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Corporations - Dissolution - Effect on Federal Criminal Prosecution Against Corporation

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CORPORATIONS—DISSOLUTION—EFFECT ON FEDERAL CRIMINAL PROSECUTION AGAINST CORPORATION—Defendant corporation was prosecuted along with its officers and employees for submitting false statements on FHA insured loans¹ and for conspiracy.² After return of indictment the corporation was voluntarily dissolved under Texas law. The corporation's motion to dismiss the indictment on the ground that dissolution abated the prosecution was overruled. On appeal, *held*, affirmed. Article 1388 of the Texas civil statutes,³ which constitutes the president and directors trustees "to settle the affairs" of a dissolved corporation and to "maintain or defend judicial proceedings," continues the corporation in existence for the purpose of defending federal criminal proceedings. *Alamo Fence Company of Houston v. United States*, (5th Cir. 1957) 240 F. (2d) 179.

¹ 18 U.S.C. (1952) §1010.

² 18 U.S.C. (1952) §371.

³ Tex. Civ. Stat. (Vernon, 1945) art. 1388.

At common law, dissolution of a corporation is analogized to death of a natural person, and all actions pending at time of dissolution or subsequently brought are abated.⁴ Today, however, almost every jurisdiction has a statute prolonging the life of a dissolved corporation for a stated period and for specific purposes. Generally the cause of action must have accrued prior to dissolution and must be of a type permitted by the prolongation statute of the state of incorporation, or the common law rule will apply.⁵ Prolongation statutes in all but two states,⁶ however, do not specifically declare that criminal prosecutions are preserved beyond dissolution.⁷ Because of a dearth of state decisions interpreting these statutes, the federal courts have had to determine what the state legislatures intended. The result has been a discordant medley of decisions of which the present case is the latest.⁸ For example, two federal courts interpreted the Delaware prolongation statute as allowing survival of federal criminal prosecutions while two others ruled that they were abated.⁹ The courts allowing the prosecutions stated that the statute was remedial and should be broadly construed.¹⁰ These courts placed particular emphasis on the inclusion of the word "proceedings" in the statute,¹¹ feeling that it had great jurisdictional significance and should cover criminal prosecutions. Courts which refused to include such prosecutions under the Delaware statute narrowly interpreted the words and concluded that only civil actions were intended to survive.

Further insight into the motivation of courts in determining the inclu-

⁴ Marcus, "Suability of Dissolved Corporations—A Study in Interstate and Federal-State Relationships," 58 HARV. L. REV. 675 (1945).

⁵ Oklahoma Natural Gas Co. v. Oklahoma, 273 U.S. 257 at 259 (1927).

⁶ Criminal prosecutions are clearly not abated under Colorado and North Carolina statutes. Colo. Rev. Stat. Ann. (1953; Supp. 1955) §31-6-3; N.C. Gen. Stat. (1950; Supp. 1955) §§5-110.

⁷ Although statutes vary in form, they may be grouped by jurisdictional words used: fifteen statutes say only "suits" do not abate; two use the word "actions"; four say "suit or actions"; five say "actions or proceedings"; two say "suit or proceedings"; eight say "actions, suits or proceedings"; six say "suit and liabilities"; one says "obligations and liabilities," and three are indefinite.

⁸ United States v. Safeway Stores, Inc., (10th Cir. 1944) 140 F. (2d) 834, and United States v. Union Carbide and Carbon Corp., (D.C. Colo. 1955) 132 F. Supp. 388, held that "suit" alone in the statute did not include a criminal prosecution. United States v. United States Vanadium Corp., (10th Cir. 1956) 230 F. (2d) 646, held the same way with reservation but stated that "actions and proceedings" would include a federal criminal prosecution. The Union Carbide case also holds that statutes listing "liabilities and obligations" will not include criminal prosecutions. *Contra*, United States v. Cigarette Merchandisers Assn., (S.D. N.Y. 1955) 136 F. Supp. 214. For interpretation of "actions, suits or proceedings," see note 9 *infra*.

⁹ United States v. P. F. Collier and Son Corp., (7th Cir. 1953) 208 F. (2d) 936; United States v. Maryland State Licensed Beverage Assn., (D.C. Md. 1956) 138 F. Supp. 685, held that prosecutions are included. *Contra*: United States v. Line Material Co., (6th Cir. 1953) 202 F. (2d) 929, and United States v. Union Carbide and Carbon Corp., note 8 *supra*.

¹⁰ United States v. Maryland State Licensed Beverage Assn., note 9 *supra*, at 708.

¹¹ Del. Code Ann. (1953) tit. 8, §278, reads "Action, Suit, or Proceeding."

siveness of prolongation statutes lies in various public policy considerations. On the side of the present case is fear that abatement of prosecutions will encourage formation of "shady" corporations and will allow morally reprehensible corporate officers partial absolution from the intended effect of statutory penalties,¹² and that therefore, the community at large will suffer.¹³ The present decision indicates that there is a stronger case for survival of liability when the prosecution is pending at dissolution than when it is brought after dissolution, but during the prolongation period. The time at which the prosecution is commenced, however, has little relevance to the validity of the claim or the damage to society. On the other hand, the wording of several state statutes indicates that the distinction might have some effect, since the jurisdictional words concerning pending adjudications are more inclusive.¹⁴ If, as in Texas,¹⁵ in addition to the prolongation statute there is a statute specifically preventing the abatement of the state's criminal prosecutions, the argument for allowing a federal prosecution is strengthened on the basis that the state cannot discriminate against the federal government by keeping the corporation alive for its own prosecutions but denying it life for federal purposes.¹⁶

If a corporation is prosecuted in the courts of a state in which it has done business but is incorporated in another, there is authority applying the prolongation statute of the prosecuting state.¹⁷ Also, since a corporation must gain the consent of the incorporating state to dissolve, it may be possible to enjoin the state from granting dissolution until the criminal prosecution is completed. By such procedure many of the jurisdictional problems described above may be avoided.¹⁸ Absent state legislative action or judicial interpretation, however, the effect of state prolongation statutes on federal prosecutions against corporations engaged in intrastate business will necessarily continue to lack uniformity.¹⁹

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¹² Corporate officers remain personally liable despite dissolution of the corporation. See notes 1 and 2 *supra*. However, ownership and operation of many small companies are in the same persons. Thus, a fine on the corporation may be a fine on its policymakers. The recent increase of the penalty on corporations for violation of the antitrust laws from \$5,000 to \$50,000 is further inducement to try to escape by dissolution. 69 Stat. 282 (1955), 15 U.S.C. (Supp. IV, 1957) §1.

¹³ *United States v. Maryland and Virginia Milk Producers*, (D.C. D.C. 1956) 145 F. Supp. 374 at 375; *United States v. Western Pennsylvania Sand and Gravel Assn.*, (W.D. Pa. 1953) 114 F. Supp. 158 at 160.

¹⁴ Principal case at 182. *Contra*, *United States v. Union Carbide and Carbon Corp.*, note 8 *supra*. See Ohio Rev. Code (Page, Supp. 1956) §1701.88.

¹⁵ Tex. Civ. Stat. (Vernon, 1945) art. 1374.

¹⁶ See *Chicago Title and Trust Co. v. Forty-One Thirty-Six Wilcox Building Corp.*, 302 U.S. 120 (1937), dissent of Justice Cardozo at 131.

¹⁷ *Dr. Hess and Clark, Inc. v. Metalsalts Corp.*, (D.C. N.J. 1954) 119 F. Supp. 427.

¹⁸ *United States v. Western Pennsylvania Sand and Gravel Assn.*, note 13 *supra*.

¹⁹ But see *United States v. United States Vanadium Corp.*, note 8 *supra*, at 649, and *United States v. Leche*, (E.D. La. 1942) 44 F. Supp. 765, indicating that the Supreme Court or Congress might act to insure uniformity of interpretation of state prolongation statutes in federal prosecutions.