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Criminal Law - Bribery of a Public Officer

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practical matter, the mere fact that the purchaser, rather than the defendant, hauled the heifer away should not preclude the defendant's criminal liability.

J. S. D.

CRIMINAL LAW—BRIBERY OF A PUBLIC OFFICER—Defendant, a city policeman, accepted one hundred dollars upon the pretense and representation that he could and would improperly influence the official action of a municipal officer of the city. Defendant was convicted of bribery and appealed urging that he, being a policeman, was not a municipal officer, but merely an employee of the city, and thus was not within the statute making it an offense to accept a bribe under color of office. The decision of the lower court was affirmed. *State v. Sheffield,* 10 So. (2d) 894 (La. 1942).

Originally the offense of bribery was limited to the offering or giving of a reward to a judge or other person concerned in the administration of public justice; but the offense was subsequently broadened so as to include the receiving or offering of a reward by or to any person in a public office to influence his official behavior. Modern statutes cover the bribery of all persons whose official conduct is in any way connected with the administration of government, whether general or local, judicial, legislative or executive.[1] Bribery in Louisiana was formerly covered by numerous conflicting and confusing statutes. In 1878, however, the legislature enacted a general bribery statute which was for the purpose of punishing anyone who should offer or give a bribe, present, or reward to any public officer of the state with the intent to induce or influence such officer to show partiality or favor contrary to law in the performance of his duty. The statute also included the asking for or receiving of a bribe.[2]

These modern statutes were of a comprehensive nature, yet in some cases they did not appear to be as inclusive as the criminal activity they sought to prescribe. Only public officers were included, and the question often arose as to whether the accused, in fulfilling his duty as a public servant, could be designated a

1. Clark and Marshall, A Treatise on the Law of Crimes (4 ed. 1940) 594, § 434.

2. La. Act 59 of 1878, as amended by La. Act 162 of 1920, and partly repealed by La. Act 78 of 1890, § 1 [Dart's Crim. Stats. (1932) § 796]. See redactor's "Comment on Former Statutes," La. Crim. Code (1942) 121.

public officer within the limitations of the statute. Where the recipient of the bribe was a mere employee, the statute, which affected only public officers, would not apply.[3]

A definite distinction between a public officer and an employee was needed. In *Martin v. United States*[4] the court said, "Greater importance, dignity, and independence mark the position of an officer than that of an employee." Other courts felt that such importance, dignity, and independence were too subjective for a definite distinction. They adopted an objective standard, the requirements necessary for a public officer being that (1) his office be established by the constitution or created by the legislature, (2) a position of the sovereign power of the government be delegated to him to be exercised for the public benefit, (3) his tenure of office be for a fixed period, (4) his salary and emoluments be definitely fixed, and (5) he take the oath of office required by the constitution. The lack of any one of the above made the person a mere employee of the state and not an officer within the intendment of the law.[5]

In *United States v. Ingham,*[6] the person accused of bribery was employed as a substitute to an official and carried out a duty charged to the latter. The question to be decided involved the official functions of the act when carried out by a subordinate. The court held that "the official function spoken of is not necessarily a function belonging to an office held by a person acting on behalf of the United States; it may also be a function belong-

3. Krichman v. United States, 256 U.S. 363, 41 S.Ct. 514, 65 L.Ed. 992 (1921).

4. 168 Fed. 198, 202 (C.C.A. 8th, 1909).

5. Metcalf and Eddie v. Mitchell, 269 U.S. 514, 46 S.Ct. 172, 70 L.Ed. 384 (1926) (accused held not an officer as employment was not continuous; duties were only prescribed by contract; and he took no oath of office); Martin v. United States, 168 Fed. 198 (C.C.A. 8th, 1909) (all requirements were absent except "taking the oath of office" and court held that that alone could not create an office); Commissioner of Internal Revenue v. Harlan, 80 F.(2d) 660 (C.C.A. 9th, 1935) (respondent was officer by all the requirements; however, the court held that a definite term was not a necessary attribute of an office); Varden v. Ridings, 20 F. Supp. 495 (E.D. Ky., 1937) (sheriff of a county possessed the necessary requirements); Smith v. Board of Education of Ludlow, 23 F. Supp. 328 (E.D. Ky., 1938) (plaintiff was an officer by possessing all the requirements); Moll v. Sbisa, 51 La. Ann. 290, 25 So. 141 (1899) (accused held an officer as all elements were present); Throop v. Langdon, 40 Mich. 673 (1879) (a mere clerk whose position as chief clerk in the assessor's office has not been created is not an officer, but an employee); State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 Pac. 411, 53 A.L.R. 583 (1927) (only an employee having no delegation of a position of the sovereign power of the government, and his employment was terminable at the will of the board); State ex rel. Kendall v. Cole, 38 Nev. 215, 148 Pac. 551 (1915) (accused not an officer as no sovereign power of the state was entrusted to him; his position in every regard was a contract with the board of directors).

6. 97 Fed. 935, 936 (E.D. Pa. 1889).

ing to an office held by his superior, which function has been committed to the subordinate (whether he be also an officer, or a mere employee) for the purpose of being executed."

Compare, however, the case of *Krichman v. United States*,[7] where a baggage porter at a railway station, being supervised and controlled by the United States government, accepted a bribe for the delivery of a trunk of valuable furs, the court held that the function of transporting baggage, a clear duty of the government at that time, was not an official function by the authority of a department or office of the government and that the porter was not acting for or on behalf of the United States. Here the porter did as much harm as the station master could have done by accepting the bribe, but the court said that not every person performing any service for the government, however humble, is embraced within the terms of the statute. It includes only those performing duties of an official character,[8] and the duty of the porter was not such as was required.

The courts have not been able to arrive at a definition that will faultlessly fit all cases. They have been compelled to decide whether, in each case under consideration, the position of a given person comes fairly within the legislative intendment and contemplation. Conclusions vary, of course, with the different legislative provisions in the respective jurisdictions and the nature of the respective cases.[9]

Louisiana, along with many other states, has solved the foregoing problem by enlarging the scope of the bribery offense. Article 118 of the Criminal Code defines public bribery so as to include both "public officers" and "public employees."[10] Article 2 of the Code broadly defines these terms to include

> "any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state of Louisiana or any parish, municipality, district, or other political subdivision thereof or any agency, board, commission, department or institution of said state, parish, municipality, district or other political subdivision."

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7. 256 U.S. 363, 41 S.Ct. 514, 65 L.Ed. 992 (1921).

8. Kellerman v. United States, 295 Fed. 796, 799 (C.C.A. 3rd, 1924).

9. State v. Dark, 195 La. 139, 196 So. 47 (1940), discussed in The Work of the Louisiana Supreme Court for the 1939-1940 Term (1941) 3 LOUISIANA LAW REVIEW 267, 394.

10. Art. 118(1), La. Crim. Code.

Had the principal case been decided subsequent to the adoption of the Criminal Code, the accused would not have been able to urge seriously that he was an employee of the city, rather than an officer.

The public bribery article includes the giving and the receiving of a bribe as did the former statute. It also follows the common law rule that the offense of bribery is complete upon the offer or the asking and does not require that the bribe be actually given or received.[11] If the bribe be given for the purpose of trapping the receiver, undoubtedly the court would hold by the article that such a purpose would be no defense on the part of the accused unless the bribe be an inducement.[12]

It has been held that to constitute bribery, the act of at least two persons is essential, that of him who gives and him who receives; and the minds of the two must concur, the giving and receiving being reciprocal. In such a case one would be an accomplice of the other, both parties being guilty.[13] The rule at common law was that either the giver or the taker of the bribe is indictable upon his own guilty participation in the transaction, regardless of the corrupt intention of the other.[14] Such was the rule in one Louisiana case.[15] Our Code has followed the rule of the latter, holding either of the parties guilty in the event of a participation, and not looking to the intent of the other party.[16]

According to the new Code article, it is not necessary that the act for which the officer is bribed be one which is within his lawful authority. If the act is done under the color of office, it is done officially. This is clearly the weight of authority in other jurisdictions.[17]

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11. State v. Woodward, 182 Mo. 391, 81 S.W. 857 (1904); State v. Miller, 182 Mo. 370, 81 S.W. 867 (1904); Lee v. State, 47 Tex. Cr. Rep. 620, 85 S.W. 804 (1905).

12. State v. Dudoussat, 47 La. Ann. 977, 17 So. 685 (1895); People v. Liphardt, 105 Mich. 80, 62 N.W. 1022 (1895); Rath v. State, 35 Tex. Cr. Rep. 142, 33 S.W. 229 (1895).

13. State v. Callahan, 47 La. Ann. 444, 17 So. 50 (1895); People v. Coffey, 161 Cal. 433, 119 Pac. 901 (1911); Newman v. People, 23 Colo. 300, 47 Pac. 278 (1896).

14. 1 Russell, The Law of Crimes (1841) 627; 3 Wharton, Criminal Law (1932) § 2235.

15. See note 12, supra.

16. Art. 118(1), La. Crim. Code.

17. Roberts v. State, 45 Ohio App. 65, 186 N.E. 748 (1933); Wells v. State, 174 Tenn. 552, 129 S.W.(2d) 203 (1939). See also Ex parte Winters, 10 Okla. Cr. 592, 140 Pac. 164 (1914), where defendant held himself out as an officer, but asserted as a defense that he was not actually one. It was held that if he is officer enough to solicit and accept a bribe, he is also officer enough to be sent to the penitentiary for his conduct.

As to the nature or value of the bribe, the words "anything of apparent present or prospective value" include anything from which the recipient might receive some personal advantage. From American Jurisprudence,[18] "anything may serve as a bribe so long as it is of sufficient value in the eyes of the person bribed to influence his official conduct." In one Ohio case[19] a substantial favor was held to be something of value.

Public bribery, as defined in Article 118 of the Louisiana Criminal Code, specifically includes election officials and jurors, as well as public officers and employees. The clause "Grand or petit juror" contemplates any jurors lawfully selected and summoned to act as such.[20] Any interested witness whether before a board, civil, or criminal trial is included in the article. He need not be a witness at the time, but it is enough if he is "about to be called as a witness."[21] Voters were not included in the public bribery article as it was thought best to put this lesser offense in a category of its own. Article 119 of the Code refers to all voters, including those at political meetings or conventions. The penalty for bribery of voters is not as severe as that prescribed for the general offense of public bribery; and the offense is triable by a judge without a jury.[22]

The solicitation or acceptance of a bribe strikes at the very foundation of the honesty and integrity of public officers. There can scarcely be a more grievous crime committed than that a public officer should so far forget himself as to solicit or take a bribe, using his office for the purpose of private gain. Laws against bribery must be effective, so that when a man is guilty, he shall be punished. The Louisiana Criminal Code covers bribery with articles of the broadest scope possible, and it is the opinion of the writer that this was necessarily and rightfully done. Governmental agencies have made enormous advances of late, because our economic set-up demands it. Now as never before, we need this type of control, as a matter of public policy to protect taxpayers from unscrupulous officials and employees.

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18. 8 Am. Jur. 889 (1937).
19. State v. Scott, 107 Ohio St. 475, 141 N.E. 19 (1923).
20. State v. Glaudi, 43 La. Ann. 914, 9 So. 925 (1891); State v. McCrystol, 43 La. Ann. 907, 9 So. 922 (1891).
21. See redactor's comment on "Witness," La. Crim. Code (1942) 122.
22. See redactor's comment on "Separate Article as to Voters," La. Crim. Code (1942) 124.