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Feds Cast Net For Ill. Speaker With $200M ComEd Bribery Deal

By **Celeste Bott**

Law360 (July 20, 2020, 9:21 PM EDT) -- Federal prosecutors' $200 million bribery settlement with Commonwealth Edison Co. clearly identifies powerful Illinois House Speaker Michael Madigan as a target for potential prosecution and serves as an invite to others to cooperate against the lawmaker, white collar attorneys say.

Madigan wasn't charged in connection with the $200 million deferred prosecution agreement in which ComEd, an Exelon subsidiary and the largest electric utility in Illinois, admitted it arranged jobs and other benefits for allies of the Illinois House speaker in exchange for him supporting its push to change utility regulation. Madigan — arguably the state's most powerful politician, having served as speaker for all but two years since 1983 — has denied any wrongdoing and said he will cooperate with federal investigators.

But while prosecutors haven't used Madigan's name, by referring to him as "Public Official A" in the filings against ComEd and describing that official as the Illinois speaker of the house, they're letting the public know he's in their sights even if they can't make a case against him just yet, said Renato Mariotti, a Thompson Coburn LLP partner and former federal prosecutor.

On Friday, the day the ComEd agreement was announced, prosecutors subpoenaed Madigan's state office, seeking records involving the utility and a number of other businesses and political operatives. They requested detailed information about communications with AT&T of Illinois, Walgreens and Rush University Medical Center, a Chicago hospital, including any discussions related to lobbying.

The factual basis prosecutors included in the deferred prosecution agreement with ComEd was very detailed, likely to push others to come forward, Mariotti told Law360.

"A big purpose of what the feds did Friday is to try to encourage others to cooperate," he said.

John Lausch, the U.S. attorney for the Northern District of Illinois, said Friday that the government's investigation is "vibrant" and ongoing, but declined to comment on whether anyone else named in the filings Friday is cooperating with prosecutors.

He did stress that the deferred prosecution agreement is with ComEd alone and "doesn't resolve any liability one way or the other for any other entity or any other individual."

While prosecutors have shown they have sufficient evidence to prove a scheme to influence Madigan, there's nothing in the ComEd filings that establishes Madigan had personal knowledge of the scheme, Mariotti said.

"Was he doing any of these things knowingly, was he knowingly participating in a scheme?" Mariotti said. "What it suggests to me is they haven't quite made their case yet, but they're letting the world know they're targeting Madigan and that now is the time to cooperate."

Friday's filings left open some "tantalizing questions" about where the federal investigation is going for Madigan and others, said Dan Shallman, a Covington & Burling LLP partner and ex-federal prosecutor who chairs the firm's anti-corruption practice group.

"It looks bad, no question about it," Shallman told Law360.

But he said it's clear the government's investigation is ongoing, with several interesting potential targets, and that prosecutors haven't publicly connected all the dots they would need to bring charges against Madigan.

The deferred prosecution agreement is relatively vague when it comes to establishing a clear nexus between the benefits flowing to Madigan's associates and any actions allegedly taken to benefit the utility, Shallman said. Establishing that nexus would be essential to bring a case against the speaker, he said. It's also unclear, based on the agreement, whether the government has proof money was flowing through associates to the speaker himself, he said.

"They can move forward on a bribery case without proving he received a penny. But it's a much stronger case, and a case they're much more likely to bring, if they can show that," Shallman said.

Shallman also noted the government will likely lean on other people involved in the bribery scheme and may already have the cooperation of some, even if it isn't prepared to show its cards on that front yet. Should prosecutors eventually bring a case, this sort of alleged patronage system is going to appear to jurors as "old school public corruption," Shallman said.

As for what's happening for Madigan on the ground, Mariotti said he almost certainly has a criminal defense attorney, and his team is likely gathering the documents subpoenaed by prosecutors Friday and reviewing them to determine the extent of his potential culpability.

"I would expect that attorney has also been interviewing and speaking with individuals who have knowledge of this or may be interviewed by the government," Mariotti said. "The purpose of which is to ensure that they have full information about the extent of the speaker's liability and the liability of others so they can best respond to the government's allegations."

Illinois Gov. J.B. Pritzker has said that if the allegations made against Madigan, a Chicago Democrat, are true, "there is no question that he will have betrayed the public trust and he must resign."

"The speaker has a lot that he needs to answer for, to authorities, to investigators, and most importantly, to the people of Illinois," Pritzker said in a statement.

And the wide-ranging grand jury subpoena indicates that prosecutors are looking beyond dealings with Exelon and ComEd, as it also seeks records from the speaker's office related to AT&T and Walgreens,

including but not limited to "any and all contracts, agreements, letters of engagement and correspondence related to the retention, hiring, or engagement of any person to provide services, including lobbying, consulting or other services" to those companies and their related entities.

A spokesperson for Rush University Medical Center told Law360 in a statement Monday that it has received and is cooperating with a subpoena for records reflecting work by, and communications with, "certain government relations consultants for the period 2014 to the present."

A spokesperson for Walgreens declined to comment. Representatives of AT&T did not immediately return requests for comment Monday.

For ComEd, meanwhile, prosecution on the one count of bribery it faces will be deferred for three years and later dismissed if the utility continues to cooperate.

The Illinois Commerce Commission, the state agency tasked with reviewing utility costs, has invited ComEd executives to appear at its July 29 meeting to address the reforms the company has said it has implemented in the wake of its agreement with the federal government.

"Pursuant to that duty, the commission will take action to ensure that ComEd is not paying the $200 million criminal penalty at the expense of Illinois' electricity consumers," the agency said in a statement.

--Editing by Aaron Pelc.

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