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CRIMES AND OFFENSES

Offenses Against Public Administration: Provide Definition of Bribery of a Public Official or Employee

CODE SECTION: O.C.G.A. § 16-10-2 (new)
BILL NUMBER: SB 72
ACT NUMBER: 560
SUMMARY: The Act expands the class of people subject to the offense of bribery and provides a new definition of bribery. Public officials, whether elected or appointed, or employees of the state, any county or municipality or any agency, authority, or entity thereof, are subject to the Act. The Act provides that a public official or employee commits bribery when she solicits, accepts, or agrees to receive a thing of value by inducing the reasonable belief that the thing will influence her performance of any official action.
EFFECTIVE DATE: July 1, 1991

History

Part of the Governor's proposed crime legislation was SB 72 to provide for the criminal offense of extortion by public officials.¹ The Governor wanted to strengthen extortion laws in the state and have something parallel to the federal Hobbs Act² for public officials in Georgia.³ The Hobbs Act is the federal racketeering statute that has been used in the past to prosecute public officials for extortion in Georgia.⁴

SB 72

As summarized in House floor debate, this Act covers those situations where a public official solicits something of value in exchange for

1. Michael Abbott, *Does Georgia Need This Hobbs Act?*, FULTON CO. DAILY REP., Feb. 22, 1991, at 9.

2. 18 U.S.C. § 1951 (1988).

3. Telephone Interview with Rep. Thurbert Baker, Governor's Assistant Floor Leader (Apr. 11, 1990) [hereinafter Baker Interview].

4. Abbott, *supra* note 1.

something related to official action.⁵ The Act amends Code section 16-10-2(a)(2) by modifying the old Code language defining bribery.⁶

The intent of the Act is to change the definition of bribery and the scope of public officials and employees subject to the Act.⁷ Under the new language, the definition of bribery is satisfied when a public official or employee directly or indirectly solicits, receives, accepts, or agrees to receive a thing of value by inducing the reasonable belief that the giving of the thing will influence her performance of, or failure to perform, any official action.⁸ Individuals subject to the Act include public officials, whether appointed or elected; employees of the State or of any agency, authority, or entity of the State; or employees of any county or municipality or any agency, authority, or entity thereof.⁹

SB 72, as introduced, was patterned after and expressly referred to the federal Hobbs Act,¹⁰ and also proposed a new Code section.¹¹ As a result of political compromise,¹² the House Judiciary Committee eliminated the reference to the Hobbs Act,¹³ structured the Bill to modify the already existing bribery statute,¹⁴ and deleted detailed definitions of the property given to a public official.¹⁵

The original version of SB 72 seemed to be so broad as to cover the act of a lobbyist taking a legislator to lunch.¹⁶ While concerns were expressed about an equally broad reading of the House Committee

5. *Law Makers '91* (WGTV television broadcast, Mar. 9, 1991) (videotape available in Georgia State University College of Law Library). Rep. Thurbert Baker presented the House Committee Substitute to the bill. *Id.*

6. O.C.G.A. § 16-10-2(9)(2) (Supp. 1991).

7. *Id.*

8. *Id.*

9. *Id.*

10. SB 72, as introduced, 1991 Ga. Gen. Assem. See Abbott, *supra* note 1, for a critical analysis of the bill as introduced.

11. SB 72, as introduced, 1991 Ga. Gen. Assem.

12. Baker Interview, *supra* note 3.

13. By reference to the Hobbs Act, state courts may have referred to federal precedent in construing the state statute. See Abbott, *supra* note 1. SB 72 as introduced prohibited officials from obtaining property to which they would not otherwise be entitled, by "inducement" under color of public office. *Id.* The Court of Appeals for the Eleventh Circuit, however, has placed a liberal reading on what constitutes "inducement." *Id.* In *United States v. Evans*, 910 F.2d 790, 796 (11th Cir. 1990), the court held "the requirement of inducement is automatically satisfied by the powers connected with the public office." The word "inducing" under the Georgia statute, however, should not be linked to the federal construction of the word under the Hobbs Act. Baker Interview, *supra* note 3.

14. O.C.G.A. § 16-10-2 (Supp. 1991). This was done in part to prevent overlap between the new Act and the then-existing bribery statute. Baker Interview, *supra* note 3.

15. SB 72, as introduced, 1991 Ga. Gen. Assem.

16. *Law Makers '91* (WGTV television broadcast, Mar. 9, 1991) (videotape available in Georgia State University College of Law Library). Rep. Thurbert Baker presented the House Committee Substitute to the bill. *Id.*

substitute of the bill,¹⁷ the elements of bribery under the Act focus on the actions of the public official in “inducing the reasonable belief that the giving of the thing will influence his or her performance.”¹⁸ Therefore, unless the legislator has accepted the lunch by inducing the reasonable belief that the lunch will influence her performance of an official act, taking a legislator to lunch is not bribery under the Act.¹⁹

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17. *Id.*

18. O.C.G.A. § 16-10-2(9)(2) (Supp. 1991).

19. *Id.* See also *Law Makers '91* (WGTV television broadcast, Mar. 9, 1991) (videotape available in Georgia State University College of Law Library).