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Criminal Law—Receipt of Bribes by Labor Representative

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receive the State Police officer's testimony that six weeks before the arrest he observed the satisfactory performance of his speedometer as compared with a master speedometer in a test made by an employee of a service station where State Police cars were customarily so checked, and the County Court's conclusion that such receipt was error⁵³ must be rejected. Consequently it was also reversible error for the County Court to find that the trial court's finding of guilt was against the weight of evidence, since the County Court reached this conclusion with the evidence of the speedometer testing erroneously excluded from its consideration.

The law in New York as it now stands would seem to be as follows: (1) Evidence of the reading of an untested speedometer is admissible, but by itself will probably be found insufficient to sustain a conviction for speeding. (2) Such evidence coupled with a coinciding independent estimate of the defendant's speed made by an officer qualified to judge speed may be sufficient to sustain a conviction. (3) Evidence as to the testing of a speedometer even by an agency outside the police department and without the testimony of the person who conducted the test is admissible as long as the witness observed the test.

Receipt Of Bribes By Labor Representative

Section 380 (2) of the New York Penal Law⁵⁴ relating to the acceptance of bribes by a labor representative was recently considered by the Court of Appeals in *People v. Cilento*.⁵⁵ In this case a labor representative was indicted for allegedly accepting a bribe while acting in the capacity of trustee of the union welfare fund. The Court reinstated the indictment after it was dismissed by the lower courts.⁵⁶

As pointed out by the Appellate Division⁵⁷ there generally is a valid distinction between the positions of trustee and labor representative, so that no question arises as to whether section 380 (2) of the Penal Law applies. The problem arises when the two positions are combined in the same person. In construing the section, the Court of Appeals held that the term "labor representative" was not to be considered generically but was to be interpreted in a broader sense to include any duty imposed on a labor representative. The Court reasoned that where the constitution of a union provides that a certain labor representative solely by virtue

53. *People v. Marsellus*, 4 Misc.2d 211, 157 N.Y.S.2d 148 (County Ct. 1956).

54. N.Y. PENAL LAW §380(2) provides:

Any duly appointed representative of a labor organization who solicits or accepts . . . any thing of value . . . that he shall be influenced in respect to any of his duties . . . is guilty of a misdemeanor.

55. 2 N.Y.2d 55, 156 N.Y.S.2d 673 (1956).

56. 207 Misc. 914, 143 N.Y.S.2d 705 (Gen. Sess. 1955); 1 A.D.2d 206, 149 N.Y.S.2d 14 (1st Dep't 1956).

57. 1 A.D.2d 206, 149 N.Y.S.2d 14 (1st Dep't 1956).

of his official position shall be a trustee of the union's welfare fund, the two positions may not be separated. Consequently a violation of one of his duties in the area of trusteeship is at the same time and by the same act a violation of his duty in the overall area as labor representative. Therefore, the acceptance of a bribe in the capacity of *trustee* alleges a violation of section 380 (2) of the Penal Law which makes it a misdemeanor to accept a bribe as a *labor representative*. (Emphasis supplied).

A further question was raised by the subsequent amendment of that section which enlarged its application to include "Labor representative or any duly appointed trustee . . . of an employee's welfare fund." The Court held that this later amendment did not indicate that the legislature never intended the original section to apply to a labor representative who simultaneously held a position as trustee. But rather it was a legislative attempt to cover those trustees who held their positions independent of being a labor representative.

It is apparent that the Court, in construing the term "labor representative" to include those acts performed as a trustee, has broadly construed this statute in derogation of the rule of construction that a criminal statute should be strictly construed in favor of the defendant.⁵⁸ The only justification for this decision seems to be the slim technicality that the union constitution combined the two positions in the same person. Therefore, in light of the subsequent amendment, the writer feels that this case should be limited to its facts.

Criminal Contempt

The granting of statutory immunity to a witness by a grand jury does not preclude prosecution for contempt for failure to answer questions properly within the scope of its investigation.⁵⁹ Nor is prosecution for contempt barred, after immunity is granted, because the witness refused to answer questions on the grounds his answers might tend to incriminate him.⁶⁰

In *People v. Saperston*⁶¹ the defendant was convicted of contempt for refusing to reveal to a grand jury, while under statutory immunity, the identity of persons in wire tapped conversations he had with said persons. The defendant contended that although the statutory immunity protected him from prosecution by the state, it did not prevent federal prosecution under the Federal Communication Act,⁶²

58. *People v. Benc*, 288 N.Y. 318, 43 N.E.2d 61 (1942).

59. N.Y. PENAL LAW §§600, 2447.

60. *People v. Breslin*, 306 N.Y. 294, 118 N.E.2d 108 (1954).

61. 2 N.Y.2d 210, 159 N.Y.S.2d 160 (1957).

62. 48 STAT. 1103, 47 U.S.C.A. §605 (1934).