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New Rules Could Strip Pensions From Politicians Convicted of Corruption

By WILLIAM K. RASHBAUM and JESSE MCKINLEY SEPT. 17, 2013

Any public officials convicted of federal corruption charges could lose their government pension under new policies announced on Tuesday night by the top federal prosecutor in Manhattan.

The policies, aimed at ending the longstanding practice of jailed politicians continuing to collect public money, were detailed by Preet Bharara, the United States attorney for the Southern District of New York, at the first public hearing of the Moreland Commission to Investigate Public Corruption. The 25-member panel was established in July by Gov. Andrew M. Cuomo to address what has been widely decried as a corruption crisis in Albany and other political spheres in New York State.

Mr. Bharara said that as part of the initiative, prosecutors in his office filed court papers on Monday in two separate corruption cases giving notice that they were adding the pensions of two state senators, a city councilman and two other officials to the list of property subject to forfeiture if the officials are convicted. Any forfeiture action against a convicted official's pension would require judicial approval.

Mr. Bharara called it “a galling injustice” that corrupt officials can “draw a publicly funded pension” until their “dying day.”

He said that the statute under which officials for decades have been able to collect their pensions despite corruption convictions was an “error of state law,” and he noted that while it had been partially fixed several years ago, it “must succumb to common sense.”

“Convicted politicians should not grow old comfortably cushioned by a pension paid for by the very people they betrayed in office,” he said.

More than 30 New York State politicians have been indicted or convicted of a crime, censured or otherwise accused of misconduct in the last seven years. The officials whose pensions could become subject to forfeiture as a result of the new filings are State Senator Malcolm A. Smith; State Senator Eric Stevenson; City Councilman Daniel J. Halloran; and Noramie Jasmin and Joseph Desmaret, the mayor and deputy mayor of the Rockland County town of Spring Valley.

Senator Smith, a Democrat, and Councilman Halloran, a Republican, both from Queens, were charged on April 2 with plotting to bribe Republican Party bosses to place the senator on the ballot in the city’s mayoral race. The two Spring Valley officials were charged in the same case in a separate real estate scheme. Mr. Stevenson was charged two days later in an unrelated case, accused of taking more than \$22,000 in bribes to help developers open adult day care centers in his Bronx district.

Mr. Smith’s lawyer, Gerald L. Shargel, said the action by prosecutors was premature. “They can’t have forfeiture without a conviction, and what I’m focusing on is defending the allegations in the indictment, and I’m eager to do that,” he said.

Vinoo P. Varghese, a lawyer for Councilman Halloran, contended that it was inappropriate for Mr. Bharara to speak about his client before the public commission because, he said, the councilman had not committed a crime.

Lawyers for Mr. Stevenson and Ms. Jasmin declined to comment, and Mr. Desmaret’s lawyer did not respond to e-mail and voice mail messages.

Mr. Bharara said that under his office's new policies, prosecutors would also seek what he called "appropriate fines" with an eye toward the money that convicted corrupt officials might receive from publicly financed pensions so "the punishment fits the crime and so we can take the profit out of that crime."

He also said that his office would consider civil forfeiture actions against the pensions of corrupt officials who were previously convicted and who failed to pay fines, forfeiture or restitution imposed at sentencing in order to satisfy those criminal judgments.

And in future cases, as well as pending ones like those in which action was taken on Monday, prosecutors will use federal forfeiture laws to strip politicians convicted of corruption charges.

The panel, convened at Pace University, also heard testimony from Loretta E. Lynch, the United States attorney in Brooklyn, and Cyrus R. Vance Jr., the Manhattan district attorney. Ms. Lynch outlined some of the current allegations facing legislators, including filing false travel vouchers and more serious crimes like obstruction of justice, while Mr. Vance called for toughening state corruption laws, which he said were weaker than those that prohibited things like fixing a fight.

"Those that bribe public officials in New York are less likely to be prosecuted than those that bribe boxers," Mr. Vance said.

Outside, protesters gathered to rally for stronger corruption laws, chanting "Follow the money!" amid a heavy police and security presence. But the establishment of the corruption commission has been met with a lukewarm response in the Legislature, which failed to pass a comprehensive corruption and campaign bill earlier this year.

William J. Fitzpatrick, the district attorney in Onondaga County and the commission's co-chairman, made a veiled reference to that in opening remarks to the panel, which includes nine other district attorneys from around the state, law professors and lawyers at major private firms.

“You might think that if you ran a business where 35 of your employees in a five-year period were indicted, convicted or investigated and led out in handcuffs, that this might inspire a period of reflection,” Mr. Fitzgerald said.

Correction: September 20, 2013

An article on Wednesday about a New York prosecutor’s plan to curtail the pensions of officials convicted of corruption misidentified, in some editions, the county in which Spring Valley, N.Y., is located. It is in Rockland County, not Westchester.

A version of this article appears in print on September 18, 2013, on page A17 of the New York edition with the headline: New Rules Could Strip Convicted Politicians of Pensions.

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