

Subject : Legal Opinion Liberty Dollar Raid
Date : Wed, 28 Nov 2007
From : Jon Roland jon.roland@constitution.org

Here is a legal opinion on the Liberty Dollar raid by Attorney Jacob G. Hornberger, founder and president of the Future of Freedom Foundation,

<http://www.fff.org/index2.htm>

NORFED <http://www.norfed.org/>

Liberty Dollar <http://www.libertydollar.org/>

<http://www.goldismoney.info/forums/showthread.php?t=204459>

Legal opinion on the Liberty Dollar Raid. (more comments at the above link)

<http://www.fff.org/comment/com0711j.asp>

The Soviet-Style Attack on NORFED by Jacob G. Hornberger

<http://www.fff.org/aboutUs/bios/jgh.asp>

November 21, 2007

It would be difficult to find a better example of federal heavy-handedness than the recent six-hour federal raid on NORFED, the National Organization for the Repeal of the Federal Reserve and Internal Revenue Code. In fact, it would be virtually impossible to distinguish the NORFED raid from similar raids conducted by Soviet and Chinese communist officials against private businesses operating in those countries.

After all, by confiscating all the assets of the company, including its coins, computers, records, and equipment, the feds have totally shut down the NORFED operation. But where is the court order authorizing them to shut down this privately owned business? The answer: There is no such court order. All federal agents had was a search warrant issued by a federal magistrate.

Here's what the feds did that enabled them to engage in their Soviet-style attack on NORFED. Unlike the system that existed in the Soviet Union and that still exists in Communist China, the U.S. government is precluded by law from simply closing down businesses it doesn't like or that it feels are violating the law. If the government wishes to have a business shut down, the law provides a remedy called an injunction, which is a formal order issued by a judge that requires a person or business to cease and desist from engaging in a certain operation.

In order to secure a federal injunction, the petitioner files an application for the injunction with a federal district judge. The judge sets a date for the hearing on the application and gives notice to the respondent of the application and the hearing. What is significant about the hearing on the temporary injunction is that the respondent has the right to be present to defend his side of things. He can have his lawyer present, cross-examine witnesses, present witnesses, introduce evidence, file motions and briefs, and make legal arguments to the judge.

At the conclusion of the temporary-injunction hearing, the judge can either grant or deny the request for a temporary injunction. If he grants it, he sets a bond as a prerequisite to the issuance of the injunction, in order to protect the respondent from damages suffered if it later turns out that the injunction was wrongfully issued. The respondent has the right to appeal the grant of the injunction to the federal court of appeals, which ordinarily grants priority to such cases because of their importance and urgency. Unless the court of appeals vacates the temporary injunction, it remains in effect until a trial on the merits is later held, which may be a trial by jury. At that time, it is determined whether to make the temporary injunction permanent.

What makes the injunction process fair and just is that it permits both sides to be heard. It also protects the respondent by requiring the petitioner to file a bond in an amount intended to compensate him for damages suffered during the pendency of the injunction, including claims filed by irate customers. (Among the assets the feds seized were coins that had been purchased and paid for by NORFED's customers.)

So, did the FBI and Justice Department employ the injunction process to close down the NORFED operation? Did they ask a judge for a temporary injunction to shut down the operation? Did a federal judge enter an order enjoining NORFED from continuing to operate its business?

The answer is "No" to all of those questions. Instead, what the feds did was engage in a sneaky, back-handed, perhaps even fraudulent, trick of using a search warrant to accomplish the same thing that an injunction accomplishes, but without the procedural due-process protections provided by the injunction process.

A search warrant and an injunction involve two completely different procedures, and each serves a distinct function. For one thing, a search warrant is used in criminal cases while injunctions are used in civil proceedings. The search warrant is used when law-enforcement officers suspect that there is evidence of criminal activity inside a particular location. An officer will appear before a federal magistrate, which is a position lower than a federal district judge, and ask for permission to search the particular locale. In support of the application for a search warrant, the officer must file an affidavit (i.e., a statement under oath) describing with specificity the evidence, the suspected crime, and why he believes the evidence is located in that place.

For example, suppose the cops receive information that a gun used in a murder is located inside a person's home. They are not permitted to simply drive up to the home, enter it, and begin searching. Instead, they must apply for a warrant. If the warrant is issued, they go to the home, enter it, and search for the weapon. If they find it, they can seize it as evidence.

That's the purpose of a search warrant --- to seek evidence in a criminal case, not to shut down a person's privately run business. After all, it's not as if selling coins is akin to selling drugs --- just ask the Franklin Mint or any coin dealer.

When the FBI went to the magistrate in the NORFED case, its affidavit alleged that NORFED was engaged in illegal activity, primarily violating the government's monopoly over the issuance of money.

One problem, however, is that NORFED denies that it has broken the law in any respect. It contends that the issuance of its coins is not illegal, a position that is at least inferentially substantiated by the fact that the feds have taken no action to seek injunctive relief for the several years that NORFED has been in business, not even in the context of a federal lawsuit that NORFED has filed seeking a declaration that its activities are legal, a suit that is still pending in federal district court. Indeed, while the feds have known of NORFED's operation for years and have even had agents secretly infiltrate the organization, they have never secured a criminal indictment against the operation.

Moreover, even if the government is correct in its allegation that NORFED is violating the government's money monopoly, as an American business NORFED nonetheless has the right to argue and show that the government's money monopoly is unconstitutional. While NORFED would have had the opportunity of presenting its constitutional arguments in a temporary injunction hearing, the government's Soviet-style search-warrant ruse prevented NORFED from doing so prior to its business being shut down and its assets confiscated and carted away.

Did the FBI and the Justice Department have sufficient time and opportunity to seek injunctive relief instead of using the sneaky search-warrant procedure that enabled them to mount their Soviet-like raid? Absolutely. For one thing, federal judges are a dime a dozen in Washington, D.C. The feds could have sought an injunction from any of them, including the federal judge who is presiding in the pending litigation between NORFED and the feds. That of course would have permitted NORFED to be heard and to present its case before a federal district judge, something that the FBI and the Justice Department obviously feared or abhorred. At such a hearing the government would have had the burden of proving that NORFED had truly been violating some federal law with its coin business. NORFED, for its part would have had the opportunity of showing the contrary or of showing that such a law is unconstitutional. But who needs some stinking injunction before a federal judge, where the victim has notice and the opportunity to be heard, when one can simply use the sneaky device of a criminal search warrant to shut down someone's private business, Soviet-style?

Consider a comparable example. Suppose someone opens a postal delivery business to compete against the U.S. Postal Service in the delivery of first-class mail. Can the FBI legally send its gendarmes out and conduct a Soviet-style raid on the business, as it has done with NORFED? No. Instead, the government must go to federal court and secure an injunction requiring the privately owned business to cease and desist its competitive ways. In fact, that is exactly what happens whenever someone has the audacity to compete against the U.S. Postal Service in the delivery of first-class mail.

But here we have the feds using Soviet-style tactics to raid and shut down a privately owned business without providing the victim advance notice or opportunity to be heard. Even worse, in order to deceptively preserve the appearance of legal process to cover up its Soviet-like behavior, government officials abuse the criminal process, perhaps even with the fraudulent failure to disclose their real intentions to the federal magistrate who issued the search warrant.

In a civilized country based on the rule of law, people cannot have their lives, liberty, and property taken away from them without notice, hearing, opportunity to be heard, and other fundamental aspects of procedural due process. Unfortunately, in the post-9/11 world in which we now live, anything goes as far as federal power is concerned. The heavy-handed, perhaps even fraudulent, Soviet-style attack on NORFED is proof-positive of that.

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