

## REVISITING THE SALT LAKE CITY OLYMPIC SCANDAL: WOULD THE OUTCOME BE DIFFERENT TODAY?

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### Synopsis:

Recently, the Foreign Corrupt Practices Act's foreign officials requirement was extended to include the employees of state-controlled entities, such as many National Olympic Committees. This study will examine when this implicates members of the IOC by using the facts from the 2002 Salt Lake City Winter Olympic bribery scandal.

### Abstract:

#### AIM OF ABSTRACT

The aim of this study is to examine the use of an anti-bribery law to prevent and punish corruption. Here, the Foreign Corrupt Practices Act (US) will be applied to the facts of the 2002 Salt Lake City Winter Olympic bidding scandal.

#### PRACTICE DESCRIPTION

A case-study examination is appropriate for a legal analysis. Because the law has not been studied within a similar fact context, the application to this global sport mega-event scenario is relevant.

#### CONTEXT DESCRIPTION

The 2002 Olympic Winter Games are remembered by its bribery scandal. The Salt Lake City Organizing Committee (SLOC) was accused of providing more than \$1.2 million in cash and gifts, such as: trips to Disneyland, a Rolex watch, shopping sprees and college scholarships, to entice IOC members to support its bid. As a result of this scandal, 10 members of the IOC were expelled and new bidding rules were created.

The United States Department of Justice brought fifteen counts of criminal charges against two members of the SLOC. The members were charged with conspiracy, violations of the Travel Act, mail fraud and wire fraud. Despite overwhelming evidence of vote-buying activity, the case failed to meet the criminal standards for those charges. Ultimately both SLOC members were acquitted of all illegal claims.

The Foreign Corrupt Practices Act (FCPA) is a US law that prohibits the bribing of foreign officials. Unfortunately the FCPA's reach is limited to the bribing of

foreign officials from a governmental department, agency or instrumentality of a foreign government. Because the IOC and its individual members were not technically affiliated with any particular government within the meaning of the FCPA, the FCPA was not an appropriate law for the prosecutors to use at that time.

Recently a US court redefined the foreign official requirement. In *United States v. Esquenazi*, the Eleventh Circuit provided a framework to analyze how an organization may be considered an instrumentality of a foreign government. This court defined an instrumentality as “an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own” (Esquenazi, 2014). Amongst the analytical factors provided the court, an organization may be considered an “instrument of the government” when a government subsidizes the entity’s costs, if the entity’s officers are appointed or associated with the government, or if the government has appointed the entity for a particular purpose, such as health or sport. In other words, now the FCPA extends to employees of state-controlled entities such as many National Olympic Committees. If an IOC member is also member of the NOC or employed within a Ministry of Sport, then that IOC member may be considered a foreign official for FCPA purposes.

Because of this new point of view, the FCPA would criminalize bribery activity such as those from Salt Lake City. The penalties for violating the FCPA include a maximum of a \$100,000 fine and a five year imprisonment term.

The FCPA’s jurisdiction is not limited to US citizens. It may have jurisdiction over any foreign person who causes an act in furtherance of the corruption. Thus, the FCPA may include the bribery activity by citizens of other countries.

#### IMPLICATIONS AND LEARNING

This paper will discuss the Foreign Corrupt Practices Act and analyze the 2002 Salt Lake City Winter Games bribery claims under the new interpretation of the FCPA. This investigation will show how the law can prevent and punish bribery actors, both US and other national citizens.

#### References:

15 U.S.C. §§78dd-1

*US v. Esquenazi*, 752 F.3d 912 (2014)