Filed 4/14/04

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Appellant, v. MARIA SOCORRO CHACON, Defendant and Respondent.	B164649 (Los Angeles County Super. Ct. No. BA219058)

APPEAL from an order of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Reversed.

Steve Cooley, District Attorney of Los Angeles County, Brent Riggs and Phyllis C. Asayama, Deputy District Attorneys, for Plaintiff and Appellant.

Nasatir, Hirsch, Podberesky & Genego, Michael D. Nasatir and Tariq A. Khero for Defendant and Respondent.

There are two issues in this People's appeal from an order of dismissal in the conflict of interest prosecution of Maria Chacon: whether the appeal lies, and whether Chacon may assert the defense of entrapment by estoppel. The case was dismissed when the People announced they were unable to proceed because the trial court had denied their motion to exclude evidence (and to instruct on) the defense of entrapment by estoppel. We conclude the order is appealable and that the defense of entrapment by estoppel is not available. We reverse with directions to the trial court to grant the motion to exclude evidence relevant solely to the entrapment by estoppel offense and to refuse instructions based on that offense.

FACTUAL AND PROCEDURAL HISTORY

Maria Chacon is the defendant in a felony complaint charging her with a violation of Government Code section 1090, conflict of interest, between the dates of May 29, 1999 and December 7, 2000 (L.A. Super. Ct. No. BA219058). At the relevant times, Chacon was a member of the City Council of Bell Gardens, a general law city. Chacon is charged with conspiring with other council members to repeal a city ordinance in order to remove a legal obstacle to her immediate appointment as city manager.

We take the relevant factual history from the transcript of the preliminary hearing. In the Fall of 2000, Chacon expressed an interest in becoming city manager of Bell Gardens. She solicited the support of Rogelio Rodriguez, another member of the city council. Chacon was seeking a four-year contract as city manager at an annual salary of $106,000, with a provision for 18 months of severance pay. Section 2.08.020 of the Bell Gardens Municipal Code stood in her way. It provided: "No person elected to membership on the city council shall be eligible for appointment as city manager of the city subsequent to such election until one year has elapsed after he has ceased to be a member of the city council."

A repeal of this language was proposed at an October 9, 2000, meeting of the city council. This was after Chacon had met with Rodriguez. City Councilperson Pedro Aceituno proposed ordinance number 730, which would eliminate the one-year waiting

period. Councilmember Rodriquez seconded the motion. Chacon joined the other council members in unanimously voting in favor of ordinance number 730, thus making herself eligible for immediate appointment as city manager.

In December 2000, the city council met in a special session to discuss filling the city manager position. Chacon, who was still on the council, did not attend the meeting, but she was in a nearby room. During the meeting, City Attorney Arnoldo Beltran asked Councilperson Aceituno to meet with him, Chacon, and Mayor Remiro Morales in another room for the purpose of discussing Chacon's appointment. Aceituno agreed, and his support for Chacon's appointment was solicited. They also discussed the contract terms Chacon wanted.

Aceituno returned to the council meeting and a discussion of the terms to be offered Chacon followed. The council, without Chacon's participation, voted to appoint her city manager. The council then voted to replace Chacon on the city council. After this special session, the council returned to a public meeting and announced that Chacon had been appointed city manager. Chacon, who was present at the public session, accepted the appointment. She then signed a contract to serve as city manager and resigned from the council.

In January 2003, the People instituted original proceedings against Chacon for violation of Government Code section 1090, prohibiting conflict of interest by public officials. In a pretrial motion in that prosecution, Chacon raised the defense of "entrapment by estoppel." She contended that she had relied on the advice of City Attorney Beltran when she agreed to be appointed as city manager. Chacon alleged that evidence would show it was Beltran who proposed elimination of the existing prohibition on an immediate appointment, drafted ordinance 730 to accomplish that change, and drafted the employment contract for her as city manager. She argued that prosecuting her for relying on the advice of the City Attorney constituted a violation of her right to due process under the Fifth Amendment of the United States Constitution.

On the eve of trial, the People moved to exclude testimony on the defense of entrapment by estoppel. The parties vigorously argued the question, which was an issue

of first impression in California. The trial court took the motion under submission, and on the next day, both counsel submitted on their previous arguments. The trial court indicated doubt about the concept that the state can be estopped by incorrect advice given by a city official. But it felt bound to follow *Cox v. Louisiana* (1965) 379 U.S. 559 (*Cox*). The court recognized that there were factual issues whether the defense applied, but ruled that these were for the jury to determine, and concluded that the defense of entrapment by estoppel would be allowed.

The prosecutor asked for a continuance to allow his office to seek review of the order by petition for extraordinary writ. The defense objected and stated that it was ready to begin the trial immediately. The prosecutor then asked for time to discuss the ruling with his supervising deputy, and that was permitted.

After a recess, the prosecutor asked whether the court was inclined to instruct on the entrapment by estoppel defense. The court replied that it would do so if the evidence at trial warranted the instruction. The prosecutor then stated: "Your Honor, in light of the court's ruling on denying our request to exclude the defense and to allow the defense to present this kind of a defense, the People are announcing that we're going to be unable to proceed to trial." Defense counsel stated: "It will be a motion to dismiss, your honor." The trial court dismissed the case under Penal Code section 1385. (All further statutory references are to this code unless another is indicated.) The People then filed the present appeal.

DISCUSSION

I

The threshold question is whether the dismissal order is appealable. If not, there is nothing further to decide. The issue is one of statutory construction. "The People have no right of appeal except as provided by statute. (*People v. Smith* (1983) 33 Cal.3d 596, 600 [189 Cal.Rptr. 862, 659 P.2d 1152].)" (*People v. Douglas* (1999) 20 Cal.4th 85, 89.) Section 1238 governs a People's appeal from orders or judgments of the superior courts. The People invoke subdivision (a)(8) which permits appellate review of "*An order or*

judgment dismissing or otherwise terminating all or any portion of the action including such an order or judgment after a verdict or finding of guilty or an order *or judgment entered before the defendant has been placed in jeopardy* or where the defendant has waived jeopardy." (Italics added.)

"In construing any statute, '[w]ell-established rules of statutory construction require us to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.' (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715 . . . .) We begin by examining the words themselves 'because the statutory language is generally the most reliable indicator of legislative intent.' (*Ibid.; People v. Jefferson* (1999) 21 Cal.4th 86, 94 . . . .) 'The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.' (*Hassan, supra,* at p. 715; see also *People v. Robles* (2000) 23 Cal.4th 1106, 1111 . . . .) If the statutory language is unambiguous, 'we presume the Legislature meant what it said, and the plain meaning of the statute governs.' (*People v. Robles, supra,* at p. 1111; *People v. Castenada* (2000) 23 Cal.4th 743, 747 . . . .)" (*People v. Toney* (2004) 32 Cal.4th 228, 232.)

The plain language of section 1238, subdivision (a)(8) permits a People's appeal from the dismissal of an entire prosecution before jeopardy attaches, the circumstance presented here. We find no reason that would bar application of this statute according to its terms. But even if there was some ambiguity in the statutory language, we would reach the same result in this case. Our conclusion that the appeal lies is supported by the legislative history. In 1998, section 1238, subdivision (a)(8) was amended to add language expressly allowing an appeal by the People from a dismissal after a verdict under specified conditions, a circumstance not presented here. But the legislative history is instructive on the Legislature's intent concerning the breadth of subdivision (a)(8): "A legislative committee report states that the amendment was enacted to permit the prosecution to appeal *in all situations* 'except where the appeal would violate double jeopardy,' thereby bringing the scope of appeals by the People into conformity with federal law. (Assem. Com. on Public Safety, Rep. on Sen. Bill No. 1850 (1997-1998

Reg. Sess.) as amended May 12, 1998.)" (*People v. Salgado* (2001) 88 Cal.App.4th 5, 12, italics added.) Jeopardy attaches when the jury is empanelled and sworn. (See *People v. Hernandez* (2003) 30 Cal.4th 1, 8.) The prosecution's motion to dismiss the action was granted in a pretrial hearing before jury selection commenced and jeopardy therefore had not attached when the case was dismissed.

There is, however, one problem with the plain reading approach to section 1238, subdivision (a)(8). Where the prosecutor announces that it cannot proceed, this leaves the trial court with no choice but to dismiss the action. The question presented is whether the prosecution can proceed with an appeal after it affirmatively has chosen not to proceed with trial when the only possible outcome is for the trial court to dismiss the action.

Several cases have recognized the right of the People to appeal from an order of dismissal following its announcement of inability to proceed where that decision is based on an adverse evidentiary ruling by the trial court. (*People v. Yarbrough* (1991) 227 Cal.App.3d 1650, 1654 [suppression of in-court identification by victim]; *People v. Dewberry* (1974) 40 Cal.App.3d 175, 181-185 [same]; *People v. Angeles* (1985) 172 Cal.App.3d 1203, 1209-1211 [suppression of custodial statements]; *People v. Mills* (1985) 164 Cal.App.3d 652, 655 [suppression of results of Breathalyzer test].) But each of these cases involves a ruling excluding prosecution evidence. This case is different. Here, the ruling was to *allow* evidence by the defendant and to recognize the defense theory of entrapment by estoppel.

Of course, if the case against Chacon goes forward to trial, the entrapment by estoppel defense is allowed, and she is acquitted, the People could not appeal because jeopardy would have attached. This places the People in an impossible position because they could not have obtained appellate review to determine whether the defense of entrapment by estoppel is cognizable. (*People v. Superior Court* (1968) 69 Cal.2d 491, 499 [Review of an alleged error may be sought by a petition for writ of mandate *only* when a trial court has acted in excess of its jurisdiction and the need for such review outweighs the risk of harassment of the accused. Mandate is not available to the

prosecution for review of "'ordinary judicial error.' [Citation.]" (*People v. Superior Court (Stanley)* (1979) 24 Cal.3d 622, 625-626)].) We conclude that in these circumstances, appellate review of the order of dismissal is appropriate.

II

The second issue is whether the trial court erred in ruling that Chacon would be allowed to present evidence on the defense of entrapment by estoppel, and if she did, that it would instruct on that defense. Chacon argues this issue is not ripe because there are factual issues to be determined by the jury. This argument misses the point. If the defense is recognized, there would indeed be factual issues for the jury to decide. But the issue before us is whether the defense is cognizable. We shall assume for purpose of argument that Beltran gave the advice Chacon claims and that she reasonably relied on it.

As we shall discuss, we need not and do not decide whether the entrapment by estoppel defense would be allowed if the city attorney were the prosecutorial official for the offense charged, or if the advice to Chacon came from someone who was. Instead, we decide whether the state may be estopped from prosecuting a city councilperson because the municipal attorney gave bad legal advice. We conclude that it may not, because to allow the defense in these circumstances would undercut the district attorney's prosecutorial authority.

A

Procedural Background

As we have discussed, the People's in limine motion was to preclude Chacon from introducing evidence that she relied on the advice of the city attorney. In a pretrial memorandum, Chacon advised the prosecutor and the trial court that she intended to rely on the defense of entrapment by estoppel. No declaration was attached, but the memorandum was based on preliminary hearing testimony to the effect that Chacon "relied upon the legal advice and actions of the Bell Garden's [*sic*] City Attorney when she entered into that employment contract. The evidence will show that the City Attorney proposed changing the existing law which prohibited Mrs. Chacon, or any sitting Council member, from seeking the position of City Manager, and drafted the new

ordinance which allowed Mrs. Chacon to become City Manager. The City Attorney also drafted the employment contract now deemed illegal by the District Attorney."

At oral argument on the motion, defense counsel asserted that the evidence would show that the Bell Gardens City Attorney had led Chacon into a violation of the law. The trial court questioned whether the city attorney was authorized to bind the state government.

The record is unclear as to exactly what City Attorney Beltran told Chacon. In argument, the prosecutor stated that the single memorandum by the city attorney found on the subject indicates "that there was no California law, statute or case law that said that you couldn't change the ordinance regarding the waiting period. That there was nothing that prohibited them from changing the waiting period. There is no other memo indicating that Ms. Chacon was free to contact other people, enlist the support of her fellow council members, vote for changing the ordinance, do any of the other things that we have alleged that she has done. There's nothing to that extent that Mr. Beltran [the city attorney] told her to do, and nothing that we can show Mr. Beltran gave advice in that court." Defense counsel responded that these were factual questions which were disputed.

Later, defense counsel made the following offer of proof as to what Mr. Beltran "could say:" ". . . I was asked whether this waiting period was essential under state law, or whether we could adopt the ordinance that we finally adopted. I ordered my subordinate . . . to do a memo on that. I took that memo . . . and drafted a statute. I put that statute on the agenda. I had the council vote on it. I was there to explain anything they wanted. . . . [A]s I drafted the statute and as I said in the statute, the waiting period was not required by state law. And if we got rid of the waiting period, we would be in accordance with state law. I checked with other municipalities. They didn't have a waiting period. I put it on the agenda for a first reading. After it was put on for first reading, we had a waiting period. It was put on for a second reading. There were comments. *I spoke to Mrs. Chacon about whether or not this statute was a legal statute, and her actions, if she became city manager or any council member became city*

manager, whether that would be legal. *I authorized that as yes, it would be in compliance with state law*. *And actions were taken with regard to my advice*." (Italics added.) "I, then, on December 7th, I placed on the agenda the appointment of Mrs. Chacon to be City Attorney [*sic*]. . . . I always do that. I asked Mr. Aceituno to see what she wanted as far as salary. I was in a closed session with the rest of the council members talking about the legality of a city councilman becoming city manager, about the terms and contracts of employment, about what the requirements were for city manager." According to the defense offer of proof, Beltran told Chacon that the council would not pay her what she wanted, and that he explained the probationary period and severance provisions of the agreement. He drafted the employment contract.

Continuing, the defense said Beltran would testify: "I urged Mrs. Chacon to become city manager. I thought she would be a good city manager. I thought it would be good for the city of Bell Gardens, and I prevailed upon her to sign the contract and give it a try. I told her that if she became city manager, that was an automatic resignation from the city council, and *I never gave any indication that there was anything improper about this entire situation*." (Italics added.) Later, defense counsel supplemented this offer of proof, saying that it was Beltran rather than Chacon who set in motion the idea of her becoming city manager.

Ultimately, the trial court concluded that it was unable to distinguish *Cox* because that case also involved advice by a city official which was held to estop the state from prosecuting defendants for a violation of a state law prohibiting protests near a courthouse. Based on *Cox*, the trial court denied the People's motion and indicated that, if the evidence at trial supported the theory, it would instruct on the defense of entrapment by estoppel.

B

General Principles

The entrapment by estoppel defense, based on principles of federal due process, has been recognized in federal courts but not in any published California opinion.

The defense arose from three Supreme Court opinions, although none used the term "entrapment by estoppel." In *Cox*, the police chief and other local officials told civil rights demonstrators that they *could* demonstrate across the street from a courthouse, a location 101 feet from that building. The demonstrators proceeded within the parameters of this advice, but were subsequently convicted of violating a law barring picketing "in or near" a courthouse. (*Cox, supra*, 379 U.S. 559.) In *Raley v. Ohio* (1959) 360 U.S. 423, the second case, the chairman of the Ohio Un-American Activities Commission told four people being questioned by the Commission that they had a right to rely on a state constitutional privilege against self-incrimination. The state Supreme Court later held that the four were presumed to know that under Ohio law an immunity statute had deprived them of the privilege. In both *Cox* and *Raley* the Supreme Court held that to affirm the convictions "would be to sanction the most indefensible sort of entrapment by the State--convicting a citizen for exercising a privilege which the State clearly had told him was available to him." (*Raley v. Ohio, supra*, 360 U.S. at p. 438; *Cox, supra*, 379 U.S. at p. 571).

In the third case, *United States v. Pennsylvania Chem. Corp.* (1973) 411 U.S. 655, the Supreme Court applied estoppel to overturn a corporate conviction for discharging industrial refuse into a river, in violation of a federal statute. The Supreme Court concluded that the corporation could rely on the Army Corps of Engineers' conflicting interpretation of its regulation on the subject because it was "the responsible administrative agency under the [statute], and the 'rulings, interpretations and opinions of [the Corps] . . . , while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which . . . litigants may properly resort for guidance.'" (*Id.* at p. 674.)

As the Second Circuit has explained, the defense of entrapment by estoppel "arises where a government agent authorizes a defendant 'to engage in otherwise criminal conduct . . . and the defendant, relying thereon, commits forbidden acts in the mistaken but reasonable, good faith belief that he has in fact been authorized to do so.' [Citations.]" (*U.S. v. Gil* (2d Cir. 2002) 297 F.3d 93, 107.) The Ninth Circuit has held

that, "[t]o succeed under this theory, defendant must do more than show that the government made 'vague or even contradictory statements.' [Citing *Raley*.] Rather, he must show that the government affirmatively told him the proscribed conduct was permissible, and that he reasonably relied on the government's statement. *Id.* A defendant's reliance is reasonable if 'a person sincerely desirous of obeying the law would have accepted the information as true, and would not have been put on notice to make further inquiries.' [Citations.]" (*U.S. v. Ramirez-Valencia* (9th Cir. 2000) 202 F.3d 1106, 1109.)

C

Authorized Official

Many federal circuit courts have rejected attempts to invoke the defense of entrapment by estoppel where a state or local official has given advice concerning a federal offense. "[A] defendant is required to show reliance either on a federal government official empowered to render the claimed erroneous advice, or on an authorized agent of the federal government who, like licensed firearms dealers, has been granted the authority from the federal government to render such advice. [Citations.]" (*U.S. v. Brebner* (9th Cir. 1991) 951 F.2d 1017, 1027; see also *U.S. v. Caron* (1st Cir. 1995) 64 F.3d 713, 715;[1] *U.S. v. Etheridge* (4th Cir. 1991) 932 F.2d 318, 320-332; *U.S. v. Ormsby* (6th Cir. 2001) 252 F.3d 844, 851; *U.S. v. Achter* (8th Cir. 1995) 52 F.3d 753, 755; *U.S. v. Gutierrez-Gonzalez* (10th Cir. 1999) 184 F.3d 1160, 1167-1168; *U.S. v. Funches* (11th Cir. 1998) 135 F.3d 1405, 1407.)

Chief Judge Godbold of the 11th Circuit, writing for the court in *United States v. Bruscantini* (11th Cir. 1985) 761 F.2d 640, observed that both *Cox* and *Raley* involved state officials' interpretations of state law leading to state convictions. He focused on the issue presented here: "Where, however, the government that advises and the government that prosecutes are not the same, the entrapment problem is different. . . . [I]f one benefit

[1] Rehearing en banc was granted on an issue unrelated to the entrapment by estoppel defense. (See *U.S. v. Caron* (1st Cir. 1996) 77 F.3d 1, 2.)

of the estoppel defense is that it encourages government officials to better know and articulate the law, that benefit is not present where application of the defense would penalize the wrong government--the government that prosecuted appellant rather than the government that mistakenly and misleadingly interpreted the law." (*Bruscantini, supra*, at p. 642.)

The reasoning of the federal circuit courts that advice given by a state official cannot preclude federal prosecution for a violation of federal law applies with equal force where, as in this case, the defendant claims a defense to a state prosecution based on advice from a city official: "[R]epresentations or assurances by state or local officials lack the authority to bind the federal government to an erroneous interpretation of federal law. [*U.S. v. Brebner*, *supra*, 951 F.2d] at 1026; *see also United States v. Hurst,* 951 F.2d 1490, 1499 (6th Cir.1991) (defendants charged under 18 U.S.C. § 1955 could not rely upon statements by state officials concerning state law to establish defense to federal offense)." (*U.S. v. Ormsby*, *supra*, 252 F.3d at pp. 850-852.) As we next discuss, the city attorney of Bell Gardens did not have the authority to bind the People of the State of California to an erroneous interpretation of state conflict of interest statutes.

The People argue that only the district attorney, as public prosecutor under Government Code section 26500, has the power to prosecute felony offenses.[2] The city attorney has no power to prosecute a felony offense. (See *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 745 ["'The prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor. . . . The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek'"]; 20 Ops.Cal.Atty.Gen. 234, 238 (1952) ["there appears to be no provision authorizing a city prosecutor or any legal officer other than the district attorney to prosecute felony actions"].)

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[2] Government Code section 26500 provides: "The district attorney is the public prosecutor, except as otherwise provided by law. [¶] The public prosecutor . . . within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses."

Chacon relies on general statutes authorizing the city attorney to "advise the city officials in all legal matters pertaining to city business" (Gov. Code, § 41801) and to perform other legal services required by the legislative body (Gov. Code, § 41803). Government Code section 41803.5 grants the city attorney a limited power to prosecute misdemeanors *with the consent of the district attorney*.[3] The power to prosecute felonies, such as those with which Chacon is charged, is retained by the district attorney.

Chacon's argument confuses the authority of the city attorney to render advice with the effective power to preclude the state prosecutor from proceeding on felony charges. As Chief Judge Godbold concluded in *United States v. Bruscantini*, *supra*, 761 F.2d 640, to allow advice given by the city attorney to preclude a public corruption prosecution by the People would be to punish the wrong government.

The factual scenario in which this prosecution arises suggests a good reason to reject the defense: Chacon relies on advice given by a subordinate. Bell Gardens is a general law city. Government Code sections 36505 and 36506 establish that an appointed city attorney serves at the pleasure of the city council. Though this circumstance is not determinative, it presents a good illustration of why advice given by a local government official should not estop the state from pursuing a prosecution for a violation of a state statute.

The trial court concluded that it was bound by *Cox* because it could not distinguish that case from the one before the court. We disagree that *Cox* may not be distinguished from this case. In *Cox*, defendants were convicted of violating a Louisiana statute that prohibited persons from obstructing or impeding the administration of justice, or from picketing or parading "'in or near a building housing a court of the State of Louisiana.'" (*Cox, supra*, 379 U.S. at p. 560.) The United States Supreme Court addressed whether

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[3] Government Code section 41803.5, subdivision (a) provides: "With the consent of the district attorney of the county, the city attorney of any general law city . . . may prosecute any misdemeanor committed within the city arising out of violation of state law. . . ."

the term "in or near" was unconstitutionally vague. It concluded that while the lack of specificity might not render the statute unconstitutionally vague, where a demonstration occurred within sight and sound of a courthouse, the statute "foresees a degree of on-the-spot administrative interpretation *by officials charged with responsibility for administering and enforcing it*." (*Id.* at p. 568, italics added.) The court concluded that demonstrators would be justified in relying on this "administrative interpretation of how 'near' the courthouse a particular demonstration might take place." (*Id.* at p. 569.)

The *Cox* court expressly concluded that the administrative discretion to construe the term "near" "is the type of narrow discretion which this Court has recognized as the proper role of responsible officials in making determinations concerning the time, place, duration, and manner of demonstrations. [Citations.]" (*Cox, supra*, 379 U.S. at p. 569.) But this "limited administrative regulation of traffic" does not constitute "a waiver of law which is beyond the power of the police." (*Ibid.*) Thus, "telling demonstrators how far from the courthouse steps is 'near' the courthouse for purposes of a permissible peaceful demonstration is a far cry from allowing one to commit, for example, murder, or robbery." (*Ibid.*) It was undisputed in *Cox* that the local police chief and the sheriff had given the defendants permission to demonstrate across the street from the courthouse. (*Id.* at pp. 570-571.)

Like *Cox*, *Raley* involved a defendant's reliance on advice given by an official with authority over the proceeding from which the prosecution arose. *United States v. Pennsylvania Chem. Corp.*, *supra*, 411 U.S. 655, is analogous to *Cox* in that it involved reliance on an interpretation of a statute by given by the entity charged with that duty.[4] (But see *U.S. v. Hedges* (11th Cir. 1990) 912 F.2d 1397 [defendant, former military officer, could rely on advice given by Staff Judge Advocate charged with interpreting

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[4] The defendant was convicted of a violation of section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 407). (411 U.S. at p. 657.) That statute expressly provides: "'the Secretary of the Army . . . may permit the deposit' of refuse matter deemed by the Army Corps of Engineers not to be injurious to navigation . . . ." (*Id.* at p. 658.)

statutes giving rise to prosecution].) Unlike the officials and agencies in *Cox*, *Raley*, and *United States v. Pennsylvania Chem. Corp.*, the city attorney of Bell Gardens has neither enforcement nor regulatory authority over the state conflict of interest criminal statutes. Certainly the power to prosecute is reserved to the district attorney acting as a public prosecutor.

DISPOSITION

The order of dismissal is reversed. The trial court is directed to enter a new order granting the People's motion to exclude character evidence relevant to the defense of entrapment by estoppel and to refuse jury instructions based on that defense.

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EPSTEIN, Acting P.J.

We concur:

HASTINGS, J.

CURRY, J.