Michigan Law Review

Volume 38 | Issue 3

1940

QUASI-CONTRACTS -- UNSOLICITED PERFORMANCE OF A STATUTORY DUTY

Edward S. Biggar
University of Michigan Law School

QUASI-CONTRACTS — UNSOLICITED PERFORMANCE OF A STATUTORY DUTY — An Indiana statute [1] required county officers to publish reports of public business in two newspapers, representing the leading political parties of the county. Plaintiff, one of the two newspapers in Decatur county, printed the required notices without first obtaining official authorization. After defendant had disallowed the claim for this service, plaintiff appealed to the circuit court, there obtaining a verdict. Defendant appealed from the denial of its motion for

[1] Ind. Stat. Ann. (Burns, 1933), §§ 49-701 to 49-709.

a new trial. *Held*, that plaintiff had performed an obligation created by law and was entitled to recover on quasi-contract principles. On motion for rehearing, defendant urged the statute [2] prohibiting recovery by volunteers. *Held*, that plaintiff was not to be classed as a volunteer, since it had fulfilled a statutory duty. *Board of Commissioners of Decatur County v. Greensburg Times*, (Ind. 1939) 19 N. E. (2d) 459, 20 N. E. (2d) 647.

Recovery in quasi-contract for those persons who have voluntarily performed the statutory duties of public officers has been confined within narrow bounds. If the performance of the duty is a matter of grave public concern, and the officer has refused, upon request, to act,[3] or if there is an emergency so that a request is not practicable,[4] a proper [5] person may perform the official duty and will ordinarily be compensated for so doing. But aside from these cases of public necessity, the volunteer has received little consideration. For the most part, statutes imposing liability on counties and municipal corporations are strictly interpreted,[6] in accordance with the theory that these public bodies have no

[2] ". . . the board of county commissioners . . . shall have no power whatever to make any allowance for voluntary services, or for things voluntarily furnished. . . ." Ind. Stat. Ann. (Burns, 1933), § 26-533.

[3] Recovery for support of paupers is generally allowed. Hendrickson v. Town of Queen, 149 Minn. 79, 182 N. W. 952 (1921); Eckman v. Township of Brady, 81 Mich. 70, 45 N. W. 502 (1890); Randolph v. Town of Greenwood, 122 Ill. App. 23 (1905). But even in this type of case, some older decisions have denied relief. Morgan County v. Seaton, 122 Ind. 521, 24 N. E. 213 (1890). Aid in the education of schoolchildren is usually compensated. Sommers v. Putnam County Board of Education, 113 Ohio St. 177, 148 N. E. 682 (1925); Eastgate v. Osago School District of Nelson County, 41 N. D. 518, 171 N. W. 96 (1919). But where there was no prior request made of a public official, recovery was denied in Noble v. Williams, 150 Ky. 439, 150 S. W. 507 (1912).

[4] Board of Commissioners of Garfield County v. Enid Springs Sanitarium & Hospital, 116 Okla. 249, 244 P. 426 (1926) (operation to save life of pauper); Miller v. Banner County, 127 Neb. 690, 256 N. W. 639 (1934) (attention given to injuries sustained in automobile accident); Newcomer v. Jefferson Township, 181 Ind. 1, 103 N. E. 843 (1914) (operation to save crushed leg). But recovery has been denied where there was no showing that the patient's life was in danger. Board of Commissioners of Noble County v. Niemann, 182 Okla. 497, 78 P. (2d) 672 (1938).

[5] Apparently any person acting within the other limitations set forth would be considered "proper." RESTITUTION RESTATEMENT, § 115, comment (a) (1936).

[6] Where the statute is interpreted as going to the governmental body's power to incur liability, the fact that benefits have been conferred will not justify recovery. Passaic County v. Manly, (Cir. Ct. N. J. 1936) 186 A. 33; United States Rubber Co. v. City of Tulsa, 103 Okla. 163, 229 P. 771 (1924); Inhabitants of South Scituate v. Inhabitants of Hanover, 9 Gray (75 Mass.) 420 (1857); McCormick v. City of Niles, 81 Ohio St. 246, 90 N. E. 803 (1909). If, however, the services are rendered at the request of governmental officers, or with their knowledge and acquiescence, some courts will not construe the statutes as being mandatory. Shulse v. City of Maysville, 223 Wis. 624, 271 N. W. 643 (1937); Village of Harvey v. Wilson, 78 Ill. App. 544 (1898); State ex rel. Beckstrom v. Glenn, 144 Kan. 461, 61 P. (2d) 1354 (1936); Miles v. Holt County, 86 Neb. 238, 125 N. W. 527 (1910).

powers other than those specifically delegated to them.[7] In view of the usual judicial attitude, the decision in the principal case is striking. There is, here, no showing of an emergency, nor is a matter of great public importance involved. No request had been made to any official to perfom the duty which the plaintiff had taken upon itself. Furthermore, there is in force in Indiana a statute expressly reinforcing the common-law aversion to volunteers.[8] On its facts, the decision would seem to go beyond any previously decided cases.[9] The court, however, emphatically rejects the suggestion that it is widening the scope of quasi-contract recovery for unsolicited services.[10] Plaintiff's performance of an obligation created by statute is the ground upon which the decision is rested. But here the court seems to have fallen into error. Plaintiff is under no statutory duty; the statute speaks in general terms, leaving the selection of particular newspapers to the public officers who must publish the necessary reports.[11] The fact that plaintiff conforms to the statutory requirements does not alter the terms of the statute so as to create a duty where previously none has existed. And secondly,—a more fundamental objection—the court is confusing the obligation to perform a statutory duty with the obligation to pay a sum of money which the law implies in giving quasi-contract relief. This latter obligation is not dependent upon legislative enactment; it is essentially a remedial fiction employed by the courts to do justice in particular cases.[12] When there is sufficient evidence that benefits have been unjustly conferred upon a defendant, at the expense of a plaintiff, the duty of compensation will be implied. But the fact that the defendant has been benefited at the plaintiff's expense is not conclusive. Thus, in the principal case, plaintiff's performance of a statutory obligation incumbent upon a county officer would not seem, necessarily and automatically, to give rise to the quite distinct, quasi-contract obligation. It must first be asked whether the enrichment is just or unjust. The answer to this question will depend mainly

[7] 1 DILLON, MUNICIPAL CORPORATIONS, 5th ed., §§ 33, 37 (1911); Tooke, "Quasi-Contractual Liability of Municipal Corporations," 47 HARV. L. REV. 1143 (1934).

[8] Ind. Stat. Ann. (Burns, 1933), § 26-533.

[9] Another bar sometimes obstructing plaintiff's recovery is the availability of a mandamus remedy by which the performance of the statutory duty might have been compelled. Noble v. Williams, 150 Ky. 439, 150 S. W. 507 (1912). This would seem to raise an argument pertinent to the principal case. However, the better view is that this objection will not prevent recovery if plaintiff's case is otherwise complete. Summers v. Putnam County Board of Education, 113 Ohio St. 177, 148 N. E. 682 (1925), noted in 24 MICH. L. REV. 511 (1926).

[10] "Appellee is not held to be entitled to recover upon the theory of services voluntarily rendered, but rather upon an obligation created by statute." Principal case, 20 N. E. (2d) 647 at 648.

[11] This fact distinguishes the principal case from Moon v. Board of Commissioners of Howard County, 97 Ind. 176 (1884), which is relied upon by the court, as laying down the "applicable rule." In the Moon case, a county surveyor was allowed to recover for the performance of his own statutory duty; but in so far as his claim covered functions which it was not his duty to perform, recovery was denied.

[12] "Quasi-contracts . . . are not based on the apparent intentions of the parties. . . . They are obligations created by law for reasons of justice." 1 CONTRACTS RESTATEMENT, § 5, comment (a) (1932).

upon considerations of policy. As has been suggested, the courts have consistently favored the interests of the public corporations, and their tax-payers, as against those of the volunteer-plaintiffs. The principal case cannot be thought to indicate a new trend of policy in view of the court's refusal to consider the plaintiff as a volunteer. The basis of the court's reasoning seems to lie in a confusion of quasi-contract principles; it is submitted, therefore, that the decision is not one of general application.

Edward S. Biggar