

NO. 00000

STATE OF TEXAS)	IN THE DISTRICT COURT
VS.)	186th JUDICIAL DISTRICT
JOE SMITH)	BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the indictment filed in this case be set aside by virtue of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I §§ 10 and 19 of the Texas Constitution, and Articles 1.05, 21.01, 21.02, 21.03, 21.04, and 21.11 of the Texas Code of Criminal Procedure for the following reasons:

I.

The indictment is defective because:

1. It does not state the manner and means by which the benefit was allegedly conferred. *See Jeffers v. State*, 646 S.W.2d 185, 188 (Tex. Crim. App. 1981)(indictment for receiving bet quashed for failure to allege manner and means by which bet was received).
2. It does not allege how much currency was conferred on Inez Brown.
3. It does not specify, according to Tex. Penal Code Ann. § 36.01(5), whether the benefit was a benefit to Inez Brown personally, or to some other person in whose welfare the beneficiary is interested. Section 36.01(5) enumerates two different types of benefits. Where a statute enumerates more than one way in which an offense may be committed, a defendant is entitled to notice of which definition the state intends to rely upon. *See Gorman v. State*, 634 S.W.2d 681, 683 (Tex. Crim. App. 1982).
4. It is not an offense to confer a benefit which is "a contribution or expenditure made and reported in accordance with law." Tex. Penal Code Ann. § 36.01(5). The indictment in the present case does not negate this exception to the offense of

bribery.

5. It is vague and fails to give adequate notice regarding the allegation that the benefit was conferred "as consideration for Inez Brown's vote . . . concerning, to wit: the purchase of the property by the Eagle Pass Independent School District commonly known as the CEP Building situated in Maverick County Texas." Specifically, the indictment does not allege what Brown's vote was, what Defendant wanted Brown's vote to be, how this vote was related to the purchase of the CEP building, and how or whether Defendant would benefit from this purchase. *Cf. Bates v. State*, 587 S.W.2d 121, 129 (Tex. Crim. App. 1979)(rejecting challenge to indictment which is much more specific than present indictment
6. The term "engage in conduct that would constitute said offense" fails to apprise the Defendant of the alleged conduct which would constitute the offense alleged in the indictment, thereby failing to allow Defendant to prepare a defense.
7. The indictment fails to state the elements of the alleged conduct which would constitute the offense allegedly conspired to by the Defendant and thus fails to apprise the Defendant of the nature of the conspiracy alleged.
8. The indictment does not give sufficient notice of the conduct or acts relied upon to constitute the felony offense of bribery to which the Defendant allegedly agreed.
9. The case of *Lindsay v. State*, 588 S.W.2d 570, 571, 572 (Tex. Crim. App. 1979) is exactly in point.

II.

Because of these defects:

1. The indictment does not accuse defendant of an "act or omission which, by law, is declared to be an offense", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.01.
2. The offense is not "set forth in plain and intelligible words", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.02(7).
3. The indictment does not state "[e]verything . . . which is necessary to be proved", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.03.
4. The indictment does not possess "[t]he certainty . . . such as will enable the

accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense," in violation of TEX. CODE CRIM. PROC. ANN. art. 21.04 and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I §§ 10 and 19 of the Texas Constitution.

5. The indictment does not "charge[] the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant and with what degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment . . ." in violation of TEX. CODE CRIM. PROC. ANN. art. 21.11 and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, §§ 10 and 19 of the Texas Constitution.

WHEREFORE, premises considered, the defendant prays that the Court set aside the indictment in the above-numbered and entitled cause.

Respectfully submitted:

MARK STEVENS
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205-3192
(210) 226-1433
State Bar No. 19184200
mark@markstevenslaw.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion To Set Aside The Indictment has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the 1st day of April, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered Defendant's Motion to Set Aside the Indictment, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING