

STATE OF MARYLAND	*	IN THE
	*	CIRCUIT COURT
v.	*	FOR
RONALD HOLT LIPSCOMB	*	BALTIMORE CITY
Defendant	*	CASE NO. 1099007008
* * * * *		

**MEMORANDUM**

The Maryland State Prosecutor filed a single count indictment against Defendant Ronald Holt Lipscomb. It charged Mr. Lipscomb with a violation of Maryland Code, Criminal Law § 9-201, which more specifically reads:

Between on or about January, 2007 and September 24, 2007, the exact date to the Grand Jury being unknown, at Baltimore City, Maryland Ronald Holt Lipscomb did bribe Helen L. Holton, who was, then and there, a duly elected member of the Baltimore City Council to influence her in the performance of her official duties, to wit: did pay the sum of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) to Company Z at the request of and on behalf of the said Helen L. Holton who was then and there a duly elected member of the Baltimore City Council, to influence her in the performance of her official duties, against the peace and dignity of the State.

Indictment at ¶ 41.

Defendant Lipscomb has now moved to dismiss the indictment under Maryland Rule 4-252 asserting that (a) the indictment fails to charge the crime of bribery; (b) the bribery charge is unconstitutional as applied to these facts inasmuch as the Defendant was engaged in actions protected by the First Amendment of the United States Constitution and Article 40 of the Maryland Declaration of Rights; and (c) the conduct alleged is legal according to Maryland's Election Laws. The State of Maryland filed an Opposition to the Defendant's Motion which was

followed by a Reply Memorandum filed by the Defendant. The Court heard argument on the Motion on April 23, 2009.

As the State notes at the outset, the proper focus of a motion to dismiss a criminal indictment under Maryland law is very limited. The trial court does not determine the quality of the evidence but rather tests “the legal sufficiency of the indictment on its face.” *State v. Taylor*, 371 Md. 617, 645 (2002). This review is generally limited to “some substantial defect on the face of the indictment, or in the indictment procedure, or where there is some specific statutory requirement pertaining to the indictment procedure which has not been followed.” *Id.* The indictment at issue charges a single violation of Criminal Law Article, § 9-201. The relevant portion of that section provides that, “[a] person may not bribe or attempt to bribe a public employee to influence the public employee in the performance of an official duty of the public employee.” Maryland Code, Criminal Law § 9-201(b) (2009). A person who commits the offense is guilty of a misdemeanor and subject to the penalties provided in § 9-201(d).

The indictment is straightforward. It alleges a bribe by the Defendant of a public employee, Helen L. Holton, and it is alleged to have been done with the intent to influence her in the performance of her official duties. It is specific as to the nature of the bribe, the payment of \$12,500.00 to a specific company retained by Ms. Holton for a political poll, and that the payment was done at the request of and on behalf of Ms. Holton.

The count asserted was preceded by 38 paragraphs of alleged facts, which set out in detail the relationship between the Defendant and Ms. Holton, a member of the Baltimore City Council, the real estate projects of which Defendant and his related companies were seeking approval by city officials, Ms. Holton’s actions as a city council member which favored the Defendant’s

projects, Ms. Holton's procurement of an election survey for her own election purposes, and finally Ms. Holton's instructing the company doing the survey to bill one of Defendant's companies for her survey, which was paid in full by the Defendant's company. It is alleged that shortly after the election survey was completed that Ms. Holton acted favorably on tax relief benefits for projects connected with the Defendant.

Against this background, Defendant alleges that the indictment fails to adequately charge the crime of bribery. Defendant appears to focus on his assertion that "there is no allegation whatsoever in this 41 paragraph Indictment that Councilwoman Holton and Mr. Lipscomb ever agreed to an exchange of the payment of the election survey in return for her vote on Bill 07-0700." Defendant Lipscomb's Motion to Dismiss at 5. Defendant contends that the indictment alleges nothing more than "an innocuous independent expenditure [by the Defendant] made during a political campaign." *Id.* at 6.

Under Maryland law, bribery requires proof of payment of money or other benefits to a public employee for purpose of influencing the employee in performance of official duties, and it must be established that payment was received pursuant to a corrupt agreement. *Klein v. State*, 52 Md. App. 640, 646 (1982). What is required under Maryland's bribery statute is to show payment involved, not as *quid pro quo* for specific action but with intent to influence conduct of a public servant in relation to his position, employment, or duties. *Spector v. State*, 289 Md. 407, 433 (1981). Bribery is the corrupt payment of a private price for official action. *State v. Canova*, 278 Md. 483, 485 (1976).

Under these standards, it is clear to the Court that the crime of bribery under Maryland law has been adequately charged in this indictment. The State's explanation and refutation of

Defendant's argument are persuasive. As the State notes, the indictment outlines in clear detail the corrupt payment alleged to have been received for the official action:

In June or July 2007, Councilwoman Holton wanted an election survey conducted and sought the services of a pollster company. See Indict. ¶¶ 25-26. In July 2007, she received an invoice from this company in the amount of \$12,500. See Indict. ¶ 27. Soon after she received the invoice, Councilwoman Holton voted favorably on a tax incentive Bill regarding Defendant's Inner Harbor East project. See Indict. ¶ 29. The Defendant benefitted from her favorable vote as a result of the tax breaks received from this Bill. Doracon paid the invoice in full. See Indict. ¶ 31. . . . These details support the allegations of ¶ 41, which clearly alleges that the \$12,500.00 payment to Company Z was made "at the request of and on behalf of the said Helen Holton...to influence her in the performance of her official duties...".

State's Opposition to Defendant's Motion to Dismiss at 5.

The court agrees with the State's analysis as to how the Indictment should be read. It sufficiently alleges a crime under Maryland's bribery statute. The Defendant at trial may well argue the lack of any agreement linking the payment and the actions of Ms. Holton, or may be able to characterize the payment made by the Defendant differently than the State does, but at this initial stage, the indictment is not fatally defective on its face.

Defendant also contends that the indictment must be dismissed because the bribery charge is unconstitutional as applied to these facts in violation of the First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights. To support this argument, Defendant characterizes the payment of the \$12,500.00 as simply a campaign contribution, or independent political expenditure with no unlawful expectation of action by Ms. Holton, or as a totally independent campaign expenditure enjoying full constitutional protection. To support its position, Defendant cites cases such as *U.S. v. McCormick*, 500 U.S. 257 (1991), *Buckley v. Valeo*, 424 U.S. 1 (1976), and *State v. Brookins*, 380 Md. 345 (2004). These cases are

all controlling authority, but none of them deal with a situation such as the one presented here. As noted above, the State has set out in the indictment a sufficient charge of bribery under Maryland law. While the sweep of the First Amendment is great in the arena of political speech and campaign activity, it does not sanction what Maryland has criminalized which is “the corrupt payment of a private price for official action.” *State v. Canova*, 278 Md. 483 (1976). This is not protected speech. It is bribery.

Defendant can certainly present to the adjudicator of fact evidence and argument that support its theory of a non-corrupt view of the expenditure made here. As Defendant notes, its challenge here is an “as applied” challenge, which is by necessity dependent on the specific facts that pertain. It is premature to judge how the facts will shake out at trial, and whether those facts will show that the Defendant engaged in protected political expression rather than corrupt activity which is criminal.

As the State notes, it will be difficult for the Defendant to establish that the payment of the money for the poll was an independent expenditure. Expenditures coordinated with a candidate are treated as contributions. The indictment here alleges that the payment was a closely coordinated effort between the Defendant and Ms. Holton. She directed the company to forward the invoice to the Defendant for payment. Defendant paid the invoice, but only because of Ms. Holton’s request.

Finally, Defendant argues that the indictment must be dismissed because the conduct in which Mr. Lipscomb engaged was legal under Maryland’s Election Law. Defendant states that Maryland has statutorily recognized the ability of individuals to make unlimited monetary expenditures in political campaigns and cites Section 13-102 of the Election Law Article, which

applies to independent expenditures by an individual. This Section applies by its terms only to a person who “acts independently of any other person.” As noted above, the allegations of the indictment do not support the contention that Defendant’s payment to Company Z was an independent expenditure. Indeed, it is alleged in the Indictment that the payment was a closely coordinated activity with the public official involved. If this is shown at trial, then Section 13-102 would not offer a defense.

For the reasons stated above, the Defendant’s Motion to Dismiss shall be denied.

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Judge Dennis M. Sweeney