

12-1-1965

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Recommended Citation

Howard Lee Schweitzer, *Florida's Conflict of Interest Law: A Municipal Windfall*, 20 U. Miami L. Rev. 472 (1965)

Available at: <https://repository.law.miami.edu/umlr/vol20/iss2/13>

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that punitive damages may be apportioned in Florida, it recognized the fact that a jury cannot be compelled to render an apportioned verdict in the absence of a rule of procedure from the supreme court. Nevertheless, the court held that all relevant facts should be placed before the jury and evidence may be admitted as to each joint tortfeasor's wealth. On certiorari, the supreme court affirmed the first district and acted on its suggestion³⁴ to formulate a rule providing for apportioned verdicts. The supreme court requested the Florida Bar to present it with a rule encompassing the recommendation of the appellate court, and in the interim, ruled that in all cases "in which the element of punitive damages against joint tortfeasors is an issue for determination, a special or separate verdict shall be used for the assessment of punitive damages against each tortfeasor."³⁵

The Florida Supreme Court is to be commended for requiring the use of special verdicts in the assessment of punitive damages among joint tortfeasors. The problem is now at rest in Florida.³⁶ This writer strenuously recommends a like rule for all jurisdictions, either by statute or judicial mandate.

SHEP KING

FLORIDA'S CONFLICT OF INTEREST LAW: A MUNICIPAL WINDFALL

The county brought an action to recover the purchase price of land sold to it by five defendants, one of whom was a county commissioner. The decision to purchase had been made pursuant to the motion and affirmative vote of the defendant commissioner. The transaction thereby violated a criminal statute¹ which made it unlawful for a commissioner

34. *Spencer Ladd's, Inc. v. Lehman*, 167 So.2d 731, 738 (Fla. 1st Dist. 1964):

[T]he most practical solution to the problem presented by this appeal would be adoption by the Supreme Court of a rule of trial procedure which requires special verdicts in common law actions seeking punitive damages, and providing that such damages shall be apportioned between the defendants found to be liable therefore.

35. *Lehman v. Spencer Ladd's, Inc.*, 182 So.2d at 403 (Fla. 1965).

36. The naked mandate to use apportioned verdicts does, however, leave still another question unanswered. When an apportioned verdict is employed, does satisfaction of a judgment against one tortfeasor release all others? While the decisions repeatedly dictate the use of apportioned verdicts, only a paucity of attention has been devoted to this question. From the limited sources available, the answer appears to be that each defendant is severally liable for punitive damages notwithstanding other satisfactions. *Thompson v. Catalina*, *supra* note 26; *Bowman v. Lewis*, 110 Mont. 435, 102 P.2d 1 (1940); *Johnson v. Atlantic Coast Line R.R.*, *supra* note 26. Assuming several liability under the apportioned verdict as opposed to several and joint liability under the single sum verdict, it is curious to note that not one opinion of any court has ever discussed this policy question when deciding which procedure to adopt. Since the purpose of punitive damages is to punish and to make an example of, it is submitted that each defendant should be severally liable to insure that each will feel the sting of the court. As a side effect, fortunate or unfortunate, the complaining plaintiff will probably receive a windfall in punitive damages.

1. FLA. STAT. § 839.07 (1965):

to be interested in any contract for public work. The circuit court rendered judgment for the county. On appeal to the Second District Court of Appeal, *held*, affirmed: The county was entitled to recover the full amount paid for the property notwithstanding the fact that the other county commissioners knew of the interest of the defendant commissioner in the land. Nor did the fact that the county had erected a barn on the property estop it from recovering the purchase price without reconveying or offering to reconvey the land. *Hooten v. Lake County*, 177 So.2d 696 (Fla. 2d Dist. 1965).

At common law, contracts of a governmental agency in which a public official² had an interest were considered void as against public policy.³ Today, forty-seven⁴ states have enacted legislation in various

It is unlawful for any commissioner or other officer of this state, or for any officer elected or otherwise of any county or incorporated town or city therein, to bid or enter into, or be in any way interested in, a contract for the working of any public road or street, the construction or building of any bridge, the erecting or building of any house, or for the performance of any public work in which the said officer was a party to the letting, and any person upon conviction thereof shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding one year.

In *State v. Hooten*, 122 So.2d 336 (Fla. 2d Dist. 1960), the court held that selling property to the county came within the provisions of the above statute and convicted the commissioner for the violation.

2. The question of who is a public official under the conflict of interest laws could be the subject matter of a casenote in itself. As referred to in this paper, the term means officers and certain employees of a governmental agency such as mayors, city and county commissioners, judges, members of boards of directors, etc. For more specific reference, see generally 1 ANTIEAU, MUNICIPAL CORPORATION LAW § 10.07 (1965); 10 McQUILLIN, MUNICIPAL CORPORATIONS § 29.99 (3d ed. 1950).

3. E.g., *Lainhart v. Burr*, 49 Fla. 315, 38 So. 711 (1905); *City of Macon v. Huff*, 60 Ga. 221 (1878); *Bay v. Davidson*, 133 Iowa 688, 111 N.W. 25 (1907); 1 ANTIEAU, MUNICIPAL CORPORATION LAW § 10.07 (1965); 2 DILLON, MUNICIPAL CORPORATIONS § 773 (5th ed. 1911); 10 McQUILLIN, MUNICIPAL CORPORATIONS § 29.99 (3d ed. 1950).

The minority view was that such contracts were only voidable and could be ratified by the governmental agency by accepting the benefits. *Spearman v. City of Texarkana*, 58 Ark. 348, 24 S.W. 883 (1894) (city liable on quantum meruit); *Polk v. Spencer*, 364 Mo. 97, 259 S.W.2d 804 (1953); *Pickett v. School District*, 25 Wis. 551 (1870) (school district liable on quantum meruit).

4. ALA. CODE tit. 41, §§ 211, 221 (1959) (misdemeanor); ARIZ. REV. STAT. ANN. ch. 3 §§ 38-446, 38-447 (1956) (contract may be avoided by anyone but interested official; makes act a felony plus official is forever disqualified from holding office); ARK. STAT. ANN. tit. 22, § 612 (1962) (misdemeanor); CAL. GOV. CODE §§ 1090, 1091, 1092 (contract may be avoided by anyone except officer interested therein); COLO. REV. STAT. 40-19-5 (1963) (contract is null and void and governmental agency can recover from interested official or third party all "benefits or advantages" as would have accrued to interested official); CONN. GEN. STAT. ANN. § 53-263 (1958) (misdemeanor, but only if he is not the lowest bidder in open competition); DEL. CONST. art. 15 § 8 (1953) (merely states that no officer shall be interested); FLA. STAT. § 830.07 (1963) (misdemeanor); GA. CODE ANN. §§ 22-1713, 22-1714 (1963) (provides that contract shall be illegal and official shall be removed from office); REV. LAW OF HAWAII ch. 9: § 54 (1955) (declares contract to be void; misdemeanor); IDAHO CODE tit. 59, § 201 (1947) (contract is voidable at option of anyone except officer interested therein); ILL. REV. STAT. ch. 102, §§ 3 & 4 (1957) (declares contract to be void; misdemeanor); IND. STAT. ANN. §§ 10-3713, 48-1247 (1963) (felony 2-14 yrs.); IOWA CODE ANN., §§ 741.8, 741.11, 363.47 (1946) (misdemeanor); KANSAS STAT. ANN. ch. 33, § 107 (declares contract null and void); KY. REV. STAT. §§ 61.210, 61.250, 61.260 (1962) (provides contract is void and interested official is removed from office); LA. REV. STAT., § 14.140 (1950) (felony); MAINE REV. STAT. ANN. tit. 17, § 3104 (1964) (declares contract is void; misdemeanor); ANN. CODE OF MD. art. 27 § 42, art. 19A § 1-9 (1957) (misdemeanor, contract

forms prohibiting conflict of interest contracts by public officials. The form of the statute is immaterial since the courts consider such contracts void whether the statute is penal or civil in nature.⁵

The persistent problem which has faced the courts is how to handle the rights of the interested official and third parties under the void contract.⁶ The problem has presented itself in several ways. The most common situations are those where goods, services or realty have been sold to the governmental agency and: (1) the interested official or organization in which he has an interest seeks to recover the purchase price from the governmental agency;⁷ or (2) the governmental agency has

may be avoided by state unless it was in public interest); MASS. GEN. LAWS ANN. ch. 43 § 27, ch. 268 § 10 (1958) (contract is voidable at option of city; misdemeanor); COMP. LAWS OF MICH., § 222-18 (1948) (contract is declared void; felony); MINN. STAT. ANN. ch. 471.87 (1963) (misdemeanor; provides that contract is void with certain exceptions); MISS. CODE ANN. §§ 2301, 2302 (1942) (misdemeanor with fine equal to double the value of contract, or alternatively, governmental agency can institute a civil suit for double the value of the contract); MO. REV. STAT. § 73.490 (1949) (misdemeanor plus removal from office); REV. CODE OF MONT. § 59.501-503 (1947) (misdemeanor; contract is voidable by any party except interested official); REV. STAT. OF NEB., §§ 23-146, 147 (1943) (declares contract is void; felony); NEV. REV. STAT., §§ 244.310, 244.325, 266.440 (1963) (contract is voidable at option of anyone except interested official; misdemeanor); N.H. REV. STAT. ANN. ch. 95: 1, 2 (1964) (\$5,000 fine plus removal from office); N.J. REV. STAT. ANN., 2A: 135-8, 9 (1937) (misdemeanor plus forfeit office); N.M. STAT. ANN., § 40A-23-6 (1953) (felony; all amounts received by interested official can be recovered); N.Y. GEN. MUN. LAW § 51 (McKinney 1965) (misdemeanor); N.C. GEN. STAT. §§ 14-234, 14-236 (1953) (misdemeanor plus removal from office); N.D. CODE ANN. § 12-10-06 (1960) (misdemeanor); OHIO CODE ANN. § 733.78 (1958) (felony; interested official liable for all sums of money or other things received by him); OKLA. STAT. ANN. tit. 21, § 344 (1951) (misdemeanor); ORE. REV. STAT. § 279.360 (1953) (misdemeanor; he can only be interested if he bids openly and on invitation); PA. STAT. ANN. tit. 18, § 4682 (1963) (misdemeanor plus removal from office); S.C. CODE tit. 14, § 205 (1962) (merely states that public officials shall not be interested in public contracts); S.D. CODE, ch. 55 § 2818 (1939) (provides contract is null and void with specific reference to third parties; misdemeanor); TENN. CODE ANN. §§ 12-401, 402 (1955) (interested official shall forfeit all pay and compensation on the contract and be dismissed from office); TEXAS PENAL CODE, art. 352 (1952) (felony); UTAH CODE ANN. tit. 76-82-61; tit. 76-1-17 (1953) (felony plus disqualified from holding public office); CODE OF VA., §§ 15.1-67, 618, 780 (1950) (declares contract is void and governmental agency can recover back the value of anything purchased or sold); REV. CODE WASH. ANN. tit. 42.20.010 (1961) (declares contract is void; misdemeanor); W. VA. CODE § 506 (1961) (misdemeanor; and removal from office); WIS. STAT. § 946.13 (1958) (misdemeanor; declares contract is void and governmental agency "incurs no liability thereon"); WY. STAT. § 9-680; § 6-178 (1957) (declares contract null and void).

5. *E.g.*, *Berka v. Woodward*, 125 Cal. 119, 57 Pac. 777 (1899); *Town of Boca Raton v. Raulerson*, 108 Fla. 376, 146 So. 576 (1933); *McNay v. Town of Lowell*, 41 Ind. App. 627, 84 N.E. 778 (1908); *Norrrell v. Judd*, 374 S.W.2d 192 (Ky. 1964); *Crass v. Walls*, 36 Tenn. App. 546, 259 S.W.2d 670 (1953).

6. 6 CORBIN, CONTRACTS § 1534 (1962):

It is far from correct to say that an illegal bargain is necessarily "void," or that the law will grant no remedy and will always leave the parties to such a bargain where it finds them. . . . Before granting or refusing a remedy, the courts have always considered the degree of the offense, the extent of public harm that may be involved, and the . . . prevailing mores and standards of the community.

7. See *City of Concordia v. Hagaman*, 1 Kan. App. 35, 41 Pac. 133 (1895) (city councilman bringing suit on a printing contract); *Wakely v. County of St. Louis*, 184 Minn. 613, 240 N.W. 103 (1931) (county employee bringing suit for supplies sold to county); *Grand Island Gas Co. v. West*, 28 Neb. 852, 45 N.W. 242 (1890) (gas company, in which a city councilman was a stockholder, bringing suit against the city).

already paid for the items and seeks to recover the sums paid;⁸ or (3) a taxpayer on behalf of the governmental agency seeks either to enjoin payment before it has been made or to recover amounts already disbursed.⁹

The scope of this paper will be limited to cases in which: (1) the contract is fully executed¹⁰ by both sides, (2) the governmental agency seeks to recover the purchase price from the interested official, and (3) the subject matter of the contract is non-returnable. The first question presented by these cases is whether restitution of the benefit received by the governmental agency is a requisite to relief. Absent a statute, the majority of courts have precluded the governmental agency from recovery where the benefit was non-returnable.¹¹

Since adoption of the conflict of interest statutes, however, the courts have split on the question of whether the governmental agency can recover the purchase price where the benefit is non-returnable. Those courts which have departed from the common law position have done so by distinguishing contracts which are void because against common law public policy from contracts which are void because prohibited by an express statute.¹² These courts treat the statutes as legislative mandates which cannot be avoided regardless of the circumstances. Those courts

8. See *Town of Boca Raton v. Raulerson*, 108 Fla. 376, 146 So. 576 (1933) (city bringing action to recover purchase price of land); *Village of Bellevue v. Sterba*, 140 Neb. 744, 1 N.W.2d 820 (1942) (city bringing suit to recover salary paid to city officer for extra work performed by him); *Village of Bethesda v. Mallonee*, 75 Ohio Law Abstract, 136 N.E.2d 457 (1955) (action by city to recover amounts paid to city official under a construction contract).

9. See *Miller v. City of Martinez*, 28 Cal. App. 364, 82 P.2d 519 (1938); *Neisius v. Henry*, 142 Neb. 29, 5 N.W.2d 291 (1942); *Land, Log & Lumber Co. v. McIntyre*, 100 Wis. 245, 75 N.W. 964 (1898).

10. Where the contract is executory, a taxpayer can have the contract set aside, *Bartley, Inc. v. Town of Westlake*, 237 La. 413, 111 So.2d 328 (1959) (declaratory judgment); or can enjoin performance, *Price v. Edmonds*, 232 Ark. 381, 337 S.W.2d 658 (1962) (injunction); *Trainer v. City of Covington*, 183 Ga. 759, 189 S.E. 842 (1937) (injunction). Also, the interested official cannot force the city to perform, *Stockton Plumbing & Supply Co. v. Wheeler*, 68 Cal. App. 592, 229 Pac. 1020 (1924) (writ to compel performance denied).

11. E.g., *Smith v. Dandridge*, 98 Ark. 38, 135 S.W.2d 800 (1911) (school district cannot retain the benefits without payment); *Lainhart v. Barr*, 49 Fla. 315, 38 So. 711 (1905) (county officials liable only for profits or excess over the actual cost: such cost not to exceed the market value); *City of Macon v. Huff*, 60 Ga. 221 (1878) (city must restore mayor to status quo); *Kagy v. Independent Dist. of W. Des Moines*, 117 Iowa 694, 89 N.W. 972 (1902) (the district cannot recover money paid for additions to the school buildings by a district officer); *Polk v. Spencer*, 364 Mo. 97, 259 S.W.2d 804 (1953) (where town accepts and retains the services, they must pay where there has been no unjust enrichment of the board member). *Contra*, *Bay v. Davidson*, 133 Iowa 688, 111 N.W. 25 (1907) (town could recover amounts paid to city councilman even though the benefits were used up).

12. *Town of Boca Raton v. Raulerson*, 108 Fla. 376, 146 So. 576 (1933):

From our review of the authorities we are convinced that such transactions fall into two classes; namely, (1) those which are illegal because against public policy, . . . and (2) those which are void because prohibited by statute.

Accord, *Berka v. Woodward*, 125 Cal. 119, 57 Pac. 777 (1899); *McNay v. Town of Lowell*, 41 Ind. App. 627, 84 N.E. 778 (1908); *City of Concordia v. Hagaman*, 1 Kan. App. 35, 41 Pac. 133 (1895); *Neisius v. Henry*, 142 Neb. 29, 5 N.W.2d 291 (1942); *Land, Log & Lumber Co. v. McIntyre*, 100 Wis. 245, 75 N.W. 964 (1898).

that still adhere to the common law position have refused to allow recovery where the benefit is non-returnable, notwithstanding the statute, either on the basis of quasi-contract,¹³ or because the amounts paid were reasonable.¹⁴

Prior to the enactment of section 839.07 of the Florida Statutes, Florida adhered to the majority common law position that when a county official, directly or through his agent, sold goods which were consumed by the county, the county could not recover the full purchase price if the goods were necessary and beneficial to the county.¹⁵ Since the adoption of the present statute, Florida has taken a position contrary to its earlier view. In *Town of Boca Raton v. Raulerson*,¹⁶ the town had sought recovery of money paid by it to a town commissioner for real estate upon which a town hall was constructed. The supreme court held that a sale made in violation of the statute was void, and that the town was entitled to recover the full amount paid despite the fact that the town could not reconvey the property to the commissioner. In the instant case, the court followed the *Raulerson*¹⁷ decision, allowing the county to recover from the defendant commissioner.

The effect of the instant case with respect to a public official is obvious. It gives the governmental agency a civil cause of action for violation of a penal statute. This indicates that the act of a public official per se gives rise to the cause of action without the necessity of pleading fraud or damages.¹⁸ It also punishes the public official via forfeiture for violation of a penal statute.

Other jurisdictions have considered this same result to be too harsh and have circumvented it in two strikingly similar factual situations. In *Frisch v. City of St. Charles*,¹⁹ the court denied recovery by the city

13. *Frisch v. City of St. Charles*, 167 Minn. 171, 208 N.W. 650 (1926).

14. *E.g.*, *Diver v. Keokuk Savings Bank*, 126 Iowa 691, 102 N.W. 542 (1905) (city cannot avoid payment where the city has accepted the benefits notwithstanding the express statute); *Mares v. Janutka*, 196 Minn. 87, 264 N.W. 222 (1936) (city cannot recover purchase price where the price is reasonable and benefits cannot be returned); *Grady v. City of Livingston*, 115 Mont. 47, 141 P.2d 346 (1943) (city cannot recover where the goods can not be returned and the city has paid no more than their value); *Village of Bethesda v. Mallonee*, 75 Ohio Law Abstract, 136 N.E.2d 457, 461 (1955) ("as a matter of common justice a municipality could not recover under a void contract unless they returned to the contractor the specific thing in which he had placed his time and materials"). See also *Githens v. Butler County*, 350 Mo. 295, 165 S.W.2d 650 (1942) (where contract is void and land purchased from the county must be returned, the county must restore the consideration paid).

15. *Lainhart v. Barr*, 49 Fla. 315, 318 So. 711 (1905).

16. 108 Fla. 376, 146 So. 576 (1933).

17. *Ibid.*

18. *Hooten v. Lake County*, 177 So.2d 696 (Fla. 2d Dist. 1965); *Watson v. City of New Smyrna Beach*, 85 So.2d 548 (Fla. 1956); *City of Stuart v. Green*, 156 Fla. 551, 23 So.2d 831 (1945); *Town of Boca Raton v. Raulerson*, 108 Fla. 376, 146 So. 576 (1933).

19. 167 Minn. 171, 208 N.W. 650 (1926). The city brought an action to recover the purchase price of land bought from a city councilman. A building was being constructed on the property. A statute made such transactions void and provided for criminal punishment.

without a return of the land to the interested official by applying a quasi-contract rationale.²⁰ A contrasting rationale was applied in *Span-danuta v. Village of Rockville Centre*²¹ which held that the void contract caused the deed to the land to be void also. Therefore, title never passed to the city and it was entitled to recover the purchase price. No other court has applied this rationale.

The decision in the instant case had a twofold effect on the four defendants who were not public officials. First, it placed them in the same position as the public official with respect to their rights under the void contract. Second, it punished them indirectly, via forfeiture, for violation of a penal statute under which they could never have been prosecuted in the first instance. The court relied on two previous Florida cases wherein the statute was applied to a corporation²² and a partnership²³ in rendering its decision.

Other jurisdictions have refused to apply a penal statute to affect third party rights under a contract in which there is a conflict of interest. In *Grady v. City of Livingston*,²⁴ the court refused to apply a penal statute against a corporation which had sold goods to the city where officers and employees of the corporation were also members of the city council. In denying recovery to the city for amounts paid under the contract, the court held the penal statute applicable only to public officials. The court's rationale is noteworthy:

We do not think there is any rule . . . that empowers any court to penalize a corporation on the ground that one of its agents, while serving a municipality, violated his trust as an officer of the municipality. The respective obligations of the official to his employer on the one hand and to the municipality on the other

20. *Id.* at 650:

The attempted contract, being void, is disregarded, and in its place the quasi contractual obligation to do justice is enforced. . . . The purchase was within the powers of the city. It would be impossible practically to return the property . . . , and, only a fair and reasonable price having been paid, the money could not be recovered by or for the city.

21. 20 A.D.2d 799, 248 N.Y.S.2d 405 (1964). The mayor had sold land to the city for use as a public highway. The court stated that the city would have to reacquire the property in condemnation proceedings.

22. *City of Stuart v. Green*, 156 Fla. 551, 23 So.2d 831 (1945). The city had executed promissory notes to a corporation in payment of the purchase price of land. A stockholder of the corporation was also a city commissioner. The corporation subsequently assigned the note to the defendant. The city brought suit to set aside the unpaid notes and to recover the amounts already paid. The supreme court held for the city.

23. *Watson v. City of New Smyrna Beach*, 85 So.2d 548 (Fla. 1956). A taxpayer brought action to test the validity of a contract with the city. The work originally was to be done by a partnership, of which one partner was also a city commissioner. The city would not award the contract under those circumstances. The partner who was not a city official then submitted a bid in his own name which was accepted. The supreme court held that the contract was invalid because an approval would amount to an inroad on the conflict of interest statute.

24. 115 Mont. 47, 141 P.2d 346 (1943).

are separate and distinct. There is no relation between the two.²⁵

In the instant case, the court rejected this argument, bluntly stating that "the contamination through [the defendant commissioner's] interest permeated the *transaction*"²⁶ thereby bringing the other defendants within the scope of the statute. Florida's position, applying a solely penal statute to third parties, is a minority view since most conflict of interest statutes have both civil and penal sanctions.²⁷

While it appears that Florida has adopted an inflexible rule allowing the governmental agency to recover without first making restitution of the benefits,²⁸ the instant case indicates a possible exception where the benefit is returnable. Although the issue was not before the court, dictum suggested that the interested official or third party may recover the benefit where it remains "intact in the vendee."²⁹ Speculation as to how much of a change must occur before the property ceases to be intact; whether the exception will be applied to both real and personal property; and whether the interested official or third party, by paying or offering to pay the cost of the improvement, can force the return of the property, will remain unanswered until those issues are actually presented.

Why is the harsh result of the instant case necessary? The purpose of the conflict of interest statute is the prevention of profiteering by public officials as a result of their fiduciary positions.³⁰ The ideal statute would both afford adequate protection of the public interest and provide sanctions sufficient to deter such conduct in the future.

It is submitted that Florida would do well to discard the forfeiture aspect of its conflict of interest law as such action would not prevent the achievement of the desired results. Legislation should be enacted to increase the criminal sanction³¹ with respect to public officials, and to provide civil sanctions adequate to preclude public officials from acquiring personal interests in public contracts by having them forfeit all profits obtained through the transaction.³² Granted good faith, third parties

25. *Id.* at 352.

26. *Hooten v. Lake County*, 177 So.2d 696, 701 (Fla. 2d Dist. 1965).

27. See statutes cited note 4 *supra*. One writer has taken the position that the conflict of interest law should not be used to affect the rights of third parties under the contract. Weiss, *Law or Justice?*, 6 FLA. B.J. 284 (1932).

28. *Hooten v. Lake County*, 177 So.2d 696 (Fla. 2d Dist. 1965); *City of Stuart v. Green*, 156 Fla. 551, 23 So.2d 831 (1945); *Boca Raton v. Raulerson*, 108 Fla. 376, 146 So. 576 (1933).

29. *Hooten v. Lake County*, *supra* note 26, at 700.

30. 1 ANTEAU, *op. cit. supra* note 2; 10 McQUILLIN, *op. cit. supra* note 2.

31. Several states have made it a felony for public officials to acquire an interest in public contracts—see statutes cited note 4 *supra*.

32. 1 ANTEAU, *op. cit. supra* note 2; Lillich, *Municipal Conflicts of Interest: Rights and Remedies under an Invalid Contract*, 27 FORDHAM L. REV. 31, 41 (1958). Both of these writers are in favor of allowing the interested official and third parties to retain or receive the actual costs incurred on the contract.

should be penalized only to the extent of any profit made on the transaction.³³ In instances of bad faith, the third party should be subject to sanctions identical to those applicable to public officials. This combination of criminal punishment and loss of profits meets public policy requirements while avoiding the factor of windfall.

The present strict application of Florida's conflict of interest statute is a clear *caveat* to all public officials and third parties that they may well become unwilling donors to state or municipal treasuries.

HOWARD LEE SCHWEITZER

33. See Lillich, *op. cit. supra* note 32.