

MOTION TO DISMISS - STATUTORY CONSTRUCTION

State of Indiana v. John C. Dugan, Jr., No. 49A02-0108-CR-513 (June 5, 2002, 6 pages).

In a recent appeal from the Marion Superior Court, the Indiana Court of Appeals reaffirmed the well settled principle of law holding that, in most cases, the more specific statute controls over the one of general applicability.

In the case at bar, the State had appealed the Trial Court's partial grant of the Defendant's Motion to Dismiss the Indictment. The Defendant had been charged with one count of ghost employment and two (2) counts of official misconduct. The Defendant worked for the Indiana State Alcoholic Beverage Commission as an Indiana State Excise Police Officer. It was alleged that he had accepted gratuities, including sexual favors, from the owner of a nightclub.

The State argued on appeal that the Trial Court had erred in partially granting Dugan's Motion to Dismiss. Specifically, I.C. 35-34-1-4 sets forth various circumstances allowing dismissal of an indictment. I.C. 7.1-5-5-2 provides that it is unlawful for an employee of the Alcoholic Beverage Commission to receive a gratuity from a person applying for, or receiving, a permit under the Alcoholic Beverage Statutes. The Defendant had been charged with official misconduct pursuant to I.C. 35-44-1-2. That statute provides that a public servant commits a Class A Misdemeanor when he knowingly or intentionally performs an act that he is forbidden by law to perform.

After reviewing the statutes at issue, the Court held that the official misconduct statute was not the appropriate statute with which to charge Dugan. Instead, I.C. 7.1-5-1-8 is a specific statute within that chapter, "providing that a person who violates a provision of this title for which no other penalty is provided commits a Class B Misdemeanor". The Court also noted that there are several other statutes that deal specifically with violations of those particular statutes, including the Public Intoxication

statute, the Intoxication Upon A Common Carrier statute, and the Possession Of Untaxed Beverages statute.

The Court noted that “while I.C. 35-44-1-2 may generally apply to a person who violates I.C. 7.1-5-5-2, Section 8 is intended to cover violations of Title 7.1 that do not have a specific penalty already attached”.