



Caution: When State Corruption Becomes a Federal Crime

08.20.2013

BY: CHARLES E. "CHUCK" JAMES, JR.

With multiple state and federal investigations ongoing, all eyes are on Richmond, Virginia. Meanwhile, the Department of Justice continues to devote considerable resources to other allegations of bribery, corruption and fraud in local, state and federal government. Whether you are a vendor, a government contractor, a government employee or an elected official, the news is full of cautionary tales.

The United States Attorney's Office for the Eastern District of Virginia (EDVA) maintains its website with press releases on various cases, including everything from human trafficking convictions to espionage indictments to lengthy sentences for drug traffickers. Although they don't get the attention of some other cases, even a cursory review of the website demonstrates that the prosecutors in EDVA and from the Department of Justice's Public Integrity Section have been aggressively targeting state and federal contracting fraud and bribery in several forms.

In July of this year EDVA prosecutors were involved in the sentencing of a former federal employee for his acceptance of bribes from a government contractor and the sentencing of a parking lot manager for stealing approximately \$1.4 million in Smithsonian Institution parking fees. Prosecutors also secured an embezzlement conviction against a former treasurer for a municipal fire department, indictments for fraud and embezzlement against the former Chief and President of a volunteer fire and rescue department, and fraud convictions against a former Department of State contract employee and her husband for a \$53 million scheme to steer federal contracts to a company they controlled.

Also in July, Andrew Zoby, Jr., the owner of a plumbing company, was sentenced to 15 months in federal prison. He was convicted of bribing two Norfolk employees in exchange for preferential treatment in the procurement of city plumbing contracts. The two former employees await sentencing for their roles.

On August 8th, the court unsealed a four count indictment against former Portsmouth Sheriff's Office Sergeant Melvin Hike. Hike is alleged to have conspired with a bail bondsman and to have accepted cash payments in exchange for referring recent arrestees to his co-conspirator. Although the alleged conduct is notable in its own right, the government's charging decision is particularly interesting. One count of the indictment is "Attempted Extortion Under Color of Official Right" in violation of 18 U.S.C. 1951. Though most commonly used to prosecute robberies affecting interstate commerce, the "Hobbs Act" has also been used effectively to prosecute public corruption.

The charge under the Hobbs Act states that Sargent Hike "attempted to obtain property to which he was

not entitled from another person, *with that person's consent*, under color of official right. . ." The overt acts in furtherance of the scheme were that the defendant "obtained a gift card valued at \$250 to which he was not entitled" and that he "accepted this gift card knowing it was given in return for his assistance in getting an arrestee released on bond and assigned to a bondsman."

The Hobbs Act, consistent with common law, does not require a threat of force or violence when an office holder solicits or accepts a thing of value to which he is not entitled. Where the government can prove that the thing of value was offered, solicited or accepted in exchange for an official act, either party may be convicted of extortion and sentenced to up to 20 years in federal prison. That's a hefty punishment for a \$250 gift card or other benefit.

Whether in the private sector or in government service, strict adherence to the highest ethical standards regarding gifts and gratuities is critical. Even where no criminal charges are filed, long and expensive investigations can be personally and professionally crippling. Developing strong procurement and compliance programs, providing regular training and promptly reacting to any appearance of impropriety is critically important for anyone wishing to stay on the right side of federal prosecutors. If you're not convinced, just see what the folks at DOJ and EDVA are working on these days and how they have made a *federal crime* out of acts of *state corruption*.

Related People

- Charles E. "Chuck" James, Jr. – 804.420.6529 – cjames@williamsmullen.com

Related Services

- White Collar and Investigations
- Government Relations