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PUBLIC CONTRACTS - CALIFORNIA

People v. Superior Court

Supreme Court of California, California - June 26, 2017 - P.3d - 2017 WL 2729540 - 17 Cal. Daily Op. Serv. 6139

The People charged defendant with being personally interested in a contract made in his personal capacity as public officer or employee.

The Superior Court granted defendant's motion to dismiss the charge. The People petitioned for writ of mandate. The Court of Appeal denied petition. The People petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- An independent contractor can be a public officer or employee prohibited from having a financial interest in a contract made in his official capacity, disapproving *People v. Christiansen*, 216 Cal.App.4th 1181, 157 Cal.Rptr.3d 451;
- Defendant could not reasonably believe he was not expected to subordinate his financial interests to the public's;
- Defendant had constitutionally adequate notice that the statute applied to him; and
- Evidence that defendant made a contract in his official capacity was sufficient to overcome his motion to dismiss.

Under the statute forbidding public officers and employees from being financially interested in any contract made by them in their official capacity, the term "employees" includes outside advisors with responsibilities for public contracting similar to those belonging to formal employees, notwithstanding the common law distinction between employees and independent contractors; disapproving *People v. Christiansen*, 216 Cal.App.4th 1181, 157 Cal.Rptr.3d 451.

A defendant who was, or had been, an independent contractor for a hospital that was a public entity could not reasonably believe he was not expected to subordinate his financial interests to the public's interest in the hospital's contract with another physician, and thus the defendant could not rely on any such exception to criminal liability under the statute forbidding public officers and employees from being financially interested in any contract made by them in their official capacity, where the defendant served on the hospital's independent medical executive committee, the defendant was the hospital's codirector of surgery, and the defendant was asked "to try to bring physician services to the hospital."

A defendant who was, or had been, an independent contractor for a hospital that was a public entity had adequate fair notice that he could be subject to criminal liability under the statute forbidding public officers and employees from being financially interested in any contract made by them in their official capacity if he was affiliated with the hospital at the time of the challenged contracts, where the contracts were made before the Court of Appeal erroneously held in *People v. Christiansen*, 157 Cal.Rptr.3d 451, that independent contractors were not "officers" or "employees."

There was sufficient evidence that a defendant who was, or had been, an independent contractor for a hospital that was a public entity, made a contract in defendant's official capacity as an "officer" or "employee" of the hospital in recruiting a physician to work at the hospital and negotiating payment, thus precluding the trial court from granting defendant's motion to set aside the accusatory pleading based on insufficient evidence of the offense of being financially interested in a contract made in one's official capacity as an officer or employee; hospital's former CEO testified that defendant was asked "to try to bring physician services to the hospital," and there was evidence that defendant exploited his position on the hospital's independent medical executive committee in negotiating against hospital.