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## Prohibition Against Use of State Money for Private Undertaking

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## PROHIBITION AGAINST USE OF STATE MONEY FOR PRIVATE UNDERTAKING

*N.Y. CONST. art. VII, § 8(1):*

*The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational, mental health or mental retardation purposes.*

### COURT OF APPEALS

People v. Ohrenstein<sup>854</sup>  
(decided November 22, 1990)

See case analysis under SPEECH OR DEBATE CLAUSE.<sup>855</sup> The court held that defendants were not subject to criminal prosecution for using senate staff in political campaigns since engaging in these activities, prior to 1987, was not criminally prohibited by Article VII, section 8 of the New York State Constitution.<sup>856</sup>

### COURT OF CLAIMS

Santangelo v. New York<sup>857</sup>  
(decided November 7, 1990)

The New York Court of Claims questioned whether the legislature's amendment of the General Municipal Law (GML), section 205-e,<sup>858</sup> which allows the statute<sup>859</sup> to apply retroactively under

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854. 77 N.Y.2d 38, 565 N.E.2d 493, 563 N.Y.S.2d 744 (1990).

855. See *infra* notes 1177-226 and accompanying text.

856. *Ohrenstein*, 77 N.Y.2d at 52, 565 N.E.2d at 500, 563 N.Y.S.2d at 751; N.Y. CONST. art. VII, § 8.

857. 149 Misc. 2d 171, 563 N.Y.S.2d 597 (Ct. Cl. 1990).

858. Act of July 22, 1990, ch. 762, § 1, 1990 N.Y. Laws 1551, 1552

specific circumstances, "can constitutionally revive"<sup>860</sup> the plaintiffs' cause of action, which had been previously dismissed "following a full trial on the issue of liability."<sup>861</sup> Specifically, the court questioned whether the legislature had the right to infringe on the vested rights established by a final judgment of the courts of this state resulting from the retrospective application of section 205-e as amended in July of 1990.

The court held that although the defendant could not assert a successful *res judicata* defense,<sup>862</sup> the amended statute was unconstitutional to the extent that it was applied retroactively to revive the plaintiffs' cause of action in which final judgment had already been obtained.<sup>863</sup>

The plaintiffs were policemen who were injured on July 15, 1979 while "attempting to arrest a mental patient escapee."<sup>864</sup> The first action was brought on August 20, 1979, and is referred to as *Santangelo I*. After a trial on the merits, the first claim was dismissed.<sup>865</sup> Subsequent to *Santangelo I*, the legislature enacted GML section 205-e so that "officers who are injured in the line of duty as a direct or indirect result of a person's violation of a rule, a law, a statute or an ordinance"<sup>866</sup> would have a cause of action. The courts interpreted section 205-e as not applying retroactively. Consequently, the legislature amended the statute and made section 205-e expressly retroactive under the following circumstances: 1) cases pending on or after January 1, 1987; 2) cases dismissed on or after January 1, 1987 because the section was non-existent at the time of the claim; and 3) cases which

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(McKinney).

859. N.Y. MUN. LAW § 205-b (McKinney Supp. 1991).

860. *Santangelo*, 149 Misc. 2d at 175, 563 N.Y.S.2d at 599.

861. *Id.* at 173, 563 N.Y.S.2d at 598.

862. *Id.* at 181, 563 N.Y.S.2d at 603. The court reasoned that a *res judicata* defense was not available because the "statutory amendment materially changed the parties' rights to the extent that the new request was independent of the first, and was thus considered a wholly distinct transaction." *Id.* (citation omitted).

863. *Id.* at 184, 563 N.Y.S.2d at 605.

864. *Id.* at 173, 563 N.Y.S.2d at 598.

865. *Id.*

866. *Id.* at 174, 563 N.Y.S.2d at 598.

should have been actionable if the section was in effect.<sup>867</sup>

The plaintiffs sought to revive their claim based on the amended statute. They brought this present claim, referred to as *Santangelo II*, on August 27, 1990.<sup>868</sup> The court found plaintiffs' claim to be viable under the requirements of category two above.<sup>869</sup> However, in the same breath, the court declared that GML section 205-e, as amended, was unconstitutional in its revival of the plaintiffs' claims in *Santangelo I*. In so holding, the court pointed to strong public policy, grounded in article VIII, section 1 of the New York State Constitution, which the court argued "preserv[es] and protect[s] public funds from unwarranted and nonmeritorious claims."<sup>870</sup>

The court first examined older cases that dealt with the issue at hand. Under this line of case law, a strict and rigid approach was employed that did not allow the legislature to infringe on vested rights accruing to a person that were the result of a final judgment rendered by the court.<sup>871</sup> This policy was based upon the notion that the vested rights became the property rights of the individual, which the legislature could not violate.<sup>872</sup>

The court then examined more recent case law. It noted that the New York Court of Appeals, in *Chrysler Properties, Inc. v. Morris*,<sup>873</sup> adopted a more flexible approach to the vested rights theory by recognizing that "the concept is a fiction and hides

867. *Id.* at 174-75, 563 N.Y.S.2d at 598-99.

868. *Id.* at 173, 563 N.Y.S.2d at 598.

869. *Id.* at 177, 563 N.Y.S.2d at 600-01.

870. *Id.* at 183, 563 N.Y.S.2d at 604; *see* N.Y. CONST. art. VIII, § 1.

871. *Santangelo*, 149 Misc. 2d at 179, 563 N.Y.S.2d at 601-02 (citing *Germania Sav. Bank v. Village of Suspension Bridge*, 159 N.Y. 362, 54 N.E. 33 (1899) (holding that the legislature could not confer a right to appeal upon a party whom has already exhausted his appellate resources unsuccessfully).

872. In *Germania*, the court stated:

A judgment is a contract which is subject to interference by the courts so long as the right of appeal therefrom exists, but when the time within which an appeal may be brought has expired, it ripens into an unchangeable contract and becomes property . . . . It is then beyond the reach of legislation affecting the remedy, because it has become an absolute right which cannot be impaired by statute.

*Germania Sav. Bank*, 159 N.Y. at 386, 54 N.E. at 35.

873. 23 N.Y.2d 515, 245 N.E.2d 395, 297 N.Y.S.2d 723 (1969).

many unmentioned considerations of fairness to the parties, reliance on pre-existing law, the extent of retroactivity and the nature of the public interest to be served by the law.”<sup>874</sup> In *Chrysler*, the court of appeals adopted a test that balances the above factors and requires “showing . . . the public interest to be served by [the] retroactive legislation . . . .”<sup>875</sup>

Accordingly, the *Santangelo* court examined the vested rights secured by the state through the dismissal of the plaintiffs’ claims in the first action. The court found that as a result of the first action, the state did not have to “expend public funds to compensate claimants as a result of the injuries sustained.”<sup>876</sup> The court argued that the principle of preservation and protection of public funds is so important to the state that it is addressed expressly in the New York State Constitution.<sup>877</sup> Even upon a legislative finding that an injustice has been done, as a result of which legislation is enacted to remedy such injustice, the court of appeals has stated:

[Injustice] cannot free the Legislature from the restriction placed by the Constitution upon its powers when it attempts to use public moneys to remedy that ‘injustice,’ [sic] in cases where no legal obligation to pay existed at the time when payment was withheld.<sup>878</sup>

The court then concluded that there is no public interest to be served by applying section 205-e retroactively.<sup>879</sup> Consequently, the court declared the statute, as amended, unconstitutional in its revival of the plaintiffs’ initial claim, and the defendant’s motions to dismiss were granted.<sup>880</sup>

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874. *Santangelo*, 149 Misc. 2d at 179, 563 N.Y.S.2d at 602 (quoting *Chrysler Properties*, 23 N.Y.2d at 518, 245 N.E.2d at 397, 297 N.Y.S.2d at 725).

875. *Chrysler*, 23 N.Y.2d at 522, 245 N.E.2d at 399, 297 N.Y.S.2d at 728.

876. *Santangelo*, 149 Misc. 2d at 183, 563 N.Y.S.2d at 604.

877. *Id.*; see N.Y. CONST. art. VIII, § 1.

878. *Santangelo*, 149 Misc. 2d at 183, 563 N.Y.S.2d at 604 (quoting *Mullane v. McKenzie*, 269 N.Y. 369, 376, 199 N.E.2d 624, 629 (1936)).

879. *Id.* at 184, 563 N.Y.S.2d at 605.

880. *Id.*