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PUBLIC OFFICES AND PUBLIC OFFICERS IN THE UNITED STATES AND IN GERMANY

HANS F. ABRAHAM†

"A word is not a crystal, apparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."
Justice Holmes in *Towne v. Eisner*, 245 U. S. 418, 425, 38 Sup. Ct. 158, 159, 62 L. Ed. 372 (1918).

An author who ventures to determine the American legal concepts of "public office" and "public officer," faces an experience similar to Tamino in Mozart's famous opera "The Magic Flute." His first steps towards the seat of wisdom encounter the imperative, almost discouraging warnings: "Stand back, stand back!" "It is impossible to give a definition of an office that will be applicable to all offices."¹ "The words 'office' and 'officer' are terms of vague and variable import, the meaning of which necessarily varies with the connection in which they are used . . ."² ". . . The definitions of the term 'office' while not inaccurate taken in a general sense, are quite inadequate when applied to particular cases."³ And most uncompromisingly: "It would be futile to attempt to reconcile the many definitions and illustrations of 'public officer'.⁴"

German pre-Nazi law was by no means more precise. There

†Dr. Jur., University of Berlin. Former Lawyer at the Court of Appeals at Berlin.

¹State v. Wilson, 29 Ohio St. 347, 347 (1876).

²State v. Kiichli, 53 Minn. 147, 155, 54 N. W. 1069, 1071 (1893); see *Morgenthau v. Barrett*, 108 F. (2d) 481, 483-485 (C.C.A. D.C. 1939).

³Patton v. Board of Health, 127 Cal. 368, 397, 59 Pac. 702, 705 (1899).

⁴Pacific Finance Corp. v. City of Lynwood, 300 Pac. 50, 52 (Cal. App. 1931).

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