

California Supreme Court Clarifies Who is Liable for Prosecution for Misuse of Public Funds

Legal Alerts

Determining If Someone is “Charged” with Fiscal Responsibility is Key

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A public official need not be in charge of public funds to be convicted of misappropriating them, the California Supreme Court has decided. In an opinion issued late last week, the Court found that a public school district superintendent’s conviction should stand because he was responsible for “the receipt, safekeeping, transfer or disbursement of public moneys.” An appellate court had sided with the official, who argued he lacked the authority to make any decisions about expenditures without approval from the school board.

As the superintendent of the Beverly Hills Unified School District, Jeffrey Hubbard oversaw the “business side” of the school district. Without required board approval, Hubbard ordered the Human Resources Department and the head of payroll to increase the then-director of planning and facilities’ monthly car allowance and provide her a \$20,000 stipend.

At issue in the case is California Penal Code section 424, which centers on misuse of public funds and resources and the manipulation of public accounts. The law covers everything from theft or embezzlement of public funds, to filing false claims for pay or vacation time, to misuse of public resources whether employees or equipment. The statute does not require “specific intent,” (which theft does), only knowledge or criminal negligence of the relevant legal authority and duty to act in a particular fashion. The law can also apply to people other than public officials, and extends to any person charged with the receipt of public moneys. Thus, a private person or company that receives public funds earmarked for a particular public purpose can be criminally liable under the statute for the misuse or misappropriation of those funds. The offense is a felony punishable by up to four years in state prison and permanent disqualification from holding office.

People

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Hubbard was charged with violating section 424 and a jury convicted him for directing the payments without board approval. However, the appellate court overturned his convictions, accepting Hubbard's argument that he lacked the formal authority to approve such payments — as only the board had such authority — so he was not charged with the disbursement of such funds. The appellate court also rejected the Attorney General's alternative argument that, because Hubbard was an "officer," he was liable under the statute, regardless whether he was "charged" with control over public moneys.

[In a decision issued June 16](#), the state Supreme Court reversed the appellate court and re-instated Hubbard's convictions. The Court did agree with Hubbard's argument that, because the law was designed to protect the public funds, its application was limited to those in a position to place public funds at risk — those with "some measure of responsibility over public funds," whether a "person" or an "officer." However, the Court did ultimately agree with an alternative argument advanced by the Attorney General, namely that, even if the statute required the officer be "charged" with the disbursement of public funds, Hubbard was so "charged." And it is in this conclusion that the Court truly spelled out the reach of the law.

The Court held that the term "charged" in the law applies broadly to every person with "some control over public funds." Such control need not be the officer's or person's "primary responsibility." Additionally, the officer or person need not have physical control over the funds and, most importantly, the legal authority to spend public moneys need not be vested with the person. "Charged" comes down to a case-by-case determination of "actual function," not necessarily "formal title," although both can factor into the analysis. Under this standard, the Court found that Hubbard, as superintendent, as a matter of title and its attendant responsibilities, and as a matter of "actual managerial authority," was "charged" with the disbursement of public funds.

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