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Оценка информации, полученной в результате проверки сообщения о незаконном участии в предпринимательской деятельности

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Аннотация

Для принятия следователем решения о возбуждении уголовного дела будет достаточным наличие сведений, указывающих на вероятность незаконного участия в предпринимательской деятельности, т.е. достоверного установления факта преступления. Отмечается, что с момента получения заявления либо сообщения о преступлении следователем могут приниматься меры к предотвращению и пресечению преступления (например, до момента предоставления должностным лицом подконтрольной организации льгот, преимуществ или покровительства в иной форме, или совершения иных преступлений против государственной власти, интересов государственной службы и службы в органах местного самоуправления и преступлений в сфере экономики). Кроме того, рассматривается вопрос о наличии оснований для передачи заявления другому органу (должностному лицу). Например, в отдел по расследованию особо важных дел (о преступлениях против государственной власти и в сфере экономики). По мнению автора наличие факта учреждения или участия в управлении организацией будут являться основанием для проведения дальнейших первоначальных следственных действий. Но главным основанием возбуждения уголовного дела будет иметь факт предоставления льгот, преимуществ или покровительства в иной форме. Именно при поступлении сообщения о преступлении необходимо акцентировать внимание на данное обстоятельство, указывающее на наличие состава преступления, предусмотренного ст. 289 УК РФ.

Ключевые слова: незаконное участие в предпринимательской деятельности, проверка сообщения о преступлении, оценка информации, возбуждение уголовного дела.

Evaluation of information obtained as a result of verification of a report on illegal participation in entrepreneurial activity

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Abstract

For an investigator to make a decision to initiate a criminal case, it will be sufficient to have information indicating the likelihood of illegal participation in entrepreneurial activity, i.e. reliable establishment of the fact of the crime. It is noted that from the moment of receipt of a statement or report of a crime, an investigator can take measures to prevent and suppress a crime (for example, until an official of a controlled organization provides benefits, advantages or other forms of patronage, or committing other crimes against state power, the interests of the state service and service in local government and economic crimes). In addition, the issue of the existence of grounds for transferring the application to another body (official) is being considered. For example, to the department for the investigation of especially important cases (on crimes against state power and in the field of economics). In the author's opinion, the presence of the fact of establishment or participation in the management of the organization will be the basis for further initial investigative actions. But the main reason for initiating a criminal case will be the fact of providing benefits, advantages or patronage in a different form. It is when a crime report is received that it is necessary to focus on this circumstance, indicating the presence of corpus delicti under Art. 289 of the Criminal Code of the Russian Federation.

Key words: illegal participation in entrepreneurial activity, verification of a crime report, assessment of information, initiation of a criminal case.

For an investigator to make a decision to initiate a criminal case, it will be sufficient to have information indicating the likelihood of illegal participation in entrepreneurial activity, i.e. reliable establishment of the

fact of the crime. Here one should take the position of V. G. Tanasevich, who points out that the law links the initiation of a criminal case and all subsequent proceedings on it with the detection of signs of a possible crime, since the same signs can not only be criminal, but also non-criminal activity [1].

So, for example, the fact that a close relative of an official of an organization is established, that a given legal entity carries out entrepreneurial activities and that an official meets with his relative may not have any connection with the patronage of the official. Indicating illegal participation in entrepreneurial activity will be the presence of one or a combination of elements of the objective side of the crime: - establishment by an official of an organization engaged in entrepreneurial activity; - participation in the management of such an organization personally by an official or through a proxy, contrary to the prohibition established by law; - providing such an organization with benefits, advantages or other forms of patronage; - the relationship between the institution and (or) participation in the management of the organization and the provision of such an organization benefits, advantages or patronage in another form.

Undoubtedly, the presence of the fact of the establishment or participation in the management of the organization is the basis for further initial investigative actions [2]. But the main reason for initiating a criminal case is the confirmed fact of granting benefits, benefits or patronage in a different form. It is when a crime report is received that it is necessary to focus on this circumstance, indicating the presence of corpus delicti under Art. 289 of the Criminal Code of the Russian Federation.

Thus, the receipt at the disposal of the investigating authorities of information about the availability of sufficient data indicating signs and likelihood (reliable establishment of the fact of a crime) [3] of illegal participation in entrepreneurial activity is the basis for initiating a criminal case. In turn, the incompleteness of the verification of the crime report may lead to unjustified initiation of a criminal case [4].

For example, the participation of an official in the management of a commercial organization, but without providing the latter with benefits, advantages or patronage in another form, the lack of communication between the powers of the official and the nature of the economic activity carried out, which may be influenced by the official, In most cases, data on the fact of illegal participation in entrepreneurial activities are part of the initial information that the investigator has at the time of the initiation of a criminal case and the organization of the investigation. In addition, from the moment of receipt of a statement or report of a crime, the investigator can take measures to prevent and suppress the crime (for example, until an official of the controlled organization provides benefits, advantages or other forms of patronage, or committing other crimes against state power, the interests of public service and service in local government and economic crimes).

In addition, the issue of the existence of grounds for transferring the application to another body (official) is being considered. For example, to the department for the investigation of especially important cases (on crimes against state power and in the field of economics).

And only then the question of initiating and further directing the case, taking preventive measures or refusing to initiate a criminal case is taken. The identification of the crime we are investigating is a set of operational and search measures aimed at obtaining, checking and implementing information about the facts or signs of illegal participation in entrepreneurial activity, as well as officials and proxies involved in it. As noted by G. A. Matusovsky, signs of a crime are facts that are the result of criminal acts and indicating, more or less likely, the event of the crime, the persons involved in its commission, the place, time, method and other circumstances that are important for solving the crime [5].

Note that an indicative fact of the possible participation of an official in participation in the management of an organization engaged in entrepreneurial activity may indicate:

- the acquisition by an official of his own property or the acquisition of property by a close family member of an official of real

estate (land plots, residential buildings, apartments, non-residential properties), motor vehicles, jewelry, as well as other property having a high market value, including at the expense of the funds of the controlled organization and subsequently transferred to the ownership of the official and (or) members of his family, other persons. Use of real estate before the actual acquisition of ownership. In this case, it is necessary to check both the source of origin of the funds and the counterparty (whether there is a connection with the controlled organization and (or) the competence of the official) in the legal relationship of purchase and sale. Since the property acquired for ownership, in particular, can be the subject of a bribe.

- residence of an official and (or) his family members in a house (apartment) belonging to a controlled organization; payment of utility bills by a controlled organization [6].
- private travel of an official and his family members outside the territory of the Russian Federation, the purpose of the dressage is not business trips (for tourist purposes, medical purposes, for study, etc.), and payment for the trip is carried out through personal funds or funds of a controlled organization;
- a meeting of an official with the head or employees, representatives of the controlled organization, and systematic telephone conversations, spending leisure time with them, not due to a business necessity;
- the presence of the official and his family members of funds, including - freely convertible currency, the source of receipt of which has not been established;

Of course, the signs we have considered above alone cannot testify to a committed crime. For example, the acquisition of property by an official or his relatives of movable or immovable property, the value of which clearly does not correspond to their financial situation, the presence of freely convertible currency may indicate that the official has received a bribe. In view of this,

when assessing these signs, it is necessary to comprehensively analyze the interrelated circumstances.

Of course, the presence of the fact of the establishment or participation in the management of the organization will be the basis for further initial investigative actions. But the main reason for initiating a criminal case will be the fact of providing benefits, advantages or patronage in a different form. It is when a crime report is received that it is necessary to focus on this circumstance, indicating the presence of *corpus delicti* under Art. 289 of the Criminal Code of the Russian Federation.

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