

West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 14. Criminal Law (Refs & Annos)
Chapter 1. Criminal Code (Refs & Annos)
Part VII. Offenses Affecting Organized Government
Subpart F. Official Misconduct and Corrupt Practices (Refs & Annos)

LSA-R.S. 14:138

§ 138. Public payroll fraud

Effective: August 15, 2011

Currentness

A. Public payroll fraud is committed when:

(1) Any person shall knowingly receive any payment or compensation, or knowingly permit his name to be carried on any employment list or payroll for any payment or compensation from the state, for services not actually rendered by himself, or for services grossly inadequate for the payment or compensation received or to be received according to such employment list or payroll; or

(2) Any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.

B. This Section shall not apply in the following situations:

(1) When a bona fide public officer or public employee, who is justifiably absent from his job or position for a reasonable time, continues to receive his usual compensation or a part thereof.

(2) When arrangements between firefighters to swap work or perform substitute work with or for each other is done in compliance with the provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3) and the associated regulations found in the Code of Federal Regulations and in accordance with rules and regulations adopted by the appointing authority.

C. (1) Whoever commits the crime of public payroll fraud shall be fined not more than one thousand dollars, or imprisoned, with or without hard labor, for not more than two years, or both.

(2) In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202.

Credits

Amended by Acts 1997, No. 538, § 1; Acts 2010, No. 811, § 1, eff. Aug. 15, 2011.

Editors' Notes

REPORTER'S COMMENT--1950

Louisiana statutes covered:

Acts 1940, No. 63, §§ 1 to 3, 5, 8 (“deadhead” on public pay roll).

Section 4 of the “deadhead” statute provides for the venue of prosecutions. This is a procedural provision, and should be included, by amendment, in the Code of Criminal Procedure.

Section 6 provides for forfeiture of office. See the special comment on forfeiture of office as a penalty, *infra*, this Comment.

Section 7 gives the state a civil action plus damages for the recovery of money unlawfully paid out. A general section of this nature was originally included in this Sub-Part, but was deleted upon recommendation of the Council.

Scope:

This section is simply a rewriting of the former Louisiana statute on “deadheads,” in a form consistent with the other sections of the Code.

The terms “public officer,” “public employee,” and “state” are defined in Part I, Chapter 1 [R.S. 14:2].

Under former statutes [Acts 57 and 155 of 1888] the courts held that it was not a crime to receive a salary for services that were not personally rendered but were rendered by another person. *State v. Farrell*, 130 La. 228, 57 So. 898 (1912); *State v. Irion*, 165 La. 1035, 116 So. 549 (1928). The 1940 act [Act 63 of 1940] superseded these cases by requiring that the services be personally rendered. The section has likewise made such a requirement.

Forfeiture of public office:

Section 6 of the former Louisiana “deadhead” statute provided that conviction “shall, ipso facto, operate as a vacancy of the office or employment of the person so convicted.” The case of *State ex rel. Koppel v. Thompson*, 28 La. Ann. 444 (1876) construed a similar penal provision of Act 26 of 1873 and held that it was unconstitutional because the Constitution provided the only method by which an officer could be removed. Likewise in *State v. Bain*, 137 La. 308, 68 So. 621 (1915) a similar penal provision in Act 22 of 1898 was held unconstitutional. See Louisiana Legislation of 1940, 3 La.L.Rev. 98, 152, n. 17. In view of the above holdings that such forfeiture of office clauses are unconstitutional, no such provision is included in the Criminal Code.

Penalty clause:

The former statute provided that both a fine and imprisonment should be imposed, the minimum sentence being a fine of five hundred dollars and six months imprisonment. The Reporter felt that by eliminating minimum penalties and providing for fine or imprisonment, or both, that it would be easier to secure convictions. Also the maximum term of imprisonment has been reduced to two years, with or without hard labor.

Notes of Decisions (30)

LSA-R.S. 14:138, LA R.S. 14:138

Current through the 2022 First Extraordinary, Veto, Regular and Second Extraordinary Sessions.