

786 F.2d 268, \*; 1986 U.S. App. LEXIS 22932, \*\*;

122 L.R.R.M. 2177; 4 Fed. R. Serv. 3d (Callaghan) 927

his dismissal in 1976. On November 1, 1974, Benson entered into a one-year written contract with the DOR to "undertake projects requiring personal and technical services as assigned by the [DOR] concerning pending investigations for the [DOR]." The contract was terminable at will by either party upon written notice. The parties entered into a similar contract that commenced November 1, 1975, and expired on June 30, 1976. Benson was terminated on June 24, 1976, six days before the second contract was to expire of its own accord.

Benson was initially assigned to assist in the enforcement of the Illinois Cigarette Tax Act, codified at Ill. Rev. Stat. ch. 120, paras. 453.1 to.22 (1975) and the Illinois Cigarette Use Tax Act, codified at *id.*, paras. 453.31 to.51 (referred to collectively as "Tax Act" or "Act") n1 at the Illinois-Indiana border. n2 Benson lived in South Holland, Illinois, which is not far from the Indiana border, and worked out of a squad room on LaSalle Street in Chicago.

n1 Both acts have now been consolidated as the Illinois Cigarette Use Tax Act, codified at Ill. Rev. Stat. ch. 120, paras. 453.1 to.67 (1984). [\*\*4]

n2 Benson was also involved in the enforcement of laws relating to retailer occupation taxes, motor fuel oil taxes, as well as bingo and lottery activities.

[\*270] In the latter part of 1971, the DOR placed certain cigarette stands in Indiana under surveillance where it could observe individuals purchasing cigarettes and then transporting them into Illinois without paying the appropriate tax. After assuming the position of Director of the DOR in the latter part of March 1973, defendant Robert Allphin adopted a policy of arresting Tax Act violators and confiscating their vehicles. Benson and his partner, James Kelleher, were involved in the enforcement of this policy. Benson made numerous arrests. He also took photographs of individuals allegedly violating the Tax Act. These photographs were said to include pictures of Chicago police officers, Chicago firemen, and other state, county, and city employees engaged in violations of the Act. Benson retained the negatives of these photographs.

Benson maintained that, from 1974 until the time of his termination, he was ordered not to enforce [\*\*5] the Tax Act against state, county, and city employees, especially Chicago police officers. He discussed this matter extensively with his supervisors and co-workers. In addition, Benson informed his supervisors and co-

workers that he had taken photographs of Tax Act violations and that he had retained the negatives.

Benson also criticized the DOR's tax-collection policy, and maintained that collection suits were being settled for unacceptably low amounts. n3 Apparently only Allphin and defendant Rummel (the Associate Director of the DOR) were authorized to settle these suits. Benson maintained further that certain taxpayers were making payoffs to DOR personnel in order to escape prosecution.

n3 It should be noted that Benson was not involved in the collection of the disputed taxes.

After Benson discussed his grievances with Allphin and Rummel in the latter part of 1975 and the early part of 1976, his duties at the DOR were changed, in that he was ostensibly assigned in January 1976 to a continuing investigation [\*\*6] into the improprieties he had alleged were taking place within the DOR. Allphin and Rummel also told Benson to report only to them, and not to come to the DOR office in Chicago.

Allphin and Rummel instructed Benson not to reveal any investigatory information to the public. However, because he was dissatisfied with the manner in which his superiors were handling the investigation, Benson discussed his allegations with reporters from the *Chicago Tribune* and *Hammond Times* in February or March of 1976. Benson also turned over some of his photographs to a reporter in June 1976. As a result of these disclosures, several stories regarding Benson's allegations appeared in the press in March 1976; another series was published in August 1976 after Benson was terminated.

After Benson made these disclosures to the press, Allphin and Rummel tried to keep a tighter rein on him. He was again told not to discuss these matters with anyone outside the DOR. Several meetings were arranged, however, between Benson (along with other DOR personnel) and the Internal Affairs Division of the Chicago Police Department in the spring of 1976. At these meetings, Benson was allowed to discuss the alleged [\*\*7] selective enforcement problem and his surveillance photographs. Despite these meetings, Benson still believed that the DOR was not acting in good faith and that his superiors were attempting to cover up the allegations. In early June 1976, he indicated to DOR personnel that he might make further disclosures of his allegations to the public and press. Allphin and Rummel decided that Benson's services were no longer needed, and terminated him on June 24, 1976.