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MUNICIPAL CORPORATIONS-VALIDITY OF AGREEMENT BY MUNICIPAL EMPLOYEES TO ACCEPT LESS THAN STATUTORY SALARY

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MUNICIPAL CORPORATIONS—VALIDITY OF AGREEMENT BY MUNICIPAL EMPLOYEES TO ACCEPT LESS THAN STATUTORY SALARY—Plaintiff firemen sued the City of Chattanooga to recover the difference between the salary actually paid them during the depression years and the minimum salary provided by statute. The city, as a defense, relied upon certain instruments voluntarily executed by the plaintiffs by which they authorized the city auditor to reduce their salaries by a specified amount each month during these years so that the city could meet its budget without being compelled to exercise its legal right to reduce the fire force. The plaintiffs claimed that the reductions were illegal because of the minimum salary fixed by law. On appeal, *held,* plaintiffs were barred from maintaining a suit to recover the difference by the doctrine of equitable estoppel. *Molloy v. City of Chattanooga,* (Tenn. 1950) 232 S.W. (2d) 24.

The prevailing rule is that a contract whereby a public officer or employee agrees to perform services required of him by law for less compensation than that fixed by law is contrary to public policy and void.[1] Under this rule, an officer or employee is permitted to recover the amount of any such reduction despite a prior agreement to accept less. This rule seems to be supported by sound legal doctrine.[2] Many courts, however, have declined to follow the majority view, recognizing that while the municipality in accepting such an agreement is acting illegally, its motive in so doing is to enable itself, during a period of economic emergency when income is sharply reduced, to meet its budget and, at the same time, to provide the community with adequate protection against fire or crime. By reducing the salary of each employee it is able to refrain from exercising its legal right to discharge any of such employees. Thus, these courts hold, all

[1] 160 A.L.R. 491 (1946); 7 ROCKY MT. L. REV. 80 (1934); 14 TENN. L. REV. 48 (1935).

[2] The agreement being void because contrary to public policy, there is nothing to prevent recovery of difference money since the same should have been paid in compliance with the statute. For an excellent discussion of the general problem, see 24 MINN. L. REV. 580 (1940).

employees by agreeing to a small wage reduction are assured of their jobs during a period of general unemployment, and to allow suit for the difference money at a later date would be inequitable. Such courts have decided that the employees are estopped to sue for back wages because by their agreement they have led the municipality to alter its position to its detriment.[3] While admitting that there are strong policy reasons prompting such a decision, it is difficult insofar as legal doctrine is concerned to find adequate justification for it. The choice of estoppel as the basis for denial of recovery is especially unfortunate since the parties on both sides were equally aware of the facts and circumstances and it can hardly be said that the municipality was misled.[4] For reasons of public policy, it is usually held that a party to an illegal contract cannot at the time of execution or afterwards waive his right to rely on the defense of illegality in an action on the contract by the other party thereto.[5] It is also generally held that estoppel can never be invoked in aid of a contract which is expressly forbidden by a constitutional or statutory provision.[6] It would seem that the courts following the minority view would be on safer ground so far as legal doctrine is concerned if they were to adopt the reasoning of Smith, J., of the Minnesota Supreme Court in his dissenting opinion in *George v. City of Danville.*[7] The reasoning there presented is this: such contracts are not inherently criminal or immoral; they are unlawful because contrary to statute and public policy, thus not enforceable. But if public policy requires that a contract not intrinsically illegal or immoral be enforced notwithstanding its illegality, then there is an exception to the general rule. There is simply a choice of policy. Will the greater public good be served by enforcing the contract or in refusing to enforce it?

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[3] See collection of cases, 70 A.L.R. 972 (1931); 118 A.L.R. 1458 (1939); 160 A.L.R. 491 (1946).

[4] George v. City of Danville, 383 Ill. 454, 50 N.E. (2d) 467 (1943); National Dollar Stores, Ltd. v. Wagnon, 97 Cal. App. (2d) 1011, 219 P. (2d) 49 (1950).

[5] Amer. Nat. Bank of San Francisco v. A. G. Sommerville, 191 Cal. 364, 216 P. 376 (1923); Hollywood State Bank v. Wilde, 70 Cal. App. (2d) 103, 160 P. (2d) 846 (1945).

[6] Deer Creek Highway Dist. v. Doumecq Highway Dist., 37 Idaho 601, 218 P. 371 (1923); A. C. Frost & Co. v. Coeur D'Alene Mines Corp., 61 Idaho 21, 98 P. (2d) 965 (1939); Kennedy v. Johnson Lumber Co., (La. App. 1947) 33 S. (2d) 558.

[7] George v. City of Danville, supra note 4. See also 42 MICH. L. REV. 720 (1944).