

PUBLIC HEARING

before

ASSEMBLY COMMITTEE ON COMMERCE, INDUSTRY AND PROFESSIONS

on

ASSEMBLY, NO. 1411 & NO. 159

(Concerning the retail sale of motor fuels and prohibiting distributors from engaging therein)

Held:

September 25, 1974

Assembly Chamber

State House

Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Assemblyman Byron M. Baer (Chairman)

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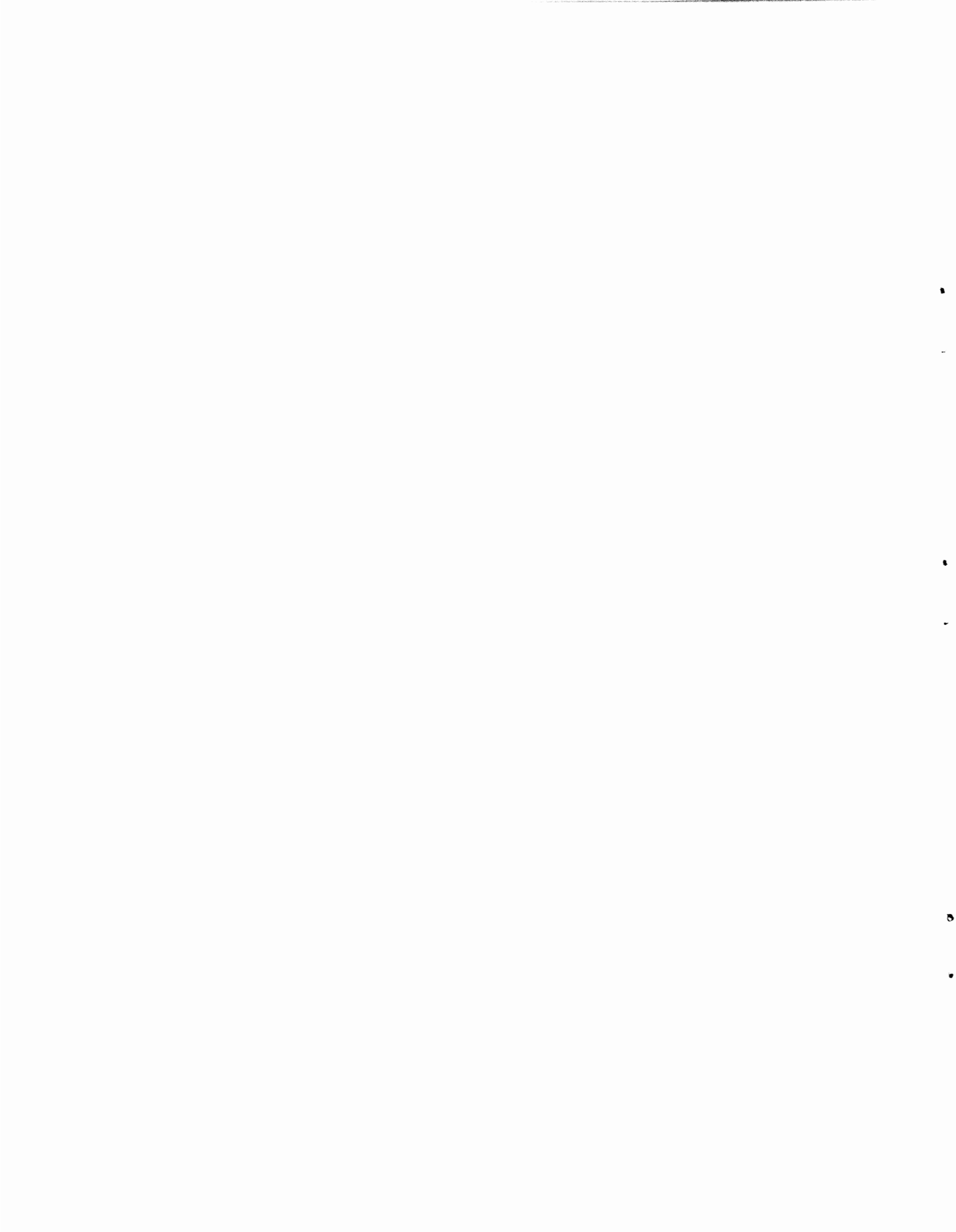
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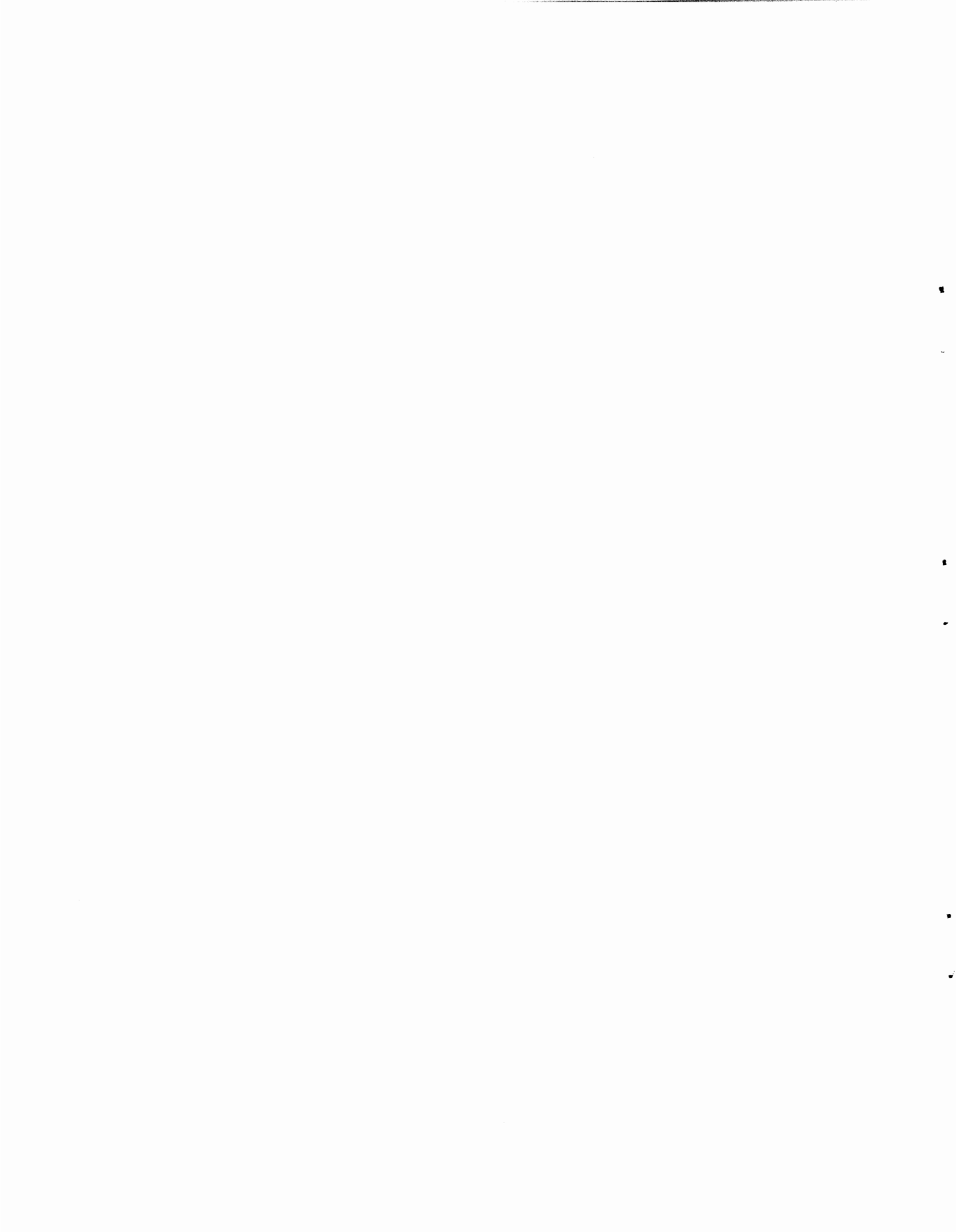


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ASSEMBLY, No. 1411

STATE OF NEW JERSEY

INTRODUCED MARCH 25, 1974

By Assemblymen BAER, GLADSTONE and BURSTEIN

Referred to Committee on Commerce, Industry and Professions

AN ACT concerning the retail sale of motor fuels and prohibiting distributors from engaging therein.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. As used in this act unless the context clearly indicates other-
2 wise:

3 a. "Distributor" means and includes any person who produces,
4 refines, manufactures, blends, compounds or imports motor fuels
5 for sale or distribution within the State.

6 b. "Person" means and includes natural persons, partnership,
7 firms, associations, joint stock companies, syndicates and corpora-
8 tions, and any receiver, trustee, conservator or other officer ap-
9 pointed pursuant to law or by any court, State or Federal. A
10 corporation shall include any director or officer thereof, and any
11 stockholder owning more than 10% of the voting stock of the cor-
12 poration.

13 c. "Motor fuel" shall mean (a) all products commonly or com-
14 mercially known or sold as gasoline (including casinghead and
15 absorption or natural gasoline), benzol, benzene, or naphtha
16 regardless of their classification or uses; and (b) any liquid pre-
17 pared, advertised, offered for sale or sold for use as or commonly
18 and commercially used as a fuel in internal combustion engines,
19 which when subjected to distillation in accordance with the
20 standard method of test for distillation of gasoline, naphtha,
21 kerosene and similar petroleum products (American Society of
22 Testing Material Designation D-86) shows not less than 10%
23 distilled (recovered) below 347° Fahrenheit (175° Centigrade)
24 and not less than 95% distilled (recovered) below 464° Fahrenheit
25 (240° Centigrade); and (c) any other product or liquid when sold
26 for use as a fuel in any type of internal combustion engine furnish-
27 ing power to operate a motor vehicle.

28 d. "Retail sale of motor fuel" means selling motor fuel from
29 a fixed location such as a service station, filling station, store or
30 garage, directly into the service tank or tanks of any vehicle pro-
31 pelled by said fuel.

1 2. It shall be unlawful for any distributor to engage in the retail
2 sale of motor fuel or to have any ownership or controlling interest
3 whatsoever in any person engaged in the retail sale of motor fuel,
4 except as hereinafter provided.

1 3. Any distributor engaged in the retail sale of motor fuel or
2 having any ownership or controlling interest in any person en-
3 gaged in the retail sale of motor fuel on the effective date of this
4 act shall have a reasonable time, not to exceed 2 years, from said
5 effective date to terminate its engagement in such retail sale or to
6 divest itself of such ownership or controlling interest so as to
7 avoid any undue hardship or economic loss. In the event that such
8 termination or divestment cannot be completed within 1 year with-
9 out undue hardship or economic loss, a distributor may apply to
10 the Superior Court for a reasonable extension of time which shall
11 be granted upon a satisfactory showing that said distributor has
12 acted diligently in attempting to complete such termination or
13 divestment and shall be conditioned upon continuing such diligent
14 action.

1 4. Any person who violates the provisions of this act shall be
2 liable to a penalty of not more than \$1,000.00 for each and every
3 day such violation may continue. The penalty shall be collected
4 and enforced in a summary proceeding pursuant to "The Penalty
5 Enforcement Law" (N. J. S. 2A:58-1). Process shall be either
6 in the nature of a summons or warrant and shall issue in the name
7 of the State, upon the complaint of the Attorney General.

1 5. Whenever it shall appear to the Attorney General that any
2 person has engaged in, is engaging in or is about to engage in any
3 act or practice declared unlawful by this act, or whenever he be-
4 lieves it to be in the public interest that an investigation be made,
5 he may in his discretion either require or permit any person sus-
6 pected of any such unlawful act or practice or any involvement
7 therein to file with him a statement in writing under oath or other-
8 wise as to all the facts and circumstances concerning the matter
9 under investigation. In connection with any such investigation the
10 Attorney General or his designee is empowered to subpoena wit-
11 nesses, compel their attendance, examine them under oath before
12 himself or a court of record, and require the production of any
13 books or papers which he deems relevant or material to the inquiry.

1 6. To accomplish the objectives and to carry out the duties
 2 prescribed by this act, the Attorney General may promulgate such
 3 rules and regulations in accordance with the "Administrative Pro-
 4 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as he shall
 5 deem necessary and proper, which shall have the force of law.

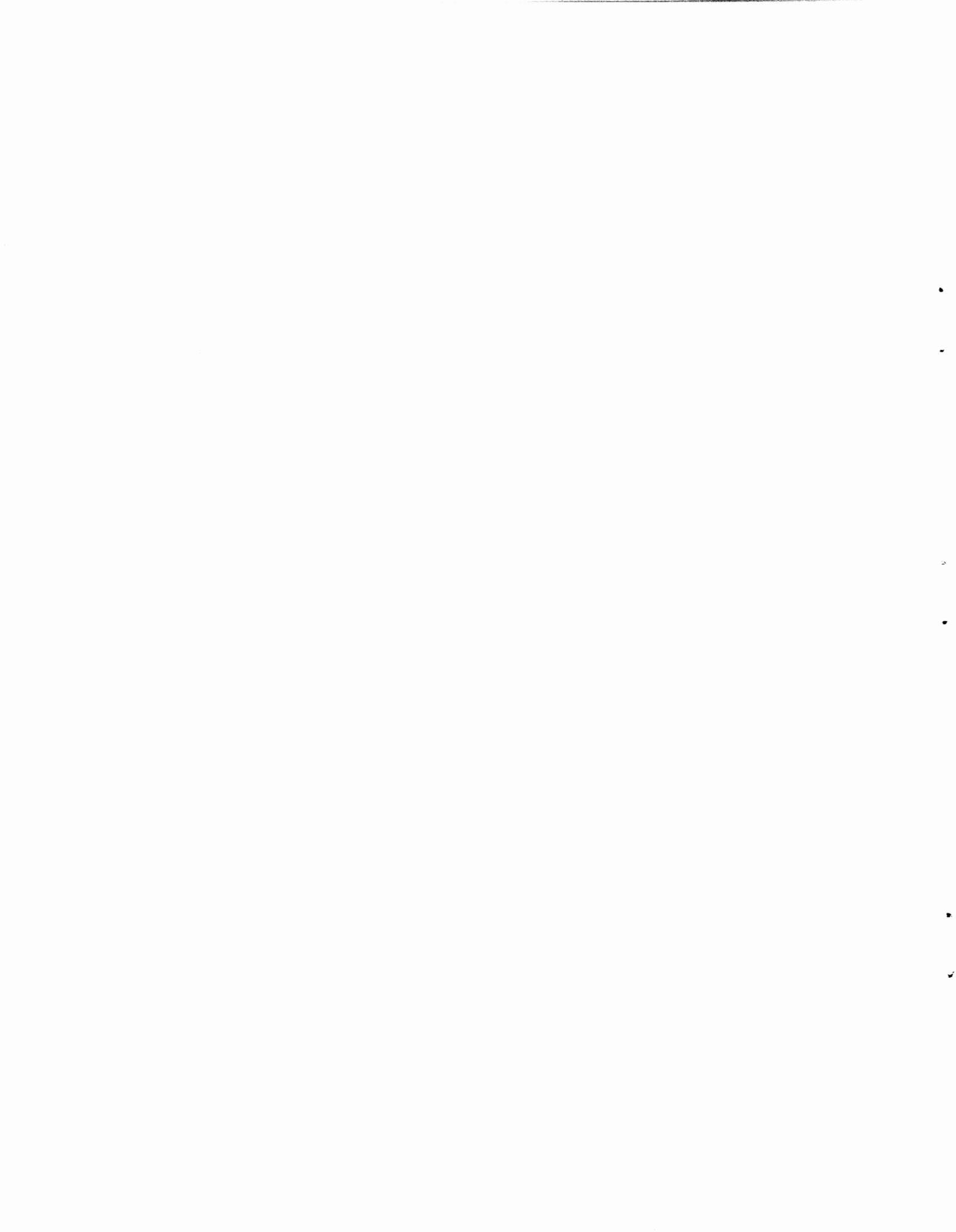
1 7. The Superior Court shall have jurisdiction to prevent and
 2 restrain violations of this act. The Attorney General may institute
 3 proceedings to prevent and restrain violations. The court may
 4 grant prohibitory or mandatory injunctions and other restraints
 5 for a period and upon terms and conditions necessary to deter
 6 the defendant from, and insure against, the continuing of a viola-
 7 tion or the committing of a future violation. The court may issue
 8 temporary restraining orders or prohibitions and may proceed in
 9 a summary manner.

1 8. This act shall take effect immediately.

STATEMENT

The energy crisis has brought into sharp focus the high degree of vertical integration in the petroleum business. The major oil companies, through their multinational business activities, are engaged in every aspect of the petroleum business, from oil exploration to gasoline marketing. Such vertical integration provides the major oil companies with a predominant if not controlling, interest in the retail sale of motor fuels to the detriment of retail dealers and consumers. Many independent service stations, garages and other retail dealers of motor fuels have already been forced out of business. Consumers have been subjected to gas lines, higher prices, and a daily concern over whether or not they can obtain enough gas to carry out essential regular activities. Yet, the profits of the major oil companies have soared upward.

In order to check the strong, if not monopolistic, influence of the major oil companies on the retail sale of motor fuels and to restore a competitive balance in this area for the benefit of consumers and retailers alike, this bill would prohibit any distributor, defined broadly as any person engaged in the production or importation of motor fuels for sale or distribution, from engaging in the retail sale of motor fuels. Any distributor currently engaged in such retail sale would be required to terminate such engagement or divest itself of its interests in such retail sale over a reasonable period of time. The Attorney General is charged with enforcement of the act and penalties and other remedies are provided to deal with violations.



ASSEMBLY, No. 159

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1974 SESSION

By Assemblyman ORECHIO

AN ACT to amend "An act to regulate the retail sale of motor fuels, and providing penalties for violations," approved May 12, 1938 (P. L. 1938, c. 163) and repealing the "Unfair Motor Fuels Practices Act," approved September 18, 1953 (P. L. 1953, c. 413).

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

3 1. Section 201 of P. L. 1938, c. 163 (C. 56:6-2) is amended to
4 read as follows:

5 201. (a) Every retail dealer shall publicly display and maintain
6 on each pump or other dispensing equipment from which motor
7 fuel is sold, in the manner regulated by the [State Tax Commis-
8 sioner] Director of the Division of Taxation, a sign stating the
9 price per gallon of the motor fuel sold by said dealer from such
10 pump or other dispensing equipment. All taxes, State and Federal,
11 imposed with respect to the manufacture or sale of motor fuel
12 shall be included in the price shown on said sign, but said sign shall
13 contain a statement of the amount of taxes included in said price,
14 or, without specifying the amount thereof, said sign shall state
15 that taxes are included in said price. A retail dealer shall not sell
16 at any other price than the price, including tax, so posted. Any
17 such price when posted shall remain posted and in effect for a
18 period of not less than 24 hours.

19 (b) [No retail dealer shall sell motor fuel at a price which is
20 below the net cost of such motor fuel to the retail dealer plus all
21 selling expenses.] (Deleted by amendment.)

22 (c) No other price signs of motor fuel so dispensed, or signs
23 relating to the price of such fuel shall be used or displayed on or
about the premises where motor fuel is sold at retail, other than
the signs provided herein by section 201 (a).

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

24 (d) No advertising or sign other than that provided for in
 25 section 201 (a), which directly or indirectly contains a statement
 26 of, or an implied reference to the price of motor fuel shall be dis-
 27 played at any place where motor fuel is dispensed at retail. Any
 28 advertising of the retail price of motor fuel through any other
 29 medium which contains a reference to the per gallon price thereof,
 30 shall include all taxes in the price stated, and there shall be included
 31 in such advertising a statement that such price includes taxes, or
 32 a statement of the amount of taxes which are included in such price.
 33 Such advertising shall be identified by the name of the product,
 34 and the letters of the name shall be not less than one-half the size
 35 of the figures used in the price.

36 (e) [No rebates, allowances, concessions or benefits shall be
 37 given, directly or indirectly, so as to permit any person to obtain
 38 motor fuels from a retail dealer below the posted price or at a
 39 net price lower than the posted price applicable at the time of
 40 the sale.] *(Deleted by amendment.)*

41 (f) It shall be unlawful for any retail dealer to use lotteries,
 42 prizes, wheels of fortune, punchboards or other games of chance,
 43 in connection with the sale of motor fuels.

44 (g) All above-ground equipment for storing or dispensing motor
 45 fuel operated by a retail dealer shall bear, in a conspicuous place,
 46 the name or trademark of the product stored therein or dispensed
 47 therefrom, and no retail dealer shall permit delivery into under-
 48 ground or above-ground containers, tanks or equipment of any
 49 motor fuel other than the brand represented or designated by the
 50 name or trademark appearing on such container or dispensing
 51 equipment attached thereto. No retail dealer shall be a party to
 52 the substitution of one grade of motor fuel for another.

53 (h) If the motor fuel stored in or dispensed from any above-
 54 ground equipment by a retail dealer shall not have a brand name
 55 or trademark, such container or dispensing equipment shall have
 56 conspicuously displayed thereon the words "No Brand."

1 2. The "Unfair Motor Fuels Practices Act," approved Septem-
 2 ber 18, 1953 (P. L. 1953, c. 413, C. 56:6-19 et seq.) is repealed.

1 3. This act shall take effect immediately.

STATEMENT

This bill removes all State price controls on motor fuels at both the retail and wholesale level. The purpose of this bill is to permit greater competition among motor fuel dealers, thereby gaining an advantage for the public through a decrease in the cost of motor fuel.

ASSEMBLYMAN BYRON M. BAER (Chairman): The public hearing of the Commerce, Industry and Professions Committee on motor fuel sale regulations will come to order.

I am Assemblyman Byron Baer, Chairman of the Committee. I will identify other committee members as they are present.

The hearing is on Assembly Bill 159 and Assembly Bill 1411. There is another bill that was just introduced by Assemblyman Contillo - it has not been formally printed - that is quite closely related. The number of that bill is Assembly 2096. We are making arrangements to have mimeographed or xeroed copies of that bill available as soon as possible. If anybody chooses to comment on that bill, that would be very much welcomed and in order, although the Committee will naturally consider the bill, later, in the normal way we would when it becomes available in regular printed form. But I did not want to preclude any discussion or consideration of it here for anybody who may wish to testify or comment on it, since it is so closely related.

I might mention that I was in Washington yesterday and obtained certain related materials which will be on file here with the Committee for any Committee member to review and for any other person who wishes to look at them here and make any comments, relevant to this hearing, for us.

The record of the hearing will be open for a period of at least two weeks, so anybody who is either unable to testify today or wishes to add additional comments can be able to do so. I would certainly welcome any rebuttal testimony or comment in written form subsequent to this hearing if anybody wishes to make it on any testimony we hear today, so that we can be sure that we are hearing the fullest information on both sides of these issues.

For the record, the materials that will be left with the Committee are: A hearing on Part I and Part II of the Subcommittee on Anti-Trust and Monopoly and the Subcommittee

on Administrative Practice and Procedure of the Committee of the Judiciary of the United States Senate, October 16, 17 and 18, 1973, which, I have been informed, has some related materials; hearings before the same Subcommittee, June 8, 11 and 12, and July 11 and 27 of 1973 on gasoline and fuel oil; hearings before the Special Subcommittee on Integrated Oil Operations of the Committee on Interior Insular Affairs, United States Senate, December 12 and 13. Let's see. That is a little out of order. That is Part II. Part IV was December 20, 1973. Part II was December 5 and 6. And Part I was November 28 and 29. Also there is some related Federal legislation and supporting material.

I am also going to request the Committee Aide to obtain from the House hearing records of the Committee chaired by Congressman Dingell related material and I am also going to request that the Committee Aide obtain, for the review of the members, a related book, "The Marketing of Gasoline," by Fred C. Allvine and James M. Patterson. There is a xeroxed copy of the cover page which is also to be left here in the file until the book is available.

Because we have a lot of witnesses and because of Yom Kippur, we want to end promptly at 4:30, if we can, so that anybody who needs to leave by then will be able to. For that reason, I do request witnesses to not be repetitive and to conserve our time.

Witnesses have been scheduled on our list, allowing 15 minutes to a witness, including time for questions. Since we are starting half an hour late and since questions may consume a portion of the time, I would appreciate it if the witnesses keep that in mind. It will not always be necessary to read full statements. If you have statements in writing, we do want copies of those statements and,

if you do not have additional copies, I would appreciate it if you would bring them to the Committee Staff now so that arrangements can be made to have copies made.

I think I will start off by a very brief reading of the statements on each bill and then we can proceed.

The statement on A 159 is as follows: "This bill removes all State price controls on motor fuels at both the retail and wholesale level. The purpose of this bill is to permit greater competition among motor fuel dealers, thereby gaining an advantage for the public through a decrease in the cost of motor fuel."

The statement of A 1411 reads: "The energy crisis has brought into sharp focus the high degree of vertical integration in the petroleum business. The major oil companies, through their multinational business activities, are engaged in every aspect of the petroleum business, from oil exploration to gasoline marketing. Such vertical integration provides the major oil companies with a predominant, if not controlling, interest in the retail sale of motor fuels to the detriment of retail dealers and consumers. Many independent service stations, garages and other retail dealers of motor fuels have already been forced out of business. Consumers have been subjected to gas lines, higher prices, and a daily concern over whether or not they can obtain enough gas to carry out essential regular activities. Yet, the profits of the major oil companies have soared upward.

"In order to check the strong, if not monopolistic, influence of the major oil companies on the retail sale of motor fuels and to restore a competitive balance in this area for the benefit of consumers and retailers alike, this bill would prohibit any distributor, defined broadly as any person engaged in the production or importation of motor fuels for sale or distribution, from engaging in the retail

sale of motor fuels. Any distributor currently engaged in such retail sale would be required to terminate such engagement or divest itself of its interests in such retail sale over a reasonable period of time. The Attorney General is charged with enforcement of the act and penalties and other remedies are provided to deal with violations."

I might add, as one who is the prime sponsor of this bill, that I think concern with this issue is heightened as we witness criminal proceedings in a neighboring state on apparently related anti-competitive practices, and we hear reports about independent gas stations presently having prices on gasoline in some instances as much as 13 cents below that of others, indicating the important role that such independent stations may be playing in maintaining a competitive market.

I do want to say as sponsor of the bill that I am interested very much not only in testimony for or against the legislation that might provide material supporting such positions, but also any testimony that would deal with the specifics, which I recognize may be far from perfect. The question as to the nature of the separation, whether it is divestment or some other form, is a very open question in my mind. The question as to where in the industry the separation should exist, between what categories of businesses, is an open question, as is the question as to what for the purposes of this legislation should constitute control when we have such a variety of business arrangements between gas station operators and larger companies that have an interest in them. So testimony on all these points and any other details that anybody might want to testify on is very welcome.

If anybody here is not presently on the witness schedule and wishes to testify, I would appreciate his contacting the Committee Staff Director in the first seat

here and giving your name to him. I would appreciate those of you who are here advising anybody who may come in afterward of that fact. And anybody who has not seen that list and wishes to, may do so by contacting the Committee Staff.

The first witness is Mr. Charles Irwin, an attorney, who, I understand is appearing also in lieu of Mr. Leonard Ruppert of the New Jersey Petroleum Council, who will not testify. Is that correct?

MR. IRWIN: Yes, Mr. Chairman.

ASSEMBLYMAN BAER: Please proceed.

C H A R L E S J. I R W I N: Thank you.

Mr. Chairman and members of the Legislature who are present, I am appearing this morning with respect to Assembly Bill 1411, for the purpose of presenting what I believe to be the consumer viewpoint on this legislation or on similarly constituted legislation. I have spent considerable time making an analysis of this Bill and its potential effects, based upon my experience as a New Jersey Legislator, as the first Director of the New Jersey Division of Consumer Affairs, as an advisor to the Cost of Living Council during wage and price controls, and as an informal advisor to HUD concerning consumer problems in housing. You should understand, Mr. Chairman, that although I have been retained by oil companies affected by this legislation, through the New Jersey Petroleum Council, this presentation represents my conclusions alone and I have not been limited or directed in any way in the content of my statement. As a matter of fact, the representatives of the oil companies have only seen my statement for the first time this morning.

I have a reputation locally and nationally as a consumer advocate. I would not sacrifice that to further a special interest or a special interest position which was in my opinion contrary to the public interest.

Accordingly, when I was requested to make a consumer analysis of this bill by the Petroleum Council, I agreed to make such an analysis to ascertain whether or not passage would benefit the consumers of New Jersey. It was agreed that the analysis would be totally independent and that my compensation would be based on time spent irrespective of my ultimate conclusions. If I had concluded this legislation would be in the best interests of consumers, my report to them would so indicate.

I made the analysis and I discussed the nature of this legislation with many consumer advocates whom I know and respect. There is no question in my mind, based upon the analysis and based upon my experience, that Assembly Bill 1411 is not consumer protection legislation. To represent it to be protective of the consuming public would in my opinion be an unjustifiable hoax.

Assembly Bill 1411 is special interest legislation which, among other things, could under certain circumstances cost New Jersey consumers millions of dollars per year.

Now please understand, when I state that this bill is special interest legislation that does not necessarily mean that it is bad legislation. What it does mean is that it should be considered as should all legislation in the light of all the true facts. All artificial smoke-screens supporting motherhood, apple pie, God, country and consumerism should be swept aside and the legislation should be viewed, as I have attempted to view it, on the basis of cause and effect.

This bill is clearly special interest legislation designed, I believe, and intended to benefit the New Jersey retail gasoline dealers, the men and women who operate a substantial majority of the retail establishments in New Jersey. Their interest is not the same as the general consuming public and should not be confused or mislabeled

a consumer interest. They are, of course, consumers, as the Chairman is, as I am, as everyone who is present is, but their interest is not the same as the interest of the general consuming public.

The bill in brief provides that distributors, defined in the bill as persons who produce, refine, manufacture, blend, compound or import motor fuels, for sale or distribution within the State, may not engage in the retail sale of motor fuel or have any ownership or controlling interest whatsoever in any person engaged in the retail sale of motor fuel, and further that such distributors, as defined, must divest themselves of any such ownership within two years of the effective date of such legislation. The Statement appended to the bill, as read by the Chairman, suggests that consumers have recently been subjected to gas lines, higher prices, etc. We all know that is true. The Statement implies that this legislation could or might correct that problem for the consumer. The effect and intent of the legislation, however, is to reduce the numbers of gas stations available to the public by eliminating all company owned stations. Perhaps it is over-simplifying, but surely, if another severe shortage is experienced, the effect of fewer stations will be to increase the length of gas lines.

The statement also indicates that vertical integration in the petroleum business provides major companies with a controlling interest in the retail sale of motor fuels to the detriment of consumers. The only way that a controlling interest in retail sales can operate to the detriment of consumers is if the major companies engage in price fixing through price agreement. This Bill in no way insures against such monopolistic practices. There are, however, state and federal anti-trust laws which under vigorous enforcement will prevent consumer detriment as a result of price rigging.

I will have more to say with respect to that later. The interest of the consumer is to obtain lower prices, better service, readily available outlets, and responsible management. This Bill would eliminate competition to independently operated gasoline retailers from company operated outlets.

The first interest of the consumer is price. It is axiomatic that vigorous competition pressures price downward. The corollary is that removal of any competitive segment may affect prices upward.

Due to many factors, including federal regulations, and in some instances company marketing policy, the price of gasoline at the pump in 1974 in New Jersey sold through company owned and operated outlets at from 1 cent per gallon to 4 cents or more per gallon lower than prices charged by independent brand name retail dealers.

According to figures supplied by the New Jersey Division of Motor Fuel Taxes, there are approximately 3.4 billion gallons of motor fuel sold in New Jersey in a year.

A conservative estimate of the share of that gasoline sold through company (or distributor) owned stations is 10 per cent or 340 million gallons in New Jersey. Every penny in reduced cost per gallon to the consumer at the pump results, therefore, in a 3.4 million dollar saving to the consuming public per year. An average three cent per gallon difference results in potential annual consumer savings of over ten million dollars. And if the effect of competition from lower-priced outlets is to force the price downward generally among all outlets, then the obvious result would be that one penny at the pump would result in a \$34 million saving to the public per year.

Let us look now at the special interest aspect and why I call it special interest legislation. It appears to me that A 1411 is the second step in an attempt by the

organized retail dealers to obtain control of gasoline retailing in New Jersey and to eliminate certain areas of competition. The first step in the continuing wrestle for power between the retail dealers and the oil companies was accomplished on behalf of the retail dealers in 1971 when the Franchise Practices Act became law. That bill projected the State of New Jersey into the contractual relationships between manufacturers and retailers and placed significant restrictions on oil companies with respect, among other things, to what action they could take to discontinue or alter a retail franchise contract. The oil companies now assert that that bill essentially froze them into all of the dealer arrangements that they had in 1971, regardless of the quality of the performance or profitability of any given location. That is their position. The retail dealers, on the other hand, assert that the bill rectified inequities in the bargaining process and safeguarded their livelihood and investments. For purposes of the analysis of this Bill, I make no judgment as to the correctness of either position, but merely note that in my experience it is unusual and it is the exception for government to become engaged in the contractual relationship of commercial parties unless there is a showing of an overriding public need. With the Franchise Act in effect, however, if the retail dealers can through A 1411 or similar legislation prohibit oil companies from operating their own stations, they have effectively locked the oil companies into the contractual relationship permitted by the Franchise Act and it is, therefore, an extension of that Act in my judgment. The question for the Legislature is whether the State should become that involved in a commercial dispute between special interests without a very substantial and significant showing of public interest on behalf of consumers. I suggest that if there is such an interest it

is in favor of promoting rather than restricting competition.

It is also significant to note just how broad the scope of this Bill is since it appears to prohibit any ownership or controlling interest by a distributor. And it is my understanding that such was the intention of the Chairman in his role as principal sponsor.

There are other problems which would be generated by the passage of this legislation, problems which stem from the nature of the retailing process in New Jersey.

There are a number of retailing systems, and, as a matter of fact, my analysis indicates that every company deals differently with respect to their marketing practices. The most prevalent form of marketing appears to be the independent brand name retailer dealer, who sells a brand name product such as Exxon, Gulf, Sunoco, Hess, etc. through a station which he operates for profit and which he either owns himself or leases from the oil company or from someone else.

If this bill is passed in its present form, the independent dealers who lease from oil companies (who are distributors under the bill) will be placed, I believe, in a difficult financial position.

If, as I suspect, the bill requires such oil companies to divest themselves of ownership of such properties, then the independent dealer will be required to continue his business to buy that property or enter into another arrangement. His required investment, I am advised, may run from \$100,000 to \$250,000 at a time when interest rates for borrowing are at an all time high and the country is experiencing an economic recession.

Such a result would be disabling to many retail dealers and would clearly not be in their interest.

Another method of marketing is through jobbers who purchase gasoline from producers and establish retail outlets

through contracts with independent dealers. Essentially the jobber in many ways replaces the oil company as the local contracting party. It is clearly in the interest of such jobbers, as my analysis would indicate, that this legislation be passed for a number of reasons, including:

(1) There is a likelihood of increased jobber opportunity to try to fill the gap left by company withdrawal from the marketplace.

(2) Established jobbers may be able or may hope to be able to purchase company-owned stations at distress prices.

Therefore, the pitch of the jobbers in support of this bill should be carefully evaluated by the Committee.

It should also be noted that from the standpoint of the consumer the jobber does represent another middleman, another layer of profit and an additional cost factor to the consumer.

I would urge, in addition to calling this to the attention of the Committee, the retail dealers who might otherwise support this bill to carefully evaluate their own particular situation with respect to this bill and others like it, particularly those who are presently leasing from a major oil company. Many such leases are adjusted to business volume and take into account good and bad business cycles. For example, the lease may have a minimal rental and then from that minimum there are increases in the amount paid based upon the activity of the particular retail outlet. If the companies are required to relinquish ownership, the land will either then be owned by a real estate investor or by the dealer himself. The inevitable result will be a fixed cost for rent or purchase money mortgage. Either course will reflect the present high interest rates and either could provide additional costs to the dealer which ultimately must be passed on to the consumer.

It may also be that implementation of this kind of legislation will weaken brand name attractiveness to dealers and dealers will prefer to take their chances in the market for product and remove the brand name from their stations. With smart buying that could mean lower cost to the dealer, and if it means lower cost to the dealer, that could mean lower cost to the consumer. But it is unlikely, I think, that a single dealer would have sufficient requirements to obtain surplus, which is what he would essentially be buying, if any, at reduced prices.

I would like to note here too that another area where competition is affected by this bill is that in the event that there is a major producer or one who would qualify as a distributor under this bill who is not presently substantially operating outlets in the State of New Jersey, passage of this legislation in this form would effectively preclude that person from coming into the State of New Jersey. I say that for this reason: Let us assume that we have an oil company that would like to begin retail operations in New Jersey. Under the present system, they can come into the State, select locations, perhaps even obtain options on the purchase of property or lease of property, and having done that, they can find people or attempt to find people who will come in as franchise dealers and operate the stations, the investment being the investment of the oil companies. If they are not permitted to have an interest in these companies, the alternative available to them is to come into the State and attempt to find investors to open a chain of stations throughout the State at a cost to the investor of perhaps \$150,000 to \$250,000 or more. As a realistic possibility, it seems to me that that effectively precludes new companies from coming into the State of New Jersey and from bringing the additional competition that that would represent.

With respect to brand names, as a former government consumer administrator, I can tell you that in the case of consumer complaints against retail dealers, it is much easier to obtain satisfaction for the consumer when a brand name company has an interest in maintaining a state-wide or national reputation. That does not mean that the local dealer will not attempt to keep his customers happy and do the things that he thinks are necessary to preserve his business. But there is an effective bit of extra muscle here available to the consumer advocate to straighten things out when they appear to go awry.

One further word about control of sales and prices in the State, getting back to the monopolistic question: If major oil companies conspire to artificially set prices, they are subject to prosecution under many present laws which prohibit the restraint of trade, and prosecution should proceed.

This bill would eliminate as far as the Petroleum Council is concerned and the 13 major oil companies that belong to it, 164 company-operated stations.

Conspiracy on pricing can exist at any level and can't be rectified by this bill. For example, if, as I suggested earlier, jobbers move in to replace companies in the state, they could combine in restraint of trade and even the retail gasoline dealers with a strong organization could operate in restraint of trade, particularly if other competitive segments are eliminated.

The intention of the major oil companies appears to be to maintain and to establish high-volume, low-overhead, gasoline-only retail establishments in high-traffic areas. It seems unlikely to me that they will want to undertake or that their objective would be substitution of an employer-employee relationship for all of the present independent dealer-operated stations. It just doesn't from my viewpoint -

and I can't pronounce the viewpoint of the oil companies -- it just doesn't make sense for them to undertake the thousands of employees that would be necessary to man all of these stations, with all of the attendant problems of workmen's compensation, social security payments, union contracts, etc. The marketing development in gasoline is similar to that which occurred in food a few years ago. Supermarkets did in some instances replace the corner grocery store and to that extent that fact displaced some grocery store operators; those operators experienced a detriment. The net effect from the standpoint of the consumer was to provide convenient, high-volume, low-price retail food establishments. The corner grocery store continued and continues today to exist as a convenience outlet where consumers are willing to pay a somewhat higher price for commodities for the convenience of having the store within walking distance. Similarly, gas-only, high-volume highway retail operators can and should provide a consumer advantage, but the local independent dealer providing service, convenience and local availability will continue to fill a need for the driving public.

Mr. Chairman, if the objective of the New Jersey Legislature is to strike out at the major oil companies and at their interests out of anger or frustration because of the worle energy crisis or because some of the oil companies reported unusually high profits, this bill may provide a vehicle for such emotional ventilation.

If, however, your objective, Mr. Chairman, and the objective of the Legislature is well-reasoned, well-founded consumer-oriented protection legislation, this bill in my judgment offers nothing. Thank you.

ASSEMBLYMAN BAER: Thank you, Mr. Irwin. I would like to ask you a few questions, although I don't want to spend too much time because we have consumed a great deal

of time here.

Do you recognize that independent gas stations sometimes have prices lower than that of what you have been referring to as company-owned gas stations?

MR. IRWIN: Yes, I do. My understanding is that ---

ASSEMBLYMAN BAER: Let me ask you this: Are you aware that there has been a substantial decrease of some of these independent gas stations and some of this has been occasioned by the policies of the companies which have served to put them out of business? Are you aware of any of this?

MR. IRWIN: I am aware of the fact that there has been in the last year or two a decrease in the number of stations nationwide. I wouldn't, based upon the figures that I have seen, classify that as a substantial decrease. And I would suspect that some of those fatalities of gasoline stations may be attributable to operations of some of the oil companies. I think that the operations of oil companies vary considerably. Some of them, I recognize, may place unreasonable requirements on some of their dealers. Those things must be dealt with, I think, in their own fashion. But I don't believe that this kind of legislation addresses itself to that type of problem.

ASSEMBLYMAN BAER: If you recognize that there have been gas stations, independent gas stations, put out of operation by companies, based on what you have described as unreasonable policies, do you feel that this does reduce competition in the industry and, secondly, since you indicate you feel this should be taken care of in some other way, how would you propose that these practices be put to an end if you feel that it is in the interest of the consumer and not just in the interest of the guy running the gas station who happens to be the victim of unreasonable practices?

MR. IRWIN: I would suggest to you, Mr. Chairman, with

respect to those stations that have discontinued operations, although I can't give you statistics with respect to it, I think it is, probably, and I think a survey would reveal that a great majority of those stations left the market place because they were marginal operations and because their function, like many corner grocery stores, was taken over by another marketing principal. I would say that the number of stations that closed by improprieties of contractual relationship between the parties would constitute a small number of those stations. And I would further indicate that the Franchise Practices Act, which I alluded to in my presentation, is the kind of legislation which is intended to take care of those contractual inequities.

ASSEMBLYMAN BAER: Yet you were very critical of that legislation.

MR. IRWIN: Critical of it to the extent that in my judgment --

ASSEMBLYMAN BAER: Do we need more of it or do we need less of it? I am confused by your testimony.

MR. IRWIN: Well, I think it becomes a matter, as with so many law, of enforcement. And where there are inequities in bargaining positions, there may be under some circumstances a basis for governmental intervention, provided there is sufficient public interest.

ASSEMBLYMAN BAER: In other words, you want to see more enforcement of this Franchise Law that you were just attacking as step one of a very bad setup.

MR. IRWIN: I think that is the appropriate way to rectify the abuse that you indicate may exist as far as stations closing. I haven't seen in the materials that I have had an opportunity to look at and in the analysis that I have been able to make -- I haven't seen any hard

evidence indicating that this is what has occurred, that stations are being forced out of business.

I have seen evidence that oil companies do want to get into this high-traffic, high-volume business and it is my judgment that if they do, that would be of benefit to the consumer, not a detriment.

ASSEMBLYMAN BAER: When did you begin your research for this presentation here?

MR. IRWIN: Approximately two weeks ago.

ASSEMBLYMAN BAER: I see. You spoke about the problem that you thought might be occasioned if this bill were to go into effect where there would be necessary refinancing in a high mortgage market.

MR. IRWIN: Yes.

ASSEMBLYMAN BAER: Would you feel that that problem would be eliminated if the bill made provision for leasing rather than complete sale and divesture?

MR. IRWIN: Yes. I think that if the bill were altered in such a way that oil companies could continue to own the properties, erect the structures, equip the properties, etc., and lease them to dealers, that would remove the problem that I see the dealers having with respect to their financing. It would also remove the problem, at least to a large extent, with respect to new oil companies coming into New Jersey for the purpose of enlarging their operations.

ASSEMBLYMAN BAER: Now you made reference by analogy to the corner grocery in many cases having been superseded by the need for the supermarket.

MR. IRWIN: Yes.

ASSEMBLYMAN BAER: Yet there are large supermarkets that are independently operated. A large supermarket may need to have some ten to twenty thousand different products, as I am sure you are aware from your past experience, whereas the number of products in a service station are

relatively few. In fact, in your reference to the gas stations, in trying to draw the same analogy between the high-volume stores and the low-volume stores, isn't it a fact that in many cases the low-volume stores offer a greater variety of services and sometimes products?

MR. IRWIN: Absolutely - no question about that. The analogy goes to the kind and extent of services available to the public. I did not mean to imply that ---

ASSEMBLYMAN BAER: So you don't have that benefit of the diversity. Now is there any particular reason why a high-volume operation would be better suited to be operated by a company-operated station as opposed to an independent? I have heard assertions that independents operating in high-volume locations have been forced out and taken over by companies. Is there anything inherent that would cause the company to need to operate the high-volume outlets as opposed to independents?

MR. IRWIN: I think that high-volume outlets can be operated by independent operators, by companies, by jobbers. I think that they probably are being operated by all three now.

ASSEMBLYMAN BAER: If that is the case, then I fail to see where the analogy with the supermarket has any significance for us because the high-volume store neither is necessarily more efficiently operated by a company station by the nature of its operation nor is it more likely to provide the consumer with diversity of services. Can you explain then how it is that there has been a taking-over of some of these high volume locations, since I assume these are the most profitable, and, therefore, such stations are least likely to fail when under independent operation? Can you explain why there has been this kind of takeover, except as a result of the unreasonable practices

that you described before?

MR. IRWIN: With due respect, I think your question kind of is a "when did you stop beating your wife" question because it assumes facts that really I don't have available to me and I don't recognize necessarily as being so.

ASSEMBLYMAN BAER: All right. You question whether in fact such high-volume outlets have been taken over?

MR. IRWIN: Yes, that's right.

ASSEMBLYMAN BAER: You are not denying it or you are just not familiar with it?

MR. IRWIN: I have no information to support that and I really could not respond to it. I think with respect to new investment in such operations, you are talking about a considerable investment which probably can most readily and most effectively be made by the oil companies that have the money to do it rather than an independent dealer who would have to come up with a substantial amount of money for a large piece of highway frontage property and build a building on it, etc. I think as a realistic matter, this kind of service will be provided through large company operations and is less likely to be provided, particularly in the present market, by independent financing.

ASSEMBLYMAN BAER: One other question: You made reference to the need for anti-trust enforcement in terms of potential price-fixing and that price-fixing can occur in any type of setup.

MR. IRWIN: That's correct.

ASSEMBLYMAN BAER: First of all, is price-fixing a difficult thing to establish?

MR. IRWIN: You mean a violation of the act, sir?

ASSEMBLYMAN BAER: A violation. Is it a difficult thing to get evidence on and establish?

MR. IRWIN: It is difficult to establish at any level.

That's correct.

ASSEMBLYMAN BAER: Secondly, is this difficulty lessened when those that are involved in the fixing necessarily must be hundreds and hundreds of independent entities as opposed to a handful of major corporations? Are the communications necessary when you have hundreds and hundreds of operators like that independently that all have to be plugged in -- are the communications much more subject to being exposed and prosecution easier as a result?

MR. IRWIN: Well, I have to answer that question really two ways and give you some information that it doesn't really request. First of all, it assumes facts that may not necessarily be so because if oil companies are removed from the marketplace as owners, it seems to me that they will rapidly be replaced by jobbers who are not "importers" and, therefore, not under the coverage of this bill. Now those jobbers, if they wished to move in restraint of trade, I think would have probably more incentive with respect to price-fixing than major oil companies would have because substantially all of their investments would be in the particular market that you were dealing with and there you would not be dealing with substantially larger numbers of potential operators but perhaps even smaller numbers or the same number.

With respect to the potential for abuse at the retail level, if you assume that you have a disorganized structure of independent dealers who have no focal point, then I think the question has to be answered, yes, it is more difficult. If you assume, however, that there is, as there are in many states - and I don't focus on New Jersey with respect to this - a strong dealer organization with strong dealer support, under those circumstances it is more likely, it seems to me, that an individual or small group of individuals could ascend to sufficient power

to be able to essentially operate in restraint of trade as to pricing.

ASSEMBLYMAN BAER: As I understand it, one of the things you are saying is you feel if there was this divesting or any other of the forms of elimination of control that I have alluded to in my opening statement, that the result would be not an expansion in the number of entities that are setting prices, but a narrowing?

MR. IRWIN: There could be a diminution.

ASSEMBLYMAN BAER: Well, not just could be, but you are saying you think probably there would be. Anything could be. There are probabilities all over the map. You could also at the same time be saying that it could be in the other direction. But if I understand the thrust of your testimony, you are saying that you think this is what is going to happen.

MR. IRWIN: Well, if I were in a situation as a businessman where the oil companies were being removed from the marketplace and where opportunities for company-operated locations on high-volume roads were going to be available and if I had the capital, I would very readily invest that capital to obtain those locations and operate as a jobber-owner. Now I think that that would happen. The result would be that there would be a new figure in the marketplace replacing the companies, the jobbers. The same potential that you are concerned about, Mr. Chairman, about the restraint of trade would then exist for those jobbers and there would be, as I see it, no particular benefit flowing to the consumer as a result of the substitution. On the contrary, all we would have done is to put another middleman in the picture with an increase in price.

ASSEMBLYMAN BAER: Let me go along with you on the

hypothesis that the reduction in the control of what seems to many to be the major controlling influences in the industry would result in a greater centralizing of control for the moment. I am certainly interested in seeing anything that will reduce competition at any level in the industry being avoided. I think it is important to see that we have competition at all levels and I would like to ask, therefore: What would you propose specifically in the hypothetical situation you describe to prevent this sort of consolidation by a few jobbers?

MR. IRWIN: I would not propose anything because I don't think that it should be prevented any more than I think that the oil companies should be prevented from owning and operating stations. I think that any elimination of any segment from the marketplace is an elimination of competition, and I think that is what this bill accomplishes.

ASSEMBLYMAN BAER: And you don't see a trend towards elimination of competition through the beginning of the take-over of these independent gas stations? That doesn't concern you. That is kind of insignificant according to your testimony.

MR. IRWIN: As marketing trends change, I would say that it is probably to be expected that certain marginal retail operations will be eliminated. For the fellow that is eliminated, that is bad. For the consuming public, that is not necessarily bad and it may be good.

ASSEMBLYMAN BAER: All right. The marginal ones may be eliminated. In so far as the non-marginal ones with the high volume, you really don't have knowledge of that.

MR. IRWIN: I would say this, that it certainly would not be in the interest of an oil company to eliminate that dealer, any more than it would be in the interest of an automotive manufacturer to eliminate a profitable and satisfactory dealer in his automobiles. And I think the kind of thinking that develops this legislation must be

carefully evaluated because it does or it could slop over into all kinds of other industries. If the objective is to eliminate any possibility at any level of any restraint against trade, I think that many legislators at the Federal and State level have spent many, many years operating in this area and have come up with as effective legislation as they can contrive. I don't think this bill addresses itself to that problem.

ASSEMBLYMAN BAER: All right. I want to thank you very much, Mr. Irwin, for your testimony. I certainly want to say to you since you propose that the Committee very carefully scrutinize the pitch of jobbers in support of this legislation, that I am sure that we will. And, in fact, I think you can be sure that we will very carefully scrutinize the pitch of all witnesses before this Committee on either side of the issue. Thank you very much.

MR. IRWIN: Thank you, Mr. Chairman.

ASSEMBLYMAN BAER: I want to mention that copies of Assembly Bill 2096 are now available here.

Again I would like to ask those who have printed testimony, if you don't have additional copies, please have your statements duplicated in advance of your being called to testify.

The next witness will be Mr. F. W. Butler of Exxon. Have you a statement to hand us?

MR. BUTLER: Yes.

ASSEMBLYMAN BAER: Since we are running substantially behind, I will ask you to please take that into account. We will end up not having time for some of the later witnesses if we continue taking as much time as we took with the last witness.

F. W. BUTLER, JR.: Thank you, Mr. Chairman.

My name is F. W. Butler, Jr. and I am here today representing Exxon Company, U.S.A. I am responsible for our retail operations in New Jersey as part of my overall responsibility as Retail Sales Manager in the Northeastern Region. I appreciate the invitation to appear before your Committee to comment on Assembly Bills 159 and 1411. Exxon supports A.159 and opposes A.1411.

First, let me comment on A.159 which amends Section 201 of Public Law 1938 Chapter 163. We support this measure and urge the Committee to release the bill with a favorable report. This is a consumer oriented bill which would permit cross-merchandising in service stations, a marketing concept now prohibited by law. Permit me to define cross-merchandising by using a Car Wash operation as an example. In neighboring states these investments provide gasoline and car wash service through the same facility, and the amount one pays for his car wash depends upon the amount of gasoline he purchases. With this prohibition removed, citizens of the State of New Jersey would then be able to benefit from marketing innovations which are now enjoyed by consumers in her neighboring states. We would like to see all unnecessary and unreasonable legal restraints lifted on marketing operations in the State of New Jersey so that the consumer can exercise his vote on how he wants his motoring needs to be served.

I realize that what I'm about to say next refers to another law and not A.159, but we feel another example of unreasonable legal restraints against the citizens of New Jersey is the prohibition of self-serve in dispensing of motor gasoline. Self service is approved now in virtually all states and benefits the consumer in that the savings in labor is passed on to him.

The second bill, A. 1411, is entitled "an Act to prohibit distributors from engaging in the retail sale of motor fuels." Under the statement of purpose in the bill, the comment is made that "vertical integration provides the major oil companies with a predominant, if not controlling, interest in the retail sale of motor fuels to the detriment of retail dealers and consumers." This statement, we believe, is misleading. As a matter of clarification, vertical integration in the oil industry means that a company is engaged in exploration, production, refining, transportation and marketing. It does not mean that at the marketing level a vertically integrated company owns and operates retail service stations as A. 1411 erroneously presumes. Exxon retail service stations are primarily operated by dealers and we will expand on that a bit later.

The statement accompanying the bill implies that the oil companies are running the independent dealer out of business. By independent dealer, I understand the bill to mean a private businessman, such as one who leases a retail station from Exxon and markets under its trademark, and other retailers with whom Exxon has a supply contract. It is interesting to note that a survey completed by the American Petroleum Institute on August 30, 1974 indicates that for the 22 major companies reporting, only 7,375 service stations are directly operated. In December, 1972, these companies directly operated 7,641 stations. This reveals that the ratio of company operated stations to the total of all service stations for these companies remained essentially constant. These figures include a number of retail stations on toll roads and turnpikes where contractual requirements specify they be directly operated by the supplying company. A copy of this survey will be furnished your Committee upon request.

Those are industry figures -- now, how does Exxon stand? On a nationwide basis, 96.4% of the Exxon identified service stations are operated by independent dealers. Over the past several years, the number of stations directly operated by Exxon has been declining. In December of 1970, there were 3,649 direct company operations. As of December 31, 1973, the number had been reduced to our current level of 933 company operations. Now let's get closer to home and see what these same statistics reveal for the State of New Jersey. Presently, of the 1,231 Exxon identified service stations, only 43 are direct company operations. This small number of our total New Jersey representation could hardly be construed to be a predominant or controlling interest. We think of further significance is the fact that, of these 43 direct company operations, only 22 are conventional service stations, 3 are Car Care Centers, and 18 turnpike and parkway locations. If A.1411 were enacted into law, this company would have to convert these direct operations to dealer within one year. Passage of this law would place Exxon in the awkward position of abrogating its present contractual arrangements with both the New Jersey Highway Authority and the New Jersey Turnpike Authority, which require that the 18 turnpike stations be directly operated by Exxon.

What I have discussed so far should demonstrate that A.1411 is unnecessary and would place an unjustifiable restraint on the marketplace in the name of protecting retail dealers - a result, I might add, which has already been accomplished under other applicable New Jersey statutes.

Some of you will recall that in December of 1971 this legislature enacted the New Jersey Franchise Practices Act which was strongly supported by the

New Jersey Gasoline Retailers Association. This group, according to our best information, claims a membership of 3,116 dealers - only 39% of all the dealers in the State. This Act specifically states that a supplier cannot terminate a dealer except for good cause which must be specified in the franchise agreement. The purpose of this law was to protect dealers from unjust termination, but its practical effect is to make it extremely difficult to discontinue business relationships with a dealer, no matter how poor his performance might be in satisfying consumer needs. The combination of that statute with A.1411 would tend even more to produce a privileged group of dealers, that is, those dealers currently in business. A.1411 would absolutely foreclose a gasoline supplier from competing and participating in the retail service station business. This is undesirable in at least two aspects: first, it is anti-consumer, and second, it is of doubtful constitutionality in that it is confiscatory as to any presently direct operated stations.

Let us examine some of the adverse effects this legislation could have upon various segments of the New Jersey petroleum marketing environment. We will consider its possible adverse effects on the consumer, the State of New Jersey, on the dealer, and upon this company.

First, The Consumer.

How would A.1411 adversely affect the consumer?

It would lessen competition in the marketplace by the elimination of a competitor or a potential competitor.

Direct operations are designed to be models of efficiency, cleanliness, and courtesy, with convenient hours of operation. They should serve as a model and as a standard, hopefully for dealers to emulate. This desirable consumer

benefit would not be possible in the event A.1411 is enacted.

It would tend to reduce marketing innovations and large capital investments in the range of \$300,000 - \$500,000 made in such innovations as Car Care Centers and Car Washes. We believe it is important to operate these high investment, high operating cost innovative projects with company personnel to assure optimum use of the facilities and desirable services to the consumer. The restriction of this will tend to limit certain options to the consumer in the marketplace, options that the consumer has told us he wanted by virtue of various consumer surveys and test programs we have conducted.

Company operated stations are used to test market concepts under controlled conditions. This includes new type stations, new procedures, new ancillary products, and new equipment. These tests are conducted at direct operations at Exxon's risk; however, the findings are passed on to dealers which ultimately results in another consumer benefit. This type research would be curtailed without company operations.

If this bill is enacted and a dealer decides to retire unexpectedly, becomes ill or dies, or abandons the station, it could eliminate a service station from the marketplace for a substantial period of time. The consumer who was trading at this particular location would find himself inconvenienced in seeking to satisfy his motoring needs. This interval when the station is closed can also make it difficult for the new dealer to regain customers whose buying habits would have been changed. The option available to us now, and which would be removed under A.1411, is to operate it as an interim company operation, awaiting the new dealer, and thereby continuing to satisfy the needs of the consumer in that trading

area. This also could possibly reduce the supply of gasoline available to the citizens of New Jersey under present FEA regulations.

The State of New Jersey

How would A. 1411 adversely affect the State of New Jersey?

Innovative projects such as Car Care Centers and Car Washes require very large capital investments. Without the ability to operate these large investments on a direct basis to insure optimum operating standards, Exxon would have to re-evaluate its decision to build such high investment, high expense operations in the State. This would tend to reduce construction opportunities and lessen additions to tax rolls, which is a matter of some importance during our current economic situation and period of relatively high unemployment. These investments are currently going to neighboring states which permit cross-merchandising and self-serve. Car Care Centers are the only innovative projects we have been able to develop in this State and passage of this legislation might eliminate future investments even of this nature.

Exxon's direct retail operations have in the past directly benefited the State of New Jersey. As an example, Exxon Research and Engineering Company assisted the State of New Jersey in developing its automotive emissions testing program. This was tested and evaluated at Exxon's direct operated service stations in various parts of the State and, after refinement, was made available to our retailers. Incidentally, as a group, Exxon retailers comprise the largest segment of dealers qualified to perform these emission tests for the State of New Jersey.

The Retail Dealer

How would A. 1411 adversely affect the retail dealer?

With 96% of our distribution system being through independent dealers, it's obvious that any policy, program or procedure which would not have the dealers' interests at heart would be self defeating. We have no incentive to see him fail, but every incentive to help him succeed. Exxon learns more about the marketplace by first-hand experience and, as a result, is able to share this experience with its retail dealers, helping them be better businessmen. We feel Exxon must have the freedom to engage in business in direct contact with consumers in order to be more effective in filling our role as retail counselor and advisor to our 1,231 Exxon service stations in this great Garden State.

The Company

How would A. 1411 adversely affect our company?

Basically, Exxon would be deprived by this proposed legislation of the freedom to make reasonable and independent decisions on how to operate its properties.

Denying a company the freedom to engage in any legitimate business should be done only after a determination that its conduct of that business has been detrimental to society. Such is not the case with any of the retail service stations operated directly by Exxon.

Thus, the Proposed Bill is an improper exercise of police power by the State and the taking of private property without due process, and is in direct conflict with the working of the free enterprise system.

Furthermore, Exxon would be prohibited from operating service stations with company personnel on a discriminatory basis. While oil companies would be excluded from the direct retail market, large manufacturers in other industries could continue to retail their products.

Summary

Exxon believes that A. 1411 is not a constructive bill. It appears to have a detrimental effect on all substantial interests involved - the consumer, the State, retail dealers, and gasoline suppliers. Freedom to participate in any business is an important freedom. A. 1411 would go against this important freedom without accomplishing any worthwhile results.

ASSEMBLYMAN BAER: I want to thank you for your testimony. I will forego questions because of the time.

You made reference to a survey.

MR. BUTLER: Yes.

ASSEMBLYMAN BAER: We certainly would appreciate it if you would make that available to us and any other material which you care to submit.

MR. BUTLER: We will be most happy to provide that, and thank you for your time.

ASSEMBLYMAN BAER: Thank you.

I understand we have a witness who has some kind of an emergency and will have very brief testimony of no more than five minutes. So I will change the sequence and Mr. Allen will be able to testify at this time. Then we will return to the regular order of witnesses.

G E R A L D D. A L L E N: I don't have a prepared statement, but I will be glad when I can write one to have it sent to you, if that is all right.

I have a few very brief statements and I appreciate your kindness in letting me testify so I can get back to the doctor.

ASSEMBLYMAN BAER: I understand your problem.

MR. ALLEN: Mine was on purpose. I understand yours was accidental.

Really what I would like to discuss for the few minutes that I would like to talk is Assembly Bill Number 1411 and the critical need there is in this State for that type of protection.

Some people would argue that under the Franchise Law in the State of New Jersey the dealers and distributors would be protected and that this bill would really not be necessary to give them further protection. However, I would like to say in that regard that, as you probably know, the major oil companies now are appealing the validity of the Franchise Law and the constitutionality of that law is in question.

Secondly, we have found in our specific case, inasmuch as we are distributors of Mobil gasoline, that even though you may have a franchise, by the use of economic tools, you can be discriminated against to the point where it may not be feasible for you to stay in business. So, specifically, if major oil companies are permitted to operate stations directly with salaried personnel, they can discriminate against their own dealer and distributor stations by means of changing the pricing to these dealers and distributors to such an extent that eventually it can be unprofitable for them to stay in business.

In Mobil's specific case, they have in a little over a year taken over 52 of the best stations that are available

in the State of New Jersey and converted them over to company-salaried operations. I am sure they would like to gain more of these stations, but fortunately the dealers are rebelling to a certain extent and are fighting to the best of their ability to prevent this from happening. The reason this is happening is that the major oil companies to a large extent realize that their center of profitability has to go from the producing end to the marketing end of the business inasmuch as the Arab countries have taken over to a large extent the marketing operations.

Inasmuch as this is the case, we are going to find a larger and larger concentration of the major oil companies in the marketing end to the exclusion of independent dealers and distributors. What this means is that in order to maximize the profitability on the marketing end of our business, the majors will have to control the pricing. In order to control pricing, they will have to do away with independent dealers and distributors because the independents basically market at a lower level than the major oil companies would like to market.

You may ask, how can the majors control the pricing in the independent stations as well as their own salaried stations? They do it by means of so-called temporary, voluntary allowances. They can either basically force a dealer to raise or lower his price by the extension or taking away of these temporary, voluntary allowances.

If I may be specific, I will go a little further and explain exactly how they work. Mobil, specifically, divides Jersey up into areas, basically containing one, two or perhaps three stations, and these areas they designate for aid when there are price depressions, so that if the major, in this case Mobile, feels that a certain area has low pricing, it can go in and say to the dealer, "If you will reduce your price and meet the competition and

hence sell more gasoline, we will give you a temporary, voluntary allowance." At the same time, if Mobile wishes him to increase his price, it merely goes and takes away the temporary, voluntary allowance, which is completely at the discretion of the major oil company.

As a matter of fact, these units or these areas are set up completely arbitrarily and are really set up by the oil companies in order to give them control over the pricing structure in the industry.

I would like to go one step further to indicate the need for this bill, and that is, I think unless the majors are prevented from taking over the marketing of gasoline, you are going to see unrealistic high prices and the public is going to be the one who winds up paying the tab.

Now I would just like to make one or two points in relation to the other bill that is being mentioned here today and that is Bill Number 159, which would permit the oil companies to go back into games and go back into give-aways and things like that. I would like to say in that regard that the public always winds up paying for these things. When you get a free glass in a gas station, you don't get a free glass. You wind up paying for it in the price of the gasoline. And normally the dealer winds up paying more to the oil company than the oil company pays when it buys it. So it always winds up that the oil company makes the profit, the dealer takes the squeeze and the customer winds up paying for everything.

Again I would like to thank you for the few minutes you have given me and I would be glad to answer any questions that you might have.

ASSEMBLYMAN BAER: Thank you. I have only one question. Could you identify the type of business that you operate?

MR. ALLEN: Yes. The Allen Oil Company is a franchise distributor of Mobile gasoline in Northern

New Jersey and we also distribute private-brand gasoline in the State of New Jersey. At the present time, our contract has been terminated by Mobil and we are presently trying to void their termination of our agreement.

We have had this problem before with them and they have indicated to us that they don't want distributors in their key market areas because we tend to sell at lower prices than their own stations.

ASSEMBLYMAN BAER: If you feel that the basis on which you are being terminated is relevant to this Committee, I would appreciate your giving us a little information on that.

MR. ALLEN: I would be glad to. Our company was originally basically private brand until we became Mobil. As a result, we always believed in selling volume at a lower price. When we became a Mobil distributor, they at that time felt they wanted additional volume in the State of New Jersey. However, as circumstances have changed and as the Arab situation became obvious, Mobil decided rather than having people selling at lower prices, such as ourselves, and hence forcing their stations in markets where we competed with them to sell at lower prices, that it was much more profitable for them to market without us. Therefore, they terminated our contract by telling us we were unprofitable to them. We asked them what unprofitable meant and they indicated, "Unprofitable means where we can market directly and make more money and have less problems with the pricing because we can sell at higher prices, we don't want or need distributors such as yourself."

This not only applies to us as a distributor, but it applies to dealer stations as well. If it is more profitable for Mobile to market directly to their own stations, it is also much more profitable for them to market directly to their own salaried outlets. This again

gets back to the situation where they can control the price, and that is the whole point of the situation.

ASSEMBLYMAN BAER: I want to thank you very much for your testimony.

MR. ALLEN: Thank you.

ASSEMBLYMAN BAER: The next witness will be Mr. Laurence Weiss.

L A U R E N C E S. W E I S S: Mr. Chairman and members of the Legislature who are present: My name is Laurence S. Weiss. I am President of the American Petroleum Corporation, a distributor for Exxon, and I thank you, sir, for this opportunity to appear before this Committee.

American Petroleum Corporation would like to voice its opposition to A 1411, State of New Jersey.

This bill would preclude our company from participating in the retail business if and when we have to obtain our supply of motor gasoline at locations outside of the State of New Jersey.

American Petroleum Corporation is a distributor with 60 retail outlets in the State of New Jersey.

We doubt that any useful purpose would be served by prohibiting direct retail operation by either distributors, such as our company, or by larger company suppliers, such as our present supplier, Exxon Company, U.S.A.

We have been distributors in the State of New Jersey for over 50 years. We have extensive experience in the retail motor fuel business. In our long direct participation in motor gasoline distribution, we have never seen any unfavorable results from the direct operation of retail service stations by major oil companies. Rather, the reverse has been true. Our supplier has been able to better counsel us on successful marketing practices and

merchandising programs because of its direct retail involvement. Its business has consistently enjoyed a high level of consumer satisfaction toward which other operators could strive.

In the event that we should desire to sell our business in the future, A 1411 would limit prospective, financially-responsible buyers which would tend to reduce the selling price. As a result, a small business man could be injured by his not receiving full value for his investment.

In our opinion, prohibiting distributors from engaging in the retail sale of motor fuel will not serve the public or benefit the consumer.

That is the end of my statement, sir, and I thank you very much.

ASSEMBLYMAN BAER: Thank you. Could you just give me a little bit of information about your company and its operation in the State?

MR. WEISS: Yes, sir. We operate in Central New Jersey in Middlesex, Essex, Union and part of Somerset County. We have been in business for 57 years. As for the name "distributor," it sometimes becomes synonymous with jobber. We are jobbers for this program. We have operated under that license or franchise for these years. We have enjoyed good relationships with our supplier. We call on them on many occasions for their expertise in matters such as general sales information. They help us with our financing, plans for buildings, etc., and we feel that they do help in the marketplace because their standards for their own service stations are quite high. You find that competition with them is very keen and competition never hurt anyone.

Usually you find in pricing that their stations in the areas are usually fair. It is not cut-throat competition. If prices do go down, they are right down with them, but not the first.

As to the matter of marginal operations, their company stations are not marginal. The stations that they put up are really a credit to the area. If you have sat in on some zoning board meetings, you find that the various zoning boards usually ask you what stations you have in the area, what they are like, and these board members know. When I appear before these boards - and I have appeared before a number of them in crucial times when service stations were going up ---

ASSEMBLYMAN BAER: One last question: How many stations do you supply?

MR. WEISS: Sixty, sir.

ASSEMBLYMAN BAER: I want to thank you very much for your testimony, Mr. Weiss. We appreciate it and also appreciate your brevity. Thank you very much for coming here to help us.

MR. WEISS: Thank you.

ASSEMBLYMAN BAER: Mr. Jerry Ferrara, New Jersey Gasoline Retailers Association.

MR. FERRARA: Mr. Chairman, I have requested the staff to permit me to put on several dealers with short statements that tell their stories. One of them you have scheduled; two aren't. I don't know whether you want to put them on before or after me, but I would like them to have the privilege of testifying because I think they will tell the story as it is. You have Cal Parsons scheduled, and there are two more with short statements. If you prefer, I will put them on after I speak.

ASSEMBLYMAN BAER: How long do you think their statements are going to be?

MR. FERRARA: I don't think a total of ten minutes for all three would cover them. You have fifteen minutes schedule for one of them, Cal Parsons. I think we could cover it in that fifteen minutes.

ASSEMBLYMAN BAER: What sequence would you prefer then?

MR. FERRARA: I think it would be preferable is they told their stories and then perhaps I could amplify a little bit for them.

ASSEMBLYMAN BAER: As you wish.

MR. FERRARA: I would call Cal Parsons first, then Tom Noyes and Bob Shaw.

C A L P A R S O N S: Mr. Chairman, I am Cal Parsons. I imagine you must have read something of my plight in the paper because it has been publicized for the last 14 months, off and on.

Mobil has chosen to take over my operation and put me out as a lessee-dealer. Their intention was to put me in as a manager of the station for them. This would entail my doing pretty much the same as I now do, but working for much less.

There have been statements made concerning the competition in the service stations. I believe if the dealer is put out and paid a flat \$150 a week plus a commission, as has been proposed to me, the interest is lost. So naturally the customer too will lose through the operation. I believe competition is there for the man who is looking for it.

Now I started in 1961 and at that time I had four other service stations in my area and through my competition, I believe, these stations were eliminated. This wasn't cut-throat competition, but I felt I had done a better job, so consequently I got the business. Evidently Mobil feels this way too because in 1970 or '71, they chose not to renew my franchise. They wanted the station as their own operation, run exactly the same way as I had been operating it, with the exception that I would be working for them. But there would be no security whatsoever for me. The contract that was offered at that time stated that within three days

I could be put out for maybe a dirty windshield or a piece of paper in the driveway or for any whim that they might come up with.

The Franchise Practices Act was the first legislation that had ever been passed to help us. It gave us the option of having someone else listen to our story other than the two fellows from the company who would come in to talk to us individuals. It was always worked on that arrangement - two to one. If there were two of you, there were always three of them. So you were always at a disadvantage.

I have been there 13 years. My competition, as I started to say, was from a Getty station which was self-owned; a Texaco station, company-owned; a Chevron station, which now has been eliminated by one of the superhighways; and an Exxon, privately-owned. These stations have all gone for one reason or another. As I said before, I believe my competition had something to do with it. I must have been doing something right to eliminate the small businessman next to me through competitive competition, not cut-throat competition.

The company operations that I spoke of before have in my estimation eliminated this for the dealer who has no incentive to go ahead and produce. He is there; he is going to get the same amount whether he produces or whether he doesn't. Right now under the present contract that Mobil has, they have to pump 60,000 gallons of gas in order to get any commission of any kind at all on the gas. In their last contract, this has been changed because they found they left a loophole and a man could make a couple of pennies, so they eliminated that.

Mobile has shown no interest in the smaller stations and probably doesn't want them until someone builds them up so they come up to a place where they can make a profit from them. Then they want those too.

My station started at 28,000. And before the energy crunch, it was up to around 70,000, between 70 and 80 thousand gallons. I believe in all fairness I deserve a better shake from Mobil than just a kick in the pants to get out. When I was presented with this "either join or get out" contract, I had asked about getting rid of some of the things that I had and they told me "eat it". This goes with some of the dealers who right today are being displaced. The company will not take back the products that you have bought from them. They have more to sell to the next dealer coming in if he has the money to take it.

That is about all I have to say concerning my plight.

ASSEMBLYMAN BAER: Thank you for your testimony. I appreciate your coming down here.

MR. FERRARA: Tom Noyes has a statement to read. These statements are prepared by the people who submit them and are not prepared by me in any shape or form.

ASSEMBLYMAN BAER: What did you just say, Mr. Ferrara?

MR. FERRARA: These statements are letters to me from these gentlemen and they prepared them themselves. We had nothing to do with preparing them.

T H O M A S G. N O Y E S: My name is Tom Noyes. I am a contract-manager with Mobil Oil Corporation in a station in Montvale. I am here because I have been on both sides of the fence. I spent thirteen years in the marketing division with Mobil Oil Corporation, as a marketing representative and a training instructor.

As a marketing representative, my philosophy was that I was to represent the dealer, as would a lawyer, to the company to try and get fair and equitable situations for him, to make his operation more profitable. When I entered the company and tried to carry out this practice, I was told such things as, "Who are you working for, the dealer or Mobil" or "What are you, a dealers' man?"

When I got into the higher level of Mobil's management, I could see that their policy was to try and help their marketing people at the lower level to motivate the dealer to do the things that were best for them in business practices. However, when you got down to the district level and the salesmen, it seemed time was of essence to them and, therefore, they would say, "Don't sell them; tell them," or if you tried to represent the dealer, they would say, "Are you trying to run some kind of a popularity contest out in the field?"

I always preached to the dealers as a training instructor when the subject of their security with Mobil came up, that they were their own best security, that if they did a good job running the business, they would be left in and would be given a fair and equitable lease. I could see that this was not happening and my moral conscience led me to leave the oil company. I left and I received a one-year lease in a rehab station up in Montvale, New Jersey, which is at the end of the Garden State Parkway. The station was doing 480,000 gallons a year when I took over. The first year I did 980,000 gallons, almost a million gallons. The company's projection for that station the first year was 540,000 gallons, and their twentieth year projection was 750,000 gallons.

I have always believed that I had one boss, one supervisor, other than my wife, and that was the consumer, the consuming public. So I devoted 15 hours a day, 7 days a week, for 3 solid years, building this business up, feeling that Mobil Oil Company would appreciate what I had done and would leave me alone. And during that period of time, they did, and they praised me for the accomplishments that were made at that station.

In 1972, however, Mobil began to acquire complete control over their major outlets in the New Jersey area. I

appealed to higher management, because I knew they were not forcing large highway stations to go under the contract plan, to put me in the same category and give me a lease, and I was turned down.

Mobil Oil Company approached me regarding their contract plan. They inferred in my case it would be just a formality if I signed, and that nothing would change. Unfortunately, I did sign. I might add also that another mistake I made was not joining the dealers' association. I was approached several times, but I felt that I did not need them because I had faith in the oil company and believed they would deal with me fairly, and I felt that I couldn't offer them my services.

I checked with my attorney and he said that the company had a perfect right to cancel their lease and force me into a contract plan. I have a wife and four children to support. My oldest son was coming up to go to college.

When I told the oil company I was going to refuse to sign, they said they would bring legal action against me and any other dealer who refused, and they would be out of the stations within three months.

I had put my life's blood into that station and I did not feel like walking away. So, under duress, I unfortunately signed the contract.

Everything was going fine until I started to question the contract and to make waves for Mobil Oil Company, living under the contract. When we had the gasoline shortage, I took it upon myself to open the station at four o'clock in the morning because there was a town ordinance that said all service stations had to be closed between the hours of 8:00 in the morning to 10:00 and between the hours of 2:00 and 6:00, for protection of the children walking to and from school. So to take care of my customers -

and I still considered them my customers even though I was an employee of Mobil Oil Corporation - I opened the station at 4:00 o'clock in the morning. The customers would wake up, come down, get their gas, and go back to bed. Many of them, in fact, most of them, appreciated this additional service and I know of 30 customers who wrote letters complimenting me. However, I never received any compliment or even one copy or even any reference to any of these letters from the customers. I know because two customers gave me their letters because they didn't have the address and I addressed them myself to upper management. I never heard from them.

However, I did receive a letter. The letter stated three customer complaints were brought against me. One was because of a mistake in a credit card. It was printed up as \$10.50 and it should have been \$5.50. The other was a tire adjustment which I could not take care of and I referred the customer to Mobil Oil Company. The other had to do with work done on a car prior to the contract plan which was 12 months old and which the customer refused to pay on his credit card. This is the letter that I received from Mobil Oil Company:

"Within the last two months, our office has received three customer complaints. The complaints have been forwarded to Mr. _____, who will discuss each with you. (He was the marketing representative.) This type of activity is in direct violation of Mobil policy and, if it continues, it will have an unfavorable effect upon your employment relationship. We request that you take immediate steps to prevent complaints in the future."

No compliments on the excellent job that I was doing during the energy crisis. Despite the fact that in that particular market area, we were selling gasoline at

one to two cents higher than the other stations, I was still able to maintain my high volume. In fact, we have been doing 10 to 15 percent higher than our allocation, set in 1972, when I did a million gallons that particular year.

When I asked the company what more I could do to have better relationships with them and advised them that I felt the gasoline gallonage was extremely high, their comment was, "How high is up" or "If you don't like it, you can get out."

The Mobil Oil Corporation debauches its own employees. It attempts to strip them of any moral sensitivity. I am talking about the marketing representatives. The incredibly high turnover of sales personnel may reflect the salesman's distaste for this mode of doing business.

Mobil has succeeded in stripping the small independent businessman of any chance at free enterprise. The dealer is regarded as just another piece of equipment in the outlet and is given no opportunity for independent decision-making. For example, I am exceeding my allocation. Yet on September 5th, the marketing representative came in and told me that my hours of operation would be from 6:00 in the morning until Midnight, seven days a week. My location is at the intersection of two cowpaths, heavily travelled, but two cowpaths. The only other business in that area is the Garden State across the street. The Garden State Farms outlet, by the way, stays open until 10:00 o'clock. When I had stayed open beyond 10:00 o'clock when I was an independent dealer to see if it was worthwhile for me, I was robbed - held up - three times. The only things up at 6:00 o'clock in the morning on Sunday - and I am not too sure they are up - are the birds. So for me to open up at that hour is utterly ridiculous.

Obviously Mobil feels the profitability of those

extra two hours from 10:00 to 12:00 in the evening, seven days a week, to them would be much greater than the possibility of the loss of a human life. I personally look at human life over profits and, therefore, I am sticking to closing at 10:00 o'clock when the Garden State Farms outlet closes.

I do not know what action Mobil will take against me for this disobedience of an order, but I am prepared for whatever may come.

They also shut me off on their gasoline from March 1st through March 15th. I sat down with management many times to discuss this and try and solve the problem, and they said it could not be solved, that if I didn't do what they wanted me to do, I would not get any gasoline and would eventually be out of the station. I turned the matter over to my attorney and at great expense we went to court. Suddenly on the doorsteps of the court, it appeared that Mobil could do those things which they said they couldn't do prior. And I lost that 20 days of business in the month of March, not to mention the cost to me for legal fees.

Maybe I am in a fortunate position because I can afford legal costs. But I am sure there are a lot of dealers who cannot afford legal costs and, therefore, knuckle under and do what Mobil Oil Company wants them to do.

It is obvious of no consequence on the part of Mobil that this policy could endanger lives, as I said before.

I made a few notes. But I will make it short. That's it. Thank you very much, Mr. Chairman. I certainly appreciate the time you allowed me to present my views.

(Letter submitted by Mr. Noyes can be found beginning on page 136A

ASSEMBLYMAN BAER: Thank you. We appreciate your testimony.

MR. FERRARA: We have one more, Bob Shaw. He will give you a picture of another company-manager operation.

ROBERT SHAW: Mr. Chairman, my name is Bob Shaw from West Orange, New Jersey.

My case is very simple. I was an Esso dealer for nine years. My family has been involved working for Esso for something like 80 years. I own the station.

ASSEMBLYMAN BAER: Excuse. Can I interrupt just a moment?

Will Mr. Noyes and Mr. Parsons be staying here?

MR. FERRARA: Yes.

ASSEMBLYMAN BAER: I don't see Mr. Noyes.

MR. FERRARA: He is back there in the last row.

ASSEMBLYMAN BAER: All right. Excuse my interruption.

MR. SHAW: I took over an Esso Station in 1961 which was doing a low volume. In one year, I doubled my business. For the next consecutive eight years, I increased my business, as one should, being an independent dealer.

My story is this, that after nine years of being with Exxon -- or Esso -- excuse me -- this is strictly Esso -- records will show that my volume, my business, my TBA, everything I have done for the station, increased each year. I was considered a good dealer and I ran a high-volume station. This high-volume station was also a neighborhood station.

ASSEMBLYMAN BAER: TBA, by the way, is what?

MR. SHAW: Tires, batteries and accessories - in other words, the over-all picture of the station.

I started out by working seven days a week, 7:00 in the morning until 11:00 at night, to build up a good reputation for the station which had a bad reputation to begin with. Over the course of the years, I built up a

good reputation and then they decided in 1968 to build a new station up on the corner which would be 500 feet from my present location. For the next two years, in the negotiations, all indications from representatives of the company - and they asked my opinion about the station - is that I would be going up there if they decided to build a new station. All negotiations and contracts were completed somewhere around November of 1970. The station was in the process of being built. They acquired the property and were going to build this station. In January, when my lease was due for renewal, they came along and told me I was not going to get it as an independent dealer, that they were going to offer me a job to work for them as a manager.

Part of my contract, without going into it deeply, was that I was to work for them, and one thing that they weren't going to give me was any hospitalization or company benefits. That was just part of the whole negotiation for this new station.

From January through July, we looked at company-run stations, manager plans, etc. It was not beneficial for me to take it over as a company manager. I asked them to let me go in as a dealer for one year. You, yourself, know if you go to an independent dealer, he can do things for you and not charge you for little things, etc., and be right there when you need him.

Finally in November of 1970, they put me out and said, "Thank you ---" No, they didn't even say thank you. They just said, "So long." They didn't even say, "So long." That was it. It was just unbelievable how I and my family put up with this in the last year. How they could come along after nine years during which I was considered a good dealer, doing a high volume, and not even say "thank you," just,

"that's it."

I was put out and their company-run station that they started under the manager's plan lasted for something like two years. Today that station is no longer a company-run Esso station that is there to serve the motoring public. I will make a comment on that. It is now an off-brand Alert station that is still run directly by the company, but gas now is what they call an off-brand gas; it is Alert.

My comments are as follows: Today I heard responsible management, independent dealers testify. They are interested in the motoring public. They see you go to work in the morning; they see you come home at night. They spend long hours at their stations. When you look at independent dealers, you will see this.

Now they took my high-volume station away from me. I was doing 65,000 gallons a month and they took that away from me. We wrote letters and posted signs. We went to Pelham, New York, we went to Houston, Texas, with letters about my case, about my being put out of business. They came back and said, "We are going to run this new station and it is going to better serve the motoring public." They are not better serving the motoring public when they boarded up the bays and all they are doing right now is just pumping gasoline. That whole section of town is now without any kind of service to the motoring public.

They advertised back in 1964, '65, and '66, if you read the papers, to be your own boss. "Come with Esso and you can build your own business and be your own boss." What a falacy that was when you look at things today. If the Franchise Act existed then, I would not have been put out of business. Unfortunately, it came a year too late for me.

My family worked so hard to build up the business, then to have a major oil company come along and say, your

number is one, two, three - that's all we consider you - is the reason, Mr. Chairman, I am for this bill. Consider it and talk to independent dealers, the men who better serve you. There is no one left up in that place now. Thank you, sir.

ASSEMBLYMAN BAER: Thank you.

We will now take a five-minute break for the stenographer.

(Five-Minute Recess)

AFTER RECESS

ASSEMBLYMAN BAER: The hearing will come to order. If I can break in just for a moment, Mr. Ferrara, I have just been given a statement by Mobil Oil Corporation, by the committee staff, and I was informed that Mobil is leaving and will not be able to testify this afternoon, as scheduled. I would like to request the representatives of Mobil to see if they could stay, or return, this afternoon. I do appreciate the written testimony but I did intend to ask some questions, particularly in light of some of the testimony that has been presented here, relating to the Mobil operation and dealers being forced out of business.

I would hope that the Mobil Company representatives will not want to avoid responding to some of this testimony, or answering questions on it. So, if there is some possibility of your returning, I would appreciate it and if you did not come prepared to respond to the sort of questions raised by the testimony that we have heard, since we will have a lunch break and a period of time between now and then, I would appreciate it if you would get whatever information you might need.

Mr. Ferrara, you may proceed.

MR. FERRARA: Mr. Chairman, after listening to the stories of the three dealers, I think you can understand why I wanted to preface my remarks with their testimony.

Their testimony only touches on the problem of what we call company-manager/company-direct operated stations.

On A-1411, we are for the concept of the bill. Some action must be taken to prevent the oil companies from coming in and taking complete control of the stations.

Realistically, if the bill is intended to stretch it out to keep them from owning land, pipelines, etc., my feeling would be that it would be rather difficult to enforce such a bill on a statewide basis. That is commonly called divorcement in the industry, which would divorce them from complete ownership or control. If anything were done along that line, conceivably it would have to be done on the national level.

Amplifying the remarks that I heard here this morning and some of the questions that you, as Chairman, asked, I'd like to address myself to the problem of company direct operations and company employees. I very rarely make prepared statements for the simple reason that I find my position, representing over 3,000 service stations - which is not 39% of the dealers in the State of New Jersey, there are 5,300 service stations per se in the State of New Jersey today-- We directly represent over 3,000 of them but I would say that, through mail contacts and through personal contacts and attendance at our various chapter meetings throughout the State - we have 21 - we probably reach 4,500 of the dealers and can, conceivably, address ourselves to this on behalf of all 4,500 dealers.

Mr. Irwin, representing the Petroleum Council, made

some statements in his address which I'd like to answer. I have a tremendous respect for Charlie Irwin, I knew him as an Assemblyman, and I think deep down in his heart he knows the problem of the gasoline dealers. When you questioned him as to what he felt about leasing the station - that is the concept, again, of letting the companies own the station and stay out of direct operation, which is what the Franchise Bill does address itself to - Mr. Irwin said that it would lessen the number of stations. If the concept was that they were permitted to own the stations, that would remove that argument from the realm of opposition to this particular bill because being able to own the stations and not directly operate them would not stop them from coming in and building new stations; it wouldn't stop another brand company from coming in.

They went along and said that the consumer would get better prices out of the competition entailed by company operation. Now, I ask you, isn't that what they are telling us, that if the occasion arose, yes, the consumer would gain until the point that there were no small independents to fight back? Then, all I tell you is, look back at the past crisis - the past 9 months - to find out what would have happened if the multinational companies had complete and absolute control from the well to the consumer. I am sure the consumer would pay. I am sure the past history of the past winter would show that New Jersey, in particular, was discriminated against. I don't want to rehash the energy crisis but I have to refer back to that. Domination of the oil industry by any segment as large as the oil companies is certainly not going to benefit the consumer. If competition has to be engendered, it will be engendered more on the small, independent, neighborhood station.

What they are doing to the neighborhood station is, they all decided in the past two years that every station doing less than 240 thousand gallons a year - approximately 20 to 25 thousand gallons a month - are very uneconomical for them to own or operate. I say good for them, if that were the truth then, perhaps, they have the right to close down. But it is strange that when they sell these properties, they put a restrictive clause in there so another gas station cannot go in there. When the dealer himself, who is operating there, offers to buy the station, they find they can't sell him gasoline.

I say to you, how much more does it cost to deliver a tank of gasoline to a small station than it does to a large station? The cost is no greater. They deliver 8,000 gallons of gasoline to a small station and 8,000 of gasoline to a large station and nobody can tell me it costs any different. Yet, every one of them - the economic studies must have been done by the same company - all at once, decided to divest themselves wherever possible of the small station.

Of course, our opposition, as dealer-spokesmen, has slowed things down a little bit and we are kind of proud of this, for that reason.

Mr. Irwin pointed out that gas stations owned by the company were 1¢ to 4¢ per gallon lower during the past months of 1974. Now isn't that nice? The only reason they were 1¢ to 3¢ lower on the retail end is because they were prohibited by the FEA from passing it on. Later on, when they were permitted to pass it on, the price went up 3¢ - and you heard Tom Noyes testify that in a company-manager station, the price went up 3¢ and he didn't get anything out of it.

Now, conceivably, this was supposed to be spread

out so whatever extra profit they made, would result in lower prices. I want to be honest about it, throughout the industry, that is going to be a hard one to prove.

They referred to every penny reduced in price resulting in 3 or 4 tenths million dollars in savings to the consuming public - with an average of 3¢ per gallon difference. Now that was very neatly done but the facts disprove that there will ever be any real, honest attempt to lower the prices to the consuming public because if there were, we should see it today. You do see competition on the streets in the past two weeks but it is competition, not engendered by their lowering their prices, or giving any of their profits away, the competition is engendered by the small dealer being forced to meet other competition.

I often wonder - maybe I am a pessimist - that if the vicious cycle hasn't been created by permitting more gasoline to be fed into what they call the "private sector" - the private brand, which some people refer to as the independent brand. All of a sudden, gasoline became available to them. They did lower their prices anywhere from 4¢ to 5¢ to where they are down now - instead of being above the major brands - below the major brands. But wasn't it strange that within several days, salesmen were out in the field representing the major companies and telling their dealers, "look at that, why not be competitive"? But it didn't come out of their pockets, so competition, if it is ever going to come out of anyplace, it is going to come from the small dealer who may get angry at the guy across the street and will lower his price.

So much for some of their testimony given here this morning.

New Jersey has, probably, one of the lowest amounts of company operated stations but, as I said, it has been coming in the past couple of years.

If you would look back and investigate the Justice Department's investigation of the Sohio Oil Company in Ohio - one of the few companies who really, through company-operated stations, do dominate the entire market in Ohio - you will find that with some consent agreements they are starting to change their practice and divesting themselves of them. But, in that marketplace, the consumer did not benefit by their operations. At times they paid more for gasoline and at times they paid less.

I can't speak for the Ohio market, but I would say that when they paid more for it, the market was pretty stable and they thought they had the market under control. If they paid less they might have been losing some gallonage to the private, or the small independent major brand stations of different companies and they decided to lower it. But, a study of that marketplace will show you what complete control can be like with company-operated stations.

There was a question here that the jobber would become a small entity and would then, in substance, be another small group - or a middleman. I say to you, a simple amendment to this bill, adding the word "wholesaler" or "jobber" would prevent that from happening. Then the jobber would be in the same category as the major oil companies, in that he could not directly manage or operate the stations, so that competitive factors would be the same and the competition would still rest with the independent dealer, who is running the station - whether it be for a jobber, under franchising, or for a major brand company.

It is not only happening here, it is happening all over the country. I am sure, from the list of speakers

here, you will have every company in the State here today who will have something to say. I think maybe, in fairness, we should be allowed to come back at the end. They are going to have more here than we have in any case.

A bill was passed in Maryland which they have taken to court. This addressed itself to the concept of manager stations. Why did that come about? In the Maryland/Washington area, BP decided to wipe out all their stations, change them to what we call, "gas and go", and take them over as direct operation. No offer was made to the individual dealer to take it over as an independent franchise. He could take it over and work as an employee of the company. Why was that? Because in that way they could get better control of the profit structure, again, from the well to the consumer and while, conceivably, initially it could result in a lower price, ultimately that type of control would only lead to higher prices and, again, I say the experience of the past 9 months will dictate that, and I will debate that anytime and anyplace with anybody in the major oil companies who can say otherwise on that issue.

I put a chart in front of your, Mr. Chairman - several charts. These charts do not illustrate the company involved but they address themselves to market concepts of company-operated stations, vis-a-vis sales to independent marketers. These charts were obtained from the FEA at an open hearing about two weeks ago of, what they call, a dealer advisory council.

If you will look at chart B-2, I have them underlined and they go from '72 to '74. I underlined the month of January, 1972, 1973 and 1974. Just taking them arbitrarily, chart #2 here - again, it is called

a large integrated refiner and there are over a million gallons being sold so there can be no question that he is fairly large - shows that in 1972, sales through company-operated retail outlets were 274,157,000 - about 5.01% of the marketplace - while sales to independent marketers were 85.03%.

If you will now look down at 1973, you will see sales were 5.01% again and still 85% to independent marketers.

But if we get down to 1974, when the market became a little more lucrative, you will see sales started to go up to 342,446,000 gallons, or roughly 6 $\frac{1}{4}$ %, while the sales to the independent marketers dropped 1% and sales to other direct distributors dropped also.

Turning to B-3, which lists large independent refiners, this addresses itself to, also, the segment of the industry that can be classified "independent" on the refining end. You will see sales through company-operated retail outlets in 1972 were 129,717,000, or roughly 21% of the market and sales to independent marketers were 73.08%.

When we get down to 1973, the sales were 146,490,000, or 21% of the market - still similar - and, again, 73% to the independent markerers.

Let's go down, again, to 1974 - the market, again, is a lucrative place - 158,242,000 gallons to company related stations, or 24 $\frac{1}{2}$ % - an increase of almost 3 $\frac{1}{2}$ % to the company operated stations, while the independent segment of the market - or retailer, as we call them - dropped from almost 74% down to 70%. Now where did that 4% go? You can see where the 4% went. The 4% went from th independent retailer to the company-operated retail outlets.

The next table we will go to is table B-4, which

indicates small refiners. Again, the picture is similar. January of 1972 shows 180,491,000 gallons, or 16% of the market. 82% went to the independent retailers. 1973 shows 213,236,000 gallons to the company-operated stations, or 15½% versus 82% of the market to the independents.

But then we come down again, right down the line, to 1974. Again, when the economy was tight and gasoline was tight, what do we come up with? 243,487,000, or roughly 20% of the market against 16% that went to company related stations and the independent segment dropped to 78% from 82%.

Now if you look through all of these, in 1972 approximately 4% to 5% of the market of gasoline shifted from the independents. Do you wonder why there is opposition to any form of independents continuing in the marketplace?

Mobil Oil, of course, in the State of New Jersey, under the guise of opposing franchising, is the biggest culprit in New Jersey; they have the largest number of company-manager stations. As two dealers testified - one who is still fighting them and one who capitulated - "you took it, or else".

In every instance, Mobil Oil did not take a station that was doing less than 40,000 gallons a month; they took the higher ones. Why? If they really want to serve the public - all of the company-operated stations - why don't they go down to that little neighborhood station that is doing 40,000 gallons, where the dealer is knocking his brains out trying to do repair work, service his customer, put air in kids' bicycles, look at cars and say, "well, you need this or you need that - no charge". That is not profitable to them. If it is not profitable to them, then the name of the game is

profit. How can we conceive that if they took over complete domination of the industry that the name of the game wouldn't be profit, such as we have seen over the past two years where their profits have increased 200% - where the profits are increasing this quarter and the independent/private brand dealer is lowering his price of gasoline on his end of the deal while not one cent is being lowered-- Don't misunderstand, if you see a lowering of price by the major oil companies today it is because they cannot pass through any higher cost, it isn't because they are being magnificent and giving you any of their profits. The lowering of prices in the marketplace today is controlled, basically, by the Federal Energy Agency, so they are "supposed to" - and I use quotes around "supposed to" - justify any of their increases by justifying that there is an importation of crude oil, vis-a-vis the importation of domestic oil, resulting in a higher price.

Some of them have rolled back their prices and I wouldn't presume to put their names on the record; the FEA didn't see fit to, and neither will I, have them accused of overcharging themselves through their subsidiaries. The cost pass through was too high and in the past couple of months they have lowered that. The public, thankfully, is gaining from that. But any lowering that you see in the marketplace as you ride the roads of Trenton and certain sections of this State today is the independent/private dealer - the guy who represents a major brand franchise, or otherwise, who is meeting the competition on his corner. I often wonder if this competition is not conceived at the present time to lull the American public into thinking that our multi-national companies have gotten a conscience and are starting to lower the price to the

consumer.

I could go on but in the interest of time I certainly want to make sure that the whole list of people here representing the rest of the major oil companies have their opportunity to be heard. I'd like the question put to them, Mr. Chairman, that if their argument is against complete divorcement, what is their answer to letting the station be removed from their direct control as company-operated or managed? Let's find out if they really are talking about not being able to come into the marketplace or build stations, or are they really talking about control?

With that, I think I ought to conclude. I have a copy here of an article in Pennsylvania which shows the same thing is happening there. I also have copies of the Maryland Bill, which I would like to present to the Committee for their consideration for whatever amendments 1411 should have.

ASSEMBLYMAN BAER: I want to thank you. I have some questions.

First of all, relating to the amendment that you made reference to in terms of jobbers, would you want to be specific? Could you tell us specifically where you would like that change to be made, or have you a copy of the bill with your proposed amendments on it?

MR. FERRARA: If this bill were to be left as it is, I, hopefully, think it could be changed to direct itself to the manager-type operation. If, in paragraph 2, where it says it shall be unlawful for any distributor to engage in the retail sale of motor fuel, if you insert the words, distributor, wholesaler, or jobber, that would cover the whole gamut.

I have your original copy. I haven't got the printed copy. I have one of the original copies.

But, where it says, shall be unlawful for any distributor, if you simply put in the word ~~wholesaler~~ or jobber, that would take care of the question of covering the jobber segment of the industry.

ASSEMBLYMAN BAER: I see. On the question of-- You stressed the point that you feel the issue here should focus more on direct control rather than, necessarily, total divestment.

MR. FERRARA: Divorcement.

ASSEMBLYMAN BAER: Now I would be interested in any specific comments as to what criteria for direct control you think should be used, since there is such a wide spectrum of operational arrangements in the industry.

MR. FERRARA: Well, for all practical purposes and for an easier enforcement of the act, if it just divested them from the retail segment of the industry to the extent that they could not, directly, operate or have a commission-manager type station - if they had to lease out the stations to independent people to operate under a franchise - that would eliminate the possibility and question of the stations being divorced, and the ownership, and the question of the dealer having to raise the money to buy it. If divorcement ever comes through on a national level, then, of course, arrangements could be made for subsidizing the small private dealer to make it possible for him to buy the location.

I don't think we could really do it on a state-wide basis, even though the problem is there. I don't think, realistically, that the state can cope with complete divorcement, such as this bill possibly could force. It is a question of the interpretation of what you have in this bill.

ASSEMBLYMAN BAER: I did want to ask, in relation to the tables - maybe you mentioned it and I might have

missed it - what is the source of these tables?

MR. FERRARA: The Federal Energy Agency.

ASSEMBLYMAN BAER: I see.

MR. FERRARA: They did not put the name of the companies on them. They issued them. They are public. I picked them up.

ASSEMBLYMAN BAER: They issued this, when?

MR. FERRARA: Two weeks ago.

ASSEMBLYMAN BAER: Two weeks ago.

In earlier testimony the question was raised as to the potential danger of price setting - price fixing - practices by jobbers, or by independents, were legislation like this to go into effect. I would be interested in any comments you might have as to, specifically, whether that could come into being and what further steps - if there is a possibility of this happening at all - could be taken to reduce that possibility?

MR. FERRARA: Well, I was amused with the comment about a strong organized retailer group. I think, perhaps, we are probably one of the strongest organized group in the entire country - on a statewide basis. Many are organized citywide.

All I can say is, go back on the highways for the past couple of years-- We have been around for 34 years, our organization. Let's relate it to the past couple of years; let's relate it to the past week. If I could keep a dealer from giving his profits away, I probably would. But I assure you that you can't. And when it comes to enforcement, I'd like to make another comment: How easy it is to penalize the little guy and not the big guy?

In the State of Michigan the Justice Department was requested by Congressman Dingell, who is a Congressman from Michigan and is part of the Sub-Committee on

Regulatory Agencies in the Congress, to go into Michigan and investigate the large-scale price wars - price cutting - that was going on and the coercion that was going on.

Do you know what the Justice Department came up with? They indicted two small dealer groups, one in Grand Rapids and one in Lansing because they had a meeting and decided to pull in signs. They had no legal counsel. They weren't organized. They were dealers that met in their own city. They were taken into court and, as the judge said, you know, you put out a net and you caught a minnow instead of a whale. Those two dealer groups had to sign consent agreements.

Now, conceivably, small independent dealers will be much more liable and much more vulnerable to anti-trust actions, even under the State of New Jersey statutes. So, I don't see how we will control the price of gasoline in New Jersey if and when the oil companies are out of it completely and if they are out of it to the extent that they still own the stations and are franchising them out; they have their own little way of telling the dealer when and how and what to do with his price. As the one dealer said, it is usually two on one and it is sitting in the car; it is never where they can be taped - where they can tape anything that is said. You can ask any dealer in the business and he will tell you that is the story.

ASSEMBLYMAN BAER: Just very briefly, in the company owned operations the prices come down from the company office, is that it?

MR. FERRARA: Oh, yes.

ASSEMBLYMAN BAER: Well, could you tell me this: In the different types of operations that we have in the State, where are those prices set, within those

different types of operations?

The reason I am asking this is, I am trying to get an understanding as to if there were fixing, how many different people would have to be involved in these different types of operations we have now?

MR. FERRARA: Well, I would put it this way, in the company owned/managed, directly owned or managed station, the prices would be fixed directly by the company. On the company franchised stations, or independent/private ownership it is suggested. It is not set. It is suggested, depending upon what the marketplace is. At times they will suggest a lower price, but not at their expense.

The dealer, supposedly, has his own option of setting the price. But the street competition never permits a dealer to be very high above his competition because the relationship of supermarket vis-a-vis a small independent grocer didn't even hold here this morning because a car is a mobile unit; there is no affinity to one particular price except the station may have a good mechanic and he goes there. So, he will buy a dollar's worth of gasoline there, if that station is a little more expensive, instead of going down the street or on the highway, if they are cheaper, to buy it.

ASSEMBLYMAN BAER: I want to thank you very much for your testimony, Mr. Ferrara.

MR. FERRARA: Thank you for the privilege of being heard.

ASSEMBLYMAN BAER: We appreciate your coming here. We will have just one more witness before the lunch break and that will be Mr. Marcus of Rutgers University.

M A T I M A R C U S: Mr. Chairman, I have prepared

my statement with the understanding - perhaps mistaken - that the thrust of the bill was the divestiture of the retail end of the business on the part of the large oil companies.

As I have listened to the presentations here, I gathered, at least from the dealers point of view, they are more concerned about the company-operated stations.

Now, at your pleasure, Mr. Chairman, I can go through the main arguments that I have developed in my statement, bearing upon both divestiture and company-owned stations, or I can concentrate on the company-owned--

ASSEMBLYMAN BAER: Well, as Chairman, I would say, discuss anything you wish to, and as sponsor of the legislation I would say that I do not have an inflexible approach towards it at all. I am interested in any specific changes or variations that you might want to suggest, as well as whatever testimony you might have - for or against the bill.

I realize that there are a number of-- Any bill with the overall goals of this, has to face questions in several major areas as to where the lines are drawn and to the kinds of lines that are drawn. I think a very important function of this hearing is to give guidance on those questions. I know, at least as the sponsor, that I was looking forward to that sort of information at this hearing, since I did not believe I had the final answer to all these questions at the time the bill was introduced. I knew it would be necessary to have a hearing to get further information before making a final determination. You may proceed in any way you wish.

MR. MARCUS: Just one other qualification. I recognize that there will be very little time. This is kind of a concise statement. I am preparing a larger study because of my interest in the problem at the moment.

I would also like to say that I have not been supported by any party in the preparation of this study and I think, from that point of view, I do not really have any stake in the results of the legislation, other than as a citizen of this State.

ASSEMBLYMAN BAER: Very good. In case you were not here at the beginning, I stated that the record will be open for at least a couple of weeks for any further information anybody may wish to provide. Since you indicated that your studies are on-going in this, we would certainly welcome any further information at a later date.

MR. MARCUS: Again, the last impression I had - over the last hour or so - is that here we are having almost contravening groups fighting over the pie - how should the pie be distributed? One could have almost forgotten that there is a public that is going to pay for the entire pie. It is in this regard that I want to concentrate entirely - on the interest of the consumers, at least as I perceive them.

I think it ought to be stated for the record that it is fairly common knowledge that both the oil industry and the average gasoline dealer have benefitted financially from the energy crisis that we have experienced. So, I think it is about time that we really consider how, precisely, will the public be serviced and gain from any particular legislation.

I would think that it is fairly clear that one can define consumers' interests. It is much more difficult to determine how and what will serve these interests.

I think customers are interested in lower retail gasoline prices. They are interested in having ready and convenient availability of gasoline station services and they are also interested in diversity of service

and marketing options, which are offered to the public.

This is nothing unique, this is what customers are always interested in, in whatever purchase decisions they make.

I think, again, for simplicity, I would like to suggest to you that the price to the customer be conceived as consisting of two parts - that part which is determined by the oil company, refiner, or an integrated company; and by the dealer's margin. The two enter into the determination of the price.

With regard to the underlying price which the company sets, I think, unfortunately, very little can be done at the state level with one exception - with one qualification - that I will elaborate on as I proceed. So, if there has been any collusion among the oil companies, if there have been restrictive practices, etc., I am afraid that this is properly the purview of the Justice Department, of the Federal Trade Commission - which is involved in this thing - and the Federal Energy Administration.

With regard to dealer's margins, I think - at least my analysis and my understanding, and, again, I am not speaking as an oil industry man, I am not an industry expert, by the way, and I probably know less than just about everybody in this room regarding the very specifics of great retail gasoline operations - that it is not in the interest of the major oil companies, the established oil companies, to allow the dealer's margin to be extremely high - or high.

Let's put that differently. I think what Mr. Ferrara said is precisely the way one would expect these oil companies - all oil companies - to behave, namely, once they set a given wholesale price - tank wagon price - it is in their interest to have the gasoline marketing at the lowest possible retail level

because otherwise - that is, if the retail level is higher - they may be cutting into their own sales. So, it is because of this that I am not surprised that most of the established major oil companies prefer to have non-company owned stations.

I have a table on page 5 which indicates that and, again, Mr. Ferrara and others have admitted that company-operated stations are not presently popular - I shouldn't say popular, they do not appear to be a major force. I think that the statistics bear that out. Although Mr. Ferrara's statistics were illuminating, I would suggest that we are talking about small percentages of changes. The fact of the matter is, that the companies have not moved to company-operated stations. This is precisely because they would want to see competition at the retail level. The competition among dealers would tend to lower the dealer's margin, would tend to increase efficiency and, thereby, eliminate the kind of risk they would have to take if they were at the retail end of the business.

I am also very skeptical about some of the advantages of company-owned stations, in particular as they bear upon price competition by the major oil companies. I think the major oil companies have very sophisticated legal advice and are very much aware of the fact that if they were to underbid and underprice, independent-owned stations in a systematic way to drive them out of business, they will be vulnerable with regard to possible predatory pricing practices.

So, for that reason I probably share the sentiment of Mr. Ferrara, that company-owned stations are not the desirable vehicle, nor do they appear economically necessary.

The literature in other industries has demonstrated that the retail level operations can be run efficiently

by a small operator. However, what I fear about the bill, which would prohibit all company-owned stations, is that it will in effect also prohibit potential entry of new major marketing groups which would require company-owned operations in order to be sustainable. In other words, if a new refiner wanted to enter the market, or a new retailer wanted to do it on a large enough scale, he would face very serious risks. These risks can be somewhat spread vertically if he has ownership in upstream operations.

So, the company-owned vehicle may be the kind of vehicle for new potential entry, both at the retail and, more importantly, at the refiner level who wishes to compete with established operations.

In my testimony I made reference to Hess. Now Hess is completely company-owned, yet Hess represented an innovative marketing approach, as judged by the acceptance in the marketplace. Hess now has about an 8% share of the New Jersey marketplace. It is a reasonably new company. Had a bill of this sort been in effect, would it not have barred such entry into the marketplace?

So, the dilemma that arose in my mind, at least, as I read this and as I have been listening to the issue of company-owned operations is, on the one hand I agree that I do not see major economies coming to the public from companies of some size owning the retail operation and operating them directly. On the other hand, we cannot foresee the future route of technological innovations, of marketing innovations, and we cannot tell whether, by barring any ownership links, we may not impede, seriously, potential entrants.

So, this is the dilemma that I have faced with regard to company-owned operations.

I think this pretty much covers my prepared

comments, although I have not read them. Mr. Chairman, if you have any questions, I would be happy to amplify my comments.

ASSEMBLYMAN BAER: We appreciate your testimony very much and the fact that, as you point out, you are a disinterested party.

You describe, in your observations, some of the problems that we are faced with. I wanted to know if you could be more specific in terms of how you think we might address these problems and what the legislative solution to this is?

MR. MARCUS: Well, I must admit that I have been intrigued by your questions, Mr. Chairman, throughout the morning in this direction. I had not thought about it with care at home. However, some thoughts come to my mind.

First, because the bill is so wide in its implications, I have taken the position that I think as it is presently presented it might not be, at this time, the correct approach.

However, I think that if we define the interest of consumers as having a large number of independently managed stations, then, obviously, the State and the legislature may want to be very much concerned about nondiscriminatory supply practices on the part of the oil companies to gasoline stations.

I think that the major oil companies should be prepared to justify any discontinuance of supplies to an independent dealer - an independently-owned dealer - who is willing to meet the wholesale price, presumably including transportation costs. I think they ought to unbundle the prices with respect to the other services to their own gasoline stations and have a wholesale price and that wholesale price, which presumably should cover the costs of the gasoline, should not be a discriminatory one.

Again, there should be some protection for brand names that they have developed, etc.

I think that the crux of the matter is nondiscriminatory wholesale supplies and if a bill can address itself to this specifically, I can see the problem as being solved.

On the one hand, it would allow dealers to go out of business if they so choose because the company has maintained that some dealers have gone out of business because of economics. At the moment we don't know - have the companies been prepared to supply them at a quoted price or not?

Now, it would appear to me to be a fairly simple requirement - although, again, I am not a lawyer, I am not an Assemblyman, I don't know the mechanics of this.

ASSEMBLYMAN BAER: I don't think lawyers or Assemblymen have all the answers.

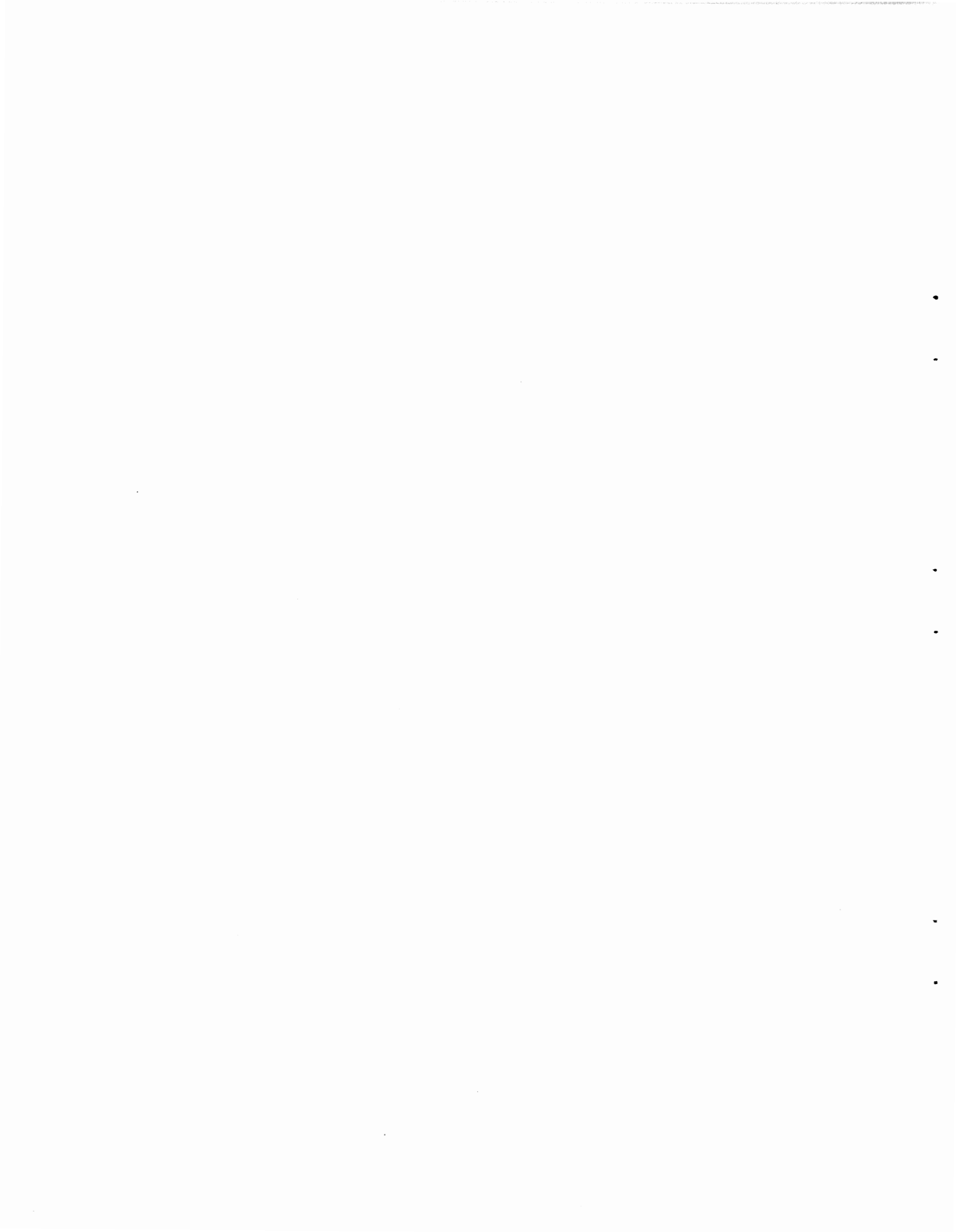
MR. MARCUS: Well, that is what we would like to believe, I suppose.

But one would like to require them to report on how they continue supplying the various stations with whom they had contracts, and when they terminate supplies to an independently owned station. They should be required to answer why they have done so. I would assume this might be illegal, based on the FEA requirements. (full statement on page 139A)

ASSEMBLYMAN BAER: I appreciate your coming to testify today. Since you indicated you may have further information for us later, we would welcome this also.

The hearing will recess now for a lunch break. We seem to be well behind schedule so I think we will make an effort to see if we can resume in 45 minutes. We will begin again at that time.

(Recess)



AFTERNOON SESSION

ASSEMBLYMAN BAER: The hearing will now resume. The first witness of the afternoon is Mr. J. D. Campbell of BP Oil, Inc.

J. D. C A M P B E E L L: Mr. Chairman, Members of the Assembly, I am Dug Campbell, General Manager of retail sales for BP Oil.

We appreciate the opportunity to verbally summarize for you the reasons for our opposition to Bill A-1411. This statement covers the following points:

Background on our operations in New Jersey and surrounding states.

Marketing Divorcement. That is, the required divestment of all marketing properties is an unproven solution to a problem that may or may not exist.

Finally, that the elimination of company-operated service stations from the State will reduce competition, thereby probably causing prices to increase; stifle evolution in petroleum marketing to the detriment of the consumer and will not provide the independent dealer any additional protection.

The prevention of the future development of company-operated service stations will, at best, seriously hamper the ability of new or small competitors to becoming viable in New Jersey. BP's situation today exemplifies this point.

As part of a merger with British Petroleum Company, Limited, of London, England, effective at the beginning of 1970, the Standard Oil Company of Ohio acquired the former Sinclair marketing outlets in the 16 East Coast States.

Sohio knew at the time of the negotiations with British Petroleum that this marketing and refining business was a loss operation. However, the Alaskan oil field leases

which were Sohio's prime objective in this transaction could not be acquired unless these refining and marketing properties were included.

After preliminary studies of the former Sinclair operations, it soon became apparent that we faced even greater problems than we had anticipated and that large infusions of capital would be needed.

As a result, sizable capital and advertising programs were initiated on the East Coast. Unfortunately, operating losses continued to increase. Therefore, decisions were reached to withdraw from certain areas and to stay in those locations which were considered most promising. Total losses before taxes from the BP marketing and refining operations through the end of 1973 have exceeded \$150 million, and they are continuing. In addition, about \$50 million has been spent on marketing capital outlays alone.

After these withdrawals, BP's marketing operations remain in the middle Atlantic states and the New England states. New England is entirely a jobber operation. The entire BP operation is still in a stage of transition, with the immediate job being the making of a profitable business. We are trying to do this through development of new, high-volume gasoline-only outlets in the major metropolitan areas. Since the operation of such outlets is more cost efficient than that of conventional stations, this program should be beneficial to us and to the consuming public as well. Outside the major metropolitan areas, all of our marketing will be through jobbers.

Although integrated companies operate with a degree of cost-efficiency not otherwise possible, it is fashionable these days to criticize them as being responsible for many of our ills in the energy field.

We believe that the forced divorcement of any of the segments of the industry or a complete breakup of the industry would accomplish nothing but chaos in the near term and would be a tragic mistake in the long term.

Unless it can be demonstrated to the General Assembly with virtual certainty that proposed restructure or dismemberment of the oil industry will better serve the public than the system we now have, we submit that the critics of the industry will have failed to establish their case. To date, this case appears to be couched only in theory and rhetoric.

In the case of marketing, we believe it is unrealistic to expect divestment of service stations by large companies to result in thousands of small marketers across the land.

If individual dealers were able to find the resources with which to buy their stations, the cost of land and interest rates today are such that their operating costs would be substantially increased. The result would be an increased financial burden on the consumer as well as the dealer.

As we said at the outset, we believe that divorcement is no answer and we have seen no critic of the industry meet the heavy burden of proof which should rest with those who propose far-reaching and novel changes in fundamental business relationships.

The elimination of company operated stations would remove one source of competition from the marketplace. Generally, the elimination of any competitor in the marketplace in favor of the special interests of another competitor increases the consumer's exposure to higher prices at the hands of the remaining competitors. For many years we have had antitrust legislation which is designed to preserve

and stimulate competition. Thus, any legislation which would restrict competition should be approached with extreme caution.

Customers are satisfied if they are provided with convenient service and competitive prices. We believe the Ohio experience of our parent company, which, in 1973, company operated 29% of its stations, is translatable to New Jersey, as both states have highly industrialized urban centers and rural agricultural regions. If this is so, the expansion of company operated stations would benefit the New Jersey gasoline consumer by from $\frac{1}{2}$ ¢ to 3¢ per gallon.

The elimination of company operated retail gasoline outlets will have a long term adverse impact on the New Jersey motorist. Our industry is undergoing a retailing evolution much like the grocery industry that we discussed this morning.

Gasoline supermarkets are evolving, providing the consumer with fast service and economical prices. The two or three bay service station provides highly personalized service and are comparable to the convenience store. There is a demand for both types of outlet in the grocery business and in the gasoline business and one need not threaten the other.

The gasoline supermarket must sell high volumes if it is to achieve operating economics which permit low prices. Low prices, in turn, stimulate high volumes. This is the cycle which has enabled private brand marketers to capture 20% of the New Jersey gasoline market. To start the cycle, however, and to keep it working, lower consumer prices are a necessity. We have found in the operation of our Gas & Go stations in the Philadelphia-Camden area that this high volume-low margin method of operation can best be achieved through company operated stations.

BP's situation today is an outstanding example of how the bill before you will curb competition and slow the growth of the gasoline supply to the detriment of the New Jersey consumer.

We are now in the final stages of completing a revamp of our Marcus Hook, Pennsylvania refinery so that its gasoline-making capacity will go up about 60%. Since the pipeline system flows north and our largest terminal is at Tremley Point, New Jersey will be a logical and economic market for this new supply.

BP supplies only a small part of the New Jersey gasoline demand today. Our results in the State must be improved if we are to become a viable competitor. This, we believe, can best be accomplished by the addition of a relatively small number of high-volume/low-priced gasoline-only retail outlets in the metropolitan areas of the State. At the same time, we expect to continue to supply the rural areas of the State exclusively through independent jobbers.

The prohibition of company-operated stations would make it much more difficult for us to become a viable competitor in New Jersey. Total divorcement makes it impossible. It is our opinion that if A-1411 becomes law, marketing innovation will be hampered, competition will be seriously reduced, and consumer gasoline prices will most probably increase.

Thank you, sir. If you have questions, I will attempt to answer them. (full statement on page 67A)

ASSEMBLYMAN BAER: No, I have no questions.
Thank you for your testimony.

Our next witness will be Mr. Victor Cino.
V I C T O R C I N O: Mr. Chairman, my name is Victor Cino. I am President of the New Jersey Shell Dealers Association, an organization just recently formed during the gasoline shortage.

There is a strong possibility that if legislation is not passed to end company service stations in the State of New Jersey, then a majority of the retail service stations in the State will be operated and controlled by just a few large, major, international oil companies.

The oil companies, despite what you have heard here this morning, are already making inroads into the company-station operation, and by doing so are cutting out opportunities for small, independent businessmen to open their own business in the State of New Jersey.

Further, the eventual takeover of service stations by the major oil companies will mean that the consumer must deal with fewer and fewer companies to meet his car needs, and for the State of New Jersey it means that fewer and fewer businessmen will be able to contribute their income to the general welfare and progress of their neighborhood community. In other words, the income derived from those retail outlets would be spent not necessarily in the State of New Jersey, but in foreign lands to benefit the international oil companies through complicated tax structures.

In short, the threat of oil company takeovers of retail service stations in the State of New Jersey amounts to a serious threat to our free enterprise system, a loss of real income to the State of New Jersey, and eventually more expensive gasoline and other petroleum products, because as fewer oil companies take over control of the gasoline market, the price of gasoline will rise even further than we have seen heretofore.

We believe that the major oil companies will utilize their increasing control of service stations to drive out independent service station operators, to further control the price of gasoline at other branded service stations, and to effectively create anti-competitive situations that will drive prices up for the consumer and the

residents of the State of New Jersey.

With the exception of the divorcement provision of A-1411 - the divestiture provision - and with the addition of certain supplemental amendments, we are in support of A-1411.

We support A-1411 in its most substantive statement that it should be unlawful for any distributor to engage in the retail sale of motor fuel or to have any ownership or controlling interest in the business of selling motor fuel.

Oil company operated service stations often control the price of gasoline in their marketing area and, thus, effectively over the long haul, eliminate price competition from independent service station operators. The result, historically, is higher prices of gasoline for consumers.

Should enough oil company-operated service stations enter the retail marketing area -- I'd like to contradict some of the statements that were made this morning. It doesn't necessarily require a great number of company-operated service stations to control the price of gasoline in the marketing area. Forty stations out of 800, if they are large enough, will control the price of gasoline in the marketing area.

Should enough oil company-operated service stations enter the retail marketing area, it would mean greater control of the price of gasoline by fewer companies. The result of this circumstance, obviously, would mean less competition since a monopolistic situation would arise.

It is important that control of the retail service station be kept in the hands of the small, independent businessman to allow competition to thrive and to avoid cut-throat tactics by which the major oil companies destroy small, independent service station operators - and I might add, small independent branded operators - and to allow the

consumer a wider choice in his or her selection of the station he or she wishes to do business with.

International oil companies wield tremendous economic influence over our lives at it is, by virtue of their vertical integrated nature. By eliminating the major oil companies from directly marketing their product, the State of New Jersey will strengthen the hand of branded service station operators to buy products from other sources, thus creating a more competitive situation in the area of sales of tires, batteries, accessories, and the like. The result will be lower prices for these items at branded service station outlets.

Oil company-operated service stations tend to be much larger and less accessible to customers than the small, neighborhood-type service station. Obviously, 40 service stations, averaging 20,000 gallons a month, are not the same as 40 company-operated service stations selling 500,000 gallons a month, on an average. So, the point that was made earlier this morning as regards the number of company stations involved and the minuteness of the ratio is irrelevant since what we are really talking about is volume throughput and the particular specific location of a service station and the influence it wields over that particular marketing area.

These large stations will often take over the marketing of gasoline from the smaller, more convenient neighborhood locations, drive the independent dealer out of business and cause the consumer to suffer poor service, longer waiting lines and less accessibility.

There is a great likelihood that oil companies may attempt to divest themselves of some marketing outlets to oil-producing countries in return for guarantees on long-term crude oil supply. This possible agreement raises the strong possibility of the intervention of foreign

oil-producing nations in the marketing of gasoline through retail service station outlets in the United States. This is a very clear possibility. A-1411, with certain amendments, would prevent the direct takeover of retail service stations by foreign oil companies.

A-1411, without the divorcement provision, by ending the company-operated service station, strengthens the economic integrity of the independent service station operator and the branded service station operator, by allowing them to compete in an open market, free of the overwhelming economic influence of any one of the major oil companies operating through their company stations, to the economic advantage of the consumer.

Historically, oil companies will operate company stations to control the price of gasoline - to keep the price of gasoline up, not down.

ASSEMBLYMAN BAER: Mr. Cino, I have a couple of questions. I would like to ask you this: when you assert that you believe that major oil companies will utilize their increasing control of service stations to drive out independent station operators to control the price of gasoline at other branded service stations, how do you feel that is going to be achieved?

I'd also like you to explain to me in what manner 40 out of 800 stations can control the price.

The third question I have is, when you say oil companies are already making inroads into company station operation, what specific facts do you have on that?

MR. CINO: I'll take your last question first. It is common knowledge in the industry that Mobil has driven many, many independent branded service station operators out of their stations in the past two years. I think the figure is 52.

ASSEMBLYMAN BAER: What about Shell?

MR. CINO: No, that is not the case with Shell at this time.

ASSEMBLYMAN BAER: Has there been any evidence of that beginning?

MR. CINO: No, not yet. However, there have been statements made by officials that they are interested in the takeover of company stations - in the takeover of service stations.

ASSEMBLYMAN BAER: Shell officials?

MR. CINO: Yes, sir.

ASSEMBLYMAN BAER: Were these public statements or were they internal communications?

MR. CINO: Internal communications between officials of Shell and their dealer organizations, yes.

ASSEMBLYMAN BAER: Will you be able to submit any of this to us in the next couple of weeks?

MR. CINO: I will submit whatever you would like me to submit.

ASSEMBLYMAN BAER: If you can I would appreciate it.

MR. CINO: With reference to your question about the forty stations, I would like to cite an example. One location, for example, on Route 17 southbound, an Alert station, is now posting a price of 51.9. This has a ricocheting effect on one side of the highway. If one station in a particular town on one side of the highway draws business away from the next station, then, of course, it will have an effect by causing the price to drop from station to station in either direction of the service station involved.

ASSEMBLYMAN BAER: Well, of course, that is sometimes called competition and it isn't always to the detriment of the consumer.

I thought you were talking about setting the

prices at artificially high levels.

I certainly would hope to see competition and I would hope to see prices brought down through competition.

MR. CINO: Right. My point was that prices are artificially high at the wholesale level through branded service station outlets, while wholesale prices at the independent level are artificially low.

ASSEMBLYMAN BAER: Let me ask you this: is there any evidence of practices in the oil industry - as there has been, sometimes, in some instances, with supermarkets, etc. - where there are major companies involved, where, when one company sets a higher price, other companies tend to follow them as a kind of leader of an industry?

MR. CINO: Historically, that pattern will result after a pricing situation. In other words, to restore stability of price to a market, one major oil company will raise its prices and the other major oil companies will follow. Does that answer your question?

ASSEMBLYMAN BAER: Yes.

Because of time, I cannot go into it, but you made reference to supplemental amendments.

MR. CINO: Yes, sir.

ASSEMBLYMAN BAER: I would appreciate it if you would submit to us whatever supplemental amendments you have in mind, and your rationale for those amendments.

MR. CINO: I will be happy to do so.

ASSEMBLYMAN BAER: Thank you.

Mr. Joseph R. Mariniello.

J O S E P H R. M A R I N I E L L O: Mr. Chairman, I have a prepared statement which, in the interest of time, I will submit to the Committee as if I had testified to it, if that is agreeable to the Chairman.

ASSEMBLYMAN BAER: I would appreciate that.

MR. MARINIELLO: Mr. Chairman, I am an Attorney

at Law of the State of New Jersey and have been engaged, on many occasions, in litigation involving dealers rights, vis-a-vis major oil companies, and I speak to you in that capacity; on behalf of those clients. I speak to you also as a citizen of the State who has to buy gasoline and also as a member of a family who has been involved in gas station dealerships for perhaps 20 years. My father is a dealer, and still is a dealer, for one of the major oil companies. I might add, he is a good dealer in everyone's mind and he is not in any trouble with any oil company, so I don't come here on that basis.

There have been many statements made here today, and there have been many questions asked of the Chairman, with regard to proof of the situation which your bill and others like it intend to remedy.

I would like to point out, just briefly, some facts which are proven and which have been proven for many, many years. Beginning in 1890, when the Sherman Anti Trust Act was passed, governmental bodies have been attempting to break up the huge oil companies and their monolithic practices.

We are all familiar, of course, with the great Standard Oil Trust, which was broken up, I think, in 1900. The parts into which it was broken up are now Standard Oil of California, Exxon, Standard Oil of New Jersey and many, many others. They are bigger than the trust which was originally intended to be broken up.

These companies still exist and the practice still exists. It is apropos in my mind that this Legislature and this Committee is investigating ways to solve the harm, because this State has been one of the leaders in that area for many years. Our Franchise Act legislation is a landmark piece of legislation which has been copied - and, by the way, fought tenaciously by many of the oil

companies and is still being fought in litigation in which I am involved.

But let's talk about facts. It is a fact, and it has been judicially found in many cases, including those in this State, that the oil companies use their leverage, on the termination or failure to renew leases and deal agreements, to control prices. Now, I don't say that lightly; that is a judicially determined fact in a case that I was involved in that lasted 9 days, which involved an oil company that, I am sure, will testify here today.

The judge found, as many other judges have found, that the subtle pressures upon the dealer, controls price. They not only control price, they control sale of products. The many, many applications of this pressure have to be solved. The Franchises Act did a great deal toward solving this problem. However, your bill and the others which may be brought forth as a result of these hearings, go to the only true essence of solving the problem. You must take away from the major oil companies their control over the retail outlets. This is the only solution.

I would say one other thing. I will remain brief, as lawyers often are not. We have had a lot of talk about public interest and it seems all the talk about public interest is price. Now, I for one, am certainly in favor of lower prices to the public. But we have a greater public interest that is involved and it is an interest, I think, that is the foundation of this country and it is the foundation of what I consider "free enterprise". I think it was Rosco Pound who specified that interest when he said, the major interest that government and legislatures should protect is the interest of individual freedom and individual opportunity. It is this individual opportunity that I ask the legislature to protect.

In this day of complicated businesses, the only way

a small man can operate a business with the thought of growing and bringing up something that is his is through, really, franchise arrangements, especially in the oil industry. It is difficult to compete with these companies - any of the major companies - on an entire integrated level; it is impossible.

I remember, Mr. Chairman - and I will end with this - what I think is a quote that bears repeating by the late Robert Kennedy. He said, without work in community and true opportunity to stand as men and citizens, the basic right, the right to be human, cannot be fulfilled.

If this country's free enterprise system is to be continued, there must be a limitation on these companies and there must be an opportunity for individuals. Thank you, Mr. Chairman. (full statement on page 80A)

ASSEMBLYMAN BAER: Thank you very much for your testimony. We appreciate your coming to testify before the committee.

Mr. H. J. Vaughn, Sun Oil.

H A R O L D J. V A U G H N: Mr. Chairman, I am Harold J. Vaughn, District Marketing Manager for Sun Oil Company of Pennsylvania. My office is in Newark, New Jersey. My territory covers the northern half of the State. The gentleman to my right is Michael Haley, the Marketing Manager for the southern portion of New Jersey.

Before I begin my remarks on specific points contained in Assembly bill 1411, I want to say at the outset that my company believes that the primary intent of this bill is to prevent companies from operating their own retail service stations on a direct basis in the State. As such, you should be aware that presently Sun Oil does not have any company-operated stations in New Jersey, nor do we have plans to initiate any.

The sponsors' Statement of Legislative Intent addresses itself to a number of allegations against the

major oil companies which are not true. In addition, we believe that this legislation rather than being in the best interest of the consuming public and dealers, is, in fact, anti-consumer and anti-dealer in nature.

Obviously, the bill was hastily introduced more than seven months ago at the height of the emotion-charged energy supply shortage and makes reference to "gas lines and a daily concern over whether...they (the public) can obtain enough gas..." and is a clear attempt to attribute a lion's share of the blame to the oil companies for last winter's crisis.

My company will neither accept responsibility for the energy crisis nor dignify any attempt by the legislature to find a likely scapegoat, namely the oil industry. I think today's newspapers are pointing to the real cause of the energy crisis and anybody that has been reading them will have to have second thoughts on blaming it on the industry.

As you know, the supply situation has improved, in part, because of conservation measures on the part of the consuming public and because of an end to the Middle East embargo. The success of the allocation program also has been very helpful. A major effort continues today on the part of the oil industry and others to balance the national supply and demand position. However, recent developments at the OPEC meeting in Vienna should indicate that as long as much of the world's oil supply is owned by the Arab nations, the supply and price of oil products at the retail level in this country will be, to a major extent, beyond the control of American oil companies.

We believe the economics of operating a fully integrated oil company - the control of oil from the exploration and production stages and through the intermediate stages leading to the retail marketing stage - is

consumer-oriented because of the expertise and efficiencies learned and practiced by all experienced oil firms over the years. By this I mean, that companies like mine can draw on the expertise of many departments in the achievement of goals. For example, we have our own planning department, our own transportation department, our own financial department, to name a few.

This is one layer of management and we think that the consumer benefits with the use of one corporate structure, rather than putting additional middle-men into the picture, which is what we believe will happen when the oil companies are forced to sell out to distributors or remove themselves from the marketplace.

As proposed, the bill could be interpreted as requiring companies to rid themselves of retail marketing and also to divest the real estate on which these stations are situated. This brings up an interesting question: Who will buy them?

We estimate that a small percentage of our dealers would be able to purchase these properties. The value of many properties, as stated earlier, is as high as \$250,000 per location. In this period of high interest rates and tight mortgage money, we suspect that a prospective dealer-owner would have much difficulty trying to come up with a satisfactory financing arrangement. On some of our higher priced properties, financing for a station's inventory alone might be difficult to arrange.

If companies, like Sun, are forced to sell off their properties, the climate of the circumstances would probably dictate that they would have to be sold at lower than market value because buyers would realize the problem and take advantage of the situation. In such an artificially-created buyers' market the buying price would bring the value of these properties down to a fraction of their true

value. In effect, this could amount to taking without just compensation.

In addition, many dealers might find that owning their own station outright is not as attractive as the deal he has with the company-dealer lease arrangement. This is because we handle many of the annoyances which accompany the operation of a service station, such as credit card problems, liability, tax, insurance, maintenance and financing.

We are convinced that if these facts were fully understood by the dealers, many of them too would oppose this bill. As for the consumers, when a company like Sun loses its ability to oversee the way its service stations are run, its customers will be the big losers. This is because the company loses the right to represent the consumer in the maintenance of service station performance and appearance. After all, when we get a complaint letter, it is generally the oil company salesman who intercedes on behalf of the consumer in complaints against a service station. He is the man who usually attempts to negotiate some kind of a compromise.

Presumably, the sponsors of this bill also think that by separating companies from their retail marketing operations, competition in the marketplace will be enhanced. We strongly disagree.

This bill in no way encourages competition.

ASSEMBLYMAN BAER: Can I break in here for a moment?

MR. VAUGHN: Yes, sir.

ASSEMBLYMAN BAER: As our time is short, I have completed reading your statement myself and I have some questions on it. Would you mind-- The whole statement will be in the record.

You referred to greater efficiencies by company

operated gas stations. What are the greater efficiencies of such operations?

MR. VAUGHN: I believe, Mr. Chairman, that I referred to the greater efficiencies of the integrated oil company structure.

As I mentioned earlier, we have no company-operated stations in the State of New Jersey. However, we distribute directly to the independent dealer-operated locations. Were we forced to divest ourselves of our service station properties on a direct basis, we would, in effect, be cutting in another middle man into the picture. We would be selling either to a real estate investor who would have his own investment to protect in order to realize a return; we might be selling to a distributor who has to make a profit on his investment.

As a matter of information, marketing direct hasn't been the profitable end of the oil industry. Our owning of service station locations and paying the taxes -- Rents have been frozen under the present governmental regulations and taxes have continued to go up to the point where, really, ownership of these locations for an individual with that only as his interest would be unprofitable.

But, as far as within the corporate structure, we have one Board of Directors and one President, one staff - or one management group - so that if the integrated oil company were broken up, making one company the production head, another being used for exploration, another for marketing, another for the pipeline - all of them independent companies - this could not help but add to the cost of the product.

ASSEMBLYMAN BAER: I'd like to ask another question. You speak about the possibility - if the bill were passed - of chain operators coming in and establish control of the market place. Presumably you are referring

to a chain of retail operators. Is there any experience with this happening anywhere in the country - where such chain operations have a large share of the market?

MR. VAUGHN: I can't speak for the rest of the country but I should like to point out that if we are trying to protect the small, independent operator, what chance does he have in competing against a large chain operation that might be in control of certain segments of this market?

Normally, in the past, when the market was depressed - fortunately, it isn't at this time - it was only the supplier who the small individual dealer could turn to for help.

ASSEMBLYMAN BAER: Well, granted that he might have some difficulty competing with the chain but would his difficulty competing with the chain be any greater than his difficulty competing with the major oil companies?

MR. VAUGHN: Well, I can speak for the Sunoco dealer; he is not competing with the oil company at this time.

ASSEMBLYMAN BAER: What would cause the chain to become more of a problem?

MR. VAUGHN: Well, he might be in a position to buy a distressed product and maybe dominate a particular county or community with several locations. The small independent, who is only able to buy gasoline in smaller quantities, may not be able to compete with this.

ASSEMBLYMAN BAER: On page 6 you state, "A check of the facts will reveal that New Jersey is probably one of the most competitive States in the marketplace...", and then you go on and cite some figures about the variety of companies in New Jersey, which are not offset - to the best of my knowledge - by comperable figures from other states.

If we are so competitive, how is it that, subjectively,

it seems in so many instances that our gasoline prices are higher than in many of the other states?

MR. VAUGHN: I don't know that to be the case, Mr. Chairman.

ASSEMBLYMAN BAER: Would you say that is not the case, or don't you know?

MR. VAUGHN: I know that some of our neighboring states may even be higher by virtue of their state sales tax on gasoline.

ASSEMBLYMAN BAER: I am not talking about state taxes.

MR. VAUGHN: I don't know of a neighboring state that has lower prices than New Jersey at this time, sir.

ASSEMBLYMAN BAER: I didn't confine my statement to neighboring states.

MR. VAUGHN: Well, if you are referring to another state, perhaps I could develop that information for you but I am unaware of lower prices and I can speak for my company; it is not lower in other areas.

ASSEMBLYMAN BAER: If you can give me further facts on this, I would appreciate it because I hear from many citizens who travel around throughout the country and some of them seem to be aware of lower prices. I am seeking specific information on this.

MR. VAUGHN: You know, there are lower prices, depending upon the dealer throughout the State of New Jersey. That is his prerogative - to establish the price at the retail level.

ASSEMBLYMAN BAER: Right.

Now I want to ask you - on page 7, one of the reasons you give why a company should be free to operate a station directly is to comply with certain local zoning laws which may prohibit the shutdown of a business for a long period of time. How does this tie in? Why is an independent less

able to comply with local zoning laws?

MR. VAUGHN: That isn't the point, Mr. Chairman. The point is, should a station fail to have an operator for a period of time, perhaps due to the death or termination of a lease by the dealer himself - or any number of other reasons - it may be in the best interest to operate the location with a temporary company operation until a replacement dealer could be found. There may be communities that have laws on their individual, local board that would indicate that--

ASSEMBLYMAN BAER: You are referring to the abandonment of non-conforming uses?

MR. VAUGHN: Yes, sir.

ASSEMBLYMAN BAER: Okay. I didn't understand.

MR. VAUGHN: I would like to make one other point, Mr. Chairman and that has to do with the issue of large oil companies. I pointed out, we are generally considered the second largest oil company in the State of New Jersey. We have 792 Sun brand locations, either managed by distributors or independent operator-owners, or we lease them ourselves to dealers.

With this position in the market, we still have approximately 8% of the market, and that is far from being a dominating factor. This is a very, very competitive business.

ASSEMBLYMAN BAER: Mr. Vaughn, I want to thank you very much for coming here and testifying and giving the committee the benefit of your knowledge.

If you can submit, later, any of that material, I would appreciate it. (full statement on page 89A)

Mr. Gilbert Repetto, local service station owner.
G I L B E R T R E P E T T O: Mr. Chairman, I am Gilbert Repetto. I manage a station in Oakland. Previous to that, I was a dealer for 8 years.

When they first approached me with this station manager idea, I didn't like it but after being in it about 6 months, I find myself financially better off. The help is happier. The help is paid better than I could pay them as a dealer. They are also getting paid vacations. It is taking a lot of the responsibility off my shoulders - withholding taxes, social security payments - that I had as a small dealer.

So, I am happier financially now than when I was a dealer.

ASSEMBLYMAN BAER: All right. Do you have any other testimony?

MR. REPETTO: No.

ASSEMBLYMAN BAER: You came here to say that you prefer--

MR. REPETTO: I prefer being a manager to being a dealer.

ASSEMBLYMAN BAER: You prefer being a manager to being a dealer?

MR. REPETTO: I was a dealer for 8 years and I have been a manager for 2 years. In that two years as a manager I find myself better off.

ASSEMBLYMAN BAER: I see.

MR. REPETTO: One major factor is that as a dealer I could never get a mortgage to buy a home. Within 6 months, as a manager, I got my mortgage right away.

ASSEMBLYMAN BAER: I see.

Have you read this bill?

MR. REPETTO: No.

ASSEMBLYMAN BAER: Are you familiar with the bill?

MR. REPETTO: Slightly, yes.

ASSEMBLYMAN BAER: If you haven't read it, how are you familiar with it? Did the company inform you of it, or what?

MR. REPETTO: Inform me of the bill?

ASSEMBLYMAN BAER: Yes.

MR. REPETTO: No. They just said I was to appear here and give my personal statement.

ASSEMBLYMAN BAER: Who said that?

MR. REPETTO: They asked me if I would appear here on my own to give my personal statement.

ASSEMBLYMAN BAER: I see. They, meaning Mobil?

MR. REPETTO: The station managers.

ASSEMBLYMAN BAER: Mobil station managers? I see. Do you happen to know whether Mr. Hokamp, who left this letter and testimony, is going to be back this afternoon? (see index)

MR. REPETTO: I don't know.

ASSEMBLYMAN BAER: To answer questions?

MR. REPETTO: I don't know.

ASSEMBLYMAN BAER: I see.

Do you know him?

MR. REPETTO: Yes, slightly.

ASSEMBLYMAN BAER: I see. All right, thank you very much for coming and giving us your testimony.

Mr. Robert Ireland, Mobil service station owner -- manager, excuse me. Mr. Repetto, I take it then, was not correctly listed here; he is a manager, not an owner. He is an ex-owner.

R O B E R T I R E L A N D: Sir, I am, at present, a station manager for Mobil Oil in Cherry Hill. Before that I was a leasing dealer. So, I have experience under both systems, or plans.

I am here, mostly, to answer any questions about the way I feel about either type of operation.

ASSEMBLYMAN BAER: Well, I am interested, first of all, in what testimony you wish to give of your own free will.

MR. IRELAND: Well, concerning the present arrangement

with Mobil, it seems to be a workable agreement for me and for Mobil Oil. I employ a professional accounting service and the reason I go there every day is to earn a living and it is a new plan versus the old leasing-dealer plan. It hasn't affected my income adversely. If anything, possibly, it has helped it in a small way.

ASSEMBLYMAN BAER: Well, if this has affected you so little, why have you come to testify about the bill, since, presumably, it doesn't make that much difference one way or the other?

MR. IRELAND: One thing about the bill is the part that would require the oil companies to sell their locations. I wouldn't be able to buy the location. I would have to leave.

I understand it is supposed to be valued somewhere between \$250 and \$300 thousand. It is a prime location on Kings Highway in Cherry Hill.

ASSEMBLYMAN BAER: I understand. If the bill were to provide, instead, for leasing, which would basically bring about a return to the previous arrangement you had - or something similar to that - what would your feeling be against legislation modified to that extent? Would you then support such legislation?

MR. IRELAND: Yes, I would.

ASSEMBLYMAN BAER: I see. Thank you very much.

MR. IRELAND: You are welcome.

ASSEMBLYMAN BAER: Mr. William Hobokan, Ashland Oil Company.

W I L L I A M H O B O K A N: Mr. Chairman, my name is William Hobokan, I am District Manager of Public Affairs for Ashland Oil. I have a statement here, prepared in Ashland, Kentucky. Unfortunately, Mr. Charles Luellen was unable to make it today, so I am reading it for him.

If Assembly Bill A-1411, which prohibits retail

gasoline station operation by distributors and refiners, is enacted into law, we believe that New Jersey citizens will be deprived of that portion of the total retail marketing system which traditionally has been the most vigorous competitive force in the market. Contrary to the apparent intent to protect New Jersey consumer interests, there is no doubt the eventual effect of the legislation will be to increase gasoline retail prices.

Ashland Oil is an independent refiner in the sense that we purchase over 80% of the 360,000 barrels per day of crude oil needed for operation of our refineries. We also consider ourselves independent because we always have sold the principal portion of our gasoline through independent jobbers who resell under their own brand names and through direct salary operated retail stations which are identified by names other than Ashland. These stations are typical independent or private brand type outlets which sell only gasoline and motor oil and offer no mechanical or other services. Their principal appeal is low gasoline prices and quick service, and the high gasoline volumes produced at the stations are abundant evidence that the public has been well served by our investment in these facilities.

In addition to sales through our salary-operated stations and to independent jobber customers, we sell, under the Ashland brand, through conventional stations in a small region of Kentucky, West Virginia and Ohio. These stations are conventional major brand type outlets, with bays for mechanical work, lubrication and accessory sales and installation. They are operated by dealers who generally price their gasoline at full major brand level, which is typically 3¢ to 5¢ per gallon above the prices offered at our direct operated stations.

We believe that our three-way gasoline marketing system provides maximum benefit to retail customers and contains no inequity for our jobber and dealer customers.

We do not attempt to conceal from our dealers and jobber customers the fact that we sell a portion of our gasoline through salary operated stations identified by names other than Ashland. In New Jersey they consist of Hi-Fy Bi-Lo and Red Head.

We would not attempt to salary operate a conventional branded service station. This type of high cost, service oriented business is most efficiently operated by an independent dealer. Incidentally, despite restricted gasoline supply in recent months, our skilled Ashland dealers, who undoubtedly are typical of all dealers, currently are enjoying unprecedented prosperity.

Neither would we by choice allow dealer operation of our salary operated stations, for the simple reason that salary operation of these high volume/limited service outlets provides maximum economy. That economy, in turn, is reflected in low retail prices and the savings accrue to those retail buyers who prefer to patronize that kind of station instead of conventional full-service outlets.

In New Jersey we do not sell gasoline through dealer-operated branded stations, but we do salary-operate a number of stations which, for many years, have provided to New Jersey consumers high-quality, economically-priced gasoline.

Assembly Bill A-1411 not only would prevent expansion of that station network when the present oil shortage ends, it would have an immediate deleterious effect upon retail gasoline marketing in New Jersey. Its prohibition of continued direct salary operation would lead to an eventual decision to close these stations permanently and sell that quantity of gasoline presently sold in New Jersey in states where this most efficient type of station operation is permitted. It seems likely that other refiners similarly situated would be inclined to the same decision.

In that event, the citizens of New Jersey would be severely penalized. We respectfully request your consideration of our views in this matter.

Original signature by Charles Luellen, Group Vice President, Ashland Petroleum Company, Division of Ashland Oil, Inc.

ASSEMBLYMAN BAER: I want to thank you very much, Mr. Hobokan, for bringing us this testimony and for coming before the Committee.

I have no questions and we can now go to the next witness.

MR. HOBOKAN: Thank you, sir.

ASSEMBLYMAN BAER: Mr. Jack Chandler, Kayo Oil. J A C K W. C H A N D L E R: Mr. Chairman, looking at that schedule, if I were through right now we would be just about on time, so I will see if I can't speed it up. I'd just like to get about two minutes worth in here.

I am Jack Chandler, President of Kayo Oil Company, Chattanooga, Tennessee. Kayo is a wholly-owned subsidiary of Continental Oil Company, operating 630 retail stations. In New Jersey we have been marketing since 1968. Last year we sold 20 million gallons of gasoline. We have 23 outlets in New Jersey. All of these stations are operated by Kayo and they always have been.

Kayo represents what is characterized as low-cost or low-priced marketing. I hesitate to use the word independent because that has been kicked around here today. In our terminology, independent is the type of marketing that I represent. So, I will just refer to ourselves as low-cost operators. We have been called worse than that. A lot of people question the legitimacy of my parents' nuptials at the time of my nativity.

The point I'd like to make here is that this legislation is aimed at major brands and will have a harmful effect on low price marketers, and will do a disservice to

the New Jersey consumer.

The ability of this low price marketer to charge a lower price is attributable to a low cost of operation and high gallonage throughput. One of the keys to low cost operation, of course, is direct operating control. Such methods mean a low price to the consumer. Low price marketers have found it advantageous to operate where they have control of everything that goes on in the station.

Now the cost savings in these direct operations without this intervening level between the supply source and the customer's gasoline tank are passed on to the consumer in the form of a price savings. Without the benefit of direct operations, the low price marketers will be unable to maintain past levels of operating efficiency, which are essential to their continuance as a strong competitive force in the industry.

We believe, and our parent company believes, that a tailored marketing approach is necessary. In other words, it is a Sears Roebuck versus a Sacks Fifth Avenue. We think the public ought to have a choice. They ought to have the low priced marketer, such as we are.

This bill, in my opinion would eliminate the Kayo's, the Hi-Fy's - as the gentleman from Ashland said - the Red Head, the Low Boy, Scott, Hess, etc. It would eliminate this segment from the market. In other words, you would throw out the baby with the bath water. I don't think that is what the bill is intended to do.

I am sure that Kayo's customers in New Jersey, who bought gas at a lower price than a major station offered, would agree with this view.

You asked a while ago about lower prices and why prices in New Jersey were not as low as they are in other states. I was itching to answer that because I operate in 19 states. Prices are lower in a lot of other

states where we have a lot of competition. In Florida, for example, and North Carolina there is a lot of competition. The low price segment is usually the segment of the marketing industry that brings the prices down. You very seldom hear of a major oil company dealer starting a price war. It is usually -- Well, the people in the industry know who they are. So, I think that we need this. It is healthy.

This legislation - I'd like to say - is aimed at preserving the lessee-type operations. In reality, it forces a change in long-established marketing methods of our low-cost, low-price marketers, such as I am. This bill strikes at what, in my opinion, is the most competitive segment of gasoline price competition available to New Jersey's or any other motorist - that is, the price differential charged by the low cost marketers versus the majors.

I would like to summarize this by saying that the residents of New Jersey are poorly served, rather than benefited by this proposed bill. They will pay more for gasoline than they otherwise would pay and they will have their choice restricted in terms of type of gasoline purchase available.

Sir, I urge you not to support the Bill. Thank you.

(full statement on page 98A)

ASSEMBLYMAN BAER: Thank you. I'd like to ask you a couple of questions.

First of all, you stated that without the benefit of direct operations the low price marketers will be unable to maintain past levels of operating efficiency. What is it about the direct operation that makes it more efficient? In either case, you have certain investment; there are certain types of expenses which, presumably, would be the same. What are the key things, in your opinion, that are different and that result in economy when you are a direct dealer?

MR. CHANDLER: In my opinion, the thing that causes this extra expense is, you add another level between

the supply source and the man who puts that gasoline in the tank of the car.

We can operate - marketers such as we are - with only two people between the headquarters and the customer at the pump - that is, a Field Supervisor and the station manager-attendant who puts the gasoline in the car.

If you have a major oil company, or a dealer type operation - a jobber - you have at least one, maybe two more levels there. Somebody has to pay for that.

ASSEMBLYMAN BAER: You talk about another level but, for instance, if you are an independent operator, there is another level in the sense that it is a different legal entity. But the independent dealer has to eat and the salaried person has to eat. In both cases you are paying rent, or you are paying a mortgage for the real estate involved. In both cases there has to be insurance. How does this other level introduce extra cost and what are they, specifically?

MR. CHANDLER: I am not sure an independent low-priced marketer could make it. In other words, you almost have to have the high volume and you can't operate, for example, without 8 or 10 stations in any given district. Now certainly a man could do that - an independent could. But here, again, you get into other problems, such as investment. If a station costs \$75 to \$100 thousand, it means that this man would have to have, maybe, \$1 million of capital investment in these stations.

Certainly an individual could go out and operate 10 low-priced stations and effect, basically, the same thing. But I don't believe a major type dealer could do this.

Basically, over the years, there has always been a 2¢, 3¢ or 4¢ differential between the branded dealers and the low-priced marketers.

ASSEMBLYMAN BAER: That leads me to my other question. You commented that you believe one of the reasons that there might be higher prices in this state - which, implicitly, you seem to be confirming - is because a smaller percentage of the market in this state is operated by these low-priced marketers - or whatever term you use. First of all, do you have any opinion as to how it is that we have that situation in this state, as opposed to other states, and do you have any ideas as to what is likely to encourage more competition and growth from this sector of the market?

MR. CHANDLER: Well, first of all, Mr. Baer, my company has only been marketing here since 1968. I was surprised when I came up here and surveyed the New Jersey market in the late '60's as to the tremendous lack of the type of competition that we have. Now why, I don't know except maybe real estate prices were higher. It took a much higher investment to get into New Jersey.

ASSEMBLYMAN BAER: Is it harder for you to get locations than in other states?

MR. CHANDLER: No.

ASSEMBLYMAN BAER: Is it harder to get the locations zoned out?

MR. CHANDLER: No, it isn't more difficult. We did find it a little more difficult to get permits, etc. That was quite a chore for a Southern company like us, at first - you know we country boys coming up here to New Jersey; that was very difficult.

I'll tell you another reason why companies, such as mine, are proliferated in Florida and the South, a lot of people like to go to Florida. It seems like you have service stations on every corner in Florida and it seems like the higher percentage of them are the low priced marketers.

The point I am trying to make is, New Jersey needs more of this kind of market. It needs more of the Hesses, the Kayos, the Scotts, the Red Heads; it needs this type market. This bill will eliminate them.

ASSEMBLYMAN BAER: I understand that is your testimony. What I am trying to find out is, over and above this bill, or modifications of it - since, in your opinion, competition will be fostered by more of the type company that sells at a lower rate and since we have so few of them - what factors - I am trying to identify the factors - have caused New Jersey to have such an unusually low percentage of them and, presumably, reduced competition in this State? I am trying to see what we can do to address those factors.

MR. CHANDLER: That gets into marketing research areas that I am not familiar with. I don't know what it is. New Jersey certainly is not the same marketing area as Florida. So, I really don't know.

ASSEMBLYMAN BAER: I would certainly welcome it if you, or your associates, can provide in the next few weeks, any information to us on this - if you want to. We would certainly welcome testimony on this.

Thank you, Mr. Chandler, for your testimony.

The next witness will be Mr. James Gerlock, Shell Oil Company.

J A M E S G E R L O C K: My name is James Gerlock. I am the Manager of the Newark Retail Marketing District for the Shell Oil Company and I am responsible for overseeing the retail sale of automotive gasoline, motor oil, tires, batteries and accessories in the northern two-thirds of New Jersey.

We have submitted a written statement in opposition to the bill - A-1411 - which I assume the members of this committee will take - if they have not already taken -

the opportunity to read. I am not going to take the trouble, due to the lack of time, to read it to you.

I should like to summarize, very quickly, what it says and then answer any questions you may have.

Now, the first reason we are opposed to Assembly Bill 1411 is that it is aimed at a problem that simply doesn't exist. Therefore, there obviously is no need for the law. Despite unsubstantiated charges to the contrary, statistics show that the major oil companies are not driving out dealers of their service stations, depriving them of their livelihood and converting dealer stations to company operated outlets.

I will state, categorically, that the Shell Oil Company does not have such a policy and does not intend to have one. We have 380 service stations in the State of New Jersey and all but one of them are operated by independent dealers who hold the property on a real estate lease from Shell, or own the property outright.

Now, nationwide, we have approximately 9,200 stations in territories where leases are arranged directly with the dealers. We also have approximately 9,800 other units which are supplied through jobber operations. Of the 9,200 stations in direct marketing territory, only 332, or approximately 3.6%, are operated by this company. Only 25 of these are conventional-type stations. These are the stations that you recognize as service stations.

The rest are special types, such as car washes, self-serves and innovative projects. These special stations cost in excess of \$300 thousand and so, obviously, they are beyond the financial means of many individual dealers and they require closer control over their operations than is possible through dealer operations.

Other testimony is being, and has been, submitted to show that there is no industry-wide tendency toward the

elimination of service station dealers in New Jersey.

Our second main reason for opposing the bill is that it is grossly discriminatory and would work against the interest of the consumer by removing a class of competition in the marketing of gasoline and other automotive products and services. What this bill is designed to do is insulate and protect the business interests of a small segment of the population of the State of New Jersey to the detriment of the whole motoring public, which comprises virtually the entire adult population of the State.

This bill runs counter to the main idea of law and government in this country, which is: the greatest good for the greatest number.

Now, without being critical of the great majority of service station dealers, who I believe are doing a good job, I just have to say very bluntly that I feel this is a very selfish proposal. There are many lines of business in which supplying companies market through their dealers and franchisers and also operate their own stores, yet the oil industry is the only one singled out by this bill to bar producers, manufacturers, distributors, from operating their own outlets.

But, this is not all. This legislation would not prohibit any other large merchandizing organization - such as Pennys, Wards, Sears - from selling a wide range of automotive products and services, including gasoline. There are many reasons why it is advantageous to the public for petroleum producers, refiners and distributors to operate their own stations. It allows them, one, to train dealers. It enables them to try out new marketing methods and innovations in facilities which benefit the consumers. This is what I made reference to previously. It is frequently the only way stations can be kept open when a dealer leaves the business on a short notice. And,

most importantly, it provides desirable standards of operation, in terms of service, hours, days of operation, and cleanliness in appearance.

I would like to refresh your memory, if you don't recall, concerning last winter and I would like to ask you do you remember the service, the hours, the cleanliness and the attitudes? These are not trivial considerations. There is no gain in stating the fact that there has been a lessening of service since the Arab embargo last October. During the time of the critical shortages last winter, the major supplying companies were able to exercise control over hours of operation and allocation of available supply at company operated stations that could not be imposed on dealers.

Even now, in the large areas, the only stations that motorists can find open in the night-time hours - and many times over the weekend - are company-operated stations.

Let me state this with a somewhat different emphasis. A company station is a unique sales opportunity for the company and for the consumer. It is not just another station. When the station is leased to a dealer, he controls the business and the business premises and that is exactly how it should be.

The Anti-Trust Laws in the New Jersey Franchise Practice Act require this and Shell's agreements guarantee it. The consumer who buys from the dealer and not the company, seems quite satisfied. But the consumer has also found that he likes dealing with company stations and it is easy to tell why. While Shell is more than pleased in the dealers overall performance and is proud of its dealer organization, Shell considers its company stations to be of top quality. They comprise a natural, if only occasional, adjunct to our dealer operations. Control is important. At dealer stations, Shell doesn't control and doesn't use

it, but at company stations we are everything. As such, Shell expects results and gets them immediately. The operation is conducted exactly as Shell's experience tells us a station should be run. The attendants are in full uniform. The crews are fully manned. The service is quick. The rest rooms are faithfully maintained. A complete inventory of everything required to service your car is at hand. The hours are long. Many times they are 24 hours. The terms of sale are reasonable and are in compliance with all the laws and regulations.

We are very proud of our few company stations, and our customers are obviously pleased. Indeed, I can't help but think that Assembly Bill 1411 might not have been proposed if Shell had opened a few more company stations in New Jersey, giving many more customers the opportunity to sample our type of operation.

But really, Assemblyman, there are three basic issues, as we view it here. First of all, the dealer has a statutory protected right to remain in business. That was guaranteed under the Franchise laws of 1971.

Secondly, we feel Shell has a constitutional right to make intelligent and profitable use of our private property.

And, thirdly, we feel the customer has a right to deal with whomever he chooses and the right that he be given that choice.

I respectfully urge that Assembly Bill 1411 be defeated because I feel it is unnecessary; it is discriminatory; it is special interest; it is anti-consumer; and it is unconstitutional.

If I can prevail upon you for one moment longer, I cannot let pass several of the remarks that were made here today and I happen to agree with Mr. Ferrara with reference to some of the things that he said. He said

that complete domination doesn't do anybody any good and I sincerely agree with that, be it a company-run operation or a dealer operation. I think the individual dealer has a place in the marketplace, as well as company-run stations. There is a need for both.

The other thing that keeps popping up here is price. I would like to state - and I am sure that you are aware of this, but in the event you aren't - that for all practical purposes the price is controlled; it is controlled by the government of the United States. They control how high you price. So, price, from that viewpoint, is no longer in the hands of the oil company.

Also, you asked a question-- One second before I come to that - there was another statement that was made that I want to categorically deny. It was stated that prices generally sold two on one car. I want to set the record straight. That is not the case. In the 20 years that I have been in the oil business, not once have I ever heard that and I will defy anybody to question me or my company, relative to irresponsible statements such as that. I am sure you will take that into consideration.

Now, competition -- you asked why, and you asked the previous speaker what happened. One of the things involved and one of the most difficult states that I have ever been associated with involving the permit problem is this state. As far as I am concerned, this is the most difficult state in the United States in which to acquire a permit. So, to acquire permits to stimulate competition to build new facilities is literally, virtually an impossibility - or had been until this previous winter.

Secondly, what happened to the others? Well, the self-serve has been outlawed by the State of New Jersey, which is another form of competition. That was also involved and your independent operations didn't, as pointed out,

prosper very much in the State of New Jersey.

ASSEMBLYMAN BAER: Sir, I would suggest that you bring your presentation to a conclusion now because of our time situation.

MR. GERLOCK: I am sure that I have stimulated more than several questions, so I will defer to you.

ASSEMBLYMAN BAER: You have extensive rebuttal material.

MR. GERLOCK: Yes, I do.

ASSEMBLYMAN BAER: We would welcome it, but it can be introduced in written form into the record. As I have said, most of the committee members are going to become familiar with this through reading the record and it will be studied very carefully, both the material that is introduced now and later.

MR. GERLOCK: I sincerely hope so because anything as important as this - both to the Legislature, to the consumers, to the oil companies and to the many, many independent dealers - should not only get a thorough examination but a double dose of everything in taking everything into consideration. I urge you to do this. This is something, if passed, that will have either serious or beneficial consequences from now until it is repealed, if it is passed.

ASSEMBLYMAN BAER: Let me just ask you one question. You indicate that the company does not have any intention and does not have any policy in terms of eliminating dealers; there have been no internal communications to this effect and there has been no tightening of criteria relating to elimination of dealers recently. Whatever policies you have been following in taking action against dealers is consistent with policies that you have had for a long period of time, in terms of just maintaining standards of the company and there hasn't been any change in that recently, is that correct?

MR. GERLOCK: Well, let me kind of separate those. There are about one-half dozen things in there. First of all, we - in the statement I made - are not going to remove, eliminate, terminate any dealer for the sole purpose of taking over as company-operated stations.

Number one, if we could we wouldn't do it. Secondly, we are prevented - even if we wanted to - by the Franchise Law.

As far as the tightening of our standards, etc., this has been brought about by the Franchise Law, which now requires standards of performance. So, yes, we are enforcing those.

As far as internal communications, as far as salaried-operated stations, yes, we have two here now - one or two - and we are desirous of having more. When the opportunity presents itself, and it is the right situation, yes, we will look for salaried operation.

But, again, I must emphasize this is not to terminate or eliminate dealers for the sole purpose of taking over salaried stations. First of all, we are prohibited but even if we weren't, we don't operate like that.

ASSEMBLYMAN BAER: All right. I want to thank you very much for your testimony, Mr. Gerlock, and for the material that you will submit. I appreciate your coming to share your knowledge with the committee and I assure you that your testimony and material will be studied carefully, as all the testimony is.

MR. GERLOCK: Thank you very much. (statement on page 105A)

ASSEMBLYMAN BAER: The next witness is Mr. Paul Kukan.

P A U L K U K A N: My name is Paul Kukan. I run a Gulf Service Station on Route 22 in Scotch Plains, New Jersey.

I am opposed to Bill 1411, mainly because I would have to buy my own service station. This, I find, would be financially impossible to do at the present time. My rent

deal and lease deal with the Gulf Oil Company, I consider to be fair and I would not like to see things changed from the way they are right now at the present time.

ASSEMBLYMAN BAER: What is your present arrangement?

MR. KUKAN: I am a leased dealer.

ASSEMBLYMAN BAER: A leased dealer?

MR. KUKAN: Right, for Gulf Oil Company.

ASSEMBLYMAN BAER: If the bill did not require sale but only required leasing, what would you feel about the bill then?

MR. KUKAN: Depending upon from whom - in what respect did you ask that question?

ASSEMBLYMAN BAER: If the bill were to only require that major oil companies must lease stations instead of changing to selling them and divesting themselves of them, if they were required to lease them to dealers - if it were modified in that way, as has been suggested by some previous testimony - what would be your feeling about the legislation if it were in that form?

MR. KUKAN: If the company was just going to lease the service station?

ASSEMBLYMAN BAER: That's right.

MR. KUKAN: To the dealer directly?

ASSEMBLYMAN BAER: Right.

MR. KUKAN: Well, I am a leased dealer.

ASSEMBLYMAN BAER: So, in that case, you would have no objection to the bill?

MR. KUKAN: I don't understand you. I am sorry. I am a leased dealer at the present time.

ASSEMBLYMAN BAER: I understand that.

MR. KUKAN: I am in favor of it. But as far as having to buy my station from the company for a phenomenal figure, let's say, of \$100 or \$200 thousand, this, to me,

would be financially impossible.

ASSEMBLYMAN BAER: I understand. Your objection goes to the forced sale that would result from the bill in its present form.

MR. KUKAN: Right. I don't see anything wrong with company operations. All they seem to do for me is keep me on my toes. They do run a good, clean operation. As far as price, they don't seem to be cutting anybody's throat presently. They are always priced competitively - high, low, but not below dealer operations. I can see no problem there.

ASSEMBLYMAN BAER: And from your point of view, is that an advantage?

MR. KUKAN: Oh, definitely. I would say so.

ASSEMBLYMAN BAER: That they are priced higher?

MR. KUKAN: I don't think they could possibly run a service station the same way a dealer does because of one thing, the dealer is there. It is his own, lease-wise, etc. He puts his heart into it. Where can you get a man to run a service station and pay him "X" amount of dollars, and expect him to do the same job as the dealer himself does?

ASSEMBLYMAN BAER: I can understand, from your point of view, how you would feel that way.

Putting yourself, for a moment, in the shoes of the consumer, how do you think this would be from the consumer's point of view - would this be to the consumer's advantage to have that higher price or the lower price?

MR. KUKAN: Definitely, it would be to the consumer's advantage to go with the dealer rather than the company station.

ASSEMBLYMAN BAER: Thank you very much, Mr. Kukan.

The next witness is Mr. Douglas Linn, Gulf Oil Company.

D O U G L A S G. L I N N: Mr. Chairman, my name is D. G. Linn and I am Regional Vice President for Marketing of Gulf Oil Company of the United States. My area of responsibility includes all of the northeastern United States, from Maine to Virginia.

I have come before your committee today to offer testimony on Assembly Bill 1411. I have with me, Mr. John R. Galloway, who is an attorney and Regional Vice President for Governmental Relations for Gulf Oil.

We have already distributed our principal testimony and in order to expedite the hearing I'd like to highlight that testimony and I'd like to offer a few comments on some statements made to you today about our business.

I would like to request that our principal testimony be inserted into the record, as though read in full by me.

The highlights of Gulf's statement are that the bill under consideration is wholly inappropriate and it appears to be an unlawful, discriminatory restraint of competition in the retail sector of our business.

Gulf feels that the interests of the consumer are severely and adversely affected by the effects of the bill. We feel that the bill may so distort the retail availability of gasoline as to prove a hardship on the motoring public, both from the standpoint of the quantity and of price.

I am not going to belabor again all of the postures taken by other representatives of other oil companies this afternoon, except to say that in principle we are in general agreement. I would like, however, to touch on a few points that were made today in testimony by others.

By way of preface, I would like to add that Gulf tends, generally, to agree with the overall comments made by Professor Marcus in his appraisal of this proposed

legislation.

There was some reference made today by others, having to do with the closing and sale of low volume - as a matter of fact, I think a volume of 240 thousand gallons was quoted - with deed restrictions against their future use as service stations by some of the majors. I presume this gentleman referred to Gulf as well.

My response to that, of course, has to be, well, why not? He made quite a point of the fact that we were writing into these sales, deed restrictions against the future use of service stations but, as a matter of fact, over the past 9 months of this year, Gulf, in the State of New Jersey, has, in fact, sold some 32 or 35 existing, going, Gulf Service Stations to dealers and with supply contracts.

ASSEMBLYMAN BAER: How many would be with restrictions, if I may interrupt?

MR. LINN: These were not restricted. These sold to the 32 or 33 dealers that I referred to.

ASSEMBLYMAN BAER: Oh, I see.

MR. LINN: Now, there seems to be threading through some of the testimony made today, a tendency to disparage the profit motive which I find a little perplexing and disturbing. After all, this is the reason that we, and the dealers, are in business.

I think the question of ownership, or interest, on the part of major oil companies in retail outlets in the State of New Jersey gets back to a pretty basic premise, and that is the right of an oil company, or anyone else, to be in business for the purpose of generating profit and making the basic determinations as to the use to which their rather substantial investment are made.

There were further references made to - well, it doesn't cost any more to haul a load of gas to a small

station than it does to a big one. Well, certainly, the gentleman who made that allegation recognizes that's only a partial expense surrounding the operation of a retail outlet; there are taxes; there are depreciations; and many, many other things beyond just hauling gas.

I think that the - or at least it appears on the surface - dealers that were brought forth today and who gave testimony, appear, from their testimony, to have some problems. But here again the introduction of bill 1411 to solve those kinds of problems, is a little bit, I think, like attacking the problem with a shotgun rather than with a rifle.

If I understand the Franchise Law correctly, it was pretty much enacted to handle those kinds of things and if it doesn't, then I can't understand, of course, the passage of the law at the time it was passed.

There have been some assumptions made here too that were 1411 and the divestiture of interest on the part of majors passed, that, perhaps, jobbers would buy these stations. Well, of course this is not necessarily true. There are any number of people, I suppose, that could and might very well be interested in buying these and I had in mind, perhaps, a real estate trust or whoever - someone who will buy these assets for the purpose of investment.

Now, assuming this might happen, the only way that an investor is going to get his money back - or at least get a return on his investment - is probably through rent. We, from time to time, try to work out lease deals and we are finding 12%, 15%, 18%, net-net deals to be not uncommon.

So, presumably, were someone like that to acquire these properties, the rent to the dealer - assuming he rents back - would probably have to be in that range compared to ours, which returns to us something in the range of 2%, 2 $\frac{1}{4}$ %, 2 $\frac{1}{2}$ % on our investment.

I think the whole climate established by the

introduction of this proposed legislation sets up an atmosphere that is so severe as to warrant serious consideration on the part of a major company in the State of New Jersey who, by virtue of the legislation, might conceivably lose whatever influence he has over the way in which his investment is handled and would pretty much force, I think, some majors to take another look at whether or not they can, in fact, afford to continue their investment in the state.

I think, too, the impression has been attempted to be created that the dealers by and large are the guys that can do no wrong and that the major oil companies do all of the wrong. I can understand the climate that might generate that kind of thinking but typical, I think, is the reference made to the two dealers in the State of Michigan who were picked on, ostensibly, and charged with conspiracy. Well, it is not less legal, of course, for a dealer to conspire than it is for an oil company.

There are further instances that make it impractical for Gulf, here and elsewhere, not to go to company operation. We have more than one instance where the end cost between real estate taxes, amortization, and all the rest of it make it impossible to continue to operate some of these locations through dealer operations, which means, simply, that we need to go either to company operation and operate on a part of that retail margin or dispose of a location - and they may be big volume stations.

There was further reference by a gentleman today that made much of the ability of company operations within a state like New Jersey to control prices. The statement was made that these prices would not be controlled on the low side, but rather on the high side. Well, that has to be ridiculous in that anybody running a service station business knows that you cannot long be non-competitive on the high side and keep your station going.

A gentleman referred to a statement made by the late Robert Kennedy and made much of the American system - the principle of free enterprise - with which we fully agree, as long as the oil companies are included as partners in the free enterprise system. His logic seemed to rule us out.

Our position, finally, is a little bit like that which was enumerated by one of our competitors a few minutes ago. In the State of New Jersey at the present time we have 3 agency-operated service stations, which is kind of tantamount to company operation. These are, basically, experimental-type locations - that is 3 out of some 363. Our intent and our policy at the present and as far as we can read the future, is not, in fact, to go the broad-scale company operation route. We do foresee, because of the changing nature of the market, a place for the company operation in the spectrum of major oil company business.

To support my statement, I'd like to quote from - a very brief quote - remarks made by the President of our company to a meeting of the American Petroleum Institute earlier this year. This is a direct quote. He said, "Sure I think there may be some more company stations. I am inclined to think that the real change - the important change - is going to be less overall stations, less in numbers, but more profitable to the independent operator. In other words, larger service stations but operated by independents. This business lends itself to an independent, rather than to a major company. Also, if you will just look at the economics of the cases where major companies have operated stations, it hasn't worked out very well. The independent has always done a better job".

We recognize this. We have many, many large volume, highly profitable retail service stations operated by dealers and that is the way we intend to go.

ASSEMBLYMAN BAER: Thank you.

Mr. Linn, I want to ask you some questions in one narrow area, particularly. About this business with deed restrictions - the ones that you described in your testimony - you spoke of some that you sold to other dealers without deed restrictions but you indicated at the beginning of your testimony that there also are sales with restrictions. You said, "why not?" Can you give me any idea of the frequency of such sales with deed restrictions?

MR. LINN: They probably - and this would have to be an estimate - would range at, maybe, 40% of the total.

ASSEMBLYMAN BAER: 40% of the total sold?

MR. LINN: Yes.

ASSEMBLYMAN BAER: And how many are likely to be sold in a year?

MR. LINN: In the State of New Jersey?

ASSEMBLYMAN BAER: Yes, by your company.

MR. LINN: I guess, probably, throughout the State this year - and I guess this is probably as good a year as any - maybe 18 or 20, somewhere in that range.

ASSEMBLYMAN BAER: 18 or 20?

MR. LINN: That's right, for non-service station use.

ASSEMBLYMAN BAER: Oh, in other words, 18 to 20 would represent that 40%.

MR. LINN: Yes.

ASSEMBLYMAN BAER: I didn't take 40% of the 18 to 20. Okay.

To the best of our knowledge is this equally common practice among other major dealers?

MR. LINN: I don't know if it is practiced. I have seen deed restricted sales made. Now whether that is practice or policy, I just don't have any way of knowing.

ASSEMBLYMAN BAER: And what is the reason for the deed restriction?

MR. LINN: Well, one of the principal reasons, of course, for disposing of and selling a marginal station, marginal in terms of volume and profit, is to help the remaining outlets of your own in the State, or in the area, to pick up, hopefully, the volume that has been disposed of through the sale and make the remaining locations individually more profitable and more viable for the dealers.

ASSEMBLYMAN BAER: And how does that help this to come about? Why does this help the stations in the nearby area? Doesn't it come about, really, through the reduction of competition?

MR. LINN: Do you mean between Gulf dealers?

ASSEMBLYMAN BAER: Well, between the station that has the restrictions and the stations that you intend to still have an interest in operating. Isn't that very obviously the avoidance of competition - that you intend to enhance the sales in that store? You take a financial beating, I take it - or some loss - in the value of that real estate by adding the deed restriction, isn't that true?

MR. LINN: Yes, that's generally been our experience.

ASSEMBLYMAN BAER: And offsetting that from the point of view of the value to your company, isn't it a fact that this reduces the competition from this location and, therefore, enhances the sales to your nearby stations?

MR. LINN: Not necessarily because our stations, of course, are dealing with the competitive locations in the same trading area. They are competing with the private branders in the same trading area. So that the fact that a Gulf station in a trading area closes - is no longer in business - doesn't insure, by any stretch of the imagination, that that volume will move anywhere else except by virtue

of the man fighting to get it.

ASSEMBLYMAN BAER: It doesn't guarantee one-to-one transference of gallonage, but the whole purpose of the thing is to reduce the competition from that location to your other locations. Why else would you take a loss? What other purpose would you have? You say not necessarily but isn't that, certainly, the hoped for result?

MR. LINN: Yes, but keep in mind that the majority of these stations that close are closed unilaterally on the part of the dealer because he can't make it - the volume is not sufficient, or the profit is not sufficient - and he walks away from it, as is his right. We, because of the condition that caused him to fail, elect not to reopen that station.

ASSEMBLYMAN BAER: I can understand that. I understand, if it is a non-profitable location, it is not going to have much value on the market for that particular use with a future buyer. Future buyers would be discouraged to use it for that purpose, if it was unprofitable, and, therefore, there isn't much likelihood that it would be reopened for that use. But I assume the need for the deed restriction is because there are people that feel they could make a go of it at that location.

MR. LINN: Well, possibly so. That has to be an assumption. We have sold, as I said, earlier, some 60%, if that is a sound number, of the total number without restriction because we have not been able to move them.

ASSEMBLYMAN BAER: Do you have any idea, industry-wide, within the state, what the turnover is of gas stations so we could attempt to arrive at any kind of an estimate as to how many stations might have deed restrictions, within a given year?

MR. LINN: No, I don't think I would even come anywhere close to what the industry number might be.

ASSEMBLYMAN BAER: Could you tell me where we might get that information as to the industrywide turnover of gas stations?

MR. LINN: I don't know whether API has that kind of statistical data or not. I don't really know.

ASSEMBLYMAN BAER: American Petroleum Institute?

MR. LINN: Yes.

ASSEMBLYMAN BAER: I take it there is nothing in the law to prevent such deed restrictions?

MR. LINN: No, sir.

ASSEMBLYMAN BAER: You are not just a state representative, if I recall.

MR. LINN: No, sir. I have 15 northeastern states.

ASSEMBLYMAN BAER: Do you know if any of the states in your jurisdiction, or any other area that you know of, have any legislation restricting such deed restrictions when deed restrictions are applied for the purpose of reducing competition?

MR. LINN: I just checked with Mr. Galloway who, as I mentioned earlier, is an attorney and he tells me he is not aware of any such legislation.

MR. GALLOWAY: As a matter of real property law, Mr. Baer, I don't know of any prohibition against deed restrictions in the transfer of property in any of those states in which Mr. Linn has jurisdiction over.

ASSEMBLYMAN BAER: Do you know of any in any state?

MR. GALLOWAY: No, I don't.

ASSEMBLYMAN BAER: I want to thank you for your testimony, Mr. Linn. Thank you very much. (statement on page 113A)

Our next witness will be Mr. Paul Hankin.

P A U L H A N K I N: My name is Paul Hankin. I am a Gulf dealer at two locations - lease dealer - and I'd like to enter some comments into the record in opposition to this particular piece of legislation.

I brought a prepared statement with me and I would like to leave copies of it for the members of the committee.

Mr. Chairman, members of the Committee, I am appearing here today to present my views and opinions regarding Assembly Bill 1411. My interest in this particular legislation derives from the fact that I am the operator of two gasoline service stations, owned by my supplier and which I operate under a lease contract.

As I understand the wording of this proposed statute, the existing contractual relationship between myself and my supplier would be materially altered by passage of 1411.

In my opinion, the only possible justification for the government to intervene, or inject, itself into the contractual relationship between two private parties would be a compelling need to protect the consuming public against unfair trade practices. The addendum statement to the bill seems to reinforce this opinion by relying upon consumer protection as justification for the bill.

Earlier today you have heard from a recognized consumer advocate, Mr. Charles Irwin, who expressed the opinion that this bill in no way serves the interest of the consumer public. I would like to endorse the points made by Mr. Irwin in his prepared statement.

Further, I should like to explain why I feel this particular legislation is not in the interest of either the general public or the independent service station operator, particularly the many who operate under leasing contracts with major oil company suppliers.

First, if this bill be enacted, I, and others like myself, who are lessee/operators of supplier-owned premises, will be forced into the position of either purchasing the property from our supplier or negotiating a lease contract with a third party who would purchase the

property. Either of these alternatives must inevitably result in increased costs to the consumer.

For example, were I to opt for the first alternative, purchase of the property from my supplier, I would, of necessity, be forced into a financial arrangement involving a substantial mortgage commitment. It is even problematical whether I would be able to afford such a large mortgage commitment. In today's money market, with the high rates of interest that are being imposed upon such long-term loans, my operating costs would be so materially increased, that I would be required to increase prices to the consumer in order to absorb these additional costs.

On the other hand, were I to opt for the second alternative, leasing from a third party, my rent expenses would become fixed at a figure calculated by my landlord to provide him with a reasonable rent on his investment. Such a fixed rental, as opposed to a flexible rent, based on business volume as I now enjoy under my lease arrangement with my supplier, would tend to increase my operating expenses to the point where I would, again, have to increase costs to the consumer in order to absorb those added expenses.

At the present time, under our existing lease contract there is a mutuality of interest in the operation of my stations between myself and my landlord-supplier, wherein it is in both of our best interest to relate the amount of rent to business volume. This arrangement makes it mutually advantageous to us to maintain lower costs to the consumer for the purpose of increasing that volume - increasing rent to my landlord and income to myself. This give and take factor would not exist were I leasing from a disinterested third party, whose self-interest could very well force me into a position of increasing costs to the consumer.

There is yet another advantage to the consumer which derives from my contractual relationship with my

supplier, and that is the protection that is afforded to the consumer by a brand name being attached to my stations.

If my supplier is forced to divorce himself from any interest in the operation of my stations it is axiomatic, then, that I would be free to procure my merchandise, such as gasoline, motor oil, batteries, tires, filters, etc., from the most economical sources I could find.

Under such an arrangement I would certainly expect my supplier, a national brand major oil company, to disassociate its name from my operation in order to preserve and protect its own reputation. Thus, in the long run I can see that enactment of this particular piece of legislation would serve to abolish a tie-in between the retail establishment and the established national brand names.

In these times, when the automobile repair and service industry is generally suffering from a tarnished reputation resulting from much national publicity about repair shop unethical practices, I believe that the best interest of the consuming public would be more likely preserved by maintaining, rather than destroying, the relationship between the service station operator and the brand name supplier.

If this relationship is destroyed, a consumer who feels he has been mistreated by a retailer has no viable recourse other than the courts, whereas with the brand name association between the retailer and supplier, a consumer may appeal to the major oil company - or supplier - for redress.

ASSEMBLYMAN BAER: Mr. Hankin, so that we will have 10 minutes left for the last witness, will you kindly summarize as you go, the remainder of your testimony.

MR. HANKIN: I will only take two more minutes.

ASSEMBLYMAN BAER: We did want to end at 4:30

and I did want to leave 10 minutes for the last witness.
Can you possibly summarize the rest of the statement?

MR. HANKIN: Well, I was going to go on and say that the Franchise Law, passed in 1971, I think, adequately protects me against abuses by my supplier.

In conclusion, let me state that enactment of this bill - Assembly Bill 1411 - would result in increased cost to the consumer, deterioration of public confidence in national brand products and a decline in the benefits which I derive from my association with a national brand and would limit the consumer's recourse when he feels he has been victimized by poor business practices.

I cannot see how many of these results would serve to benefit the general public, nor do I believe that businessmen should look to government to solve any of the problems they have created through their own business ineptitude.

ASSEMBLYMAN BAER: Thank you. I would like to, just briefly, ask you a couple of questions.

When, may I ask did you prepare this statement?

MR. HANKIN: At 10:30 this morning.

ASSEMBLYMAN BAER: I see. I commend you upon the speed with which you prepared it. I was puzzled by your reference in here to Mr. Irwin's testimony.

MR. HANKIN: I know Mr. Irwin, personally, for about 15 years and I had discussed his attitude about this particular bill with him.

ASSEMBLYMAN BAER: I see. Well, I want to thank you very much for your testimony. The whole statement will be in the record and, of course, will be studied by the committee.

I have no other questions. Thank you very much, sir.

MR. HANKIN: Thank you. (statement on page 119A)

ASSEMBLYMAN BAER: Mr. Charles Berry.

C H A R L E S H. B E R R Y: Mr. Chairman, I have a short statement which I would like to read, if that is agreeable with you?

ASSEMBLYMAN BAER: Certainly, if you feel that you can complete it within 10 minutes. I would like time to ask questions too.

I am just trying to think what would be the best way of using the time. Perhaps, so that I would have an opportunity to question you, if you would either summarize it or allow me a couple of minutes to try to read it, then there will be some time left because someone can read it themselves faster than if it were read to them. That would give us an opportunity for some questions. The whole statement, of course, would be in the record.

MR. BERRY: That's fine, Mr. Baer, if you like. Or, I could pick out what I think would be the more relevant parts of the statement, which I think I might do.

ASSEMBLYMAN BAER: All right, that would be fine.

MR. BERRY: Let me ignore the first page, which is basically a description of my credentials for appearing here.

In brief, I am a Professor of Economics and Public Affairs at Princeton University and there are some references at the beginning of the statement to my experience and to my qualifications to address this issue.

I will start in the middle of page two with respect to the discussion, which is directly relevant to A-1411, which we are here to talk about today.

I would oppose the enactment of A-1411 and I would oppose it for two reasons. First, I think it would not accomplish what it seeks to accomplish. Second, it seems to me to carry with it restrictions that are capable of impairing, not improving, the functions of those markets that

bring to us the motor fuel whose availability - or lack thereof - apparently stimulated the drafting of this bill.

To be more specific the statement accompanying the bill indicates the cause of concern in the following way: "Many independent service stations, garages and other retail dealers of motor fuels have already been forced out of business. Consumers have been subjected to gas lines, higher prices, and a daily concern over whether or not they can obtain enough gas to carry out essential regular activities. Yet, the profits of the major oil companies have soared upward."

Looking at the recent past, and apart from minor quibbles over the meaning of words like "many" in that statement, I would not dispute any part of it. Service stations have closed and gas lines and gas anxiety have been present and oil company profits have soared. That is clearly true. The issue, it seems to me is, why?

A-1411 appears to be premised by the assumption that vertical integration between distributors and retailers in New Jersey was responsible - at least in part - for those consequences in New Jersey, and that is just not so.

Every last one of New Jersey's retail service stations could have been totally independent and under the conditions of the last year and one-half we would still have seen gas lines, station closings, rising prices and lots more profits for the major oil producers. Certainly, three of those were a straightforward consequence of the reduced availability of foreign oil, combined with price controls.

Initially we had a shortage. More oil was demanded than was supplied. Normally, under those circumstances, prices go up. Price controls, in this case, held them down. We rationed by gas lines rather than by higher prices. As the controls were relaxed, prices went up. We began to ration by higher prices and the lines went away. The

higher prices meant higher profits for petroleum producers - not by virtue of their ownership of service station outlets or the integration within the system, but by virtue of their ownership of production facilities here or elsewhere.

Now, I'd like to point out, Mr. Chairman, that there is an error on page 3 - an omission in what I just read - in that, in the statement "not by virtue of their ownership of production facilities" should read, not by virtue of their integration into the retail service station outlets, but by virtue of their ownership of production facilities here or elsewhere. I will correct a copy for the stenographer.

In that light, it is clear that Arab prices went up too and there, for example, are no OPEC operated service stations in New Jersey, so far as I know.

The question of service station closings, I find, is more complex. Let me say at the outset that I have no pat answer on this one. There are a number of factors. First, with shortages, there would be no incentive for major refiners to offer discounts or other inducements to independent distributors - in other words, to sell in the spot market at less than the tank wagon price. When you can sell all you can at the prevailing price you don't cut your price. The effect would be to dry up the spot market and that would put a squeeze on the independents. But notice that the reason for the squeeze is the system of price control, not the system of integration.

But, second, those controls would hurt in another way too. Controls caused lines, shortened hours, congestion, and may have severely cut back on the ability of some stations to carry on the normal pit work that is also an important source of service station income. That can cause closings too. And, remember, in addition, that the total quantity of gas pumped decreased as well.

Thirdly, while I do not know the extent to which the allocation rules, and the behavior of pass-through provisions have affected profit margins in petroleum retailing, it is entirely possible that retail margins are higher now than they would have been in the absence of controls and, if so, there would be another distinct incentive to refiners to enter retailing to the detriment of independent marketers.

But, again, the source of that problem is the controls, not the structure of the oil industry. As the controls come off - as I think they should - these distortions will disappear. In the meantime, higher prices - or gas lines if the controls are retightened - will not disappear with enactment of A-1411.

What, then, would enactment of A-1411 accomplish? That is a little unclear. For example, paragraph 2 would prohibit "...any ownership or controlling interest whatsoever in any person engaged in the retail sale of motor fuel..." If that is interpreted to prohibit only the direct ownership of service station outlets by distributors and to permit the leasing or franchising of service stations by distributors - major producers - the effect, in terms of the incentives mentioned earlier, is presumably not much.

One can accomplish almost as much with an appropriate lease agreement as with direct ownership. The major effect, I think, would be to make it a little more difficult for small, independent marketers - for many of those would be "distributors" within the terms of A-1411 - to compete successfully with the retailers of branded gasoline. The result of that, of course, would be somewhat higher margins on average for the retailers of branded gasoline and somewhat higher prices for consumers.

But suppose A-1411 were to prohibit, as it may, or with amendment as it certainly could, even the leasing of service station facilities by distributors or the sale of

franchise agreements? What then? That, to me, is a little more frightening. For if, for example, large segments of the retailing of gasoline within the State, or within areas of the State, were to come under common ownership, and if, with that common control, retail margins were increased with increased gas prices to consumers, A-1411 would prohibit any distributor, major or minor, from entering that market to compete and bid down those retail margins. In that regard, A-1411, far from increasing the openness of competition in petroleum retailing within the State, could, and in my judgment, would reduce it.

A-1411 is a restraint of trade. It restrains - notice - any person from importing and selling at retail any motor fuel in the State of New Jersey.

In my judgment, it should not be enacted.

I have, Mr. Baer, some comments with respect to A-159 as well. It is short. Would you like me to continue?

ASSEMBLYMAN BAER: Certainly.

MR. BERRY: I have, interestigly enough, much the same reaction to some of the provisions of A-159 but, unfortunately, my understanding is that those provisions are already contained in the statute A-159 seeks to amend and when this material was sent to me, a copy of the original statute was not included, so I did not have an opportunity to compare A-159 with the statute whick it seeks to amend.

But let me comment on the provisions of the amendment as it stands anyway. A-159 would continue to restrict, by section 201 (c), the right of any retailer of motor fuel to advertise on his premises the price at which motor fuel is sold, uother than by display on the pump or dispensing equipment itself.

Whom does that adversely affect? Clearly, those who would seek to compete through lower prices and lower retail margins. Once again, the effect, if any, is to lessen the effectiveness of price competition in the

retailing of petroleum products.

Although I hold no brief for the aesthetics of games of chance in the retailing of any product, it seems clear that the same thing can be said of section 201, paragraph (f) that prohibits that form of inducement in the retailing of petroleum products.

Paragraph (h), as I understand it, requires any buyer of gasoline on the spot market to carry the sign "no brand" on his pumps. Such a requirement further strengthens the market position of the retailers of branded products of the major refiners.

The stated purpose of the bill - A-159 - is, "To permit greater competition among motor fuel dealers, thereby gaining an advantage for the public through a decrease in the cost of motor fuel."

These provisions - section 201, paragraphs (c), (d), (f) and (h), in combination with A-1411, would appear to me to be designed to accomplish just the reverse. A-159 could be improved.

As a final comment, Mr. Chairman, it may be noted that my comments have focused on competition among gasoline retailers and not on competition among gasoline producer-refiners. And that is correct. But that is because, for the reasons that I hope I have indicated, the State of New Jersey can importantly affect the former, whereas I am afraid the reality of the matter is that the structure of the national industry of petroleum production and refining is a matter of federal, rather than state, jurisdiction. I do not mean to imply that at that level I like everything I see, for, indeed, I do not. But as I have indicated, I do not believe that enactment of A-1411, in particular, will help.

I would be happy, sir, to answer any questions that you or the committee may have.

I would also like to apologize, Mr. Baer, for

those errors. This was prepared very quickly at the last minute and I did not get a chance to proof read it.

ASSEMBLYMAN BAER: First of all, no apology is necessary. We appreciate the fact that you prepared this testimony for us and that you did not come here on behalf of any special interest or economic group, or business, or industry. This is a public spirited effort on your part. So, we certainly appreciate that.

I did want to ask if there was anything further you could add? By the way, I certainly, heartily, agree with you that a large part of this problem is beyond the capacity of this State to deal with. Certainly, I also agree that the question of competition among retailers is something that we can properly address.

I wondered if you had any more specific thoughts as to what you would recommend, in terms of legislative action to increase that competition and, through that, presumably, help to keep prices at the lowest level that would be possible, given the other circumstances?

MR. BERRY: Well, I think, Mr. Baer, that I can best address myself to that by going to what is clearly the theme that runs through the statement itself and that is that it is very important that any restrictions which are placed on access to the retailing business itself must be very carefully thought out and must be designed to accomplish some particular goal which is in the interest of the people of the State.

I think the real danger is, too quickly we jump at the imposition of a restriction without having carefully thought through what all the implications are, with the effect that we protect one group and deny access to another group to the detriment, ultimately, of the consumers of the product.

ASSEMBLYMAN BAER: That is, in a large part, the

purpose of this hearing; so that we don't move so quickly and so that we can get that input.

MR. BERRY: I appreciate that and, as I say, I am pleased to be able to come here and testify.

ASSEMBLYMAN BAER: I hope we will hear "do" in addition to "don't".

MR. BERRY: There are some do's that are implicit in my comments with respect to A-159, which are: It might be wise to consider deleting some of the provisions of the original statute, with respect to competitive techniques that individual operators may employ.

I think there are problems with some tie-in's. There is a tie-in implicit with respect to the use of lotteries as an inducement to sell the product. I think the real problem there is the matter of the degree to which consumers have accurate information with respect to the terms of the lotteries they play. I think, again, there, the notion ought to be to have free information with respect to what the terms of the purchase are, but not to restrict the right of any individual service station to offer inducements through price or other means to his customers.

What has concerned me with respect to A1411 is that it appears to me to be restricting the market for the product. It is, in fact, saying, we are going to consider New Jersey a closed state, with respect to the retailing of gasoline. I think that is a mistake. I would draw an analogy to a corresponding mistake at the federal level. For example, if we were to say, "no company - or no one-is going to be permitted to import oil from outside the United States and sell it at retail within the United States", that would be a restraint of trade which would decrease the effectiveness of the functioning of those markets within the national economy.

I am afraid that what we are trying to do here is to do the same thing within the state economy, and I think that is a mistake for exactly the same reasons.

ASSEMBLYMAN BAER: If this legislation were modified so that rather than prohibiting one type of operation - which, it can be argued, reduces competition in that type of operation - it would prevent that type of operation from narrowing the competition - or reducing the competition - from other types of operations and have effectiveness in preventing dealers being put out of operation, would you feel that would be a constructive goal?

MR. BERRY: I am not sure that I completely followed that, Mr. Baer. If I could have an illustration, perhaps that would help.

ASSEMBLYMAN BAER: I was saying, if this legislation were modified so that rather than preventing one type of operation - company operation - if it were to restrict and prevent company efforts to put out of business - or take over - other types of operations, which are presently competing dealer operations, preventing, in other words, any attrition of dealers by company action, would you think that would be a desirable legislative goal?

MR. BERRY: I think it well might be. The real issue is: Why is this take-over occurring, if it is occurring? If a take-over is occurring, to restrict access to a particular line of business - whether the entities that are being taken over are more efficient or not - then it is clear that something has broken down within the system and we should attempt to find out why and rectify the matter.

The real problem, you see, is that some of the effort in that direction recently may have been a consequence of what, I hope, was an unusual situation last year - the combination of the particular controls which were applied and the shortage of petroleum which was then present.

If that has resulted in a distortion of the way

in which a company views the options of a company-run service station and independent dealership, such that the company, because of the controls and the way that they operate, is better off now retailing itself and is moving in that direction for that reason, then I would say, what we ought to do is worry about the distortion which is implicit in those controls and get rid of the controls and improve that system, so that, ultimately, the company is neutral and will choose either company-owned businesses or independent dealers, depending upon which is the most efficient way of doing the job. Because we do want these companys to be efficient; we do want the retailing process to be efficient. We don't want to, in fact, impose a particular form of organization without carefully deciding why it is that we want to do that.

So, I guess what I am saying, sir, is that I am concerned about restricting the right of a firm to do something without understanding exactly why it is that they are doing it.

ASSEMBLYMAN BAER: Let me ask you another thing. Are you concerned about the freedom that companies have to eliminate competition by putting deed restrictions on property that they sell that otherwise would be competing with them, by putting those outlets out of business and, presumably, narrowing the market? Do you feel -- Well, first of all, please answer that.

MR. BERRY: I am not really familiar with the practice and my exposure to it has only been in listening to some earlier witnesses this afternoon comment on this practice, and in hearing you question a witness about the practice.

It is clear that I would be opposed, given the way in which my thoughts have been expressed here earlier, to a restriction which is a restraint of trade, and it sounds to me as though some of those may have been an unreasonable

restraint of trade. But, again, I don't think I can pose as an expert with respect to deed restrictions because I don't know anything about them.

ASSEMBLYMAN BAER: Well, I do want to thank you very much for having come here with this prepared testimony and for answering questions. We very much appreciate it and if you have anything further you want to comment on or any afterthoughts, or any further reflections on any of the other testimony, we certainly would appreciate any communication from you on that.

MR. BERRY: If you would like me to look at the deed restriction question - if there is information you could send to me - I would be happy to comment on that and send you my comments.

ASSEMBLYMAN BAER: I would be most appreciative if you would look into that. I presently have no specific information beyond what has been presented in testimony here.

If any of the people here submit any information to me, I will see it is sent to you. But if you can develop any information on your own I would certainly appreciate it. Thank you very much.

MR. BERRY: Thank you. (statement on page 124A)

ASSEMBLYMAN BAER: This is the last witness of the day so I am going to bring the hearing to a conclusion. I just wanted to say that we have heard from many parties and we very much appreciate the thoroughness and the diversity of the testimony before the committee.

Certainly on my behalf - and I am sure it is true on behalf of all the members of the committee - our interest, as we hear a cross-current of testimony between various economic segments of the oil industry, is to see ultimately that no special interests are served, except through fairness but to see that the public interest is served through

enhancing competition and eliminating any practices that may exist that are restricting competition.

A period of intensive study is going to be needed following this hearing to review all of this testimony and follow up some of the leads suggested by it.

I do want to say on my behalf that I have become, as a result of the testimony here, particularly interested in this question of deed restrictions. It seems to me that if, in fact, as has been testified to, there is not presently legislation that provides jurisdiction to deal with this problem, that it is something that should be studied to see if legislative action can be taken.

It seems to me that where a company places deed restrictions on property that would be otherwise in competition with it, this is certainly a violation of the principle of fair competition. If, in fact, statutes do not cover that, I think it should be our purpose to explore this to see if statutes for that purpose can be developed. If so, I certainly intend to develop such and introduce such.

Anybody here who has any information that would be helpful in that regard, I would certainly welcome them passing it on to me.

The hearing is -- I did want to mention, specifically, that since the copies of 2096 were available only after the hearing began, that certainly any testimony - particularly in regard to the fact that some people communicated with me and told me that they could only give testimony later on that, after studying it - during the period of the next two weeks would be welcomed. We would certainly welcome any information or comments that anyone would want to submit on that bill.

The hearing is adjourned.

(hearing concluded)

STATEMENT

BY

BP OIL INC.

TO

THE ASSEMBLY COMMERCE, INDUSTRY
AND PROFESSIONS COMMITTEE
STATE OF NEW JERSEY

Mr. Chairman and members of the Committee, I am J. D. Campbell, Jr., General Manager of Retail Sales for BP Oil Inc., headquartered in Wilmington, Delaware. As a wholly-owned subsidiary of The Standard Oil Company of Ohio, BP is engaged in the Retail Marketing of motor fuels in 12 North-eastern Seaboard States including New Jersey.

We appreciate the opportunity to express to you the reasons for our opposition to Assembly Bill 1411. This statement covers the following points:

1. Background on our operations in New Jersey and surrounding states;
2. Marketing Divorcement (required divestment of all marketing properties) is an unproven solution to a non-existent problem;
3. The elimination of company-operated service stations from the State will reduce competition thereby probably causing prices to increase, stifle evolution in petroleum marketing to the detriment of the consumer and will not provide the independent

dealer any additional protection. The prevention of the future development of company-operated service stations will, at best, seriously hamper the ability of new or small competitors to becoming viable in the New Jersey Market. BP's situation today exemplifies this point.

BACKGROUND

As part of a merger with British Petroleum Company Limited, effective at the beginning of 1970, Sohio acquired a substantial number of marketing outlets in 16 East Coast states and refineries at Marcus Hook, Pennsylvania, and Port Arthur, Texas. Prior to our deal with BP, the BP Oil Corporation, now a Sohio subsidiary, had bought these properties from Atlantic Richfield. Atlantic sold them in order to satisfy certain anti-trust requirements in connection with its purchase of Sinclair Oil Corporation. All of the properties, except the Port Arthur Refinery, had been Sinclair properties.

Sohio knew at the time of the negotiations with BP were carried out that this marketing and refining business was a loss operation. We also knew, from experience in planning, organizing, and conducting our corporate affairs, that the BP operation was not being conducted in a manner that would permit survival in the marketing and refining business. We would have preferred not to acquire these properties. However, the Alaskan

oil field leases which were Sohio's prime objective in this transaction could not be acquired unless these refining and marketing properties were included. In order to get the crude oil which will be provided by the Alaskan leases, Sohio accepted the refining-marketing properties and even entered into a consent decree requiring divestiture of a substantial portion of its Ohio marketing business to facilitate the acquisition.

Immediately after the BP acquisition was closed, Sohio initiated studies of its new marketing-refining operations to see what had to be done to turn the loss operation into a profitable one and make BP an effective competitor on the East Coast. We found that site selection had been poor and expenditures had not been made to maintain and upgrade the marketing properties. There were a large number of widely dispersed retail outlets, most of which had very small gallonage sales when compared to modern industry standards. Costs of transporting products to these outlets in many cases were very high.

It soon became apparent that we faced even greater problems than we had anticipated and that large infusions of capital would be needed. Sohio had to keep its capital expenditure priorities in mind since it was faced with outlays in connection with the Alaskan operation that can be considered massive for a company its size. Nevertheless, sizable capital

and advertising programs were initiated on the East Coast. Unfortunately, operating losses continued to increase. Therefore, decisions were reached to withdraw from certain areas and to stay in those locations which were considered most promising. Total losses before taxes from the BP marketing and refining operations through the end of 1973 have exceeded \$150 million and they are continuing. In addition, about \$50 million had been spent on marketing capital outlays alone.

During 1972 withdrawals were made from western New York, New York City, and most of North and South Carolina. Properties were sold to numerous regional and local marketers and jobbers whose investment priorities were different from ours. We honored all supply contracts to their expiration but allowed any persons to terminate their contracts if they wished to do so following a public announcement in mid-September 1971 of our intent to withdraw.

On July 1, 1973 we sold to American Petrofina all marketing properties in Georgia and Florida, the remaining properties in North and South Carolina, the Port Arthur Refinery and related terminals and pipeline facilities. We believe our former associates in these states will be in a better position with Petrofina as their supplier than they were with us. Petrofina will be able to make investments that are needed. It has already increased the output of the refinery.

After these withdrawals, BP's marketing operations remain in the middle Atlantic states and the New England states. New England is entirely a jobber operation.* The mid-Atlantic area is a mixture of jobber and direct marketing extending from Long Island (exclusive of New York City) through the Baltimore-Washington area. The entire BP operation is still in a stage of transition, with the immediate job being the making of a profitable business. We are trying to do this through development of new, high-volume gasoline-only outlets in the major metropolitan areas. Since the operation of such outlets is more cost efficient than that of conventional stations, this program should be beneficial to us and to the consuming public as well.

DIVORCEMENT

The oil industry can be categorized into 4 segments - production, transportation, refining and marketing. Some companies take part in all of these activities. Although these integrated companies as they are called operate with a degree of cost-efficiency not otherwise possible, it is fashionable these days to criticize them as being responsible for many of our ills in the energy field. Some people are calling for a complete breakup of the industry.

*A jobber is a petroleum products marketer who buys branded and/or unbranded products and resells them to consumers directly or to dealers who resell. Jobbers market gasoline through dealer-owned and operated service stations, stations on which the jobber controls the real estate but are operated by lessee dealers, and stations operated by employees of the jobber.

We believe that forced divorcement of any of the segments of the industry or a complete breakup of the industry would accomplish nothing but chaos in the near term and would be a tragic mistake in the long term.

The petroleum industry is large, complex, and is made up of thousands of individuals, partnerships, and corporations of various sizes. Just like any complicated machine, it doesn't function perfectly all of the time. However, we believe that any objective person will agree that it has generally served our society well over the long term. Therefore, its imperfections should be recognized but ought to be put in proper perspective with its accomplishments.

At this time the industry is faced with these great challenges--find additional oil supplies, develop the means of moving this oil, and prepare this oil for use by customers. These types of activities have always been expensive and risky and will be even more so in the future. Unless it can be demonstrated to The General Assembly with virtual certainty that proposed re-structure or dismemberment of the oil industry will better serve the public than the system we now have, we submit that the critics of the industry will have failed to establish their case. To date, this case appears to be couched only in theory and rhetoric.

We believe the forced divestiture of marketing would destroy a natural economic relationship between Refining and Marketing. We do not believe separating refining and marketing is conducive to a strong, up-to-date refining sector, nor do we believe divorcement of marketing would particularly help the independent marketer.

Refining is a capital-intensive industry with individual refineries costing \$200 to \$300 million and with fixed costs representing three-fourths of on-going operating costs. Therefore, a prudent operator would not consider such an investment without an assured supply of crude oil or an assured outlet for product. Nor would a financial institution make money available for such a project unless the owner could give evidence that he has such a supply of crude oil and an assured outlet. Long-term supply contracts for crude oil have been the exception rather than the rule in the past. Likewise, long-term product purchase contracts have been the exception rather than the rule for independent marketers who have generally preferred to buy on a spot basis.

In the case of marketing, we believe it is unrealistic to expect divestment by large companies to result in thousands of small marketers across the land. The financial requirements of the business are such that in the past many dealers bought their

own stations with financial assistance from a large company. Therefore it is far from clear to us who would buy the marketing properties in New Jersey if the refiners were forced to sell them.

If dealers were able to find the resources with which to buy their stations, the cost of land and interest rates today are such that their operating costs would be substantially increased. To meet these demands, the dealer would undoubtedly be forced to increase gasoline prices, since gasoline is typically the source of 75 - 80% of dealers' sales revenue. The result would be an increased financial burden on the consumer as well as the dealer.

In view of the historically rapid turnover of dealers in the industry, we conclude that, if every dealer bought his station now, it would not be many years until stations would end up being owned by large nationwide chains. At that point, all that would have been accomplished is a change in the companies whom the dealers represent. In the process, the dealer may have lost the advantages of being associated with a well-known branded product.

In summary, as we said at the outset, we believe that divorcement is no answer and we have seen no critic of the industry meet the heavy burden of proof which should rest with those who propose far-reaching and novel changes in fundamental business relationships.

ELIMINATION OF COMPANY-OPERATED STATIONS

The elimination of company operated stations would remove one source of competition from the marketplace. Generally, the elimination of any competitor in the marketplace in favor of the special interests of another competitor increases the consumer's exposure to higher prices at the hands of the remaining competitors. For many years we have had antitrust legislation which is designed to preserve and stimulate competition. Thus, any legislation which would restrict competition should be approached with extreme caution.

Only by satisfying customers can any marketer generate a high enough sales volume to produce a reasonable return on investment. Customers can be satisfied if they are provided with convenience, service and low prices. Through experimentation, the service stations operated by the companies can better determine what the consumer really desires than can the individual dealer. With a large number of outlets, the companies can incur more risks by varying individual outlet hours of operation or types of services offered than can the dealer with only one station. With regard to prices, the history of Sohio's company operated stations in Ohio should demonstrate the advantages to the customer of this kind of marketing. The attached Table 1 lists gasoline price data for the State of Ohio from June 1967 through July 1974. In 1973, Sohio had 2805 service stations in the State of Ohio, 29.2% of which were company run. We believe the Ohio experience is translatable to New Jersey as both states have industrialized urban centers and rural agricultural regions. If so, the expansion of company operated stations

would benefit the New Jersey gasoline consumer by from 1/2¢ to 3¢ per gallon.

The elimination of company operated retail gasoline outlets will have a long term adverse impact on the New Jersey motorists. Our industry is undergoing a retailing evolution much like the grocery industry did some years ago. Mass merchandising is becoming popular but personalized service and neighborhood convenience are still in demand. The result in the grocery business was supermarkets selling high volumes of merchandise at low profit margins, and neighborhood convenience stores selling low volumes at high profit margins.

Gasoline supermarkets are evolving, providing the consumer with fast service and economical prices. The two or three bay service station, where conventional station provides highly personalized service, is comparable to the convenience store. There is a demand for both types of outlet in the grocery business or the gasoline business, and one need not threaten the other.

The gasoline supermarket must sell high volumes if it is to achieve operating economics which permit low prices. Low prices, in turn, stimulate high volumes. This is the cycle which

has enabled private brand marketers to capture 20 percent of the New Jersey gasoline market. To start the cycle, however, and to keep it working, lower consumer prices are a necessity. We have found in the operation of our Gas & Go stations in the Philadelphia-Camden area that this high volume-low margin method of operation can be best achieved through company operated outlets. Dealers have been much more concerned with high margins and have paid little, if any, attention to volume. Bill 1411 would drive many high volume-low margin marketers out of the State. This would hurt the consumer.

BP's situation today is an outstanding example of how the bill before you will curb competition and slow the growth of the gasoline supply to the detriment of the New Jersey consumer.

The BP sources of product supply have been a combination of refinery outputs, purchases from other refiners and product received in exchange from product delivered from our Ohio refineries. Such exchanges are used since no facilities are available to move products from Ohio to the East Coast. We are now in the final stages of completing a revamp of our Marcus Hook, Pennsylvania refinery so that its gasoline-making capacity will go up about 60 percent. Since the pipeline system flows north and our largest terminal is at Tremley Point, New Jersey will be a logical and economic market for this new supply.

BP supplies only 1.7% of the New Jersey gasoline demand today. Our results in the State must be improved if we are to become a viable competitor. This, we believe, can best be accomplished by the addition of a relatively small number of high volume, low-priced gasoline-only retail outlets in the metropolitan areas of the State. At the same time we expect to continue to supply the rural areas of the State exclusively through independent jobbers who today supply about one-half of our 216 branded retail outlets in New Jersey

The prohibition of company-operated stations would make it much more difficult for us to become a viable competitor in New Jersey. Total divorcement makes it impossible. It is our opinion that if A1411 becomes law, marketing innovation will be hampered, competition will be seriously reduced, and consumer gasoline prices will most probably increase.

TABLE 1.

AVERAGE PRICES OF REGULAR GRADEGASOLINE BY BRAND IN OHIO

	<u>June</u> <u>1967</u>	<u>Sept.</u> <u>1967</u>	<u>July</u> <u>1968</u>	<u>Sept.</u> <u>1969</u>	<u>March</u> <u>1970</u>	<u>April</u> <u>1970</u>	<u>Sept.</u> <u>1970</u>	<u>Jan.</u> <u>1971</u>	<u>June</u> <u>1973</u>	<u>Sept.</u> <u>1973</u>	<u>March</u> <u>1974</u>	<u>July</u> <u>1974</u>
All Majors	33.62	34.32	35.32	36.34	36.29	37.24	36.63	37.19	38.69	38.54	53.83	56.90
Sohio Company	32.90	33.90	34.90	35.92	35.80	36.90	35.76	35.44	37.90	37.90	51.80	55.80
Sohio Dealer	33.70	34.38	35.44	36.49	36.48	37.43	36.97	37.61	38.76	38.53	55.04	59.00
Sohio Total	33.61	34.33	35.38	36.40	36.36	37.30	36.73	37.19	38.51	38.34	54.00	57.80
Private Brand	31.48	32.03	31.56	33.39	33.10	33.70	33.28	33.28	36.59	36.31	53.22	54.20
All Majors Ex. Sohio	N.A.	34.34	35.28	36.33	36.28	36.38	36.60	37.18	38.74	38.62	53.74	56.57
Sohio Dealer vs Company	+ .80	+ .48	+ .54	+ .57	+ .68	+ .53	+ 1.21	+ 2.17	+ .86	+ .63	+ 3.24	+ 3.20
All Majors (Ex Sohio vs Company)	N.A.	+ .44	+ .38	+ .41	+ .48	- .52	+ .84	+ 1.74	+ .84	+ .72	+ 1.94	+ .77

N.A. - Not Available

Source: Statewide Price Surveys

MY NAME IS JOSEPH R. MARINIELLO, ESQ., I AM AN ATTORNEY AT LAW OF THIS STATE WHO HAS BEEN ENGAGED ON MANY OCCASIONS IN LITIGATION INVOLVING DEALER'S RIGHTS VIZ-A-VEE, MAJOR OIL COMPANIES. I WISH TO THANK YOU FOR THE INVITATION TO SPEAK BEFORE THIS LEGISLATIVE BODY.

THE PROTECTION OF DEALERS OF PETROLEUM PRODUCTS FROM THEIR SUPPLIER IS A THOUGHT OF OLD VINTAGE. THE THOUGHT, HOWEVER, ALTHOUGH EXISTING FOR SOME TIME HAD NEVER REALLY BEEN PUT INTO ACTION UNTIL RECENTLY. COURTS AND LEGISLATURES OF THIS STATE AND OTHERS AND OF THE FEDERAL GOVERNMENT HAVE LONG RECOGNIZED THE ABUSES HEAPED UPON FRANCHISE DEALERS OF PETROLEUM PRODUCTS. NO ONE MORE VIVIDLY STATED THE POSITION OF A FRANCHISE DEALER OF PETROLEUM PRODUCTS THEN JUDGE WISDOM IN 1966 IN DELIVERING AN OPINION REGARDING SHELL OIL COMPANY. JUDGE WISDOM FOUND AND DESCRIBED THE RELATIONSHIP. HE SAID:

"THE RELATIONSHIP OF A MAJOR OIL COMPANY TO ITS SERVICE STATION DEALER GOES BEYOND THE BIGNESS--LITTLENESS ANTITHESIS THAT EXISTS IN INNUMERABLE CONTRACT NEGOTIATION AND IN THE OPERATION OF A MODERN LARGE BUSINESS. THE INHERENT LEVERAGE A MAJOR OIL COMPANY HAS OVER ITS DEALERS RESULTS IN THE LIMITED STRUCTURE OF THE INDUSTRY AND THE POSITION DEPENDENT ON THE COMPANY OF THE SERVICE STATION DEALER. A MAN OPERATING A GAS STATION IS BOUND TO BE OVER-AWED BY THE GREAT CORPORATION WHO IS HIS SUPPLIER, HIS BANKER, AND HIS LANDLORD. THE RUN OF THE MILL SERVICE STATION DEALER IS A MAN OF LIMITED MEANS WHO HAS FOR HIM A SIZABLE INVESTMENT IN HIS STATION. MUCH OF THE VALUE OF THAT INVESTMENT IS IN GOOD WILL ATTACHED TO THE GASOLINE HE SELLS, THE TBA'S HE STOCKS, AND THE LOCATION OF THE STATION WHERE HE SELLS THESE PRODUCTS..."

THE EVILS WHICH GOVERNMENTAL BODIES HAVE ATTEMPTED TO CORRECT COMMENCE AT THE VERY OUTSET OF THE RELATIONSHIP BETWEEN AN OIL COMPANY AND A PROSPECTIVE DEALER. THE APPLICANT IS NORMALLY TOLD THAT THE PARTICULAR LOCATION IN WHICH HE WOULD GET COULD GIVE HIM A FUTURE FOR LIFE IF HE WORKED HARD AND MADE

A LIMITED INVESTMENT. THE "FAMILY-POLICY" OF THE MAJOR OIL COMPANY IS NORMALLY EXPLAINED TO HIM. THIS FAMILY POLICY TRANSLATES TO THE DEALER INTO THE FOLLOWING: THAT AS LONG AS HE CONFORMS TO THAT COMPANY'S POLICIES AND OPERATES A GOOD STATION HE WILL HAVE A THRIVING BUSINESS WITH THE COMPANY. AFTER THESE INITIAL CONTACTS, THE APPLICANT MUST MAKE AN INVESTMENT, NORMALLY BETWEEN \$5,000 and \$20,000 DEPENDING ON THE SIZE OF THE STATION AND INVENTORY REQUIRED. OF COURSE, SOME OIL COMPANIES WILL EVEN HELP THE APPLICANT IN THIS AREA BY LENDING HIM MONEY, AT SUBSTANTIAL INTEREST, OF COURSE, AND WITH FULL SECURITY. THE APPLICANT THEN SIGNS A LEASE AND DEALER AGREEMENT FOR THE STATION WHICH IN THE PAST WAS LIMITED GENERALLY TO ONE YEAR DURATION. THE LEASE AND DEALER AGREEMENT ARE PREPARED BY THE OIL COMPANY, CONTAINS THE CLAUSES IN WHICH THE OIL COMPANY WISH TO INSERT, AND ARE NOT SUBJECT TO ANY NEGOTIATION. THERE IS NO WORRY ABOUT THE ONE YEAR DURATION OF

THE LEASE AND DEALER AGREEMENT BECAUSE ASSURANCES HAVE
ALREADY BEEN MADE THAT AS LONG AS HE WORKS HARD AND OPERATES
THE STATION HE WILL HAVE THE BUSINESS. ONCE THE BUSINESS
COMMENCES THE SALESMAN OF THE OIL COMPANY OR DEALER REPRESENTATIVE,
WHATEVER THEIR DESIGNATION, CALLS UPON THE DEALER. THE DEALER
REPRESENTATIVE IS THE MAN FROM WHOM THE DEALER ORDERS HIS
TIRES, BATTERIES, AND ACCESSORIES AND ALSO THE MAN WHO HAS
PRIMARY SAY IN WHETHER OR NOT THE LEASE AND DEALER AGREEMENT
WILL BE RENEWED EACH YEAR. THE SALESMAN IS ALSO THE ONE
WHO "ADVISES" THE DEALER ON THE MARKET PRICES. OF COURSE,
ANY OIL COMPANY REPRESENTATIVE WILL TELL YOU THAT THEY DO NOT
CONTROL PRICES. THE LEGISLATURE OF THIS STATE AND THE COURTS
OF THIS STATE HAVE RECOGNIZED THIS RELATIONSHIP FOR WHAT IT IS
AND HAVE TAKEN AFFIRMATIVE ACTION IN ATTEMPTING TO EQUALIZE THE
RELATIONSHIP. IN THE ENACTMENT OF THE NEW JERSEY FRANCHISE
PRACTICES ACT, THE LEGISLATURE IN EFFECT DEMANDED THAT THE OIL
COMPANIES LIVE UP TO THEIR INITIAL REPRESENTATION

A CONTINUING CHALLENGE TO THE FEDERAL GOVERNMENT EVER SINCE 1890 WHEN THE SHERMAN ANTI-TRUST ACT WAS PASSED. FIRST THE STANDARD OIL TRUST WAS BROKEN UP INTO A NUMBER OF UNITS, MANY OF WHICH NOW FAR EXCEED IN SIZE AND FINANCIAL STRENGTH THE ORIGINAL TRUST ITSELF. THE UNITS THAT WERE BROKEN UP TODAY SURVIVE AS EXXON, STANDARD OIL OF THE VARIOUS STATES, AND MOBILE, TO NAME BUT A FEW. OF COURSE, THE POWER OF THE MAJOR OIL COMPANIES ECONOMICALLY AND POLITICALLY IS STAGGERING AND THEY HAVE SUCCESSFULLY FRUSTRATED ATTEMPTS TO EFFECTIVELY ACCOMPLISH THE RESTRUCTURING OF THEIR INDUSTRY. BILLS HAVE BEEN INTRODUCED IN THE FEDERAL LEGISLATURE NOT UNLIKE THOSE WHICH ARE BEING CONSIDERED OR WILL BE CONSIDERED IN THIS BODY. THEY HAVE BEEN DESCRIBED AS DIVESTMENT BILLS. THAT IS, THE ATTEMPT TO TAKE FROM THE OIL COMPANIES THEIR POWER OVER THE PROPERTY ON WHICH GAS STATIONS ARE LOCATED. FORMER JUSTICE WEINTRAUB OF OUR SUPREME COURT POSED A QUESTION AS TO WHETHER OR NOT DIVESTMENT IS REALLY THE ONLY MEANS TO EFFECTIVELY

LIMIT THE OIL COMPANIES CONTROL OVER THE GAS STATIONS
OPERATOR, FOR CONTROL OVER THE DEALER THROUGH SHORT TERM
LEASES AND DEALER AGREEMENTS AND THREATS OF WITHDRAWAL OF
A COMPANY FROM THE AREA AND FURTHER THREATS OF TURNING THE
STATION INTO A COMPANY OPERATED STATION ARE THE TOOLS IN WHICH
THE OIL COMPANY CONTROL PRICES AND BEND THE GOVERNMENT TO DO
THEIR COLLECTIVE WILL. THE LEGISLATION BEFORE YOU HAS TWO
MAJOR OBJECTIVES. FIRST, TO ESTABLISH COMPETITION IN THE
INDUSTRY SO THAT PRICES ARE DETERMINED BY THE FREE INTERPLAY
OF MARKET FORCES RATHER THAN THE EXECUTIVE DECISION EITHER
GOVERNMENTAL OR PRIVATE. SECONDLY, TO REALLOCATE THE
ECONOMICAL AND POLITICAL POWER OF THIS INDUSTRY SO THAT THIS
POWER WILL BE DISTRIBUTED INTO A GREAT MANY SMALLER UNITS
INSTEAD OF BEING CONCENTRATED IN A FEW GIANTS. IT WILL MAKE
THE OIL INDUSTRY GOVERNABLE AND CREATE FAIR MARKET PRICES.
IT CANNOT BE DISPUTED THAT THE PUBLIC INTEREST IN THIS MATTER
IS PARAMOUNT. THERE IS EVEN A MORE COMPELLING ARGUMENT FOR

THE PASSAGE OF LEGISLATION AIMED AT PROTECTING THE INDEPENDENT DEALER. IN OUTLINING WHAT HE THOUGHT WOULD END CAOTIC AND EPISODIC DISCUSSION OF PUBLIC POLICY BY CLASSIFYING INTEREST WHICH MUST BE PROTECTED BY THE COURTS AND LEGISLATURE, ROSCO POUND INCLUDED AS ONE OF THE FOREMOST INTEREST THAT OF INDIVIDUAL LIFE, INDIVIDUAL ASSERTION AND INDIVIDUAL OPPORTUNITY. THE COURTS, LEGISLATURE AND LEARNED MEN OF THE LAW HAVE ACCEPTED AND INTERGRATED THIS INTEREST OF INDIVIDUAL LIFE CONSTANTLY. THE DECLARATION OF INDEPENDENCE OF THE UNITED STATES EMBODIES THE VALUE OF INDIVIDUAL ASSERTION AND OPPORTUNITY. THE ECONOMICAL BACK BONE OF OUR COUNTRY IS FORTIFIED BY IT. IS THERE A MORE FUNDAMENTAL ECONOMIC AND INDIVIDUAL INTEREST WHICH MUST BE PROTECTED THEN A MAN'S RIGHT TO SACRIFICE, WORK, WORRY, AND WAIT IN ORDER TO ACHIEVE HIS SUCCESS. IS NOT INDIVIDUAL FREE ENTERPRISE THROUGH INDIVIDUAL ACHIEVEMENT AND OPPORTUNITY TO BE ADVANCED. ARE THESE DEALERS TO BE TOLD NOW THAT DESPITE

THEIR YEARS OF WORK, THEIR EXPECTATIONS, THEIR FIRM BELIEF
IN THE REPRESENTATIONS OF THEIR OIL COMPANIES THAT NOW THEY
HAVE NOTHING. WOULD INDIVIDUALS SUCH AS THIS CONTINUE TO
BUILD A BUSINESS AND COMMUNITY RELATION ON SUCH A CONTINGENCY?
ROBERT KENNEDY REAFFIRMED THIS INTEREST WHEN HE SAID:

"WITHOUT WORK AND COMMUNITY AND TRUE OPPORTUNITY
TO STAND AS MEN AND CITIZENS, THE BASIC RIGHT, THE
RIGHT TO BE HUMAN, CANNOT BE FULFILLED."

Mr. Chairman, I am Harold J. Vaughn, District Marketing Manager for Sun Oil Company of Pennsylvania. My office is in Newark, New Jersey. My territory covers the northern half of the state.

Before I begin my remarks on specific points contained in Assembly Bill 1411, I want to say at the outset that my company believes that the primary intent of this bill is to prevent companies from operating their own retail service stations on a direct basis in the state. As such, you should be aware that presently Sun Oil does not have any company-operated service stations in New Jersey.

The sponsors' Statement of Legislative Intent addresses itself to a number of allegations against the major oil companies which are not true. In addition, we believe that this legislation rather than being in the best interest of the consuming public and dealers, is in fact anti-consumer and anti-dealer in nature.

The bill, which was hastily introduced more than seven months ago at the height of the emotion-charged energy supply shortage and makes reference to "gas lines and a daily concern over whether... they (the public) can obtain enough gas...", is a clear attempt to attribute a lion's share of the blame to the oil companies for last winter's crisis.

My company will neither accept responsibility for the energy crisis nor dignify any attempt by the legislature to find a likely scapegoat, namely the oil industry.

As you know, the supply situation has improved, in part, because of conservation measures on the part of the consuming public and because of an end to the Middle East embargo. The success of the allocation program also has been very helpful. A major effort continues today on the part of the oil industry and others to balance the national supply and demand position. However, recent developments at the OPEC meeting in Vienna should indicate that as long as much of the world's oil supply is owned by the Arab nations, the supply and price of oil products at the retail level in this country will be, to a major extent, beyond the control of American oil companies.

Through this legislative smokescreen of trying to help prevent future supply shortages evolves an attempt to make oil companies divorce themselves from retail marketing operations.

We believe the economics of operating a fully integrated oil company--the control of oil from the exploration and production stages and through the intermediate stages leading to the retail marketing stage--is consumer-oriented because of the expertise and efficiencies learned and practiced by experienced oil firms over the years. By this I mean that companies like mine can draw on the expertise of many departments in the achievement of goals. For example, we have our own planning department, our own transportation department, our own financial department, to name a few. These disciplines generally are located within close proximity to each other to assure coordination. The intercession or formation

of private firms to coordinate the acquisition and movement of petroleum products would have the effect of adding another middleman to the picture, thus forcing the retail price much higher than it is now.

As proposed, the bill could be interpreted as requiring companies to rid themselves of retail marketing, and also to divest the real estate on which these stations are situated. This brings up an interesting question: Who will buy them? We estimate that a very small percentage of our dealers would be able to purchase our properties. The value of many of these properties is about \$250,000 or more per location. In this period of high interest rates and tight mortgage money, we suspect that a prospective dealer-owner would have much difficulty trying to come up with a satisfactory financing arrangement. On some of our higher priced properties, financing for a station's inventory alone might be difficult to arrange.

Needless to say, passage of this legislation would create a substantial financial burden and be a severe injustice to today's average service station dealer.

Let me take a moment to illustrate my point. Let's say that a dealer would like to purchase the service station property where he has been operating previously as a lessee-dealer. The property value is \$250,000, and a buyer needs to come up with a ten percent down payment, or \$25,000, with the balance to be financed through a bank, assuming the money is available and the bank is willing to handle the financing. At a reasonable annual interest rate of

ten percent, payable over a twenty-year period, the prospective buyer's mortgage payment alone would come to about \$2,271.71 a month. This would be about twice his current monthly rental.

Additionally, if companies like Sun are forced to sell off their properties, the climate of the circumstances would probably dictate that they would have to be sold at a lower market value because buyers would realize the problem and take advantage of the situation. In such an artificially created buyer's market, the buying price would bring the value of these properties down to a fraction of their true value. In effect this would amount to taking without just compensation.

In addition, many dealers would not find owning their own station outright as attractive as the company-dealer lease arrangement. This is because we handle many of the annoyances which accompany the operation of a service station, such as credit card problems, liability, tax, insurance, maintenance and financing.

We are convinced that if these facts were fully understood by the dealers, many of them too would oppose the bill. As for the consumers, when a company like Sun loses its ability to oversee the way its service stations are run, its customers will be the big losers. This is because the company loses the right to represent the consumer in the maintenance of service station performance and appearance. Afterall, it is generally the oil company salesman who intercedes for the consumer in complaints against a service station.

Presumably, the sponsors of the bill also think that by separating companies from their retail marketing operations, competition in the marketplace will be enhanced. We strongly disagree.

This bill in no way encourages competition. By definition, a "Distributor" is one "who produces, refines, manufacturers... or imports fuels for sale or distribution within the state." Therefore, while we interpret the bill to include companies like Sun, it also indicates that wholesale distributors/jobbers in the state would be excluded from coverage because they do not "produce, refine or manufacture." We believe this would allow one class of marketer an unfair advantage over others and would be anti-competitive in and of itself.

Furthermore, we believe that this bill will forge another potentially anti-competitive atmosphere by allowing the creation of large retail chain operators. Chain operators would be in the position of establishing control of the marketplace through pricing by undercutting the independent-dealer class which does not have the same flexibility to lower prices and which, in many cases, would eventually be driven out of business. As such, competition in the state would drop significantly, thus reducing choices available to the consumer who would be at the whim of a single class of marketer.

The free enterprise/free market system encompasses a situation where manufacturers and distributors of products have the ability to sell and distribute their products in many ways. Some may choose to sell through wholesalers, some through retailers, and some directly to the public. Therefore, it follows that this

legislation would serve to foreclose the state of New Jersey to those manufacturers of petroleum products who wish to market at retail, thus reducing competition.

It can also be argued that while systematically reducing competition in the state, this legislation would impose a stagnant method of distribution of petroleum products by locking in distributor structures and channels which in time may become archaic, expensive and unworkable.

A check of the facts will reveal that New Jersey is probably one of the most competitive states in the marketplace, with a good blend of major companies and small independents competing against each other, and quite successfully. Our records show that there are more than 60 oil companies (all marketers) doing business in the state. In addition, I also want to point out that historically New Jersey has been nationally known for price competition. This has been caused in part by the vast number of large and small oil companies competing for the motoring public's business.

As for Sun, we sell gasoline and other petroleum products in New Jersey directly or through distributors to more than 792 Sunoco-brand service stations. All of these stations are operated by independent businessmen-dealers and distributors. In addition, we operate products terminals in Newark, in Paulsboro and in Piscataway, and a fuel oil terminal in Hackensack. We also lease a fuel oil terminal to an independent distributor in Atlantic City. As you can see, my company has a big stake in the fortunes of the business climate of New Jersey. Measuring the holdings I have

just described, we would appear to be a significant factor in the marketplace. We are not. Our share of the marketplace is no more than eight percent.

Another important factor implied in the language of the bill is that no supplying company will be able to directly operate any retail outlet in the state. As I mentioned previously, Sun does not have any company-operated stations here, but we are vigorously oppose to the concept that precludes us from doing so if we feel it necessary.

Sun wants to be in a position to implement change in its marketing practices through company-operated outlets for the benefit of our customers. We regard any attempt by the legislature to take away this freedom as an unjust taking and as discriminatory

The following are some of the reasons why a company should be free to operate a station directly if it so chooses:

-To serve as a training source for new dealers. Assembly Bill 1411 would prevent us from doing so and, instead, we would be forced to either put untrained dealers in our outlets or find an alternative training ground for them.

-To provide uninterrupted service to the community in the event of a dealer's death, or the cancellation of a lease by the dealer.

-To comply with certain local zoning laws which may prohibit the shutdown of a business for a long period of time.

We assume that the "threat" of company-operated service stations in New Jersey is the reason for the sponsors' charge that "Many independent service stations, garages and other retail

dealers of motor fuels have been forced out of business (Page 3 Statement)." If this is so, I would like to remind the committee that the New Jersey Franchise Practices Act is one of the most stringent in the country.

The protection afforded franchise dealers under the act precludes any frivolous "takeovers" or "cancellations" on the part of the major oil companies. The act requires "good cause" before a dealer can be terminated. And believe me, this provision is taken literally by my company.

Considering the relatively insignificant number of company-operated stations operating in the state as well as the legal protection already working on behalf of the dealers, I question the need or rationale for another law of this type.

In concluding my comments on company-operated stations, I would like to pose a question to the committee: In what way can it be proven that this type of legislation is good for the consumer?

Another objection we have is the discriminatory nature of the legislation. If the state deems it necessary to have such a law, why must it only apply to the oil industry. Why single out one class of manufacturer? We suspect the sponsors have not given enough thought to this point.

As to the allegations on "soaring" profits of the major oil companies, I want to point out that Sun's profit on petroleum products was held to 1-2/3 cents per gallon in 1972, and 2-1/3 cents per gallon in 1973. For every \$1 profit in 1974, Sun plans to invest about \$3 in exploring for new sources of energy.

Our attorneys are of the further opinion that because of the way the legislation is drafted, with its many possible interpretations, the bill may well be adjudged void and unenforceable because of the ambiguities contained therein, particularly in regard to the definition of "Distributor" and implications that would effect the sale of real estate properties.

We would be pleased to answer any questions you may have.



KAYO OIL COMPANY

TELEPHONE 615/266-2134 • 1221 EAST MAIN STREET • CHATTANOOGA, TENNESSEE 37406

JACK W. CHANDLER, PRESIDENT
WILLIAM F. KISLING, EXECUTIVE VICE PRESIDENT
WADE L. HOLEN, VICE PRESIDENT-OPERATIONS
DOCK GRAY, VICE PRESIDENT-DEVELOPMENT
WILLIAM M. MCMAHAN, CONTROLLER-TREASURER

FOR IMMEDIATE RELEASE

TRENTON, NEW JERSEY, SEPTEMBER 25--A petroleum marketing specialist today said a proposed New Jersey law prohibiting distributors from operating service stations would raise gasoline prices and reduce competition.

Jack Chandler, president of Kayo Oil Company, said Assembly Bill 1411 unintentionally strikes at the most effective regulator of gasoline price competition available to New Jersey--the price differential between low-cost marketers and major brand service stations.

"Without the benefit of direct (salaried) operations, the low-priced marketers will be unable to maintain past levels of operating efficiency which are essential to their continuance as a strong competitive force in the industry," Chandler said.

At best, he said, low-priced marketers would be forced to raise their prices. At worst, they will be forced to withdraw from the State.

Aimed at preserving dealer or lessee-type station operations, AB 1411 prohibits any distributor who produces or refines petroleum or imports gasoline from owning and operating retail stations.

.....More.....

**CHANDLER
KAYO OIL COMPANY
PAGE 2**

Kayo, a subsidiary of Continental Oil Company, has marketed in New Jersey since 1958, Chandler said, and has 23 stations in the State. All are operated by Kayo employees and always have been.

Chandler said the Bill would cause New Jersey residents to pay more for gasoline, restrict their choice of station outlets and place low-price marketers, many of whom are small businessmen, in jeopardy.

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ASSEMBLY BILL 1411

COMMITTEE ON COMMERCE,
INDUSTRY and PROFESSIONS

Statement of JACK W. CHANDLER

My name is Jack W. Chandler. I am President of KAYO OIL COMPANY, located at 1221 East Main Street, Chattanooga, Tennessee. Thank you for the opportunity of appearing today to present views of my company concerning Assembly Bill 1411 which, if enacted, will restrict the direct operation of retail service stations.

KAYO is a wholly--owned subsidiary of Continental Oil Company, High Ridge Park, Stamford, Connecticut. KAYO currently operates some 650 retail gasoline outlets in the eastern United States. The company has marketed in New Jersey since 1968 and sold twenty million gallons of gasoline in New Jersey in 1973. (Current number of KAYO outlets - 23. Market share: About one-half of one percent (1/2%) of the New Jersey gasoline market.)

In terms of gasoline marketing method, KAYO represents the segment of the industry characterized by "low cost" or "low price" marketing, as contrasted to major brand or full price type marketing. Historically, low price marketing represents the fastest growing segment of the gasoline retailing industry and has attained approximately a one-third share of the retail market in the United States. My brief statement pertains primarily to this segment and the point I will be

making is that the proposed legislation, which is aimed at major brands, will have a harmful effect on low price marketers, and will do a disservice to the New Jersey gasoline consumer.

The typical low price marketer emphasizes minimum investment in land and facilities, primary emphasis on gasoline sales, limited services, limited advertising and sales promotion, and operating control of the station. Common to all these marketers is a retail pump price which is below that charged at major brand stations. This differential varies from brand to brand and from time to time but for KAYO has averaged approximately three cents (3¢) per gallon of regular grade gasoline and approximately four cents (4¢) per gallon of premium gasoline in recent years. The ability of the low price marketer to charge a lower price is attributable to a low cost of operation and high gallonage throughput per outlet. One of the keys to low cost operation is direct operating control of the outlet. Salaried or quasi-salaried operations have characterized this type of marketing for many years. Such methods provide the means of attaining maximum productivity per dollar of expenses and minimum operating costs per station hour. In short, the low price marketers have found it advantageous to operate where they have control of everything that goes on in the station.

The cost savings attained in a direct operation, i.e., without intervening distribution levels between the supply

source and customer's gasoline tank, are passed on to the consumer in the form of a price savings. Without the benefit of direct operations the low price marketers will be unable to maintain past levels of operating efficiency, which are essential to their continuance as a strong competitive force in the industry.

The fact that KAYO is a subsidiary of Continental Oil Company, which in other sections of the United States operates as a major style marketer under the CONOCO brand, has in no way interfered with KAYO's performance as a low cost, low price marketer in which the benefits of realized efficiencies in operations are passed on to the New Jersey consumer in the form of a lower price at the station pump. In fact, the affiliation with Continental Oil Company has, through access to investment capital not otherwise available, permitted KAYO to expand its operations in accordance with the desires of and to the benefit of the gasoline consumer. I am sure that KAYO's many customers in New Jersey who buy KAYO gasoline at a lower price than at major stations would agree with this view.

The proposed legislation, while aimed at preserving lessee-type service station operations by the major companies, in reality forces a change in long-established marketing methods of the low cost, low price marketers. The bill thus strikes at what

in my opinion is the most effective regulator of gasoline price competition available to New Jersey motorists -- the price differential charged by the independents under the majors.

The proposed legislation will therefore bring about an unintended result -- the lessening of competition, loss of efficiency in marketing gasoline, and an increase in cost of gasoline to the New Jersey consumer.

Further, it appears that such a bill, which purportedly is for the welfare of the State's residents, is actually an unreasonable and unnecessary extension of the State's police power, which will be creating an invalid regulatory scheme. Such regulation is highly discriminatory and, if implemented, surely will be challenged in courts. This legislation appears also to raise serious constitutional problems in that it will operate in a manner which would deprive persons and companies of their business and property values without due process of law.

At best, low price marketers will be forced to raise prices to offset having to adopt a method of doing business that is for them less efficient than their current method. At worst, low price marketers will be forced to withdraw from the

marketplace. In summary, the residents of New Jersey are poorly served rather than benefited by the proposed bill by (a) paying more for gasoline than they otherwise would pay, and (b) having their choice restricted in terms of type of gasoline purchase available. In addition, the bill places the low price marketers, many of whom are small businesses operating a limited number of outlets, in jeopardy. Gentlemen, I urge you not to support Assembly Bill 1411.

Again, thank you for your time . . .

STATEMENT IN OPPOSITION TO
NEW JERSEY ASSEMBLY BILL 1411

Shell Oil Company is opposed to the enactment of Assembly Bill 1411 for three basic reasons:

1. The bill addresses itself to a nonexistent problem. The charge that major oil companies are engaged in an effort to drive service station dealers out of business and take over their stations on a company-operated basis is false. It is just not happening, so there is no need for this legislation.

2. Assembly Bill 1411 would actually be against the interest of consumers -- the motoring public -- who constitute virtually the entire adult population of the state. On the other hand, the avowed purpose of the legislation is to benefit certain individuals engaged in gasoline retailing by removing a class of competition. These individuals represent only a tiny fraction of the people of the state.

3. The proposed legislation is fundamentally discriminatory and possibly unconstitutional. It would prohibit one class of enterprise in the oil industry from engaging in retail gasoline marketing, which would still be permitted for other classes of enterprise both within and outside the oil industry. This type of restriction would apply only to the oil industry but not to other industries in which suppliers operate their own retail outlets.

Let us consider each of these points in detail.

First, the relationship between the major supplier oil companies and their branded dealers. Vague and unsubstantiated charges have been made by a few individuals purportedly speaking on behalf of dealers that major oil companies are attempting to switch the operation of a substantial number of stations from independent dealers to company salary personnel.

Shell denies categorically that it is doing so, or plans to do so. Nationwide, Shell operates 9,149 branded service stations in territories where leases are arranged directly with dealers. In addition, Shell jobbers operate approximately 9,800 Shell-branded stations. Of the 9,149 stations in direct marketing territory, only 332 or 3.6 percent are operated by company-salaried personnel. In New Jersey Shell has 361 stations of which only one is company-operated. Of the 332 stations operated by the company throughout the country just 25 are conventional type service stations and the remainder are special types of stations, such as car wash, self serve and gasoline only units. These kinds of stations are operated with salaried personnel because of the very high investment required -- upwards of \$300,000 -- which is beyond the financial capacity of virtually all dealers or potential dealers and because the nature of their operation does not lend itself to normal dealer operation.

As to the future, Shell will continue to consider the various operating options available to it as opportunities arise. But it cannot be emphasized too strongly that Shell will not terminate a dealer's lease or fail to renew that lease for the specific purpose of establishing a salary operation. If, however, a dealer should voluntarily decide to leave

the business, Shell will evaluate that station against stringent criteria to determine whether to obtain another dealer or convert it to salary. It is believed that the potential for this sort of conversion will be extremely limited for the foreseeable future. Shell also regularly evaluates the performance of existing salary units to make sure that they meet the high standards required.

On the basis of this policy, it cannot be predicted exactly how many salary units Shell will have in the course of the next few years. But at the present time we are firm in our belief that Shell's retail gasoline marketing will continue to be strongly oriented toward independent dealers and jobbers.

These are the facts with regard to Shell. While we would not presume to speak for other oil companies, available statistics indicate that charges of dealer takeovers by the major oil companies are as groundless for the whole group as they are for Shell.

The American Petroleum Institute completed last month a survey of service station operations by 22 of the nation's leading oil companies. This showed that on June 30 they operated directly, either through personnel who are either on company payroll or who receive a commission on sales, 7,375 or 3.5 percent of the nation's estimated 212,000 service stations.

The survey also showed there has been little change in the ratio of salaried and commission stations to the total of all service stations. Directly operated stations totaled 7,239 at the end of 1973 and 7,641 at the end of 1972.

Furthermore, half again as many stations were converted last year from company to dealer operation as were converted from dealer to company operation. The actual numbers are 965 to 608. This should be quite conclusive evidence that dealers are not being squeezed out of business.

Let us now consider why there is a real need for having some stations operated by the major companies which supply dealers with their products and why this kind of operation has benefits for the consumer -- and for dealers, themselves.

First, company station operation is often necessary to prevent interruption of service when a dealer dies or leaves the business unexpectedly. In most instances, if the station could not be operated by the company temporarily until a new dealer could be found it would have to be closed, with resulting inconvenience to regular customers. In some instances this would severely curtail petroleum product availability in a fairly large area or along a major highway. Such temporary company operation sometimes must of necessity continue for several months before a satisfactory new dealer can be found. Another important consideration is that under the federal allocation program now in existence, the closing of a station reduces the amount of gasoline available in the state. Furthermore, keeping the station open through company operation benefits the incoming dealer by maintaining customer continuity.

Second, during these unusual times of product allocation and possible shortages because of uncertain crude oil and product supply from overseas and view of the existence of numerous local, state and federal controls over petroleum marketing, a limited number of company-operated

service stations provides Shell a direct opportunity to evaluate the impact of the many rules and regulations and to directly experience the effects of such regulations on both the independent dealer and service station customers in general. Through Shell's direct experience in service station operation, it is then in a better first-hand position to make recommendations and guide the various levels of government in modifying existing legislation or in considering proposed legislation to be sure it is not counterproductive.

Third, at a time when retail gasoline marketing is in a state of rapid transition, company-operated stations provide a basis for comparing performance by customers and by the company in terms of quality of service, hours of operation, and so forth. One of the most obvious developments in the past year, of which every motorist is acutely aware, is that dealers are in general staying open fewer hours during the week and in many instances remaining closed entirely from Friday afternoon to Monday morning. In many areas the only stations which can be found open during night-time hours and over the weekend are company-operated stations. The need for such stations for the motoring public need not be belabored.

Fourth, company-operated stations are essential to provide the proper facilities and conditions for training prospective dealers. These stations provide ideal conditions in a laboratory-type environment that can be maintained only through the control obtainable with salaried personnel.

They permit the installation of permanent classroom facilities and the utilization of professional instruction. They also allow Shell to evaluate its dealer training courses and other programs. Furthermore, since many prospective dealers come to Shell with little or no background in the service station business, a salary unit gives them an opportunity to become exposed to the business before they invest their money. It also helps Shell weed out applicants who seem unsuited for the business. Altogether, individual failure is reduced, dealer turnover is diminished and the public benefits through improved service.

Fifth, salary operation provides the most effective means of testing new service station products, new services and new approaches and techniques to improve customer service. In a salary service station the supplier can implement such various proposals from time to time and give them laboratory-type testing under rigidly controlled conditions. Our objective is that this type of operation will result in many effective innovations that can subsequently be made available to Shell dealers as a means of expanding the product and merchandising lines in the difficult years ahead.

Sixth, as alluded to earlier, Shell operates certain types of service stations because the amount of money involved in the facility -- \$300,000 and more -- virtually precludes investment by a dealer. These are known in the industry as innovative stations and include car washes, self service stations and stations that provide facilities for car repair by the customer. Aside from the high initial investment, another important

consideration is the need to ensure that expensive equipment is safely operated and efficiently maintained. In addition, salary operation is the most efficient method of serving our customers at these types of outlets. There is strict control over personnel, hours of operation, standards of service and appearance. Overall, supervision of several such units can be more easily accomplished by company field representatives.

Finally, let us consider the discriminatory nature of A.B. 1411, and the possibility of its unconstitutionality.

This proposed legislation singles out a segment of the oil industry which it would bar from engaging in retail gasoline marketing. At the same time, it would not prevent any other enterprise from having company-operated gasoline retail outlets. These could be companies engaged solely in this business, obtaining their supply through contracts with distributors, and having numerous stations. It does not cover such very large merchandising outfits as Penney's and Sears.

Of course, it does not apply the same kind of restriction to companies in other lines of business who have both dealers or franchises and their own company-operated retail outlets. Among these types of enterprises are tire companies, fast food franchisers, paint manufacturers, and many others.

It is patently unfair to pass legislation which is so narrowly discriminatory. It is also probably in violation of the United States Constitution by denying oil companies equal protection of the law.

We also believe that A.B. 1411 clearly contravenes the New Jersey Constitution. Article 1, Section 1, of the New Jersey Constitution states that it is a "natural and inalienable right" to acquire and possess property. Yet A.B. 1411 would have the practical result of requiring "any distributor", that is to say "any person who produces, refines, manufactures, blends, compounds or imports motor fuels for sale or distribution within the state" to put his property into some one else's hands.

Suits challenging its constitutionality are certain if A.B. 1411 becomes law. Suits have already been brought against a similar prohibition of company stations in Maryland. One suit alleges that Maryland's prohibition violates Maryland's declaration of rights, singles out refiners and producers and denies them the equal protection of the laws, and constitutes a taking of the plaintiff's substantial investment in retail stations in that state. Another suit alleges that the prohibition exceeds the police power, unduly burdens interstate commerce, restricts free and open competition, denies the owners the right to earn a reasonable rate of return on their property and will affect the public adversely by restricting the opportunity for normal and lawful competition.

At a minimum, Shell would ask that A.B. 1411 be referred to the Attorney General for his opinion of the bill's constitutionality. Beyond that, it well might be fair and a practical thing for this legislature to await the results of these suits and of similar suits in Delaware and Florida before running the same constitutional risks in this state.

S T A T E M E N T
of
GULF OIL COMPANY - U.S.

on
STATE OF NEW JERSEY ASSEMBLY BILL NO. 1411
AN ACT concerning the retail sale of motor
fuels and prohibiting distributors from
engaging therein

and

STATE OF NEW JERSEY ASSEMBLY BILL NO. 159
AN ACT to amend "An Act to Regulate the
Retail Sale of Motor Fuels, and Providing
Penalties for Violation".

Presented to the Assembly Committee on
Commerce, Industry and Professions of the
New Jersey State Legislature at the Public
Hearing on September 25, 1974.

My name is D. G. Linn. I am Eastern Regional Vice
President for Marketing of Gulf Oil Company - U.S., and I
wish to offer the following comments on Assembly Bills No.
1411 and No. 159.

We are opposed to the enactment of Assembly Bill No.
1411 since it discriminates against refiners of gasoline in
their ability to sell their products to the motorists of
New Jersey.

The provision of the bill which prohibits a distributor
as defined from engaging in the retail sale of motor fuel will
preclude Gulf from exercising its right to conduct a retail
business in New Jersey. Your committee should note that no
such restraints are applied to the sellers of milk, foodstuffs,
tires, furniture or any other of the needs of the public.
For gasoline to be singled out is clearly an unwarranted dis-
crimination.

Gulf has supplied some of the gasoline needs of the motoring public in New Jersey since prior to 1920. In recent years the supply of these needs has been conducted through Gulf service stations operated by independent business persons. These persons sometimes own the real estate and improvements and sometimes lease the realty from Gulf. During the period preceding 1935 much of the gasoline sold in New Jersey was through stations operated by Company employees. It is not Gulf's intention to return to primarily that type of operation but rather to meet the challenges of modern retail marketing with a flexible response that will best serve the needs of the motoring public.

The most ominous result of the proposed legislation will be its effect upon the consumers of the State of New Jersey. I am sure that this Committee considers the motoring public and the consumers of New Jersey as their constituents rather than any narrow special interest groups such as those who sponsored this restrictive and discriminatory legislation. In order for you to properly evaluate the effect on the consumers certain facts concerning the number of service stations and the method of operation of said stations should be brought to your attention.

There are 632 automotive gasoline outlets which bear the Gulf logo in New Jersey. Out of that total only three are operated on what is referred to as an "agency basis" directly for Gulf; this method of retailing would be the type of operation which the special interest group would seek to outlaw. The remaining 629 stations are all operated by private business persons; some 50 of these are jobber operated. These 629 stations have a mix between those locations where Gulf owns the

real estate and improvements and leases it to dealers and others where the dealer owns the real estate.

The bill also would make it unlawful for a "distributor" (as defined this would include Gulf) "to engage in the retail sale of motor fuel or to have any ownership or controlling interest whatsoever in any person engaged in the retail sale of motor fuel, except as hereinafter provided.

The result of this prohibition would appear to preclude Gulf from owning the real estate any place where gasoline is sold to the public. That provision would affect 343 of the stations that now display the Gulf logo. In order to stay in business after the effective date of the act, those 343 dealers would either have to purchase the real estate which at the fair market value would range in cost from \$125,000 to \$300,000 per station or locate a real estate investor who would be willing to purchase the real estate to lease to them. As you are no doubt aware, financing for any capital acquisitions today is extremely difficult. It is unlikely that many service station dealers could raise the necessary capital to purchase a piece of real estate worth between \$100,000 and \$300,000; a total capital requirement for Gulf dealers in New Jersey of from \$25,000,000 to \$ 50,000,000. The impact to consumers of financing this cost is obvious.

The result of this horrendous displacement of the marketplace on the consumer would be significant. It would appear that the consumer would be able to purchase motor fuel in substantially fewer locations than are now available to him. These fewer existing locations may prove less desirable to the consumer from the point of view of providing the services to

the motorist that he needs and now has. You should also be aware that the price of gasoline at the retail level is a direct function of the marketplace. The ready availability of gasoline sold in a free and open marketplace should result in lower prices to the public.

At least some of the direct effects of the enactment of this legislation on the dealers who do not own the real estate and, therefore, on the public will be a requirement which would significantly reduce the cash flow of the dealers operations since the dealer would be forced to capitalize the real property investment and naturally would have to allocate much of the income to the amortization of the debt.

Additionally the ownership risk which is now assumed by the "distributor" would be transferred to the dealer. In certain cases this ownership may be of significant consequence to the very small businessman if unfortunate circumstances of road condemnation or foreclosure were to deteriorate the value of his investment. The consumer in the long run would be the greatest victim of this proposed special interest legislation since he would have to bear the costs in the form of higher payments for the goods and services he purchases.

If a survey were to be made of those 239 Gulf service station locations where the improvements are owned by the dealer or leased by dealers from persons other than Gulf and then a comparison of those stations with the existing supply arrangements for the public were made, the results would no doubt indicate to you that in addition to a prospective financial burden Gulf customers would also be seriously deprived of

their gasoline supplies and automotive services by the proposed legislation. Since under the Act only those 239 stations plus those that could raise the necessary capital to purchase the stations or make other arrangements as noted above would continue to operate.

This Committee should also note that the rentals that are currently paid by the dealers to the oil companies for the use of the real property owned by those oil companies are much less than would be paid for comparable real estate. A review of the Gulf files indicates that a range of rentals between \$5,040 and \$15,000 per year are now being paid for properties worth between \$25,000 and \$300,000. These rental costs compare most favorably with the normal rental in other business fields that would be charged on such properties of from \$15,000 to \$36,000 per year.

In the statement which accompanied the bill certain points were made concerning the hazards of vertical integration which the proponents indicate would occur should this legislation not be passed. As we have noted above in the New Jersey case for Gulf the percentage of direct operations is less than 1%. A recent national survey has noted that not over 3.5% of the nation's 212,000 service stations are directly operated by the leading oil companies. This data includes those stations that are operated as a result of the contractual requirements of various state, turnpike and freeway authorities. Gulf's one per cent in New Jersey or the national service station average of 3.5% could hardly be called a predominating control in retail sales of motor fuel.

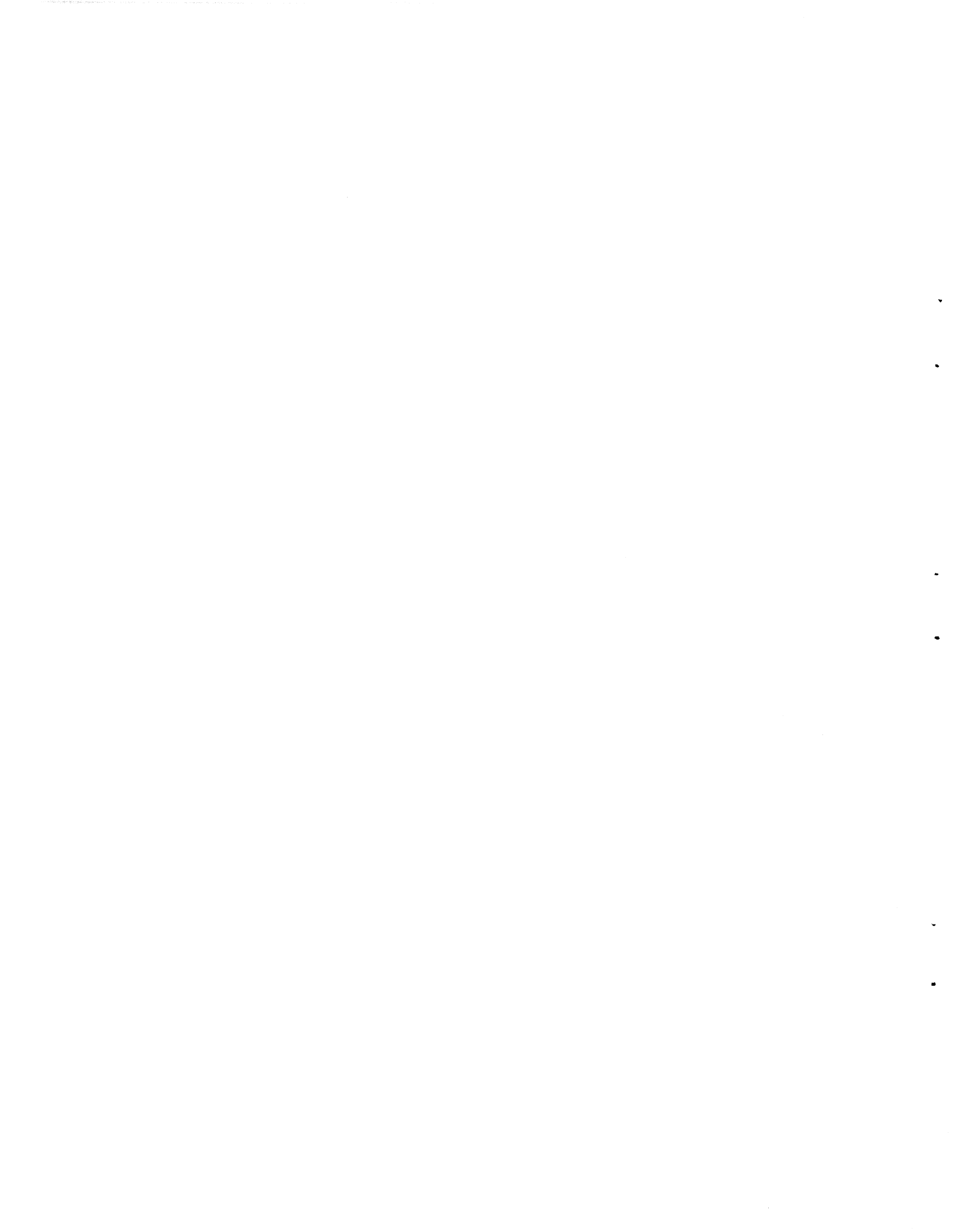
The control of marketing techniques of companies engaged in interstate commerce when said marketing is carried on in accordance with the laws of the United States does not appear to be a proper function for the New Jersey Legislature. It would seem that for this legislature to attempt to outlaw flexible approaches to the marketing of gasoline is tantamount to having a legislature dictate that supermarkets will no longer be permitted in New Jersey and that all food sales must be through convenience stores or corner "Mom and Pop" type operations. This improper control is even more serious when the negative effects on the consumer are reviewed.

The statement that the legislation will check the "... strong, if not monopolistic influence of the major oil companies on the retail sale of motor fuels and to restore a competitive balance in this area for the consumers . . ." is a most improper statement of fact. A historical analysis of the retail gasoline marketplace will show that most consumers at one time acquired most of their fuel needs directly from a gasoline company. Even further such a survey would show that the percentage of gasoline now supplied to the public by what is often termed independent marketing outlets (other than major brand identified) is now about 26% which is an increase during five years from the 19% formerly furnished by independent marketing outlets. This trend hardly indicates monopolistic domination particularly when these percentages reflect the total retail sales operations including dealer operated service stations.

Gulf would also like to comment on Assembly Bill No. 159 which has also been introduced and scheduled for hearing today. Gulf feels that the provisions of Assembly Bill No. 159 are appropriate and therefore does not oppose the passage of these amendments. It is suggested, however, that if the legislature is sincerely interested in the benefits that might accrue to the motoring public by a more realistic approach to the marketplace, that it should immediately review prohibition of the sale of gasoline at the self-service service station pumps. Whereas the provision of Assembly Bill No. 159 might affect the retail pricing of gasoline at a few locations, history has shown that in states where no prohibition against self-serve pumps exists customers find that they save an additional two to three cents per gallon through the use of this modern marketing technique.

Thank you very much for your kind attention to these comments. If any amplification is desired, please let me know and we will be happy to do so.

9/25/74



PREPARED STATEMENT OF PAUL A. HANKINS
RETAIL GASOLINE DEALER
RE: ASSEMBLY BILL 1411

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM APPEARING HERE TODAY TO PRESENT MY VIEWS AND OPINIONS REGARDING ASSEMBLY BILL 1411. MY INTEREST IN THIS PARTICULAR LEGISLATION DERIVES FROM THE FACT THAT I AM THE OPERATOR OF TWO GASOLINE SERVICE STATIONS WHICH ARE OWNED BY MY SUPPLIER AND WHICH I OPERATE UNDER A LEASE CONTRACT. AS I UNDERSTAND THE WORDING OF THIS PROPOSED STATUTE THE EXISTING CONTRACTUAL RELATIONSHIP BETWEEN MYSELF AND MY SUPPLIER WOULD BE MATERIALLY ALTERED BY PASSAGE OF 1411. IN MY OPINION, THE ONLY POSSIBLE JUSTIFICATION FOR THE GOVERNMENT TO INTERVENE OR INJECT ITSELF INTO THE CONTRACTUAL RELATIONSHIP BETWEEN TWO PRIVATE PARTIES WOULD BE A COMPELLING NEED TO PROTECT THE CONSUMING PUBLIC AGAINST UNFAIR TRADE PRACTICES. THE ADDENDUM STATEMENT TO THE BILL SEEMS TO REINFORCE THIS OPINION BY RELYING UPON CONSUMER PROTECTION AS JUSTIFICATION FOR THE BILL.

EARLIER TODAY YOU HAVE HEARD FROM A RECOGNIZED CONSUMER ADVOCATE, MR. CHARLES IRWIN, WHO EXPRESSED THE OPINION THAT THIS BILL IN NO WAY SERVES THE INTEREST OF THE CONSUMER PUBLIC. I WOULD LIKE TO EMPHATICALLY ENDORSE THE POINTS MADE BY MR. IRWIN IN HIS PREPARED STATEMENT. FURTHER, I SHOULD LIKE TO EXPLAIN WHY I FEEL THIS PARTICULAR LEGISLATION IS NOT IN THE INTEREST OF EITHER THE GENERAL PUBLIC OR THE INDEPENDENT SERVICE STATION OPERATOR, PARTICULARLY THE MANY WHO OPERATE UNDER LEASING CONTRACTS WITH THEIR MAJOR OIL COMPANY SUPPLIERS.

FIRST, IF THIS BILL BE ENACTED, I AND OTHERS LIKE MYSELF, WHO ARE LESSEE/OPERATORS OF SUPPLIER OWNED PREMISES WILL BE FORCED INTO THE POSITION OF EITHER PURCHASING THE PROPERTY FROM OUR SUPPLIER, OR NEGOTIATING A LEASE CONTRACT WITH A THIRD PARTY WHO WOULD PURCHASE THE PROPERTY. EITHER

OF THESE ALTERNATIVES MUST INEVITABLY RESULT IN INCREASED COSTS TO THE CONSUMER.

WERE I TO OPT FOR THE FIRST ALTERNATIVE, PURCHASE OF THE PROPERTY FROM MY SUPPLIER, I WOULD OF NECESSITY BE FORCED INTO A FININICAL ARRANGMENT INVOLVING A SUBSTANTIAL MORTGAGE COMMITMENT. IN TODAY'S MONEY MARKET WITH THE HIGH RATES OF INTEREST BEING IMPOSED UPON SUCH LONG TERM LOANS, MY OPERATING COSTS WOULD BE SO MATERIALLY INCREASED THAT I WOULD BE REQUIRED TO INCREASE PRICES TO THE CONSUMER IN ORDER TO ABSORB THESE COSTS.

ON THE OTHER HAND, WERE I TO OPT FOR THE SECOND ALTERNATIVE, LEASING FROM A THIRD PARTY, MY RENT EXPENSES WOULD BE FIXED AT A FIGURE CALCULATED BY MY LANDLORD TO PROVIDE HIM WITH A REASONABLE RENT ON HIS INVESTMENT. SUCH A FIXED RENTAL, AS OPPOSED TO A FLEXIBLE RENT BASED ON BUSINESS VOLUME AS I NOW ENJOY UNDER MY LEASE ARRANGEMENT WITH MY SUPPLIER, WOULD TEND TO INCREASE MY OPERATING EXPENSES TO THE POINT WHERE I WOULD HAVE TO AGAIN INCREASE COSTS TO THE CONSUMER IN ORDER TO ABSORB THOSE ADDED EXPENSES.

AT THE PRESENT TIME, UNDER OUR EXISTING LEASE CONTRACT THERE IS A MUTUALITY OF INTEREST IN THE OPERATION OF MY STATIONS BETWEEN MYSELF AND MY LANDLORD WHEREIN IT IS IN BOTH OF OUR BEST INTEREST TO RELATE THE AMOUNT OF MY RENT TO BUSINESS VOLUME, THIS ARRANGEMENT MAKES IT MUTUALLY ADVANTAGEOUS TO MAINTAIN LOWER COSTS TO THE CONSUMER FOR THE PURPOSE OF INCREASING THAT VOLUME. THIS GIVE AND TAKE FACTOR WOULD NOT EXIST WERE I LEASING FROM A DISINTERESTED THIRD PARTY WHOSE SELF-INTEREST COULD VERY WELL FORCE ME INTO THE POSITION OF INCREASING COSTS TO THE CONSUMER.

THERE IS ANOTHER ADVANTAGE TO THE CONSUMER WHICH DERIVES FROM MY CONTRACTUAL RELATIONSHIP WITH MY SUPPLIER, AND THAT IS THE PROTECTION AFFORDED TO THE CONSUMER BY A BRAND NAME BEING ATTACHED TO MY STATIONS. IF MY SUPPLIER IS FORCED TO DIVORCE HIMSELF FROM ANY INTEREST IN THE OPERATION OF MY STATIONS ITS AXIOMATIC THEN THAT I WOULD BE FREE TO PROCURE MY MERCHANDISE SUCH AS GASOLINE, MOTOR OIL, BATTERIES, TIRES, FILTERS, ETC. FROM THE MOST ECONOMICAL SOURCES I COULD FIND. UNDER SUCH AN ARRANGEMENT, I WOULD CERTAINLY EXPECT MY SUPPLIER, A NATIONAL BRAND MAJOR OIL COMPANY TO DISASSOCIATE ITS NAME FROM MY OPERATION IN ORDER TO PRESERVE AND PROTECT ITS OWN REPUTATION. THUS, IN THE LONG RUN I CAN SEE THAT ENACTMENT OF THIS PARTICULAR PIECE OF LEGISLATION WOULD SERVE TO ABOLISH A TIE IN BETWEEN THE RETAIL ESTABLISHMENT AND THE ESTABLISHED NATIONAL BRAND NAMES.

IN THESE TIMES WHEN THE AUTOMOBILE REPAIR AND SERVICE INDUSTRY IS GENERALLY SUFFERING FROM A TARNISHED REPUTATION RESULTING FROM MUCH NATIONAL PUBLICITY ABOUT REPAIR SHOP UNETHICAL PRACTICES I BELIEVE THAT THE BEST INTEREST OF THE CONSUMING PUBLIC WOULD BE MORE LIKELY PRESERVED BY MAINTAINING RATHER THAN DESTROYING THE RELATIONSHIP BETWEEN THE SERVICE STATION OPERATOR AND THE BRAND NAME DISTRIBUTOR.

IF THIS RELATIONSHIP IS DESTROYED A CONSUMER WHO FEELS HE HAS BEEN MISTREATED BY A RETAILER HAS NO VIABLE RECOURSE OTHER

THAN THE COURTS WHEREAS WITH THE BRAND NAME ASSOCIATION BETWEEN THE RETAILER AND SUPPLIER A CONSUMER MAY APPEAL TO THE MAJOR COMPANIES FOR REDRESS.

THE FRANCHISE LAW PASSED IN 1971 ADEQUATELY PROTECTS THE RETAIL DEALER AGAINST UNFAIR AND UNDO PRESSURES FROM HIS SUPPLIER/ LANDLORD SO THAT IN THE ABSENCE OF THE GROSSEST KIND OF MALPRACTICE ON THE PART OF THE RETAILER THE WEDDING BETWEEN RETAILER AND SUPPLIER IS MORE OR LESS PERMANENT AND TERMINABLE ONLY AT THE OPTION OF THE RETAILER.

THIS IS NOT TO SAY THAT THE MAJOR BRAND NAME SUPPLIERS CANNOT PREVAIL UPON THE RETAILER THROUGH FRIENDLY PERSUASION TACTICS TO REMEDY A CONSUMER'S GRIEVANCE FILED WITH THE COMPANY. THE FRANCHISE ACT HAS IN EFFECT MADE NEGOTIATION AND CONCILLATION AS BETWEEN THE SUPPLIER AND RETAILER A NECESSARY FACT OF LIFE AS IT HAS STRIPPED THE SUPPLIER OF THE DICTATORIAL POWERS HE ONCE HELD.

IT IS MY CONSIDERED OPINION THAT SINCE ENACTMENT OF THE FRANCHISE ACT DEALER COMPLAINTS AGAINST SUPPLIERS ARE FOR THE MOST PART THE RESULT OF A FAILURE OF THE DEALER TO APPRECIATE THE VALUE OF THE NATIONAL BRAND PRODUCT NAME WHICH BACKS HIS OPERATION COUPLED WITH A FAILURE TO PERCIEVE THE NEEDS FOR NEGOTIATION AND CONCILIATION IN ANY CONTRACTUAL RELATIONSHIP. THEY SEEM TO WANT A ONE WAY STREET WITH ALL BENEFITS FLOWING TO THEMSELVES. I SUGGEST THAT MORE CONSUMER ORIENTATION ON THE PART OF DEALERS WOULD GO A LONG WAY TO RESOLVING THEIR DIFFERENCES WITH THE SUPPLIER AS WELL AS TO IMPROVE THE IMAGE OF THE BUSINESS.

THE SPECTRE OF COMPANY OPERATED RETAIL OUTLETS FORCING THE

DOWN TRODDEN INDEPENDENT BUSINESSMAN OUT OF THE RETAIL MARKET IS FOR THE MOST PART UNREAL AND WITHOUT SUBSTANCE. THE THOUGHT THAT MY SUPPLIER COULD, AND EVEN MIGHT, ESTABLISH A COMPANY OPERATION IN DIRECT COMPETITION WITH ME DOES NOT CAUSE ANY GREAT CONCERN ON MY PART BECAUSE OURS IS A SERVICE INDUSTRY AND AS SUCH, DEPENDS HEAVILY ON THE PERSONAL RELATIONSHIP AND CONFIDENCES THAT ARE ESTABLISHED BETWEEN THE OPERATOR OF THE SERVICE BUSINESS AND HIS CUSTOMERS. AS AN INDEPENDENT BUSINESSMAN OPERATING WITHIN A COMMUNITY, I AM CONFIDENT THAT I CAN ESTABLISH STRONGER AND BETTER RELATIONSHIP THAT CAN THE REPRESENTATIVE OF A MAJOR OIL COMPANY OPERATING ITS RETAIL OUTLET IN THE SAME COMMUNITY, BUSINESS ITSELF REQUIRES CERTAIN RIGIDITY IN ORGANIZATION AND BUSINESS PROCEDURE. AS AN INDEPENDANT BUSINESSMAN I ENJOY THE FLEXIBILITY NECESSARY FOR ESTABLISHING AND MAINTAINING GOOD PERSONAL AND BUSINESS RELATIONSHIPS. FOR THEIR OWN INTEREST I SINCERELY HOPE THAT MY SUPPLIER WOULD NOT BE SO FOOLISH AS TO RISK SUCH A VENTURE, IN WHICH HE COULD ONLY LOSE.

IN CONCLUSION, LET ME STATE THAT ENACTMENT OF ASSEMBLY BILL 1411 WOULD RESULT IN INCREASED COSTS TO THE CONSUMER, THE EVENTUAL DETERIORATION OF PUBLIC CONFIDENCE IN NATIONAL BRAND PRODUCTS AND HENCE A DECLINE IN THE BENEFITS DERIVED BY THE RETAILER FROM THE REPUTATION OF THE NATIONAL BRANDS AND LIMIT THE CONSUMERS RECOURSE WHEN HE FEELS HE HAS BEEN VICTIMIZED BY POOR BUSINESS PRACTICES. I CANNOT SEE HOW ANY OF THESE RESULTS WOULD SERVE TO BENEFIT THE GENERAL PUBLIC NOR DO I BELIEVE THAT BUSINESSMEN SHOULD LOOK TO GOVERNMENT TO SOLVE ANY OF THE PROBLEMS WHICH THEY HAVE CREATED THROUGH THEIR OWN BUSINESS INEPTITUDE.

STATEMENT OF CHARLES H. BERRY BEFORE THE ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS COMMITTEE, STATE HOUSE, TRENTON, NEW JERSEY, SEPTEMBER 25, 1974, IN REGARD TO ASSEMBLY BILLS 159 and 1411

Mr. Chairman, it is a pleasure to have the opportunity to appear before the Committee today. I do so in response to your invitation, but for the record let me identify myself. I am Professor of Economics and Public Affairs at Princeton University, and I live at 47 MacLean Circle in Princeton Township.

I have degrees from McGill University and the University of Connecticut, and received a Ph.D. in Economics from the University of Chicago in 1956. From 1955 until 1963 I was instructor in Economics and then Assistant Professor of Economics at Yale University. From 1963 to 1966 I was a member of the senior staff of the Brookings Institution in Washington. I came to Princeton as Associate Professor of Economics and Public Affairs in 1966. I have been a full Professor since 1971.

For the past eighteen years, I have taught and worked in the area of economics called Industrial Organization. Industrial Organization involves analysis of the implications of the structure -- things like concentration or the vertical integration we are talking about today -- for the behavior and performance of industrial markets. At Princeton I teach the basic graduate course that prepares our students for the Ph.D. general examination in this field. I also teach the basic price theory required of graduate students in the Woodrow Wilson School of Public and International Affairs. That course is also designed to train students in the analysis of this kind of problem -- the implications of structure for the economic performance of industrial markets. Both courses include - though the coverage is much more extensive in the industrial organization course - consideration of the impact of antitrust as well as direct regulation on the behavior of industrial markets.

I am or have been a consultant to the U.S. Department of Treasury, the Internal Revenue Service, the Department of Justice, the White House, the State of Connecticut, and, indirectly through work with Mathematica, Inc., in Princeton Junction, for the U.S. Department of Health, Education, and Welfare. I have also been, at one time or another, a consultant to a number of private corporations, including - again for the record, an oil company.

I am the author of two books - the second scheduled to appear in late November titled Corporate Growth and Diversification - and a number of articles both in law journals and professional journals in economics. I am a Director of the National Bureau of Economic Research.

Let me discuss A-1411 - which I take it is the major bill - first. Let me also stress that I speak as a professional economist in response to an invitation from the Chairman of this Committee, and not of a representative of any special interest group, or in the interests of any group other than the people of New Jersey and the people of the United States.

I would oppose the enactment of A-1411. I would oppose it for two reasons. First it would not accomplish what it seeks to accomplish. Second it would carry with it restrictions capable, in my judgment, of impairing, not improving the functioning of those markets that bring to us the motor fuel whose availability - or recent lack thereof - has apparently stimulated the drafting of this Bill.

Let me be more specific. The STATEMENT accompanying the Bill indicates the cause of concern in the following way:

Many independent service stations, garages and other retail dealers of motor fuels have already been forced out of business. Consumers have been subjected to gas lines, higher prices, and a daily concern over whether or not they can obtain enough gas to carry out essential regular activities. Yet, the profits of the major oil companies have soared upward.

Looking at the recent past, and apart from minor quibbles over the meaning of words like "many," I would not dispute any of those statements. Service stations have closed, gas lines and gas anxiety were present, gas prices and oil company profits have soared. That is clearly true. The issue is why.

A-1411 appears to be premised by the assumption that vertical integration between distributors and retailers in New Jersey was responsible -- at least in part -- for those consequences in New Jersey. And that is just not so. Every last one of New Jersey's retail service stations could have been totally independent and under the conditions of the last year and a half we would still have seen gas lines, station closings, rising prices and lots more profits for the major oil producers. Certainly three of those were a straightforward consequence of the reduced availability of foreign oil combined with price controls. Initially we had a shortage. More oil was demanded than was supplied. Normally, under those circumstances, prices go up. Price controls held them down. We rationed by gas lines rather than by higher prices. As the controls were relaxed, prices went up. We rationed by higher prices and the lines went away. The higher prices meant higher profits for petroleum producers - not ^{by virtue of their vertical integration to retailing but} by virtue of their ownership of production facilities here or elsewhere. Arab profits went up too, and there are, for example, no OPEC operated stations in New Jersey so far as I know.

The question of station closings is more complex. Let me say at the outset that I have no pat answer on this one. There are a number of factors. First, with shortages, there would be no incentive for major refiners to offer discounts or other inducements to independent distributors - in other words, to sell in the spot market at less than the tank wagon price. When you sell all you can at the prevailing price you don't cut your price. The effect would be to dry up the spot market, and that would put a squeeze on the independents. But notice that the reason for the squeeze is the system of price control, not the system of integration.

But second, those controls would hurt in another way too. The controls caused lines, shortened hours, congestion, and may have severely cut back in the ability of some stations to carry on the normal pit work that is also an important source of service station income. That can cause closings too, and remember in addition that the total quantity of gas pumped decreased as well.

Thirdly, while I do not know the extent to which the allocation rules, and the behavior of pass-through provisions, have affected profit margins in petroleum retailing, it is entirely possible that retail margins are higher than they would be in the absence of controls, and if so there would be another distinct incentive to refiners to enter retailing to the detriment of independent marketers. But again the source of the problem is the controls, not the structure of the oil industry. As the controls come off - as I think they should - these distortions will disappear. And in the meantime, higher prices -- or gas lines if the controls are re-tightened -- will not disappear with enactment of A-1411.

What would enactment of A-1411 accomplish? That is a little unclear. For example, paragraph 2 would prohibit "...any ownership or controlling interest whatsoever in any person engaged in the retail sale of motor fuel...." If that is interpreted to prohibit only the direct ownership of service station outlets by distributors, and to permit the leasing or franchising of service stations by distributors (major producers), the effect in terms of the incentives mentioned earlier is presumably not much. One can accomplish almost as much with an appropriate lease agreement as with direct ownership. The major effect I should think would be to make it a little more difficult for small independent marketers (for many of those would be "distributors" within the terms of A-1411) to compete successfully with the retailers of branded gasoline. The result of that, of course, would be somewhat higher margins on average for the retailers of branded gas.

But suppose A-1411 were also to prohibit, as it may, or with amendment as it certainly could, even the leasing of service station facilities by distributors or the sale of franchise agreements. What then? That is a little more frightening. For if, for example, large segments of the retailing of gasoline within the State, or within areas of the State, were to come under common ownership, and if, with that common control retail margins were increased with increased gas prices to consumers, A-1411 would prohibit any distributor, major or minor, from entering that market to compete and bid down those retail margins. In that regard, A-1411 far from increasing the openness of competition in petroleum retailing with the State could, and in my judgment would, reduce it.

A-1411 is a restraint of trade. It restrains, notice, any person from importing and selling at retail any motor fuel in the State of New Jersey. It should not be enacted.

Interestingly enough, I have the same reaction to some of the provisions of A-159. Unfortunately, my understanding is that those provisions are already contained in the statute A-159 seeks to amend. But let me comment on those provisions anyway. A-159 would continue to restrict, by section 201 (c), the right of any retailer of motor fuel to advertise on his premises the price at which motor fuel is sold other than by display on the pump or dispensing equipment itself. Whom does that adversely affect? Clearly those who would seek to compete through lower prices and lower retail margins. Once again the effect, if any, is to lessen the effectiveness of price competition in the retailing of petroleum products.

Although I hold no brief for the aesthetics of games of chance in the retailing of any product, it seems clear that the same thing can be said of section 201, paragraph (f) that prohibits that form of inducement in the retailing of petroleum products.

Paragraph (h), as I understand it, requires any buyer of gasoline on the spot market to carry the sign NO BRAND on his pumps. Such a requirement further strengthens the market position of the retailers of the branded products of the major refiners.

The stated purpose of the bill - A-159 - is

To permit greater competition among motor fuel dealers, thereby gaining an advantage for the public through a decrease in the cost of motor fuel.

These provisions - section 201, paragraphs (c), (d), (f) and (h) - in combination with A-1411, would appear to be designed to accomplish just the reverse. A-159 could be improved

As a final comment, Mr. Chairman, it may be noted that my comments have focussed on competition among gasoline retailers and not on competition among gasoline producer-refiners. And that is correct. But that is because, for reasons that I have indicated, the State of New Jersey can importantly affect the former, whereas I am afraid the reality of the matter is that the structure of the national industry of petroleum production and refining is a matter of federal rather than State jurisdiction. I do not mean to imply that at that level I like everything I see, for indeed, I do not. But as I have indicated, I do not believe that enactment of A-1411, in particular, will help.

I would be happy, Mr. Chairman, to try to answer any questions the Committee may have.

Mobil Oil Corporation

P.O. BOX 839
VALLEY FORGE, PENNSYLVANIA 19482

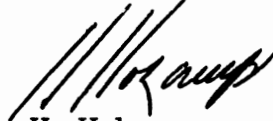
September 23, 1974

Members
Committee on Commerce, Industry & Professions
New Jersey Assembly
Trenton, New Jersey

Honorable Sir:

Enclosed please find statement on behalf of Mobil Oil Corporation
in opposition to Assembly Bill 1411. We appreciate the opportunity to
express our views on this bill.

Very truly yours,



H. Hokamp,

Regional General Manager

Statement

of

Mobil Oil Corporation

in opposition to

Assembly Bill 1411

Submitted to the
Committee on Commerce, Industry
and the Professions

New Jersey Assembly
Trenton, N. J.

September 25, 1974

Assembly Bill 1411, as we read it, will prohibit a company, such as Mobil, from engaging in the retail sale of motor fuels. Simply put, it will prohibit Mobil from operating a service station which it owns with salaried managers.

Mobil is strongly opposed to Assembly Bill 1411, since it firmly believes that no business entity should be singled out and prohibited from operating its own retail facility when, in its judgment, sound business reasons warrant such policy. At the present time Mobil has a number of salary manager service stations in New Jersey. This is a paradoxical situation, for it is contrary to Mobil's previous marketing policy in New Jersey.

What caused Mobil to change its marketing policy in New Jersey? Very simply, it was enactment of the New Jersey Franchise Practices Act in 1971. This act forced Mobil to reevaluate its previous practice of marketing its motor fuels principally through independent dealers. When Assembly Bill 2063, the bill enacting the Franchise Practices Act, was before the Governor, Mobil said in a statement to the Governor, in opposition to the bill, that "Mobil's investment in a single service station property, together with improvements, may amount to a quarter of a million dollars or more in today's market. By operating through independent businessmen this facility is thereafter leased to a dealer . . . Prudent management requires that Mobil retain the right to make basic marketing decisions with respect to this substantial investment. It must, therefore, retain

the right to discontinue doing business with a dealer who, through lack of business acumen or unwise business practices, jeopardizes that investment, or adversely reflects on Mobil's reputation and the reputation of the thousands of other Mobil dealers across the country."

We further stated that the New Jersey Franchise Practices Act would "deprive Mobil of this basic and legitimate right by granting the dealers a 'vested right' in this investment. This (Act) will convert a leasehold interest for a fixed period into a perpetual lease. Under these circumstances, (the Act) compels Mobil to completely reevaluate its practice of marketing product through owned facilities by independent lessee dealers. Two obvious alternatives suggest themselves: (1) terminate all existing relationships with lessee dealers in New Jersey and operate these service station outlets with Mobil employees; (2) drastically modify Mobil's present lease and supply contracts to provide for additional controls and defined standards of dealer performance."

Continuing, Mobil said that "either of these actions will obviously severely affect present lessee dealers and paradoxically this negative effect will accrue because of a legislative enactment designed to protect the service station dealer."

After the Franchise Practices Act became law in New Jersey, Mobil reassessed its marketing policy for New Jersey and determined that in order to protect its substantial investments in commercial properties in New Jersey, certain locations should be operated by salaried managers.

This policy decision was thereafter implemented and now becomes the focal point of criticism prompting the proposal of additional legislation which, in our judgment, will merely further compound the drastic anti-consumer and anti-competitive implications inherent in the New Jersey Franchise Practices Act.

In Mobil's statement in opposition to the Franchise Practices Act, Mobil further stated:

"(The Act) is self-interest legislation, which will ultimately prove to be detrimental to the consumer. It will encourage a franchisee to render poorer service at higher prices, secure in the knowledge that his supplier cannot terminate or otherwise fail to renew his franchise without risking lengthy litigation under a statute couched in vague and imprecise language. It will reward inefficiency. A market place populated with complacent or inefficient dealers will become devoid of competitive pressures characteristic of the free enterprise system, all to the distinct disadvantage of the consuming public."

We firmly believe this earlier prediction to be sound. It will become doubly so if oil companies are denied the right to elect to company-operate retail facilities. The restrictive Franchise Practices Act, coupled with a prohibition against company-operation, will stagnate the maintenance and upgrading of existing retail outlets, and foreclose development of new and modern facilities to service the motoring public of New Jersey.

In order to provide a service station facility that will economically support an independent lessee dealer, it is generally necessary to invest a quarter of a million dollars or more for key locations in today's market. Through the years it has proven extremely difficult, if not impossible, for an individual dealer or small businessman to make such a huge investment. Therefore, oil companies have done so with a view towards leasing the completed facility to an independent dealer. Destroying oil company incentives to continue to make these substantial investments will foreclose prospective dealers from the attractive small business opportunities historically afforded them by the oil industry.

In short, Mobil respectfully suggests that the public interest of the citizens of New Jersey would be better served if the New Jersey Legislature reconsidered the basic anti-consumer and anti-competitive features of the present New Jersey Franchise Practices Act, with a view towards making corrective amendments to it, rather than by further compounding the present situation by enactment of Assembly Bill 1411.

#

September 25, 1974

Summit Service Center
105 Spring Valley Road
Montvale,
New Jersey 07645

September 19, 1974

Mr. Jerry M. Ferrara, Executive Director
New Jersey Gasoline Retailers Association
66 Morris Avenue
Springfield, New Jersey 07081

Dear Mr. Ferrara:

Persuant to our last conversation, I am sending you the following background information regarding my experiences with Mobil Oil.

I spent thirteen years as an employee of the Mobil Corporation. During this time I had sales territories on Long Island, in The Bronx and in New Jersey. At one point I was assigned to Division Headquarters in New York on special assignment and then I returned to New Jersey as this area's Training Instructor. As Training Instructor, I was responsible for teaching all aspects of ~~the~~ service station business to new Mobil employees and potential dealer personnel in the area.

It became apparent to me before long that a stunning dichotomy exists between the levels of management in the Mobil Corporation. While top management was bestowing its blessing on "how-to-be-effective-concerned-constructive-creative etc." sales persons emphasizing dealer motivation to increase sales, local management was concerned only with the end result - not the means of achieving it. With district management it was simply a case of "making the numbers". Salesmen were told, "TELL them - don't sell them" (and be sure to take the dealer outside so he can't tape you!). If an attempt was made to present the dealer's side of a problem the response was always, "Trying to run some kind of a popularity contest? Whose SIDE are you on?" The reality of life was not the Dale Carnegie-MPMS approach but rather the savagery of a battleground. In sales meetings dealers were frequently referred to as "the animals". Quotas were to be made at any cost. As a salesman, I could not in good conscience dump a load of tires on a man who really wasn't going to be able to move that many in the context of the time terms. Management's response was that if he folded he could be replaced and that they were covered for any losses. Many of these dealers never had a chance and many had the potential.

I started out as a Training Instructor preaching that the good dealer builds his own security. Eventually, after watching some top dealers forced out because they didn't knuckle under to the demands of a neophyte salesman, I realized the fallacy of this belief.

In 1968 I decided to go into business ^{for} myself. Since my training and experience were in the area of service station management, I acquired a year's lease on a Mobil station in Montvale. This outlet had been producing 480,000 gallons a year. By personally working this station close to fifteen hours a day seven days a week, I built gallonage in that first to 980,000 gallons - far exceeding Mobil's TWENTIETH year projection of 750,000 gallons.

I was the highest volume producer in that area. This was achieved by tremendous personal sacrifice.

During this time I was approached by the Dealer's Association as a potential member. Secure in my belief that Mobil would deal with me honorably as a former employee and as a top product retailer for them, I didn't feel that membership would be of value to me. Obviously, I made a serious error.

In 1972 the Mobil Oil Corporation began to acquire complete control over their major outlets in the New Jersey-Metropolitan area through their mandatory contract plan. As leases came due for renewal, competent, award winning dealers, some of whom had represented Mobil for decades, were faced with a choice - sign as a contract dealer or get out. Under the Contract Plan Mobil had complete control. Price and profit were theirs - a very fortuitous arrangement when the so called gas shortage occurred last February.

When Mobil first approached me regarding their Contract Plan, they inferred that of course in my case it would just be a formality if I signed and that nothing would change. I have supportive memos regarding this attitude. When my lease terminated and I remained opposed to the Contract I was told finally that if I didn't sign my resistance would be met with eviction and legal sanctions. I appealed to Harry Bade, Vice President-Marketing to make an exception and class me in the highway station group, which were to remain independent, on the basis that my operation like theirs was gasoline oriented rather than service oriented. My letter was referred to local management but to no avail.

I have a wife and four children to support. At this time my older son was just about to start college. I am a man who has poured his life's blood into building a really good business. It is hard to turn your back on something that is a part of you especially when you have to consider the needs of a family. I was finally coerced - and I do not use that term lightly-into signing the Contract largely on the basis of certain concessions that made it somewhat more palatable. I noted under my signature that I was signing the Contract under duress. I never received an executed copy of the contract although I made numerous requests for one. The concessions noted above were forthcoming during the first six months that the contract was in force but then they were suddenly terminated. When I had an attorney make inquiries, I was informed that the contract couldn't be found and it was basically my word against theirs.

One of the factors that influenced my signing the Contract was Mobil's assurance that all dealer holdouts would be in court within three months and would be stripped of their locations. It became apparent that Mobil had no intention of prosecuting these dealers and in one case the corporation avoided confrontation with one dealer who was in a position to create organized opposition by "forgetting" to get his lease cancellation notice to him in the legally constituted period.

Over and over Mobil has abused its dealers. An acquaintance, a most respected clergyman in his community, became a contract dealer during the summer of 1972. He was continually harassed and intimidated by the Corporation and came away from the experience appalled by Mobil's inhumanity to man. He would be delighted to testify regarding his experiences..

I have been subjected to continual harassment - constant audits, implied threats, gasoline shortage (restored only when I started proceedings aimed at an injunction). At one point over thirty letters were sent to the Corporation regarding my extended hours of service in response to the gas shortage. I opened my station at 4:00 A.M. to take care of customers making it possible for them to get to work on time. The company did not mention this to me but a complaint regarding repair work on a car that had been done over a year ago - a car owned and operated by a known teenage dragster - was made an issue. Again it was implied that this could serve as grounds for termination if I caused any trouble.

During the gas shortage when the FEO authorized that second increase of three cents for dealers not under the refinery code, Mobil picked up that three cents in their Contract outlets. Not one cent went to the dealers and there was no reduction in the base price of gas. Considering the spiraling profit profile of this corporation this only substantiates my contention that it has only the most callous indifference for the man in the street.

That is why I am willing to testify. This self-perpetuating giant is - in spite of its honeyed public interest ads in the New York Times - totally indifferent to the plight of the little man.

When I asked what more they could ask of me, one of their largest producing dealers the response was, "How high is up?" The attitude of "If you don't like it - get out!" has caused good men who have invested many years of their lives building a business to bow out.

The Mobil Corporation debauches its own employees. It attempts to strip them of any moral sensitivity. The incredibly high turn over of sales personnel may reflect the salesman's distaste for this mode of doing business. In truth, the salesman is as harassed and as intimidated by local management as the dealer.

Mobil has succeeded in stripping the small independent business man of any chance at free enterprise. The dealer is regarded as just another piece of equipment in the outlet and is given no opportunity for independent decision making. I am presently and have consistently pumped 10-15% over allocation yet I have just received an ORDER to maintain hours of operation from 6:00 A.M. to 12:00 Midnight. I am in a relatively isolated location. My hours are until 10:00 P.M. when The Garden State Farms outlet across the street closes. When I remained open after this in the past, this location was subjected to armed robbery on several occasions. Miraculously, no one was seriously injured. It is obviously of no consequence to Mobil that this policy could endanger lives. This two extra hours certainly are not going to be profitable. Incidentally, I am responsible for any losses due to theft.

I feel that the buck has to stop here with me. I know that by testifying Mobil will never rest until I'm out. I am a person of sincere religious and moral convictions and these convictions cry out against Mobil's essential inhumanity.

Yours truly,

Thomas G. Noyes

Statement of Dr. M. Marcus on Assembly Bill 1411

My name is Matityahu Marcus and I reside at 771 Cranford Avenue, Westfield, N.J. I hold a Ph.D. degree in Economics from Brown University. I am Professor and Chairman of the Department of Economics, Director of Graduate Studies, and Director of the Bureau of Economic Research at Rutgers University. I have been teaching courses in industrial organization, price theory, financial theory and the economics of regulated utilities. I have long been concerned with aspects of industry structure and behavior, and have published in various economic journals including The Review of Economics and Statistics, The Journal of the American Institute of Planners, Land Economics, The Journal of Industrial Economics, The Canadian Journal of Economics, The Southern Economic Journal, The Antitrust Bulletin, Bulletin of the Oxford University Institute of Economics and Statistics, Public Utility Fortnightly. I have testified on rate structure and financing of several utilities before the Alabama Public Service Commission, the New Jersey Public Utilities Commission, the New York State Public Service Commission and the Federal Communications Commission.

I would like to thank you Mr. Chairman and members of the Assembly Commerce and Professions Committee for writing me to present my views on the proposed bill. The statement which follows represents my own views and does not of course necessarily reflect the views of any of the institutions at Rutgers with which I am associated. I would however like to acknowledge the research assistance provided by the Bureau of Economic Research at Rutgers.

Because of the limited time and the desire of many individuals and organizations to have an opportunity to present their views before this Committee, my statement will be brief. I will be happy, of course, to answer any questions and to elaborate on the rationale underlying my position at the pleasure of the Committee.

Recent developments have justifiably focused attention upon the organization and behavior of the oil industry at all levels of its operations. However, because of the pervasiveness, size, and complexity of the industry it is understandable that the primary thrust of the concern of government should be channeled through federal agencies such as the Federal Energy Administration, the Federal Trade Commission, and the Antitrust Division of the Justice Department. The concern of this Committee and other state agencies with the plight of consumers is laudable.

In my evaluation of the desirability of this bill I have sought to focus exclusively on the interests of consumers. Although the Committee and the Assembly may also wish to consider the interests of gasoline retailers and of oil companies, I am of the opinion that legislation with substantial economic impact -- and Bill 1411 certainly falls in this category -- should primarily if not entirely reflect the interests of consumers. This is particularly true in the consideration of a bill dealing with the oil industry; for it is fairly common knowledge that both oil companies and the average gasoline dealer have benefitted financially from the sharply higher retail prices of gasoline now paid by the public.

It would be fairly simple to offer a broad definition of what are the interests of consumers; few would dispute the proposition that it is in the interests of New Jersey gasoline consumers to have a choice of service arrangements and that these be readily available -- in different locations and at all times of day -- at the lowest possible cost consistent with the quality of service offered. Thus, it would seem to me that the desirability of this bill should be assessed in terms of its effects on:

- a. Retail gasoline prices.
- b. Ready and convenient availability of gasoline station services.
- c. Diversity of service and marketing options offered to the public.

It would be impossible nor necessary to consider in the present framework all the factors which determine the final retail price of fuel. For simplicity, let me assume that the price to the consumer is determined by the Company's tank wagon price to the dealer and the added dealer's margin. Very little can, unfortunately, be done at the individual state level about the company's tank wagon price with one major qualification. State authorities may want to encourage the maximum possible competition by ensuring that potential entry of independents is not made even more difficult and risky than it is at present. I return to this subject below.

It should be recognized that high dealer's margins are not in the interest of the oil companies. While obviously interested in increasing their revenues and profits, oil companies are aware that a high dealer's margin may restrict sales, and hence the companies' profitability. The arrangement of company owned/leased stations which

are operated by dealers is consistent with this view. Such a structure permits competition which would tend to check the rise in dealers' margins while at the same time encourages dealers towards greater efficiency and cost reduction efforts. In contrast, company-operated stations would not appear to be as desirable to the major companies; salaried managers lack incentives and the pricing flexibility of these stations is further reduced due to fear of antitrust difficulties if they were to reduce prices below those charged by independent dealers. The table which follows supports this analysis. Company-owned and operated stations are hardly a factor of importance for the 'majors'.

The competitive pressures at the retail level -- most important for restraining price increases and for service quality improvements -- are obviously dependent on the number of gasoline stations in the market and on the assumption that they behave non-collusively. I strongly fear that, if enacted, the bill may result in a significant reduction of the number of gasoline stations; it is very questionable whether dealers will be able to finance the purchase of stations currently owned by oil companies. It is quite likely that not only will there be fewer stations, but that ownership patterns after divestiture will be far more concentrated. Such developments could adversely affect the levels of competition among retailers.

The importance I attach to the number of retail stations is of course consistent with the concern of the proponents of the bill that the practices of oil companies have forced some dealers out of business. Certainly, discriminatory marketing practices of oil companies which have these effects should not be allowed and the long run interests of

Ownership and Operation Patterns for Various Major Oil Companies
in New Jersey, 1974

<u>Name of Company</u>	<u>Company Owned or leased Dealer Operated</u>	<u>Company Operated</u>	<u>Retailer Owned or leased</u>	<u>Jobber Stations</u>	<u>Total</u>
Exxon ⁽²⁾	788	42 ⁽³⁾	397	55	1,282
Sunoco	504	(1)	167	122 ⁽⁴⁾	793
Texaco	250	0	140	270	660
Getty	194	(1)	161	60 ⁽⁴⁾	415
Atlantic Richfield	240	(1)	156	(1)	396
Shell	319	1	39	(1)	359
Gulf	343	3	(1)	50	632
Amoco	383			289	672
Chevron	175	--	12	--	187

Source: Correspondence with companies.

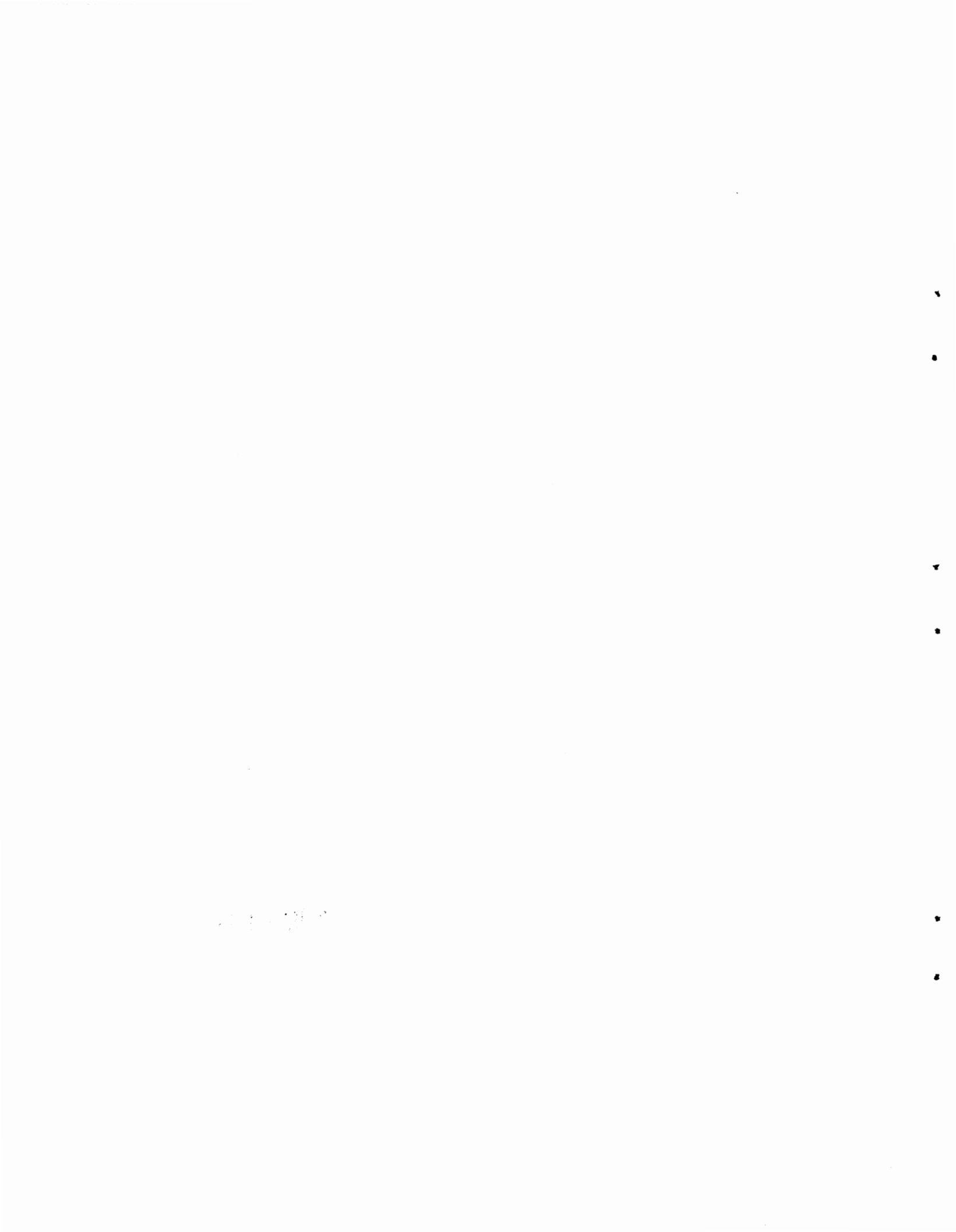
- (1) presumably none; no specific reference was made by the Company to this category.
- (2) Data for 1973.
- (3) Of these, 16 are "Turnpike" stations acquired by competitive bids.
- (4) The 122 Sunoco stations served by jobbers and the 60 Getty stations are served by 5 jobbers each; other companies did not specify the number of jobbers.

consumers require that retailer owned/leased stations and jobber stations continue to be supplied at non-discriminatory rates. Although I am told that FEA allocation rules bar such discrimination, this matter must be kept under continuing surveillance of the appropriate state agency. However, I do not consider the proposed bill to be the appropriate instrument for meeting the objectives of non-discriminatory marketing. Where supplies are tight divestiture would not necessarily remove the incentives for discrimination. On the other hand, when supplies are plentiful it is not in the interest of any individual oil company to withhold supplies from independent retailers or jobber-owned stations. Furthermore, ensuring non-discriminatory supply arrangements probably can be more efficiently achieved through specific directives, and would not justify as far-reaching a bill as 1411.

Lower retail prices, better service quality, and variety are not, however, merely a result of a large number of stations. Major productivity gains and the subsequent cost savings and price reductions have historically resulted from the introduction of technological and managerial innovations. No one can, of course, foresee when, where, and who will introduce such innovations in any particular industry. Rigid ownership restrictions tend to impede the flow of innovations and should not be undertaken without clear demonstration that they will significantly benefit the public. In my view, the evidence does not suggest that the benefits of the proposed bill will offset its potential harmful effects on competition through innovation and new entry. A case in point is the successful retailing operations of Hess in this state. Hess presently enjoys a share of about 8% of the market. This has been

achieved through a marketing innovation which called for company-operated stations. As previously noted, I do not believe that the Hess operating model would suit most of the "majors". However a firm seeking to retail a new brand faces considerable risks. In order to reduce these risks new entrants may pool these risks by spreading them among the various vertical stages of the industry.

In conclusion, Mr. Chairman, a bill requiring major restructuring of the industry should be undertaken only as a last resort and only if its potential benefits are clearly demonstrated. I do not believe that Bill 1411 meets these requirements, and I would hope that it not be enacted at this time.



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