



Department of Justice

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TESTIMONY

ACCOMPLISHED

of

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CRIMINAL DIVISION

before

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
UNITED STATES HOUSE OF REPRESENTATIVES

on

H.R. 8853

and

H.R. 10066

Wednesday, March 8, 1978

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It is a pleasure to be here to present the views of the Department of Justice on two pending bills dealing with cigarette smuggling, H.R. 8853 and H.R. 10066.

Present law deals with this subject through the Jenkins Act, Sections 375 through 378 of Title 15, which does not directly ban the transportation of non-tax paid cigarettes in interstate commerce. Rather, it attempts to deal with that problem by requiring persons who ship cigarettes in interstate commerce, other than to a distributor, to notify the taxing officials of the receiving State of such shipment. Persons shipping to a distributor need file no such reports, and the word "distributor" is defined in the Act so as to include any wholesaler or retailer in States which do not license cigarette dealers.

Any person failing to file the required reports is subject to a penalty of six months in jail and a fine of \$1,000. In addition, a civil injunction suit to restrain future violations can be brought in United States District Courts.

Since little Federal investigative effort has been devoted to tracking over-the-road movements of non-tax-paid cigarettes, the statute has been most often applied to mail order sales. In view of the light penalty for violations of the Jenkins Act, however, the more effective recent prosecutions of cigarette bootleggers have been brought under the mail fraud statute, Section 1341 of Title 18. The theory of these prosecutions is that the mails are used in executing a scheme to defraud the receiving

States of tax revenue. The penalty for mail fraud is up to five years in jail and a fine of \$1,000.

In recent years, the wide disparity between the tax on cigarettes in North Carolina and Virginia and that in many Northern States has made the practice of smuggling cigarettes North along the Mid-Atlantic coast, and to a lesser extent into the Midwest and Far West, highly profitable. This profitability has even attracted some elements of organized crime.

H.R. 10066 and H.R. 8853 attempt to deal with this problem in some ways similarly and in other ways differently.

H.R. 10066 has as its main objective the equalization of State taxes on cigarettes by applying an additional Federal tax on cigarettes of 23 cents per pack. States which repeal their tax on cigarettes would be eligible for rebates on the Federal tax which would, roughly, give them the same amount of revenue as they presently receive. There are also some law enforcement provisions in the Bill which I will comment on in connection with H.R. 8853.

The Department of Justice takes no position on the H.R. 10066 tax proposals. Without doubt, the single most effective measure in dealing with the problem of cigarette bootlegging would be equalization of the tax among our various States. Yet the coercive effect of H.R. 10066 and its inherent limitations on the power of the States to levy taxes raises basic questions of Federalism with which the Congress is best able to cope.

With minor differences, the enforcement provisions of H.R. 8853 and H.R. 10066 are almost identical, so I shall comment on these provisions together.

Both Bills contain Congressional findings as to the pernicious effects of non-tax-paid cigarette smuggling. They deal with the problem, in essence, by (1) outlawing the shipment of non-tax-paid cigarettes and (2) making criminal false statements and making of false records in connection with such shipments. Both Bills authorize the Secretary of the Treasury to require supporting records regarding sale of such cigarettes. Application of State laws to this problem is not pre-empted by the Bills. Seizures of methods of conveyance of such cigarettes and the cigarettes themselves is provided for.

In both Bills, "contraband cigarettes" are defined as to include non-tax-paid cigarettes in a quantity of 20,000 cigarettes (100 cartons). The term "dealer" is defined as anyone selling or distributing that number of cigarettes in a single transaction. Persons entitled by Federal or State law to deal in or account for the tax on cigarettes are generally exempt from the application of the law. No provision for confidentiality of the records required under the Act is made, other than that provided generally under present law, 5 U.S.C. 552a (The Privacy Act).

The Department of Justice has historically opposed Bills of this type as a significant expansion of Federal criminal jurisdiction into an area usually reserved to the States. Such Federal intervention is difficult to justify unless the affected States have done

all in their power to deal with the problem. In addition, Federal entry into this field might lead to a relaxation of State efforts at enforcement and eventually lead to almost total reliance on enforcement of State revenue measures by the Federal Government. In this connection, the history of the Jenkins Act itself shows that mere passage of such a Bill with no significant appropriation for its enforcement will have little overall effect on the problem.

Recently, States such as Pennsylvania and New York have mounted major enforcement programs and other States have strengthened somewhat their collection and enforcement efforts. In addition, there is now credible information that organized crime is involved in the cigarette traffic. While we have no definite knowledge as to the proportion of the trade controlled by organized crime, we are convinced that it is involved. Recognizing the Federal Government's obligation to aid the States in organized crime control measures, the Department of Justice will support enactment of H.R. 8853 if it is modified so as to improve its potential effectiveness in dealing with the organized crime problem.

We propose the following modifications. First, increase the number of cigarettes necessary to trigger application of the statute to 30,000 (150 cartons) rather than 20,000. This proposed change recognizes the reality that so long as a cigarette tax disparity exists among the States, casual smuggling of contraband cigarettes will continue. The proposed increase, while not a major

change, better reflects the philosophy that the States, not the Federal Government, should deal with casual, small volume cigarette smuggling.

Second, amend the Bill to cover any person dealing in the requisite quantity of cigarettes. In our opinion, introducing the concept of a "dealer" will simply complicate criminal prosecution.

Finally, we recommend increasing the penalty for bootlegging to five years and a \$10,000 fine in recognition of the fact that the Department of Justice will normally authorize prosecution under the Bill only when, in its judgment, organized crime is involved.

The Department's support of the Bill, as amended, is predicated upon the assumption that primary enforcement responsibility in the cigarette tax area will remain with the States, while the Federal Government's mission will normally be confined to assisting the States in suppressing organized crime involvement in the trade.

I thank the Committee for receiving the views of the Department of Justice in this matter and would be pleased to answer any questions the Committee members may have.

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