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Criminal Law; Commercial Bribery

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in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed."

13. Ch. 290 §4 (amending NRS 200.501(3)).

CRIMINAL LAW; COMMERCIAL BRIBERY

Adds to NRS Chapter 207

SB 346 (Kosinski); STATS 1979, Ch 249

Chapter 249 adds a new section to NRS Chapter 207, providing for the crime of commercial bribery.¹ Anyone violating this section is guilty of a misdemeanor.² Commercial bribery is the act of influencing an employee to perform a duty improperly.³ Prior to Chapter 249 there was no Nevada statute concerning commercial bribery. All Nevada bribery law was directed toward specific types of bribery, generally involving public employees or officers.⁴

Elements of the Crime

Chapter 249 creates two statutory crimes of commercial bribery; the first is the offer of a bribe, the second is the acceptance.

Offering a bribe

Chapter 249 requires a corrupt intent to adversely affect an employee's conduct.⁵ The conduct interfered with must be related to the employer's commercial affairs.⁶ There must be at least an offer to confer a benefit;⁷ the actual conferring or acceptance of the benefit is not necessary.⁸ The statute requires that the employer not have consented to the conferring of the benefit.⁹ It is not necessary that the employer be without knowledge of the bribe. Furthermore, it appears that there need not be actual injury to the employer; this has been the holding of other jurisdictions considering statutes similar to Nevada's.¹⁰

Accepting a bribe

Chapter 249 provides that the crime is committed when any employee, agent, or fiduciary, acting with corrupt intent, solicits or accepts a benefit.¹¹ There must be an understanding or agreement that the benefit will adversely influence the employee's conduct in the employer's commercial affairs.¹² The crime of accepting or soliciting a bribe, unlike the crime of offering a bribe, does not require lack of the employer's consent.¹³ Thus, it appears that the crime could be committed with both the employer's knowledge and consent. If the employer allows the solicitation or acceptance of a bribe, there could be a conspiracy between employer and employee to commit the crime of commercial bribery.¹⁴

Application to Particular Persons

Chapter 249 is directed toward bribery of employees, agents, and fiduciaries in commerce; however, prosecution has been successfully brought under similar statutes where the bribe was directed toward public employees¹⁵ and attorneys¹⁶ acting in their official capacities.

Noreen M. Evans

FOOTNOTES

1. See N.Y. PENAL LAWS §§180.00, 180.03, 180.05, 180.08 for similar statutes. See also State v. Brewer, 258 N.C. 533, 129 S.E.2d 262 (1963).
2. 1979 Nev. Stats. ch. 249 (hereinafter "Ch. 249") §1 (adding to NRS Ch. 207). Chapter 249 does not specify a punishment for violation of its provisions; therefore, see NRS 193.150 providing punishment for commission of a misdemeanor. The employee, however, could be required to turn the gratuity received over to the employer. Sears, Roebuck and Co. v. Kelly, 149 N.Y.S.2d 133, 135 (1956). Additionally, any contract resulting from the bribe could be unenforceable. Shemin v. Black and Co., 225 N.Y.S.2d 805, 810 (1962); rev'd on other grounds, 240 N.Y.S.2d 622 (1963).
3. 12 AM JUR 2d, Bribery §17; Annot., 123 A.L.R. 739 (1939).
4. See NRS 197.010, 197.020, 197.030, 197.040, 197.050, 197.060, 197.080, 198.010, 199.010, 199.020, 199.030, 199.090, 199.150, 199.240, 199.250, 199.290, 207.290, 218.590, 218.600, 293.584, 583.432, 614.140, 614.150, 668.095, 707.120.

5. Ch. 249 §1 ¶1 (adding to NRS Ch. 207).
6. Id.
7. Id.
8. McLemore v. State, 125 So.2d 86, 89 (Miss. Sup. Ct., 1960); Commonwealth v. Murray, 213 A.2d 162, 164 (Pa. Sup. Ct. 1965), rev'd on other grounds, 223 A. 2d 102. See also 1 A.L.R. 3d 1359 (1965).
9. Ch. 249 §1 ¶1 (adding to NRS Ch. 207).
10. State v. Landecker, 126 A. 408, 409, (N.J. Sup. Ct. 1924); but the employer's interest must be involved, People v. Jacobs, 309 N.Y. 315, 130 N.E.2d 636 (1955). See also, 1 A.L.R. 3d 1350 (1965). See generally, Commonwealth v. Yarmark, 185 Pa. Super. 276, 137 A.2d 836 (1958).
11. Ch. 249 §1 ¶2 (adding to NRS Ch. 207).
12. Id.
13. Compare Ch. 249 §1 ¶1 with Ch. 249 §1 ¶2.
14. See NRS 199.480(2) (as amended by 1979 Nev. Stats. ch. 655 §28, adding punishment by fine of not more than \$5,000) and NRS 199.490.
15. McLemore v. State 241 Miss. 664, 125 So.2d 86 (1960); People v. Nankervis, 330 Mich. 17, 46 N.W.2d 592 (1951). See also Annot., 1 A.L.R. 3d 1363 (1965).
16. People v. Tuttle, 45 A.D. 2d 750, 356 N.Y.S. 2d 652 (1974).

CRIMINAL LAW; INSUFFICIENT FUNDS

Adds to NRS Chapter 205

Amends NRS 205.130, 205.380

SB 174 (Glaser and Ashworth); STATS 1979, Ch 523

AB 389 (Glover); STATS 1979, Ch 537

Chapter 523 amends NRS 205.130 and adds to NRS Chapter 205 relating to the issuance of checks without sufficient funds. Chapter 537 amends NRS 205.380 to punish stopping payments on checks in certain circumstances.

Insufficient Funds

Chapter 523 provides for a presumption of intent to defraud when a check is issued without sufficient funds. The intent to defraud is presumed to exist when the