Elections—Candidates—Corrupt Practices Act—Promises.

A candidate for a public office violates the corrupt practices act if he promises or agrees that if elected he will draw only a part of the salary attached to the office or refund into the treasury a part thereof.

Mr. H. F. Miller, March 30, 1932.
County Attorney,
Fort Benton, Montana.

My dear Mr. Miller:

I have your request for an opinion. You inquire if it is unlawful for a candidate to promise or agree that if elected to office he will draw only a part of the salary attached to the office or refund into the treasury a part of said salary.

The sale or purchase of public offices was under the common law condemned as against public policy.

Prentiss vs. Dittmer, 93 Ohio St. 314, 112 N. E. 1021.

From early times this has been the view of the law in this country and it has viewed in the same light, with little or no distinction the procurement of election to office by means of promises to accept none or less than all of the emoluments of the office.

In Alvord vs. Collins, (Mass.) 20 Pick. 428, the court said:

> "We fully recognize the validity of the objection of the sale of offices, whether viewed in a moral, political or legal aspect. It is inconsistent with sound policy. It tends to corruption. It diverts the attention of the electors from the personal merits of the candidates to the price paid for the office. It leads to the election of incompetent and unworthy officers, and on their part to extortion and fraudulent practices to procure a remuneration for the price paid. Nor can we discover a difference in principle between the sale of an office and the disposing of it to the person who will perform its duties for the lowest compensation. In our opinion the same objection lies to both."

In State ex rel. Newell vs. Purdy, 36 Wis. 224, it appears that a candidate offered, if elected, to perform the duties of the office for $700.00 per annum when the salary attached to the office was $1,000.00 per annum. The court said:

> "If the course pursued by the relator should receive judicial sanction, it is more than probable that all those public offices which are deemed desirable would in time become the objects of pecuniary bids or offers, and in many cases would be bestowed upon the highest bidders without much regard to their fitness for the positions thus purchased by them. At least such would be the inevitable tendency."

Justice Brewer of the supreme court of Kansas (afterwards a member of the Supreme Court of the United States), in the case of State vs. Elting, 27 Kan. 397, very forcibly and logically discussed the necessity of forbidding candidates to promise to accept less than the salary fixed by law when running for public office. He said:

> "When a candidate gives an elector personally money or property, there is a direct attempt to influence his vote by pecuniary considerations. The expectation is that such vote will be controlled, not by the elector's judgment of the fitness of the candidate for the office, but by the pecuniary benefit he has received. In other words, it is money and not judgment that directs the ballot; and so the election turns not on considerations of fitness or public good, but of private gain. Let such be tolerated, and elections will be simply the measure of the size of the candidates' purses. In the closing and degenerate days of Rome's august empire, preceding its immediate downfall, the imperial purple was sold at public auction to the highest bidder. Equally base and equally significant of present decay and impending downfall would be the toleration of the private purchase of electoral votes. That which is wrong when done directly, is equally wrong when done indirectly. Salaries are paid by taxation, and when a candidate offers to take less than the stated salary, he offers to reduce pro tanto the amount of taxes which each individual must pay. If the candidate went to each elector and offered to pay one dollar of his taxes, that clearly would be direct bribery; and when he offers to take such a salary as will reduce the tax upon each taxpayer a dollar, he is indirectly mak-

ing the same offer of pecuniary gain to the voter. * * * The theory of popular government is that the most worthy should hold the offices. Personal fitness—and in that is included moral character, intellectual ability, social standing, habits of life and political convictions is the single test which the law will recognize. That which throws other considerations into the scale, and to that extent tends to weaken the power of personal fitness, should not be tolerated. It tends to turn away the thought of the voter from the one question which should be paramount in his mind when he deposits his ballot. It is in spirit at least, bribery, more insidious, and therefore more dangerous than the grosser form of directly offering money to the voter."

Such a promise was likewise declared unlawful in the following cases:

Carrothers vs. Russell, 53 Iowa 346, 5 N. W. 499;
Bush vs. Head, 154 Cal. 277, 97 Pac. 512;
Kluemper vs. Zimmer (Ky.), 41 S. W. (2nd) 1111;
State vs. Dustin, 5 Or. 375;
Tucker vs, Aiken, 7 N. H. 113;
Prentiss vs. Dittmer, 93 Ohio St. 314, 112 N. E. 1021.

Statutes have been enacted in many of the states, including Montana, which have for their purpose the prevention of the practice that was condemned by the common law.

In this state we have section 10796, R.C.M. 1921, which reads as follows:

"Any person shall be guilty of a corrupt practice, within the meaning of this act, if he expends any money for election purposes contrary to the provisions of any statute of this state, or if he is guilty of treating, undue influence, personation, the giving or promising to give, or offer of any money or valuable thing to any elector, with intent to induce such elector to vote for or to refrain from voting for any candidate for public office, or the ticket of any political party or organization, or any measure submitted to the people, at any election, or to register or refrain from registering as a voter at any state, district, county, city, town, village, or school district election for public offices or on public measures. * * *"

In the case of Bush vs. Head, supra, the California court held that the promise of a candidate not to qualify for the office and thereby save to the county the salary attached to it was in violation of the statute of California which provided that it was unlawful:

"To pay, lend or contribute, or offer or promise to pay, lend or contribute, any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons."

The court held that the promise of the candidate that he would, if

elected, save the county the salary attached to the office by failing to qualify was an offer or promise to pay a "valuable consideration" within the meaning of the statute. The court said:

> "The promise was that he would act in a way that would result in a saving of expense to the taxpayers and electors. This was a promise of a valuable consideration."

The court cited with approval the cases hereinbefore mentioned.

In the case of Prentiss vs. Dittmer, supra, the salary of the office was paid in part by the state and in part by the county. The candidate for the office promised that if he was elected he would draw only that part of the salary that was paid by the state and would not draw that part that was paid by the county. The statute in Ohio provided that it was unlawful for any person to offer to contribute any money or valuable consideration for any purpose other than specified in the statute. The court held that the promise to not draw the part of the salary that was paid by the county was condemned by the statute, and said:

> "There is a wide difference between a promise of this character and those multifarious pledges made by candidates in the interest of reform, economy, and a rigidly and effective administration of office, in compliance with their official oath. The latter are made in the public interest, and are consistent with personal fitness; the former savors of vicious tendencies, involving a personal pecuniary consideration offered by the candidate in order to accomplish his election, in which the test of fitness is not an element."

In view of the foregoing cases there can be no doubt that the promise to draw none or only a part of the salary attached to an office made by a candidate for public office to the electors would be the promising to give or an offer of money or a valuable thing, within the meaning of section 10796 R.C.M. 1921, supra, and such a promise or offer would be unlawful under that section.

Very truly yours,

L. A. FOOT,

Attorney General.