

COMMITTEE ON THE CRIMINAL COURT

REPORT ON PROPOSED PENAL LAW ARTICLES 175, 180 & 185 (acted upon at meeting of December 3rd, 1964)

Article 175:

This article provides a comprehensive revision and consolidation of numerous Penal Law provisions dealing with forging, uttering and counterfeiting. The Committee finds it generally to be well-drafted and a decided improvement over existing statutes.

Section 175.00:

The Committee finds that this section, which defines the terms used in the article, is excellent--so far as it goes. Some doubts, and possible ambiguities, should be cleared up, however, by adding a few more provisions. For example, under the proposed definitions, an instrument is falsely made, completed or altered when it falsely appears or purports to be an authentic creation of, or fully authorized by its ostensible maker. This definition is serviceable; but it leaves questions as to whether it embraces false endorsements, false attestations and the like. Such subsidiary forgeries as these do not affect the authenticity of the "original instrument" nor purport to be authorized by the "original maker." While it may be clear from case law or the intent of the statute that an endorsement or attestation on an original instrument will independently have the character of an instrument (even though it is an addition to the other instrument) the Committee believes that the statute should be explicit about such matters, and make it clear that an ostensible endorser, attester, etc. is to be regarded as the ostensible "maker."

OK ✓

Section 175.05:

Approved as proposed. ✓

Section 175.10:

The Committee believes that there should be added to this section, defining forgery in the second degree, the forgery of trading stamps, which appears to be as serious an offense as that defined in subdivision 4 ("...certificates...manufactured and designed for use...as symbols of value usable in place of money for the purchase of property or services available to the public for compensation.") Under the proposed statute the items or services one may receive for trading

stamps may not qualify as "available to the public for compensation" or the trade may not qualify as a "purchase."

Sections 175.15--175.30:

Approved as proposed.

Section 175.35:

This section would relieve a person of being convicted of both forging an instrument and criminally possessing the same instrument. The Committee does not find a sufficiently good reason for making conviction the basis for avoiding double liability, particularly when "possession" might be an "uttering" entirely distinct from the forgery. Moreover, such a statute would create unnecessary procedural problems: when must the prosecution choose the offense it desires conviction for? how are the offenses to be presented to the jury? should the prosecution have to run the risk that, upon appeal, the evidence on one of the alternate charges will be held to be insufficient? The Committee believes, however, that the ostensible purpose of this new provision--relief from the possibility of multiple sentences for what may essentially be one crime--is salutary, but that it can better be accomplished by providing merely that a person cannot be sentenced consecutively for committing the two crimes with respect to the same instrument.

Section 175.40:

Approved as proposed.

Section 175.45:

The Committee approved of this new offense of criminal simulation but was divided as to whether it should be a Class A misdemeanor, as proposed, or a Class B misdemeanor, being mindful that larceny would embrace the most serious aspects of criminal simulation.

Sections 175.50--175.60:

Approved as proposed.

Article 180:

This article includes falsifying business records, tampering with public records, offering false instruments for filing, issuing a false certificate and a false financial statement and presenting a false insurance claim. The Committee generally approves of this proposed article.

Sections 180.00--180.10:

Approved as proposed.

Section 180.15:

This section provides that it is a defense for an employee to have merely executed orders in falsifying records. Although this section was recognized to be essentially an adaptation of existing law, and was thus approved, there was a strong minority view that there should be no specific defense for an employee executing his employer's orders, just as there is no such defense for other crimes. The minority believed that extenuating circumstances could be dealt with by the exercise of discretion by the appropriate authority.

The Committee suggests that the Commission may wish to consider whether the defense should apply to sections in this article other than falsifying business records, such as Section 180.50, issuing a false financial statement. )OK

Sections 180.20--180.35:

Approved as proposed.

Section 180.40:

This section makes it a crime for a public servant knowingly to issue a false certificate. The Committee believes that certificates issued by a notary public, such as that a signature was personally acknowledged before him, should not be embraced by this section which makes it a Class E felony to issue a certificate containing a statement which the issuer knows to be false. While it is possible that the section would be construed so that a notary public would not fit the requirement that the issuer be a "public servant," the Committee believes that "public servant" should be defined explicitly to exclude a notary public.

Sections 180.45--180.55:

Approved as proposed.

Article 185:

This article includes provisions dealing with "commercial bribery," bribery involving labor officials, and sports bribery. The Committee generally approves of the proposed article.

Sections 185.00--185.05:

The Committee believes that the maximum possible punishment for commercial bribery and bribe solicitation should be greater than that proposed, and the crimes should be classified as Class A, rather than Class B, misdemeanors.

Section 185.10:

Approved as proposed.

Section 185.15:

The Committee was closely divided on whether bribing a labor official should be a Class E felony, rather than a Class D, as proposed. ✓

Section 185.20:

Approved as proposed.

Section 185.25:

This section, defining the terms used in the provisions dealing with sports bribery, contains a definition of the kind of "sports contest" to which the statute applies (subdivision 1.). That definition shows a commendable intent to limit the application of the statute to public events:

"Sports contest" means any professional or amateur sport or athletic game or contest viewed by the public.

The language of this definition, however, could be construed so as to exclude public events which do not take place (even though the bribe has been paid) or sports events which are merely reported to the public, and to include essentially private contests which unintentionally happen to be viewed by members of the public. The Committee believes that the test should not be whether the contest is actually viewed by the public, but whether it is intended for viewing by, or to be reported to, the public. ✓

Section 185.30:

The Committee believes that the crime of sports bribery should be a Class E felony, rather than a Class D felony, as proposed. ✓

Section 185.35:

The Committee believes that the crime of sports bribe receiving by a participant (subdivision 1) should be a Class A misdemeanor, rather than a Class E felony, as proposed. Such conduct by a sports official should remain a Class E felony (subdivision 2). ✓

Section 185.40:

Approved as proposed.