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Предмет преступного посягательства при незаконном участии в предпринимательской деятельности

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Аннотация

Определение предмета преступного посягательства способствует установлению способа установления преступления, данных о личности преступника и ряд других сведений, необходимых для правильного построения следственных версий и организации расследования. Отмечается, что к предмету преступного посягательства относится получение от подконтрольного должностному лицу коммерческой организации результата предпринимательской деятельности: систематически получаемой прибыли. Получение денежных средств от руководителя организации должностному лицу может производиться посредством личной передачи денежных или безналичного перевода, ввиду чего, для расследования немаловажное значение будет иметь проверка денежных переводов как должностного лица (и его родственников), так и заинтересованного лица. Доказательственное значение будет заключаться как в размере переводимой денежной суммы, так и систематичности подобных переводов.

Ключевые слова: незаконное участие в предпринимательской деятельности, должностное лицо, преступное посягательство.

The subject of criminal assault in case of illegal participation in entrepreneurial activity

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Abstract

The determination of the subject of a criminal assault helps to establish a method for establishing a crime, information about the identity of the offender, and a number of other information necessary for the correct construction of investigative versions and the organization of an investigation. It is noted that the subject of criminal encroachment is the receipt of a result of entrepreneurial activity from a company-controlled official of a commercial organization: systematic profit. The receipt of funds from the head of the organization to an official can be carried out by personal transfer of money or wire transfer, therefore, for the investigation, verification of money transfers of both the official (and his relatives) and the person concerned will be of no small importance. Evidential value will consist both in the amount of the transferred sum of money and in the systematic nature of such transfers.

Key words: illegal participation in entrepreneurial activity, official, criminal assault.

Today in the Russian Federation corruption as a factor in destabilizing the development of society and the state poses a threat to national security, and from a multifaceted phenomenon, it acquires the status of an institutional phenomenon. Typical types of corrupt behavior that threaten to destabilize the national economy, the state political system and are characterized by social danger and widespread prevalence include the participation of an official in entrepreneurial activity. Having a negative impact on public legal consciousness, the participation of an official in entrepreneurial activity undermines the confidence of the majority of citizens of the Russian Federation in government and administration.

The establishment by an official of an organization engaged in entrepreneurial activity, or the participation of such a person in the management of the organization in person or through intermediaries, contributes to the development of corruption, prejudice state power, the interests of public service and service in local governments.

The determination of the subject of a criminal assault helps to establish a method for establishing a crime, information about the identity of the offender, and a number of other information necessary for the correct construction of investigative versions and the organization of an investigation.

The subject of criminal encroachment is the receipt of money, securities, other property (for example, transfer of movable and immovable property into the ownership of a commercial organization controlled by an official), i.e. result of entrepreneurial activity: systematic profit. As V. N. Borkov notes, the content of entrepreneurial activity indicates its implementation in the private rather than public interests of an official, which clearly indicates its incompatibility with the exercise of public functions [1].

The receipt of funds from the head of the organization (proxy) to the official may be carried out by personal transfer of money or wire transfer. In view of this, verification of money transfers by both an official (and his relatives) and an interested person will be of no small importance. Evidential value will consist both in the amount of the transferred sum of money and in the systematic nature of such transfers.

In addition, it is necessary to verify the grounds for the withdrawal of funds from the organization (civil law contracts, interest-free loan agreements concluded in the transfer of funds by the organization to a member of the organization and (or) the executive body (i.e. the general director, director, president), the coincidence of the amount the amount of the premium and (or) dividends issued to the interested person and the transfer to the current account and (or) transfer of funds (object, materially equivalent value of the premium) to the official).

It must be borne in mind that the fact of transferring money, securities, and other property to an official from the organization is similar in nature

to the subject of the bribe, since the objective side of receiving the bribe is also to provide the official with official authority or may contribute to these acts. The difference lies in the fact that the commission of illegal participation in entrepreneurial activity is continuous and is not related to the provision of general patronage in the service, since the latter are related to powerfully repaired relations in a state body or local government body. In addition, illegal participation in entrepreneurial activity is associated with the provision of benefits and other advantages, as well as actions to establish a commercial organization and participation in it [2, 3].

In addition, a situation is permissible when an official can avoid criminal liability in view of the initiation of a criminal case against an interested person under Art. 291 of the Criminal Code of the Russian Federation “Giving a bribe”, in the event of a preliminary conspiracy of an official and an interested person (the executive body or a person transferring money or other property to an official may not be aware of the mechanisms of illegal participation in entrepreneurial activity and not give evidence against the official person or interested person (in the case of the participation of several interested parties) due to the provision of material benefits to him and (or) his relatives). Therefore, it is necessary to establish not only the fact of giving a bribe, but also the relationship of the official and his relatives with the organization, possible participation in the management and provision of benefits and advantages or protection in a different form under the control of a commercial organization.

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