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I.D.O.C. Bilks Illinois Prisoners For Millions Through Commissary Scheme

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Not many prisoners would be shocked to learn that they are paying way too much for the defective or otherwise poor quality merchandise sold on commissary. Nor would they be surprised to learn that the Department of Corrections does not follow its own rules, let alone state law, and that both rules and laws are enforced only against prisoners. Though both unfair and contrary to the nation's democratic ideals, these are well-known aspects of prison life. Prisoners, and people in general for that matter, may be disconcerted to learn the lengths to which the Illinois Department of Corrections (I.D.O.C.) has gone to maintain the flow of ill-gotten gains that they have been raking in by stealing from prisoners. It includes not only a clear disregard for the plain language of a statute and the arbitrary interpretation of that statute to further their own unlawful agenda, but it also consists of lying to the Illinois Auditor General and misleading the Illinois legislature.

In order to generate more revenue to help pay for a prison system that is both over capacity and siphoning money away from much-needed funding for infrastructure, education, and healthcare, the Illinois General Assembly passed Senate Bill 0629 on November 20, 2003, after both houses overrode disgraced Illinois Governor Rod Blagojevich's amendatory veto. This bill, which became Public Act 93-0607 on November 25, 2003, effectively amended 730 ILCS 5/3-7-2a granting the I.D.O.C. the authority to add up to a 25% surcharge to all non-tobacco products and up to a 35% surcharge on all tobacco products sold at facility-maintained commissaries throughout the I.D.O.C. Prior to this amendment the surcharge was capped at 10%. The increase took effect on January 1, 2004, the effective date of the amendment.

Illinois prisoners groaned as the prices on commissary rose. As captive consumers and the state's poorest segment of the population, this increase meant a drastic reduction in what they were able to purchase with the limited funds they have, especially considering that the ten-dollar state pay prisoners receive has never seen an increase to adjust for inflation. One can imagine the depreciation of purchasing power over the decades. The price of postage alone has tripled in the past four decades while state pay remained the same.

Ironically, it wasn't the indigent prisoners who cried the loudest about the increase in surcharges, but rather it was the guards. Their union, the American Federation of State, County, and Municipal Employees (AFSCME) was able to convince Illinois House Representative Ron Stephens to sponsor a bill (HB4559) to again amend 730 ILCS 5/3-7-2a. This time the amendment was to effectively exempt the guards and other I.D.O.C. employees from the increases in surcharges enacted by SB0629 and cap the surcharges they would have to pay at 10%. The new bill also made sure, though, that the surcharges that were collected from prisoners could still go to pay the commissary employee's salaries. HB4559 was filed by Rep. Stephens on April 26, 2006. It was originally known as the "Restore fair commissary pricing for I.D.O.C. employees" bill. Ironically, it is only the middle class guards and employees who are seemingly entitled to fair pricing of commissary goods and not the indigent prisoners who can't choose to shop at Wal-Mart instead. With AFSCME backing, it quickly sailed through both houses of the Illinois General Assembly with a wide margin of support, and the new amendment became law as Public Act 94-0913, effective June 23, 2006, a mere two months after proposed.

As if the millions of dollars generated out of the pockets of prisoners by this increase were not enough, the I.D.O.C. went even further. Beginning November 1, 2005, the I.D.O.C. began imposing an

additional surcharge of 3% above the allowed 25% and 35%. Then just two short months later, beginning on January 1, 2006, the I.D.O.C. increased it to 7% above the allowed 25% and 35% surcharges and has maintained it ever since.

These may seem like small amounts, but when one considers that there are almost 45,000 prisoners in the I.D.O.C. shopping on a regular basis, the potential windfall is not insignificant. The Illinois Auditor General recently calculated how much this added 3% and 7% has generated for the I.D.O.C. It concluded that for fiscal year 2006, which ended June 30, 2006, the I.D.O.C. reaped $1,266,911; for fiscal year 2007 it was $2,259,760; and for fiscal year 2008 it was $2,339,244. Thus, in just those three years the I.D.O.C., through these unauthorized surcharges, has stolen close to six million dollars from Illinois prisoners, who are in the unenviable position of having to pay whatever price is asked if they wish to obtain the goods sold.

The unlawful nature of these 3% and 7% surcharges was first pointed out to the I.D.O.C. by the Illinois Auditor General's Office during its Department of Corrections – General Office, Department-Wide Financial Audit for the two years ending June 30, 2006. The report, which was released to the public in late summer 2007, stated: "Based on [730 ILCS 5/3-7-2a] the maximum amount to charge inmates for items sold in the inmate commissary would be the purchase price of the item plus any transportation costs, the total of which would then be marked up to a maximum of 25%-35%." It went on to recommend that "the Department comply with the statute and only mark-up goods for resale in the inmate commissary the allowable amounts."

The I.D.O.C. had tried to justify their actions by creating a self-serving and delusional interpretation of the statute. The pertinent part of 730 ILCS 5/3-7-2a states: "If a facility maintains a commissary or commissaries serving inmates, the selling prices for all goods shall be sufficient to cover the costs of the goods and an additional charge of up to 35% for tobacco products and up to 25% for non-tobacco products. The amount of the additional charges for goods sold at commissaries serving inmates shall be based upon the amount necessary to pay for the wages and benefits of commissary employees who are employed in any commissary facilities of the Department." The I.D.O.C. claims that the second sentence cited above permits them to impose "additional charges" outside the 25% and 35% stipulated. Anyone with a reading comprehension level higher than an eighth grader, though, can clearly see that the "additional charges" mentioned in the second sentence is a reference to the "additional charge of up to 35% for tobacco products and up to 25% for non-tobacco products" mentioned in the first sentence. To assert as the I.D.O.C has, is not only disingenuous but willfully indifferent to the intent of the legislature.

Upon hearing the I.D.O.C.'s flimsy defense, the Illinois Auditor General further recommended that "the Department seek a formal written opinion from the Attorney General regarding whether the charge is statutorily allowed."

On April 1, 2008, the Legislative Audit Commission held a hearing on the June 30, 2006, audit where both I.D.O.C. staff and the Director at that time, Roger E. Walker, Jr., claimed that they would continue the 7% surcharge and wouldn't make any changes until they received a response from the Attorney General. The I.D.O.C. claimed that they had taken the Auditor General's advice and requested a formal opinion from the Attorney General. This turned out to be a fabrication and nothing more than a ruse, as the Illinois Auditor General was to later find out.

In 2009, while preparing the Department of Corrections – General Office, Department-Wide Financial Audit for the two years ending June 30, 2008 (see Finding No. 08-13), the Auditor General requested a copy of the letter that the I.D.O.C. sent to the Attorney General requesting an opinion on the matter. The new administration, under I.D.O.C. Director Michael Randle, revealed that the prior administration (contrary to then-Director Walker's assertion that an opinion had already been sought) had never actually requested an opinion from the Illinois Attorney General. So instead of waiting for an

opinion, the I.D.O.C. had really been stalling for time to increase the amount it could collect in unauthorized surcharges.

This was not the only devious tactic the I.D.O.C. employed. Instead of applying the 3% and 7% surcharges to the cost of the goods, the I.D.O.C. was applying it to the selling price of the goods after the authorized 25% and 35% was added. Thus instead of a 3-7% surcharge, Illinois prisoners were actually paying a 9% surcharge. As the Auditor General found, this not only violates Comptroller's Statewide Accounting Management Systems (SAMS) procedure 03.60.20, but also garnered another $1,160,781, adding to the I.D.O.C.'s illegal windfall (fiscal year 2006 = $242,055; 2007 = $451,888; 2008 = $466,838).

Thus, in all, Illinois prisoners were unknowingly bilked out of over seven million dollars between fiscal years 2006 through 2008. The surcharges continue though, so the total grows daily. As prisoners have a property interest in the funds in their Inmate Trust Fund Accounts, and the I.D.O.C. lacks authority to impose these additional surcharges, the due process rights of Illinois prisoners under both the Illinois Constitution (Article 1, Sections 2 and 6) and the United States Constitution (Amendments 4 and 14) are seemingly being trampled at will. Furthermore, as the General Assembly has the exclusive power of taxation (see Article 9, Section 1 of the Illinois Constitution), the I.D.O.C.'s actions would also seem to run afoul of the separation of powers clause (see Article 2, Section 1 of the Illinois Constitution). Unfortunately, until the courts or legislature steps in to stop this abuse, the captive consumers incarcerated in Illinois prisons have little choice but to pay this illegal tax if they want to obtain any of the necessities sold at commissary.