and Social Servs.*, 89 N.M. 276, 551 P.2d 100 (Ct. App. 1976); *State Highway Dep't v. Yurcic*, 85 N.M. 220, 511 P.2d 546 (1973); Comment, *Emergence of an Equitable Doctrine of Estoppel Against the Government—The Oil Shale Cases*, 46 U. Colo. L. Rev. 433 (1974-1975); and cases cited in note 41 *infra*.

13. *City of Carlsbad v. Neal*, 56 N.M. 465, 245 P.2d 384 (1952); *Westerman v. City of Carlsbad*, 55 N.M. 550, 237 P.2d 356 (1951).

v. City of Carlsbad,¹⁴ the court listed the essential elements of equitable estoppel. As related to the estopped party, the elements are: 1) conduct which amounts to a false representation or concealment of material facts, 2) intention or expectation that such conduct will be acted upon by the other party, and 3) knowledge of the real facts.¹⁵ As related to the party claiming estoppel, the elements are: 1) lack of knowledge as to the truth of facts in question, 2) reliance upon the conduct of the party estopped, and 3) action based on the conduct which prejudicially changed the claimant's position.¹⁶ In *Carlsbad v. Neal*,¹⁷ the court held that the presence of facts or circumstances sufficient to apply estoppel must be determined by the jury.¹⁸ Although these cases did not apply equitable estoppel against the city, they contain the court's first acknowledgement that the most just result in a particular case may be achieved by use of the estoppel doctrine.

In 1965, in *Silver City Consolidated School District No. 1 v. Board of Regents*,¹⁹ the New Mexico Supreme Court applied the doctrine of equitable estoppel against a public body for the first time. The court's language indicated some hesitancy: "We recognize that estoppel in its usual sense is not generally applicable against a sovereign in the exercise of governmental functions, but where right and justice demand it, the doctrine will be applied . . ."²⁰ The facts of this case were particularly persuasive to the court because both parties were public entities.²¹

Since the *Silver City* decision, the New Mexico courts have con-

14. 55 N.M. 550, 237 P.2d 356 (1951). In *Westerman*, a former city employee brought a breach of contract suit against the city of Carlsbad. The court found that the elements of estoppel had not been pleaded, so estoppel could not apply. See also *State Highway Dep't v. Yurcic*, 85 N.M. 220, 511 P.2d 546 (1973).

15. *Westerman v. City of Carlsbad*, 55 N.M. at 555, 237 P.2d at 359.

16. *Id.* at 555-56, 237 P.2d at 359.

17. 56 N.M. 465, 245 P.2d 384 (1952). The *Neal* case was an ejectment proceeding with a counterclaim to quiet title in land claimed by the city to be part of a street. The trial court directed the verdict for the city. The supreme court reversed and remanded for a determination of the issues by a jury.

18. *Id.* at 472, 245 P.2d at 389.

19. 75 N.M. 106, 401 P.2d 95 (1965).

20. *Id.* at 111, 401 P.2d at 99. *Silver City* involved a mandamus proceeding to require the board of regents of New Mexico Western College to transfer a high school building, previously operated by the college, to the Silver City school district. The statute which had allowed the construction and the original funding of the building required such a transfer if the college ceased to operate the high school. At the time of the suit, the college was no longer operating the high school. The court held that the college was estopped from claiming the invalidity of the statute under which it had received benefits for 20 years.

21. If both parties to a lawsuit are public bodies, application of estoppel is appropriate because any potential danger to the sovereign is equalized by the potential benefit.

sidered the application of estoppel against the state several times with varying results.²² In *State Highway Department v. Yurcic*,²³ the court held that the state was not estopped from abandoning a condemnation proceeding because all elements of estoppel had not been pleaded.²⁴ However, in a later case also involving a condemnation proceeding, *State Highway Department v. Shaw*, the court applied the doctrine of equitable estoppel against the state.²⁵ There the court prevented the State Highway Department from denying recovery to several landowners for the value of land which had been enhanced due to its proximity to a proposed freeway.²⁶ The defendants had relied on verbal assurances, the grant of a driveway permit, a letter from the Highway Department, and right-of-way maps in purchasing the property.²⁷

A 1977 case, *National Advertising Co. v. State*,²⁸ involved an estoppel issue similar to that in *Stuckey's*. In *National Advertising*, sign owners brought suit against the state seeking compensation for signs removed by the state pursuant to the Highway Beautification Act.²⁹ The supreme court found that the state was not estopped from requiring the removal of billboards at the owner's expense because language on the permits provided that the permits could be revoked and the signs removed at the expense of the owners. The court did,

22. In *United States v. Bureau of Revenue*, 87 N.M. 164, 531 P.2d 212 (Ct. App. 1975), the court found the state to be estopped from collecting taxes which, in written opinions, state officials had classified as not owed. These facts were so compelling that the court noted that failure to apply estoppel in this case may have risen to the level of an unconstitutional change in policy. In another estoppel case, *Peltz v. New Mexico Dep't of Health and Social Servs.*, 89 N.M. 276, 551 P.2d 100 (Ct. App. 1976), a recipient of Aid to Families with Dependent Children, in an attempt to attain financial independence, voluntarily terminated the assistance over four months before reapplying for aid. She was not told, until she tried to return to the program, that an absence of four months would cause her to lose her eligibility. She claimed that the caseworker's failure to notify her of the time limit regulation estopped the Department from applying it. The court held that the Department was not estopped because the caseworker had no duty to notify Ms. Peltz of the regulation.

23. 85 N.M. 220, 511 P.2d 546 (1973). In an eminent domain proceeding, the Yurcics claimed damages resulting from their reliance on the Highway Department's plan to condemn land and the Department's subsequent abandonment of the condemnation suit.

24. *Id.* at 223, 511 P.2d at 549. The court suggested that, for estoppel to lie in a condemnation case, the condemnors must engage in a "rather shocking degree of aggravated and overreaching conduct." Although merely dictum, according to Appellees' Answer Brief at 47, this language may have influenced the trial court in *Stuckey's* to find that estoppel was not appropriate in that case. Appellees' Answer Brief at 47, *Stuckey's Stores, Inc. v. O'Chesky*, 93 N.M. 312, 600 P.2d 258 (1979). The supreme court's reversal on that issue in *Stuckey's* indicates that the court did not intend for its statement in *Yurcic* to have broad application.

25. 90 N.M. 485, 565 P.2d 655 (1977).

26. *Id.* at 486, 565 P.2d at 657.

27. *Id.*

28. 91 N.M. 191, 571 P.2d 1194 (1977).

29. N.M. Stat. Ann. §§ 67-12-1 to -14 (1978).

however, recognize the applicability of the estoppel doctrine against the sovereign when all elements are present and justice is best served by its application.³⁰

EQUITABLE ESTOPPEL AGAINST THE STATE
AS APPLIED IN *STUCKEY'S*

*Stuckey's Stores, Inc. v. O'Chesky*³¹ involved the effect of the New Mexico Highway Beautification Act on the plaintiffs, Stuckey's Stores and its New Mexico franchisees. The plaintiff franchisees owned land adjacent to rights-of-way of interstate and primary highways in New Mexico. Advertising signs for Stuckey's which did not comply with the Act's requirements were located on these lands. Pursuant to the Act, the State Highway Department sought to remove the signs without compensation to the sign owners.³² The plaintiffs contended that the Department was estopped from claiming that certain signs could be taken without payment of just compensation because the plaintiffs had relied on the Department's permission to relocate the signs.³³

After a nonjury trial, judgment was entered against the plaintiffs on all issues. The plaintiffs appealed and the New Mexico Supreme Court affirmed the decision of the district court in part and reversed in part. The supreme court held that the Department was equitably estopped from claiming that the plaintiffs' signs were subject to removal without just compensation, thus reversing the district court's decision on this issue.³⁴ The supreme court based its reversal on the fact that a Highway Department official indicated to the plaintiffs that the signs would be considered "on-premise" signs for which compensation would be paid if they were later acquired by the Department.³⁵ The court also found that the district court erred in finding that the plaintiffs had failed to show reliance on the Department's representations.³⁶ The court said that "[b]y granting permis-

30. 91 N.M. at 194, 571 P.2d at 1197.

31. 93 N.M. 312, 600 P.2d 258 (1979).

32. 93 N.M. at _____, 600 P.2d 269-70; see N.M. Stat. Ann. § 67-12-6(C) (1978).

33. 93 N.M. at _____, 600 P.2d at 269. The plaintiffs also asserted that the Act abridged their freedom of speech, that it violated the just compensation and due process clauses of the United States and New Mexico constitutions, that the signs were lawfully erected entitling the plaintiffs to just compensation if they were condemned by the state, and that the state had waived its right to claim it could destroy the signs. *Id.* at _____, _____, 600 P.2d at 260, 261.

34. 93 N.M. at _____, 600 P.2d at 270. The court also held that the Act did not abridge plaintiffs' constitutional rights, that the signs were not lawfully erected, and that the state had waived its right to claim it could destroy the signs due to untimely payment because it accepted plaintiffs' late permit fees. *Id.* at _____, 600 P.2d at 262-69.

35. Appellees' Answer Brief at 46.

36. 93 N.M. at _____, 600 P.2d at 270.

sion to plaintiffs to relocate the signs, the Department's conduct conveyed to plaintiffs that the right to compensation would not be affected. Plaintiffs acted upon that permission as is evidenced by the fact that the signs were moved to new locations soon after the permission was granted."³⁷

In deciding the estoppel issue, the supreme court cited two previous New Mexico decisions as authority for the essential elements of equitable estoppel.³⁸ It did not, however, distinguish *Stuckey's* from those two previous cases which appeared to deny that estoppel could lie against the state.³⁹ The court also relied on *State Highway Department v. Shaw* for the proposition that "[r]epresentations that are contrary to the essential facts to be relied upon, even though made innocently or by mistake, will support the application of the estoppel doctrine."⁴⁰

CONCLUSION

Many jurisdictions have departed from the traditional rule which prohibits application of the doctrine of equitable estoppel against the state. Courts in those jurisdictions now invoke the doctrine when

37. *Id.*

38. 93 N.M. at _____, 600 P.2d 270 (citing *State Highway Dep't v. Yurcic*, 85 N.M. 220, 223, 511 P.2d 546, 549 (1973), and *Westerman v. City of Carlsbad*, 55 N.M. 550, 555-56, 237 P.2d 356, 359 (1951)).

39. The court in *Ross v. Daniel*, 53 N.M. 70, 75, 201 P.2d 993, 996 (1949), held that "the unauthorized acts of public officers do not present grounds for estoppel against the state where such acts relate to the performance of a public duty." Since the representations made to plaintiffs in *Stuckey's* were made by a public officer in performance of his public duty, the court must have found that the statements were not unauthorized acts and, therefore, estoppel could apply. In *Martinez v. Cox*, 75 N.M. 417, 421, 405 P.2d 659, 662 (1965), the supreme court said that the state, acting in its governmental capacity, may not be estopped. The facts in *Martinez*, which involved a prisoner who sought a writ of habeas corpus, were essentially different from the facts in *Stuckey's*. Following his conviction for unlawful possession of narcotics, *Martinez* was serving a two to ten year sentence, all but 18 months of which had been suspended. He had earned two months "good time" and three months, 24 days' "meritorious good time" which he claimed should be deducted from his sentence. The petitioner asserted, *inter alia*, that the state was estopped from denying his eligibility for release. The supreme court found that good time could only be credited against the maximum sentence or used to determine the time of eligibility for parole; it could not be credited against a sentence for this offense which was less than the minimum. The court refused to hold the states estopped and articulated no reason for its refusal. The court in *Stuckey's* did not find it necessary to distinguish *Martinez*; this fact indicates that the court chose not to apply estoppel in *Martinez* because the facts of that case did not merit application of the doctrine. Therefore, *Martinez* should be interpreted only within its facts.

40. 93 N.M. at _____, 600 P.2d at 270 (quoting *State Highway Dep't v. Shaw*, 90 N.M. 485, 565 P.2d 655 (1977)).

to do so is necessary to prevent injustice and fraud.⁴¹ The decision in *Stuckey's* reemphasizes the proposition that estoppel can be asserted against the state when New Mexico courts deem its application appropriate.⁴² The challenge to the New Mexico practitioner is to determine the circumstances under which a court will apply the doctrine. Two absolute requirements emerge from the case law and underlie the decision in *Stuckey's*. All essential elements of equitable estoppel must be present in a case for the doctrine to be applied,⁴³ but the court focuses most often on the element of reliance.⁴⁴ In addition, invocation of the doctrine must be the best, perhaps the only, means of reaching a just decision in the case.⁴⁵

The *Silver City* decision indicates that any public policy considerations which militate against use of estoppel against the sovereign disappear when two governmental units are the adverse parties.⁴⁶ The importance of the particular facts of each case is shown by the fact that the supreme court did not apply estoppel on behalf of sign owners in *National Advertising*⁴⁷ and yet found that the doctrine was

41. See *Palo Alto Inv. Co. v. County of Placer*, 269 Cal. App. 2d 363, 74 Cal. Rptr. 831 (Ct. App. 1969) (equitable estoppel available against the government where justice and right require it); *New-Mark Builders, Inc. v. City of Aurora*, 90 Ill. App. 2d 98, 233 N.E.2d 44 (1967) (estoppel may be invoked against a municipality only if positive acts of municipal officers induced action of adverse party); *Town of Jeffersonton v. Holloway*, 269 S.W.2d 728 (Ky. 1954) (town which advertised for bids under certain description of work was estopped from claiming work should have been done according to another description); *City of Baltimore v. Chesapeake Marine Ry. Co.*, 233 Md. 559, 197 A.2d 821 (1964) (municipality may be estopped from denying that official consent did not induce expenditure of efforts and monies); *Versailles Transp. Auth. v. City of McKeesport*, 171 Pa. Super. Ct. 377, 90 A.2d 581 (1952) (estoppel of governmental agency by municipality); *Ferrelli v. Dep't of Employment Sec.*, 106 R.I. 588, 261 A.2d 906 (1970) (doctrine of estoppel should be applied in some circumstances even where a public agency is involved). See also 28 *Am. Jur. 2d Estoppel* § 123 (1966); Comment, 46 U. Colo. L. Rev., *supra* note 12, at 433.

42. An alternative explanation of the holding in *Stuckey's* on the estoppel and waiver issues is that, although the court could not hold for the plaintiffs on the constitutional questions, it thought the claim was not entirely without merit and, therefore, reversed the decision of the district court on waiver and estoppel. This hypothesis seems unlikely, however, in view of the court's refusal to apply estoppel against the state except in the most compelling situations.

43. *City of Carlsbad v. Neal*, 56 N.M. at 472, 245 P.2d at 389; *Westerman v. City of Carlsbad*, 55 N.M. 550, 237 P.2d 356 (1951).

44. *National Advertising Co. State Highway Dep't*, 91 N.M. 191, 571 P.2d 1194 (1977); *State Highway Dep't v. Shaw*, 90 N.M. 485, 565 P.2d 655 (1977); *Peltz v. New Mexico Dep't of Health and Social Servs.*, 89 N.M. 276, 551 P.2d 100 (Ct. App. 1976); *United States v. Bureau of Revenue*, 87 N.M. 164, 531 P.2d 212 (Ct. App. 1975); *State Highway Dep't v. Yurcic*, 85 N.M. 220, 511 P.2d 546 (1973).

45. *Peltz v. New Mexico Dep't of Health and Social Servs.*, 89 N.M. at 277, 551 P.2d at 101; *United States v. Bureau of Revenue*, 87 N.M. at 166, 531 P.2d at 214.

46. 75 N.M. at 111, 401 P.2d at 99.

47. 91 N.M. 191, 571 P.2d 1194 (1977).

applicable in *Stuckey's* when interpreting the same statute on behalf of different sign owners. In *National Advertising*, the element of concealment was missing, whereas in *Stuckey's* the facts had been concealed from the sign owners.

Public welfare is best served by holding public officers accountable for their actions and representations through appropriate use of the estoppel doctrine. Because courts will apply equitable estoppel against a public body where justice demands it,⁴⁸ their continued espousal of the traditional rule serves no purpose. It is encouraging and significant that, in several recent cases involving an estoppel issue, including *Stuckey's*, the court has not referred to the traditional rule before applying estoppel.⁴⁹ The court thus may be demonstrating its intention to remove this vestige of sovereign immunity from New Mexico law.

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48. *Id.*, and cases cited in note 45 *supra*.

49. *Stuckey's Stores, Inc. v. O'Chesky*, 93 N.M. 312, 600 P.2d 258 (1979); *State Highway Dep't v. Shaw*, 90 N.M. 485, 565 P.2d 655 (1977); *State Highway Dep't v. Yurcic*, 85 N.M. 220, 511 P.2d 546 (1973).