

An Appeal?

4 Win Liquor Case Dismissal

BY NEIL MODIE

The prosecutor's office may decide next week whether to appeal yesterday's dismissal of the county grand jury indictment against all three members and an ex-chairman of the State Liquor Control Board.

Superior Court Judge Ward Roney cited four grounds for throwing out the entire three-count 1971 indictment, which accused the defendants of misappropriating state liquor to their own use and that of others.

During the half-day of legal arguments, deputy prosecutor Ronald H. Clark revealed for the first time some of the evidence the prosecution claims to have against the four.

Clark mentioned large-scale embezzlements of state liquor supplies and purported forgeries of the signatures of distillery representatives.

The defendants are the three present board members — chairman Jack C. Hood, Leroy Hittle and Donald D. Eldridge — and a former chairman, Garland Sponburgh, whose term expired in February, 1970.

All four were charged with grand larceny by appropriating state liquor and liquor decanters to their own use, and with fraudulent appropriation of liquor and decanters. All but Sponburgh also were charged with using their official positions to secure special privileges — the obtaining of liquor "without cost to themselves."

They were accused of committing the first two offenses between Jan. 1, 1968,

and the date of the indictment on Sept. 28, 1971, and the last offense during a one-year period prior to the indictment.

County Prosecutor Christopher Bayley said he won't decide whether to appeal the dismissal to the State Supreme Court until next week, after he has studied Roney's decision.

The main reason it might not be appealed appeared to be the judge's ruling that all four defendants are immune from prosecution because they testified before the 1971 grand jury.

That was the basis for a Supreme Court order in March that upheld the dismissals of six defendants from the grand jury's payoff conspiracy indictment, which went to trial last month.

Yesterday's dismissal was based on technical points of law rather than the evidence.

The judge didn't rule against a single argument raised by the defense attorneys — James A. Andersen for the present board members and William Wesselhoeft for Sponburgh.

Roney also granted Andersen's motion to place a secrecy order on a 109-page statement of facts, filed by Clark, which stated in detail the prosecution's case against the four and quoted excerpts from the defendants' secret grand-jury testimony.

However, Clark brought out some of the prosecution's previously undisclosed accusations in his legal arguments.

He charged that the defendants removed liquor from the regular stock in

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the state liquor warehouse in Seattle and placed it in a "bonded locker" within the warehouse. He added:

"The facts and the defendants' own statements indicate that they considered the 3,000 bottles of liquor their property when it went into the bonded locker."

Clark charged that the board members accumulated liquor in the bonded locker "without the consent of the liquor (distillery company) representatives, that they signed particular documents indicating that it was a liquor representative who had signed, and then submitted that particular document to the company so that the liquor was taken out of stock and not for negotiation of sale. It's clearly a theft crime."

(The Steele Act, which established the liquor control system in the state, authorizes the board to receive liquor samples for the purpose of negotiating with distilleries on what

brands to sell in state stores.)

Clark contended that "there were 200 to 500 cases concealed in the bonded locker, . . . that it was appropriated in some cases without the consent of the liquor representative."

He said a coding system was devised to "indicate what liquor should be diverted from stock and placed in the bonded locker." He added:

"The facts indicate that analytical samples that were over the required analytical statutory requirement for one bottle of liquor for analysis at the University of Washington were sent here and placed in the bonded locker, and they could not possibly be considered to be at that point for negotiation of sale."

The 1971 grand jury investigated the operations of the liquor board following reports of irregularities at state liquor installations and the disappearance of thousands of bottles of liquor.

Roney held that the defendants' grand jury testimony made them immune from prosecution because of a 1909 law that compels a witness to testify in cases involving "bribery or corruption" and grants them immunity for doing so.

Clark argued that the statute was intended to apply only to the specific crimes of bribery, corrupt solicitation and grafting, not the crimes with which the defendants were charged. But Roney, indicating he agreed with the defense attorneys' broader definition of corruption, declared:

"These gentlemen, these defendants in this case, were required to testify before the grand jury of this county about corruption. There's no question about it . . . That was the primary purpose and function of the grand jury being called."

Besides the immunity issue, the judge ruled that the indictment must be dismissed because:

● It was too vague to

"adequately apprise the defendants of the acts and the cause of the accusations made against them."

● State law provides that any court action against a liquor board member arising out of the performance of his duties can be brought only in Thurston County — in which the state capital is situated — and therefore the King County grand jury and prosecutor lacked jurisdiction.

● A majority of the 26 King County Superior Court judges did not sign an order approving the final extension of the grand jury's term that resulted in the liquor board indictment.

Clark argued that the prosecution's statement of facts that defense attorney Andersen sought to suppress would inform the defendants in great detail about the accusations against them.

But Roney said the indictment itself "must contain a statement of the acts constituting the offense." He added.

"The object and purpose (is) that a defendant charged with violating the law should not be required to search, as in this case, literally thousands of transactions which occurred in the administration of the liquor board duties over a period of 3½ years in order to learn and determine the specific acts they have to defend against."

Besides, Roney said, if the indictment were allowed to stand, "it would mean that the time of the court would be taken up in discovery and determination of all of the multitudinous—literally, I presume, even millions—of transactions which might be involved . . ."

Clark argued that enough judges had approved the final extension of the grand jury. He said that after 13 of the 26 judges signed the extension order, Judge Stanley C. Soderland—who presided over the grand jury—talked to other judges and obtained the oral approval of several more.

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