DEPARTMENT OF JUSTICE

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SPECIAL INVESTIGATION DIVISION

# THE USE OF STATE REGULATORY ACTION AGAINST CRIMINAL INFILTRATION OF LEGITIMATE BUSINESS



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# THE USE OF STATE REGULATORY ACTION AGAINST ORGANIZED CRIME

## I. INTRODUCTION

The purpose of this paper is to briefly outline the potential resources available to law enforcement authorities in dealing with organized criminal activity through the use of state regulatory power. The suggestions contained here are certainly not entirely original nor are they offered as a panacea to the problems presented by organized criminal activity. It is suggested, however, that these steps could contribute significantly to the prevention and control of organized crime when used in conjuction with the other more conventional methods of combatting organized criminal activity.

It has become increasingly evident that organized criminal interests have accelerated their infiltration of legitimate business enterprises in the United States. A variety of factors are responsible for this development. Probably foremost among these is the desire to hide or wash income from gambling, narcotics, prostitution and other illegal criminal activities and to provide those revenues with a guise of legitimacy for tax and other purposes.

The veneer of legitimacy thus achieved permits organized crime to expand its influence on the social and economic life of our nation. An informative review of this increasing problem is contained in the criminal justice monograph entitled "An Analysis of Organized Crime's Infiltration of Legitimate Business" authored by Gene C. Jester and published by the Institute of Contemporary Corrections and the Behavioral Sciences at Sam Houston State University, Huntsville, Texas. Organized crime has become big business. Estimates of its income and profits vary, but run as high as thirty billion dollars annually from illegal sources. It is further estimated that this figure may represent only 40% of organized crime's income with the balance coming from so-called legitimate enterprises.

The list of business enterprises found to be tainted by organized criminal interests is an impressive one. Included are the liquor industry, bottling companies, wholesale drug supply firms, finance companies, banks, travel agencies, employment agencies, discount houses, communications companies,

trucking firms, garbage companies, labor organizations, real estate sales firms, securities firms, vending and amusement device companies, restaurants, hotels, motels, and many others.

The problem thus presented for law enforcement is one of particular difficulty. The traditional approaches of investigation and criminal prosecution are often ineffective in countering the expansion of organized criminal interests into legitimate business. In the first instance, there is often no criminal violation involved and secondly, even if a criminal violation is present, it is often a misdemeanor subject to a nominal fine or penalty. In such cases the business entity involved will simply absorb the fine as a necessary cost of doing business and continue its activity in the face of growing discouragement on the part of law enforcement officers. It is submitted, however, that an alternate and supplemental approach is available in the form of State regulatory action that can provide law enforcement with a flexible response to the problem of criminal infiltration of legitimate business.

## II. THE ADMINISTRATIVE HEARING - A NEW BALLPARK

Almost every business conducted in the United States is subject to some form of governmental regulation. This activity is carried on at a federal, state and local level and in almost every instance involves some form of licensing, taxation, auditing or inspection. Agencies established at every level of government carry out this activity to insure that standards established by statute or regulation are complied with and that the intent of the regulatory legislation is carried out. These same agencies are empowered by statute and regulation to deal with infractions by administrative action that can result in penalties, fines or loss either on a temporary or permanent basis of the right to do business. Because the ultimate power of the agency is to prohibit a person, firm or corporation from doing business, its regulatory action can end the life of an economic enterprise.

It must be understood at the outset that in most cases the administrative action taken against a licensee or other business subject to regulation is done through the process of an administrative hearing. An administrative hearing is a civil proceeding and as such is generally considered to be within that classification of civil actions wherein the parties are not afforded the right of a jury trial.

Frank Irey Jr., Inc., v. OSHA, ____ F2d ____ (3rd Cir., No. 73-1765, July 24, 1975); Williams v. Joyce, 4 Or App 482 (1971); Cornelison v. Seabold, 254 Or 401 (1969). The State is not required to establish its case beyond a reasonable doubt and will prevail if its succeeds in establishing its facts by a preponderence of the evidence. The licensed individual, firm or corporation is frequently required by statute to maintain certain records and to submit those records for inspection or audit on demand of the regulatory agency. The licensed individual or the employees or agents of the licensee are compellable as witnesses and may be required to appear and testify at an administrative proceeding. Statutes frequently provide that failure to produce records for inspection or audit or failure to supply information requested by the regulatory agency can, of itself, result in penalty or loss of the license to do business. Because the administrative hearing is civil in nature the State or regulatory agency has the right of appeal and has equal standing with the licensee in litigation. Generally speaking, the exclusionary rules that so often fetter criminal prosecution are inapplicable in the administrative process because the State's police powers are viewed as providing an adequate constitutional basis for inspection of records and premises together with other reasonable and necessary steps geared to the enforcement of the regulatory statute in question. U.S. v. Biswell, 406 US 311 (1972); Colonnade Catering Corp. v. U.S., 397 US 72 (1970).

In addition the procedure by which the evidence is received and considered in an administrative hearing varies greatly from a criminal trial. The hearings officer or regulatory body is generally viewed as having the power of a court of equity in determining what evidence should properly be considered and may often use the process of taking evidence under "the rule." This process simply means that the trier of fact can permit parties to introduce testimony or exhibits "under the rule" with the understanding that a ruling on the admissibility of the evidence is being reserved until such time as the finding of fact is made. At such time the trier of fact may either accept or reject the proffered evidence in arriving at the ultimate finding of fact. This procedure, while at first alarming to an attorney accustomed to criminal prosecution, introduces great flexibility into the hearing process itself and more importantly saves a great deal of delay in hearing argument on the admissibility of evidence. Obviously, the absence of a jury makes the process considerably speedier than a criminal trial by elimination of the now all too familiar hearings out of the

presence of the jury that have become an annoying feature of so many criminal trials. The finding of fact determined at the administrative hearing is usually accomplished by a hearings officer appointed by the regulatory agency or by the regulatory body itself. Generally, that finding of fact, once entered, cannot be disturbed on judicial review unless the court can say that there is no substantial evidence in the record of the proceeding below to support the finding of fact entered by the regulatory agency. Accident Prev. Div. v. Stadeli Pump & Const., Inc., 525 P2d 170(1974); Joiner v. Public Employe Relations Bd., 513 P2d 523 (1973); Ore. Newspaper Pub. v. Peterson, 244 Or 116, 415 P2d 21 (1966); Baker v. Cameron, 240 Or 354, 401 P2d 691 (1965); Bay v. State Board of Education, 233 Or 601, 378 P2d 558 (1963).

These are some of the features that distinguish an administrative hearing from a criminal prosecution.

There are, of course, limiting factors on the power of a regulatory agency. Essentially, it has only the power given it by the legislature in enforcing applicable statutes and regulations. A regulatory agency can, however, adopt rules or regulations as they are sometimes called to supplement the statutory authority given by the legislature and to detail requirements developed for the administration of the law in question. These rules or regulations, when adopted, must be adopted in accordance with the requirements of law with adequate notice being given to affected persons and an opportunity for public hearing prior to adoption. The question then is essentially one of the jurisdiction of the agency and its actions in regulating a business must come within the ambit of its statutory charge.

## III. AN ILLUSTRATION OF THE USE OF REGULATORY POWER

The flexibility of the administrative proceeding in dealing with a problem of a tainted business enterprise can be viewed from an examination of Sportservice Corp. v. OLCC, 15 Or App 226, 515 P2d 731 (1973) and United States v. Polizzi, 500 F2d 856 (Ninth Cir 1974), cert. denied U.S. Supreme Court ___ US ___, 42 L Ed 2d 820 (1975). The Sportservice case involved administrative action brought by the Oregon Liquor Control Commission to cancel liquor licenses held by the corporation in connection with its operation of concessions at the Portland Meadows

Race Track in Portland, Oregon. Sportservice Corporation was wholly owned by its parent corporation, Emprise Corporation of Buffalo, New York and by the Jacobs family of that same city. Both corporations had identical officers with Emprise Corporation acting as the contolling organization. The cancellation proceeding was based on the fact that Emprise Corporation together with six individual defendants had been convicted in 1972 in Los Angeles Federal District Court of violating 18 USC § 1952 commonly referred to as the Travel Act. The position of the Oregon Liquor Control Commission was that the conviction of Emprise was a felony conviction and that under Oregon's Liquor Control Act a felony conviction operated to make the subsidiary corporation ineligible for further licensing to dispense alcoholic beverages. The problems facing the State in proceeding with this matter were, among other things, that Sportservice Corporation had not violated specific provisions of the Oregon Liquor Control Act in the State of Oregon, that the case in Federal District Court was under appeal to the Ninth Circuit and that in any event the conviction itself was technically that of another legal entity, Emprise Corporation.

Following is a summary of the Emprise Corporation case heard in U. S. District Court in Los Angeles, California, and the subsequent regulatory actions initiated by the State of Oregon through the Oregon Liquor Control Commission in June, 1972. The criminal prosecution of Emprise Corporation and the related regulatory action against its subsidiary Sportservice Corporation provides an instructive demonstration of the effectiveness of State regulatory action against organized criminal interests.

The particular entity doing business in Oregon is a New York corporation known as Sportservice Corporation. This entity was organized under New York laws on June 9, 1961. It was initially owned by Louis M. Jacobs, Genevieve Jacobs and Emprise Corporation, also a New York corporation. Emprise Corporation itself was, until the death of Louis M. Jacobs in 1968, owned by him and other members of the Jacobs family. Emprise and Sportservice are now owned by Jeremy and Max Jacobs, both sons of Louis M. Jacobs.

World-wide holdings of this corporate structure are enormous. By admission it controls 162 other corporate enterprises and according to officials in the U. S. Attorney's office in Los Angeles, this figure may actually approach 400.

The activities of Emprise through the efforts of Louis M. Jacobs have grown from the beginning as a concessionaire for the Detroit Tigers in 1927 to a present-day structure employing more than 40,000 persons, holding concession rights for 7 major league baseball clubs, 8 professional football teams, 5 professional basketball teams, 4 hockey teams, plus concessions at 50 horse and dog tracks throughout the United States. Emprise, or its subsidiaries, likewise enjoy concession rights in 300 theaters and operate many air catering services, airport restrurants and drive-in theaters. Emprise activities extend beyond the continental United States with racetrack concessions in England and Puerto Rico.

## THE CORPORATION AS FINANCIER

Louis M. Jacobs, through his corporate ventures, actively engaged in a money lenders role over a period of many years. This money lending function bankrolled many troubled sports franchises, always with the end result of expanding Emprise concession rights or by gaining actual operational interest and control of the ventures concerned. This activity is illustrated by transactions such as $2,000,000 loan to the Montreal Expos, a $2,000,000 loan to the Seattle Pilots, and a 12 million dollar guarantee at $400,000 per year to finance St. Louis, Missouri's Busch Memorial Stadium. All of these transactions resulted in extensive concession rights being granted to Emprise.

This financial role has provided the basic key to the Sportservice/Emprise link to organized crime.

## THE GUARANTEE

Organized crime is faced with the constant problem of how to invest its "bad" or "black" money in legitimate enterprises. Often its would-be entrepreneurs have available money but cannot show the money for a variety of reasons, primarily ones of interest to the Internal Revenue Service. Because of this difficulty, it has become necessary for organized criminal interests to resort to subterfuge in order to mask their actual investment in legitimate business. One such subterfuge and the type resorted to in the Emprise case has been that of using front men as the investors in the legitimate business enterprise, who in turn receive loans from yet another front organization that are in

actuality not loans at all and which are guaranteed directly, dollar for dollar, by organized crime. It is in this area that Emprise historically crossed the line.

In February 1972, the House Select Committee on Organized Crime investigated Emprise financing of New York organized crime figure Jerry Catena's interest in Bally Manufacturing Company. Typically, Catena had the money to invest but did not show it for tax reasons. Emprise backed a $1,000,000 bank loan in exchange for a voting trust agreement and stock in the Bally Company.

This transaction is typical of Emprise's relationship with familiar names in organized crime. This type of transaction led directly to the conviction of Emprise in the United States District Court.

## THE CONVICTION

On April 26, 1972, after 48 days of trial and five days of deliberation, a federal jury returned its verdict to the United States District Court, Central District of California, pronouncing the guilt of six individual defendants, together with that of Emprise Corporation, the parent and controlling entity of Sport-service Corporation. On April 30, 1974, the federal conviction of Emprise Corporation was affirmed by the U. S. Ninth Circuit Court of Appeals. U.S. v. Polizzi et al., 500 F2d 856 (1974).

Emprise Corporation was found guilty of the information filed against it by the United States Attorney on October 14, 1971, charging it with conspiring to violate Title 18, United States Code, §1952.

Convicted with Emprise were Anthony Joseph Zerilli, Michael Santo Polizzi, reputed Mafiosos from Detroit, Michigan, Anthony Giardano, Peter J. Bellanca, Jack S. Shapiro and Arthur J. Rooks.

Title 18, U. S. Code, §1952 was enacted into law by the United States Congress on September 13, 1961, and holds as its purpose the prevention of any interstate or foreign commerce intended to promote, manage or carry on unlawful activities. The unlawful activities proscribed by the statute includes any business enterprise involving gambling conducted in violation of laws of United States or the state in which the enterprise was carried on. The information to which Emprise Corporation was found guilty sets forth in detail the objects of the conspiracy together with 58 specific acts committed by the co-conspirators in order to accomplish those objects.

Generally, the object of the conspiracy was to conceal from the Nevada State Gaming Commission and the Nevada State Gaming Control Board the identity of certain co-conspirators who had invested money in the Vegas Frontier, Inc., (VFI), the corporation formed to build and operate the Frontier Hotel and its gaming casino in Las Vegas, Nevada.

The co-conspirators, Anthony Joseph Zerilli and Michael Santo Polizzi, were not licensed by the Nevada State Gaming Commission, as required by Nevada law and were not listed on gaming license applications as persons directly or indirectly interested in Vegas Frontier, Inc., as required by Nevada Revised Statutes.

The conspirators knew that Zerilli and Polizzi were ineligible for licensing because of their financial interests in a Detroit Michigan racetrack and because of their reputed criminal affiliation with the Detroit La Cosa Nostra.

In order to understand how and why Zerilli and Polizzi and their agents became insinuated into the Vegas Frontier, Inc. structure, it is necessary to know something concerning the operative facts surround the creation of VFI. Briefly, Maurice Friedman acted as a principal promoter behind the proposed construction and operation of the new Frontier Hotel and Gaming Casino in Las Vegas, Nevada. It was he who in late 1965 initiated the proposal to Louis Feil, a New York financier and managing officer of R & H Holding Company, whereby they would advance $6 million for the construction of the proposed hotel-casino. In addition, R & H Holding Company as landlords would execute a lease in favor of Friedman for a joint venture doing business as Las Vegas Property Management Company. This group, Friedman, T. W. Richardson, Jack Barenfeld, William Weiss, and Malcolm Clarke, Sr., were to in turn incorporate a separate entity denominated Vegas Frontier, Inc. for the purpose of constructing and operating the hotel and to which they would in turn assign the lease obtained by them from Louis Feil.

The deal was struck with Feil who was to advance the $6 million in increments as construction progressed while Friedman and his 4 associates acting as shareholders in VFI were to raise approximately $3 million in matching funds by selling "points" or shares in the corporation. Difficulties were encountered in executing this last requirement and as a result VFI, in late January 1966, found itself in financial trouble without the full $3 million and faced with the prospect of defaulting its lease.

Because the VFI short cash position, Maurice Friedman, co-conspirator and principal promoter of the VFI project, established contact with Zerilli, Polizzi and their co-conspirator agents Jack S. Shapiro and Peter James Bellanca. Once the ineligibility of Zerilli and Polizzi for licensing had been established by informal inquiry made through a Reno, Nevada attorney, plans were developed to conceal the actual interests of Zerilli and Polizzi by using front men as "investors" in VFI and by negotiating "sham loans" from Emprise Corporation to those front men for purchase of VFI stock shares.

In order to deceive and mislead the Nevada Gaming Commission into believing that the VFI shares acquired by co-conspirators Shapiro, Rooks and Alex Kachinko had been purchased with funds

from a legitimate source rather than from persons with concealed interests, co-conspirators Zerilli, Polizzi and Bellanca would arrange to have co-conspirator Emprise Corporation through its President, Louis M. Jacobs, make fictitious "loans" to Kachinko and co-conspirator Rooks and to document this officially to prevent discovery of their fictitious nature by the Commission during the course of its investigation into the source of funds invested in VFI.

Co-conspirator Emprise Corporation through its officers, co-conspirators Louis M. Jacobs and Max M. Jacobs, would also acquire shares in VFI by furnishing funds to Phillip Troy, father-in-law of Max Jacobs, who in turn would use the same funds to purchase shares in VFI as the secret nominee and for the concealed benefit of co-conspirator Emprise Corporation and co-conspirator Max Jacobs. Emprise Corporation would allow Bellanca, Shapiro and Kachinko to represent and vote its secret shareholder interest held in the name of Phillip Troy.

Co-conspirators Friedman and Richardson would be directed by co-conspirators Zerilli, Polizzi and Bellanca to travel in interstate commerce to New York City to attend meetings where changes and amendments to the original lease agreement between the landowner R & H Holding Company and VFI would be negotiated and approved. Co-conspirators Zerilli, Shapiro and Bellanca would travel in interstate commerce from Detroit, Michigan to New York City to participate in these meetings. The co-conspirators would also use interstate facilities to communicate with each other and the other unknown co-conspirators relative to business and financial decisions affecting the Frontier Hotel project.

## THE EVIDENCE

Evidence produced during the course of the nearly ten-week trial indicated the government's theory as set forth in the information and was fully supportive of the jury's verdict.

Evidence produced at trial clearly demonstrated that VFI found itself in financial straits as early as January 31, 1966. On that day a board of directors meeting was held, officers were elected and it was noted that only Friedman and Richardson had managed to find purchasers for their shares of investors stock.

Because of this financial crisis, Friedman began to cast about for financial backers. This search ended when contact was made with Jack M. Shapiro, and the names of Zerilli and Polizzi are discussed for the first time. Friedman then provided Shapiro with Nevada Gaming application forms and a meeting with Zerilli and Polizzi was arranged.

In March of 1966 Zerilli and Polizzi came to Las Vegas for their first direct meeting with Friedman. Possibilities of their becoming licensed were discussed and Virgil Wedge, a Reno, Nevada attorney, was retained to sound out members of the Nevada State Gaming Board as to the likelihood of Zerilli and Polizzi becoming

licensed. This inquiry by Wedge produced a negative response in March of 1966. Within a short time following this negative response, Emprise Corporation provided the means whereby Zerilli and his associates were able to put into execution their plans for asserting covert domination of VFI.

The means provided took the form of a $487,498.50 "loan" made by Emprise on April 4, 1966, to Arthur J. Rooks and Alex Kachinko, the first of many front men produced by Zerilli and associates to mask their investment in VFI.

A meeting held on May 7, 1967, clearly denotes the control exerted by Zerilli and the means available for its enforcement. On May 5, 1967, Friedman was told by Shapiro that the two of them were going back east on May 7. Shapiro was told that the purpose of the trip was to see "his people" and Friedman assumed they were going to Detroit. The trip however was not to Detroit, but rather to Toledo, Ohio. On arrival at that city, Friedman was told by Shapiro to go with two men who were waiting with a car and was advised that Shapiro would see him later. Friedman entered a vehicle with the two men and rode for some two hours not knowing his destination. On arrival at a one-story brick house now known to be located in Toledo, Ohio, Friedman was taken into the basement of the house by the two men, who for the first time spoke, asking if he wished to partake of food and drink. Friedman waited for some time and then others descended into the basement, including Zerilli and possibly one Dominic Corrado. Zerilli questioned Friedman closely before the group of approximately ten men concerning construction details and concerning any "kickbacks" that Friedman might have received. Zerilli asked Friedman what would happen if kickbacks had been paid in connection with the casino construction. Friedman dutifully and understandably replied that Shapiro and Bellanca would be informed and that he would make sure all the monies were turned over to them.

On February 9, 1967, the Nevada State Gaming Commission acted by letter to force Lewis Elias, a Zerilli front man, to withdraw his gaming license application made in connection with his interest in VFI because of his continued ownership of Hazel Park Racetrack stock in Michigan.

This withdrawal required raising $225,000 in clean money to replace the Elias investment in VFI. To meet this need, Max Jacobs, Vice President, Secretary and Director of Emprise Corporation and Secretary of Sportservice Corporation, contacted his father-in-law, Phillip Troy, on January 26, 1967, to seek the use of his name as a front for a legal investment of Emprise money in VFI. Testimony presented by Phillip Troy established that his net worth for a $225,000 loan was only $146,489 and further, that he was shortly to be unemployed. In addition, the agreement executed with Emprise Corporation required Troy not only to repay

the loan with interest, but was to receive only 15.83% of future stock profits, the balance going to Emprise. In short, this loan was made to a man who was obviously not eligible for it, who made sure he would have no duty to repay it if the venture went sour, and who was destined to receive only 15% of the proceeds if all went well.

This transaction alleged in the information to which Emprise was convicted, was a clear violation of state and federal law and one of its principal perpetrators remains a guiding light of the Emprise and Sportservice Corporations.

## THE SPORTSERVICE REVOCATION IN OREGON

The investigation was initiated by the Attorney General in May 1972 for the purpose of examining the corporate entity of Sportservice Corporation and its connection, if any, with organized crime. At that time it was public record that Emprise Corporation, the parent corporation of Sportservice, had been convicted of violation of Title 18, §1952 of the United States Code (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) by jury verdict entered on April 26, 1972, in the United States District Court, Central District of California. It was felt that if Emprise or Sportservice were involved in criminal traffic, appropriate steps could and should be initiated against their liquor licenses by administrative action. In addition, it was felt desirable to gain information concerning Sportservice activity within the State of Oregon, particularly that might bear on the corporation's relationship to various law enforcement agencies.

The State has a substantial interest in the administration of the State's liquor laws. To that end, the State's liquor laws are to be liberally construed to protect the safety, health, welfare, peace and morals of its citizens. In furtherance of this purpose, wide discretion is vested in the Liquor Control Commission to determine whether a license to sell liquor should be revoked or suspended. It is important to remember in this context that a license to sell liquor is not a contract creating property rights, but merely a temporary privilege granted to a licensee to do that which would otherwise be unlawful.

Emprise Corporation was convicted of conspiring to violate a federal statute commonly referred to as the Travel Act. On July 10, 1972, Emprise Corporation was fined $10,000, the maximum amount allowable under federal law. Because a corporation is a legal entity, it cannot be imprisoned as its substance is intangible. The fact that the United States District Court did not sentence the corporation to a term of imprisonment should in no way reduce the classification of Emprise crime from a felony to a misdemeanor.

The Oregon Liquor Control Commission used the felony conviction of Emprise Corporation as the factual basis under Oregon Revised Statutes for the revocation of the liquor licenses held by Sportservice Corporation. To do this, it was necessary to

disregard the corporate entity of Sportservice Corporation. It should be emphasized that the "piercing of the corporate veil" is solely for the purpose of revoking Sportservice's liquor licenses. This action by the Commission was in no way intended to attack the business reasons behind incorporation, i.e., limited liability, taxation, etc., but rather has the sole purpose of effectuating the strong state interest in the regulation of intoxicating liquor.

In disregarding the corporate entity of Sportservice Corporation, the fact the organizations are closely integrated in ownership, direction and supervision leads to the conclusion they should be considered as one enterprise. Sportservice is merely the alter ego of Emprise because the entity of Sportservice is being used to defeat the purpose of strong state interest in the regulation of intoxicating liquors and therefore should be disregarded.

To justify the public policy basis for disregarding the corporate entity of Sportservice Corporation: first, the officers of Sportservice Corporation are also the officers and owners of Emprise Corporation; secondly and most importantly, a corporation can be criminally responsible only for the acts of its agents. It was Max Jacobs whose actions led to the conviction of Emprise Corporation.

These facts coupled with a strong public interest in scrutinizing the character of persons privileged to be licensed to sell intoxicating liquors leads to the conclusion that Emprise and Sportservice Corporations should not be permitted to hide behind corporate fictions to avoid the civil liabilities of a felony conviction.

Emprise Corporation had been found guilty by a jury and sentenced; the requirements of a conviction as defined by Oregon courts had been satisfied. Numerous courts have held that a conviction for imposing a statutory disability arises either upon a guilty plea or a verdict of guilty rendered by a judge or jury. But the control of subject to the strict regulation under Oregon law. The powers vested in the State are such as to insure the highest integrity in both the sale of liquor and the licensing thereof. Maintaining the public confidence demands no less. The evils to be guarded against are well documented. The interest of the State in controlling the sale of liquor is considerable, therefore any attempt to subvert bad interests by defining convicted in terms of distant appeals and close trial maneuverings ran canter to legislative policy. The entry of judgment which finalizes the jury verdict is all that could possibly be required of the term convicted in this context.

The Sportservice liquor license revocation is only one example of the use of administrative rules and regulations to effectively combat suspect organized criminal activities. A constant monitoring of the State's business pulse must be continued in order to identify and purge this element from our society.

## POINTS AND AUTHORITIES

1. The State has a substantial interest in the administration of the state's liquor laws. To that end, the state's liquor laws are to be liberally construed to protect the safety, health, welfare, peace and morals of its citizens. Article I, §39 of the Oregon Constitution; ORS 471.030; ORS 472.030. In furtherance of this purpose, wide discretion is vested in the Liquor Control Commission to determine whether a license to sell liquor should be revoked or suspended. It is important to remember in this context that a license to sell liquor is not a contract creating property rights, but merely a temporary privilege, granted to a licensee, to do that which would otherwise be unlawful. Perry v. Oregon Liquor Control Commission, 180 Or 495, 177 P2d 406 (1947); State, ex rel Nilsen v. Whited, 239 Or 149, 296 P2d 758 (1964).

2. Conspiracy to violate the Travel Act is a felony. 18 U. S. C. §1 classifies the nature of criminal offenses in the United States Criminal Code. Subsection (1) thereof defines any offense punishable by death or imprisonment for one year as a felony. The potentiality of the punishment is determinative of the classification of the offense, not the actual punishment meted out. The use of the term "punishable" signifies that the maximum punishment allowable under the specific criminal statute controls whether an offense is characterized as a felony, misdemeanor or petty offense. This doctrine is well established in federal law. Giammario v. Hurney, 311 F 2d 285 (3rd Cir. 1962); Barde v. United States, 224 F2d 959 (6th Cir. 1955); Cartwright v. United States, 146 F 2d 133 (5th Cir. 1944). See also Morton v. Board of Liquor Control, 119 NE 2d 140 (1954).

Emprise Corporation was convicted of conspiring to violate a federal statute commonly referred to as the Travel Act, 18 U.S.C. §1952. The applicable section of the United States Criminal Code is 18 U.S.C. §371 "Conspiracy to commit offense or to defraud United States." The maximum punishment provided by either 18 U.S.C. §371 or 18 U.S.C. §1952 is $10,000 in fines or five years (5) in prison or both. These penalties satisfy the requirement of the felony classification under 18 U.S.C. §1.

On July 10, 1972, Emprise Corporation was fined the maximum amount allowable, $10,000, under federal law. Because a corporation is a legal entity it cannot be imprisoned, as its substance is intangible. The fact that the United States District Court did not sentence a corporation to a term of imprisonment should not in any way reduce the classification of Emprise's crime from a felony to a misdemeanor.

The status of the conviction of Emprise Corporation of conspiracy to violate the Travel Act, a felony, cannot be reduced to a misdemeanor on the grounds that violation of state statutes that are the subject of the federal crime are classified as misdemeanors. The Nevada gaming laws that were violated are only partial elements of the offense. The Travel Act is aimed at those who travel in interstate commerce and use interstate facilities. Arguments decrying the technical nature of the state violations

miss the very purpose of the Act--the gravity of the crime is magnified by the use of interstate commerce. See United States v. Miller, 379 F 2d 483 (7th Cir), cert denied 389 U. S. 930 (1967).

3. Emprise the parent and Sportservice the subsidiary are to be treated as an identity. Sportservice and Emprise have substantial identity of ownership and directorship. More importantly, Max Jacobs who was an active participant in the chain of events leading to the conviction of Emprise is a director to both parent and subsidiary.

While a corporation is regarded as a separate entity for most purposes, corporate status may be disregarded where the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime. McIver v. Norman, 187 Or 516, 537, 205 P2d 137, 213 P2d 144 (1949). See also: 18 Am Jur 2d, Corporations: §15 p 561; Security S. & T. Co. v. Portland F.M. Co. 124 Or 276, 288, 261 P 432 (1928); Ruth et ux v. Hickman, 214 Or 490, 500, 300 P2d 722 (1958).

ORS 471.315(1)(i) provides as a ground for revocation of a liquor license:

> "(1) That a licensee:
> ". . .
> "(i) . . . or any of its principle officers, since the granting of his license has been convicted of a felony. . ."

ORS 472.180(10) has a parallel provision.

The Commission intends to use the felony conviction of Emprise Corporation as the factual basis under ORS 471.315(1)(i) and 472.180(10) for the revocation of liquor licenses held by Sportservice Corporation. To do this, it will be necessary to disregard the corporate entity of Sportservice Corporation. It should be emphasized that this "piercing the corporate veil" action is solely for the purpose of revoking Sportservice's liquor licenses. This action by the Commission in no way attacks the business reasons behind incorporation i.e., limited liability, taxation, etc., but rather has the sole purpose of effectuating the strong state interest in the regulation of intoxicating liquors.

This stated interest is evidenced by the express commanding language of Article I, §39 of the Oregon Constitution which states in part:

> ". . . The Legislative Assembly. . .shall provide adequate safeguards to carry out the original intent and purpose of the Oregon Liquor Control Act. . ."

And this original interest is evidenced by ORS 471.030(c) which declares the purpose to:

> ". . .protect the safety, welfare, health, peace and morals of the. . .state."

Again, ORS 472.030 has a parallel provision.

In discharging its constitutional duties, the Legislative Assembly deemed it vital to the public's interst to insure that convicted felons did not participate in the state's scheme of regulation. The character of the persons permitted the privilege of liquor licenses is important to the public welfare and morals.

In disregarding the corporate entity of Sportservice Corporation, the fact that the organizations are closely integrated in ownership and common direction and supervision leads to the conclusion that they should be considered as one enterprise. Sportservice is merely the alter ego of Emprise, because the entity of Sportservice is being used to defeat the purposes and strong state interest in the regulation of intoxicating liquors and therefore should be disregarded.

In Jacques v. State Board of Equalization, 318 P2d 6 (1957) the court sustained an order of revocation of liquor licenses held by a corporation on a theory that the corporate entity was being used to defeat the purpose behind the liquor control laws. The revocation was based upon the fact that the two stockholders of Jacques, Inc. had been convicted for violating the state's gambling laws. These violations did not occur on the licensed premises nor were they in any way related to the corporate purposes. The board "pierced the corporate veil" of Jacques, Inc. in order to reach the stockholders. This action was sustained by the courts over the argument that the licenses held by the corporation could not be revoked because of the illegal conduct of the shareholders. The court went even further and said:

> "Therefore, when the . . .Board found that because of the acts of appellants. . .the continuance of the license which was owned and controlled by them would be contrarty to public welfare and morals, we do not believe that said appellants may avoid the penalty of their acts by seeking to hide behind the corporation. For as stated in Ballantine on Corporations, at page 293: '. . .[But], when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.'"

This language is parallel to that in McIver v. Norman, supra.

To justify the public policy basis for disregarding the corporate entity of Sportservice Corporation: first, the officers of Sportservice Corporation are also the officers and owners of Emprise Corporation; secondly, and most importantly, a corporation can be criminally responsible only for the acts of its agents. It was Max Jacobs whose actions led to the conviction of Emprise Corporation.

These facts coupled with the strong public interest in scrutinizing the character of persons privileged to be licensed to sell intoxicating liquor leads to the conclusion that Emprise and Sportservice Corporation should not be permitted to hide behind corporate fictions to avoid the civil disabilities of a felony conviction. See also New Hampshire Wholesale Beverage Ass'n. v.

New Hampshire State Liquor Comm'n., 116 A 2d 885 (1955); Henn Corporations (2nd Ed. 1970), West Hornbook Series §150 at 265.

The term "licensee" should be liberally construed to facilitate the primary state interest in controlling the sale of liquor. In that regard, the name that appears on the license is not controlling where the legislature clearly intended to create more than a battle of semantics. See Sapp v. State, 109 S.E. 2d 841 (1959). The common sense meaning of "licensee" in the context of this case refers to who pulls the strings. Emprise pulls the string to which Sportservice is attached. In any event, ORS 471.757 is dispositive of this issue:

> "(1) At such times as the Oregon Liquor Control Commission may prescribe and upon forms furnished by the commission, any licensee of the commission under this chapter and ORS chapter 472 may be required to submit a sworn statement to the commission showing the name, address and the nature and extent of the financial interest of each person, individual and corporate, having a financial interest in the business operated under the license.
>
> "(2) The commission shall review the statement and may suspend, cancel or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the place of business which would constitute grounds for refusing to issue a license or for cancellation or suspension of a license if such person were the licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection."

4. Conviction pending appeal is conviction. An information was filed and a verdict of guilty and sentence was returned against Emprise Corporation in United States District Court. Is the verdict and sentence sufficient as a "conviction" under Oregon Law? The full appellate process need not be explored because there is a vital interest of the state in controlling licensing of sale of intoxicating liquor.

The Court of Appeals of this state has treated the question of the meaning of "conviction" as one of public policy. State v. Brown, 7 Or App 5, 488 P2d 856 (1971). In that case the court held that pendency of an appeal does not affect a "conviction" so far as a convicted felon in possession of a concealable weapon is concerned. To the same effect see State v. Anderson 10 Or App 34, 497 P2d 1218 (1972). The Court of Appeals also indicates that the majority view holds that pendency of appeal will not affect a conviction for purpose of declaring a public office vacant. See also 71 ALR 2d 593, 600 (1960). There is a split of authority regarding the effect of an appeal on a conviction which leads to suspension of a driver's license 79 LAR 2d 866, (1961); 21 Am Jur 2d 568 Crim. Law §619. The Oregon Supreme Court has considered

a "conviction" pending appeal as sufficient to suspend an attorney's license to practice pending actual outcome of the appeal. See The Matter of the Application of Philip Weinstein , 240 Or 555, 402 P2d 751 (1965). Finally, Oregon apparently holds with those jurisdictions which take the position that pendency of appeal does not affect a conviction so far as enhanced penalty proceedings are concenred. State v. Brown, supra.

Emprise Corporation has been found guilty by a jury and sentenced; the requirements of a conviction as defined by our courts have been satisfied. Numerous courts have held that a "conviction" for the purpose of imposing a statutory disability, arises either upon a guilty plea or a verdict of guilty rendered by a judge or jury. See Gutierrez v. Immigration & Naturalization Service, 323 F 2d 593 (9th Cir. 1963); State v. Hanna, 179 N.W.2d 503 (Iowa 1970); Berman v. U.S., 302 U.S. 211, 58 S.Ct. 164, 82 L.Ed. 204 (1937). The probable public harm is a relevant consideration in limiting the definition of "conviction". Liquor control is subject to strict regulation under Oregon Law. The powers vested in the State are such as to insure the highest integrity in both the sale of liquor and the licensing thereof. Maintaining the public confidence demands no less. The evils to be guarded against are well documented. The interest of the State in controlling the sale of liquor is considerable, therefore any attempt to subvert that interest by defining "convicted" in terms of distant appeals and post-trial maneuverings runs counter to legislative policy.

## IV. CONCLUSIONS AND RECOMMENDATIONS

The Oregon experience in connection with the license cancellation proceeding against Sportservice Corporation has lead to the conclusion that the use of regulatory action against such a business enterprise can be a comparatively rapid and effective remedy. In comparison with the federal criminal trial of Emprise Corporation which consumed 48 trial days and more than 10,000 pages of transcript, the administrative hearing against Sportservice Corporation consumed only one day and resulted in the entry of the Oregon Liquor Control Commission's Order of Cancellation within approximately 8 months of the time that the jury returned its verdict against Emprise Corporation. The administrative case was then processed through the Oregon appellate system in less than one year. The economic impact of the Order of Cancellation entered by the Oregon Liquor Control Commission in the summer of 1972 was immediate; the owner of the Portland Meadows Race Track took the position that because Sportservice Corporation was not eligible to receive a liquor license during the 1972 racing season, it could not perform as concessionaire and was therefore in breach of its contractual obligations. As a result, Sportservice was forced out of business at Portland Meadows Race Track long before the completion of the litigation conducted in connection with the cancellation proceeding initiated by the Oregon Liquor Control Commission.

It was also concluded that it would be appropriate for the Oregon Governor's Commission on Organized Crime to initiate a program directed toward monitoring business investment interstate in an effort to prevent the infiltration of organized crime into the Oregon business community. In order to deal with this problem a cooperative structure between critical state regulatory agencies and the Governor's Commission on Organized Crime was created. Under this approach each regulatory agency has designated a representative to act as a liaison with the commission staff in order to facilitate an exchange of information concerning suspect business activities and individuals. These meetings are also designed to provide agency representatives with techniques and information that will aid them in identifying suspect activities. The Oregon agencies which are involved in this program are:

Department of Commerce
Insurance Commission
Department of Education
Liquor Control Commission
Racing Commission
Department of State Police
Corporation Commission
Real Estate Commission
Bureau of Labor
Department of Revenue
Banking Commission

Following the initiation of this program several additional cases have been instituted within Oregon directed toward the denial of the right to do business to suspect activities and firms. In one such case, a license to operate a distillery was denied to a business enterprise in Oregon on the grounds that the applicant corporation's president had falsified information in the application for the distillery license in order to conceal his criminal history and to create a false picture of his background, personal financial situation and the corporate financial status. This action was initiated and successfully completed using the administrative route despite attempts to block the proceeding in federal district court.

It is recommended however that any state or local governmental unit desiring to initiate a similar course of action should carefully review the following items:

1. The status of your Administrative Procedures Act. An appropriate act should provide for judicial review on the record of an administrative agency's actions at the Appellate Court level. In no event should judicial review on a de novo basis be permitted by statute. In addition, an adequate Administrative Procedures Act should provide your regulatory agencies with the powers necessary to conduct an adequate hearing including those of subpoena and contempt.

2. The process used by your administrative agencies in adopting rules and regulations. Basic due process requirements of notice and opportunity for affected persons to be heard must be met. In addition, technical requirements of your Administrative Procedures Act, as regards the adoption of rules and regulations, must be meticulously observed.

3. Licensing procedures. All too often governmental agencies (particularly at a county and municipal level) follow licensing procedures that are merely empty formalities. It should be remembered that licenses are frequently easier to deny than they are to revoke and that a critical point in regulatory control of sensitive industries is at the point of license issuance. Important in this procedure is the use of adequate personal and financial history questionnaires in obtaining background information from applicant individuals or corporations. Such questionnaires should thoroughly cover matters such as past criminal histories of applicant individuals, shareholders, principal officers or managers and should also cover in detail the actual financial interests behind the business enterprise. In those situations where an applicant corporation is in turn owned by another corporation or group of corporations it is essential that the actual financial interest behind these owner coporations be determined. In short, an identification must be made of the person or persons holding the actual controlling interest in the applicant corporation or business. The use of adequate questionnaire forms is mandatory to effective control of the licensing process. It is by the use of such questionnaires that key information is developed and in many instances attempts to falsify or withhold information required by these forms will serve as the sole legal basis for refusal of a license or later cancellation. Attached are appropriate examples of personal and financial history forms used by the Oregon Liquor Control Commission.

4. Agency Statutes. Because the basic jurisdiction of your regulatory agencies is determined by statute, it is important that these statutes be carefully reviewed in order to determine whether or not the agencies have been given the authority needed to regulate the industries for which they are responsible. Agencies should have reasonable powers of inspection, both of records and premises, and as already noted should have the necessary legal tools required to conduct effective administrative hearings. In addition, it is submitted that each agency should have statutory authority which permits it to deny, cancel, suspend or refuse to renew a license on the grounds that a person holding a financial interest in the applicant business suffers from a disability which under

appropriate statute or agency regulation would prohibit licensing of the applicant business itself. In other words, if a principal officer, shareholder or manager of a corporation is possessed of a criminal history or has some other disability that would prohibit his being licensed, then the agency should have the discretion to use this as a basis for regulatory action against the applicant or licensee. The importance of such a statutory provision (given the Oregon Liquor Control Commission by ORS 471.757(2)) is emphasized when dealing with a corporate applicant.

These are only a few of the observations and experiences that have been gathered during the course of several cases directed against business entities that were found to be objectionable because of undesirable criminal taint. On a final cautionary note, it should be observed that the power of regulatory control is not without its limitations; that an abuse of the state's police power and its misuse for purposes not reasonably related to the regulatory statute of the agency concerned will ultimately lead to the curtailment of that power by the courts. It is submitted, however, that when the regulatory power is responsibly used in accordance with the constitutional limitations it can be an effective force against criminal encroachment.

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