

Laws Used to Prosecute State and Local Corruption

Utah Tax Fraud Statutes [59-10-541](#). [Violations — Civil and criminal penalties.](#)

Utah Communications fraud [UCA 76-10-1801](#)

Utah Statute of Limitations provisions [UCA 76-1-303](#)

Federal Honest services fraud – perhaps the most popular theory used to prosecute state and local corruption is honest services mail and wire fraud. The mail and wire fraud statutes ([18 U.S.C. §§ 1341 and 1343](#)) apply to use of the mail, phone lines, or wireless transmissions in furtherance of any “scheme or artifice to defraud.” The statutes are routinely applied to the more typical schemes to defraud victims of money or property, such as a Ponzi scheme. But prosecutors also use mail and wire fraud to prosecute state and local officials for corruption, on the theory that the corrupt acts defrauded the public of its intangible right to the fair and honest services of their public officials. Honest services fraud has been used to prosecute many state and local officials over the past few decades. At times it has been applied to schemes that appeared more politically sleazy or unethical than criminally corrupt, which led to controversy about the potential breadth of the theory. But in 2010 in *Skilling v. United States* the Supreme Court limited the statute, ruling that it only applies to conduct that amounts to bribery or kickbacks. Even with this limitation, though, it remains an important weapon for federal prosecutors attacking state or local corruption. Honest services fraud was one of the primary statutes used in the McDonnell prosecution, as well as in the prosecutions of New York state Legislators.

Federal Hobbs Act Extortion – another common theory is extortion under color of official right under the Hobbs Act, [18 U.S.C. § 1951](#). As I have discussed elsewhere, extortion “under color of official right” has been interpreted by the Supreme Court essentially to be the equivalent of bribery. In the absence of a general federal bribery statute that applies to state and local officials, Hobbs Act extortion is a favorite of federal prosecutors looking at state and local corruption. Along with honest services fraud, Hobbs Act extortion formed the core of the indictment against the McDonnells in Virginia, and the same two statutes also were used in the recent indictment of former New York state Assembly Speaker Sheldon Silver.

Federal Program Bribery – a less commonly used but very powerful law is the federal program bribery statute, [18 U.S.C. § 666](#). It prohibits theft or bribery by an agent of any organization local government in connection with programs or agencies receiving federal funds. There are certain (and quite modest) minimum dollar requirements involved, but once those are met this statute is a potent anti-bribery tool that can apply not only to state or local government officials but to private individuals as well.

Federal RICO – the Racketeer Influenced and Corrupt Organizations Act, [18 U.S.C. §§ 1961-1964](#), is a statutory behemoth primarily aimed at organized crime. Given the breadth of the statute, however, it is possible to apply it to entities such as a governor’s office, charging that state officials or others conducted the affairs of that office through a “pattern of racketeering activity.” Racketeering activity is defined to include a number of state law crimes, including bribery and extortion. Accordingly, a state law bribery scheme affecting a state or local government, while not violating the federal bribery statute, may be brought as a federal prosecution through the vehicle of RICO.