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Review of Pennsylvania Legislation 1939 - Criminal Law and Procedure Solicitation for Attorneys

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The Act enacts, as Section 628, the Uniform Fire Arms Act, and provides that the Section may be cited as the Uniform Fire Arms Act, but there is no provision as to how the Act itself may be cited.

The Act repeals many criminal statutes "absolutely," but provides that the provisions of the Act shall not apply to offenses committed before its effective date, but that such offenses shall be prosecuted under the provisions of the law in force at the time the offense was committed, and that the enumerated acts shall not be repealed in so far as they (a) relate to the jurisdiction to indict and try offenses; or (b) fix the limitation of time within which persons charged with offenses may be indicted; or (c) relate to evidence or the competency of witnesses; or (d) relate to search and seizure; or (e) relate to the return of transcripts of cases; or (f) relate to the form and contents of indictments.

This form of a repealing clause may give rise to difficult questions as to the necessity of incorporating in future compilations of the criminal laws the statutes which are repealed.

W. H. HITCHLER*

b. *Solicitation for Attorneys*

The Act of 1939, P. L. 329,[1] provides a method of exercising much needed control over those attorneys and their associates who fail to appreciate the value of ethical practice.

The Act provides[2] that

> "Any person not a member of the bar . . . who shall solicit or procure . . . a retainer, power of attorney or any agreement . . . authorizing an attorney to perform . . . legal services, or who shall solicit any person in this State to institute any suit for damages in which the compensation of any attorney for instituting . . . such suit, shall directly or indirectly, depend upon the amount of recovery therein, shall be guilty of a misdemeanor . . . ."

The punishment provided, upon conviction, is a fine of not more than $200, or imprisonment for not more than two years.

The statute contains a proviso[3] to the effect that

> "The foregoing shall not prohibit any bona fide labor organization from giving legal advice to its members in matters arising out of their employment."

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[1] 17 PURD. STATS. (Pa.) § 1611.
[2] Section 1.
[3] Section 2.

The purpose of this section is not entirely clear. Probably, it was intended to prevent any possible application of the prohibitory provisions to a labor union which might advise its members to sue for injuries arising out of their employment, or for breach of contractual duties, and which might recommend to the employee, or itself employ for him, the services of a particular attorney.

It is obvious that the Act is not directed toward attorneys themselves, but toward those who act for them. It is evidently thought by the Legislature that adequate control may be exercised over the members of the bar by the courts through disbarment proceedings. But it should be noted that, in the absence of the commission of an actual criminal offense, the attorney himself cannot be punished by fine or imprisonment for mere unethical conduct, while the effect of the present legislation will be to impose such punishment upon those who represent him.

The first act prohibited by the statute is the solicitation or procurement for any attorney of a retainer, power of attorney, or any agreement authorizing him to perform legal services. Since no further provision is made, it may be assumed that this refers to any kind of retainer, whether leading to an action based on a contingent fee or not.

The statute further prohibits the solicitation of any person to sue for damages upon a contingent fee basis. This provision would seem to have been included within the first prohibition, but this second type of conduct was probably specifically referred to for the purpose of emphasis and to avoid any possibility of doubt with respect to the solicitation of contingent fee suits.

The evil attempted to be corrected is obvious. The legislation was probably brought about as a result of the recent flagrant misconduct in this respect within the Philadelphia Bar. These instances culminated in a series of cases in the Supreme Court, a summary of which appears in the opinion in *In re Disbarment Proceedings.*[4]

In those cases, a number of attorneys had reduced the practice of procurement of retainers and solicitation of business to a fine science. They employed "runners" on a regular salary to visit the jail, to keep in touch with employees there, and to immediately contact those arrested on various charges, chiefly drunken driving. The solicitors, by sounding the praises of the attorneys, including their political influence, by favors to the prisoners, by "high pressure" salesmanship, and, in several instances, by blackmail, induced the prisoners to employ the attorneys in their cases. Needless to say, the employment was usually obtained.

In the cases in question, the attorneys were disbarred for such conduct. But there was no way in which the "runners" themselves could be reached. Their action did not constitute a criminal offense, and they could not be affected by the proceedings of the courts against the attorneys. The Act of 1939 provides a method by which these employees can also be controlled.

4321 Pa. 81, 184 Atl. 59 (1936).

The Act, by its terms,[5] becomes effective immediately upon final enactment, which was June 9, 1939.

It is to be noted that similar statutes, or those with the same purpose in view, have been enacted in a number of other states, notably Michigan,[6] Washington,[7] Iowa,[8] Nebraska,[9] and New York.[10]

ROBERT I. SHADLE

c. *Waiver of Indictment on Plea of Not Guilty*

The Act of June 15, 1939,[1] amends the Act of April 15, 1907,[2] by providing that a person accused of any crime except homicide may "waive an indictment by a grand jury" and enter "a plea of *not guilty*," and in such case the accused may be tried for the crime "with or without a jury as provided by law."

This Act quite manifestly decreases the importance of the accusatory function of the grand jury. The necessity of a formal accusation by a grand jury has been for many years a fundamental characteristic of Anglo-American criminal procedure. The necessity for securing an indictment from a grand jury and the powerlessness of the king to proceed without in the early days (1249) in England is strikingly demonstrated by Pollock and Maitland in their *History of English Law*.[3] In more recent times the necessity for an indictment by a grand jury has been regarded as a traditional barrier and a valuable safeguard against the unjust oppression of the accused.

It may well be argued that this barrier ought not to be destroyed unless its uselessness has been fully demonstrated and is generally conceded, even though the removal is limited to cases in which the accused *apparently* freely consents.

The gradual attrition of the importance of the accusatory function of the grand jury is in marked contrast with recent remarkable increases in the importance and use of the inquisitorial function of the grand jury. Until recently, the inquisitorial power of the grand jury was regarded as an extraordinary one, to be exercised sparingly and with great caution and only when special circumstances or pressing emergencies require it for the suppression of general and public evils. But this, in view of very recent developments, can no longer be said to be true.

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[5]Section 3.
[6]Mich. Public Acts of 1925, Act No. 280.
[7]Wash. Acts 1903, p. 68, c. 56.
[8]Iowa, Acts 37th Gen. Ass., c. 293.
[9]Neb. Comp. St. 1922, section 9737.
[10]N. Y. PENAL LAW, § 270, as amended by Laws 1917, c. 783.

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[1]P. L. 400, 19 PURD. STATS. (Pa.) § 241.
[2]P. L. 62.
[3]Vol. 2, p. 652.