

favor ***." See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} It is undisputed that plaintiff, Wildwood Gardens (Wildwood), is in the business of importing bonsai trees from Japan and South Korea for sale in Ohio. Plaintiff, Anthony Mihalic, is the proprietor of Wildwood Gardens and his son Frank works at Wildwood Gardens. In March 2004, Frank Mihalic contacted Mary Smallsreed, an employee of defendant regarding the effective date of recent amendments to the United States Department of Agriculture (USDA) regulations. Mihalic was concerned that the new regulations might adversely affect plaintiff's import business. After some investigation, Smallsreed sent two separate correspondences to plaintiffs expressing her opinion that the new regulations were not yet in effect. However, when Wildwood attempted to bring trees into this country, it learned that Smallsreed's opinion was not correct. Plaintiffs' trees were impounded and destroyed by the USDA.

{¶ 5} There is no allegation of an express business or a contractual relationship between the parties in this case. See *State of Ohio v. First, Inc.* (Apr. 3, 1990), Montgomery App. No. 11486. Plaintiffs, however, allege a cause of action against defendant based upon estoppel. Estoppel is an equitable doctrine that prevents one party from denying "that which, by his words, his acts, or his silence *** has induced a second party reasonably and in good faith to assume and rely upon to that party's prejudice or pecuniary disadvantage." *First Federal Savings & Loan Assoc. of Toledo v. Perry's Landing, Inc., et al.* (1983), 11 Ohio App.3d 135, 145. Defendant argues that the principle of estoppel does not apply against the state or its agencies in the exercise of governmental functions. The court agrees.

{¶ 6} As a general rule, persons seeking information from the government assume the risk that the agent of the government may be wrong. *Gaston v. Board of Review, Ohio Bureau of Employment Services* (1983), 17 Ohio App.3d 12. This is particularly true in a case such as this where a state agency is asked to interpret federal law. In *Drake v. Medical College of Ohio* (1997), 120 Ohio App.3d 493, the Tenth District Court of Appeals held that mistaken advice or opinions of a government agent do not create an estoppel. *Id.* at 495, citing *Halluer v. Emigh* (1992), 81 Ohio App.3d 312. Indeed, estoppel will not apply when a position taken by an administrative agency is contrary to express statutory law. *Drake*, *supra*. See, also, *Griffith v. J.C. Penney Co.* (1986), 24 Ohio St.3d 112. In this case, even though plaintiffs may have detrimentally relied upon Smallsreed's erroneous opinion regarding USDA regulations, plaintiffs may not recover from defendant under a theory of estoppel.

{¶ 7} Similarly, to the extent that plaintiffs allege negligence, it is beyond doubt that Smallsreed was performing a governmental function in advising plaintiffs. It follows that in this instance the state is immune from tort liability for its negligence in the performance of its governmental function. See *Reynolds v. State* (1984), 14 Ohio St.3d 68.

{¶ 8} Upon review of the motion for summary judgment, the memoranda filed by the parties, and the evidentiary materials submitted herewith, and construing the evidence most strongly in plaintiffs' favor, the court finds that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be granted.

WILDWOOD GARDENS, et al. :
 Plaintiffs : CASE NO. 2004-10353
 v. : Judge J. Craig Wright
 : JUDGMENT ENTRY
 OHIO DEPARTMENT OF AGRICULTURE :
 Defendant :
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A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
 Judge

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