



Is Bitcoin Money? Judge's Ruling Reignites Regulation Questions

Samantha Joseph, Daily Business Review

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New legislation on digital currency might soon follow a Miami-Dade judge's landmark ruling that bitcoin isn't money.

Sen. Dorothy Hukill, R-Port Orange, is drafting a bill to regulate digital or cryptocurrencies, like bitcoin, and determine how they fit into existing laws governing financial transactions and money transmittal. She and her staff spent about a year working on the issue with hopes to introduce a bill in the last legislative session. But Hukill postponed it for additional research on how to create "a law with teeth" that would not hamper legitimate uses of digital currencies.

"It's an issue that needs to be addressed," she said. "The question is how do we address it?"

For Miami-Dade Circuit Judge Teresa Pooler, the question was central in her decision to dismiss all charges against a man charged with laundering and other money related charges in a case hinged on a bitcoin transaction.

The defendant, Michell Espinoza, faced three criminal charges—operating as an unauthorized money transmitter and two counts of money laundering—in a Florida case of first impression after a sting operation by Miami Beach Police and the U.S. Secret Service Electronic Crimes Task Force. Espinoza allegedly agreed to sell \$30,000 worth of bitcoin to an undercover officer pretending the transaction would fund a Russian client's purchase of stolen identities for a credit card scam. His attorneys insist he never believed was participating in illegal activity.

Investigators and prosecutors claim bitcoins and other digital currencies are the equivalent of money, but remain largely unregulated, allowing their use in schemes like narcotics trafficking and money laundering.

Espinoza's defense turned on convincing Pooler that bitcoin was a commodity, not money, under Florida laws.

"We took a very good look at the statute and analyzed every single word," Espinoza's attorney, Rene Palomino Jr. of The Corona Law Firm in Fort Lauderdale, said. "When the statute provides definitions of the terms, you have to go by the plain language of the statute. Under the plain language, bitcoin is not included in the statute."

Pooler agreed the digital currency differed from money in several aspects, including low liquidity, lack of stabilization and wide swings in value that sometimes make it worth 18 times the dollar. She also called on the legislature or an appellate court to define key terms to limit arrests when participants believe they're conducting legitimate transactions. Pooler singled out

the word "promote," for instance, in the money laundering statute designed to punish offenders who plan financial transactions to "promote the carrying on" of illegal activity.

"This court is unwilling to punish a man for selling his property to another when his actions fall under a statute that is so vaguely written that even legal professionals have difficulty finding a singular meaning," she wrote in an eight-page decision issued Monday. "Without legislative action geared towards a much-needed update to the particular language within the statute, this court finds that there is insufficient evidence as a matter of law that this defendant committed any of the crimes as charged."

State Attorney spokesman Ed Griffith said prosecutors were reviewing the court order to determine whether to appeal.

Regulatory Uncertainty

Pooler's ruling and Hukill's year-long effort hint at the difficulty ahead for jurists and legislators as prosecutors press ahead with criminal complaints based on emerging technology. The judge and senator both acknowledged they were still learning about the largely unregulated cryptocurrencies, including bitcoin, launched in 2009 by an anonymous creator.

Federal regulators and state banking agencies present differing views.

The Financial Crimes Enforcement Network, for instance, considers custodial bitcoin exchanges and payment processors as money services businesses but does not extend the classification to people or businesses who use or accept the currency for purchases. Meanwhile, under Internal Revenue Service rules, digital currency is property, not money, for taxation purposes.

"There has not been a tremendous amount of regulatory enforcement," said Berger Singerman Fort Lauderdale attorney Andrew Hinkes. "Generally regulators and legislators have done the right thing by staying hands off and allowing the platforms to innovate on their own."

New York, one of the first states to implement legislation for digital assets, has seen mixed results. The state passed its BitLicense law in 2015 to protect consumers, enhance cybersecurity, regulate companies trading virtual currencies and prevent money laundering. But in the months following the law, several platforms and startups left the state to avoid on-site inspections and collection of user information.

The international landscape is also uncertain with Australia and Canada looking to tax cryptocurrencies, China largely restricting use, and India shutting down a major platform until lawmakers can create a regulatory framework.

"It makes sense for the state to regulate transactions in virtual currencies," North Miami attorney Lewis Cohen, of Cohen Nicoleau, said. "I think (Judge Pooler) reached the correct decision. It's a very well-reasoned opinion, but it's only a game changer to the extent that it might motivate the Florida legislature to take some action to regulate virtual currency."

Hukill expects to present a bill during the 2017 legislative session.