

C. ARNHOLT SMITH SURRENDERS POST

Westgate Chairman Ousted Along With President— Court Picks New Board

By EVERETT R. HOLLES
Special to The New York Times

SAN DIEGO, Oct. 31—The financially troubled Westgate-California Corporation today became a ward of the Federal District Court here when C. Arnholt Smith formally surrendered control of the \$190-million conglomerate to a new board of directors selected by Judge Leland C. Nielsen.

Under an agreement reached last week, the 74-year-old financier and long-time powerful figure in California and national Republican party affairs submitted his resignation as chairman and a director of Westgate and its 42 subsidiaries, 53 per cent of whose stock is still held by him and members of his family.

His resignation and that of Westgate's president, Philip A. Toft, were demanded by the Securities and Exchange Commission as a condition for dropping an S.E.C. civil suit for receivership that accused Mr. Smith of engineering "massive frauds" in which Westgate assets were used to enrich himself and a group of close associates.

To Stay as Consultant

Mr. Toft is expected to remain for some time as a company consultant, however.

They also were compelled to resign from all offices they held in other publicly held corporations, including Mr. Smith's chairmanship of the Golconda Corporation, 36 per cent of whose stock is held by Westgate.

John Holt of the Smith legal staff told the court that avoidance of a receivership had "saved the jobs of 10,000 persons" as well as protecting Westgate's minority stockholders.

The new Westgate-California board of directors appointed by Judge Nielsen, with S.E.C. approval, contains five members directly responsible to the court and two who will represent the Smith stock interests.

One of the so-called "Smith directors" is the financier's daughter, Mrs. Carole Smith Shannon, a divorcee and ardent horsewoman who has been associated with her father in a number of business ventures including ownership of the perennially last place San Diego Padres baseball team of the National League, now up for sale.

The second director representing the Smith holdings in the conglomerate is Mrs. Shannon's lawyer, David H. Thompson, who holds no Westgate stock.

The five court-appointed di-

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rectors include Herbert Kunzel, retired San Diego industrialist and civic leader who is widely regarded as Mr. Smith's likely successor as Westgate chairman. Mr. Kunzel recently retired as president of the Solar division of the International Harvester Company and since July 25 has been serving as the court's "watchdog" director on Westgate's board.

Judge Nielsen said that he expected to announce the names of the other four independent directors tomorrow and that the new seven-member board probably would then go into immediate session to elect the company's new chairman and president.

Meanwhile, he said, he is holding the Smith and Toft resignations, which were submitted to him late yesterday, "in escrow."

Mr. Smith's surrender of control of Westgate, his last base of power in this community where he had held the civic title of "Mr. San Diego of the Century," followed closely upon the Oct. 18 failure of his United States National Bank of San Diego, which provided most of the financing for the multimillion-dollar frauds charged to him by the S.E.C.

The bank's collapse was due mainly to a loss of liquid

assets resulting from some \$400-million in Smith-approved loans made to Westgate entities and to interlocked companies operated by the Smith business associates.

The loans to Westgate and various "Smith-related interests," described by Government auditors as being largely of dubious collectability, have been placed in receivership by the Federal Deposit Insurance Corporation.

United States National and its 63 branches remain in operation, however, after the F.D.I.C.'s sale of \$940-million in deposits and selected "good assets" to the Crocker National Bank of San Francisco.

Faces I.R.S. Assessment

Mr. Smith's loss of control over his billion-dollar bank and Westgate-California are not a final resolution of his troubles.

He is under criminal investigation by the Justice Department, before a Federal grand jury here. The grand jury's questioning of witnesses, halted by a court order three weeks ago pending disposition of the S.E.C. civil suit, will be resumed within the next two weeks, drawing on 93,000 pages of documentary evidence assembled by the S.E.C.