

CRIMES AND PUNISHMENTS: Obtaining money by false pretenses; oppression in office; exacting illegal fees by sheriff; officer accepting bribe.

February 28, 1946

FILED
56

3-1

Honorable Russell Mallett
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, based upon the following facts:

"A Grand Jury has been called in Jasper County for the purpose of investigating reports about our sheriff and his deputies victimizing inmates of the County Jail, some of whom have been sent to the penitentiary. Numerous rumors have come back to us that prisoners who have been kept in the County Jail have stated that they were victimized by the Sheriff or his deputies and it is reported by rumors only, as far as I am concerned, a great many convicts have made those statements.

* * * * *

"The nature of the complaints that have come to me are:

"1. That the Sheriff exacted large sums of money from the prisoners promising that he would get them paroles.

"2. That the Sheriff and his jailers have been charging fees to permit prisoners to leave cells and to get

into the bullpen where they have more freedom and better quarters and charging them additional fees for being trusty where the accomodations are still better.

"I would like for you to submit to me an opinion as to what is the best and most severe charge that could be returned in an indictment against the Sheriff and his deputies in case the Grand Jury sees fit to indict them.

* * * * *

It is our opinion that complaint No. 1 could be prosecuted under Section 4437, R.S.A., which is the section making the obtaining of money or goods by false pretenses a crime. Said section is in part as follows:

"Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any other false pretense, * * * * * obtain from any person any money, personal property, right in action or other valuable thing or effects whatsoever, * * * * * shall upon conviction thereof be punished in the same manner and to the same extent as for feloniously stealing the money, property or thing so obtained."

The Supreme Court of Missouri, in the case of State vs. Wren, 333 Mo. 575, held that a similar offense was covered by this statute. In this case the indictment charged that the defendant obtained money by promising the victim that he would get him a position on the police force for a consideration of \$175. The court, in holding the indictment sufficient, said at l.c. 578:

"The indictment is drawn under Section 4095, Revised Statutes 1929 (4 Mo. Stat. Ann. p. 2894), making it a crime

for any person, with intent to cheat or defraud another, designedly, by any false token or writing, or by any other false pretense, to obtain from any person money or property. The false pretense, to come within the statute, must be as to an existing or past fact, not a promise as to something to take place in the future. * * * * *

* * * * *

" * * * * The indictment further charges that defendant represented that if Woods would pay him \$175 he would have him put in the next school of instruction and get him on the police force, thereby implying and giving Woods to understand that he had sufficient influence or power to do so, * * * * "

* * * * *

"In our opinion the indictment in this case charges facts sufficient to constitute an offense under the statute and the fact that coupled with the alleged false pretenses as to existing facts there is an allegation of a promise to be carried out in the future does not invalidate the indictment."

In dealing with the question of the sufficiency of the false pretenses or representations in the Wren case, the court said at l.c. 581:

"In the motion to quash there is the further assignment that the indictment is so vague and indefinite as not to advise defendant of the charge preferred against him. Defendant has not briefed this point. If it means that the alleged false representations are not stated with sufficient definiteness the answer is they are, presumably, set out as defendant made them, that being necessary in order to

avoid variance between allegation and proof. If defendant was not as specific in his statements to Woods as he might have been it hardly lies in his mouth to complain because his victim did not require of him a more specific false pretense. It was sufficiently specific to induce in Woods' mind the understanding and belief it was designed to produce and to get Woods' money. * * * *"

In view of the holding in the Wren case, the defendant could be prosecuted under the facts set out in complaint No. 1, if the representation was made in such a way as to lead the victim to believe the defendant could obtain a parole for him and upon the strength of such representation and belief gave the defendant his money or property.

The punishment for the above offense would depend upon the amount of money obtained by the defendant. If it was under \$30, Section 4469, R.S.A., defining petty larceny and its punishment, would apply. If the amount obtained was over \$30, Section 4456, R.S.A., defining grand larceny, and Section 4457, R.S.A., defining the punishment for grand larceny, would be applicable.

It is our opinion that complaint No. 2 could be prosecuted under Section 4339, R.S.A., titled "Oppression in office," which is as follows:

"Every person exercising or holding any office of public trust who shall be guilty of willful and malicious oppression, partiality, misconduct or abuse of authority in his official capacity or under color of his office, shall, on conviction, be deemed guilty of a misdemeanor."

Also, under Section 4342, R.S.A., titled "Exacting illegal fees," which is as follows:

"Every officer who shall, by color of his office, unlawfully and willfully exact or demand or receive any fee or

reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor."

The penalty for violating Section 4339, supra, is provided in Sections 4341 and 4344, R.S.A., which are as follows:

Section 4341.

"Every person who shall be convicted of any of the offenses mentioned in the preceding sections of this article shall be forever disqualified from holding any office of honor, trust or profit under the Constitution and laws of this state, and from voting at any election; and every officer who shall be convicted of any official misdemeanor or misconduct in office, or of any offense which is by this or any other statute punishable by disqualification to hold office, shall, in addition to the other punishment prescribed for such offenses, forfeit his office."

Section 4344.

"Every officer or person holding any trust or appointment, who shall be convicted of any willful misconduct or misdemeanor in office, or neglect to perform any duty enjoined on him by law, where no special provision is made for the punishment of such misdemeanor, misconduct or negligence, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment."

The penalty for violating Section 4342, R.S.A., is set out in Section 4344, supra.

We have been unable to find a case exactly in point under either of these two statutes, but in the case of State vs. Latshaw, 63 Mo. App. 620, the court discussed the section on oppression in office. The facts in this case disclose that the defendant was a justice of the peace and illegally charged certain defendants in criminal cases fees which were illegal and not prescribed by statute, coupled with the threat that if the fees were not paid the defendants would be committed to jail, and if paid they would be discharged. The justice of the peace had been charged with obtaining money by false pretenses and the appellate court held that the proper charge would have been oppression in office.

It is also our opinion that the acts enumerated under complaint No. 2 could be prosecuted under Section 4324, R. S. Mo. 1939, which pertinent parts are as follows:

" * * * * and any other public officer of this state, or of any county or city, town or township thereof, who shall, directly or indirectly, accept or receive any gift, consideration, gratuity or reward, or any promise or undertaking to make the same: First, under any agreement that his vote, * * * * or that he shall neglect or omit to perform any official duty, or perform the same with partiality or favor, or otherwise than according to law; * * * * shall be deemed guilty of bribery, and punished as prescribed in the next preceding section."

Punishment for the above offense is prescribed by Section 4325 R. S. Mo. 1939, and said section provides for imprisonment in the penitentiary for a term not exceeding seven years.

In the case of State v. Adcox, 278 S.W. 990, l.c. 991, the court defined the offense covered by this statute when it said:

"In order to constitute bribery of an official, under section 3177, the bribe must have been in order 'to induce him (the officer) to neglect or omit the performance of any official duty, or to perform such duty with partiality or favor, or otherwise than

is required by law.' No other language in that section can possibly be construed to apply to the act here charged. The general rule, laid down in Corpus Juris, vol. 9, p. 404, is as follows:

"In order to bribe an officer, he must be in the discharge of a legal or official duty; in other words, there can be no bribery of any official to do a particular act, unless the law requires or imposes upon him the duty of acting. A moral duty is insufficient.'

"In case of State v. Butler, 178 Mo. loc. cit. 319, 77 S.W. 572, this court said, in relation to the bribery of an official:

"The very purpose of the statute is to prevent public officials from being influenced in respect to questions upon which they are authorized to act. How can an officer be influenced to act, when there is no law requiring him to do so, and no power under the law authorizing him to act?'"

The statutory duty of the sheriff or jailer, as to the operation and custody of the jail and the prisoners therein, is provided by Section 9195, R.S.A., and is as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

The Adcox case, supra, holds that the offense must have been in connection with the performance of any official duty,

and the statute covers the administering of this duty with partiality occasioned by a bribe. Therefore, it is our opinion that when the sheriff or jailer administered the duties set out in Section 9195, supra, with partiality, because of having been paid a bribe by an inmate of his jail, he could be prosecuted under Section 4324, supra, for the crime of accepting a bribe.

Conclusion.

It is the opinion of this department that, under the facts stated in your request, the defendant could be prosecuted for obtaining money by false pretenses under complaint No. 1, and that he could be prosecuted either for oppression in office, exacting illegal fees or accepting a bribe under complaint No. 2.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WBD:ml