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CRIMINAL LAW-IMMUNITY FROM PROSECUTION STATUTES--REVOCATION OF LICENSE AS PENALTY OR FORFEITURE

Richard W. Pogue S.Ed.
University of Michigan Law School

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CRIMINAL LAW—IMMUNITY FROM PROSECUTION STATUTES—REVOCATION OF LICENSE AS PENALTY OR FORFEITURE—Plaintiff, an architect, involuntarily testified as to facts involved in a bribery transaction, before a state attorney, a grand jury, and at the trial of members of the Board of Public Instruction for bribery and conspiracy to bribe. Subsequently the State Board of Architecture filed charges against him seeking to revoke his certificate, basing these charges on the same bribery transaction, in which he allegedly had participated. Plaintiff thereupon instituted suit for declaration of his rights and immunities. He claimed an immunity by virtue of a Florida statute which provided that in connection with certain crimes (including bribery) "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction . . ." concerning which he involuntarily testified.[1] The circuit court granted an injunction against the proceeding for revocation, and the Board of Architecture appealed. On appeal, *held*, affirmed. A proceeding to revoke an architect's cer-

[1] 24 Fla. Stat. Ann. (1944) §932.29; see also 22 Fla. Stat. Ann. (1944) §838.08.

tificate falls within the protection of an immunity from prosecution statute. *Florida State Board of Architecture v. Seymour,* (Fla. 1952) 62 S. (2d) 1.

Over the course of the past two centuries legislatures have passed hundreds of laws[2] extending immunity from prosecution, or protection against subsequent use of testimony, to persons whose testimony in certain classes of criminal prosecution has been considered of great value to the state, in return for the removal of their constitutional or statutory privilege against self-incrimination. The statute involved in the principal case provides that no person shall be excused from testifying in cases concerning bribery on grounds of self-incrimination, but in exchange the statute gives any person testifying under this compulsion an immunity from certain consequences. This particular statute grants broad protection to witnesses in prosecutions for bribery (and other offenses) since in return for abolition of the constitutional privilege it guarantees them freedom from prosecution or subjection to "any penalty or forfeiture" for any matter concerning which they testify.[3] This is a guaranty in terms going beyond the Florida constitutional provision which declares simply that no person shall be "compelled in any criminal case to be a witness against himself."[4] If the statutory immunity were limited in scope to the terms of the constitutional privilege the problem of construction arising in the principal case would be simple, since it is generally recognized that a proceeding to revoke a license is not a criminal action. The additional sweep of the amnesty, however, embracing penalties and forfeitures, forces the issue of whether a revocation proceeding results in a penalty or forfeiture. In other contexts it has been held that the purpose of statutes authorizing revocation of licenses is to protect the public interest rather than to punish or inflict a penalty upon the particular licensee.[5] This principle has been established in the face of the argument that due process is denied by the taking away of "vested" or "property" rights by a nonjudicial body.[6] The same has been true as against the contention that a statute prohibiting licensees to continue their calling if they have committed certain crimes is ex post facto legislation as to persons who were convicted before enactment of the statute, since this imposes a later additional "penalty."[7] The few cases in point have split on the question of whether revocation amounts to an additional "penalty" under a statute other-

[2] Statutes are collected in 8 WIGMORE, EVIDENCE, 3d ed., §2281 (1940).

[3] The first statute phrased in these broad terms was 46 Geo. III, c. 37 (1806); at no time, however, have the penalties and forfeitures which were intended to be embraced by this terminology been spelled out.

[4] Florida Declaration of Rights, §12, 25 Fla. Stat. Ann. (1944).

[5] In addition to the cases cited in the next four notes, see cases cited in Prichard v. Battle, 178 Va. 455, 17 S.E. (2d) 393 (1941), a case upholding revocation of a driver's license to prevent danger to the public.

[6] Johnson v. Commissioner of Agriculture, 314 Mich. 548, 22 N.W. (2d) 893 (1946); Klaftner v. State Board of Examiners of Architects, 259 Ill. 15, 102 N.E. 193 (1913); West Coast Co. v. Contractors' State License Board, 72 Cal. App. (2d) 287, 164 P. (2d) 811 (1945).

[7] Hawker v. New York, 170 U.S. 189, 18 S.Ct. 573 (1898); Murrill v. State Board of Accountancy, 97 Cal. App. (2d) 709, 218 P. (2d) 569 (1950).

wise spelling out specifically the punishment for violation of regulatory legislation;[8] and some decisions have upheld the validity of legislation or regulations authorizing revocation despite lack of fault or knowledge on the part of the holder.[9] In addition to protection of the public from unfitness and incompetency in its dealings with certain trades and professions, another theory runs through the cases supporting revocation—protection of the integrity and good name of the particular calling.[10] This idea was perhaps first expressed by Lord Mansfield, in a disbarment proceeding—". . . the question is, whether, after the conduct of this man, it is proper that he should continue a member of a profession which should stand free from all suspicion. . . . It is not by way of punishment; but the Court in such cases exercise their discretion, whether a man whom they have formerly admitted, is a proper person to be continued on the roll or not."[11] In view of these holdings as to the nature of revocation in other contexts, there appears to be sound logic in the proposition that the "penalty or forfeiture" provision in an immunity statute should not encompass revocation of licenses. The strongest support for this position is found in a thorough opinion by Judge Cardozo in a 1917 review of a New York disbarment proceeding,[12] where the court denied an attorney's claim of immunity under a statute almost identical in language with that involved in the principal case. In concluding that the grant of immunity should be only as broad as the constitutional privilege, Cardozo presented, inter alia, the argument that to do more would make the statute illusory, since the state does not have *power* to excuse many penalties and forfeitures.[13]

[8] Holding no penalty: Daniel v. City of Clovis, 34 N.M. 239, 280 P. 260 (1929); Prawdzik v. Grand Rapids, 313 Mich. 376, 21 N.W. (2d) 168 (1946). Holding revocation to be a penalty: United States ex rel. Daly v. MacFarland, 28 App. D.C. 552 (1907); Greater New York Athletic Club v. Wurster, 19 Misc. 443, 43 N.Y.S. 703 (1897).

[9] Cases collected in 3 A.L.R. (2d) 107 (1949).

[10] "[Revocation] is not intended for the punishment of the individual contractor, but for the protection of the contracting business as well as the public by removing, in proper cases, either permanently or temporarily, from the conduct of a contractor's business a licensee whose method of doing business indicates a lack of integrity upon his part or a tendency to impose upon those who deal with him." West Coast Co. v. Contractors' Board, supra note 6 at 301-302.

[11] Ex parte Brounsall, 2 Cowp. 829, 98 Eng. Rep. 1385 (1778). Here the attorney was disbarred although he had previously won a pardon for his offense by a "burning in the hand," and he had committed no misdeeds in the five years since his wrongful conduct.

[12] Matter of Rouss, 221 N.Y. 81, 116 N.E. 782 (1917). *Accord:* In re Biggers, 24 Okla. 842, 104 P. 1083 (1909); also Ex parte Montgomery, 244 Ala. 91, 12 S. (2d) 314 (1943), under a somewhat differently worded statute. It should be noted that there are stronger factors supporting refusal of immunity in these disbarment proceedings than in other revocation actions, since an attorney is an officer of the court, and the courts traditionally insist on a very high standard of conduct on the part of attorneys. Otherwise, "The knave and criminal may pose as a minister of justice." Matter of Rouss, supra at 91.

[13] The opinion gives as an example the forfeiture of an estate at the election of the landlord, which the legislature cannot waive. It should be noted, however, that certain actions which might be said to involve forfeitures, such as that involved in the principal case, are proper objects of legislative grace; the state is the other party in these cases. The position that the *only* forfeitures which the immunity statute is designed to protect against

On the other hand, there are cogent arguments supporting the conclusion reached in the principal case. By way of analogy, although uncertainty exists as to what present-day forfeitures and penalties fall within the scope of the privilege against self-incrimination, Dean Wigmore states that as a matter of history, the courts have always leaned to liberality.[14] As a practical matter, it seems rather unrealistic to tell a man that deprivation of his right to carry on his calling, because of his alleged complicity in a criminal act, is not a "penalty" for the wrongful conduct—despite the fact that the *primary* theory of revocation is protection of the public. But the compelling argument for the Florida court's ruling drives to the heart of the policy underlying these immunity statutes—as stated in the principal case, "If any other rule were followed no one would testify in such proceedings."[15] While it is perhaps difficult to assess accurately the value to the public these immunity statutes have, their very number indicates notable success in making available otherwise unobtainable evidence. An argument may be made that since the constitutional privilege might be held to protect witnesses only from criminal liability, the witness could be compelled to testify even without the immunity. The force of this point is weakened by the considerations that the constitution might be construed to envelop revocations, that the plain language of the statute covers "any penalty or forfeiture," and that production of voluntary testimony from witnesses, voluntary and involuntary, will be facilitated by granting the immunity. In view of the practical problems of criminal law enforcement and prosecution, it is submitted that the principal case, in giving full play to the policy prompting enactment of immunity statutes, achieved the more beneficial result.

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are those constituting part of a punishment for crime (see Matter of Rouss, supra note 12, at 90), seems an unwarranted assumption—surely some statutory forfeitures are not designed to constitute a punishment.

[14] 8 WIGMORE, EVIDENCE, 3d ed., §2256 (1940).

[15] Principal case at 3.