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## Criminal Law—Corrupt Influencing of Agents

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## CRIMINAL LAW

## Corrupt Influencing of Agents

In *People v. Jacobs*,<sup>1</sup> defendant photographer was charged with violation of section 439 of the Penal Law, which punishes corrupt influencing of agents and employees of another.<sup>2</sup> The offense in this case consisted of giving ten dollar tips to the purser of the United States Lines, to obtain passenger manifests for use in the defendant's business. The Court of Appeals, reversing the Appellate Division, *held*, since it appeared from the record that such manifests were distributed to newspapers and were otherwise publicly circulated, that the defendant's action did not come within the meaning of the statute.

The purpose of this statute is to prevent fraud upon employers and principals. It appears obvious that although the public is concerned with enforcing this statute in the public interest, any prosecution, by reason of the very nature of the offense charged, should be initiated of the complaint of an aggrieved employer or principal.<sup>3</sup>

The phrase "particular manner" contained in the statute refers to a manner which would serve the purpose of the offender; money<sup>4</sup> must be given with intention of influencing the employee to act in a way inconsistent with his duties to his employer,<sup>5</sup> or to effect some decision by the employee involving the exercise of discretion.<sup>6</sup> Since the employee in this case was told to give manifests to newspapers and custom officials, the act involved no exercise of discretion on his part, and there was no violation of this statute.

There is also no violation of this statute if the employer has knowledge, and either approves or condones the act of his employee.<sup>7</sup> It appeared from the facts in this case that the purser had notified his superior, but was not given an answer. The money was thus not given without the employer's consent, though the Court

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1. 309 N. Y. 315, 130 N. E. 2d 636 (1955).

2. N. Y. PENAL LAW §439: A person who gives . . . an . . . employee . . . of another any gift or gratuity whatever, without the knowledge and consent of the . . . employer. . . with intent to influence such . . . employee's . . . action in relation to his . . . employer's . . . business; or an . . . employee . . . who without the knowledge and consent of his . . . employer . . . , requests or accepts a gift . . . with an understanding that he shall act in any particular manner in relation to . . . employer's . . . business, . . . is guilty of a misdemeanor.

3. *June Fabrics, Inc. v. Teri Sue Fashions, Inc.*, 194 Misc. 267, 81 N. Y. S. 2d 877 (Sup. Ct. 1948).

4. *People v. Graf*, 261 App. Div. 188, 24 N. Y. S. 2d 683 (1st Dep't 1941).

5. *Applebee v. Skiwaneck*, 140 N. Y. Supp. 450 (Mag. Ct. 1912).

6. *People v. Graf*, *supra* note 4.

7. *June Fabrics, Inc. v. Teri Sue Fashions, Inc.*, *supra* note 3.

did not base its decision on this point. In a recent case the Court refused to apply this statute in a criminal prosecution of a referee, holding that this statute relates to commercial fraud practiced by an employee against the financial or business interest of the employer, not to bribery of a referee in a professional game of sport. Sports, though conducted for money, are not trade or commerce in the commonly accepted sense of the word.<sup>8</sup> It is well to notice in this connection that section 439 falls within Article 40 of the Penal Law, entitled "Business and Trade."

Criminal convictions under this statute are very few; most of them involve convictions of employees rather than donors of bribes. As for civil actions instituted under this section, no new remedy or cause of action based solely upon its violation is created, irrespective of actual damages.<sup>9</sup>

### False Pretenses

An interpretation of section 934 of the Penal Law<sup>10</sup> relating to the fraudulent obtaining of property for charitable or benevolent purposes faced the Court of Appeals in *People v. LeGrande*.<sup>11</sup> In this case women dressed themselves as nuns and sat in front of department stores soliciting funds; they retained all of the donations in excess of \$2.50 per day, which sum was turned over to the pastor of a church.

The Appellate Division, by giving a very narrow interpretation to the phrase "for any alleged or pretended charitable or benevolent purpose," excluded from its meaning a contribution solicited for a pretended *religious* purpose and held that section 934 had not been violated. In reversing, a unanimous court felt that the term "benevolent organization" was broad enough to include a church,<sup>12</sup> and that, since the main object of defendants' solicitation was their own emolument, the token payment to the religious organization did not prevent this from being a fraud upon the public. In light of the purpose of the section,<sup>13</sup> defendants' actions

8. *People v. Levy*, 283 App. Div. 383, 128 N. Y. S. 2d 275 (1st Dep't 1954).

9. *Schank v. Schuman*, 212 N. Y. 352, 106 N. E. 127 (1914).

10. N. Y. PENAL LAW §934. A person who wilfully, by . . . false pretense, obtains . . . any money or property, for any alleged or pretended charitable or benevolent purpose, is punishable. . . .

11. 309 N. Y. 420, 131 N. E. 2d 712 (1956).

12. A charitable corporation has been defined as one freely and voluntarily ministering to the physical needs of those pecuniarily unable to secure for themselves; a benevolent corporation was held to be one that ministered to all, with the purpose being anything that promotes the mental, physical or *spiritual* welfare of man. *In Matter of Rockefeller's Estate*, 177 App. Div. 786, 165 N. Y. Supp 154 (1st Dep't 1917).

13. "The purpose of this section is to prevent impositions upon those who are induced to part with their property as a result of commendable charitable impulses, subsequently finding out that they have been duped and that their property has been diverted or converted to some other use." *People v. Yarmish*, 189 Misc. 1041, 68 N. Y. S. 2d 628 (1947).