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## Mass. Pot Shop Atty Says 'Pay To Play' Was Just Lobbying

By **Elliot Weld**

Law360 (August 25, 2022, 5:13 PM EDT) -- A Massachusetts attorney Thursday pushed to dismiss charges that he tried to bribe a police chief to influence the approval of a pot shop in which the lawyer had a financial stake, arguing his conduct was legally justifiable lobbying activity.

Attorney Sean O'Donovan said that construing federal bribery laws to apply to his alleged attempted payments to a relative of the police chief in Medford, Massachusetts, would open the door to prosecuting anyone who had any sort of informal influence on a public official, including friends, family members and former employees of those officials.

"It would also run the risk of chilling protected First Amendment lobbying activity and infringe upon the rights of states to regulate their own political systems," O'Donovan argued in his motion. "Moreover, it would constitute an unprecedented expansion of the federal criminal law into matters traditionally governed by state and local laws and ethics rules."

O'Donovan further argued that the indictment against him never established a quid pro quo between him and the chief, only that O'Donovan had asked an unnamed relative, who held no official government position, to "speak with the chief" about the prospect of Theory Wellness opening a pot shop in Medford. O'Donovan offered \$25,000 to the relative for doing so, but never interacted directly with the chief. O'Donovan argues that the indictment failed to establish the chief as the beneficiary of this offer.

"Here, there is no allegation of any benefit whatsoever flowing from Mr. O'Donovan to the chief, the only party alleged to have owed a duty of honest services," the motion reads.

O'Donovan's motion argues that prosecuting a person who made a monetary offer to a third party would be unprecedented.

O'Donovan's motion gave a summarized history of case law that has sought to define the relationship between state and federal statutes on honest services fraud. O'Donovan argues that in this case, state laws are more applicable.

"O'Donovan's alleged conduct did not, as a matter of law, violate any state statute, including ones addressing the relationship between public officials and people close to them advocating for official acts on behalf of clients," the motion reads.

Massachusetts law does not prohibit family members from lobbying a public official, O'Donovan argued, and has little regulation over lobbying at the municipal level. The town of Medford also doesn't have any law regulating municipal lobbying, he said. Therefore, the defense argued "there was no legal obstacle to Mr. O'Donovan entering into an agreement with individual 1 to lobby his relative in exchange for payment contingent upon the success of the lobbying efforts."

Medford adopted two ordinances in November 2020 that created a five-member committee consisting of the police chief and four other public officials that has the power to approve marijuana shops in the town.

O'Donovan was retained by Theory Wellness in 2018 to assist with opening a shop. He received a \$7,500 monthly retainer and would have received 1% of the gross profits of the pot store in Medford if it had been approved, according to prosecutors. The indictment said Theory Wellness was not aware of O'Donovan's plan to give money to the chief's relative, and fired O'Donovan after the indictment was issued.

Counsel for O'Donovan did not respond to requests for comment Thursday. The Massachusetts U.S. attorney's office declined to comment.

O'Donovan is represented by Martin G. Weinberg of Martin G. Weinberg PC.

The government is represented by Kristina E. Barclay of the Massachusetts U.S. attorney's office.

The case is USA v. Sean O'Donovan case number 1:22-cr-10141 filed in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Brian Dowling. Editing by Patrick Reagan.