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Contingent Fees for Influencing Legislation

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

CONTRACTS—CONTINGENT FEES FOR INFLUENCING LEGISLATION.—Property of the defendant, an alien corporation, was seized during the World War, and held for some time thereafter by the Alien Property Custodian. Defendant contracted with plaintiff to obtain legislation to facilitate the return of the property, compensation to be on a contingent fee basis. Plaintiff was successful in getting such legislation providing for a hearing before a proper tribunal to determine the right of the company to such property. Before recovery of the property, plaintiff was discharged. He sues on the contract. Held, he may not recover. *Brown v. Gesellschaft fur Drahtlose Telegraphie, M. B. H.* (C. C. A. D. C., 1939), 104 F. (2d) 227.¹

Attorneys generally have been unable to recover on contracts to influence legislation whether improper means were shown to have been used or not.² Some courts, however, have made a distinction between "lobbying" contracts, in which improper means are used, and contracts whereby the attorney merely assists in drafting legislation and appears in favor of the bill before committees.³ Every citizen should be allowed to employ agents to draft bills and explain the bill to committees in hearing; and when the contract contemplates nothing further it should not be considered illegal.⁴

No matter how courts may rule on contracts for influencing legislation where the compensation is fixed, they have been very chary of allowing recovery for such a contract where the compensation is contingent upon success in obtaining passage of the bill, on the grounds that such a contract tends to encourage the use of improper means, whether openly or surreptitiously.⁵ Nevertheless, there has been a recent tendency toward allowing recovery on contingent fee contracts for influencing legislation where there has been no

15 49 Stat L. 449, 29 U. S. C. (Supp. 1937), § 150.

¹ See also *Gesellschaft fur Drahtlose Telegraphie M. B. H. v. Brown* (1935), 78 F. (2d) 410.

² *Adams v. E. Boston Co.* (1920), 236 Mass. 121, 127 N. E. 628; *Hardesty v. Dodge Manufacturing Co.* (1927), 89 Ind. App. 184, 154 N. E. 697; *Hayward v. Nordberg Manufacturing Co.* (1898), 85 F. 4; *Marshall v. Baltimore and Ohio R. R. Co.* (1853), 16 How. (57 U. S.) 314; *Sussman v. Porter* (1905), 137 F. 161. See also *Tool Co. v. Norris* (1864), 2 Wall. (69 U. S.) 45, 17 L. Ed. 868, where the court says: ". . . all agreements for pecuniary considerations to control the business operations of the government, or regular administration of justice, or appointments to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question, whether improper means are contemplated or used in their execution." p. 56.

³ *Stanton v. Embrey* (1876), 93 U. S. 548; *West v. Coos County* (1925), 115 Ore. 409, 237 P. 961; *Chesebrough v. Conover* (1893), 140 N. Y. 382, 35 N. E. 633.

⁴ *Chesebrough v. Conover* (1893), 140 N. Y. 382, 35 N. E. 633.

⁵ *Hazelton v. Sheckells* (1905), 202 U. S. 71, 26 S. Ct. 567; *Noonan v. Gilbert* (1934), 68 F. (2d) 775.

proof of improper means either contemplated or used.⁶ These recent cases argue that if no improper means were contemplated or used, then there should be no policy against such contracts.⁷

In early Indiana decisions contingent fees for appearance before the judiciary were prohibited.⁸ Gradually these contracts were recognized as not leading to any immoral or improper consequences. The temptation to employ improper means before the judiciary is as great as before the legislature. The same reasons advanced for allowing contingent fees before the judiciary can be used in arguing for this method of compensation for appearance before the legislature. Many deserving causes will be neglected because of lack of resources with which to present them unless this method of compensation is allowed. This reasoning applies particularly where the person desiring legislation has a just claim against the state.⁹

The Indiana legislature in 1915 prohibited the employment of any person as legislative counsel on a contingent fee basis.¹⁰ Even before this act the Indiana Supreme Court had declared that contingent fee contracts for influencing legislation could not be enforced because of the tendency of such contracts toward the use of improper means.¹¹

It would seem that although the principal case is probably correctly decided on the basis of past decisions of the courts, there is strong argument in favor of allowing recovery in such cases. The case would probably be followed in Indiana in view of the Statute above mentioned.

G. H. E.

CONTRACTS—TEACHERS' TENURE.—Plaintiff brought suit for the breach of a permanent teacher's tenure contract, the alleged breach consisting of defendant's refusal to assign him a teaching position since 1931. Damages sought were loss of salary from date of breach. Held, for defendant; a permanent tenure teacher's indefinite contract is a protected contractual right entitling the teacher to a succession of definite contracts, but such indefinite contract will not sustain an action for compensatory damages. *Lost Creek School Tp., Vigo County v. York* (Ind. 1939), 21 N. E. (2nd) 58.

The case presents two questions: first, what is the nature of the indefinite contract for which the statute provides, and second, what are the remedial rights thereunder? As to the first question, there is sound basis for the holding that the indefinite contract gives the teacher a mere functional relationship, a right to be re-employed, and does not provide the specific terms for the employment in any school year. The tenure act provides that it shall be construed as supplementary to the Act of 1921 which sets out the requirements to be incorporated in teachers' yearly contracts and prohibits the bring-

⁶ *Kemble v. Weaver* (1925), 200 Iowa 1333, 206 N. W. 83; *Stansell v. Roach* (1923), 147 Tenn. 183, 246 S. W. 520; *West v. Coos County* (1925), 115 Ore. 409, 237 P. 961.

⁷ *Coyne v. Superior Incinerator Co. of Texas* (1936), 80 F. (2d) 844; *Herrick v. Barzee* (1920), 96 Ore. 357, 190 P. 141; *West v. Coos County* (1925), 115 Ore. 409, 237 P. 961.

⁸ *Lafferty v. Jelley* (1864), 22 Ind. 471; *Scobey v. Ross* (1859), 13 Ind. 117.

⁹ *Stroemer v. Van Orsdel* (1905), 74 Neb. 132, 103 N. W. 1053.

¹⁰ Acts of 1915, Ch. 2, § 4, par. 5; *Burns Ind. Stat. Ann.* 1933, § 34-304.

¹¹ *Coquillard's Administrators v. Bearss* (1863), 21 Ind. 479.