Bond Case Briefs

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(MIS)GOVERNANCE - NEW JERSEY

U.S. v. Bencivengo

United States Court of Appeals, Third Circuit - April 23, 2014 - F.3d - 2014 WL 1613315

Former mayor was convicted in the United States District Court of violating Hobbs Act and Travel Act for accepting money from insurance broker in exchange for agreeing to influence members of township school board to refrain from putting school district's insurance contract up for competitive bidding, and he appealed.

The Court of Appeals held that:

- Mayor acted under "color of official right" when he accepted money from broker;
- District court did not commit plain error in accepting government's unopposed jury instructions;
- Mayor was "performing a governmental function," within meaning of New Jersey's bribery statute, when he accepted bribes;
- Defendant's convictions did not violate Double Jeopardy Clause; and
- District judge's conduct did not constitute reversible error.

Mayor acted under "color of official right," as required to support his conviction under Hobbs Act, when he accepted money from insurance broker in exchange for agreeing to influence members of township school board to refrain from putting school district's insurance contract up for competitive bidding, even though mayor had no official power over award of school board insurance contracts, where broker reasonably believed that mayor's position gave him influence, and not effective power, over school board's decision.

In sustaining mayor's bribery conviction, Court of Appeals holds that where public official has, and agrees to wield, influence over governmental decision in exchange for financial gain, or where official's position could permit such influence, and victim of extortion scheme reasonably believes that public official wields such influence, that is sufficient to sustain conviction under Hobbs Act, regardless of whether official holds any de jure or de facto power over decision.