

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

JEFFREY HUBBARD,

Defendant and Appellant.

Case No. S216444

Court of Appeal, Second Appellate District, Division One No. B239519
Los Angeles County Superior Court Case Nos. SA075027, BA382926
The Honorable Stephen A. Marcus, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

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ISSUES PRESENTED

1. Does a superintendent of a public school district (i.e., an officer of a district of this state), qualify for prosecution for misappropriation of public funds under Penal Code section 424 without a further showing that the officer is “charged with the receipt, safekeeping, transfer, or disbursement of public moneys”?

2. If section 424 applies only when an officer is “charged with the receipt, safekeeping, transfer, or disbursement of public moneys,” must the officer have final “approval authority” of the expenditure (Opn. 6-8) rather than “some degree of control” over the disbursement of public funds (*People v. Groat* (1993) 19 Cal.App.4th 1228, 1232) for the officer to qualify for prosecution for misappropriation of public funds?

INTRODUCTION

Appellant, the Superintendent of the Beverly Hills Unified School District, arranged for payment of a \$500 monthly car allowance and a \$20,000 stipend to a contract employee. He did so without approval of the Beverly Hills Board of Education, even though board approval was required. In doing so, appellant misappropriated funds in violation of Penal Code section 424.¹

Specifically, he committed the acts of misappropriation as a public officer within the meaning of section 424. In addition, he acted as a person “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” within the meaning of section 424 because he had some control over public funds. Interpreting section 424 in a manner that finds appellant liable is in accord with the plain language of section 424, as well as the

¹ All further statutory references are to the Penal Code unless specified otherwise.

public policy behind the statute. Accordingly, the Court of Appeal's conclusion to the contrary should be reversed, and appellant's convictions should be affirmed.

STATEMENT OF THE CASE

Appellant was the Superintendent of the Beverly Hills Unified School District ("BHUSD") from July 1, 2003, through June 6, 2006. (7RT 1550.) As the superintendent, appellant was the chief executive officer of the district. He supervised all of the operations of the district. His responsibilities included developing budgets, expending district funds, accounting, negotiating contracts, and hiring and firing teachers and staff. (7RT 1527-1532, 1600.) Appellant taught courses for the Association for Superintendents that covered the ethical and legal obligations superintendents had regarding public funds. (7RT 1623.)

The BHUSD Board of Education had five members. The BHUSD held public board meetings twice a month. The superintendent attended all board meetings. Prior to each board meeting, the superintendent's office published an agenda setting forth the items to be covered during the meeting. (3RT 433-435.) The board held closed session meetings before the public sessions to discuss confidential topics, such as personnel, litigation, and student matters. Any board decision regarding employee compensation may have been discussed first in closed session, but the decision always had to be ratified in open session in order for it to take effect. In order for anything to be ratified in open session, it had to be listed on the board agenda. After every public meeting, minutes were published summarizing all of the board actions that took place during the meeting. (3RT 435-437.)

Karen Christiansen was the Director of Planning and Facilities for the BHUSD. In 2005, she had an employment contract with the district that

stated her annual salary was \$113,000 and provided for a \$150 per month car allowance. The contract did not provide for any additional stipends. The contract could only be amended with board approval. (3RT 440-441.)

In a memo dated September 29, 2005, appellant directed Melody Voyles, a Payroll Benefit Specialist at the district office, to pay Christiansen a \$500 per month car allowance retroactive to September 1, 2005. Christiansen began receiving the increased car allowance in October 2005. (3RT 369-373.)

On February 6, 2006, appellant sent another memo to Voyles directing her to pay a \$20,000 stipend to Christiansen. (3RT 375.) Voyles entered the information into the payroll system, and Christiansen received two \$10,000 stipend payments for a total of \$20,000. The two payments were made on February 9 and 16. The payments were not part of Christiansen's regular monthly compensation. (3RT 365-368.)

Cheryl Plotkin, the Director of Business Operations at the BHUSD, testified that, other than the memos at issue in this case, she had never seen a memo from the superintendent to an employee directing the payment of money to another employee without the necessary supporting documentation. (6RT 1370.) Typically, if the superintendent wanted to increase an employee's compensation or pay an employee a stipend, the superintendent would initiate the process with the assistant superintendent for human resources. The human resources department would then prepare the necessary paperwork and put together an approval package for submission to the board. After the paperwork was prepared by human resources, it was submitted to the superintendent for transmittal to the board. (4RT 716; 6RT 1363-1364, 1368, 1435; 7RT 1535-1537.) The superintendent served as a gatekeeper for all board approval. (7RT 1543.) It was not possible to get board approval for additional payments without transmitting the item to the board via the superintendent. (6RT 1266-1267,

1325.) It was unprecedented and improper for the superintendent to direct a payroll benefit specialist to increase an employee's compensation or pay a stipend without following the typical process for obtaining board approval. (4RT 721; 6RT 1370; 7RT 1544.)

Two of the five board members that served on the BHUSD board during the time Christiansen received the payments testified for the prosecution. Myra Lurie was a BHUSD board member from 2003 through 2011. (3RT 432.) She testified that appellant never asked for board approval to give Christiansen a \$500 per month car allowance or a \$20,000 stipend. Appellant never personally told Lurie that he wanted to give Christiansen a stipend. The board never approved the additional payments to Christiansen, nor did the board ever direct appellant to pay the car allowance or stipend. (3RT 441-442; 4RT 608-609.) If the board had met in a closed session to discuss a \$20,000 stipend for an employee, the vote on the stipend would have been reported in the minutes. Neither the agendas nor the minutes for the board meetings that occurred in September and October 2005 reported board action on the increased car allowance for Christiansen. (4RT 614-619.)²

In April 2006, Lurie was in a car with appellant and Christiansen during a work-related trip to Sacramento. During the car ride, appellant remarked to Christiansen that he was going to find a way to pay her more money. Later, out of Christiansen's presence, Lurie told appellant that she was disappointed that he would offer an employee a raise without first consulting the board. Appellant did not mention that he had already directed that Christiansen be paid a \$20,000 stipend. (4RT 609-612.)

² Alex Cherniss, the Assistant Superintendent of Business Services at the time of trial, searched BHUSD records for evidence that the board ever approved the \$500 car allowance and/or the \$20,000 stipend and did not find anything. (4RT 776-780.)

Myra Demeter was a BHUSD board member between 2001 and 2009. Demeter testified that the board never directed appellant to give a \$20,000 stipend to Christiansen. The board never approved the stipend or the increased car allowance. (5RT 962-974.) The board did not learn about the payments to Christiansen until 2009. (5RT 975.)

At trial, the jury was instructed, without objection, that the prosecution had to prove that appellant was “an officer of this state, or of any county, city, town, or district of this state, or was a person charged with the receipt, safekeeping, transfer, or disbursement of public moneys.”³ (2CT 303-304; 8RT 1833-1834.) Appellant’s defense at trial was that he did not have the requisite knowledge and intent to commit the crime and that the prosecution was not commenced within the time required by the statute of limitations. He did not argue that he was not subject to prosecution because that he was not an “officer” or “a person charged with the receipt . . . of public moneys.” (8RT 1862-1902 [defense closing argument].)

A jury convicted appellant of two counts of misappropriation of public funds (§ 424, subd. (a)(1)). (2CT 287-289.) The trial court placed appellant on three years of formal probation with various terms and conditions. (2CT 316-318.)

On appeal, appellant contended that he was not a person “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” within the meaning of section 424, and therefore he could not be found

³ This portion of the instruction was consistent with standard CALJIC No. 7.26.1 (2012). Counsel objected to a separate portion of the instruction regarding the intent element. (7RT 1654-1664.)

guilty of violating that section.⁴ Respondent countered that appellant, as the superintendent of the BHUSD and an officer of the school district, was a public officer, and therefore fell within the ambit of section 424 without need for showing that he was “a person charged with the receipt, safekeeping, transfer, or disbursement of public moneys.” Respondent also argued that the evidence established that appellant exercised some degree of control over public funds; therefore, he was also “a person charged with the receipt, safekeeping, transfer, or disbursement of public moneys.” (See *People v. Groat* (1993) 19 Cal.App.4th 1228, 1232 [holding that evidence of “some degree of control” over public funds was sufficient to qualify a person for prosecution under section 424].)

The Court of Appeal reversed appellant’s convictions. The court held that appellant’s status as a public officer could not alone qualify him for prosecution under section 424. Further, the court found appellant was not a person “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” since the “approval authority” to make the payments rested with the BHUSD board, rather than with appellant. (Opn. 10.)

SUMMARY OF THE ARGUMENT

Appellant was a public officer—the chief executive of the BHUSD with oversight of the budgeting, accounting, business operations, and contracting on behalf of the district. As a public officer, he was within the class of persons subject to prosecution under section 424. Interpreting section 424 to require that, in addition to being a public officer, appellant also had to be “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” (Opn. 8) renders the first part of the statute

⁴ Appellant raised several other claims on appeal; however, the Court of Appeal did not reach the merits of those claims.

meaningless and it is contrary to the legislative intent to hold public officers specially accountable.

And even if section 424 limits liability to public officers who are also “charged with the receipt, safekeeping, transfer, or disbursement of public moneys,” only “*some* degree of control over public funds” is necessary and that control need not be the primary function of defendant in his or her job. (*People v. Groat, supra*, 19 Cal.App.4th at p. 1232, italics added.) Here, appellant had, at a minimum, some control over the expenditure of public funds since he was the chief executive officer of the BHUSD and was responsible for the day-to-day business operations of the district.

There is no authority for interpreting section 424 to require an officer to have final authority for approving an expenditure. (Cf. Opn. 10.) Under such a rule, almost no public officials would be subject to liability because most public officials do not have “approval authority” and they cannot legally expend or disburse funds without authorization from another elected body, such as a school board. Such a narrow interpretation of section 424 runs counter to the Legislature’s intent.

Accordingly, this Court should reverse the decision below and affirm appellant’s convictions.

STANDARD OF REVIEW

In interpreting a statute, this Court has held that courts should look to the plain language, attempt to effectuate legislative intent, and avoid absurd consequences:

In construing a statute, our role is to ascertain the Legislature’s intent so as to effectuate the purpose of the law. [Citation.] In determining intent, we must look first to the words of the statute because they are the most reliable indicator of legislative intent. [Citation.] If the statutory language is clear and unambiguous, the plain meaning of the statute governs. [Citation.] “If, however, the language

supports more than one reasonable construction, we may consider ‘a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’ [Citation.] Using these extrinsic aids, we ‘select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.’ [Citation.]” [Citation.]

(*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.)

ARGUMENT

I. A SCHOOL DISTRICT SUPERINTENDENT IS AN OFFICER OF A DISTRICT OF THE STATE AND CAN BE PROSECUTED FOR MISAPPROPRIATION OF PUBLIC FUNDS WITHOUT A FURTHER SHOWING THAT THE OFFICER IS “CHARGED WITH THE RECEIPT, SAFEKEEPING, TRANSFER, OR DISBURSEMENT OF PUBLIC MONEYS”

From the time it was enacted in 1872, section 424⁵ has punished the misappropriation of public moneys by an “officer of this state, or of any county, city, town, or district of this state, *and* every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys” (§ 424, subd. (a), italics added.) It is undisputed that appellant was an officer of the BHUSD. Appellant was the superintendent

⁵ Section 424, subdivision (a)(1), states:

Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who . . . [w]ithout authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another . . . is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

of the BHUSD, and, as such, he was the chief executive officer of the district, with oversight over all of the district's operations.

The Court of Appeal rejected respondent's argument that appellant could be guilty of violating section 424 without an additional showing he was "charged with the receipt, safekeeping, transfer, or disbursement of public moneys." In doing so, the court observed that no case had adopted the proposed interpretation and, relying upon language in this Court's opinion in *People v. Dillon* (1926) 199 Cal. 1, concluded "section 424 concerns only the misuse of public funds *by the official custodians of those funds . . .*" (Opn. 9, original italics.)

This Court should re-examine section 424 in light of well-established principles of statutory interpretation and the legislative intent underlying the statute. Such an examination will clarify that a public officer of the entities listed in the statute may be convicted of violating section 424 without an additional showing that the public officer was "charged with the receipt, safekeeping, transfer, or disbursement of public moneys."

A. To Avoid Rendering Part of Section 424 Meaningless, a Defendant Must Either Be An "Officer" or a "Person Charged With the Receipt, Safekeeping, Transfer, or Disbursement of Public Moneys"

Under the plain language of section 424, all public officers are subject to liability if they misappropriate public funds. However, for "every other person" who is not a public officer, that person must be "charged with the receipt, safekeeping, transfer, or disbursement of public moneys" in order to be liable. Thus, where, as here, a defendant is a public officer, he can be found liable for misappropriating public funds under section 424. No further showing is necessary. In other words, the language in section 424 following "person" describes "every other person," other than officers, who also fall within the ambit of the statute.

The Court of Appeal reasoned that the “charged with the receipt . . .” language of the statute modified both “officer” and “every other person.” (Opn. 8.) However, such a construction of the statute renders the portion of the statute describing “officer” mere surplusage. “Well-established canons of statutory construction preclude a construction which renders a part of a statute meaningless or inoperative.” (*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274.) If no characteristic distinguishes the specified class of officers from the class of non-officers, as is true under the Court of Appeal’s interpretation, the entire portion of the statute preceding “every other person” is rendered meaningless.

If the Legislature had intended that the “charged with the receipt . . .” language of the statute modified both “officer” and “every other person,” there would have been no need to include *any* category of officer. Instead, it could have written the statute as follows:

Any person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who . . . [w]ithout authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another

To give meaning to each word and phrase in the statute, section 424 should be interpreted as listing the various people subject to the statute, i.e., “each officer of this state . . .” or a “person charged with the receipt . . . of public moneys.” (See *People v. Groat, supra*, 19 Cal.App.4th at pp. 1231-1232 [“To be convicted under section 424, a defendant must be a public ‘officer’ or a ‘person charged with the receipt, safekeeping, transfer, or disbursement of public moneys’”].) As discussed below, such a construction of the statute would give the words of the statute their plain and commonsense meaning and would effectuate the legislative intent to “safeguard the public treasury and ensure public confidence in the state’s use of its funds.” (*Id.* at p. 1232.)

It is undisputed that appellant, the superintendent of the BHUSD and chief executive officer of the district with oversight over all of the district's operations, was an officer of the BHUSD. Where, as here, a defendant is a public officer, he can be found liable for misappropriating public funds under section 424. No further showing is necessary.

B. The Legislature Intended to Hold Public Officers Specially Accountable for Public Funds

This Court has previously observed that the legislative intent underlying section 424 requires that it be “construed very broadly.” (See *Stark v. Superior Court* (2011) 52 Cal.4th 368, 400.) The statutory construction proposed here would give the words of the statute their plain and commonsense meaning and would effectuate the legislative intent “to safeguard the public treasury and ensure public confidence in the state’s use of its funds.” (*People v. Groat, supra*, 19 Cal.App.4th at p. 1232.) Holding public officers specially accountable to the public for the safekeeping of public funds—regardless of whether they are charged with the receipt, safekeeping, transfer, or disbursement of public moneys—is in accordance with the legislative intent behind section 424. (*Ibid.*)

An “officer” necessarily has a responsibility to perform the duties entrusted to them in a lawful manner.

“A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. [Citation.] . . . The most general characteristic of a public officer, which distinguishes him from a mere employee, is that *a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting* [Citations.] . . .’ . . . [¶] ‘[T]wo elements now seem to be almost universally regarded as essential’ to a determination of whether one is a ‘public officer’:

‘First, a tenure of office “which is not transient, occasional or incidental,” but is of such a nature that the office itself is an entity in which incumbents succeed one another . . . , and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial.’ [Citation.]”

(*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1212, original italics.)

In modern governance, the duties of a public officer necessarily and logically encompass, at a minimum, some control over the public funds entrusted to the office. Indeed, it is difficult to conceive of a situation where a public officer could be prosecuted for misappropriating public funds without expending funds entrusted to the public office. An officer who misappropriates public funds violates the public trust. Therefore, section 424 requires only that a “officer” “[w]ithout authority of law, appropriates [public moneys], or any portion thereof, to his or her own use, or to the use of another.” (§ 424, subd. (a)(1).) No additional showing that the officer was “the official custodian[] of those funds” is required. (See *People v. Lee* (1975) 48 Cal.App.3d 516, 523 [“No express language in section 424 restricts its application to cases where the public officer’s duties include the possession of public funds.”].)

Indeed, a public officer who is *not* entrusted with public money is at least as culpable for misappropriation as an officer who is entrusted with such money. Public officers are given public trust by virtue of the office that they hold, and that trust is not fully dependent upon the specific duties that are delineated to them. That trust is breached when they misappropriate public money, regardless of their specific duties. Thus, a public officer who has only some control over the public coffers but nevertheless steals money from them is as culpable as the treasurer, charged with guarding the coffers, who similarly steals from them. Accordingly,

construing section 424 to exclude public officers who may not have specific duties regarding public money would lead to absurd consequences.

Here, the Court of Appeal's requirement that a public officer must be "charged with the receipt, safekeeping, transfer or disbursement of public moneys" (Opn. 8-9) is counter to the Legislature's intent to hold public officers specially accountable. (*People v. Groat, supra*, 19 Cal.App.4th at p. 1232.) The Court of Appeal's reliance on *People v. Dillon, supra*, 199 Cal. 1, in support of its reasoning is misplaced. (Opn. 8-9.)

In *Dillon*, the defendant was the commissioner of finance for the City of Fresno. There was no dispute that the defendant was a public officer and fell within the ambit of section 424. The issues in *Dillon* concerned whether the defendant could be prosecuted under section 424 rather than section 503 or 504, and what was the requisite intent for the crime this Court described as "malfeasance in use of public funds" (§ 424, subd. (a)). (*People v. Dillon, supra*, 199 Cal. at p. 2.) This Court held that the possibility of prosecution under a more general statute for embezzlement, such as section 503 or 504, did not preclude prosecution under section 424. (*Id.* at pp. 5-7.) In addition, the Court held that proof of a defendant's intent to violate law was not required, and that proof of the defendant's intention to commit the forbidden act was sufficient. (*Id.* at pp. 7-9.)

Although *Dillon* states that "section 424 has to do solely with the receipt, safe-guarding, transfer, and disbursement of public moneys by official custodians" (*People v. Dillon, supra*, 199 Cal. at p. 10, italics added), that statement "was merely paraphrasing the first paragraph of section 424 for the purpose of emphasizing that section 424 is limited to the single subject of 'public moneys' whereas section 504 broadly embraces 'any property . . .'" (*People v. Lee, supra*, 48 Cal.App.3d at p. 522). The statements by the *Dillon* court that were relied on by the Court of Appeal in this case (Opn. 8) were clearly not intended to set the parameters for

assessing the scope of section 424 as applied to other public officers or situations since the Court simply did not address those questions.

No express language in section 424 restricts its application to cases where the public officer's duties include the possession of public funds. The legislative intent behind section 424, as discussed in *Dillon*, leaves no doubt that the section was also intended to cover instances where an officer misappropriates public funds without a further showing that the officer was a "person charged with the receipt, safekeeping, transfer, or disbursement of public moneys" and/or that the officer had "approval authority" for disbursing the funds.

Here, as the superintendent of the BHUSD, appellant was clearly an officer within the purview of section 424. A school district superintendent is statutorily defined as "the chief executive officer of the governing board of the district." (Ed. Code, § 35035, subd. (a); see *People v. Crosby* (1956) 141 Cal.App.2d 172, 175 ["There is no doubt that a public administrator is a public officer of a county"].) Education Code section 35035 delineates the powers and duties of school superintendents. Those powers and duties include preparing and submitting a budget to the board, entering into contracts for and on behalf of the district, and submitting financial and budgetary reports to the board. These duties were delegated to appellant. (7RT 1527-1532, 1600.)

As an "officer of . . . [a] district" appellant was prohibited from appropriating public moneys to his own use or to the use of another without authority of law. (§ 424, subd. (a)(1).) He was obligated to protect the school district's funds and to ensure that funds were expended for the benefit of the students in the district. (See 7RT 1540.) Thus, appellant's status as an officer of the district meant that he fell within the ambit of section 424. No additional showing that appellant was "charged with the

receipt, safekeeping, transfer, or disbursement of public moneys” was required.

II. THE COURT OF APPEAL ERRONEOUSLY CONCLUDED “APPROVAL AUTHORITY” WAS REQUIRED TO BE A PERSON “CHARGED WITH THE RECEIPT, SAFEKEEPING, TRANSFER, OR DISBURSEMENT OF PUBLIC MONEYS” RATHER THAN “SOME DEGREE OF CONTROL” AS IMPLICITLY APPROVED BY THIS COURT IN *STARK*

Appellant was the chief executive officer of the BHUSD and was responsible for the day-to-day business and operations of the district. Appellant had oversight over all aspects of the district’s operations, including business, accounting, facilities, and human resources. (7RT 1600.) He initiated district expenditures by bringing them to the board for approval. If an expenditure was approved, he was then obligated to ensure that the payment was made. The BHUSD board relied on appellant to spend district funds only on things that had been approved by the board. (7RT 1543.) The evidence also showed that appellant had the actual ability to order funds to be disbursed because he directed subordinate staff to make payments to Christiansen, and that directive was carried out.

Despite the evidence of appellant’s control over the BHUSD’s funds, the Court of Appeal held that he could not be prosecuted under section 424 as a “person charged with the receipt, safekeeping, transfer, or disbursement of public moneys” because he did not have “approval authority” to expend the funds. (Opn. 9-10.) Even assuming a public officer must also be “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” in order to be found liable under section 424, the evidence overwhelmingly established that appellant, at a minimum, had some degree of control over public funds, which was sufficient to satisfy section 424. The Court of Appeal’s narrow

interpretation of section 424 runs counter to the legislature's intent to construe the statute broadly and effectively precludes a vast number of public officials from prosecution under the statute.

A. Only Some Control Over Public Funds Is Necessary For a Person To Be “Charged With The Receipt, Safekeeping, Transfer, or Disbursement of Public Moneys”

Courts examining convictions for violations of section 424 have long held that only “some degree of control” over public funds is necessary for a person to be charged with the receipt, safekeeping, transfer, or disbursement of public moneys. This standard properly promotes the legislative intent to broadly construe the statute's application.

In *People v. Groat*, the Sixth Appellate District examined whether a manager of a unit within the city's Department of Public Safety violated section 424 by signing and submitting time cards indicating hours she claimed to have worked or was sick when she was neither at work nor sick but was teaching classes for another employer. (*People v. Groat, supra*, 19 Cal.App.4th at pp. 1231-1233.) The defendant in *Groat* contended, as appellant did on appeal in this case, that the evidence was insufficient to show that she was a person charged with the receipt, safekeeping, transfer, or disbursement of public monies. (*Id.* at p. 1231.) She argued that unlike defendants in other cases, she was neither a public officer nor a person whose duties “included some type of disbursement of ‘public moneys.’” (*Id.* at p. 1233.)

The Court of Appeal reviewed cases dating back to this Court's opinion in *People v. Dillon, supra*, 199 Cal. 1, and interpreted those cases to require only “some degree of control” over public money:

Courts have recognized the Legislature's intent [in enacting section 424] to hold public officers specially accountable.

Those “who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave public responsibility, and . . . courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards upon such officials. [Citations.]” [Citation.] [¶] Because of the essential public interest served by the statute it has been construed very broadly. The state Courts of Appeal have held that “to be charged with the receipt, safekeeping, transfer, or disbursement of public moneys” within the meaning of section 424 requires only that the defendant have *some degree of control* over public funds and that control need not be the primary function of defendant in his or her job.

(*People v. Groat, supra*, 19 Cal.App.4th at p. 1232, italics added.)

The *Groat* court observed that *Dillon* only mentioned custody or control of public funds, not “actual possession of public moneys.” (*People v. Groat, supra*, 19 Cal.App.4th at p. 1232, citing *People v. Dillon, supra*, 199 Cal. at p. 5.) The court further noted that cases after *Dillon* had rejected claims that a public officer’s duties must include possession of public funds or require that the person’s primary duties be related to public funds. (*People v. Groat, supra*, at p. 1233.) Turning back to the case before it, the Court of Appeal concluded, “Appellant is clearly a person charged with disbursement of public money in her ability to authorize her own pay” (*id.* at p. 1233) and that “[w]hen appellant filled out her time card, she took the first step in the process which led to the disbursement of public funds in the form of her paycheck” (*id.* at p. 1235). The court accordingly held that *Groat* was a “person charged with disbursement of public funds” within the meaning of section 424, in light of her control over the funds paid to her as salary. (*Id.* at p. 1233.)

The *Groat* court’s “some control” standard was a reasonable interpretation of prior cases applying section 424. In *People v. Vallerga* (1977) 67 Cal.App.3d 847, the Assessor of Orange County purchased a roundtrip plane ticket to travel to South Carolina and consult with a local

assessor regarding the purchase of Orange County's computerized assessment program. (*Id.* at pp. 856-862.) He charged the ticket to his department's travel account and did not reimburse the County, received half of the former assessor's consultation fee, and received full salary for the time spent on non-official business. (*Id.* at pp. 861-862.) Defendant contended that he was an official not charged with the receipt, safekeeping, transfer, or disbursement of public moneys. (*Id.* at p. 871.) The Court of Appeal rejected that argument and found that the defendant had control over public moneys because he was authorized to expend funds within the county assessor's travel account even though the specific expenditures at issue were not lawful. (*Id.* at pp. 872-874.)

In *Webb v. Superior Court* (1988) 202 Cal.App.3d 872, the defendant was a county supervisor who wished to improve a county road in an area adjoining a city within the county. (*Id.* at pp. 876-877.) Webb negotiated with city residents living on the road to build curbs and gutters along the road in exchange for title to the curbside portion of their properties. After consulting with the city council, he took possession of checks from the city ostensibly to pay the residents for ownership of the curbside properties and to complete the project; he had the residents endorse the checks, and he transferred the checks to a contractor charged with constructing the curbs and gutters. (*Ibid.*) Webb, unbeknownst to the city or the city residents, extracted sufficient funds from the city to pay for *all* of the road improvements, including those portions of the road not abutting city residents' properties. (*Ibid.*) Thus, Webb misappropriated city funds for county expenditures.

The *Webb* court conceded Webb had not engaged in a "typical" violation of section 424, in which a public employee embezzles public funds for his or her own use. (*Webb, supra*, 202 Cal.App.3d at p. 886.) However, the court concluded, "What petitioner did that provides the basis

for the charges . . . was *use his position* as a member of the Board and *the trust and respect that position carries with it to implement a scheme . . . that he would not have been able to accomplish through the ordinary and, indeed, legal channels.*" (*Id.* at p. 886, italics added.) The court further rejected Webb's contention he could not be held liable for misappropriating city funds because he worked for the county: "petitioner received the City warrants in his capacity as a county supervisor, he delivered the warrants to the various property owners pursuant to arrangements with City officials, and the property owners endorsed the warrants and returned them to petitioner in his capacity as a county supervisor pursuant to arrangements he made with them in that capacity." (*Id.* at pp. 887-888.) The court held that the defendant's ability to arrange the spending of public funds was sufficient:

Thus, for a public official, and particularly a county supervisor, to violate section 424, it is not necessary that he or she have actual custody of the public moneys. The fact that petitioner was not directly, in his job description or the common responsibilities of his position, charged with receipt, safekeeping, transfer or disbursement of public funds does not necessarily preclude a prosecution under section 424. *It is sufficient if the public official controls public funds so as to cause their expenditure for nonpublic purposes.* [Citation.]

(*Id.* at p. 887, italics added.)

People v. Qui Mei Lee (1975) 48 Cal.App.3d 516, is also instructive. In that case, the county medical director forged and approved false invoices for county medical services. The defendant was the medical director's secretary, and she was convicted of aiding and abetting the director's misappropriation of public funds. On appeal, she claimed that her boss, as principal, was not chargeable under section 424 because his duties did not require him to have actual possession of the funds. The court rejected the argument and held that "[n]o express language in section 424 restricts its

application to cases where the public officer's duties include the possession of public funds." (*Id.* at p. 523.) "Through his approval of the invoices, and through his receipt of the local health district and state payments which he was obligated to transfer to the accounts of the county medical facility payees, [the county medical director] controlled 'the receipt, safe-keeping, transfer, or disbursement of public moneys' as required for section 424 to apply." (*Ibid.*)

In *People v. Schoeller* (1950) 96 Cal.App.2d 55, the defendant was the secretary of the board of directors of the Palmdale Irrigation District. He also took care of all collections for the district, signed receipts, papers, and documents as deputy collector, and made bank deposits but did not sign checks. The *Schoeller* court held that, "Defendant was not only an officer of the district but he was also charged with the receipt and safe-keeping of public moneys." (*Id.* at p. 58.)

In light of the above cases, it was reasonable for the *Groat* court to conclude that "section 424 is not limited to public officers but includes every other person with some control over public funds." (*People v. Groat, supra*, 19 Cal.App.4th at p. 1233.) Indeed, this Court cited *Groat's* "some control" standard with approval in *Stark, supra*, 52 Cal.4th 368.

In *Stark*, the defendant was the auditor-controller of Sutter County. In that position, he made decisions about allocations and expenditures of public money. However, the Sutter County Board of Supervisors had to approve county expenditures—Stark did not have approval authority. The People alleged that Stark misappropriated public money by transferring money in the county budget from the general fund to the Waterworks District without board approval. (*Stark, supra*, 52 Cal.4th at p. 381.) Although *Stark* addressed the intent required to prove a violation of section 424, this Court noted that, in addition to public officers, the statute applied "to 'every other person' with some control over public funds." (*Id.* at p.

400, citing *People v. Groat, supra*, 19 Cal.App.4th at p. 1234, and *People v. Evans* (1980) 112 Cal.App.3d 607 [county aid worker with authority to complete emergency check requisitions for clients was a person charged with disbursement of public money].)

The “some control” standard articulated in *Groat* is consistent with the legislative intent behind section 424. “The safekeeping of public moneys has, from the first, been safeguarded and hedged in by legislation most strict and severe in its exactitudes. It has continuously been the policy of the law that the custodians of public moneys or funds should hold and keep them inviolate and use or disburse them only in strict compliance with the law.” (*People v. Dillon, supra*, 199 Cal. at p. 12.) Officers and persons charged with the “receipt, safekeeping, transfer, or disbursement of public moneys” have a responsibility to the public to ensure that public funds are expended lawfully. (*Stanson v. Mott* (1976) 17 Cal.3d 206, 225; *People v. Dillon, supra*, 199 Cal. at pp. 12-15.) Interpreting section 424 to find that responsibility should apply whenever a person has “some control” over public funds is therefore consistent with legislative intent.

B. The Court of Appeal’s Creation of an “Approval Authority” Standard Ignores the Legislative Intent Behind Section 424 and Effectively Precludes a Vast Number of Public Officials From Prosecution Under the Statute

The Court of Appeal here essentially invented a new requirement for a person to be found liable under section 424—that the defendant must have *final authority* for approving the expenditure. (Opn. 9-10.) The Court of Appeal also dismissed the “some degree of control” standard described in *Groat* as “dicta.” (Opn. 9-10.) But that standard was clearly central to the *Groat* court’s holding because the court upheld the conviction based on that standard to conclude her degree of “approval authority” over her time cards qualified her as a person “charged with the receipt, safekeeping, transfer, or

disbursement of public moneys.” Moreover, there is no basis for the new requirement found by the Court of Appeal in this case.

The Court of Appeal construed section 424 narrowly and imposed a new, more stringent, “approval authority” standard for imposing liability relying upon *People v. Aldana* (2012) 206 Cal.App.4th 1247. (Opn. 9-10.) In *Aldana*, the defendant was hired by a hospital administrator to perform administrative services at a county hospital in addition to his regular duties as a physician at the same hospital. (*People v. Aldana, supra*, 206 Cal.App.4th at p. 1249.) Aldana signed blank timesheets and submitted them to his supervisor, the hospital administrator. The administrator then estimated and averaged the number of hours that Aldana performed administrative duties and entered that number on the timesheets. The timesheets did not accurately reflect the hours that Aldana worked for the hospital on each individual day.⁶ (*Ibid.*) Aldana was convicted of violating section 424, subdivision (a)(3), which prohibits “[e]ach officer . . . and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys [from] . . . knowingly keep[ing] any false account, or mak[ing] any false entry or erasure in any account” (*Id.* at p. 1252.)

The Court of Appeal reversed Aldana’s conviction, holding that the evidence was insufficient to support the conviction because Aldana was not an officer nor was he a person charged with the receipt, safekeeping, transfer, or disbursement of public moneys. (*People v. Aldana, supra*, 206 Cal.App.4th at pp. 1250, 1253.) The court held that Aldana could not have been “charged with the receipt, safekeeping, transfer, or disbursement of

⁶ Notably, the hours eventually filled in by the defendant’s supervisor reflected *less* hours than the defendant had actually worked. (*People v. Aldana, supra*, 206 Cal.App.4th at p. 1257.)

public moneys” within the meaning of section 424” by merely signing his blank timesheet, because he “was not able to authorize his own pay.” (*Id.* at p. 1254.)

Here, the Court of Appeal expanded the *Aldana* court’s statement that the defendant “was not able to authorize his own pay” to mean that under section 424, a defendant had to have “approval authority” for the expenditure of public funds. (Opn. 9-10.) However, the *Aldana* court did not intend to create such a rule. In fact, the *Aldana* court cited *Groat’s* “some control” standard with approval. (*People v. Aldana, supra*, 206 Cal.App.4th at p. 1253.) The *Aldana* court’s statement regarding the defendant’s inability to authorize his own pay was merely one of the reasons for finding that section 424 did not apply to the defendant under the facts of that case. It was not the creation of a more stringent standard, contrary to the case law it cited from *Groat*, for determining whether a person was “charged with the receipt, safekeeping, transfer, or disbursement of public moneys.”

In the present case, the Court of Appeal compared appellant, the superintendent of the BHUSD, to the physician-employee in *Aldana*, stating that appellant was required to get board authorization to make the payments to Christiansen: “By sending memoranda to payroll and the human resources department (which undisputedly was the sole party responsible for creating the necessary documents for securing board approval), Hubbard was merely ‘the first step in a process that results in the expenditure of public funds,’ but that is not ‘sufficient to establish criminal liability under section 424 absent approval authority,’ which Hubbard undisputedly did not have.” (Opn. 7, quoting *People v. Aldana, supra*, 206 Cal.App.4th at p. 1254.)

The Court of Appeal’s comparison of the defendant in *Aldana* to appellant is inapt. The defendant in *Aldana* was a hospital employee that

merely signed a blank timesheet and submitted it to his supervisor for completion. The defendant was not a public officer. He had no duty delegated to him regarding public funds, and he had no power over the payment or disbursement of public funds, and did not even enter the information upon which disbursement decisions would be made. (*People v. Aldana, supra*, 206 Cal.App.4th at p. 1254.) Thus, in *Aldana*, there was no evidence that the defendant exercised *any* control over public funds. (*Ibid.*) Its statement regarding approval authority distinguished that defendant from other cases involving submission of time records (including *Groat*) since the ability to “approve” or “certify” time records provides evidence of “some control” over public funds in that specific context.

In any event, to the extent *People v. Aldana* can be read to require that a person have approval authority for an expenditure to establish criminal liability under section 424 (see *People v. Aldana, supra*, 206 Cal.App.4th at p. 1254), its reasoning is counter to the “some control” standard this Court has referenced with approval. (See *Stark, supra*, 52 Cal.4th at p. 400.) This Court never stated that the defendant in *Stark* could not be liable under section 424 because final authority for expenditures rested with the county board of supervisors. Instead, this Court reiterated:

Section 424 is not limited to public officers. “Because of the essential public interest served by [section 424] it has been construed very broadly.” [Citation.] It applies to “every other person” with some control over public funds.

(*Stark, supra*, 52 Cal.4th at p. 400, quoting *People v. Groat, supra*, 19 Cal.App.4th at p. 1234.) Moreover, as evident in the cases described above, to the extent cases have relied on a defendant’s approval authority over a specific expenditure—such as an ability to certify that particular hours were worked or that travel funds could be dispensed for specific purposes—such “authority” was not defined in the restrictive manner interpreted by the Court of Appeal here.

In this case, appellant was the superintendent of a school district, not merely an employee. He was much more than “the first step in a process that results in the expenditure of public funds.” (Opn. 7.) Appellant was the chief executive officer of the BHUSD and was responsible for the day-to-day business and operations of the district. Appellant was tasked with bringing expenditures to the BHUSD board for approval, and then with expending BHUSD funds according to the board’s directives. (7RT 1543, 1600.) Appellant was an integral part of the approval and expenditure process. Indeed, he had authority to expend district funds—although lawful expenditures were limited to those approved by the board. And he had ultimate supervisory authority over the Department of Human Resources, which was tasked with the clerical duties to put the board’s directives into motion. Therefore, even if appellant did not have final approval authority to lawfully expend district funds, he certainly exercised *some* control over public funds.

Requiring “approval authority” would also be contrary to the legislative intent behind section 424, which is to “hold public officers specially accountable. Those ‘who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave public responsibility, and . . . courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards upon such officials.’” (*People v. Groat, supra*, 19 Cal.App.4th at p. 1232, quoting *Stanson v. Mott, supra*, 17 Cal.3d at p. 225.) As this Court has stated: “‘Because of the essential public interest served by [section 424] it has been construed very broadly. . . .’ [Section 424] applies to ‘every other person’ with *some control* over public funds.” (*Stark, supra*, 52 Cal.4th at p. 400, italics added, quoting *People v. Groat, supra*, 19 Cal.App.4th at pp. 1232, 1234.)

Moreover, the Court's adoption of an "approval authority" requirement would severely limit the application of section 424 because many public officials cannot legally expend or disburse funds without authorization from another elected body, such as a school board. But under the Court of Appeal's holding, persons who exercise some control over public funds—control sufficient to convert the funds to their own use or to another's use—but who do not have "approval authority" to expend public funds, could never be found liable for misappropriating public funds.

The present case illustrates the overly restrictive and circular reasoning flowing from the Court of Appeal's interpretation of section 424. The fact that appellant did not have authorization from the district board to make the payments to Christiansen is the basis for the misappropriation of public funds charge since that is the reason he knowingly acted "without authority of law." (§ 424, subd. (a)(1).) In other words, if the board had authorized the payments, he necessarily would not have misappropriated public funds. The lack of board authorization did not make it impossible for the payments to Christiansen to be made because the evidence showed the payments were actually made. Instead, the lack of board approval meant that such payments were unauthorized and illegal. Section 424 does not criminalize the appropriation or disbursement of public funds but only the *unlawful* disbursement of public funds. (§ 424, subd. (a)(1).) The offense is not complete without proof that the defendant's appropriation of the public funds was not authorized by law. The Court of Appeal's decision improperly combines this element of the crime with the first part of the statute that specifies the persons that are subject to liability.

In light of the legislative intent, a person who is "charged with the receipt, safekeeping, transfer, or disbursement of public moneys" under section 424 should include individuals who exercise "some control" over public funds. Requiring such individuals to have "approval authority"

would be counter to the legislative intent, and such an interpretation finds no support in case law. Since appellant in this case had “some control” over public funds, he was properly found guilty of misappropriation under section 424.

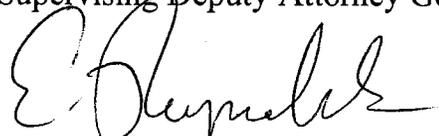
CONCLUSION

In sum, appellant was the superintendent of the BHUSD, and he was therefore liable for misappropriation under section 424 as a public officer. In addition and separate from that liability, appellant fell under section 424 as a “person charged with the receipt, safekeeping, transfer, or disbursement of public moneys” because he had some control over the public funds entrusted to the BHUSD. Therefore, appellant fell within the class of persons subject to prosecution under section 424. When appellant misappropriated district funds by directing payments to Christiansen without board approval, he violated the statute. Therefore, the Court of Appeal’s decision should be reversed, and appellant’s convictions should be affirmed.

Dated: August 7, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 8,264 words.

Dated: August 7, 2014

KAMALA D. HARRIS
Attorney General of California |

A handwritten signature in black ink, appearing to read "E. Reynolds", written in a cursive style.

ERIC E. REYNOLDS
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DECLARATION OF SERVICE

Case Name: *People v. Jeffrey Hubbard*

Case No.: **S216444**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 7, 2014, I served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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The Honorable
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On August 7, 2014, I caused **original and thirteen** copies of the **RESPONDENT'S OPENING BRIEF ON THE MERITS** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by **FedEx, Tracking # 8043 3133 5556**.

On August 7, 2014, I caused one electronic copy of the **RESPONDENT'S OPENING BRIEF ON THE MERITS** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

On August 7, 2014, I caused one electronic copy of the **RESPONDENT'S OPENING BRIEF ON THE MERITS** in this case to be served electronically on the California Court of Appeal by using the Court's Electronic Service Document Submission system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2014, at Los Angeles, California.

Z. Salena
Declarant



Signature