



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 10 | Number 4

Article 10

6-1-1932

Bribery -- Scope of Official Duties Under Bribery Statute

A. E. Garrett Jr.

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

A. E. Garrett Jr., *Bribery -- Scope of Official Duties Under Bribery Statute*, 10 N.C. L. REV. 385 (1932).

Available at: <http://scholarship.law.unc.edu/nclr/vol10/iss4/10>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

The deposit in the instant case falls clearly within the classification of a deposit for a specific purpose. Such deposits under escrow agreements have generally been held to be specific.²⁷ The intention in such cases seems clear that the ordinary debtor-creditor relationship is not contemplated. Thus, it seems right that the depositor should be preferred above the general creditors of the bank.

ROBERT A. HOVIS.

Bribery—Scope of Official Duties Under Bribery Statute.

Defendant, clerk of the city council, was convicted of bribery under an indictment alleging that he exerted his influence upon members of the council to procure the passage of resolutions settling a claim against the city and that he stamped, transmitted and certified these resolutions. The question presented was whether or not defendant's lobbying of the councilmen was within the scope of his official duties.¹ *Held*, the indictment sufficiently related to the clerk's official duties and his conviction was proper.²

At common law, bribery consisted in the receiving or offering of any undue reward by or to any person in a public office to influence his behavior in office.³ Modern statutory definitions⁴ of the offense⁵

780 (C. C. A. 5th, 1900); *Willoughby v. Weinberger*, 15 Okla. 226, 79 Pac. 777 (1905); *Orme v. Baker*, 74 Ohio St. 337, 78 N. E. 439, 113 Am. St. Rep. 968 (1906).

There is a split of authority concerning the allowance of a preference where the failed bank has issued a draft covering money on deposit. *Morecock v. Hood*, 202 N. C. 321, 162 S. E. 730 (1932) (no preference allowed); *Bryon v. Coconut Grove Bank and Trust Co.*, 132 So. 481 (Fla. 1931) (preference allowed). The better view seems to be not to allow a preference. Note (1932) 26 ILL. L. REV. 63.

As to whether the proceeds of a check or other paper deposited with a bank for collection constitutes a trust fund in the hands of a bank which has failed, see *Bogert, Failed Banks, Collection Items, and Trust Preference* (1931) 29 MICH. L. REV. 545; *Turner, Bank Collections—The Direct Routing Practice* (1929) 39 YALE L. J. 468.

²⁷ *Hudspeth v. Union & Savings Bank*, 196 Iowa 706, 195 N. W. 378, 31 A. L. R. 466 (1923); *Schulz v. Bank of Harrisonville*, 246 S. W. 614 (Mo. 1923); *Mothersead v. Lewis*, 117 Okla. 167, 245 Pac. 550 (1925); *Lusk Development and Improvement Co. v. Güinter*, 32 Wyo. 294, 232 Pac. 518 (1925); *Blythe v. Kujawa*, 175 Minn. 88, 220 N. W. 168 (1928).

¹ As to defendant clerk's prescribed duties, see *Taylor v. State*, 161 S. E. 793, 794 (Ga. 1932).

² *Taylor v. State*, *supra* note 1.

³ *State v. Farris*, 229 S. W. 1100 (Mo. App. 1921); *People v. Coffey*, 161 Cal. 433, 119 Pac. 901 (1911); *State v. Pritchard*, 107 N. C. 921, 12 S. E. 50 (1890); 3 WHARTON, CRIMINAL LAW (11th ed. 1912) 2352.

⁴ For a general discussion, see 9 C. J. 406.

⁵ As to the North Carolina statute, see N. C. CODE ANN. (Michie, 1931) §4372.

include all persons whose official conduct is in any way connected with the administration of government,⁶ general or local,⁷ whether judicial,⁸ legislative,⁹ executive¹⁰ or ministerial.¹¹ The New York statute includes any person employed by or acting for the state, or for any public officer in the business of the state.¹² A clerk of a city council is an "officer of the state" and as such may be guilty of bribery.¹³

Generally,¹⁴ the cases say that the object sought by the bribe¹⁵ must be an act within the scope of authority or within the official duties of the officer bribed.¹⁶ Nevertheless, a number of courts hold officials who have acted outside the scope of their authority when they have been acting under color of office.¹⁷ A broad construction of the statutory definitions of bribery covers the case where a public officer acts corruptly in a matter to which he merely bears some official

⁶ *Dropp v. U. S.*, 34 F. (2d) 15 (C. C. A. 8th, 1929).

⁷ *Fromm v. State*, 36 Ohio App. 346, 173 N. E. 201 (1930).

⁸ *People v. Jackson*, 191 N. Y. 293, 84 N. E. 65, 15 L. R. A. (N. S.) 1173, 14 Ann. Cas. 243 (1908).

⁹ *People v. Emmons*, 7 Cal. App. 685, 95 Pac. 1032 (1908).

¹⁰ *State v. Worsham*, 154 Wash. 575, 283 Pac. 167 (1929); *Territory v. Wong*, 30 Haw. 819 (1929).

¹¹ *Osburn v. State*, 160 Tenn. 594, 28 S. W. (2d) 47 (1930).

¹² N. Y. CONSOL. LAWS, PENAL LAW (1930) §372; *People v. Clougher*, 246 N. Y. 106, 158 N. E. 38 (1927).

¹³ *Taylor v. State*, 42 Ga. App. 443, 156 S. E. 623 (1931) (facts same as in instant case, but indictment held defective); *White v. State*, 43 Ga. App. 748, 159 S. E. 897 (1931) (private individual who aided, counseled and conspired with city councilman held guilty of bribery).

¹⁴ As to intent of offeror and acceptor of bribe: (1931) 25 ILL. L. REV. 456; *Robinson v. U. S.*, 32 F. (2d) 505 (C. C. A. 8th, 1928); *Williams v. State*, 100 Tex. Cr. Rep. 318, 272 S. W. 484 (1925); *Williams v. State*, 178 Wis. 78, 189 N. W. 268 (1922). As to knowledge by accused of official character of officer bribed: *State v. Beattie*, 129 Me. 229, 151 Atl. 427 (1930). Such knowledge may be by implication. *Creswell v. State*, 161 Tenn. 290, 30 S. W. (2d) 247 (1930). Failure to convict offeror does not entitle acceptor of bribe to directed verdict of acquittal. *People v. Frye*, 248 Mich. 678, 227 N. W. 748 (1929). It is not bribery where the official act is consummated without prior corrupt intent. *People v. Coffey*, *supra* note 3.

¹⁵ Actual tender of bribe is not necessary. *Fenwick v. State*, 200 Ind. 460, 164 N. E. 632 (1929); *People v. Anderson*, 75 Cal. App. 365, 242 Pac. 906 (1926).

¹⁶ *Taylor v. State*, *supra* note 13, *State v. Adcox*, 312 Mo. 55, 278 S. W. 990 (1925); *State v. Adams*, 308 Mo. 664, 274 S. W. 21 (1925).

¹⁷ *Fall v. U. S.*, 49 F. (2d) 506 (App. D. C. 1931) (defendant assumed authority to proceed with the administration of the petroleum reserves); *People v. Clougher*, *supra* note 12 (secretary to health commissioner caused assistant secretary to procure commissioner's approval of a temporary cream permit); *People v. Anderson*, *supra* note 15 (city marshal had no authority to arrest); *Browne v. U. S.*, 290 Fed. 870 (C. C. A. 6th, 1923) (defendant army officer could not make valid sales of war materials); *People v. Jackson*, *supra* note 8 (coroner assumed to act judicially where he was without jurisdiction).

relation, though the act be technically beyond the scope of his official duties.¹⁸ Similarly, where the conduct of the officer bribed relates to acts purely discretionary by virtue of his actual relation to an official matter.¹⁹ The act need not be prescribed by statute,²⁰ but may be established by usage.²¹ It is immaterial whether the act be right or wrong, where official in form and done under color of office.²² And it is not essential that the act be accomplished.²³

The strict official duties of the defendant in the instant case consisted in his stamping, transmitting and certifying the resolutions.²⁴ The majority opinion brought defendant's lobbying of the councilmen within the scope of his official duties on the ground that defendant intended such acts, coupled with his ministerial duties, to accomplish one general result.²⁵ The dissenting opinion contended that defendant was bribed merely for his political influence, that his services as clerk were not needed and the fact that he happened to be clerk was but a coincidence.²⁶ It is submitted that the decision in the instant case is in line with the judicial authorities which bring within the statutory definitions of bribery any act related to the official duties of a public officer and that, as a matter of public policy to protect taxpayers from unscrupulous officials,²⁷ the court was justified in holding defendant's acts within the scope of his official duties.

A. E. GARRETT, JR.

¹⁸ *People v. Lafaro*, 250 N. Y. 336, 165 N. E. 518 (1929); *People v. Clougher*, *supra* note 12.

¹⁹ *People v. Walsh*, 138 Misc. 159, 246 N. Y. Supp. 171 (1930); *People v. Clougher*, *supra* note 12.

²⁰ *Daniels v. U. S.*, 17 F. (2d) 339 (C. C. A. 9th, 1927); *U. S. v. Birdsall*, 233 U. S. 223, 34 Sup. Ct. 512, 58 L. ed. 930 (1913).

²¹ *U. S. v. Birdsall*, *supra* note 20.

²² *People v. Walsh*, *supra* note 19 (defendant chairman of board of standards and appeals voted in favor of a legal resolution); *Daniels v. U. S.*, *supra* note 20 (defendant bribed prohibition agent to forego investigation of withdrawals of bonded liquor); *People v. Jackson*, *supra* note 8 (coroner acted without jurisdiction); *Turner v. State*, 43 Ga. App. 799, 160 S. E. 509 (1931) (matter not legally pending before city council). Vote of councilman need not be upon enforceable measure. *York v. State*, 42 Ga. App. 439, 156 S. E. 733 (1931). As to defective appointment of officer: *State v. Wynne*, 118 N. C. 1206, 24 S. E. 216 (1896).

²³ *Curtis v. State*, 113 Ohio St. 187, 148 N. E. 834 (1925).

²⁴ *Taylor v. State*, *supra* note 1, at 794.

²⁵ *Taylor v. State*, *supra* note 1, at 803.

²⁶ *Taylor v. State*, *supra* note 1, at 806.

²⁷ *Fromm v. State*, *supra* note 7, at 204.