itself recognized this.[9] In the *Myers* case, a postmaster of the first class was appointed for a term of four years with no other qualifications on his removal,[10] while removal of the director of the Tennessee Valley Authority was qualified by an enumeration of specific bases for action by Congress and the President.[11] Thus, while the only specified ground of removal in the *Myers* case was the expiration of the official's term, the officer in the instant case was, in addition, subject to removal in a specific way and for a specific cause.

From a comparison of the cases, it seems that an officer whose duties are mainly executive may be removed at any time by the President, no matter what qualifications be placed by Congress on the removal of that officer. J. E.

CONTRACTS—LEGALITY OF CONTRACTS FOR LOBBYING SERVICES—[Federal]. Plaintiff sued in contract to recover for services rendered in lobbying for a bill which Congress eventually enacted. Plaintiff, who had been paid $500 per month for his expenses and services, sued for an additional $10,000 which he claimed as additional compensation agreed upon by defendant in event of his success in securing the enactment of the bill. Defendant denied liability on the ground that the contract was illegal. It was proved that plaintiff had used his personal influence with certain legislators, and had promised certain Senators that he would exert political influence for them in their home states. *Held*, that the contract was a lobbying contract and was, therefore, unenforceable. *Ewing v. National Airport Corp.*[1]

The courts have said that lobbying contracts are invalid if they have the slightest tendency to induce acts injurious to the public interest or welfare. To be held void, it is not necessary that the contract stipulate for corrupt or immoral action, such as bribery.[2] The evil seems to lie in the secrecy of private solicitation intended to influence action on the part of a legislator in a manner and at a time that makes it impossible for opposing views to be presented.[3] A contract to pay for such services is void.[4] This

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9. The court said, "between what was decided in the Humphrey case, and what was held in the Myers case, there still remains a field of doubt, and * * * cases falling within it must be left for future consideration and determination as they arise." Morgan v. Tennessee Valley Authority (C. C. A. 6, 1940) 115 F. (2d) 990, 992.

10. Act of July 12, (1876) 19 Stat. 78, 80, c. 179, 39 U. S. C. A. (1928) sec. 31.

11. See Tennessee Valley Authority Act (1933) 48 Stat. 60, 63, c. 32, 16 U. S. C. A. (Supp. 1940) secs. 831c, 831e. These sections provide that the directors may be removed (1) by a concurrent resolution of the Senate and the House of Representatives, (2) by the President for violation of the provision prohibiting appointment of employees on the basis of their political affiliation.

1. (C. C. A. 4, 1940) 115 F. (2d) 859.

2. Adams v. East Boston Co. (1920) 236 Mass. 121, 127 N. E. 628.

3. 1 Cooley, *Constitutional Limitations* (8th ed. 1927) 281.

4. Providence Tool Co. v. Norris (U. S. 1864) 2 Wall. 45; Trist v. Child (U. S. 1874) 21 Wall. 441; Marshall v. B. & O. Ry. (U. S. 1853) 16 How.

type of contract is, however, to be distinguished from a contract for prosecuting a claim or presenting and arguing for a bill before a legislature or its committees. Such services may consist of drafting a petition, collecting facts, preparing arguments, and submitting them orally or in writing before a committee or other proper authorities.[5] There is little doubt that such a contract is valid and in no way repugnant to public policy.[6]

There is a conflict on the question whether a provision for a fee contingent upon the enactment of legislation invalidates a soliciting contract. Some courts have held unequivocally that, if the contract is one in which compensation is contingent upon success, it is void as against public policy.[7] Other courts have held that, if nothing improper or immoral was contemplated, the fact that the compensation was to be contingent, does not in itself render the contract illegal.[8] It would seem that, in the absence of statutes to the contrary, the latter view is the better. Where the contract contemplated nothing objectionable, and where there is no evidence of improper conduct in its performance, it would seem more just to enforce the contract than to declare it void on the ground that the contingency might tend to induce secret and unfair solicitation. As was pointed out in one case,[9] no one questions the right of an individual to act in his own behalf in such matters, even though he would be induced more strongly to use improper methods than an agent, working for a mere fraction of the benefits resulting from his services.

314; Noonan v. Gilbert (App. D. C. 1934) 68 F. (2d) 775; Gesellshaft Fur Drahtlose Telegraphie M. B. H. v. Brown (App. D. C. 1935) 78 F. (2d) 410. See Note (1924) 29 A. L. R. 157; Note (1930) 67 A. L. R. 685.

5. See Trist v. Child (U. S. 1874) 21 Wall. 441.

6. Martin v. Street Improvement Dist. (1928) 178 Ark. 588, 11 S. W. (2d) 469; Crawford v. Imperial Irr. Dist. (1927) 200 Cal. 318, 253 Pac. 726; Kemble v. Weaver (1925) 200 Iowa 1333, 206 N. W. 83; Smathers v. Board of Chosen Freeholders (1934) 113 N. J. Law 281, 174 Atl. 336; Herrick v. Barzee (1920) 96 Ore. 357, 190 Pac. 141; State ex rel. Hunt v. Okanogan County (1929) 153 Wash. 399, 280 Pac. 31, 67 A. L. R. 668.

7. Noonan v. Gilbert (1934) 63 App. D. C. 30, 68 F. (2d) 775; Chrichfield v. Bermudez Asphalt Paving Co. (1898) 174 Ill. 466, 51 N. E. 552, 42 L. R. A. 347; Coquillard v. Bearss (1863) 21 Ind. 479, 73 Am. Dec. 362; Haulton v. Dunn (1895) 60 Minn. 26, 61 N. W. 898, 30 L. R. A. 737, 51 Am. St. Rep. 493.

8. Wylie v. Coxe (U. S. 1853) 15 How. 415; Wright v. Tebbitts (1875) 91 U. S. 252; Stanton v. Embrey (1876) 93 U. S. 548; Stroemer v. Van Orsdel (1905) 74 Neb. 132, 103 N. W. 1053, 4 L. R. A. (N. S.) 212, 121 Am. St. Rep. 713; Herrick v. Barzee (1920) 96 Ore. 357, 190 Pac. 141; Stansell v. Roach (1923) 147 Tenn. 183, 246 S. W. 520, 29 A. L. R. 143; State ex rel. Hunt v. Okanogan County (1929) 153 Wash. 399, 280 Pac. 31, 67 A. L. R. 668. In Gesellschaft Fur Drahtlose Telegraphie M. B. H. v. Brown (App. D. C. 1935) 78 F. (2d) 410, the court made a distinction between contracts for contingent compensation for prosecution of a debt or individual claim against the government, and contingent contracts for procuring favors from heads of the government or the procuring of general remedial legislation, authorizing or granting advantages to which, prior to enactment, the contractor had no existing legal claim. The former type of contract was declared to be valid, while the latter was not.

9. Stroemer v. Van Orsdel (1905) 74 Neb. 132, 103 N. W. 1053, 4 L. R. A. (N. S.) 212, 121 Am. St. Rep. 713.

Under the facts of the present case, the court's decision was consistent with prevailing law. Plaintiff's conduct in using his personal influence with the legislators was quite enough to justify the decision. While it is possible to contract legitimately for services to be rendered before a legislature on behalf of a claim or bill, it is essential that one use the utmost care in drafting and performing such a contract. J. W. F.

DECLARATORY JUDGMENTS—CONSTITUTIONAL REQUIREMENT OF CASE OR CONTROVERSY—THREAT TO ENFORCE ALLEGEDLY UNCONSTITUTIONAL STATUTE —[Federal].—The Southern Pacific Company sought a declaratory judgment against the Attorney General of Arizona, individually, to the effect that the Arizona Train Limit Law was in violation of the Federal Constitution. The complaint alleged that defendant had said that it was his duty as attorney general to prosecute plaintiff for any violation of this law. Defendant denied the allegation and stated that he would not attempt to enforce the statute until he had decided that it was constitutional. The court made a finding of fact in favor of defendant. Proceedings were dismissed by the district court for want of jurisdiction, no case or controversy within the judicial power of the United States having been presented. The circuit court of appeals affirmed the dismissal and *held*, that there was no case or controversy. *Southern Pacific Co. v. Conway.*[1]

The Federal Declaratory Judgments Act gives to the federal courts the power to issue declaratory judgments "in cases of actual controversy except with respect to federal taxes * * *."[2] The limitation of the power to cases of "actual controversy" means that it pertains to "cases" and "controversies" in the constitutional sense.[3] The Declaratory Judgments Act has not changed the jurisdiction of the federal courts. It is merely a procedural statute, providing remedies in cases where jurisdiction already exists.[4]

In a suit between a private party and a state officer for a judgment declaring a statute unconstitutional, there is a sufficient controversy when the officer expresses an intention to enforce an act alleged to be unconstitutional and capable of causing irreparable injury to the plaintiff. The officer may be sued in a federal court as an individual.[5] But when the officer has given no indication of his intent to enforce the act, and has done nothing to place himself in a position adverse to the plaintiff, by the weight

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1. (C. C. A. 9, 1940) 115 F. (2d) 746.
2. (1934) 48 Stat. 955, c. 512, 28 U. S. C. A. (Supp. 1940) sec. 400.
3. Aetna Life Ins. Co. v. Haworth (1937) 300 U. S. 227.
4. Aetna Casualty & Surety Co. v. Quarles (C. C. A. 4, 1937) 92 F. (2d) 321; John P. Agnew & Co. v. Hoage (App. D. C. 1938) 99 F. (2d) 349; Utah Fuel Co. v. National Bituminous Coal Comm. (App. D. C. 1938) 101 F. (2d) 426; United States Fidelity & Guaranty Co. v. Thompson (D. C. S. D. Iowa 1940) 32 F. Supp. 15.
5. Nashville, C., & St. L. Ry. v. Wallace (1933) 288 U. S. 249; Currin v. Wallace (1939) 306 U. S. 1; Chester C. Fosgate Co. v. Kirkland (D. C. S. D. Fla. 1937) 19 F. Supp. 152; Gully v. Interstate Natural Gas Co. (C. C. A. 5, 1936) 82 F. (2d) 145; Black v. Little (D. C. E. D. Mich. 1934) 8 F. Supp. 867; Acme Finance Co. v. Huse (1937) 192 Wash. 96, 73 P. (2d) 341.