Takeaways From Pa. State Treasurer Extortion Case

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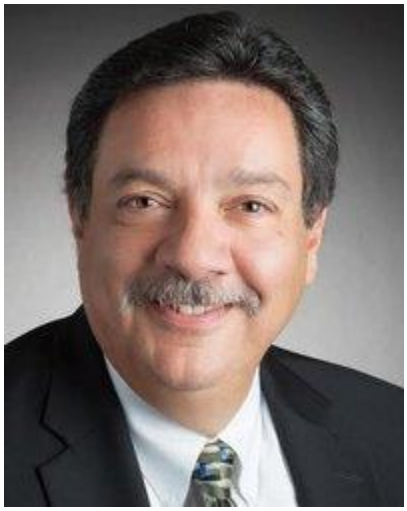

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Law360, New York (February 20, 2015, 10:31 AM ET) -- On Feb. 17, 2015, the former treasurer of Pennsylvania, Robert M. McCord, pled guilty to federal extortion charges for attempting to shake down campaign donors in his failed bid to become the 2014 Pennsylvania Democratic gubernatorial nominee. McCord, who was first elected treasurer in 2008 and re-elected in 2012, was considered by some to be a front-runner in the 2014 gubernatorial primary. According to his signed plea agreement, McCord attempted to extort campaign contributions from a Philadelphia-based law firm that provided hundreds of thousands of dollars of legal services to the state, as well as a Pennsylvania-based property management company that did significant business with the state.

In conversations recorded by federal agents, McCord was heard demanding that the managing partner of the law firm commit a significant contribution to the campaign. McCord went as far as to state, “And that’s fine but you also run a law firm, so if you are not going to hedge your bet, don’t think that I am so stupid that I am not going to read you the riot act down the road. You know what I mean.”

On another occasion, McCord attempted to strong-arm the managing partner into authorizing an unnamed attorney to make a $25,000 contribution as a conduit, stating, “I mean some people come through with these huge numbers and it’s like, I can’t believe they’re doing this. And other people like, aren’t returning my phone calls and I’m going … I can’t be … at the very least I’m still gonna be the freakin’ Treasurer. What the hell are they thinking?”

Perhaps more troubling is McCord’s attempt to use one of his bundlers[1] to extort at least

$100,000 in contributions from the principals of the property management company. McCord instructed the bundler to deliver messages to the principals warning them that McCord could influence the company's attempt to obtain additional business with the state. For example, McCord told the bundler to convey to the principals, "If they (the Property Management Company) got one-tenth of the money they are talking about, it'd be about half a million dollars. Right? I mean if one-hundredth is $50,000. Instead of being part of the solution, they're part of the problem." On another occasion, McCord instructed the bundler to tell the principals "you guys … you need to be really careful about breaking your political word because you … start break … breaking your political word to a guy who is the sitting State Treasurer."

In a videotaped statement, McCord admitted that he attempted to strong-arm the two potential donors stating, "to remind them I could make things difficult for them, I essentially said that potential contributors should not risk making an enemy of the State Treasurer."

Federal prosecutors rely on four statutes to prosecute state and local officials for corruption: the Hobbs Act (18 USC 1951), the mail and wire fraud statutes (18 USC 1341, 1343), the Travel Act (18 USC 1952) and the Racketeer Influenced and Corrupt Organizations Act (18 USC 1961, et seq).

The Hobbs Act, which McCord pled guilty to violating, makes it a crime to obstruct, delay, or affect commerce by robbery or extortion. The Hobbs Act defines extortion as "obtaining property of another, with consent induced by wrongful use of actual or threatened … fear, or under color of official right."

The mail and wire fraud statutes are anti-fraud statutes, and while the specific language of the statutes do not include corruption, they are used extensively by prosecutors in public corruption cases to prosecute honest services fraud. In public corruption cases, a fraudulent scheme under the mail and wire fraud statutes includes "a scheme ... to deprive another of the intangible right of honest services." (18 USC 1346). Honest services fraud arises in two situations: (1) where a public official was paid for a particular decision or action (bribery), and (2) a conflict of interest resulting in personal enrichment, i.e., those circumstances where the official has an express or implied duty to inform others of the official's personal relationship to the matter at hand even though no public harm occurred or there was no misuse of office (or a failure to disclose).

The Travel Act criminalizes the use of interstate travel or the mail to distribute the proceeds of, or promote, or manage unlawful activity including extortion or bribery.

The RICO Act (18 USC 1962) has four subdivisions. Subdivisions (a) and (b) are generally used in situations where a legitimate business has been infiltrated by organized crime. Subdivisions (c) and (d), although designed to combat organized crime, have been used as a tool against corrupt public officials. For example, Section 1962(c) of the RICO Act makes it unlawful for any person, including any public official, "employed by or associated with any enterprise engaged in, or the activities of which affect interstate or foreign commerce, to conduct or participate ... in the conduct of such enterprise's affairs through a pattern of racketeering activity." Likewise, Section 1962(d) makes it unlawful for a person to conspire to violate subdivision (c), as well as subdivisions (a) and (b).

The elements of a RICO violation as charged against a public official are that the official: (a) through the commission of two or more chargeable or indictable or punishable predicate offenses (which include mail or wire fraud, Travel and Hobbs Acts); (b) constituted a "pattern of racketeering." Charging a public official with a RICO violation insinuates the public official is not only corrupt but also involved in organized crime.

McCord was charged under the Hobbs Act of two counts of attempted extortion, and each count is punishable with up to 20 years in prison with a $250,000 fine. There has been no agreement as to what his sentence will be, and reports indicate that the investigation is ongoing and may extend to individuals who contributed to or helped raise funds for McCord's campaigns.

McCord's behavior appears to have been unabashed and shameless, and certainly not representative of the majority of elected officeholders who serve with honesty and integrity. Nonetheless, this case illustrates the vigilance candidates and their supporters must display when it comes to fundraising and avoiding any appearance of impropriety.

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[1] The plea agreement describes a "bundler" as "a person who solicits friends, business associates and others who are willing to contribute to a campaign and thereafter collects the contributions and delivers checks to the candidate in one big "bundle."

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