

ADMINISTRATIVE PROCEDURES TO CONTROL THE LIQUOR INDUSTRY

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Because South Dakota has a small population, our unit is charged with investigating and prosecuting organized crime and there is not a special organized crime unit. Our unit follows a broad definition of organized crime, which necessitates investigations and prosecutions in securities, antitrust, corporate fraud, and official corruption. I would like to tell you about our experience with one particular case that involved the liquor industry in South Dakota. This will illustrate what you have heard from Oregon about how effective regulatory action can be.

We heard allegations in our office that for years there had been a practice of kickbacks in the liquor industry, whereby the wholesalers would offer special incentives to the retailers in order to induce the retailers to buy from a particular wholesaler. For example, if a retailer would buy ten cases of liquor from a wholesaler, he would receive an extra case of liquor free. This was considered an acceptable business practice even though it was in violation of state statutes. In 1976, our office received information about a retailer who was actually selling the liquor for less than the other retailers were having to pay the wholesalers. There was also an accusation of political corruption

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in that it was alleged that this retailer had obtained his license illegally. (This allegation was not substantiated.)

An informant retailer had been approached by a liquor salesman and offered a cash kickback for a particular order of liquor. Our unit utilized a consensual wire recording to document the delivery of the money by the salesman to the retailer. Our unit then interviewed another retailer referred to us by the informant retailer.

The retailer told us that he had been approached by a salesman who offered to give him an amount of money if he would let the wholesaler falsely invoice him for liquor which the salesman intended to sell himself, in violation of the state liquor laws. Fortunately, an office employee has been separating the false invoices for three years and so had records of all these illegal transactions.

Our unit then called on the regional office of the Bureau of Alcohol, Tobacco and Firearms for advice on how to proceed with an investigation into the liquor business. We decided on a federal/state team investigation and began gathering evidence. We then convened a grand jury and subpoenaed the man who had been falsifying invoices and making kickbacks, and questioned him about these practices. He did not truthfully testify as to the ultimate recipients of the liquor that he had falsely invoiced. He was indicted for perjury. After that initial indictment, grants of immunity

were given to liquor salesmen. Information was obtained about practices throughout the industry in the state. We were careful to document all of the violations as to each wholesaler in the state. The evidence obtained would only prove misdemeanor violations of the criminal laws.

We then called a meeting with the wholesaler, their lawyers and their managers, and presented them with the evidence against them. We then negotiated a settlement by way of consent decree, an often used technique in antitrust cases. In a consent decree, the defendant basically says: "I do not admit that I've done the things you say I've done, but I will agree to refrain from doing those things in the future." The decree is like a contract and is enforceable in court. The settlement included an initial agreement by the wholesalers that they would pay \$50,000 which represented approximately twice the cost to the taxpayers of the entire investigation.

In addition, the wholesalers agreed to stop the following illegal practices: to refrain from falsely invoicing retailers; to stop illegally transporting liquor by salesmen (salesmen can only sell, not transport liquor); stop making kickbacks to the retailers. They also agreed to pay the state money representing sales tax that had been lost when the wholesaler's salesmen had sold the liquor to people other than the retailers. Moreover, they agreed that if the Attorney General ever had to file a similar complaint against them, they would submit

to a summary suspension of their licenses for seven days, until a hearing could be held. They also agreed that every salesperson and manager would file a statement under oath with the Department of Revenue every month, stating that they were not aware of any kickback schemes and that they had not been approached to give kickbacks; if they were aware of any such activities, they were to supply the names of the persons involved.

Another provision of the consent order was that anytime the Attorney General's Office wants to give a polygraph test to any employee in the wholesale liquor industry concerning the conditions of the consent decree, the employee must submit to such an examination. A refusal can result in the employee's discharge. If the wholesale house ratifies the employee's refusal, this can be grounds for revocation of the wholesaler's license. We also required them to furnish a copy of the decree to all the retailers in the state and all the distillers in the United States at their own expense. Of course, they also had to furnish copies to all their agents and employees. Any violation of the consent order is grounds for license revocation.

Thus, far, there has been no occasion to test the enforceability of the decree in court because no violations have occurred. As you can see, this case demonstrates that combined antitrust/regulatory action can be used very effectively to stop illegal activities and to provide a

future enforcement tool. It is a remedy available to every Attorney General. This case also demonstrates the advantages of targeting early, so your resources are not wasted.

Another example of our use of regulatory action involved a pharmacist who had engaged in some fraudulent practices; the fraud amounted to about \$400. This amount was not substantial enough for us to want to take the case to a criminal trial, but it necessitated some kind of action. We took the case to the State Pharmacy Board. The Board fined him, revoked his license for six months, ordered that \$2500 in investigative costs be paid, and publicized this action throughout the state. It was actually much more effective to pursue the administrative route in that the license is the professional's livelihood.

These examples demonstrate that the most effective remedy in every prosecution is not always a resort to the criminal laws. The prosecutor should review his case to analyze whether or not administrative action may be the most effective remedy.



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