

discerned than when the law is general, addressed to no one in particular but available to all of a class as a vehicle for incorporation so long as it stands unrepealed.

Grand Lodge Hall Ass'n v. Moore (1945) 224 Ind. 575, 579, 70 N.E.2d 19, 20, cert. denied, 330 U.S. 808, 67 S.Ct. 1088, 91 L.Ed. 1265; 331 U.S. 864, 67 S.Ct. 1201, 91 L.Ed. 1869.

In that same opinion, this Court cited a quote from Justice Holmes that guides our decision today:

The broad ground in a case like this is that, in view of the subject-matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. *In announcing its policy, and providing for carrying it out, it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefor(e), it makes no promise to them. It simply indicates a course of conduct to be pursued until circumstances or its views of policy change.*

Id., 224 Ind. at 581, 70 N.E.2d at 21, quoting *Wisconsin & Michigan R. Co. v. Powers*, 191 U.S. 379, 387, 24 S.Ct. 107, 108, 48 L.Ed. 229, 231 (1903) (emphasis added). The language of the GES contains neither a promise that the exemption from direct taxation on the bonds would not be repealed or subject to modification for perpetuity, nor a promise that the GES would exempt bonds from even being used to measure a franchise tax, such as the FIT. Even if the GES was incorporated into the bond contract, it would not have prevented the Legislature from using the bond income to measure the FIT liability. The bonds and their income are still exempt from direct state taxes. The promise contained in those bonds was the promise of a given return as a percentage of their purchase price. Thus, the use of the federal and municipal bond income to measure the taxpayer's FIT liability was not an unconstitutional impairment of a state obligation.

Conclusion

We grant the Department of Revenue's petition for review, vacate the judgment of the Tax Court, and affirm the Department's denial of the refund.

SHEPARD, C.J., and DICKSON and SELBY, JJ., concur.

SULLIVAN, J., did not participate in this case.



In the Matter of the Honorable Evan Dee GOODMAN, Presiding Judge of the Marion Municipal Court.

No. 49S00-9406-JD-581.

Supreme Court of Indiana.

April 27, 1995.

Judicial disciplinary proceeding was brought. The Supreme Court held that circumstances which give rise to perception that court's business is based upon exchange of favors violate rules requiring judge to avoid appearance of impropriety, nepotism and favoritism and requiring judge's staff to observe standards of fidelity and diligence which apply to judge and warrant public reprimand.

Reprimand ordered.

Judges ⇐11(2, 4)

Circumstances involving court's hiring of close relatives of court employees and close personal and family relationships between judge, court employees and officers of corporation under contract to provide services for court program, which give rise to perception that court's business is based upon exchange of favors, violate rules requiring judge to avoid appearance of impropriety, nepotism and favoritism and requiring judge's staff to observe standards of fidelity and diligence which apply to judge and warrant public reprimand. Code of Jud.Conduct, Canons 2, subd. A, 3, subd. B(2, 4) (1992).

Ronald E. Elberger, Indianapolis, for respondent.

Meg Babcock, Indianapolis, for Indiana Comm'n on Judicial Qualifications.

DISCIPLINARY ACTION

PER CURIAM.

The Indiana Commission on Judicial Qualifications and the Respondent, the Honorable Evan Dee Goodman, formerly the Presiding Judge of the Marion Municipal Court, have entered into and now tender for this Court's approval, a Statement of Circumstances and Conditional Agreement for Discipline.

The agreement arises out of a Notice of the Institution of Formal Proceedings and Statement of Charges filed in June 1994 and amended in August 1994. Article 7, Section 4 of the Indiana Constitution and Rule 25 of the Indiana Admission and Discipline Rules give this Court original jurisdiction over this matter.

The Commission's allegations against Respondent referred to activity that occurred before March 1, 1993, the effective date of the present Code of Judicial Conduct. The Commission charged Respondent with violating the 1975 Code of Judicial Conduct, Canons 2A, 3B(2) and 3B(4). These rules state that a judge should avoid the appearance of impropriety, avoid nepotism and favoritism, and require the judge's staff to observe the standards of fidelity and diligence which apply to the judge.

The facts in this case are not in dispute and are set out in the Conditional Agreement. We summarize those facts as follows.

Judge Goodman issued an anti-nepotism policy on May 17, 1994. Before that time and during Respondent's tenure as Presiding Judge of the Marion Municipal Court from 1989 until June 1994, several employees were hired who were close relatives of court employees. The Court Administrator was allowed to hire his daughter, his daughter's fiancé, and the fiancé's brother. The Court Administrator was allowed to approve raises for his family members. Three family members of the Assistant Court Administrator were hired. The daughter of the head of the

Probation Department was hired. Judge Goodman's son worked for the court occasionally on school vacations, although the amounts he was paid were reimbursed to the court.

In 1992, Judge Goodman contracted with a corporation to provide certain services for a Marion Municipal Court program. The owner of the corporation was a close personal friend of the Court Administrator. The owner hired the Court Administrator's son-in-law (the former fiancé of the Administrator's daughter), who left his employment with the Marion Municipal Court and was subsequently put in charge of the court program for the corporation. In September 1992, Judge Goodman became engaged to marry the in-house accountant for the corporation, and the owner hosted an engagement party for the Judge and his fiancée.

Although the parties agree Judge Goodman did not profit or intend to profit from the court's program or the corporation's providing services to the court, the parties also agree that these circumstances gave rise to a perception that the court's business was based upon the exchange of favors.

Canon 2A of the 1975 Code of Judicial Conduct provided:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B of the 1975 Code of Judicial Conduct provided:

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

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From the above agreed and undisputed facts, we accept the agreement of Respondent and the Commission that Respondent engaged in the charged misconduct. The parties agree that an appropriate sanction for the misconduct here is a public reprimand.

In light of the foregoing facts and findings of misconduct, this Court concludes that the Conditional Agreement for Discipline entered into by the parties should be approved and the agreed discipline, a public reprimand, should be and is hereby accepted.

Accordingly, Respondent, the Honorable Evan Dee Goodman is hereby REPRIMANDED for his misconduct in this case. This discipline terminates and forecloses all disciplinary proceedings relating to the circumstances giving rise to this cause.

Costs of this proceeding are assessed against Respondent.



Guy KINDEL, Jr., Appellant-Defendant,

v.

STATE of Indiana, Appellee-Plaintiff.

No. 02A04-9407-CR-290.

Court of Appeals of Indiana,
Fourth District.

March 31, 1995.

Defendant was convicted in the Allen Circuit Court, Thomas L. Ryan, J., of operating motor vehicle while privileges were suspended, and he appealed. The Court of Appeals, Riley, J., held that: (1) Bureau of Motor Vehicles (BMV) record was properly admitted, and (2) evidence was sufficient to support conviction.

Affirmed.

1. Criminal Law ⇨429(1)

In prosecution for operating motor vehicle while privileges were suspended, Bureau of Motor Vehicles' (BMV) determination of driver's status as habitual traffic offender was admissible; BMV's determination was not product of investigation and involved no subjective interpretations and thus was "observation" within meaning of hearsay exclusion, rather than inadmissible "factual finding." West's A.I.C. 9-30-10-4(b), 9-30-10-5(a); Rules of Evid., Rule 803(8)(c).

See publication Words and Phrases for other judicial constructions and definitions.

2. Criminal Law ⇨1144.13(5, 6), 1159.2(9), 1159.4(1)

When presented with challenge to sufficiency of evidence, Court of Appeals considers only evidence most favorable to state and all reasonable inferences drawn therefrom, and will not reweigh evidence nor judge credibility of the witnesses.

3. Criminal Law ⇨1158(1)

Court of Appeals will not disturb findings made by trier of fact if it finds there is substantial evidence of probative value to support conviction.

4. Automobiles ⇨355(2)

Evidence that Bureau of Motor Vehicles (BMV) classified defendant as habitual violator was sufficient to support finding, in support of conviction for operating motor vehicle while privileges were suspended, that defendant was habitual violator. West's A.I.C. 9-30-10-16.

5. Automobiles ⇨355(2)

Evidence that Bureau of Motor Vehicles (BMV) mailed notice of suspension to defendant's last known address and defendant's admission that letter was mailed to correct address, was sufficient to support finding, in support of conviction for operating motor vehicle while privileges were suspended, that defendant was notified of his habitual violator status. West's A.I.C. 9-30-10-16.

Gregory L. Fumarolo, Fort Wayne, for appellant.