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STATE OF NEW JERSEY

Report of the
Gasoline Study Commission

Created by
Assembly Concurrent Resolution No. 7, of 1952

TO THE
GOVERNOR AND THE LEGISLATURE

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N.J. Gasoline Study Commission

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February 16, 1953.

*To The Honorable Alfred E. Driscoll,
Governor of the State of New Jersey:*

*To The Honorable Members of the Senate and the General
Assembly of the State of New Jersey:*

SIRS:

We, the members of the Gasoline Study Commission appointed by you in February of 1952 to study the gasoline industry in the State of New Jersey, with particular reference to the factors governing the fixing of prices of gasoline to the public and any related matter, have the honor and privilege of transmitting to you herewith our report.

Sincerely,

(s) WAYNE DUMONT, JR.
WAYNE DUMONT, JR., *Chairman*

(s) VINCENT E. HULL
VINCENT E. HULL

x x x x x x x x
BRUCE A. WALLACE

(s) MARIE F. MAEBERT
MARIE F. MAEBERT

(s) ANDREW A. SALVEST
ANDREW A. SALVEST

(s) ELVIN R. SIMMILL
ELVIN R. SIMMILL

x x x x x x x x
ALBERT F. HOWARD

(s) OTTO L. STRAUB
OTTO L. STRAUB

ASSEMBLY CONCURRENT RESOLUTION No. 7

A CONCURRENT RESOLUTION establishing a commission to study the gasoline industry within the State.

WHEREAS, A gasoline study committee was appointed in August, one thousand nine hundred and fifty; and

WHEREAS, Said gasoline study committee filed its report on June fourteenth, one thousand nine hundred and fifty-one; and

WHEREAS, A further study of the factors governing the fixing of prices of gasoline to the public is now desirable; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring)*:

1. There is hereby established a gasoline study commission to consist of nine members, three to be appointed from the membership of the Senate by the President thereof, three to be appointed from the membership of the General Assembly by the Speaker thereof, and the remaining three members to be the members of the gasoline study committee appointed in August, one thousand nine hundred and fifty.

2. The Commission shall undertake a study of the factors governing the fixing of prices of gasoline to the public and any related matter and upon completion of its study shall forthwith report its findings, conclusions and recommendations to the Legislature. The members of the Commission shall elect from among their number a chairman and a secretary. The members of the Commission and the officers thereof shall serve without compensation.

3. The Commission is authorized to hold hearings in different parts of the State and is empowered by its subpoena to compel the attendance of witnesses and the production of any books, papers and public and private records and reports, and obtain all factual information which shall be necessary to a completion of its study and furnishing of its report, and may call upon any State agency to furnish it with such assistance as it may require.

4. This concurrent resolution shall take effect immediately.

I.

CREATION, ORGANIZATION AND PROCEDURE OF THE COMMISSION.

Pursuant to Assembly Concurrent Resolution No. 7, introduced by Mr. Simmill and Mrs. Maebert in the 1952 Legislative Session and passed in February of 1952, the Gasoline Study Commission was created, to consist of three members of the Senate, three members of the General Assembly and three members of the Gasoline Study Committee appointed by the Governor of New Jersey in August of 1950.

The Commission was directed by the resolution to study the factors governing the fixing of prices of gasoline to the public and any related material and was authorized to hold hearings and to compel by subpoena the attendance of witnesses and the production of any papers, records and reports necessary for completion of its study. Although the resolution contained no appropriation of funds for the work of the Commission, it did permit the use of any State agency to furnish such assistance as might be required.

The Commission held its first meeting on February 20, 1952, and organized by the election of a chairman and a secretary. Thereafter throughout 1952 ten hearings, including two public hearings, were held, and a total of 57 witnesses appeared before the Commission. All testimony was taken under oath and was transcribed. In only a few instances was it necessary for the Commission to use its subpoena power to compel the attendance of witnesses, and numerous exhibits were voluntarily introduced into evidence.

The Commission never considered its mission to be solely a study of price fixing, but rather one of surveying the operation of the entire gasoline industry in the State of New Jersey, with a view to correcting—if it appeared necessary and desirable—by legislative recommendations,

any practices which might be found to be injurious to the best interests of *all* the people of New Jersey. Keeping in mind that the paramount obligation owed by the members of the Commission is to the citizens of this State, every effort has been made to be fair and not to show preference to any one phase of the gasoline industry in New Jersey or to any one group of people by recommending unnecessary or undesirable legislation as a panacea or cure for the alleged ills of the industry.

Special attention has been directed in this examination to the plight of those New Jersey citizens—small businessmen—who own or operate the retail outlets in this State. The problems of the retailers and of all other phases of the petroleum industry have been carefully and fully reviewed both from the viewpoint of serving the best interests of the vast army of consumers of a commodity—gasoline—which has become a necessity in modern living and from the viewpoint of recognizing the difficult and important position of the small businessman in an industry dominated by giants.

Of the 57 witnesses who appeared before the Commission, seven represented three different State-wide organizations of retailers, of which the principal one was the New Jersey Gasoline Retailers Association; 12 were individual retailers either operating or both owning and operating their own service stations; seven testified on behalf of five small companies known in the industry as independent wholesalers, distributors or jobbers; and the remaining 31 were either officers or attorneys of 12 of the major oil companies doing business in New Jersey.

The members of the Commission desire to acknowledge with deep appreciation the fine co-operation of these witnesses and their constructive contributions to a better understanding of this complex industry. The members also wish to thank most gratefully the stenographic assistants made available to this Commission for their competent and faithful service.

II.

THE PETROLEUM INDUSTRY IN NEW JERSEY.

Consideration of the petroleum industry within the physical boundaries of a single State is made more difficult by the fact that this is an international business of frequently huge proportions. It was, therefore, necessary for the members of this Commission to devote a considerable amount of time and effort before acquiring an even elementary grasp of the subject-matter and the issues involved.

This is an integrated industry. The major oil companies' testimony disclosed that starting with the oil wells, where the crude oil is produced, and continuing through the refineries, the transportation facilities such as tankers, tank cars and pipe lines, the bulk storage plants and the distribution therefrom to the retail outlets, the parent companies by themselves or with the help of their subsidiaries control the situation. As will be pointed out later in this report, the major oil companies also exercise a large amount of control over the retail outlets. It should be emphasized that this control is not necessarily bad and that in many instances it has resulted in increased efficiency of operation and in making gasoline and allied petroleum products available to the millions of consumers at reasonable prices. However, this integration distinguishes the petroleum industry from most other kinds of business.

Over the years there has been a gradual evolution from the old-time "split" stations, where a dealer would offer at retail several different brands of gasoline at the same station, to the modern one-brand stations of expensive construction. The major oil company testimony emphasized that this was a natural trend brought on by the desire of the average motorist to purchase gasoline of a particular brand in a station which dispensed only that brand and which was not physically unattractive by reason of having pumps of various colors, sizes and shapes. Although some dealers indicated that competition had been curtailed by

this trend rather than increased and improved, they seemed to agree that the one-brand type of service station is here to stay.

This evolution, among other things, has actually resulted in a decrease in the total number of retail outlets in New Jersey. In 1941 there were 11,300 licensed retail outlets in this State; in 1951, 10,605 licensed retail outlets. As modern service stations grew in number, consumers shifted their demands from the small outlets, such as those which used to prevail in front of rural grocery stores, to the more elaborate neighborhood and highway stations offering many additional services and products besides gasoline. Also indicative of this trend has been the appearance in recent years of multi-pump stations with several islands of pumps. The retailers for the most part condemned this innovation as not being efficient because not usually responsive to the demand at a particular station and also because not supplying the "personal touch," characteristic of the small businessman. However, the major oil companies are planning continued experimentation with this type of station in order to meet the competition of a few independent operators selling "unbranded" gasoline at multi-pump service stations along some of the busier highways in New Jersey.

Although there are over 10,000 licensed retail outlets in New Jersey, it was testified that only about 6,400 are classified as gas stations—that is, stations where the greatest percentage of profit is derived from the sale of gasoline. The balance of retail outlets consists of stores, garages, backyard pumps where an employer sells some gasoline to his employees and a few other kinds of dispensing agencies.

The Commission found several variations in the ownership and operation of service stations:

- (1) Company owned and operated for training or rehabilitation purposes;
- (2) Stations owned by the major oil companies and leased to dealers;

- (3) Stations leased by major oil companies and sub-let to dealers;
- (4) Stations rented to dealers by owners or lessors other than major oil companies and operated by those dealers; and
- (5) Stations owned and operated by dealers.

The testimony of the representatives of the 12 major oil companies appearing before the Commission indicated that a total of 35 stations should be considered in the first category above and that those stations were staffed by company-paid employees either as training stations or for purposes of rehabilitation. It is difficult to break down exactly the specific numbers of the next two classifications but it would appear that approximately 3,500 service stations in New Jersey are either company-owned and leased or company-leased and sub-let. In many instances the leases involved are of the two- or three-party type usually involving financing by banks which are willing to furnish money for construction purposes on the security of payment that only a major oil company lease as distinguished from an individual retailer's lease can provide. The Commission would estimate that the fourth and fifth classifications would not together constitute more than 40 per cent of all of the service stations licensed in New Jersey.

III.

ARE THERE TOO MANY SERVICE STATIONS IN NEW JERSEY?

The testimony on this point was conflicting. It has already been noted that the number of licensed retail outlets in New Jersey has decreased during the past decade whereas the total gasoline consumption, the average number of gallons sold per outlet and the automobile registration have all increased considerably. Moreover, as previously mentioned, there are about 6,400 licensed service stations and retailers, the balance of approximately 4,000 retail outlets consisting of other types. The retailers and their organization representatives testified that there are too many service stations in New Jersey and that continued expansion on the part of major oil companies was throwing the gasoline supply out of proportion to the demand at least in certain areas of the State and that this action materially helped in the precipitation of "price wars."

It was the opinion of the major oil company representatives, on the other hand, that even if it were conceded that there are too many retail outlets of all kinds in New Jersey, there are probably not enough good service stations and that their policy of expanding into new or additional areas would depend upon whether a survey of the economic conditions involved warranted in their opinion the construction of new service stations.

One witness stated that the major oil companies had saturated certain sections of the State with service stations, and he proposed a study of the licensing of retail outlets. He also cited examples of regulating the number of service stations by municipal ordinance.

A number of examples were presented of two or more dealers selling the products of the same company and being in competition with each other although distant only the

width of a highway or a few hundred feet from one another. While such a practice would not appear to be very sound or reasonable, this Commission believes that it can be adjusted by better relations between the major oil companies and their respective retailers and that there is no necessity, nor would it be in the public interest, to recommend the regulation of the number of service stations by legislation.

IV.

A COST SURVEY AS CONCLUSIVE EVIDENCE OF RETAIL PRICES.

One of the two principal proposals advanced by the New Jersey Gasoline Retailers Association was for legislation to require that a survey be conducted to determine the average cost of operation at the retail level.

In support of this proposal the association president contended that independent retail dealers operating stations which they lease from owners or lessors other than major oil companies or owning and operating their own stations could satisfactorily conduct their business at a margin of 5.8 cents per gallon (that is 5.8 cents above the tankwagon price of a gallon of gasoline charged to them by their suppliers), whereas a company owned and operated stations, confronted with pension plans, fringe benefits and other items of expense not affecting independent retailers would be forced to operate at a margin of no less than six to nine cents above its supplier's tankwagon price; that the small businessman operating his own station and endeavoring to provide for his customers the best products and service at the lowest possible prices is more interested and would be more competent to handle gasoline at the retail level than a salaried employee of a major oil company; that this plan would not guarantee an income to every dealer, but would compel individual retailers who have been operating above the average cost to reduce to the average or be eliminated from the business; and finally that this would not be price fixing, but rather an orderly play of economics resulting in savings to the consuming public.

This spokesman reviewed the precedents for such legislation in Michigan and Massachusetts but indicated that the kind of survey he recommended in New Jersey would differ from those in that the findings of average cost would become conclusive evidence of the minimum prices rather than merely *prima facie* evidence as in those States. He

stipulated that the cost of such a State-wide survey in New Jersey would probably approximate \$15,000.00 and that it could be conducted by some competent and impartial firm. He suggested that this cost could be borne by his association but that a survey to have any weight would have to be authorized by appropriate legislation.

In advocacy of a cost survey, several references were made to the fair-trade legislation in New Jersey which resulted in the stabilizing of retail prices for more than a decade by requiring that on the resale of branded products either the manufacturer or wholesaler could make a contract with one retailer in the State by which contract the retail price was established. Then the manufacturer or wholesaler gave notice to all other retailers who in turn had to abide by the same price. It was testified that about three years ago the major oil companies started notifying the trade generally that they would no longer fair-trade gasoline and shortly after that price wars began at the retail level. In 1951, the testimony discloses, the Supreme Court of the United States in passing upon a Louisiana statute similar to the New Jersey Fair Trade Act, held that the only person who could be bound under such legislation was the dealer who actually signed the agreement with the major oil company.

Most of the major oil company testimony disagreed with the statement that independent retailers could effectively operate at a lower margin per gallon of gasoline than a station owned and operated by an integrated company, although the representatives of one or two companies conceded that certain economies of operation which an individual retailer whose station is his sole source of income would be compelled to adopt frequently are not or cannot be practiced at company stations operated primarily as training projects.

It is worthy of note, too, that a representative of one other retailer organization flatly opposed legislation directed at price fixing. The idea of price fixing was also repugnant to the independent wholesalers, distributors and

jobbers who appeared before the Commission and who had apparently not been affected by the New Jersey Fair Trade legislation because that only permitted the establishing of prices on products when resold under the brand name.

The Commission, therefore, believing that a cost survey of the proposed kind would result in price fixing and believing further that such legislation would tend to eliminate rather than preserve the free enterprise system within reasonable bounds and would not serve the best interests of the public, must be recorded as opposed to such a cost survey.

V.

DIVORCEMENT OF WHOLESALING FROM RETAILING.

The second principal proposal advanced by the New Jersey Gasoline Retailers Association was to divorce the major oil companies entirely from the retail phase of the industry. In support of this proposal, the president of this association presented an excellent brief at the public hearing of December 2, 1952, which hearing was devoted entirely to this important question. He conceded that there are no State precedents in support of such a move, but that an analogy might be drawn from the operation of the liquor industry in New Jersey where no wholesaler is permitted to operate a retail liquor establishment. In discussing the legal background for divorcement, he reviewed decisions of the Federal Courts, including the United States Supreme Court, effecting divorcement in the railway sleeping car business, certain phases of the motion picture industry and the meat packing business.

He argued, moreover, that divorcement would be sound economics and would serve the best interests of the consuming public. He contended that the integrated major oil company of today is a vertical monopoly which tends to limit rather than encourage free competition and that this limitation is in effect from the oil well to the consumer. He stated that the major oil companies have so insulated themselves through the media of trade restrictions, leases and contracts as to make it almost impossible for a small businessman to raise sufficient funds to construct a new service station of his own or to purchase an existing station and obtain a branded supplier. He pointed out that the evolution to one-brand stations previously discussed in this report was not encouraged by the dealers themselves but rather was stimulated by concessions made to the retailers by the major oil companies to go one-brand.

He advocated legislation which would prevent the wholesaler from entering retailing and which would create an agency within the New Jersey Department of Labor and Industry to enforce the new requirement. This proposed enactment would declare it to be the policy of the State of New Jersey to free a retail dealer from control either directly or indirectly exercised by his supplier. He proposed further that this special agency within the Department of Labor and Industry would have to consent to any supplier cancelling the lease of a retailer and would also have to consent to any increase in rent charged by a supplier.

The advantages of divorcement he described as being:

- (1) An immediate halt to the construction of new service stations except by private capital and except in localities where the demand would warrant such expansion;
- (2) The removal of all possible pressure by the suppliers on retail dealers;
- (3) The restoration of free competition between the levels of wholesaling and retailing in the gasoline industry;
- (4) Savings to the consuming public by elimination of the differential in tankwagon prices whereby commercial consumers and certain other preferred customers can today buy gasoline at cheaper tankwagon prices than the retail dealers who resell to the public; and
- (5) Additional benefits to all consumers in not having to absorb in the tankwagon prices the ultimate cost of failure of new service stations constructed by major oil companies, which stations prove not to be self-supporting, are not physically suitable for conducting any other type of business and the costs of which are transferred indirectly to the consumers by the companies in the form of tankwagon prices.

Finally, he stated that divorcement would have to become effective gradually and he conceded that because of the many leases presently in effect between the owners of real property and the major oil companies, a minimum of 10 years would be required for this plan to become fully operative.

The counter-arguments were many and varied and were not confined solely to the major oil companies, for there were also dealers who testified they were by no means certain they would benefit by divorcement. Conceiving divorcement as a plan to make it unlawful for a company selling gasoline at wholesale to own, operate, assist in the financing of or have any other connection with a service station selling gasoline to the public, the opponents made, among others, these replies:

- (1) Such a law would violate the provisions against impairment of the obligation of contracts contained in both the Federal and State Constitutions;
- (2) Individual owners of real property wanting to lease desirable land sites to major oil companies for development would be denied that privilege;
- (3) The building of new service stations would not be retarded or stopped and the total number of service stations reduced because chain service station operators would move quickly to fill the gap caused by the removal of gasoline wholesalers from the retail level;
- (4) Price wars would not necessarily be eliminated because of the shift in service station ownership to individuals or to real estate investment chains;
- (5) Many dealers would be required to find new sources of financing particularly when endeavoring to purchase existing service stations which the major oil companies would be required to sell under divorcement and would be hard-pressed to locate lenders sufficiently interested in the dealers to assume the risks which many wholesalers have taken to assist dealers to get started in business;

- (6) Many dealers would be forced to purchase equipment such as pumps and tanks now installed by major oil companies on a loan basis;
- (7) Dealers generally do not understand divorcement and are not enthusiastic for it; and
- (8) The buying public, rather than gain through divorcement, would suffer from a deterioration of service and a lower order of facilities available to motorists.

In the final analysis divorcement which appears on the surface to have certain meritorious features would place this Commission in the position of ordering major oil companies not to own or operate or have any connection with real property at the retail level. Although this theory, as previously noted, has been approved in certain other fields of industry and is in operation with at least some beneficial results, the members of this Commission do not feel that they possess a sufficient knowledge or understanding of all the ramifications of divorcement to support it at this time. Moreover, and most important, the members are not presently convinced that under this proposed plan the consuming public would receive better service at lower cost than is presently furnished. The Commission, therefore, is constrained at this time to recommend against legislation to implement the theory of divorcement.

VI.

SUBSIDIES.

There would seem to be little doubt but that price wars start at the retail level and that they are caused principally by the desire of a retail dealer in a particular area to corner a larger volume of the sale of gasoline in that area for himself by the device of dropping his retail price below the level of the posted price in that area. While such wars are started at the retail level by dealers themselves, the Commission found that the wars were usually protracted by the practice of the major oil companies in granting subsidies to some of their dealers.

The companies attempted to justify this practice by pointing out that it was necessary to meet competition in an area where a dealer of one company had deliberately cut below the posted price to increase his volume of sales, even though such a reduction would of necessity curtail his margin of profit per gallon. Cash subsidies varied from one to six cents per gallon depending upon the intensity of the price war in a given area at a given time and were variously described as "rebates," "temporary discounts," "emergency allowances," "temporary allowances," "special allowances," "temporary competitive allowances" and "voluntary allowances." Other forms of subsidies appeared in forgiveness of rent by a lessor company to a lessee dealer, in furnishing advertising to the dealer at the expense of the company and in lowering the tankwagon price to certain retailers only. One dealer produced exhibits in the form of original invoices clearly showing the temporary discounts granted to him in reduction of the prices paid by him to his supplier for gasoline deliveries during the price war.

It is interesting to note that the major oil companies stopped granting subsidies on or about March 1, 1952, and have not since that time engaged in the practice except in

very minor instances. Since this Commission organized for the study of the operation of the petroleum industry in New Jersey just prior to that date and began to take testimony at about that time, the Commission members are inclined to believe that the cessation of subsidies was not entirely coincidental.

Regardless of the temporary benefits of price wars to motorists in the form of reduced retail prices, it would appear that the consuming public somewhere along the line pays for the rather high mortality rate among retail dealers and the tremendous cost of price wars to the major oil companies. As a matter of fact, the companies themselves are for obvious reasons not enthusiastic about paying subsidies even based on the allegation of having to do it to meet competition.

It was pointed out that price wars, while local in scope at their outset, spread, as their intensity grows, much like ripples after a pebble has been tossed into a pool of calm water. Thus when subsidies, whether in cash or some other form, are offered or accepted directly or indirectly, they represent discrimination in favor of the dealers of a particular supplier within the circumscribed area of an incipient price war and discrimination against other dealers of the same supplier in adjacent areas not immediately affected. These latter dealers continue to pay the posted tankwagon prices of their suppliers until the price war extends into their areas and ultimately become State-wide in scope.

It is the decision of this Commission that this discrimination constitutes an unfair trade practice and that the companies and the dealers are equally at fault where subsidies are offered by the former and solicited or accepted by the latter. It would appear to be in the interest of the consuming public for any dealer cutting prices to be left entirely on his own, to "sink or swim" without any kind of artificial support. This would encourage, not destroy or lessen, competition by placing more emphasis on the initiative of the individual retailer.

This Commission, therefore, recommends the adoption of legislation making it a misdemeanor for any distributor, refiner, wholesaler or supplier to offer or for any retail dealer to accept, directly or indirectly, a rebate, concession, allowance, discount or benefit, of any kind or nature whatsoever, in connection with the sale or distribution of motor fuel or other products manufactured by the distributor, refiner, wholesaler or supplier.

VII.

LEASES AND CONTRACTS.

As previously noted, most of the service stations in New Jersey are either owned by the major oil companies and leased to retail dealers or are leased by the companies from the real property owners and sub-let to dealers. When a dealer desires to buy a service station site and construct a station or to make a sizable capital improvement to his station he frequently finds that he has insufficient funds and must borrow money. His bank, however, will not loan him sufficient capital until he makes a long-term lease to his supplier which, in turn, leases it back to him on a one-year basis. On the security of the long-term lease by the dealer to the major oil company supplying him with its products, the dealer's bank will then honor his request for funds.

The companies stated that they endeavored to negotiate leases with owners of service station sites for an average length of ten years, whereas they sub-let to their dealers for periods averaging one year. This procedure usually enables a company to fix in advance the rents it will pay the owners over a long period of time and also leaves the company free to make adjustments upwards or downwards with its sub-lessees or dealers.

The rent a dealer is expected to pay for his service station depends largely upon the actual gallonage sold, the potential volume, the value of the property and past experience at the location in question or in the area selected. Some dealers pay a flat monthly rental and others pay rent based upon a charge of so much per gallon, with some major suppliers using a sliding scale on gallonage to provide incentive for their dealers to "push" their sales. The representatives of one major oil company condemned the straight gallonage retail type of lease as penalizing dealers

for doing a good job in increasing the volume of their gasoline sales through hard work.

One of these representatives described the customary one-year term of leases or sub-leases to dealers as being a compromise between the complaint on one hand of controlling a large share of the retail market through long-term commitments and the criticism on the other hand of trying to dictate to dealers by means of threats of immediate eviction. Several dealers objected to the yearly lease or sub-lease as being too short to assist them in effective long-range planning, but the testimony seems clear that these leases and sub-leases are automatically renewable from year to year unless either of the parties thereto gives written notice of termination within the stated period of time prior to the end of the term.

While it is easily understandable that a company, particularly when leasing or sub-letting a station to a new dealer, would not wish to contract for more than one year, unfair treatment was found to have been extended to several dealers in extreme rental increases charged to those dealers because of their initiative in substantially augmenting their gallonage annually. In fact, one dealer testified that his rent was raised from \$50.00 per month to \$300.00 per month in the course of six years as a direct result of his industry in building a good business. It is difficult for the members of this Commission to understand what circumstances, if any, could possibly justify such a severe and excessive increase in rent.

This same witness pointed out that while actually he could sell the products of competitors of his supplier at his service station, the pressure on him to sell the tires, batteries, accessories and oil of his supplier in addition to gasoline grew out of an indication that his lease might not be renewed if he did not sell these other products. This is an example of what is known in the industry as "tie-in sales," and the influence exerted by veiled threats on the part of an over-zealous salesman may well be considerable. One company's contracts, if signed by its dealers, obligate

them to purchase fifty per cent of their estimated requirements of the stipulated product or products from that company, with any violation of the products contract probably resulting in termination of the real property lease, where a lease is also involved.

Actually, too, a contract with a dealer who may or may not also be under lease or sublease of a major oil company may not prohibit the dealer from selling other brands of gasoline than those of his supplier. However, even more so here than in the case of tie-in sales, he would, according to the evidence, probably face cancellation of his lease upon the usual 10 days to 30 days written notice prior to the expiration of the term or an increase in rent or the loss of his supplies of gasoline and other products or some other penalty.

This Commission is of the opinion that even though the use of undue influence or intimidation upon a retailer in endeavoring to compel him to make tie-in sales of the allied products of the supplier may occur infrequently, it constitutes an unfair and undesirable trade practice arising out of what appear to be perfectly valid lease and contract methods employed in the petroleum industry. This Commission recommends, therefore, the adoption of legislation making it a misdemeanor for any distributor, refiner, wholesaler or supplier to lease or make a contract on condition, promise, agreement or understanding that the lessee or purchaser thereof shall not use or deal in goods, wares, merchandise, supplies or other commodities of a competitor of such distributor, refiner, wholesaler or supplier. Since it would be grossly unfair for the tanks or pumps furnished to any dealer by a distributor, refiner, wholesaler or supplier to be used by that dealer for any other motor fuel than that of the particular distributor, refiner, wholesaler or supplier, that exception is specifically made from this legislative recommendation.

VIII.

DEALER TANKWAGON PRICES.

The dealer tankwagon or wholesale price is the price charged to the retailer by the wholesaler, or the invoice cost of motor fuel to the retailer. The major oil companies for the most part do their own distributing through facilities owned and operated by them. In some instances and particularly in the more remote sections of New Jersey, some of the major oil companies make use of independent jobbers or distributors.

The evidence disclosed that because New Jersey is a relatively small State geographically with a highly concentrated population, the ordinary variations in tankwagon prices based on transportation costs from the terminals or storage plants to the retailing areas, are negligible and in most situations nonexistent. However, one major oil company admitted to the possibility of its having seven different pricing areas to match its seven distributing areas within the State.

The normal tankwagon price on regular or house brand gasoline in New Jersey is 14.6 cents per gallon, to which should be added five cents per gallon for State and Federal taxes. The normal tankwagon price on premium gasoline would be somewhat higher, approximately one and a half cents more per gallon.

The evidence disclosed that some of the companies in lieu of granting subsidies in time of price wars reduced the tankwagon price to certain retailers in certain areas. Unquestionably this was a far more honest approach to meeting competition than the practice of maintaining higher or standard tankwagon prices and granting rebates or discounts. However, the end result of price discrimination was much the same.

It was further established by way of information that the tankwagon price even in normal times is not necessarily

the same for all buyers since large commercial accounts and unbranded jobbers may purchase gasoline at one and a half cents to two cents a gallon cheaper than the same gasoline would be furnished by the suppliers to their retail dealers. However, it was stated that this differential often resulted from such buyers obtaining their gasoline supplies at the storage plants, thereby saving the companies the costs of transportation from their plants to the outlets involved.

The testimony of the representatives of at least two of the major oil companies indicated that New Jersey is unique in that there is no need to graduate tankwagon prices on the basis of transportation costs. There would seem therefore to be a sound basis in the testimony of both dealers and major oil companies for the recommendation of this Commission that no distributor or wholesaler should be allowed to discriminate in price by selling at different rates to different purchasers of branded motor fuel of like grade or quality. The purpose of this proposal is to require a major oil company to sell to all of its dealers in the State of New Jersey at the same tankwagon price and any violation thereof would be a misdemeanor. Each major oil company would thus have every right and opportunity to set its own tankwagon price, but, having once established the same, would be bound to sell at that price to each and every retail dealer of that particular company located and doing business within this State.

In other words, the members of this Commission consider discrimination in tankwagon prices, like the granting of subsidies, an unfair trade practice adversely affecting the best interests of the people of New Jersey and recommend legislation to make it a misdemeanor for any distributor or wholesaler, either directly or indirectly, to discriminate in tankwagon prices between different retail dealers purchasing the same grade or quality of branded motor fuel, which last is defined in the proposed act as that motor fuel which a retail dealer sells using the trade name of the refiner or supplier.

IX.

UNBRANDED GASOLINE.

Unbranded gasoline is that which is retailed under a name which does not represent the trade name of the refiner or supplier. It is often gasoline produced and refined by major oil companies but not sold at retail under their brand names. Ordinarily, it is sold at prices approximately two cents per gallon lower than the gasoline dispensed under the trade names of the major companies.

It was testified that on occasions, particularly in former years, unbranded gasoline was not of as good a quality as gasoline retailed under major brand names because it might have been gasoline purchased in "spot" or "contract" buying of inferior products. Examples were cited where an independent distributor or wholesaler either selling to retail dealers or also operating retail outlets was able to buy gasoline at lower prices from major suppliers having temporary excesses or oversupplies of gasoline—known in the parlance of the trade as "distress" gasoline—which could not be readily moved because the demand at the retail outlets of the major oil companies did not equal the supply available.

It was testified that unbranded gasoline today is either exactly the same gasoline or at least as good a quality gasoline as branded gasoline because it is gasoline purchased from the major oil companies by comparatively small distributors or operators who retail it under trade names which do not have as wide a public acceptance as the trade names of the major brands. However, the outlets through which unbranded gasoline is sold at retail frequently are not as pretentious in appearance or as favorably located as the branded outlets, and in some instances the attendants do not furnish extra services such as windshield wiping or checking the oil, water, battery and tires. Normally these differences account for the ability of an unbranded operator to sell his motor fuel at prices two cents lower than the branded dealer and still realize a satisfactory return on his investment.

It is worthy of note and of great credit to the major oil companies that the record does not disclose a single proven instance—even at the height of the price wars—of the “swapping” or exchanging or substituting of brands with the resultant product being inferior to that advertised.

The evidence is conflicting as to whether the sale of unbranded gasoline is a contributing factor to price wars. It appeared that in two or three areas of the State price wars had been precipitated or started in part by the construction and operation of large multipump unbranded retail outlets, situated along heavily traveled highways and selling gasoline without the furnishing of any extra services at prices as much as five cents per gallon below the posted branded prices for those particular areas. The increased volume in gallonage obtained by a retail operator in that situation would normally compensate for his loss in margin of profit per gallon.

It is the opinion of this Commission that the bulk of the testimony conclusively established that unbranded and branded dealers can exist together and maintain a relatively stable economic situation on a price differential of not more than two cents per gallon without there being any noticeable effect on a well-conducted branded operation. Unbranded gasoline has been sold for many years in New Jersey and is a natural result of free competitive enterprise at work. If an unbranded dealer can make a reasonably good living at a price differential of greater than two cents per gallon, that should be his privilege. Under no circumstances should this part of the report of the Commission be construed as condemning the sale of unbranded products. The consuming public should certainly be permitted the opportunity of purchasing unbranded products if motorists so desire. It is, of course, reasonable to assume that the major oil companies because of integrated operations, large sums of money expended for advertising their products, more elaborate service stations at more favorable locations and extra services to the motorists will continue to find wider public acceptance among consumers.

X.

OPERATION OF SIGN LAW.

On May 22, 1952, the Governor of New Jersey signed into law a bill which was passed at the 1952 Session of the New Jersey Legislature and sponsored by Senator Alfred C. Clapp of Essex county. The purpose of this law was to prohibit the display of “circus” or “jumbo” signs previously erected on or near the premises of retail dealers advertising lower prices in what frequently amounted to misleading language.

The law required in substance that no signs relating to the prices of motor fuel would be permitted on or about the premises where motor fuel is sold at retail or on other premises under the control of the retail dealer other than signs displayed and maintained on pumps or other dispensing equipment from which the motor fuel is sold. This statute contained the specifications as to the size of the permitted signs and the method by which they were to be attached to pumps and limited the signs to showing only the unit price per gallon including all taxes, State and Federal. The size of any fractional part of the unit price was also established in the law.

It is interesting to note that the testimony of representatives of all phases of the petroleum industry in New Jersey was almost unanimously in favor of this legislation.

The excellent enforcement of this law by the Motor Fuels Tax Bureau of the Division of Taxation of the State Government is generally believed to have accomplished three purposes:

- (1) The virtual elimination of unsightly and misleading signs designed to lure motorists into service stations by representing in various and sundry ways prices which upon investigation were found in

many cases not to apply to gasoline at all but to some other commodity such as cigarettes;

- (2) Curtailment of the rapid spreading of price wars; and
- (3) Abolition of a traffic hazard in that motorists frequently became so intense on locating the lowest possible prices in a given area that they paid insufficient attention to their driving and became involved in accidents.

XI.

SERVICE STATIONS IN RELATION TO TOLL HIGHWAYS.

The testimony of the major oil company which successfully bid for the gasoline retailing contract along the New Jersey Turnpike indicated that the contract was awarded on the basis of a bid for all of the comparatively few retail outlets to be permitted along the highway. It appears further that the prices of regular and premium gasoline supplied by this company along the Turnpike remained constant during the price war which was going on when the Turnpike was opened to traffic and that the price of regular gasoline remained at 25.4 cents per gallon, including tax, throughout the few remaining months of the price war. It is worthy of note that the gallonage sold along the New Jersey Turnpike represents approximately ten per cent of the total volume of gasoline retailed in the State.

It would appear that the maintenance of such prices, particularly in time of a price war, when gasoline was retailing at lower figures along public highways of the State adjacent to the Turnpike, does not reflect free competition at work and does not serve the best interests of the consuming public. In fact, this situation was described by one witness as a "State monopoly" because the State receives a certain rental per gallon from the major oil company holding the franchise for a period of years.

This Commission is of the opinion that consumers would be better served by either one of two alternative procedures on toll highways of the future and, therefore, makes the following recommendations:

- (1) Each location for a retail outlet on any future toll highway should be bid upon separately and the contract for that particular site should be awarded to the lowest bidder, rather than permit a bulk bid for all retail outlets on the same highway; or

- (2) No retail outlets at all should be permitted along the right of way of the toll highway in question, which would presumably result in their construction at the interchanges, the locations of service station sites becoming subject to competition between the major oil companies and any small independent businessman possessing the required capital.

XII.

SUMMARY OF PROPOSED LEGISLATION.

By way of summary and for the reasons set forth in the appropriate portions of this report, the members of this Commission make the following recommendations for legislation which have been drafted in a bill for simultaneous submission with this report to the 1953 Session of the New Jersey Legislature:

- (a) Making it a misdemeanor for any distributor, refiner, wholesaler or supplier to offer or for any retail dealer to accept, directly or indirectly, a rebate, concession, allowance, discount or benefit, of any kind or nature whatsoever, in connection with the sale or distribution of the motor fuel or other products marketed by the distributor, refiner, wholesaler or supplier;
- (b) Making it a misdemeanor for any distributor, refiner, wholesaler or supplier to lease or make a contract on condition, promise, agreement or understanding that the lessee or purchaser thereof shall not use or deal in goods, wares, merchandise, supplies or other commodities of a competitor of such distributor, refiner, wholesaler or supplier except that this shall not apply to tanks or pumps if furnished by the distributor, refiner, wholesaler or supplier to be used in the distribution of its motor fuel;
- (c) Making it a misdemeanor for any distributor or wholesaler, either directly or indirectly, to discriminate in tankwagon prices between different retail dealers purchasing the same grade or quality of branded motor fuel;
- (d) Making it a misdemeanor for any distributor, refiner, wholesaler or supplier to lease or to sub-lease to any retail dealer the facilities and equipment for

the operation of a retail service or filling station as specified herein, to wit: At an amount not in excess of ten per cent (10%) of the amount to be paid to the owner or lessor, or not less than ninety per cent (90%) of the amount to be paid to the owner or lessor for such facilities or equipment; and

- (e) Containing the necessary provisions for enforcement of (a), (b), (c) and (d) above by the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey.

This proposed legislation is to be known as the "Unfair Motor Fuels Practices Act," and it finds considerable support, as noted in the Statement attached to the bill, in legislation of a similar nature which has been enacted in 24 other States.

The unfair trade practices which this legislation is designed to correct are clearly substantiated in the recorded testimony and accompanying exhibits obtained as a result of the thorough examination conducted by this Commission. The motor fuel business constitutes such an important and necessary part in the economy of this State that this Commission strongly urges that the police power be invoked for the purpose of protecting and promoting the public welfare by terminating discriminative practices curtailing instead of strengthening competition in the sale of motor fuel at the retail level.

Nor are the proposals hereinabove affirmatively advanced the only ones to receive the careful attention of this Commission. Abuses have been observed in certain phases of the right and privilege of leasing and contracting, particularly with respect to apparently excessive rental increases on leases and sub-leases and with respect to the high degree of control sometimes asserted over dealers desiring to sell their respective interests in their retail establishments to buyers of their own choice.

As previously discussed in this report, this Commission is extremely concerned over the excessive rental increases sometimes made by major oil companies on leases and sub-leases. The members realize that situations may arise which justify rental adjustments upwards as well as downwards. The Commission, therefore, recommends legislation as stated in "(d)" above, establishing a maximum as well as minimum range for rental adjustments in order to protect primarily the welfare of the public as well as the interested parties.

One additional subject reviewed has been that of company owned and operated stations. As previously stated, these retail outlets are relatively few in number and are maintained primarily for training or rehabilitation purposes. Because the major oil companies are for the most part integrated corporations and can, therefore, operate such outlets at a loss if necessary, they can through such stations exert considerable influence on the posted retail prices in the particular areas where these outlets are located. Because of the very nature of this type of operation, it is often difficult for a major oil company to conduct such stations at a profit. This is in sharp contrast to the individual dealer who is compelled to carry on his business at a profit in order to survive. This Commission has given much thought to advocating legislation which would require any distributor, refiner, wholesaler or supplier engaged, directly or indirectly, in the retail sale or distribution of motor fuel to the public, to sell or offer for sale at retail at a price determined by the cost of doing business plus the posted tankwagon price for such motor fuel. However, it is the opinion of this Commission that this topic is adequately covered by the existing statutes of the State of New Jersey prohibiting retail sales at prices below cost plus selling expenses and that any further recommendations along these lines would be superfluous.

XIII.

CONCLUSIONS.

In bringing this report to a close the members of this Commission reiterate that they have at all times been motivated by a desire to be fair to all phases of the gasoline industry in New Jersey consistent with the welfare of all of the people of this great State. As a matter of fact, a very considerable amount of time and energy has been devoted to this study, and any objection by any person or on behalf of any part of the industry that insufficient opportunity was granted by the Commission for the purpose of hearing of evidence would come with ill grace. The general public hearing of June 16th and the December 2nd public hearing on divorcement each consumed only half a day solely because no one present in the Assembly Chamber on those occasions requested any additional time to be heard. Moreover, one week from December 2nd was allowed for the filing of any memoranda or briefs which anyone desired to submit, and none was forthcoming either during that week or thereafter.

In condemning certain trade practices as unfair and in proposing legislation to correct these inequities, every effort was made by the Commission members to "call our shots as we see them" and to avoid favoritism to or unjust castigation of any phase of the industry. On the contrary, the Commission recognizes that the major oil companies, the independent wholesalers, distributors or jobbers and the retail dealers all have serious problems for which no ready answers are available, and that many of these are too specific to lend themselves easily to solutions by a general legislative approach. It would seem that with these questions the real answer lies in a mutual effort on the part of all phases of the industry to better understand the problems of each other and to endeavor through better relations to improve wherever possible in their common cause of serving

the people. The gasoline "strikes" of the past with their attendant difficulties and the occasional "marches" on Trenton during legislative sessions do not seem to be very reasonable or constructive approaches.

This is a gigantic and highly important industry, and the situation in New Jersey is further complicated by the fact that this geographically small State sits astride the principal arterial highways connecting the metropolitan centers on the northeast and south west. The per capita consumption of gasoline in New Jersey in 1950 was 270 gallons as compared with 180 gallons in New York and 210 gallons in Pennsylvania. Much of this heavy consumption results from transient traffic and from the lower State gasoline taxes in New Jersey as compared with those in adjoining States.

New Jersey, therefore, presents a unique market for the products of a highly competitive industry. Free competition is a fine thing providing it does not become ruthless to the point where it is unfair. Gasoline price wars at first glance appear to, and do, benefit the consuming public for a while, but it is extremely dubious whether they really help anyone over the long pull.

Although more or less "normal" times, rather than price wars, presently prevail in New Jersey, the legislative proposals of this Commission to correct unfair trade practices apply just as aptly, because fair play must and should be of paramount importance at all times. The small businessman always has been and should continue to be a very important person in the United States of America and in the State of New Jersey.

Mr. Robert C. Crane, one of the members, who was unable to attend the hearings and meetings of the Commission and who disagrees with certain findings, is not signing this report for the reasons expressed in his letter of February 10, 1953, addressed to the chairman and has requested that his letter be appended as a minority report.

Mr. Albert F. Howard, another member of the original gasoline study committee, appointed in August, 1950, by

the Governor, attended only one hearing of this Commission and has stated his unwillingness to sign this report.

Senator Bruce A. Wallace was unable to attend any of the hearings or meetings of this Commission and does not wish to sign the report at this time, until he has had further opportunity to study the proposed legislation.

Respectively submitted,

THE GASOLINE STUDY COMMISSION.

Members Appointed by the President of the Senate:

(s) WAYNE DUMONT, JR.
WAYNE DUMONT, JR., *Chairman*

(s) VINCENT E. HULL
VINCENT E. HULL

x x x x x x x x
BRUCE A. WALLACE

Members Appointed by the Speaker of the General Assembly:

(s) MARIE F. MAEBERT
MARIE F. MAEBERT, *Secretary*

(s) ANDREW A. SALVEST
ANDREW A. SALVEST

(s) ELVIN R. SIMMILL
ELVIN R. SIMMILL

Members of Original Gasoline Study Committee Appointed by the Governor:

x x x x x x x x
ALBERT F. HOWARD

(s) OTTO L. STRAUB
OTTO L. STRAUB

February 10, 1953

Honorable Wayne Dumont, Jr., Senator,
State House,
Trenton, New Jersey.

My dear Senator Dumont:

I regret exceedingly my inability to attend the meetings of the Gasoline Study Commission due to the very heavy schedule of my activities elsewhere. However as I said at the beginning, I wrote the original report submitted by the Governor's committee appointed in 1950 at the conclusion of their investigation and at that time felt that any further activity on my part, until you had completed your investigation, might have lent an aura of prejudice in the public concept of your determination. I feel that you have dealt with this matter extensively, yet, having read all the testimony which you have furnished me, I find nothing which would support the desirability of government intervention in the field of gasoline sales.

In regard to legislation, I believe that Federal laws exist that furnish a protection to all concerned if there were an earnest desire to co-operate on either a test of the sales procedures or the law itself. I have felt free to consult my own close advisors in this matter and find the proposed legislation not to my liking. I, therefore, request that you delete my name as being a party to submission of this proposed legislation inasmuch as I cannot support it in its present state.

However, your report on the proceedings of the Gasoline Study Commission is a very worthy document and I commend you for your forthright manner in discussing the many issues. In comparison, however, to the report of the 1950 committee, whose investigation was conducted at the height of the price wars, I must submit that your conclusions on page 17 relative to the recommendation for the adoption of legislation making it a misdemeanor to offer

or accept a rebate, etc. are rather indefinite and I feel that our committee frowned upon the practice only in connection with price wars. Rebates and discounts are an established part of wholesaling and retailing and would appear wholly legal except where discrimination could be proved. Therefore, I believe that your summation of the subsidy question is somewhat vague.

Section VII, dealing with leases and contracts, does not give sufficient weight to the position of the producer inasmuch as it does not seem unreasonable for a producer to do everything in his power to have his product represented in the best manner possible and do everything to protect these sales within legal means.

Section VIII, dealing with tankwagon prices, again touches upon a matter which involves discounts and I believe that there are sufficient laws to protect against discrimination the type that was evidenced in the late gas wars. However, discounts and sales at production centers, or in this instance refineries, representing the deletion of transportation costs, is a worthy practice and actually allows for competition if someone can provide transportation at a cheaper rate so that he may provide gasoline at the retail level at lower cost to the consumer.

I am happy to note in your conclusion that the sign law which we recommended in our report has had such favorable acceptance. We felt that this circus type promotion had much to do with price wars.

Relative to Section XI, the section dealing with service stations on toll highways, I am in hearty accord since the tendency today in retailing gasoline on these toll highways seems somewhat monopolistic.

The entire point that I have in controversy appears to be that your investigation was splendid, your findings, other than where I have differed, seem well directed, yet I feel that the law which you have proposed is not representative of your findings. I must again urge as I did in the report

of the 1950 group that the Federal law against discrimination be resorted to in control of another gas war. Other than that, State control of gasoline retailing would be harmful to the buying public as well as detrimental to the industry. I am reasonably certain that the laws governing substitution of product have never been questioned for at the height of the price war we found but one instance of substitute brand or inferior product not as advertised.

It may seem strange on the one hand to commend you for your efforts and on the other call for deletion of my signature on the report, signifying my disapproval of the proposed legislation, but such is my intention and, I believe, my prerogative.

Very truly yours,
ROBERT C. CRANE