

PUBLIC MEETING
of
ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION SUBCOMMITTEE
on

~~ALCOHOLIC BEVERAGE CONTROL~~

Law Enforcement

Held:
August 17, 1983
Room 348
State House Annex
Trenton, New Jersey

MEMBERS OF SUBCOMMITTEE PRESENT:

Senator Donald T. DiFrancesco, Chairman
Director John F. Vassallo, Jr., Vice Chairman
Major Edward R. Martin
Mr. J. Ross Bevis

ALSO PRESENT:

Mr. Anthony Napodano
Mr. William Jerlat
Mr. Leo Bromley
Mr. John J. Garrity
Mr. John McCaffrey

Aggie Szilagyi, Research Assistant
Office of Legislative Services
Secretary to the Commission

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SENATOR DONALD T. DiFRANCESCO (Chairman): I would like to welcome everybody who has come down here on such a lovely day. I am sure you feel the same way I do on such a beautiful day, so, I really don't want to keep you any longer than necessary.

First, I would like to ask Aggie to take the attendance of the members of the Commission. I think she has already taken the attendance. Do you have that down, Aggie?

MS. SZILAGYI: Yes.

SENATOR DiFRANCESCO: My name is Don DiFrancesco. I am introducing myself for the benefit of those of you who have never met me before. I believe that includes Major Martin.

I am filling in -- well, I am really taking over for Senator Saxton, who is not able to fit further meetings into an already busy schedule, other than legislative meetings, since I have given him a couple of other committees to work on. So, in an effort to try and expedite this, I decided that perhaps, with Senator Costello's permission, I will do the best I can on this Subcommittee, and work with you people on the law enforcement end of the Alcoholic Beverage Control Study Commission.

If something should come up in the future, with respect to my personal situation, I suggest we appoint a Vice Chairman to this Subcommittee. I would suggest Mr. Vassallo to fill the post of Vice Chairman, since the enforcement end has a great deal to do with his Division. If you have no objection, Mr. Vassallo, I would like to make that suggestion. If no one has any objection, I would like to formally make that part of the record.

In the event that I cannot attend the next meeting, or if I come late, or whatever -- I don't know what will be happening in the fall with respect to legislative matters -- Mr. Vassallo will chair the Subcommittee in my place.

Aggie is going away for three weeks, and when she returns we want to have another meeting. She is taking a vacation that has been long in the planning process -- Yugoslavia, believe it or not.

Not being an original member of the Commission, I read through the material Aggie sent to me. I now have all this other material that she has left with me, which I will try to read through

while she is away -- most of it anyway. A lot of it includes the statutes that presently exist.

I notice that one of the things the Subcommittee has requested is that no bills be moved with respect to the Alcoholic Beverage Control Statute until this Commission has completed its work, unless, of course, there is a necessity for such action. I am sure we can't enforce that, but the request has been made of both the Speaker and the Senate President, by letter. This is generally a request that is made by any Commission studying the statutes. So, from my standpoint, as a legislator, we will try and honor that request, and we will work closely with Commissioner Vassallo on anything he may need immediately.

Yes, Jack?

DIRECTOR VASSALLO: In that vein, I mentioned one of the bills at the licensing Subcommittee meeting, because it is on the licensing list. Did the letter ever go out on that, Aggie?

MS. SZILAGYI: Yes. I am waiting for the next summer session so I can present that to the members of the Legislature.

DIRECTOR VASSALLO: Oh, okay. Because there is one bill that has been playing games between the Governor's office and the Assembly because of errors.

SENATOR DiFRANCESCO: Well, I think we are going to be meeting again in the beginning of September, Jack.

DIRECTOR VASSALLO: There is also a bill that is going to be introduced by Assemblyman Marsella as soon as you go back into session, concerning the licensing of limousines. I will discuss this further at the Licensing Subcommittee meeting, the next time it is held. But, that is going to be one bill that has some urgency attached to it.

I have some correspondence that Senator Laskin sent to the Attorney General concerning it, and I would like to go into that whole section because law enforcement comes into that also.

SENATOR DiFRANCESCO: Okay.

DIRECTOR VASSALLO: We can do that a little later.

SENATOR DiFRANCESCO: The only person I have heard from -- and I saw this today for the first time -- with respect to an agenda on matters that should be taken under consideration, was Norman Feldman.

He sent a memo to Aggie, dated August 11, 1983, wherein he submits various questions, or considerations, for this Subcommittee on enforcement. All of you should have that. I believe you have it before you.

Jack, maybe you can review this first. Perhaps you would want to give an overview of just how you operate now on the law enforcement end. What would you suggest?

DIRECTOR VASSALLO: Fine. Maybe I should do that now.

SENATOR DiFRANCESCO: Because I don't know that I have had enough time to look at all of this material.

DIRECTOR VASSALLO: Fine. Let me give you an overview on it. Major Martin, I am just going to note to you that some of the things I might say are critical of the State Police and their role. Please report my remarks back in the proper vein. It can't be taken out of context. If you have any questions about what I am going to say, please ask me about them, because I am not entirely happy with enforcement and the way it is being handled right now. But, I don't think that is necessarily assigning blame to the State Police. There are many circumstances that fit into this, but it can come across that I am blaming the State Police for the problem.

The Division of Alcoholic Beverage Control, originally the Department of Alcoholic Beverage Control, was a fairly good sized Department, employing about 250 people. That dwindled through the years, although when it became a Division, in 1948, under the consolidation of the new Constitution, it still had a sizeable enforcement arm. That has remained, up to the past three years. Three years ago, or maybe four years ago -- I don't know the exact date, maybe it was 1979 or 1980, somewhere in that time period -- then Attorney General Degnan, pursuant to the powers given to him in Title 52, which allowed him to reassign personnel within the Department, took the ABC Enforcement Bureau and assigned it to the Division of State Police.

Since that time, they have been operating under the supervision of the State Police. What they did was, they superimposed a Captain, Lieutenant, and a commanding unit, on top of the inspectors that were in the Enforcement Bureau. These inspectors had been headed

by the Deputy Director of the Division of Alcoholic Beverage Control. I do not believe the Deputy Director of Enforcement was transferred at that time. There was a retirement or something. I really don't know the circumstances surrounding that.

One of the problems that I know about, from discussing it with enforcement personnel who were in the same office up in Newark, was, it took away their chance for advancement to head the Enforcement Bureau. They can't ever become Lieutenants or Captains because they are not State troopers.

There have also been questions raised by the State Police -- and I think in many respects rightfully so. The questions raised concern the fact that the ABC enforcement personnel only derive their powers under Title 33; and, therefore, they do not have general police jurisdiction -- criminal jurisdiction -- under Title 2(C). There is a bill being prepared that will cover that. I saw a draft of the bill, and I objected to it. It would give full authority to the Superintendent of the State Police, and take it away from the Director, totally.

The Enforcement Bureau, I think, is being treated as the kid sister of the State Police. And, an example of this involves the clerical personnel, and the funding process. It does not receive any direct funding. It comes under the total budget of the State Police. The portion of the budget allotted for enforcement, when it was the ABC Enforcement Bureau, was transferred, lock, stock, and barrel, to the State Police.

The State Police was assigned the Enforcement Bureau within the CIS unit -- the Criminal Investigation Section. Last year, when they had budget cuts and there were clerical personnel cuts, they took five of the eleven out of the Enforcement Bureau. This has left the ABC Enforcement Bureau with three, although I understand somehow they have just gotten a fourth one.

The number of personnel has dwindled. There are vacancies. Replacements are not being made. It comes down to a total of 72 or 73 active inspectors, several of whom are going to retire in the near future.

Why I am summing all this up is, enforcement in this State is horrible. Just as an example, I was in Atlantic City yesterday and I picked up a newspaper. Almost every page of this contains advertising space which, in some cases, involves serious violations of the Alcoholic Beverage Law. We have chosen in this State to have strict control, and not allow promotional practices which stimulate consumption.

SENATOR DiFRANCESCO: Does this relate to the discount ads and coupon ads?

DIRECTOR VASSALLO: No, that is different. That allows a rebate. The consumer can buy a bottle and save \$1.00 by trying a new brand. That is limited to one per household. I don't think of that in any way as stimulating sales, or promoting excess consumption. It is going to allow the person who is going to buy a single bottle for a legitimate purpose to try a new brand and save a dollar, if they want to go to the trouble of soaking off the label and mailing it to the company in order to save \$2.00, or whatever it is.

No, I mean things in here which are clear violations, and we just do not have any personnel to do anything about these ads. Someplace in here it says, ten beers for a dollar, or seven beers for a dollar. This is defeating our whole purpose.

If we divide the seventy inspectors, that would work out to about three inspectors per county. During the summer we are trying to crack down on underage drinking, especially in the resort areas. It is taking almost all their time to do that, and other things go unheeded.

Part of the Enforcement Bureau's task includes background investigations for State licensing, criminal investigations of people, and criminal disqualification removals. And, all in all, it is just not leaving sufficient personnel.

Also, I think putting it into the State Police has added a large degree of bureaucracy to it that wasn't there before, from what I understand.

I feel hampered in many respects, where I know there are problems occurring. Sometimes things require immediate action, and I don't have ^{the} ability to call some inspectors in, or call in a deputy director and say, "This is what we want you people to do; it has to be

done immediately." I go through a ritual of asking the State Police if they would be so kind as to undertake this. The response I get is generally very good, within the limited personnel they have.

An inspector will go out and do an investigation, and then he or she may spend the next two or three days preparing a report on the investigation because of the lack of support personnel.

Moneywise, money is derived from the alcoholic beverage industry through fees -- apart from taxes and everything else -- through penalties, through miscellaneous charges we have, and through permit fees. This is more than enough to support the Division of Alcoholic Beverage Control and to support the Enforcement Bureau. It is just that monies are drained away. There is not the emphasis put on it that there should be, and because of that -- I think the industry is aware of this -- ninety-five percent of the industry is going to live by the rules and follow the rules, and the other five percent requires a lot of policing. It is getting out of hand. They take advantage of it.

Mr. Jerlat is in the room. He is a licensee. Mr. Garrity, who represents wholesalers, may be able to add quite a bit as to what they see happening with enforcement.

SENATOR DiFRANCESCO: Well, I am starting from square one, as you know, and the question that Mr. Feldman raised, right on the first page of his memo was: "Who in the ABC is responsible for the enforcement of laws and regulations over which they have authority?" Prior to that he said, "The enforcement authority was transferred to the Division of State Police."

DIRECTOR VASSALLO: That's right.

SENATOR DiFRANCESCO: Aren't the two enforcement authorities the same?

DIRECTOR VASSALLO: Under Title 33, the way it is written, I have the enforcement authority. Obviously, I can't do it alone. I therefore have to ask the State Police to do it.

The State Police has no authority to enforce ABC laws, other than as I delegate this authority to them. I appoint them as the investigators and inspectors, as I am authorized under Title 33 to do, and I have done this.

As I said, they are generally cooperative. The problem as I see it is -- and I am not saying this is good or it is bad; I really don't know -- the superimposing of the State Police/State trooper leadership upon the inspectors, which I think in some respects has demoralized them.

One the other hand, I see the State Police as much better able than I am to train these inspectors, because they are doing general investigation type work. It fits in with police work. It is police work, limited, limited to a certain field.

I really don't have a problem, as such, with the transfer. I have a problem with the effect the transfer has had by removing the Enforcement Bureau from direct contact and control. It has also caused dwindling numbers in personnel because of the drain off that has been required because of State Police needs. They have taken away personnel. In other words, the degree of funding that the State Police has given to the Enforcement Bureau, percentagewise, is not the same as it was when it was transferred three years ago to the State Police. They have cut it. And, I am not going to criticize their reasons for doing so. They may have valid reasons. The State Police obviously has to enforce all criminal laws, and protect the people of the State. And, Colonel Pagano may have very valid reasons for this. He may have to do it because other matters seem to take priority.

I am looking at it from a very narrow scope, since I have one responsibility, the enforcement of Alcoholic Beverage Laws. Colonel Pagano has the responsibility of enforcing all the laws of the State, of which alcoholic beverages is only one.

There has been a lot of comment in the Legislature, and in the industry -- and Mr. Feldman's remarks fit right in with this -- regarding this.

I note in his last chapter, "During the period of ABC's autonomous Enforcement Bureau, the policy was to secure compliance through education, except for violations, such as underage sales, gambling and prostitution. I think we still try to do that.

He may have a good point there, in that the Enforcement Bureau not being under our direct control and supervision is out finding violations, while we with our very, very, very limited

personnel -- meaning myself and a deputy director -- are trying to communicate and teach the industry by advising them that these things are wrong, or can't be done, etc.

He is suggesting that some regulation language be changed, or statutory language be changed. This fits in. Maybe Major Martin has that suggestion from the State Police as to what they want changed. Do you, Major Martin? Have you seen the legislation that they have proposed?

MAJOR MARTIN: Since the meeting we had in your office, Director, I have not been involved in the legislation.

DIRECTOR VASSALLO: Maybe to summarize what I have said, enforcement is a big problem, largely because of the numbers and the lack of support personnel in enforcement. Enforcement is done better through education, except of course in some areas; but we don't have the personnel to do it. Perhaps with this system of separation, we are working at odds. Maybe the better system is to leave the ABC enforcement personnel and the Bureau in the State Police for the policing end of it, but the ABC should be allowed the return of some of the inspectors, so that it can be done through more of an education-type unit. Also, concerning enforcement reports, if violations are found, and if we work together and give the ABC more of an opportunity to go out and work with the industry, as opposed to policing it, in a very real sense this might prove preferable.

SENATOR DiFRANCESCO: Thank you, Director. Does anyone want to state any feelings they may have on the enforcement end?

MR. BEVIS: The only comment I would make is that it appears this transfer was done within the Executive Branch. My understanding is that our Commission is to look at the overall picture. We are trying to look more at what we can do legislatively in order to change and conceivably simplify some of the regulations as they exist today, many of which have built up since the 1930's.

It would seem to me that the Director may be able to -- internally, within the administration -- make this change back, if, in fact, a study shows that the four years we have experienced have not necessarily been the best, in terms of enforcement of the ABC

regulations. This isn't to say the Commission and this Subcommittee shouldn't look at it. It is something that could conceivably be done within the Executive Branch.

SENATOR DiFRANCESCO: You have the floor, Mr. Jerlat.

MR. JERLAT: We in the industry feel that -- I have to agree with the things the Director is saying -- this industry is an important industry to the State of New Jersey, and to the country as a whole.

We feel that the ABC should be more of a mother or father to the industry than just a law enforcement tool. As the Director pointed out before, ninety-five percent of the licensees run a clean ship. We do have bad apples in the barrel, as there are in any industry. But, basically, you will find that the industry is being policed by itself. The legitimate operator is the first one to make some sort of a howl against the illegitimate operator, for the simple reason that if there is going to be a problem within an area, within a county, or within his own municipality, the legitimate operator is the one who is going to take on the chin later on. So, we feel that it is a very important area to look into. Certainly, there are a lot of changes that can be made in that area, and I am sure we will go into that a little bit later. I just wanted to bring that out.

SENATOR DiFRANCESCO: Tony, do you have any comments?

MR. NAPODANO: I don't think I heard right, unless I misunderstood the Director. You were not advocating the return of enforcement to the Division, were you, Director?

DIRECTOR VASSALLO: If it is necessary to have a greater responsiveness to the industry, yes. As far as the problems being caused by the industry, by the bad apples in the barrel, and the ability to respond to the needs of the industry through enforcement -- and I can't disagree with Norman Feldman on that -- this should be done in large part by education. We do not have the capability of doing that at this point.

For example, at the retail level there used to be retail inspections. A licensee could request an inspector to come in and do an inspection to see if they were operating within the ambit of the law, without fear of prosecution. The ability to do that today is extremely limited.

I have an example to give you of something that came up this week. Mr. Napodano is aware of this, because it either directly or indirectly involves his client. It was something we felt had to be given immediate attention. It may be an isolated incident, or it may be the tip of an iceberg, and a very serious iceberg. I had to spend some time, personally, looking into it because of the lack of people to do it and the lack of immediate ability to have inspectors do it.

As Mr. Bevis said, this was an Executive change. It could be done within the Executive Branch, within the Department of Law and Public Safety, again in the same way it was undone. I am not so sure that is not easier said than done. This is something I think the Legislature could change if we decide that we want enforcement within the Division of Alcoholic Beverage Control, or we want it within the State Police, we want it under the jurisdiction of the Superintendent of the State Police, or we want it within the State Police but under the direction of the Alcoholic Beverage Control Division, which is now how it happens to legally be because of the way the statutes are. We want the inspectors to have general criminal jurisdiction so that they can arrest for other violations, such as drug violations. They cannot arrest for drug violations, unless they are actually committed in their presence. But, if the fruits of the investigation show sales of drugs they have to call in others for the arrest.

But, I think the ABC needs at least a core of inspectors -- an Enforcement Bureau, as such -- or within a minute Trade Practices Bureau, they should have the personnel so that they can function as enforcement people, but more in working with the industry than policing the industry, so to speak -- although I don't think we can give up the policing of the industry.

In answer to you, Tony, I am not saying I want them back. I see a definite advantage to having them in an agency where they can train them better. Selfishly, it is much easier to have their vacations, their sick time, their uniform allowances, their cars, and everything else, worried about by someone else other than myself. But, I am concerned with the question of whether we are giving the responsiveness to the people of the State that they deserve and that the industry deserves. I am not sure we are under this type of situation.

MR. NAPODANO: There is a mix of considerations that I think the Commission must look at. And, you are correct, Director. There is an unreasonable apprehension and fear when an inspector visits a premises. I find this when I talk to my clients, and others. There is an immediate apprehension that the inspector is there for the purpose of finding a violation. And, if there is not a serious violation to be found, there is always a technical violation to be found. Those technical violations are dealt with rather harshly, as opposed to when there was a fine schedule, which no longer exists. We now have a suspension, and then we revert back to a fine in lieu of suspension. I am talking now about the fact that the licensee may no longer have on his premises -- for whatever reason -- the long-form application. He has the short form application, and he has his license on the wall. He is in violation. So, there is that apprehension, and I think that is bad, bad with respect to the continued desire of the Division to gain compliance.

We in this State are never going to, no matter what we talk about -- whether we talk about ABC or whether we talk about some other regulated activity -- have enough inspectors to be sure that one hundred percent of the people are complying one hundred percent of the time.

So, most of what we do is, we rely upon industry self-policing, and we rely upon licensees being in compliance. And, by and large that works.

Back in 1979, when this switch was made, it was my understanding that the rationale for the switch was to remove the judgment aspects -- because the Director does indeed act as a judge with respect to the final determinations of the Office of Administrative Law -- from the Director. So, to remove from him, therefore, the argument that he would be acting as both judge, jury, prosecutor, and factfinder, all under the same hat, you remove the enforcement, you remove the prosecution, and you give it to an independent, yet coordinated agency, and let the Director act as he is empowered to act -- as the final decision-maker, under the Administrative Law process.

Now, that in theory is good. It is an excellent approach, but I don't think we should just view it in that fashion and just say, "That's what we want; that's what we have, and, that's fine," because of the other things Jack is saying. And, I see some of them, not with respect to educational compliance anymore, but in "prosecution compliance", which is bad. Maybe there is some balance between the two, and this Subcommittee should really study how the enforcement procedure is working. It is working best for the industry, or is it working best for the State? Is our present structure what it should be, or should we look at the possibility of meeting somewhere in the middle?

SENATOR DiFRANCESCO: Mr. McCaffrey.

MR. McCAFFREY: In the absence of relatively full enforcement, is it not true, Director, that we have two ball parks right now, one where the good apples lay and the other where the bad apples lay? This, in my opinion is at various levels of the licensing group, and it creates friction at the retail level. It creates an unfair competitive situation. On one level, the licensee follows all the regulations and on the other level others do not.

Now, it seems to me that one or two things have to happen. We have to get more manpower out there, and if we cannot do that, then it seems to me we have to cut down the scope of the ABC into those specific areas where they can properly enforce the regulations.

Isn't that the crossroads we are at now, Director?

DIRECTOR VASSALLO: I think so. Maybe I should add something to that. Maybe we are getting off too much, Senator, on how we are going to handle the enforcement, and what we are taking from the law enforcement title of the Subcommittee, as to where the Enforcement Bureau is. Maybe we should focus more on some of the problems that need statutory addressing, and this is only one of them -- maybe we should address the makeup.

I think part of what I was getting at was, what is being given for enforcement and is it sufficient? It all comes down, really, to sufficient funds being allocated for enforcement. I suppose it really doesn't matter, and I would recommend there be no change in the statute in this regard. If the Enforcement Bureau is going to remain

in the State Police, that's fine, but we can't take away the authority of the Director and the responsiveness to the Director. Let's face it, from a political standpoint, if nothing else, if we are not enforcing the laws, I am on the hot seat for it. The public is looking at me and yelling, "You are not enforcing the Alcoholic Beverage laws. It is in a state of chaos." They are not looking at the State Police.

I, therefore, have to have at least some direct control over them, so that in the areas that need addressing, I can say: "We are going to do it here. It has to be done." I don't want the State Police saying, "Well, we would rather do it here."

Perhaps one of the problems and the big conflict comes in -- and maybe it is more one of perception than reality, I don't know -- by the State Police objecting to the charges being made that the State Police aren't interested in the regulatory violations. They only want the criminal violations, where they can arrest someone. Maybe Major Martin wants to comment on that. As I said, it may be more perception than reality.

I am inclined to think that is not the case, but a lot of people tell me that it is.

MAJOR MARTIN: I would agree with you, Director. I think it is a matter of perception too. But, there is one area that I have to go back to and clear up. You mentioned that in June of 1979 the Enforcement Bureau was taken from the Division of ABC and transferred to the State Police. That was as a result of a general atmosphere at the time, where law enforcement was being consolidated at the State level into one law enforcement operation. Because, just prior to the Enforcement Bureau of ABC being moved into the Division of State Police, the Enforcement Bureau from the Division of Motor Vehicles was also moved into the State Police.

Subsequent to ABC, the Marine Police, which was part of the Environmental Protection Department, was moved into the State Police also. So, at the present time, those State level enforcement bureaus are all consolidated in the Division of State Police.

You mentioned one of the reasons was an attempt to save money. Absolutely. And, you mentioned also that you were happy that you didn't have to worry about automobiles, sick leaves, and

vacations. That kind of overhead was taken care of by the management people who were put in to direct the activities of the ABC Enforcement Bureau.

The actual enforcement activities, when they came over, were changed very little.

DIRECTOR VASSALLO: I have to agree with that.

MAJOR. MARTIN: And, the communication problem has not seemed to really develop. We, on a daily interpersonal basis, are exchanging information back and forth.

The problem, as I view it, in the enforcement is the allocation of resources. The Division of State Police is a multi-faceted law enforcement agency, and the allotment of the money probably takes up more time of the Superintendent than any other single function that he performs. I don't envy him in the decisions he has to make, and where to spend his money.

DIRECTOR VASSALLO: I don't either. The only thing I see this Committee doing, maybe-- And, as I said, I am not really upset with the Enforcement Bureau being there; I am upset with what is happening. It all comes down to a lack of resources. There may be some direction from the Legislature that the Enforcement Bureau must be funded in a certain way. How it can be done, I don't know.

SENATOR DiFRANCESCO: Mr. Bromley.

MR. BROMLEY: My members have asked me to request that this Subcommittee consider changes in the law, which move toward codifying, in a more complete fashion, some of the penalties that are arrived at, based on the administrative charges of a violation.

I would like to refer you to a portion of the Statute: (C.33:1-12.43-7), which reads, very briefly: "Violation Penalty. Any person violating any provision of this act, or of any rule or regulation issued pursuant to this act, shall be punished by a fine of not less than \$50 and not more than \$250, and such person shall also be subject to the penalties and provisions of Chapter 1 of Title 33, which is the whole act, which are applicable thereto by virtue of such violation."

We would like to refer you also to 33:1, paragraph 31: "Suspension or Revocation of License, Grounds Procedure, Effect of

Revocation, etc." It reads, briefly, at the top: "Any license, whether issued by the Director, or any other issuing authority, may be suspended or revoked by the Director, or the other issuing authority may suspend or revoke any license issued to it for any of the following causes. A. Violation of any of the provisions of this chapter."

Later, in the same group, "G. Any violation of rules or regulations."

Reading further in 31, "The Director may, at his discretion, and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may, at the discretion of the Director, be proper under the circumstance, in lieu of any suspension of license by the Director or any other issuing authority. Any sum of money so collected by the Director shall be paid forthwith into the State Treasury for the general purposes of the State."

I refer you to those sections because we think that perhaps fifty years ago, when this came into being, it was best that catchall legislation of this type be adopted because no one could envision what the violations were, or what would actually occur in practice.

However, we wonder if the violations referred to might not be looked at by category. For instance, some violations are willful, knowing, and damaging to the society as a whole, while other violations might be referred to as technical in nature, often unknowing and seldom damaging to the total community. Certainly, if there were violations, they would be damaging to the administration, and there should be a penalty, but the penalty should not have to begin with suspension or revocation.

We wonder whether this Subcommittee, having received information from the Division, might look at the second category of violations and establish some schedule of penalties which would include maximum penalties that could be reduced at a hearing held by the Director, or by the offender proving mitigating circumstances.

It is our belief that if this type of a policing were adopted, there would be considerable cost saving, and far greater compliance with the law.

Every licensee today, as you can see from what I have read, is faced with the ultimate penalty for any violation that is picked up

at the municipal level. If they choose to pick him up at all, they do not have the ability to fine him. So, they suspend him, or they revoke his license. Then the process goes on to appeal of that revocation. I just wonder if that isn't very wasteful of the finely-trained people in the State Police. They could be used for much better efforts.

We believe that by cleaning this up, and by making some effort to avoid treating every violation as though it were murder, there would be far greater compliance with the law, better performance by the licensees, and better cooperation, because they will understand what it is that is going to happen to them.

Third, we believe that it will save the Division from the gossip, rumor, and conjecture that goes on about "this person getting favored treatment," or "that person getting favored treatment," because it will be laid right out, exactly as a traffic violation or anything else is laid out: If you break a particular law, this is what the penalty is.

Now, there should be a provision that if a person breaks the law repetitively, or if in some fashion he conducts himself in a manner that is damaging to the business, the Director should have the full right to suspend and revoke his license on that basis.

The fourth thing that we would like to suggest is, in the administration of the Alcoholic Beverage law, that it be treated the same way a man who is arrested on a criminal charge is treated. If he is arrested, it is public knowledge. If he is indicted, it is public knowledge. If he is tried and convicted, it is public knowledge. And, if he is punished, it is public knowledge. We feel that only by public knowledge will respect for the law be maintained.

Now, I don't think there is any effort to avoid making it public today. I don't think that is the case. I just believe it should be a strong recommendation from this Subcommittee that all of the violations be treated in a public matter, because a full deterrence to the industry will be obtained if everybody knows that so-and-so broke the regulation, received his punishment, it was swift, and it was equal before all people. Thank you, sir.

SENATOR DiFRANCESCO: First of all, I would like everyone to know that the publisher of the Beverage Retailer Weekly is in the

audience. Certainly, if you have anything that you would like to say,
X waive your hand and I will recognize you.

MR. MATZNER: I just like to listen.

SENATOR DiFRANCESCO: Well, X waive your hand, and I will
acknowledge you. You can then come forward.

MR. MATZNER: All right. Thank you.

SENATOR DiFRANCESCO: If I can try to put this together a
little bit in my own mind after listening to everybody, I think, Jack,
that one of the things the Subcommittee should report to the Commission
as a whole is the question: What has the impact of the transfer to the
State Police, in June, 1979, been on the enforcement authority? Has
there been an adverse impact? Has there been an unnecessary
bureaucracy? What recommendations, if any, do we want to make along
those lines to the Legislature, or to the Commission, in order to have
the Commission consider this as a group?

I think that is something we could at least look at, and
perhaps get some testimony on for the record at a subsequent meeting.

The second portion of the charge, I think, is to look at the
pending bills that have been introduced and see how we feel about each
and every bill, so we can make recommendations to the Commission as a
whole.

And, the third thing would be to look at all the statutes,
the enforcement statutes, and go through them to see where we feel they
could be cleaned up, and, again, make recommendations to the
Commission, and have the Commission vote on those recommendations,
should they be accepted.

Yes, sir?

DIRECTOR VASSALLO: I would agree on your first point.
Perhaps at the next Subcommittee meeting we could have some testimony,
from people who are within the Division of Alcoholic Beverage Control
and who were around prior to the transfer. I cannot comment on this.
Perhaps we could hear from Captain Lombarde, who was the Supervisor of
the Enforcement Bureau, and maybe even some of the senior inspectors
who have been under both regimes, so as to ascertain what their
feelings are. We could ask them for their honest feelings, and point
out that we are not doing this in a critical manner. We could let them

know that if they want to be critical, we would like to hear the criticism and we could assure them that we won't hold it against them if they are critical.

Secondly, I think your looking at some of the bills -- a lot of the bills are special interest bills -- really even deserves the--

SENATOR DiFRANCESCO: (interrupting) I haven't looked at all of them. I really only received them today. Unless you have any objection, I would prefer not to start looking at them today, so that it would give me a chance to go through them.

DIRECTOR VASSALLO: I agree with you. Maybe I can be better prepared then, since we are going in that direction, with the ones I feel we should treat and the ones we shouldn't bother with. We can let them just go by the wayside. They are going to anyway.

There are a number of alcoholic beverage bills that are introduced every session by someone, in conjunction with a friend who has a special interest, that really aren't going to go anywhere.

Third, we should include looking at the statutes. Again, I would say, "Let's not look at the regulations; we can take care of them in a regulatory fashion. We need the statutes to base them on." If the statutes are changed, it gives us a direction to go in regarding the regulation. This Subcommittee couldn't possibly sit and spend the time necessary for all the regulations.

If I may comment on the things Mr. Bromley said, I think he has very excellent and valid points. I personally thank him for them, because they focused on where this Subcommittee should perhaps be going.

I had forgotten, until Leo mentioned the first one, (C.33:1-12.37). One of the problems the Enforcement Bureau has brought up, is with the change from Title 2A to 2C, and the redefinition of misdemeanor. A lot of the teeth have been taken out of Title 33. Because the penalties assigned in Title 33 date back to the 1930's, which were very severe at the time, they are pocket change today. However, because of that, they caused what was called a misdemeanor -- a criminal offense -- for certain serious violations at that time, to become only a disorderly persons' offense today.

Title 33 definitely needs revision in that regard, so that there are some teeth in it for the very serious criminal type violations that do occur. Right now, anybody can violate it with almost impunity, because one gets no more than his hand slapped, and it does not disqualify one from anything, because it is only a disorderly persons' offense. The statute was not designed that way. Because of a change of a subsequent, unrelated statute, it has been emasculated, so to speak.

I would like to comment on the provision that Mr. Bromley spoke of in (C.33:1-12.31), and his discussion of penalty schedules. I think the system that is in there now--

SENATOR DiFRANCESCO: It is (C.12:33,1-31).

DIRECTOR VASSALLO: It is (C.12:1-12.31) -- excuse me, I'm sorry, it is 1-31, right.

SENATOR DiFRANCESCO: He was reading from the--

DIRECTOR VASSALLO: It is 1-31, thank you.

One of the problems with having a schedule of penalties for violations is, if we said serving a minor is a \$1,000 fine, a very large store that moves a lot of volume may not take the time or the trouble to check proofs. If he has to pay a \$1,000 fine once in a while, he will pay it. It may be nothing to him, whereas a \$1,000 fine to the small licensee is a very great deterrent and a serious punishment for what is a very serious violation.

I think that the purpose Leo is getting at might be accomplished by looking further back and amending (C.33:1-77), regarding the sale to the underaged person -- requiring scientia or knowledge for that.

MR. BROMLEY: That's part of it, but may I just clarify that and say to you that in no way do we recommend that the penalty for things that damage society, such as selling to a minor, be schedulized.

What we are asking for is that technical violations be schedulized.

DIRECTOR VASSALLO: I understand. I only used that as an example. But, one of the problems I find with that is the amount of penalty could be a serious penalty to one licensee, and it could be such a miniscule amount to another that they wouldn't even be deterred

by it. What we are doing now is -- and I think this is common knowledge -- we are looking at the receipts of a business, the financial position of a business, and the violations are being based on that. We are basically following a penalty schedule as a starting point, but every case stands on its own. There are mitigating or aggravating circumstances in every case.

How I think 1.31 should be amended is -- and I was going to recommend this to the Legislature -- it should provide for a direct fine to be imposed without my having to go through the process of imposing a suspension and then accepting an offer of compromise in lieu of the suspension.

SENATOR DiFRANCESCO: That's what this additional section to the statute does, it sets up a plea bargaining situation?

DIRECTOR VASSALLO: No. I can only revoke or suspend when imposing a penalty. Then I can accept an offer in compromise, in lieu of suspension. I haven't called it fines, because a fine smacks of a criminal violation. These are civil in nature, and that is why we stick to the statutory language of an offer in compromise.

Let's call a spade a spade and say we can impose a monetary penalty for a violation. In furtherance of that, the Amusement Games Control Act, which was patterned on the Alcoholic Beverage Law, but adopted in 1959, authorizes the Amusement Games Control Commissioner to impose a fine of not more than \$250 for a first offense -- of course they are of a different nature -- or to suspend or revoke.

Anyway, it would make a lot of sense if we had direct power to impose a monetary penalty. I don't know whether or not the Legislature would want to go to the further extent of allowing local issuing authorities to directly impose monetary penalties because I think there would be a fear that penalties would be a means of boosting the local coffers, and could be used in that regard. That has been some of the opposition to the bill that Senator DiFrancesco mentioned, which is now pending. It would allow an addition to the section of the statute which permits an offer in compromise to be split with the municipality in the event the suspension is a municipally imposed suspension.

SENATOR DiFRANCESCO: Any way to make money.

DIRECTOR VASSALLO: There is a lot of comment on that statute which is presently pending, and which I, in fact, am in favor of.

MR. JERLAT: Senator, one of the things I think we have to keep in mind when we are discussing penalties, and what category they are to go in, would be the willfulness involved: if one knowingly violates the law. Because, although ignorance of the law is no excuse, as far as a licensee is concerned, in many cases there is an excuse. There are changes in regulations. There are changes in laws. People go into -- I am talking about the retail end of this--

SENATOR DiFRANCESCO: (interrupting) Give me an example also.

MR. JERLAT: (continuing) --the retail business really knows nothing about what the regulations are and what they are not. If they do not belong to a trade organization, where they attend meetings and become active, they are very ignorant as to what constitutes a violation. They may or may not have a "blue book", which seems to be very scarce throughout the State of New Jersey. Even though some of the municipalities are supposed to have them, they do not have them.

As a change comes along, there is no notification. This has been going on for years. This is not something that is happening now. It has been like this for years.

In the case of a minor, let us get into that situation. This is a very dangerous area, and I think right at the present time, because of the case in Manville, which is becoming a kind of nationally publicized thing, that is an area in and of itself that is a very technical area. Actually, I think the only way to be within the law at the present time -- and I am sure the Director can correct me if this is wrong -- is through an affidavit being signed or by the use of a photo on a driver's license, which is an affidavit at present -- that is, the new photo on the driver's license. If, comes January 1st, everyone has a photo on the driver's license, this will become an affidavit, and by using that, we have a shot at trying to determine the minor status.

But, we are in a position where the minor walks away. You know, they really impose themselves on the licensee, and at the same time the licensee is unprotected.

In most of these cases you will find they are not willful cases. The fact is, there is one that just happened -- you asked me to cite a particular case -- recently. It happened in a municipality that is in a rural area, involving a licensee that has been in the business for many, many years. They have always run a very tight ship. They have, in the municipality itself, confiscated all of the phoney I.D.'s that these young people come into the place with, which they have printed up in the schools, or they have obtained from other states, or whatever. They confiscated all of these, and in the police department they had a drawer full of identifications. At the same time, because of a very tight situation, they have a problem right now with a violation, all because a girl came in who was 17 years old. She showed two pieces of identification, one was a social security card and the other was a photo I.D. from St. Peter's College. Everything seemed to be in order, and unfortunately -- they were busy at the time -- they realized that they were wrong because she did not show a driver's license. It was a technical thing. They did not willfully do something to violate the law.

This is an area we have to look at. It is not only the minor situation, we have other areas that draw the same picture.

SENATOR DiFRANCESCO: Well, in that case it is not a question of not knowing what the law is, you are saying it is a question of how to deal with it.

MR. JERLAT: That's right. I think that we also have to dig into that particular area. It is an area we have to aim at. It is something that is important to the licensee out there, because right at the present time the average licensee is not out to break the law.

Another thing is, you can ride down the road and you can see a big sign that says, "Two for one." That is a total violation. It is a great big sign. There isn't a licensee in his right mind that would put a sign out that says, "Two for one" if he knows it is a violation. I am talking about two drinks for the price of one on a particular day, or at a particular time, or something like that. It is a violation.

MR. McCAFFREY: It is illegal?

SENATOR DiFRANCESCO: It is advertising.

MR. JERLAT: You will find a big sign on the outside of the place. Now, they are not going to do this intentionally. At the same time, if you went into the same place and took the sign down and said, "We are changing that; it is double for the price of one," that is not a violation.

MR. McCAFFREY: Senator?

SENATOR DiFRANCESCO: Yes, it is.

MR. JERLAT: It is?

MR. McCAFFREY: To expand on Mr. Jerlat's point about the lack of knowledge at the retail level in this particular instance, we had a case brought up before us a couple of weeks ago involving what seemed to me to be a reputable food chain who had a competitor down the road and he was advertising two drinks for the price of one. No, he was advertising half price during the happy hour.

SENATOR DiFRANCESCO: Is it the advertising that is illegal, or the serving of the two drinks for the price of one that is illegal?

MR. McCAFFREY: It is the advertising. He was advertising half price. So, the food chain said, "Well, we will go for two for the price of one." And, it turned out that that was a violation. Then they pointed to the competitor down the road and said, "Well, he is doing the same thing." They answered, "Oh, no. He is selling it at half price."

Now, let me say this: If you have a bar with forty people at it, and they are selling it at half price, that bartender, unless he is a computer analyst, puts the shot glass there, because he can't remember who already had one drink. So, he puts the shot glass in front of you. I assume that has to be a technical violation.

So, there is an instance there where the licensee doesn't fully understand the regulation.

Another point that I have involves the vacation shutdown period that Mr. Bromley was complaining about because of the hardship it places on the package stores. The package stores during that someone, to put the question to you, Director, or to put the question to someone in ABC.

Let's not put the burden just on the licensees. In my travels, representing my clients throughout the State, there are many

municipal attorneys that don't understand the regulations and don't understand the statutes.

SENATOR DiFRANCESCO: There are legislators who vote on them and don't understand them.

MR. NAPODANO: Exactly. You know, one of the charges of this Subcommittee is to look at what we now have as a maze, and perhaps simplify it, clarify it, and make it understandable. Then maybe we will have compliance, because people will then be unable to say, "I don't understand the licensing."

SENATOR DiFRANCESCO: But, there has to be an obligation on the part of the licensee.

MR. NAPODANO: I recognize that.

SENATOR DiFRANCESCO: There has to be some obligation there to do something.

MR. NAPODANO: But, you now have to be an attorney to go from a piece of paper to the book, etc.

SENATOR DiFRANCESCO: They couldn't just read this and know what the rules are.

MR. NAPODANO: No.

MR. BROMLEY: Let me ask a question about an example.

SENATOR DiFRANCESCO: Yes?

MR. BROMLEY: I would like to cite an example of the kind of thing the licensee is confronted with. We had a licensee who purchased Heineken beer. He was purchasing it for many years from a single source. At a certain point in time, another licensed solicitor from a licensed wholesaler, called on him and made an offering of Heineken beer to him at a more advantageous price than the first supplier's price. So, he considered all of that, and he finally determined to give his order to the second supplier. He did this, and the delivery was made.

Now, the solicitor, who was licensed, showed him his CBL current price list and the licensee questioned him thoroughly about whether this was filed and so forth. And, the solicitor responded travels, representing my clients throughout the State, there are so many municipal attorneys who don't understand the regulations and don't understand the statutes.

SENATOR DiFRANCESCO: There are legislators that vote on them that don't understand them.

MR. NAPODANO: Exactly. You know, one of the charges of this Subcommittee is to look at what we now have as a maze, perhaps, simplify it, clarify it, and make it understandable. Then maybe we will have compliance, because people will then be unable to say, "I don't understand the licensing."

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MR. BROMLEY: Let me ask a question about an example.

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MR. BROMLEY: I would like to cite an example of the kind of thing the licensee is confronted with. We had a licensee who purchased Heineken beer. He was purchasing it for many years from a single source. At a certain point in time, another licensed solicitor from a licensed wholesaler, called on him and made an offering of Heineken beer to him at a more advantageous price than the first supplier's price. So, he considered all of that, and he finally determined to give his order to the second supplier. He did this, and the delivery was made.

Now, the solicitor, who was licensed, showed him his CBL current price list and the licensee questioned him thoroughly about whether this was filed and so forth. And, the solicitor responded that it was. The delivery was made, and a week later the first supplier came in and said, "I'm here with your Heineken order." The licensee said, "You are not getting my order because I placed it that it was. The delivery was made, and a week later the first supplier came in and said, "I'm here with your Heineken order." The

licensee said, "You are not getting my order because I placed it elsewhere." So, the original supplier asked, "Who did you place it with?" The licensee told him, and he told him the price. A week later he received a summons from the Division stating that he had been cited for a violation, that he had bought beer below the price that had been filed by the wholesaler.

Now, there are close to 20,000 retail licensees in the State of New Jersey. The filings are here in Trenton. Those 20,000 licensees cannot come down to Trenton and verify each price. It should, through anyone's good reason, be an absolute that you can rely upon an offering made by a licensed solicitor. The State of New Jersey won't let just anybody sell beer. In order to sell beer, you have to be licensed by the State of New Jersey. This man had his license. He was valid. He made a misrepresentation to get the business. He may be guilty of a violation. However, our licensee, was cited for the violation.

The extenuating circumstances were explained. This was not during this Director's administration. This occurred shortly before this Director took office, but it was under the same regulations. In that particular case, he was fined \$50. It was said, "We have to recover the cost of the beer." You might say, "Why does that disturb you; it is only a \$50 fine?" This is a man who has had his license since 1933 and has had no violations whatsoever, and now he ends up with a violation on his license.

SENATOR DiFRANCESCO: Well, that was an area, getting back to Section 31, where the Director exercised his discretion. Right?

MR. BROMLEY: We just feel that all such cases ought to be taken out of the semi-criminal area and put into some kind of administrative area.

SENATOR DiFRANCESCO: You want it codified?

MR. BROMLEY: Yes. Into something that doesn't damage a license. This is a contest between two people as to who gets the business and who doesn't.

SENATOR DiFRANCESCO: I was aware of that problem for some reason or another. I can't remember why. I was confused myself.

MR. BROMLEY: This is in no sense to hurt the wholesalers at all because--

DIRECTOR VASSALLO: That is something that is about to come up again.

MR. JERLAT: That is something like I was talking about before -- that two for one. It is really a violation, but at the same time, is it the type of violation that you are going to take somebody out in handcuffs for? You know, this is what it comes down to.

SENATOR DiFRANCESCO: I was going to a restaurant for years that was serving two drinks for the price of one. That is why I asked you that question.

MR. JERLAT: It is all over the State.

SENATOR DiFRANCESCO: But, they don't do it anymore, and I guess that is why they don't.

MR. JERLAT: What happens in many of these cases is, somebody starts it in a particular neighborhood. Now, the next thing you know, the licensee down the street is doing the same thing in order to compete.

It is the same thing with the happy hour. The average licensee throughout the State of New Jersey is not happy with the happy hour. They don't think it is the greatest thing in the world. They are stuck with it. And, the only reason they are stuck with it is because a competitor is using it, so the other guy has to put it in.

Down in the shore areas they are running happy hours from approximately 4:00 in the afternoon until 2:00 in the morning, or 3:00 in the morning, which is absolutely ridiculous. At least when it was a situation where the happy hour ran for a two hour period, say from 4:00 to 6:00 -- well, they were not happy with that either, because of the dumping of everyone out onto the road after drinking during the happy hour.

So, I think these are things we have to look into. I think there are areas of relief for both retail groups, and we should really study some of those.

SENATOR DiFRANCESCO: Yes, Mr. Garrity?

MR. GARRITY: I think it is evident, Senator, from everything that has been said here, that anyone could go out and find thousands of violations of a technical nature, or any other type of nature -- some more serious than others.

SENATOR DiFRANCESCO: Yes. One could go to every licensee and find something.

MR. GARRITY: Right. One could go to almost any licensee and find something wrong. It is a matter of education. There is no question about that.

What we are dealing with here is part of a bigger problem. I think it is a problem more of concept, of how we view the alcoholic beverage industry in relation to the public; of how we view it from the standpoint of enforcement; of how we view it from the standpoint of who should do the enforcing, what his authority shall be, and how much authority he shall have; and of how much interference can take place, or how little interference can take place. These are all of the things that I think have an awful lot to do with what we are discussing here today.

I think the power of the Director has eroded through the years, not through the power of any of the Directors themselves, but for some reason we could trace it to budgetary reasons, consolidations, or trying to save money. All of these things have come about because of the things I have just mentioned, and I think the industry has suffered because of it. I think there is a great amount of confusion today on the part of almost everyone in the industry as to what is right. Too many grey areas have crept in. I don't like to use the words black and white, but maybe we need more black and white regulations. It is either a violation or it isn't.

At the same time, you need someone in the ABC -- or someone who is making the judgments -- who has some compassion and understanding of the industry and the traditions of the industry, so that he can make a fair determination of how serious the violation was and what the penalty should be.

These are all things that are part of the central problem we have here. We are dealing with a very, very serious substance.

SENATOR DiFRANCESCO: You have to admit if there was ever a more sensitive time with respect to alcohol, it is today.

MR. GARRITY: We go through trends, such as consumerism, and things of that sort. That has taken its place today in our industry. Why shouldn't beer, wine, and liquor be treated like corn flakes, or

something like that? There are a lot of good reasons why they shouldn't be. I think we have to realize that.

And, if we are going to be consistent, and we certainly are right now, we should set up some sort of regulation that would be in the hands of a Director who we have an awful lot of trust in, who would make the right kinds of determinations. He should be supported by the Legislature. He should be given the kinds of rules he needs to work with, and "hands off." Let him do his job.

DIRECTOR VASSALLO: Perhaps the Commission should look at 1.31 and give the Director the authority to directly impose monetary penalties. I understand what Bill and Leo are talking about when they speak about taking the technical violations away, separating them from the more criminal-in-nature violations. That can be done through legislation, calling for a regulation to contain the penalty for violations. It would have to be promulgated right in the regulation. It would make it clear to everyone, and it would also make clear what the seriousness of a violation is. It could be done by classifying certain offenses, or by directing that the Director, in promulgating regulations, classify them and have them fall into certain categories.

You can't come up with a definite schedule on this, because there are so many factors that have to be taken into consideration. I appreciate what everybody has been saying. I think they have been putting into words what we have been trying to put into action -- at least since I have been Director, with one exception: I cut out the publicity on violations. The biggest thing being done by the Division was, as soon as charges were filed, they were sent to every newspaper within a fifty mile radius. I felt that, one, personnel at the Division was so limited that they didn't have the time to do that; and, two, a lot of the violations -- the technical violations -- in and of themselves, are not something that should blacken an otherwise good licensee's good name in the public eye.

We have, very recently -- in fact, this week -- undertaken the stand that now all adjudications are going to be publicized through the trade, or they are going to be made available to the trade newspapers. That way, they can serve as a deterrent without necessarily blackening the eye of the licensee in the public image.

The basic changes that are needed would be legislative, in order to allow some of these things to occur, because as has been pointed out, right now we are tied to revoking or suspending for any violation, and not taking a monetary penalty in lieu of.

In practice, what is coming down is plea bargaining of almost the undesirable sort: "We will plead not guilty or no contest to the charges if you will give us a fine, if you promise to give us a monetary penalty, or accept an offer in lieu of a suspension." And, many times to do that, they are holding a club over our head because with the system of having to go to the OAL, they know it is time-consuming. We are playing games with a lot of them. Initially, they probably plead guilty or no contest if they know it is a monetary penalty.

SENATOR DiFRANCESCO: Well, Jack, my thought was to have another meeting. The first meeting should deal strictly with the overall question of the transfer of the enforcement authority to the Division of State Police. Perhaps we should have some witnesses testify as to what the impact has been, and maybe we can get some input as to what possible recommendations can be made along those lines, regardless of whether or not it was an Executive decision or not. We should still say something in this area.

The next meeting, following that, we should get into the statutes, and that will give me enough time to formulate questions that I will raise with regard to certain statutes, and perhaps make up an agenda as to which statutes we will be dealing with at that meeting, and also come up with anything else I can find to synthesize the meeting into a working session.

DIRECTOR VASSALLO: I will do the same thing, pointing out statutes that I see particular problems with.

SENATOR DiFRANCESCO: I will probably call everyone, or I will have Aggie call everyone, with respect to problems that they have encountered with certain statutes, so that we can at least get an idea as to which ones we have to dwell on.

MR. McCAFFREY: Senator, Item 8 here, on this memorandum--

SENATOR DiFRANCESCO: From Mr. Feldman?

MR. McCAFFREY: Yes. The second item, where the out-of-state hauler pulls into the loading dock, say at four o'clock in the afternoon and he does not have the transit insignia. We have to send him down to the nearest licensing substation. That may take hours. In the meantime, that truck lays out there. The driver's time is being added up at possibly an overtime rate -- who knows? But, is there any way of allowing the one who is loading those out-of-state trucks, or accepting delivery, six of these transit insignias that they buy in advance, and then notify the ABC that they have been used?

DIRECTOR VASSALLO: We have thought of that. In fact, Mr. Garrity, I think you are aware that we worked out a system which the Law Division has recently called into question, concerning its legality. Instead of them having to go to the ABC to obtain these emergency transportation permits, they could pick one up at a truck stop. The truck stops all have permit-issuing services, where they issue road tax stamps, and things like that. My staff visited each one of them and worked out a procedure with them, and it was working very well. These truck stops are open twenty-four hours a day, seven days a week. So, there was no problem with getting one. There is a truck stop located at all the major access roads in New Jersey.

So, it really isn't a problem at this point. I think the only thing we really need, because of the question that has been raised, is for the Legislature to authorize it to be done in this fashion. That would clear up the question. Otherwise, I think we have found a workable solution, where it still has the control that we need.

MR. McCAFFREY: You would object to the shipping area having on hand six of these pre-paid transit insignias, and immediately notifying the ABC that on such and such a date it had been issued to such and such an out-of-state hauler?

DIRECTOR VASSALLO: I think maybe that could be worked out too. Maybe I will ask the Commission to suggest to the Legislature some amendment in this regard, to give the Division the authority to set up permit-issuing services. The statute presently says that the Director must issue the permit. It comes down to what you interpret as the Director's function is when issuing the permit. Am I delegating the authority to the truck stops the way we set it up? No. They are

just being an administrative agency in issuing it. Again, it would be how we did it. But, because of the question that has been raised, I think it has to be clarified.

I think things can be worked out in that regard. Again, I don't think they are things for the Legislature to directly address. The Legislature certainly doesn't want to get bogged down in the mechanics of doing something. They want to give the general authority to do it, and then leave it up to the Division, which is working full time at it, to set up the procedure for doing it. I think in all of this we have to be cognizant of that. We don't want the Legislature to get bogged down in what is really a regulatory function, because changing it becomes very complicated if you haven't hit the nail on the head. The general powers have to be given by the Legislature, but how you apply them -- whether you put it in with a nail or a screw -- has to be left to those who can change it and work with it and fine tune it.

SENATOR DiFRANCESCO: I have one last question. According to Mr. Feldman's memo, a publication -- a bulletin -- was sent out. Was it sent out?

DIRECTOR VASSALLO: It is subscribed to by about 175 people.

SENATOR DiFRANCESCO: Licensees?

DIRECTOR VASSALLO: Not all licensees. Some of them are other than licensees who subscribe to it. We try to make it available to the trade publications when they come out. It is available. Right now, it calls for a \$25.00 a year subscription fee, which isn't enough to publish it.

Let me talk about the bulletin because it gets into one thing. Maybe this is the forum for it. Again, it all comes down to money. And, when the Enforcement Bureau was with the Division, you had -- this is not directly related to the Enforcement Bureau, Major Martin -- many more personnel at the ABC and bulletins came out sometimes even more than once a week. They were an organ for communication to the industry. I believe that the bulletins, when they first came out, were made available to the whole industry. There was a very nominal subscription rate. It was an organ of communication so that they could be kept informed.

Over the years, it gradually diminished, and since I have been Director, I have put out seven bulletins. One, I have nobody to do it. At one time, the ABC had two people working full time, just putting the bulletin out. Now, we have to sandwich it in. The Director and the Deputy Directors have to sandwich it in-between everything else.

What I need is a staff. It doesn't have to be a large staff, but I need more funds so that I can hire people who can prepare communication for the industry. I think the best thing we could do would be to raise the annual State license fee from \$50 to, say, \$150, and give us the means -- additional monies -- so that we could have additional staff. For \$150 we could give educational service to the alcoholic beverage industry. It would pay for itself. The State would probably even come out ahead on it. And, we would have a much better industry for it.

MR. JERLAT: We have a suggestion along that line.

DIRECTOR VASSALLO: As it is now, we have a bulletin. It is almost meaningless because so few people get it. I get it. My staff gets it. But, we wrote it, so we don't really need it. The Attorney General has asked me if I would put it out very frequently and raise the subscription rate to \$100, and I said I would be glad to, but could he suggest to me how I could do it. I can have all the money in the world being charged and going into the State Treasury and not get a cent out of it.

MR. McCAFFREY: When we are speaking, Senator, about a bulletin, are we referring to 2431?

DIRECTOR VASSALLO: That's only one of them. That is the latest one.

SENATOR DiFRANCESCO: He makes reference to 2430. I was just thinking back to what everybody said about the lack of knowledge by the licensee and how you get that knowledge to them.

MR. JERLAT: Director, we have a suggestion about the bulletin. We feel that maybe the area to go into is to let the trade associations handle the bulletin. It could come from you to the trade associations and we could distribute it to our members.

DIRECTOR VASSALLO: Getting it to the trade associations is not the problem. You know, I can print it and mail it. There are machines that take care of that. I can't write it. We just don't have the staff to do it. It takes a lot of time to refine it and make it a really meaningful thing. If you look back at the past couple of years, in order for them to get a bulletin out regularly, there was one opinion coming out of the OAL. Some of the opinions are meaningful. We are trying to publish the meaningful opinions. Some of them are just repetition of the same old thing. They don't really mean that much.

Granted, it would be good if we had a lot of them published. That would be useful, especially to the attorneys, and in turn it is useful to their clients, the licensees. I need more funds to do it, and the first thing I would do if I had the funds to hire people would be set up as part of my regulatory bureau, a small group that would be charged with communicating with the industry, and making themselves available. Sometimes I wonder what we are doing and how we are getting it out. It is a very real thing. How are people supposed to know? We put out new regulations. Yes, it is published in the New Jersey Register. How many people get the New Jersey Register? Half the attorneys in the State don't get it.

There is one that is coming out soon on the rebates. We made some technical changes in that. It will be in the New Jersey Register. Again, it will be published for us in the trade newspaper, I am sure. Mr. Sloan will publish it. Mr. Sloan's magazine used to go to the whole trade. He has problems because he has given it to the trade on the basis of advertising, and now the U.S. Postal Regulations are stopping him from doing that.

Mr. Matzner avoided that problem through subscription, but people don't subscribe, so they don't get his publication. A lot of this stuff is available, but it is not readily available, and I think that one of the things that should be done is, if a person has a license, they are entitled to direct communication. But, we don't have the means to give it to them.

MR. BRUMLEY: Just a word on that. The licensee who is going to be heavily penalized, to the point where his license is going to be

revoked -- and this seems to be reasonable to me -- should have knowledge of what brought that revocation on. And, in the bulletin there are unique interpretations beyond the bare bones statute, or beyond the bare bones regulation, very often, which to a reasonable person completely changes what has until then been commonly known as the interpretation.

I saw that in the case of coupons and rebates in a bulletin. There was an argument written, which, if you read that argument, was impossible to understand. There was a new regulation which completely wiped out that interpretation that was expressed in the bulletin. So, therefore, it is crucially important that the information that is contained in bulletins be conveyed to licensees. And, right now there is just nothing.

Bill Jerlat referred to Title 13, the Administrative Rules. Well, it is a sad fact, but the copy which is in current circulation has been completely gutted. No?

DIRECTOR VASSALLO: No. The OAL has published one that has everything in it that is current.

MR. BROMLEY: What I am saying to you is the old thing is still in the hands of the licensees right now.

DIRECTOR VASSALLO: That is the new one out.

MR. BROMLEY: That's the brand new one. The licensees still have the old one, which means that they must look at bulletins and everything else in order to understand the regulations.

DIRECTOR VASSALLO: The new one also has reference to bulletins in it. I will point out that I don't know any of the accuracy of it, because it was done completely by the Office of Administrative Law, without even informing the ABC that it was being done.

MR. BROMLEY: Is that available? Is that for sale to the licensee right now?

DIRECTOR VASSALLO: For \$5.00 from the OAL.

MR. BROMLEY: In other words, if he buys it, that is the edition he gets now?

DIRECTOR VASSALLO: Yes.

MR. BROMLEY: Because up until June we had nothing.

DIRECTOR VASSALLO: We are not selling ours anymore because they are incomplete, although they were complete with one bulletin. That was bulletin 24, and 24 supplements, the other book. And, that is still complete.

MR. NAPODANO: It was recently advertised for sale in the Register a couple of weeks ago.

DIRECTOR VASSALLO: So, everybody who gets the Register knows about it.

MR. NAPODANO: Half of the people know it.

MR. JERLAT: Ten licensees throughout the State of New Jersey know about it.

MR. NAPODANO: I don't think that many get the Register.

DIRECTOR VASSALLO: Yes, several attorneys have--

MR. JERLAT: Those were the attorneys who were licensees.

DIRECTOR VASSALLO: No, several have licenses.

MR. JERLAT: So, they will be fully prepared.

DIRECTOR VASSALLO: I would, as a member of the Subcommittee, suggest that one thing you recommend -- and I will prepare some specifics on what I think and how I think it should be done -- is to raise the State license fee. Right now, I think it is \$50. I am talking about the retail level, and maybe proportionately on all the other levels also. You should ask the Legislature to dedicate that money to a fund in the Division of Alcoholic Beverage Control for -- I have to come up with the proper wording on it -- education and communication with the industry.

MR. BROMLEY: How about a mandatory subscription to it?

SENATOR DiFRANCESCO: Well, that is basically part of the license fee.

DIRECTOR VASSALLO: It would be part of the license fee.

MR. BROMLEY: That would be a good idea. Instead of having all the money go into the General Fund, we should have a mandatory subscription.

DIRECTOR VASSALLO: That would be automatic. The Legislature could dedicate the additional monies.

MR. JERLAT: We are always against dedicated funds.

MR. BROMLEY: But, you are not against mandatory subscriptions?

MR. JERLAT: No, a mandatory subscription is another story.

DIRECTOR VASSALLO: Then you say a \$50 fee, plus \$100 to be utilized for certain purposes. It is a mandatory fee. It is part of the license fee, in essence, but without dedicating funds to go to the State.

SENATOR DiFRANCESCO: How many licenses are there?

DIRECTOR VASSALLO: About 12,000.

SENATOR DiFRANCESCO: Well, unless anyone has an objection, I would like to proceed in the manner I suggested. When Aggie gets back from vacation, we will have another meeting, and before that meeting we will advise you of an agenda. Hopefully, we will have a proposed list of witnesses. Any suggestions from anyone here as to witnesses they would like to hear, would be welcomed -- as many as possible, along the lines of the transfer to the State Police of the Enforcement Bureau and what its impact has been, and what bureaucracy is involved today with respect to that, including the funding aspects.

I thank you all for coming, and I will see you at the next meeting. I hope you enjoy the rest of your summer.

(MEETING CONCLUDED)

2339

New Jersey. Alcoholic Beverage
Control Study Commission.
Subcommittee on Law Enforcement.
Public Meeting (Transcript).
Held August 17, 1983.

DATE	ISSUED TO

JUL 30 1985

