

P U B L I C H E A R I N G

before

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

Concerning the Proposal of
Task Force VII

October 15, 1987
Showboat Hotel
Casino and Bowling Center
Atlantic City, New Jersey

MEMBERS OF COMMISSION PRESENT:

Senator Catherine A. Costa, Chairwoman
Leo L. Bromley, Vice Chairman
Assemblyman John T. Hendrickson, Jr.
Assemblyman Jimmy Zangari
J. Ross Bevis
John J. Garrity
William E. Jerlat
John M. McCaffrey
Anthony J. Napodano
Charles D. Sapienza
Frank J. Tripucka
John F. Vassallo, Jr.

ALSO PRESENT:

Capt. Olindo Teza
Representing Col. Clinton L. Pagano, Sr.

James Butler
Representing David Hanlon

Daniel L. Ben-Asher
Office of Legislative Services
Aide, Alcoholic Beverage Control
Study Commission

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Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

PUBLIC HEARING

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NOTICE OF PUBLIC HEARING

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION ANNOUNCES A PUBLIC HEARING ON A PROPOSAL TO REVAMP THE ALCOHOLIC BEVERAGE CONTROL DISCIPLINARY SYSTEM.

The State's Alcoholic Beverage Control Study Commission will hold a public hearing on Thursday, October 15, 1987 at 10:30 a.m. in the Showboat Hotel, Casino and Bowling Center at Delaware and Pacific Avenues in Atlantic City.

The purpose of the hearing is to receive testimony from the public and all segments of the alcoholic beverage industry concerning the proposal of Task Force VII of the Commission. That task force has recommended a revision of the statutes governing the alcoholic beverage control enforcement powers of the state and its municipalities.

The proposal would:

1. Ensure that violations of marginal impact and those which are unintentionally committed or done as a result of a reasonable misunderstanding of the law are not unduly punished;
2. Have the Director of the Division of Alcoholic Beverage Control establish a presumptive penalty schedule which would list those offenses that are generally resolvable by the payment of a monetary fine;
3. Identify those classes of offenses that are deserving of suspension or revocation of a license, permit or registration; and
4. Provide guidance to the Director and municipal authorities to preferably utilize warnings, reprimand letters or monetary penalties as enforcement measures before suspensions and revocations, where appropriate.

Address any questions or requests to testify to Daniel L. Ben-Asher, commission staff at (609) 984-0231, State House Annex, CN-068, Trenton, New Jersey 08625. The Commission would appreciate it if those wishing to testify would submit 18 copies of their testimony on the day of the hearing. The chairman may find it necessary to limit the number of witnesses or the time available to each witness.

NOTE: PRECEDING THE PUBLIC HEARING THERE WILL BE A COMMISSION VOTE ON THE PROPOSAL OF TASK FORCE 10 OF THE COMMISSION CONCERNING TAX RATES ON COOLER TYPE BEVERAGES.

TABLE OF CONTENTS

	<u>Page</u>
Louis J. Dughi, Esq. Garden State Restuarant Association	1
Robert Wilinski, Esq. New Jersey Licensed Beverage Association	10
Vincent Pitino	23
Harold Meltz Mothers Against Drunk Driving, Sussex County Drunk While Intoxicated Task Force	25
Harold Freundlich Former Mayor Byram Township	28
Fred Guarnieri Former President New Jersey Liquor Stores Association	40
David Dwork President New Jersey Liquor Stores Association	47
Carmen Gellitto Former President New Jersey Licensed Beverage Association	47
James Fordyce President Camden County Licensed Beverage Association	48

APPENDIX:

	<u>Page</u>
Task Force VII Report on Disciplinary Sanctions	1x
Statement submitted by William G. Dressel, Jr. Assistant Executive Director New Jersey State League of Municipalities	4x
Letter submitted by Samuel G. Wright Wright's Liquor Store	8x
Statement submitted by Robert Wilinski, Esq. New Jersey Licensed Beverage Association	9x

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SENATOR CATHERINE A. COSTA (Chairman): Now today we are also going to have a public hearing. I might state right at the very beginning that we will not have a vote on Task Force VII's report. This is for purposes of a public hearing only. And I'm going to call on Assemblyman Hendrickson who Chaired this Task Force, Task Force VII, to tell us all about it.

ASSEMBLYMAN HENDRICKSON: Thank you very much, Senator and Chair of this Committee. We've been meeting for quite some time in Trenton going over the State statutes and the responsibilities of our Director, the Director of ABC. I believe that the recommendations are instructive. I personally, for myself, have been a little saddened, to say the least, that we haven't seen enough of the industry itself -- the grass roots of the industry itself -- come out on such an important issue as to the enforcement side of their licenses. I would like to see a lot of participation from the retailers and from your organizations. We've had very good input, but we haven't seen very many of the licensees themselves. We have two, I believe, here to testify today. We have Louis Dughi from the Garden State Restaurant Association. If you would?

L O U I S J. D U G H I, E S Q.: My name is Louis J. Dughi. I'm a board member, and I also represent the Garden State Restaurant Association. I felt that it would be better for a member of our Association to address this Committee.

ASSEMBLYMAN HENDRICKSON: You could sit if you'd like.

MR. DUGHI: That's all right. I sit all day long and it feels good to stand up and exercise.

SENATOR COSTA: Just a moment. Were you finished with your report?

ASSEMBLYMAN HENDRICKSON: I'm finished. Yes.

SENATOR COSTA: Okay. I'm the Chairman, I'll call you.

ASSEMBLYMAN HENDRICKSON: Okay.

SENATOR COSTA: Will you please come to the seat. There's a microphone right there for you and it's being recorded so we can have this for the record.

MR. DUGHI: Would you like for me to repeat it.

SENATOR COSTA: Yes, please do.

MR. DUGHI: Okay. My name is Louis J. Dughi. I am a board member of the Garden State Restaurant Association. I felt today that it would be better for a member to address the Committee rather than our lobbyist, Barry Lefkowitz. We feel that any revamping of the Alcohol Beverage Control disciplinary system would have an adverse effect on the ability of local establishments to function in a normal and unpressured atmosphere. We question the ability of local government to handle the additional workload and their qualifications to function in this area.

Several of our members have already expressed fear of unfair treatment by local officials with whom they've had ongoing differences over the years. Also, we believe that the present ABC controls are more than adequate at present. These are but of a few of the reasons why the Garden State Restaurant Association and its members are vehemently opposed to the recommendations of Task Force VII. I intend to be very brief, and I'd just like to thank the Commission on behalf of the Garden State Restaurant Association for the honor of coming here and presenting our views to the Commission.

SENATOR COSTA: Well, we appreciate you being here, Mr. Dughi. Now I'll open it to the Commissioners for questions. Are there questions from the Commissioners? To summarize, Mr. Dughi feels that everything as it is, should stay status quo. Is that what you said?

MR. DUGHI: That's quite precise.

SENATOR COSTA: Now, any questions from the Commissioners? Commissioner Bevis?

COMMISSIONER BEVIS: Sir, are you a licensee?

MR. DUGHI: No, I am not. We do represent between 400 and 500 members in the State of New Jersey. Some are licensees and some are not.

COMMISSIONER BEVIS: Currently a local authority has one option; that's the suspension of license. Task Force VII's recommendations give them other options. Why are you opposed to that?

MR. DUGHI: We don't feel that, even the way it is at present, it is fair. There are different situations in different municipalities that have brought a lot of pressure on a lot of our individuals and they feel that's presently unfair. They don't care for the way that the bill has been presented and they just are vehemently opposed to it.

COMMISSIONER BEVIS: Well, I would like to tell you the same thing that I told the gentleman the last time we had public comment, and that is all you've done is come to object; you haven't come with any concrete proposals of what would be better. Thank you very much.

MR. DUGHI: Thank you.

SENATOR COSTA: Other Commissioners? Commissioner Hendrickson?

ASSEMBLYMAN HENDRICKSON: You realize that the statutes have not been revised since they were adopted in '33 through the legislative process; that the regulations have been more promulgated through the Division? And perhaps there's a redundancy in there. There's an awful lot that we feel we should be going over to address in the 1980s rather than to still be working under the 1933 law -- 1932 law.

MR. DUGHI: We do believe that things should be updated and should be changed, but we do not feel that the local municipalities should be the governing body.

ASSEMBLYMAN HENDRICKSON: That's well-taken.

SENATOR COSTA: Commissioner Bromley?

COMMISSIONER BROMLEY: I would like to ask whether you would advocate the issuance then of a license by the State instead of by the municipality, because the municipality currently does issue and should supervise the license that it issues?

MR. DUGHI: Perhaps joint control would be more advantageous than to have one single bureau or branch of the government issuing that type of license.

COMMISSIONER BROMLEY: Would you be able to expand on that just a little? I don't know quite what you mean.

MR. DUGHI: Well, I don't feel that a local municipality or the ABC, per se, should have -- one or the other -- should have sole control. I think it should be a joint control, rather than one person having the say-so 100%. It should be a shared endeavor, because there are two sides to every coin.

SENATOR COSTA: Commissioner Jerlat?

COMMISSIONER JERLAT: Mr. Dughi, how do you feel about the municipality fining the license, even though at the present time under this proposal -- the monies would go to the State Treasury?

MR. DUGHI: Again, we do not feel that the local municipalities should have 100% jurisdiction in this area.

COMMISSIONER JERLAT: Thank you.

SENATOR COSTA: Commissioner Hendrickson?

ASSEMBLYMAN HENDRICKSON: Just one thing. When you say dual control, we kind of more or less have that right now with the Director's influence on the licensee and also on the enforcement section. Would you agree that all of the enforcement should come down then through the Director and through the State rather than from the local? Is that what I'm listening to?

MR. DUGHI: Yes.

ASSEMBLYMAN HENDRICKSON: Perhaps going back, if you will, to ABC agents rather than now as we have it under the complete control of the State Police for enforcement?

MR. DUGHI: I'm not really prepared to answer that directly right now.

ASSEMBLYMAN HENDRICKSON: Well, these are some of the issues that we have to address in making the revisions and that's one of the reasons that I had said before that we haven't heard enough from the grass-roots licensees themselves on this very, very important subject that deals with their income and actually, their lives.

COMMISSIONER BROMLEY: I would like Mr. Dughi to comment on the principle of home rule. As I understand the history of alcohol beverages in New Jersey, when repeal took place it was decided that no one should inflict alcohol on any community, but it should be the choice of the community either to have it or not to have it -- either to issue licenses or not to issue them -- and all of that was embodied in the general concept known as home rule.

A year or so ago when this Commission recommended the passage of the 10-point program, one of the things that was indicated, and one that was passed unanimously by both houses of the Legislature and signed by the Governor was a provision that the control of retail licenses should be primarily municipal. That was to preserve home rule, and I'm interested to get your comments as to whether you feel that has any value any more in 1987?

MR. DUGHI: I'm not a politician. However, I can only reflect the way our members feel and that is my only reason for being here. Some of the things that I am getting back from you will be presented to our Association so that they can evaluate it. As far as our Association taking a stance on home rule, I cannot give you a definite answer on the way they feel. I am not going to speak on my behalf, I am going to speak for our Association.

SENATOR COSTA: Commissioner Bevis?

COMMISSIONER BEVIS: Senator, If I understood correctly what you said and what Assemblyman Hendrickson said, this is a public hearing only; we're not going to take any action beyond that today.

SENATOR COSTA: That's correct.

COMMISSIONER BEVIS: I would recommend that this group that Mr. Dughi represents come back to us, preferably in writing, with some counterproposals if they don't like what this is. I do think they have misinterpreted what Task Force VII has proposed. But in case I'm wrong, then we need them to tell us what they would like, instead of just objections. Thank you.

MR. DUGHI: The Garden State Restaurant Association would like the time to answer in writing exactly the way we feel and any alternatives to the home rule situation.

SENATOR COSTA: Thank you. Commissioner Bevis was one of the members on the Task Force that worked so hard to bring this before us. Before I call on Commissioner Sapienza, Commissioner Hendrickson, would you introduce the rest of your members of your Commission -- of your Task Force?

ASSEMBLYMAN HENDRICKSON: Well, Ross Bevis is our Vice President on my right is Charlie Sapienza, representing the wine industry, we have Bill Jerlat representing part of the liquor industry and the employees, and my good friend Mr. Napodano is sitting on the Commission. We have Jack Garrity sitting with us on Task Force VII. Who else have I missed? Leo Bromley, Executive Director. He has never missed -- and he's the Executive Director of Package Stores Association.

SENATOR COSTA: Thank you.

ASSEMBLYMAN HENDRICKSON: Just let me say that I really want to congratulate these fellows for the time that they have put in on their own. There's no reimbursement to any of these gentlemen. They've come out, because what they believe is in the best interest of the alcohol beverage

industry and spent a lot of time in Trenton. So, I thank them right here for that. And Bob Pinard, representing the Director, has been on also. And we also had a representative from our State Police.

SENATOR COSTA: As you can see, we have our Task Force working very hard via non paying members of this Commission who have taken time out of their busy lives to work at bringing to the 20th century the rules and regulations and the laws that have guided us in this State regarding the liquor industry. Most of them have been on the books since 1933, and we're trying to update them as best we can. Some will stay there with careful study and others will hopefully be changed to bring them into compliance with this day and age. I'd like to call on Commissioner Sapienza.

COMMISSIONER SAPIENZA: Mr. Dughi, I've been trying to get some feedback from on-premise licensees in terms of whom they deal with in an enforcement action. What I've been hearing -- and I'd like to have your reaction and your members' reaction-- What I've been hearing is that for the most part when they are the subject of an investigation concerning possible ABC violations, the investigating agency is almost always the State Police, or in days gone by, ABC agents -- that rarely are they the subject of investigation by local authorities. Is that accurate as far as you're concerned?

MR. DUGHI: As far as I'm concerned as far as you can tell, it's directly by the State Police. Indirectly, I have no idea. I mean, everything has to start someplace. Everything has a basis.

COMMISSIONER SAPIENZA: Well, if you go back to your members, I'd appreciate it if you'd ask them that question -- whether any one of your members have ever been the subject of an enforcement investigation by local authorities as opposed to State authorities?

SENATOR COSTA: Are there any other questions from the Commissioners?

COMMISSIONER McCAFFREY: (speaking away from the mike) I just want to find out-- Charlie, are you talking about the municipalities policing the licensees? We do that through our own police. Well, are you talking about an investigation proceeding and how far they go on it? But, who do you think maintains order on that -- on-license (inaudible)? Certainly not the State Police. They don't come in most times.

UNIDENTIFIED MEMBER OF THE AUDIENCE: We can't hear you back here.

COMMISSIONER McCAFFREY: I said the State Police do not come into most towns. Therefore, it's the local police that's supervising, in effect, the activities on license premises. So, I simply asked Mr. Sapienza to clarify exactly what investigation proceedings he's referring to, if he can. I'd like that.

COMMISSIONER SAPIENZA: Well, what I'm getting at is that in speaking to as many on-premise licensees as I possibly could have over the past couple of weeks, it's been my impression from what they've said that they are rarely subjected to an investigation by local authorities concerning a whole range of requirements that the law places on their shoulders from whether or not there are fruit flies in the bottle to whether or not the merchandise that they sell is properly labeled, etc. What I've been getting back is that in almost all cases, those investigations are done by the State -- that they are rarely done by local authorities. That is really the question to Mr. Dughi. Am I receiving that impression correctly; what's the impression of your members?

MR. DUGHI: The impression of our members-- You're quite correct as far as I can tell.

COMMISSIONER McCAFFREY: Well, I'd like to know what--

SENATOR COSTA: Commissioner McCaffrey, I'd like to ask the Commissioners to confine themselves to asking questions of the witnesses. This is what the public hearing is about. We want to hear from the public and question them and not each other at this point, because we'll have time amongst ourselves. Do any of the Commissioners wish to ask any questions to Mr. Dughi?

ASSEMBLYMAN HENDRICKSON: I would just like to follow up on my colleague. I believe that we're kind of mixing the apples and oranges here; on the ABC -- Alcohol Beverage Control -- enforcement itself, is usually done now through the State Police. But, also we're right, because if there's any problem within the licensed premises of an individual being rowdy for whatever reason, then the local authorities come in, the local police would come in, and take care of that end of it. You know, I'm talking of the taverns. Perhaps they might be called if a youngster is in there that doesn't want to leave, or along those lines. So, I believe there's a differential between the law enforcement between the State side and the law enforcement from the local side. It's two different things.

SENATOR COSTA: Commissioner Jerlat?

COMMISSIONER JERLAT: This is not a question to Mr. Dughi, but I would just like to point out at this time that the State Police is really trained to go in and check for the violations that they go onto a premise for. The locals -- basically they handle hours -- if there's an after hours operation or if there's a minor problem, even many times if there's a drug problem-- But, the State Police is trained to do a particular job, and I think it would be quite a project to train over 500 municipalities in the State of New Jersey to go out and check for fruit flies or some of these picayune things that they are going after.

SENATOR COSTA: Thank you very much, Mr. Dughi. I appreciate you being here. Mr. Robert Wilinski, Counsel for the New Jersey Licensed Beverage Association.

R O B E R T W I L I N S K I, E S Q.: Chairlady Costa, members of the Commission--

SENATOR COSTA: Chairman's all right. (laughter) Or Senator's all right.

MR. WILINSKI: I represent the New Jersey License Beverage Association as their attorney and have for a number of years. My position today is directed at the proposal, primarily to allow municipalities to assess fines against the licensee. In the State of New Jersey today there are 525 municipalities which issue licenses to sell alcoholic beverages at retail.

There are numerous forms of government that these municipalities have decided would govern the particular municipality. Some are governed by township committees, there are city commissioners, and there is an option that towns of 15,000 or more can choose to have three members appointed by the municipality to act as an ABC or a municipal beverage control commission in the town. Thus, I think you can see that there are various different types of governmental units that can deal with liquor licensing problems. They are composed of a sum of only three members whereas others may have seven.

These municipalities deal with these licensing problems on an irregular basis. Some do not have an ABC licensing problem come before them for a number of years, whereas others have them come up almost on a monthly basis, so that the experience in dealing with a licensing problem is as varied as there are municipalities in the State. This great diversion of experience, personalities, and the lack of standardization among the municipalities -- if this is coupled with the right to assess a fine against a particular licensee in a particular town -- I think would result in tremendous chaos, prejudice, and be a definite detriment to the licensee.

I have represented tavern owners and retail liquor store owners for the 36 years or more that I've been in practice. I go before the councils in various towns, primarily in the southern part of the State, but sometimes in North Jersey and a number times in the central part of the State -- on the basis of at least three times a month. And I can see the great divergence and the approach that each of these municipalities has to the alcohol licensing and problems that come up before them.

For instance, I handled a transaction in Burlington County just within the last three weeks, in which the clerk on the liquor transfer -- person-to-person transfer -- said, "You know, we haven't had any activity with a transfer except for renewals for three or four years." She said, "I don't have any idea of what the procedure is. Would you please set it out and then we'll take care of it?" And we did. And the investigation that that town performed, consisted of the local police chief, calling the police chief of the municipality in which the applicant resided, and in a matter of 10 minutes the background or the character check of the applicant was clear. Whereas in another town, not too far away from this town, on a person-to-person transfer, where a gentleman wanted to form a corporation for business reasons -- he's a sole stockholder -- he wanted to transfer the license from himself individually to his corporation, it took over three months for that transfer to be processed.

And that is not the only one. The town just put these people through, in plain words, through hell. They had no record. There's no reason why it had to be done. But I point this out because it just shows how different towns and different personalities approach the liquor licensing problem. I feel that if these towns are given the right to assess and collect a fine, it will give them a free ticket where they will feel that this is a good means of easing our tax problems,

because they will feel that every dollar that they collect in the way of fines, will be a dollar less that they'll have to collect in tax revenues. I think it's only a natural temptation for these towns to be able to help themselves tax-wise by assessing the tavern owners and the retail liquor licenses' distributors also.

I think it's manifestly unfair that towns are not equipped to do this at the present time and there's such an inconsistency of the approach to the problems and such a temptation to fine or maybe get even with someone that they are not too friendly with, and also help the town by collecting a fine again from the licensee. And I think it would be, therefore, manifestly unfair to the retail liquor licensee to be subjected to this type of approach. Thank you.

SENATOR COSTA: Thank you, Mr. Wilinski. Now, I would like to ask the Commissioners if they have any questions for Mr. Wilinski? Commissioner Bevis, followed by Commissioner Sapienza.

COMMISSIONER BEVIS: The proposal states that the money will go to the State Treasury.

MR. WILINSKI: I'm aware of that, but I think it would not be too long before the pressure would be brought to--

COMMISSIONER BEVIS: You didn't say that. That's what I'm pointing out. Your testimony stated as if our proposal said it was going right to a town, which is not the proposal at all.

MR. WILINSKI: It is not the proposal no, but it wouldn't be too far in the future that the towns would be clamoring for the receipt of this money.

COMMISSIONER BEVIS: Secondly, the current option of a town is to suspend or revoke the license. That's the only option. They can't do anything else. You would prefer it just to be left that way?

MR. WILINSKI: That's right, because the present law provides that fines can be levied by the ABC Director--

COMMISSIONER BEVIS: That's correct.

MR. WILINSKI: --and I think that works very well.

COMMISSIONER BEVIS: This does also. The current law does not say that, sir. That happens to be practiced, but it's not law.

MR. WILINSKI: But I don't think the town should be put in a position--

COMMISSIONER BEVIS: Excuse me. It is law. I'm sorry.

MR. WILINSKI: --put in the position of being allowed to assess a fine against a person in that town for an ABC violation.

COMMISSIONER BEVIS: Okay, so you would prefer that suspension and revocation be left as it is, as to what a town can do?

MR. WILINSKI: Yes, I would; yes, the way it is now.

COMMISSIONER BEVIS: Okay, thank you.

SENATOR COSTA: Mr. Wilinski, you know you speak about clamoring and getting the money away from the State Treasury. It's very difficult. They won't let go that easy. (laughter) Commissioner Sapienza?

MR. WILINSKI: I just wouldn't want to see the temptation there for it to be done or the exposure there.

COMMISSIONER SAPIENZA: Mr. Wilinski, the Task Force VII's report is based upon a number of assumptions. One of them seems extremely reasonable to me, the assumption being that towns, when they do an investigation for a violation of the ABC law or regulations, often come up with a minor type of violation, one that towns would prefer to handle in a very lower-level way. They would prefer to give the licensee who they find that has perhaps a minor violation or fruit fly in the drink or perhaps the alcohol content to the bottle has slipped below-- They would prefer to give that licensee a

warning or a reprimand. Or perhaps even a small fine. But, now those towns have their hands tied under the law. All they can do is suspend or revoke, even they know very well that when the licensee goes up to the ABC Director, the ultimate penalty that would be imposed is this minor type of penalty or reprimand or a warning. What's wrong with the idea of letting the town impose that kind of a minor penalty in the first instance, and remove the burden of the licensee from going through that appellate process?

MR. WILINSKI: First of all, I don't know of any case where a fruit fly case was initiated or brought by the town. The towns are totally unequipped to handle this type of violation. I think it must be left to trained people who know what they are doing and have been trained for this type of thing. The towns, they are hard put to act, in my opinion and in many cases, on an ordinary transfer. And they're certainly not equipped to go into any type of investigation relating to the license.

COMMISSIONER SAPIENZA: It just brings me to the second question. You have a lot of experience in representing on-premise licensees. What I'm starting to hear from those people is that they are never or rarely, if ever, subjected to investigation by local authorities for violations of ABC rules and regulations or ABC laws -- that that is almost entirely up to the State Police and the ABC; that the only thing local towns really get involved in is the transfers or the renewals, and the clamor, perhaps, from local residents when there is a transfer or renewal, and there's a public hearing. Is that accurate? Is that what your experience is too?

MR. WILINSKI: I think that is accurate. Yes.

COMMISSIONER SAPIENZA: All right. Now, has anyone in your group to your knowledge ever complained to you that they were given a suspension or revocation by a local municipality where the local municipality never really never intended to

suspend or revoke, but simply wanted to impose some sort of penalty, a lesser penalty, but couldn't do it, because of the way it's set up now? Has anyone ever complained to you about that?

MR. WILINSKI: I can't recall of any specific complaint except that I think every time someone is fined or sanction against their license, whether it's by the ABC or locally, they complain. It's just human nature.

COMMISSIONER SAPIENZA: Thanks very much, Mr. Wilinski.

SENATOR COSTA: Any other questions? Commissioner Jerlat and Commissioner Napodano.

COMMISSIONER JERLAT: I have one question. I'm sure you are well aware of this, because I know you've run into situations where there are local township officials -- council people, mayors, etc. -- that are licensees and I just would like to have your opinion, as to what type of position they are in or would be in if this proposal went through politically? I'm talking about either one side or the other. You understand what I'm driving at?

MR. WILINSKI: I don't know it would be any different than it is now really, because they disqualify themselves uniformly and are not supposed to -- and I'm sure almost all of them don't participate in any of the licensing functions.

SENATOR COSTA: Commissioner Napodano, if you're through? Commissioner Jerlat?

COMMISSIONER JERLAT: Okay.

COMMISSIONER NAPODANO: Mr. Wilinski, my name is Tony Napodano, I read with great interest your letter of October 13, 1987, and was confused when I got to the end, because I thought you were writing a paper in support of Task Force VII as I read it, and I don't mean that in a derogatory or in a sarcastic fashion either, because you have a phrase in your letter that says, "God help the licensees." The phrase, "God help the licensee," is, I think, the point at which the Task Force started in excess of 18 months ago and what we're trying to do

is to bring some uniformity of sameness to the enforcement of alcoholic beverage laws as opposed to this great diversion of personalities and lack of standardization.

If I understand your testimony, sir, you would prefer that we have a status quo?

MR. WILINSKI: That is correct, with perhaps certain modifications with maybe penalties -- it will set penalties for certain things with a right to add for aggravation or subtract for mitigation. But I think that's what's being done now and I know it's what's being done now with the ABC Department and the Director, and their Department is trained and qualified to handle that.

COMMISSIONER NAPODANO: And I don't think one person in this room would dispute that. I understand what the status quo is and I'm sure you understand what the status quo is, but just for the benefit of the audience so that everyone understands what the status quo is, Mr. Sapienza has asked a series of questions concerning what municipalities may or may not do in the practical world. Mr. McCaffrey asked for some clarification of that. I think everyone should understand, and I don't think you'll dispute this, that the municipality, as the issuing authority, has wide, broad stroke police powers over that licensee, does it not?

MR. WILINSKI: In theory it does. Yes.

COMMISSIONER NAPODANO: And it does not have to have trained personnel -- and I've heard that term several times -- it does not have to have trained personnel to go into licensed premises and to issue notices of violation, does it? Or to investigate?

MR. WILINSKI: Well, I think when we get into that area, I think you're coming very close to what I fear. Because I've seen it work and it doesn't work that way.

COMMISSIONER NAPODANO: I understand, but it doesn't have to have those trained personnel, does it?

MR. WILINSKI: It should have.

COMMISSIONER NAPODANO: But it does not have to.

MR. WILINSKI: Nothing has to, but it should have if you want an ideal situation or an improvement in the situation.

COMMISSIONER NAPODANO: And under the present statute, and I'm going to simplify two words, the words that you and I understand very fully are suspension and revocation, but those two words can be simplified to one word which says, "Closed."

MR. WILINSKI: Closed? Closing?

COMMISSIONER NAPODANO: Closing the licensee is what it means, does it not?

MR. WILINSKI: Yes.

COMMISSIONER NAPODANO: Okay. Under the present law the municipality can only close a licensee for an infraction of the statute's rules or regulations. Is that correct?

MR. WILINSKI: Yes.

COMMISSIONER NAPODANO: Okay. And after that closing occurs, and the appellate process takes place, and there is -- again, you and I do not disagree -- there is uniformity, there is standardization in that appellate process when we get to the Director. But the licensee has to go through that process in order to get to the Director. That's correct, is it not?

MR. WILINSKI: Yes.

COMMISSIONER NAPODANO: And then the Director can take the closing and say, "I will accept a monetary offer in lieu of the closing." And the Director, then, standardizes that because he has a system that is pretty standard, and he acts with some degree of reasonableness, with some degree of uniformity -- most of the time. Is that correct?

MR. WILINSKI: Yes.

COMMISSIONER NAPODANO: Okay. We have a situation where we have a municipality in -- I like to use the example because they are so far apart -- Sussex County and a municipality in Cape May County. And they both did exactly the

same thing, I don't care what it is, necessarily; and they both had been inspected by a local authorities, and they both have come before the licensee now -- have come before the respective municipal boards. I don't care if they are an alcoholic board, if it's a council, it doesn't matter what it is, they've been there. And they've now gotten different sanctions. That's possible too. It happens all the time, does it not? The municipality of Sussex County for my example will suspend for 10 days, the municipality in Cape May will suspend for 15. It happens, does it not?

MR. WILINSKI: Sure.

COMMISSIONER NAPODANO: Okay. Now we've got the same violation, same problems, and we've got two municipalities imposing different sanctions. That's unequal justice to me under the law. That's what it means to me. It may mean different things to other people. What's wrong with a system where, and I know that you've read this, but I want to read this one paragraph, if I may: What's wrong with a system that says, "Municipality, you can't close these licensees, because these violations are violations that the Director of the State Alcoholic Beverage office has set a penalty, a monetary penalty for; and that is the penalty, Mr. Municipality, that you must impose"? You cannot impose 10 days up in the north counties and 15 days down in the south counties. What's wrong with that system? A system that says that you must now fine \$1000. The store up in Sussex County is fined a \$1000, the one down in Cape May is fined a \$1000, everyone goes home, they don't need an attorney to go to direct it. What's wrong with that system?

MR. WILINSKI: That's not the proposal I read.

COMMISSIONER NAPODANO: It is.

MR. WILINSKI: And it's not going to work that way, either. You're going to run into local prejudice no matter what you do, with no standardization.

COMMISSIONER NAPODANO: Can I read to you, sir, Paragraph E of the proposal? And it says, "The Director shall establish and publish a schedule of presumptive disciplinary sanctions and penalties for violations which shall be utilized by the Director and other issuing authority subject to modification for mitigating or aggravating circumstances," which you wanted when we started this discussion. And I agree that those things should be there. That's what the proposal says. The proposal says that that man is going to establish a list of penalties and those penalties are going to be followed by every municipality, 500 and whatever number.

ASSEMBLYMAN HENDRICKSON: Sixty-seven.

COMMISSIONER NAPODANO: Sixty-seven, thank you -- in the State of New Jersey, regardless of their divergence, regardless of their lack of standardization, regardless of their lack of experience. They are all going to have to do what he says. And you know what that means to me? That I have now ended my prayer that started with the phrase, "God help the licensee," because we have. What's wrong with that?

MR. WILINSKI: No, you've haven't. You've totally ignored the mitigation factor. The municipality will mitigate favorably for someone with whom they want to be friendly and will unmitigate or throw the book for someone they are not too friendly with. This is a temptation that you just can't avoid.

COMMISSIONER NAPODANO: That's a legitimate point, sir. And Mr. Wilinski, if you came to us and said, "Eliminate that divergence of mitigation and aggravation and just establish a penalty and let that be followed come high water or low water," I would accept that and say, "You know, that's a good point. Let's talk about that and maybe that's where it should go." But you're saying to take this entire proposal and throw it out and leave the licensees in the dilemma that they are in. I don't understand that.

MR. WILINSKI: Well, I think that you are totally ignoring the human factor that you run into time and time again when you appear before these local councils in licensing problems. You're just totally ignoring that.

COMMISSIONER NAPODANO: I am because, Charles -- Commissioner Sapienza asked you a question and you said that you had no recollection of any such incident. The question was, were you ever in a circumstance where a licensee appeared before a municipality and the municipality had no option but to suspend -- sorry, incorrect word -- but to close that licensee or dismiss the violations? That's their option. And you said that you had no recollection. I have some. I have been before a municipality who did not want to close this licensee and did not want to dismiss, but had no place in the middle to go.

SENATOR COSTA: I'd like to say that this is the reason why this Task Force was formed, because it seems that it was either electrocution or that was it. So, that's the reason for the Task Force and they have worked very hard. But we appreciate you coming to give us your views. I have two more that would like to speak on it, Commissioner Bromley and Commissioner/Assemblyman Hendrickson.

COMMISSIONER BROMLEY: I'm really not asking to speak madam. I would like to question Mr. Wilinski in getting his view on Paragraph C, which we inserted because we'd hoped we would be giving some guidance to people who sanctioned licensees to avoid some of the things that you talked about. Paragraph C reads, "In the exercise of discretion in determining the type of administrative disciplinary sanction to be imposed, the Director and other issuing authority shall, to the extent possible, rely upon warnings or reprimand letters or monetary penalties in lieu of disciplinary proceedings or conversion by the Director of suspensions or revocations to monetary penalties to encourage compliance and penalize for violations."

Mr. Wilinski, our intent was to try to give a very objective legislative direction to administrative people who have a loan of authority from the Legislature that permits them to act as judges. But we hope that the Legislature will say to them, that we don't want you to treat these licensees as criminals and practically confiscate their business. We want you to warn them because half of what they do wrong, they don't know about -- they are ignorant of -- or maybe it was beyond their control. So put it on the record and reprimand them by letter, and if that doesn't deter them, give them a fine from a schedule prepared by the Director and only reserve the closing to the most egregious (sic) -- an up in arms word -- egregious case--

UNIDENTIFIED MEMBER OF COMMITTEE: Heinous is your word.

COMMISSIONER BROMLEY: Heinous is my word. Including such things as the sale of drugs on the premises, etc. That's what the intention was. I wonder if you would accept Paragraph C, if it would please you any better, if instead of saying, "the Director and other issuing authority," if that paragraph said only "the Director"?

MR. WILINSKI: Yes. That would be fine. The concern that we have is the power of a municipality to access a monetary fine that we are strongly objecting to.

COMMISSIONER BROMLEY: You would have no problem with the municipality issuing warning letters?

MR. WILINSKI: No, none whatsoever. No.

COMMISSIONER BROMLEY: Or reprimands?

MR. WILINSKI: No.

COMMISSIONER BROMLEY: Thank you.

MR. WILINSKI: We appreciate your interest and commend you for your attempt to alleviate the problems of a licensee in that regard.

SENATOR COSTA: Assemblyman Hendrickson first, then Mr. McCaffrey.

ASSEMBLYMAN HENDRICKSON: Just a point to clarify for myself. I believe if I listen to you right -- and I'm going to try to lay it on the line as plain as I can -- that you're saying, at least the way I understand it, that perhaps a licensee, because he will be working his livelihood under the police power of the municipality, will perhaps not participate in that municipality in all the ways he might be able to or thinks he might be able to if he were not under that police power? What I'm saying to you is the fear of the power out there -- that that municipality may have over the living and livelihood of the licensee -- that he may only stay in that store and not participate in the rest of the municipality because he may feel there's some retribution out there, some steel fist that perhaps wants to keep him in line.

MR. WILINSKI: That is correct.

ASSEMBLYMAN HENDRICKSON: Then, I would ask that the Chairman would participate with us in the revision of the law so that we can try to help the whole situation. I'm a former licensee. I believe since 1933 that there's a lot of good things that can be done jointly to help everyone. And we would ask for that input in order, to say the least, to straighten it out or bring it up into the societal problems of the 1980s and '90s, and then ask for a revision perhaps every five or ten years. Also, with the cooperation of the licensee -- the people, because I believe in the grass-roots approach -- full input from the people who are affected by the law.

MR. WILINSKI: Yes. I know that our Association would cooperate in that respect.

SENATOR COSTA: You know, Commissioner McCaffrey, if you would just bear with me, I found out that not everyone, a licensee, has the rules and regulations. Sometimes they don't know that they are breaking a rule and before you know it, they

are closed. I wonder, just if I can take a survey right here. How many are licensees, first of all? How many have the rules and regulations?

V I N C E N T P I T I N O: (phonetic spelling) May I make a comment on that?

SENATOR COSTA: Yes.

MR. PITINO: Before I went into the tavern business I was a milkman. And my license fee was about \$25. I was pretty well-informed from the State level as to what was going on, what I was allowed to do and what I wasn't allowed to do. When I came into this business, I spent quite a bit of money. I didn't realize what I was getting into. But up until about four years ago, until we got this "blue book" which was simplified and issued to us by the Director, I didn't know which direction to go. At least this gives me some sort of guideline to run a business properly. I think that we are going in the right direction with this "blue book" if it's updated properly, and I'm sure it's going to be, I think it's a great help and a tool for the tavern owners.

SENATOR COSTA: Could you just give us your name.

MR. PITINO: Vincent Pitino.

SENATOR COSTA: Thank you. I'm sorry to interrupt you at this point, but it seems to apply because we found that a lot of people have not had the so-called "blue book" before.

MR. PITINO: I don't believe that.

SENATOR COSTA: You don't believe it?

MR. PITINO: No, I don't.

SENATOR COSTA: Weren't we told that not everyone had the "blue book" -- all the rules and regulations?

COMMISSIONER VASSALLO: Every licensee in the State was given a copy of the "Alcohol Beverage Control Handbook for Retail Licensees" which was put out two years ago.

SENATOR COSTA: Prior to--

ASSEMBLYMAN HENDRICKSON: That's exactly right. Prior to that you bought it and prior to that you had nothing.

COMMISSIONER VASSALLO: Prior to that most licensees bought the rules and regulations because they were made available to them for a five dollar cost. It was when the Office of Administrative Law decreed that no longer could the agencies put out their own regulations and that they would publish them all and then they upped the price to-- Well, first they required that you buy the entire title which meant that all the rules and regulation for the Department of Law and Public Safety which is three thick volumes. And then we finally prevailed upon them to put out a one volume edition of just the rules and regulations that come under our authority which includes alcoholic beverages and a very short section on amusement games. They did that for a cost of I think \$65, which is what's available. It is kind of prohibitive and it's not fair.

SENATOR COSTA: Well, this is one of the things that we discussed at one of our Commission meetings whereby we should make it more accessible at a reasonable price for all. Commissioner McCaffrey?

COMMISSIONER McCAFFREY: Mr. Wilinski, you are opposed to allowing the municipalities to fine. Is that true?

MR. WILINSKI: That is correct. Yes.

COMMISSIONER McCAFFREY: In response to a question by Commissioner Napodano, as I recall, you said that you would approve of it if it was established on a statewide basis. In other words, if it were established at the municipality level and made uniform throughout the State, you would not oppose that? Is that what I understand you to say?

MR. WILINSKI: No, I didn't intend that, if that's the message that I conveyed.

COMMISSIONER McCAFFREY: Well, that's the impression that I got.

MR. WILINSKI: No. Our position is that we don't feel municipalities should be given the right or power to assess fines against retail licensees.

COMMISSIONER McCaffrey: Suppose you had to fine (inaudible) fruit flies, of all the crazy things. And they put say a \$50 fine on that. Would you oppose that at the municipality level? Well, then you would have to face a suspension--

MR. WILINSKI: Well, first of all Commissioner, I don't know of any case where the municipality has attempted even to cite a licensee for fruit flies.

COMMISSIONER McCaffrey: Neither do I.

MR. WILINSKI: And I don't think it will ever come about, really. It's out of their realm, really. They are not trained for it. They don't look for those kinds of things.

SENATOR COSTA: Are you through Mr. Wilinski?

MR. WILINSKI: Yes. Thank you.

SENATOR COSTA: Thank you. I would like to introduce Mr. Rodriguez from the Attorney General's office who worked on Task Force VII also. Hector, where are you? There he is. Won't you come forth, Mr. Rodriguez? Assemblyman Zangari had to leave, so you can take his seat. (Hector Rodriguez joins the Committee)

Now I would like to call Harold Meltz, who is from Mothers Against Drunk Driving, and Drunk While Intoxicated Task Force in Sussex County. You've come quite a distance.

H A R O L D M E L T Z: It's been my pleasure to come quite a distance and meet all of you. I've met many of you in Trenton before. All I'm speaking for is we, the people. The organizations that I do represent is the DWI Task Force of Sussex and MADD-State. Now the thing is at this particular point with all the literature that I received and I've tried to digest it, I'm not an attorney and sometimes it's very difficult, especially with the legalities on occasion. All I'm trying to do at this time, the organizations that I do belong to and represent are basically grass-roots organizations -- people who are concerned with other people. All we're trying

to do is see if we can work out something either with the Legislature or any way we can with other people as to prevent inducement for people to drink in excess, especially at an age to become addicted to drugs.

The other part of this Committee's report had to do with the request that taxes be reduced on alcohol to make it--

SENATOR COSTA: That we tabled that.

MR. MELTZ: Thank God.

SENATOR COSTA: We're on the sanctions and the Director's responsibility.

MR. MELTZ: Right. That's the important part that we want to bring up. Number one, it was the only reason being that there would be those that will serve or prepare these mixed beverages -- will be in a better position to be competitive financially -- to put it on the market at a lesser cost to make it--

SENATOR COSTA: They're still on the other one.

ASSEMBLYMAN HENDRICKSON: We're still going to have hearings on that soon.

MR. MELTZ: Okay. I'd like to come down to those then. All right, the alcohol content--

ASSEMBLYMAN HENDRICKSON: That's also--

MR. MELTZ: That's also-- Well, whatever I come to, this is what I took out of another report. Okay?

SENATOR COSTA: We're on Task Force VII in regarding disciplinary sanctions against licensees.

MR. MELTZ: I see. As I said, I didn't receive a copy of that. In fact, I didn't even get it tonight. You were all out of it when I went up there to get them. So, again, all I'm concerned about, all right, of whatever the legislation, whatever you may prepare-- I mean, it's a wonderful group. And so far, the times I've spoken to the Assembly and the Senate groups, they've been wonderful in the cooperation -- the direction that they have taken is to make things a little more important to humanity.

And as I say I'd like to commend, not only the Legislature, but our Governor and all those that work with him, because of the laws and the procedures to educate and enforce the same compatible living conditions. All it's doing is reducing the possibility and eliminating the possible death of a fellow human being, young and old. Our major intent -- and that's the two organizations -- is to temper excess consumption of brain altering drugs. Don Newcombe at a meeting we had the other night, used the expression, and I will do it, "The saving of lives is a very expensive miracle." Let's not entice people, young and old, to go for a drug and become addicted because of the convenience and low cost factor.

These public hearings are important to stimulate people on the needs of commercial venture -- which of course are the restaurants and retail drug establishments and so on -- and diverse opinion on direction and impact on our people. Please panel, the safety, lives, and living of our citizens should be the prime consideration. That's all I have to say.

SENATOR COSTA: Thank you. Assemblyman Hendrickson.

ASSEMBLYMAN HENDRICKSON: First of all, as a legislator and a human being, I agree with that. Anything that we do to preserve life out there should be done, has been done, and will continue to be done.

On the other side of that coin, we're a very diverse State and we have limited transportation facilities. We have people now that have been severely adjudicated in loss of a license and the fallout of that is on their families and their inability to go to work. Would your organization -- and we would need that and I'd like some input -- look into work permit driving -- work permit ability to get to work, if you will, to support their families? A mistake is a mistake and is being corrected by the heavy law enforcement. But on the other side, we have people now with the loss of their license from six months to two years that cannot get to work because there's no transportation throughout the great State of New Jersey.

SENATOR COSTA: Assemblyman, I have a bill in, to that effect.

ASSEMBLYMAN HENDRICKSON: I know you do. What I'm asking for is the support that is going to be needed to take a look at the aspect of the whole family situation that happens to that individual because he was wrong. Then, number two: Would you look at the expungement of that record after a five-year or so period of not being -- okay, of not actually found in any violation? In other words, he's been completely clean of the drug for the five-year period. Right now it goes on for life. He can't do anything. There's certain aspects of that driver's license that lives with him no matter what he has done. And that's the only group, I believe right now, that is caring. We do forgive an awful lot of things. And we should do that.

But we'll need your help from your organization, and I'd like to see that, to move along those lines -- one for the help for the family and one for the expungement of the record after a period of time of no violations.

SENATOR COSTA: Assemblyman Hendrickson, can we get back to this public hearing? While everything you say is fine, I really believe that we really want to get on with this hearing and I'd like to keep us on track. Are you through as far as this particular Task Force that we're discussing; nothing else?

MR. MELTZ: Yes. And the other thing, before I leave, someone is going to get my name and address again so that I get all information pertinent to this. I would appreciate it.

SENATOR COSTA: Just give that to our staff person. Thank you very much for being here. Now I'd like to have Harold Freundlich, past Mayor of Byram Township. Byram Township, is that Sussex County?

H A R O L D F R E U N D L I C H: Yes, Senator.

SENATOR COSTA: You came a long way, too.

MR. FREUNDLICH: Yes. I, like Mr. Meltz, came from Sussex County, I traveled a little bit further, I live a few miles north of him. We live in the same township.

SENATOR COSTA: Will you take the other microphone.

MR. FREUNDLICH: Okay. I'm the past Mayor of Byram Township. I am also a licensee, obviously, being a mayor, an ex elected official. I would like to talk of some of the possible problems which can arise out of this proposal. One is, throughout my entire life I've been involved in competition; competition in sports, where in football you go out and possibly maim somebody out on the field; the most basic competition in competing for a mate; and I've been in political competition which is probably the dirtiest and lowest competition of all. Okay? (laughter) I'm sorry, I'm speaking from firsthand experience.

And those of you who are here as politicians, whether you agree or not, I mean, I've had physical attacks on myself and other committee people. We've had threats, for example, by a police chief's wife that if my family and my children needed emergency services, they will not be there. When you make decisions as a public official, you make them to the best of your ability to satisfy all the people of your community. If you dare to oppose people in power, the retribution can be very severe.

I as a licensee am in a more vulnerable position than most. Besides my wife and children, the most important thing in my life is my liquor license. It provides me with the means to support my wife and family. It has been stated before that the only ability that a municipality has is revocation or suspension of the license. That's not true. The municipality has the authority to enact restrictions upon the licensees in many different forms in their operations, based on individual incidents. So, I'd like to clarify that.

The other thing is that, particularly in my municipality or in others, if you would dare to oppose somebody or if you were in a different party that was thrown out, or if you didn't buy enough tickets to a policemen's ball or something, or you opposed a pension plan, if you left this in the hands of municipal police or municipalities, they could come back and continuously harass you with minor violations, regardless of where the fine money goes, whether it goes into the State coffers or into the municipal coffers. They don't care. As long as you're broke, you're broke. They run you out of business, they've gotten their pound of flesh. It doesn't matter to them where it goes. If they just want to get even, they get even.

SENATOR COSTA: They play rough in your part of the country. (laughter)

MR. FREUNDLICH: Well, we fight back rough too. It's like that all over. I'm just big enough that I can tell you the truth. I wish that some of the questions that were asked to some of the people up here before, were asked to me. I have quite different responses.

SENATOR COSTA: All right. If you're through, we'll ask the Commissioners.

MR. FREUNDLICH: Yes.

SENATOR COSTA: Commissioner Sapienza.

COMMISSIONER SAPIENZA: Well, I never played football with you.

SENATOR COSTA: Maybe it because I'm so little, they don't bother me. You are a big target.

MR. FREUNDLICH: You swing a big stick, Senator. (laughter)

COMMISSIONER SAPIENZA: I'm really confused on Task Force VII and I'm going to ask just a couple of questions to help get myself unconfused, because, you know, I represent wholesalers. I have no real interest in how this comes out.

It doesn't affect the people who I represent in real life at all.

MR. FREUNDLICH: Who sells the majority of your product, Charlie?

COMMISSIONER SAPIENZA: You do. Who sells the majority?

MR. FREUNDLICH: No. Which form or which segment of my industry sells the most?

COMMISSIONER SAPIENZA: I have no idea.

MR. FREUNDLICH: Oh, I think you do.

COMMISSIONER SAPIENZA: Well, I wouldn't lie to you. You're too big. The honest answer is I really don't know who sells the most wine and spirit products.

MR. FREUNDLICH: Would it be the on the premises or the off-premise?

COMMISSIONER SAPIENZA: I really don't know.

MR. FREUNDLICH: Well, I think the on-premises sell 24% of the alcohol dispensed in this State. So 24 to 76, I think that would let you know.

COMMISSIONER SAPIENZA: Yeah, but I don't want to argue this point with you.

MR. FREUNDLICH: No. I just want the facts to be straight.

COMMISSIONER SAPIENZA: I guess the fact of the matter is that--

MR. FREUNDLICH: You said that you don't represent any segment of the industry, but I just want to--

COMMISSIONER SAPIENZA: I represent the wholesalers who have an interest in who imposes fines. All right? Now, I'm confused about the problems that your segment of the industry seems to have with the Task Force VII report. I'm honestly confused by it. I've heard in the first instance that you're afraid that local enforcement officers will unfairly go after a licensee for political reasons.

MR. FREUNDLICH: No question about it.

COMMISSIONER SAPIENZA: I take it there's no prohibition against them doing that now, right?

MR. FREUNDLICH: There is a check and balance system if they do do it. For example, if they walk in and suspend my license, I have an appeal to the ABC Director who will be a nonpartisan person--

COMMISSIONER SAPIENZA: Now, do you feel that the Task Force VII report will do away with that appeal -- that the proposal in Task Force VII would do away with the appeal?

MR. FREUNDLICH: That I'm not sure.

COMMISSIONER SAPIENZA: Well, I can tell you as a fact that it doesn't. It maintains the right of a local licensee to appeal to the Director, anything that he feels was improperly done to him below -- whether it be a factual conclusion or a penalty that was imposed that's greater than it should have been.

MR. FREUNDLICH: Don't I have the expense of adjudicating it on a local level though?

COMMISSIONER SAPIENZA: Well, don't you have that now? I mean, if the local people don't like you, and they go after you, now I take it that what they do is suspend your license or revoke it, but suspend it for a day or two. Right?

MR. FREUNDLICH: Well, they have to, of course.

COMMISSIONER SAPIENZA: All right. But assume that they manufacture the cause -- because they have to have cause whether they impose a fine or not, too-- Assume that they imposed a penalty. As I understand it, the only penalty they can impose on you now is the suspension or revocation. Is that correct?

MR. FREUNDLICH: That's not correct.

COMMISSIONER SAPIENZA: I know that when they renew your--

MR. FREUNDLICH: They can place many varieties of restrictions on your license.

COMMISSIONER SAPIENZA: I know when they renew your license, they can ask for restrictions on you in terms of security and things like that. I'm not talking about renewal of licenses, I'm talking about when they go in and they do an investigation for a violation of an ABC law or regulation. All right? The only penalty as I understand it, that they can impose upon you, if they find one, is suspension or revocation. Is that correct?

MR. FREUNDLICH: Depending on the violation. So if it's fruit flies, they can bring the board of health in after you.

COMMISSIONER SAPIENZA: Okay. But for the ABC violation all they can do is suspend or revoke. Right?

MR. FREUNDLICH: Okay.

COMMISSIONER SAPIENZA: Now, if they can already execute you, why are you unhappy if they can do something less than that? Or they would be required to do something like that.

MR. FREUNDLICH: You're making it easier for them to use in a small way to continually pick, pick, pick, and chip away at a problem. You're definitely more vulnerable.

COMMISSIONER SAPIENZA: The other thing I've heard is that as a practical real world thing, nobody gets investigated by local authorities for ABC violations. What really happens is all the ABC violations are enforced by the State Police.

MR. FREUNDLICH: That's not correct.

COMMISSIONER SAPIENZA: That's not correct?

MR. FREUNDLICH: No. I can give you examples. For example, in my township during my tenure as committeeman, I was not able to do anything. I had to sit there and keep my mouth shut. Because we had an establishment known as the Rocking R, the Bunkhouse. They were convicted of prostitution, drug sales, and numerous other violations -- gambling, everything. That investigation was started by the municipal police. I was aware of the ongoing investigation. It brought in the State

Police, and it also brought in the ABC. That investigation originally was started by the municipal police due to complaints. Now, we're talking about probably the most heinous crimes that can be committed in our industry. Okay?

COMMISSIONER SAPIENZA: Okay. I'm not talking about unusual matters. What I've heard from licensees -- on-premises licensees throughout the State -- and what I've asked them here today is that as a practical matter, local enforcement authorities don't do the investigation and prosecution for the normal ABC violations. That's left to the State Police. What local authorities do is they'll keep order in an establishment. If a fight breaks out, they'll be called and they'll come and respond to it. If there's a drug problem, they'll go and respond to it. But as a practical matter, for the fruit flies, for the list of employees on the wall, for all of those myriad regulations that you have to comply with, enforcement--

MR. FREUNDLICH: Local police do check the employee list.

COMMISSIONER SAPIENZA: Oh, they do?

MR. FREUNDLICH: Yes, they do. For example, they'll come in. It's after closing and they'll walk in, you have two employees, you're in there cleaning up or doing something. They will take the list and verify the people on the premises as a matter of fact.

COMMISSIONER SAPIENZA: Now, suppose they find that in fact your list isn't complete -- the local people. Suppose they find that. Okay? What do they do?

MR. FREUNDLICH: They can report it to the ABC.

COMMISSIONER SAPIENZA: Could they take action against you also? Do they have the power to take action against you?

MR. FREUNDLICH: That I'm not definite on. I didn't come here to discuss all the idiosyncrasies of the law. What I'm here to tell you is that what you are doing, and the manner of which you are doing it now, takes a segment of the

population of this State, which is the people who own restaurants, taverns, liquor stores, and you are further discriminating against them, because you are putting them in a position where they will not want to run for public office. And there are many people in this State, in the State Legislature, in the Senate, and so on, that are part owners of licensed premises. You are subjecting them to other types of inadequacies, because, for example, you are putting them out and making them much more vulnerable than they are now to being solicited for contributions.

Because now what you've done is you've taken the local regulatory agency and a local policing authority -- and this doesn't happen everywhere, and I don't even know if it would happen in my community -- but you are still making us vulnerable. And it's no reason to get up-- You don't have to get up and walk across the highway with your eyes closed if you can keep your eyes open. There's no need to have increased dangers out there.

COMMISSIONER SAPIENZA: You feel if Task Force VII were implemented, it would make you more vulnerable to political pressure than you are now?

MR. FREUNDLICH: Definitely. And also, I've seen municipalities, including my own, take something like this and use it as a revenue maker to subsidize their budget. I've seen court revenues when the police wanted to push it up to \$200,000 a year and drop down to \$8000 the following year.

COMMISSIONER SAPIENZA: You understand of course that the Task Force VII proposal would specifically prohibit any fine money from going into municipalities. You understand that?

MR. FREUNDLICH: That's correct. But if a person wants to put you out of business, as I stated before, they don't care where the money goes, do they?

COMMISSIONER SAPIENZA: Well, can't they put you out of business now?

SENATOR COSTA: Commissioner Garrity?

COMMISSIONER GARRITY: Mr. Freundlich, with the situation as it is right now with the municipalities, I get the impression, from what I am hearing, that municipalities and the local police get involved only when there's sort of complaints on noise and things of that sort and come in on the situation. Is it your fear that with an expanded laundry list of violations which the State would supply them with, that they would then have that many more things that they would become aware of and maybe look for in licensed premises as a minor violations type of thing?

MR. FREUNDLICH: That's correct. I have no fear of them coming in for a major problem. If somebody is in violation of that, they should come in and they should catch them. But to give them more things to do when they would choose to use it as a form of harassment would be detrimental to the licensee.

COMMISSIONER GARRITY: And you feel that local prejudices and local politics might have a bearing on that too?

MR. FREUNDLICH: Unquestionably. I've seen a person change the whole form of government in a township because he couldn't have his own way.

COMMISSIONER GARRITY: Thank you.

SENATOR COSTA: Commissioner Napodano?

COMMISSIONER NAPODANO: I'm sorry, I didn't hear your name.

MR. FREUNDLICH: Harold Freundlich.

COMMISSIONER NAPODANO: Freundlich. You're here representing a restaurant chain?

MR. FREUNDLICH: No, I'm here representing my own license. I happen to be Vice President of the New Jersey Licensed Beverage Association, but I'm not speaking for them, I'm speaking for myself.

COMMISSIONER NAPODANO: Let me say that there isn't one member on Task Force VII who seeks, by a proposal, to bring greater problems to the industry or to the licensees. It's not our purpose at all. I hope you appreciate that.

MR. FREUNDLICH: Yes. And I would like to say to that, especially to Mr. Bevis and to Mr. Charlie.

COMMISSIONER NAPODANO: To Mr. Charlie?

MR. FREUNDLICH: Mr. Charlie. Mr. Charlie Sapienza. Sorry. I'm sure that a lot of hard work -- having been in your position -- a lot of hard work goes into any sort of committee or task force. And I'm sure you did come up with what you felt was the best process. I'm just trying to present to you one of the problems where if your proposal is left the way it is, that perhaps it was overlooked. You know, it's nice to think we live in a world where everybody's nice, but it's not that way. And we do have people who would definitely take advantage of the situation to hurt people.

COMMISSIONER NAPODANO: Do you have a food service in your facility?

MR. FREUNDLICH: Minimal.

COMMISSIONER NAPODANO: But you do serve food?

MR. FREUNDLICH: White Castle hamburgers. (laughter)

COMMISSIONER NAPODANO: You bring them in?

MR. FREUNDLICH: I bring them in frozen and serve them in the microwave. And potato chips and pretzels.

COMMISSIONER NAPODANO: I represent a lot of retailers besides just liquor retailers, and I am familiar with a lot of activities that occur in the municipalities where municipalities have unbridled authority, basically, over the retailers that operate within their borders. And if there's someone who is seeking, your word, to "harass" you-- I would think that a municipality doesn't need a prescribed list from the Director to come in and harass you. I mean, if you serve food -- I would think that it generally takes about 48

hours or more -- they could get a local judge to close you down for health reasons or you'll stop serving food and that will be the end of that.

I mean, there are all of these things that municipalities have, and I'm not subscribing to-- And I'm not at all suggesting that municipalities do these things; I don't know that they do-- I'm listening to you and I appreciate what you're saying. You're out there having these things happen or at least experiencing these things. But why would this be a greater big stick, if you will, than the sticks that are out there right now?

MR. FREUNDLICH: Well, obviously if the sticks that are out there now would enable these things to go on, they probably would. For example, getting back to the case of the Bunkhouse, my governing body at that time did try to close it. It doesn't happen so quick with the board of health and some of the other things. This went on for quite a while. Even after there were 100 and something violations that the board of health went in. Building code-- We sent in everybody. But, they-- Let me rephrase that. They sent in everybody. I couldn't have anything to do with it. I listened, but I couldn't even speak or give advice.

But it doesn't happen as quickly as you think. The added things that you're suggesting now, would be just to make it so much easier for people to harass the licensee. I'm sure that wasn't your intent. Believe me, gentlemen. I have no misconception that that was your intent to make us more vulnerable.

UNIDENTIFIED MEMBER OF THE COMMISSION: You're wasting your breath.

MR. FREUNDLICH: No sir, he's not wasting it.

COMMISSIONER NAPODANO: I just don't understand, and again accepting you as the authority on the subject, I just don't understand how this adds more fuel to the fire? I think, and God knows I have limited abilities, but I think--

MR. FREUNDLICH: Well, for example, right now if all of a sudden these powers were given, then all of a sudden you might say, "Well, these are new powers, so we'll go out and start investigating." It could be a great tool to start on. You can say, "Well, we've got the new powers. We didn't have the problem before."

COMMISSIONER NAPODANO: We had an opportunity at the last Commission meeting, and you'll find this to be as confusing as I, perhaps. At the last Commission meeting that dealt with this question, we had two position papers presented to us before we decided we would go into a public hearing today. Of the two position papers, one was from a group who I believe you are a part of, that said, "We should not enlarge the municipal powers by permitting them to assess funds." And Mr. Wilinski said the same thing today. And I understand you saying that. I'm not disputing it. I understand that you believe it.

Let me tell you something. We had another group represented by the League of Municipalities that said that they do not favor this proposal because we are eliminating the powers of municipalities. I don't know how we can be doing two things at the same time. That's the confusion that I have.

MR. FREUNDLICH: You stated before that if you give this authority to the municipalities and they do go out and do this, it's an additional expense to the municipalities. Is it not? This just isn't going to happen. This will be an additional expense. Isn't that eventually going to be passed on, bottom line, to the taxpayers?

COMMISSIONER NAPODANO: No. We're not giving-- No. Please.

MR. FREUNDLICH: I'm sorry. For the municipalities to go out and have these investigations--

COMMISSIONER NAPODANO: We're not telling them to do that. We're not telling the municipalities to enlarge their staff. We're not telling the municipalities to visit Mr. Friendly's store. We're not telling municipalities to do

anything. We're simply telling the municipalities that their option is not simply to close Mr. Friendly. That's all we're telling them. Then the municipalities comes back to us and say, "Boloney." Forgive me. Not boloney. "Nonsense. What you're doing is limiting our power." (laughter) So, how can we be doing both? I mean, I cut myself this morning shaving, but there was still only one sharp side to that razor. I'm sorry. It wasn't a question; it was just a confusion. I have nothing further to say.

SENATOR COSTA: Thank you very much for appearing before us.

MR. FREUNDLICH: Thank you.

COMMISSIONER NAPODANO: Now we're more confused.

SENATOR COSTA: Now we're more confused. Now, we'll have Fred Guarnieri, who's the President of the New Jersey Liquor Stores Association.

FRED GUARNIERI: Good afternoon Madam Chairman. Thank you for the elevation, but they got me out of office last year. And thank goodness I am. First of all I'd like to thank the Commission for coming down and holding another hearing in front of the New Jersey Liquor Stores. I think the communications that has been provided by these hearings I hope gives the Commission a better feel for what we as licensees think.

I'm speaking on Task Force VII for myself as a licensee of two stores. I have not approached the matter with either the state board or to my South Jersey board. And I would like the option to submit written testimony subsequent to the hearings. As I have heard here today, and there seems to be a lot of confusion of what I'm hearing from the other licensees as to what Task Force VII is proposing. As to my understanding of Task Force VII, I haven't seen one written document on it. I'm relying solely on the materials that I have heard today, discussions at some of our board meetings,

and discussions at our convention -- that Task Force VII was an avenue to try to set an objective set of subscribed circumstances on subscribed instances, errors, omission, or violations.

As I see the Task Force and the discussions today, I'm very hard put, as Mr. Napodano has discussed, to understand the confusion. It seems to be so clear-cut to set up a set of circumstances and have it clear-cut for all the licensees. If I drive an automobile and I'm in a 25 mile an hour zone, or I'm going 50 miles an hour in a 25 miles an hour, there is a prescribed fine for that violation. And it doesn't matter if I'm driving a Volkswagon or if I'm driving a Rolls Royce; I'm going to get the same fine. We have had a divergency in the enforcement of fines in the past, I think, for something like this -- for minor violations. This is something that is time to come into the 1980s for.

So, I would end my remarks by saying that based on what we have heard today, as a retailer, I have no fear with the appellate procedures that are allowed in the Task Force VII -- that my municipality is going to put me out of business for minor violations. If they want to put me out of business, they could have put me out of business a long time ago. And if they want to harass me, they can harass me. You know, this is not a broadening of power. It seems to be more a definition of the powers to the municipalities. That's why I can't understand why the confusion or the difficulty with that? I think it's a positive step for the licensees and as a licensee I'd be in favor of that type of enforcement.

SENATOR COSTA: Any questions to Mr. Guarnieri? Commissioner Sapienza?

COMMISSIONER SAPIENZA: One of the underlying principles that Task Force VII was responding to was the idea that now municipalities can only suspend or revoke. But there are many instances where municipalities, in finding a violation, would like to do something less than suspend or

revoke, but can't do it, because the law doesn't permit it, so the poor licensee is then stuck. He gets suspended or revoked. He gets to then go through the additional problems of appealing to the Director, where an appropriate offering compromise can be accepted. We all took that as a fact. But, what I'd like to ask you is, is that a fact only in theory or is it a fact in reality? Is the reality that local municipalities do investigate violations of the ABC regulations and prosecute them or is the reality that only the State Police investigates ABC violations and prosecutes them?

MR. GUARNIERI: Speaking as a retailer for 22 years, I know of at least six instances where the local police had investigated and-- You know, it's not the type of thing of the local police coming in to see if my license is hanging to the wall or whether I have the proper application permit or if my transit insignia is in proper order. We're talking about the crime or the offenses that really affect the public -- the offenses of sales to minors, offenses of drug abuse, after hours sales, and prostitution.

And in reading in the paper I've often seen the investigations started on a local, or oftentimes dealing on a county level where the county prosecutor comes in and had undercover operations. I can't say for sure that they have accomplished their investigation coordinated with the State Police or whether they've done it on their own. You know, I'm not privy to that, but the understanding that I have is that oftentimes when these problems come up, that the municipality will act on it. So, I say yes. As a matter of fact, in my discussion with the Director-- I think the Director has told me that most investigations started by the ABC are the result of complaints filed either by citizens or by municipalities on licensees.

COMMISSIONER SAPIENZA: I'm not talking about complaints filed, I'm talking about investigations made and actions taken.

MR. GUARNIERI: Well, when the complaint is filed, that's when the investigation starts.

COMMISSIONER SAPIENZA: The investigation is done by the municipal officer?

MR. GUARNIERI: No, I'm talking about from the ABC level.

COMMISSIONER SAPIENZA: Let ask you a second question. The other principle that underlies the recommendations of Task Force VII is that for most of the run-of-the-mill violations there ought to be a set fine. It can be mediated downward or it can be raised up because of aggravating circumstances. But there ought to be a set fine no matter who the violator is, whether he be a big guy or a little guy. When it is the same, the fine should be the same. Are you in favor of that philosophical proposal?

MR. GUARNIERI: I think justice demands it. I mean, we're licensees. Why are we put in a position where one person gets one fine and one person gets another fine for the same identical offense? If it's an offense, it should be served objectively -- served with the degree of justice and deterrent so that you know that if you serve a minor, you are going to get "XYZ." If you serve them on a second time, you get "XYZ." And I think the Director has done an excellent job of standardizing that. But I can remember years back when I would see violations where on a minor violation they would get a two-day closing, and another store would get a ten-day closing. It seems very disparaging (sic) between the two -- that you can have that kind of disparity in a fine or in a closing, because this is prior to the fines being levied for the same violation. It seems counter to what our system of justice really demands.

COMMISSIONER SAPIENZA: Thank you.

SENATOR COSTA: Go ahead Commissioner.

COMMISSIONER JERLAT: Mr. Guarneri, one question. If the municipality had the right to fine, but the monies went to

the State Treasury, how long do you think it would take that the towns would continue to fine for a violation -- any type of a violation? How long would it take before they would plead or go to the State Legislature and ask for that money to be collected by the municipality? Do you feel that they are going to levy a fine and then allow the money to go to the State? That's one of the great problems.

MR. GUARNIERI: The answer to that would be if they were going to do it, why haven't they performed it now? They would have the ability now. They're fining licenses now. Why aren't the municipalities screaming to the Legislature right now, "Give us the money! These are fines in our township, these are violations of our municipal licenses. Why should the State get the money for this and not our municipality?" And we have not seen that. I have not seen that, and maybe someone can show me, you know, has there been an effort by the municipalities to act now on the fines that are being levied?

COMMISSIONER JERLAT: Well, the municipality at this point is not fining them. They are being fined at the State level. So, therefore--

MR. GUARNIERI: Again, if they wanted the money, what difference does it matter who does the fining, whether it's the township or the State? Yet if they wanted the money and they thought they had a just cause, because it's against that municipality's licenses, I would think that they would have come to the Legislature already and said, "These fines really don't belong to the State. It's a municipally issued licensed. That should be our money."

COMMISSIONER JERLAT: Are you aware that there has been proposed legislation in the past to allow the municipality to fine?

COMMISSIONER BEVIS: To fine or to get the money?

COMMISSIONER JERLAT: To fine.

MR. GUARNIERI: I am not aware of that. I can't recall.

ASSEMBLYMAN HENDRICKSON: If I may, you're saying that the fine should be-- Do you feel that it should be on the ability to pay -- that it's a lot harder for a store owner to pay a thousand dollars on lower yearly sales? If we have a store out there doing an exorbitant amount of sales -- I've been a retailer, so we both have an idea of what they're doing. First there's a small store out at the other end of the State, would that be equal justice where they're both assigned the same monetary fine, let's say a thousand dollars or five thousand or whatever that figure might be, or should it not be on the year end sales?

MR. GUARNIERI: Well, again the difficulty I have with that is why then don't we set a different set of fines for the man who drives a Rolls Royce as opposed to the poor man who drives the Volkswagon? Our system says if you have violated a motor vehicle law, you will be imposed "XYZ" fine. Again, as I understand it, there is mediating and aggravating circumstances allowed, and I would think that there was enough leeway in there. Again, with the appeals process, if you had a small retailer who was given a thousand dollar fine for sales to a minor and he appeals to the Director-- And again, as I understand Task Force VII, it's not a mandatory fine; they can take the closing also. Is that not correct?

ASSEMBLYMAN HENDRICKSON: It's also an appeals process.

MR. GUARNIERI: There's also an appeals process. But if they find that there's also the option that if they don't want the fine, that they can take the closing.

COMMISSIONER VASSALLO: Presently, but not in the proposal.

MR. GUARNIERI: It's not presently in the proposal?

SENATOR COSTA: We'll give you a copy of that.

MR. GUARNIERI: That might be an excellent recommendation as an added feature of the proposal, so that if

the licensee cannot physically afford it, he can take the option to accept the closing, which he has right now.

SENATOR COSTA: Commissioner Jerlat.

COMMISSIONER JERLAT: I think one of the things that Commissioner Hendrickson is talking about right now, a prime example would be Stevens at the Meadowlands, serving a minor and a small package store in Wallington in Bergen County serving a minor. I'm confused about this myself. If Stevens in the Meadowlands which does a tremendous volume of business would be fined, let's say a figure of \$30,000 versus the small licensee under the way it's set up today, the small licensee may be fined a thousand dollars or five hundred dollars, what do you think about the proposal of them both being fined -- let's say a set fee was a thousand and they were both fined at a thousand dollars?

MR. GUARNIERI: Again, I think the equality of the deterrent is going to be in the levying of the fine equally, and they know it. Now if you have a situation and you find out that you have a large operation that consistently says, "Well, gee, the heck with it. I can afford the \$1000 fine. I'll just continue violating the law." You know, I think the proposals spell out for second and third offenses -- that we're really not adding any deterrence to the big guy or decreasing any deterrence to the small.

SENATOR COSTA: Yes, Commissioner Bromley?

COMMISSIONER BROMLEY: Mr. Guarnieri, does it make any difference if one sells to a minor who proceeds out on the highway, has a head-on collision, and kills someone -- whether he bought it in a big store or a little store?

MR. GUARNIERI: To, my way of thinking, there would be no difference.

SENATOR COSTA: The infraction is the same. And what you're saying is justice should be meted out the same.

MR. GUARNIERI: I would think so.

SENATOR COSTA: Any other questions for Mr. Guarnieri? If not, I'd like to recognize David Dwork who is the New Jersey Liquor Stores Association President, and then I could call out the next one. Mr. Dwork, why don't you stand up and say hello for us? (applause) Thank you very much.

D A V I D D W O R K: Again, thank you. I would like to extend an invitation to all the Commission members for lunch this afternoon. We will have lunch compliments of Anheuser-Busch and we would love to have you all to join us.

SENATOR COSTA: Thank you so much. Any comments?

COMMISSIONER NAPODANO: I just wanted to point out, Fred, while it's not in the proposal as an option as such, the proposal does indicate that its suspension shall be the punishment, whether there's a failure or a refusal to pay a monetary penalty imposed. So, while we don't say it that clearly, the concept is in there and maybe we can say it in better language.

SENATOR COSTA: And elaborate on it. Any other comments from the Commissioners? If not, I hope you've enjoyed our bringing the Commissioners down to you each year. (applause) If there's anyone from the audience who would like to have something to say--

C A R M E N G E L L I T T O: Just briefly. Let me introduce myself. I'm Carmen Gellitto. I'm the Immediate Past President of the New Jersey Licensed Beverage Association. Currently I hold the position of the East Coast Vice President of the National Licensed Beverage Association.

Senator, I've been listening to this brilliant Committee here, and I seem to have some reservations I look into the future and I see what's happening today. I've been a licensee for 23 years and I'm flooded with bureaucracy. The ABC inspects me, I have the fire marshal come in and inspects me, I have the health department, I have the zoning officer, I have the compensation people come and see that I'm paying the

right amount for my compensation insurance, and numerous other inspections.

In the back, I have some foresight on some of the testimony that I heard. I hear a check list and a fine list of how much these fines are going to be. And I see the municipalities receiving a check list of maybe 25 items of things that they should fine at the amount that they should fine. For instance, I heard fruit flies, which the municipalities never check, but that would be on the list. I also see a township that has a little initiative and is a little aggressive and growing, like for instance my town, Mt. Laurel, that most of you are familiar with. And I see the town fathers being aggressive and building maybe a political machine, or government, or whatever they want to do, and establishing boards. Then all of a sudden, the town manager gets an idea and sees this list and says, "You know what? We ought to establish a little alcohol commission or an inspection board to go around and inspect these licenses and see if they are compliant with all these violations that we can look and that at we can fine them on."

And you know what? In the future, if this type of thought is in this board to help us and you think that helping us is by presenting this type of thing, I think that you're making a great mistake. Because, all of you are familiar, I know Assemblyman, you're familiar in Ocean County, I know that many of you in your different counties know about little towns and how aggressive they are, and believe me, I see this and I see a great problem. Thank you.

SENATOR COSTA: Thank you very much. Anyone else from the audience that wishes to speak?

J A M E S F O R D Y C E: Yeah I would like to speak. My name is James Fordyce. I'm President of the Camden County Licensed Beverage Association. I'd just like to state that I

remember about 15 years ago that the municipalities had the option to increase the licensing fee of the taverns at will. And I remember one town raised their license fee from \$200 to \$1000 in one year. The State saw fit to come in there and put a cap on this. For now they can only raise it 20% every year.

Now the State saw fit to do this because the municipality took advantage of it and saw dollar signs. Aren't you opening a can of worms now or giving municipalities the ability to see dollar signs again and they can fine at will, and again, they will help the voters out by not having to raise the ratables because their coffers are filled with the fines of the tavern owner people?

One other point I'd like to say is that you are correct, Assemblyman, that the larger people should pay a larger fine than the small people. I know in our area, one tavern that does \$100,000 got hit with a minor violation and they were fined \$5000. I have a licensee in my town that does \$700 a week. What would happen if she got fined \$5000? That's all I have to say. Thank you.

SENATOR COSTA: Thank you very much. I'm going to close discussion right now because we went beyond the time that we were supposed to. I'd like to tell you that we're leaving the record open. Since this is a public hearing, if any of you would like to send something in writing to our staff person, Dan Ben-Asher, in Trenton at the State House, we'd appreciate that. You've given us-- Well, you've enlightened us; you've confused us; you have been constructive; and you've given us food for thought. So, we're going to be taking this back, because as I stated in the very beginning we're not voting on this at this time. We're going to take everything you said, plus what comes to us, and then we'll have our meeting. Our next meeting is scheduled for November 13 if that's agreeable to all of the Commissioners. Friday the 13th.

ASSEMBLYMAN HENDRICKSON: Senator, if I may, I would ask for the reenactment of Task Force VII, if you will; and perhaps revise this with a lot of the public input.

SENATOR COSTA: Well, I think that's what we will be doing because of all that we heard today and of what will be coming to us -- that the Task Force stay and return to the drawing board and take into consideration what was stated here today. Once again, we enjoyed being here, and I want to thank the Commissioners for coming here to Atlantic City. We had quite a complement here today. Thank you very much.

(HEARING CONCLUDED)

APPENDIX

TASK FORCE 7 REPORT ON DISCIPLINARY SANCTIONS

A. THE DIRECTOR, WITH RESPECT TO ANY LICENSE, PERMIT OR REGISTRATION, MAY INITIATE AND IMPOSE DISCIPLINARY SANCTIONS AGAINST SUCH LICENSE, PERMIT OR REGISTRATION; ANY OTHER ISSUING AUTHORITY, WITH RESPECT TO ANY LICENSE ISSUED BY IT, MAY INITIATE AND IMPOSE DISCIPLINARY SANCTIONS AGAINST SUCH LICENSE FOR ANY OF THE FOLLOWING CAUSES:

(1) VIOLATION OF ANY OF THE PROVISIONS OF THE "NEW JERSEY ALCOHOLIC BEVERAGE CONTROL ACT," R.S. 33:1-1 ET SEQ.;

(2) FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THE "ALCOHOLIC BEVERAGE TAX LAW," R.S. 54:41-1 ET SEQ. AND THE "ALCOHOLIC BEVERAGE WHOLESALE SALES TAX ACT," P.L. 1980, c.62 (C.54:32C-1 ET SEQ.);

(3) FAILURE TO HAVE AT ALL TIMES A VALID, UNREVOKED PERMIT, LICENSE OR SPECIAL TAX STAMP, OR OTHER INDICIA OF PAYMENT, OF ALL FEES, TAXES, PENALTIES AND PAYMENTS REQUIRED BY ANY LAW OF THE STATE OF NEW JERSEY OR THE UNITED STATES;

(4) ANY VIOLATION OF RULES AND REGULATIONS PROMULGATED BY THE DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL;

(5) ANY VIOLATION OF ANY ALCOHOLIC BEVERAGE CONTROL ORDINANCE, RESOLUTION OR REGULATION OF ANY OTHER ISSUING AUTHORITY OR GOVERNING BOARD OR BODY; OR

(6) ANY OTHER ACT OR HAPPENING, OCCURRING AFTER THE TIME OF MAKING OF AN APPLICATION FOR A LICENSE OR PERMIT WHICH, IF IT HAD OCCURRED BEFORE SAID TIME, WOULD HAVE PREVENTED ITS ISSUANCE.

B. THE DISCIPLINARY SANCTIONS AVAILABLE TO THE DIRECTOR OR OTHER ISSUING AUTHORITY SHALL ENCOMPASS THE FOLLOWING:

(1) A WARNING OR REPRIMAND LETTER;

(2) A MONETARY PENALTY IN LIEU OF INSTITUTION OF DISCIPLINARY PROCEEDINGS;

(3) A SUSPENSION OR REVOCATION OF LICENSE OR PERMIT PURSUANT TO DISCIPLINARY PROCEEDINGS; OR

(4) A CONVERSION OF A SUSPENSION OR REVOCATION TO A MONETARY PENALTY, TO BE EXERCISED BY AND IN THE DISCRETION OF THE DIRECTOR ONLY.

C. IN THE EXERCISE OF DISCRETION IN DETERMINING THE TYPE OF ADMINISTRATIVE DISCIPLINARY SANCTION TO BE IMPOSED, THE DIRECTOR AND OTHER ISSUING AUTHORITY SHALL, TO THE EXTENT POSSIBLE, RELY UPON WARNING OR REPRIMAND LETTERS, MONETARY PENALTIES IN LIEU OF DISCIPLINARY PROCEEDINGS OR CONVERSION BY THE DIRECTOR OF SUSPENSIONS OR REVOCATIONS TO MONETARY PENALTIES TO ENCOURAGE COMPLIANCE AND PENALIZE FOR VIOLATIONS.

D. THE ACTUAL SUSPENSION OR REVOCATION SHALL BE RESERVED FOR THOSE VIOLATIONS DEMONSTRATING:

(1) A PATENT DISREGARD OF THE PRIVILEGES OF THE LICENSE, PERMIT OR REGISTRATION OR THE RESPONSIBILITIES THEREOF; OR

(2) THE EXISTENCE OF FACTORS DISQUALIFYING THE LICENSEE, PERMITTEE OR REGISTRANT OR OF AN ONGOING PROHIBITED SITUATION UNDER LAW OR REGULATION; OR

(3) THE EXISTENCE OF EGREGIOUS CIRCUMSTANCES THAT PRECLUDE RECOURSE TO OTHER TYPES OF DISCIPLINARY SANCTIONS IN ORDER TO ACHIEVE A MEANINGFUL DETERRENT EFFECT; OR

(4) A FAILURE OR REFUSAL TO PAY A MONETARY PENALTY IMPOSED IN LIEU OF A SUSPENSION OR REVOCATION.

E. THE DIRECTOR SHALL ESTABLISH AND PUBLISH A SCHEDULE OF PRESUMPTIVE DISCIPLINARY SANCTIONS AND PENALTIES FOR VIOLATIONS WHICH SHALL BE UTILIZED BY THE DIRECTOR AND OTHER ISSUING AUTHORITY, SUBJECT TO MODIFICATIONS FOR MITIGATING OR AGGRAVATING CIRCUMSTANCES.

F. THE LOCAL ISSUING AUTHORITY SHALL PROMPTLY NOTIFY THE DIRECTOR OF ANY DISCIPLINARY SANCTIONS IMPOSED BY IT AGAINST A LICENSEE.

G. WHENEVER THE DIRECTOR DETERMINES TO EXERCISE THE OPTION OF CONVERTING A SUSPENSION OR REVOCATION TO A MONETARY PENALTY, THE ECONOMIC IMPACT UPON A LICENSEE, PERMITTEE OR REGISTRANT IF IT HAD TO SERVE THE SUSPENSION OR HAVE ITS LICENSE, PERMIT OR REGISTRATION REVOKED MAY BE CONSIDERED IN ASSESSING

THE AMOUNT OF THE MONETARY PENALTY. ANY SUMS OF MONEY SO COLLECTED SHALL BE PAID FORTHWITH INTO THE STATE TREASURY FOR THE GENERAL PURPOSES OF THE STATE.

H. ANY MONETARY PENALTY COLLECTED IN LIEU OF DISCIPLINARY PROCEEDINGS SHALL BE PAID PROMPTLY INTO THE GENERAL STATE FUND.

TASK FORCE NOTES

THE BALANCE OF N.J.S.A. 33:1-31 MUST BE REVIEWED AT A LATER TIME TO ADDRESS THE APPEALS PROCESS AND ELIMINATE OR CLARIFY ANY INCONSISTENCIES WITHIN THIS SECTION OR WITHIN PROVISIONS ELSEWHERE.

AS JUST A PART OF THIS REVIEW AND CLARIFICATION PROCESS, THE TASK FORCE IS PROPOSING THE FOLLOWING "REPEALER" CLAUSE AT THIS TIME: "ALL ACTS AND PARTS OF ACTS WHICH ARE INCONSISTENT WITH THIS ACT ARE REPEALED TO THE EXTENT OF THE INCONSISTENCY." (THIS LANGUAGE WAS RECOMMENDED BY THE LEGISLATURE'S REVISOR OF STATUTES.)



LEAGUE OF MUNICIPALITIES STATEMENT
REGARDING ASSEMBLYMAN HENDRICKSON'S
CONCEPTUAL PROPOSAL FOR THE
ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION
ATLANTIC CITY
OCTOBER 15, 1987

The League would like to thank Chairperson Costa and the entire ABC Study Commission for their continued interest in our reactions to the "conceptual proposal" offered by Assemblyman Hendrickson.

The local officials whom the league represents share your concerns as much as anyone because, indeed, they deal with alcohol-serving establishments more closely than other levels of government and feel the social impact of these operations more intimately than could any departmental bureaucracy.

Yet as was indicated at the last hearing, despite our common purposes, the League has two initial reservations regarding the "conceptual proposal". One relates to the extent of regulatory authority which local governments will be allowed, and the other to fair compensation for carrying out this duty. We will not know if our first concern is well-founded until the 2½ page conceptual draft is spelled out as a clear and detailed policy proposal. When the Commission has prepared something more definitive, we will be in a position to present it to our Legislative Committee and then send you a lengthier response before anything is "set in concrete".

We recognize that section B of the Hendrickson draft proposal would indeed expand local government's regulatory authority vis-a-vis liquor-serving establishments. It would give municipal officials the ability to levy less severe sanctions, such as reprimands and fines. They should have that flexible response, and the owners of these establishments should not see their license suspended or revoked just

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because a local official didn't have the authority to issue a lesser sanction. Of course these lower penalties will provide less of a deterrent to an establishment which considers the payment of a fine as "a cost of doing business." But at least it allows for progressive penalties and fairer warning.

Unfortunately, the increased flexibility of response offered to local government in Section B could be more than offset by the regulatory authority granted the Division of Alcoholic Beverage Control in sections C through G. Again, we are not certain of the degree of State intervention which this represents, because many of the phrases in this part of the draft need defining, and the actions they allude to need detailing.

We are not prepared to offer our own recommended language regarding "a schedule of presumptive disciplinary sanctions" because we don't feel the ABC Director should be assuming such drastic oversight to begin with. He or she should defer to the decision of a local authority except when the case can be made that such a decision is arbitrary and capricious. We believe the current appeals process guarantees fairness.

This is not a stubborn "Home Rule" response. We are willing, for example, to discuss a recommendation found in Senate Bill 3417 (sponsored by Senator Rice), which would allow, in some cases, appeals to be taken into municipal courts. This represents an attempt to maintain both local prerogatives and a guarantee that sanctioned establishments will have due recourse. Conversely, Sections C through G of this proposal could threaten those prerogatives. It is very doubtful that edicts emanating from Trenton could ever be as sensitive to the varied concerns and values of New Jersey's 567 communities as are those persons entrusted with public duty on the local police forces, the local courts and the local governing bodies.

This leads us to our second major concern: fair compensation to local government for its role in this regulatory process. It is the local

governing body which must take the heat from angry citizens if, and when, public hearings erupt over the misconduct of an alcohol-serving establishment. It is they who must take administrative action for the public welfare. It is the local police force which must deal with the sometimes unruly clientele of these establishments -- a task that can pose physical risk. And, were S-3417 to become law, it would be the local courts which are charged with sorting out even more disputes stemming from the operation of these establishments than they currently do.

Local officials are not going to shrink from these responsibilities. We simply ask the Commission to keep in mind that this regulatory authority is sometimes unpleasant, and always carries an expense of time and money. Yet under this proposal, any monetary penalties levied by local government, or derived from a converted suspension or revocation (at the ABC Director's discretion), would accrue to the State Treasury.

The principle of fair compensation has been recognized in other affairs such as the apportionment of motor vehicle fines -- but this was not discussed at the last hearing. Instead there were comments that municipalities should not be entitled even to a portion of the fines, because they would come to see this as a "revenue raiser".

The League takes strong exception to this dim view of the local official's integrity. If the ABC Director currently exercises the power to convert higher penalties into cash for the State coffer "out of compassion" (as it was put at the September 11 hearing), why then the assumption that a local official's motives won't be as "pure"? It seems possible that State officials would use the fining power more liberally than their local counterparts, because while a license suspension "profits" no one, it may be the only municipal recourse which a given establishment will heed. By contrast, a State Division could lay a string of fines on that same establishment and never feel the community's anger for allowing its continued operation and misconduct.

Insinuations regarding the integrity of officials at one or another level of government are a step backward. The principle of fair compensation for regulatory enforcement has been applied in other matters, and should be applied here.

The League sincerely hopes that the above-stated concerns regarding municipal prerogatives over, and reimbursement for, the monitoring of these establishments, will be given due consideration as the current proposal is debated and expanded upon. The League will remain ready and available to work with the Commission to achieve our common purposes.

Wright's Liquor Store
P. O. Box 365
Malaga, N. J. 08328
October 20, 1987

Honorable Senator Costa and
The A. B. C. Study Commission:

My name is Samuel G. Wright owner of Wright's Liquor Store in Malaga for the past 16 years. I was also the former owner of Wright's Cafe & Liquor Store in Blackwood, N. J. from 1946 to 1968. From 1933 until 1941 as a young man I have seen the birth of the tavern and liquor store business into the present era.

During the late fourties up until the late sixties, I was a member of the South Jersey Tavern Association. Later on in the decade of the seventies, I was a member of the South Jersey Package Association and in the 1980's I served for two years as President.

The whole point of this letter concerns the current work of the Study Commission on a uniform code of regulations for the Tavern & Liquor Store industry. In my opinion, to have uniform penalties for the same offenses is a good proposal. This is true espicially if the circumstances for these violations are the same. I feel that municipalities should have defined powers to enforce various offences. I have confidence that our local governments can complete these duties and I support the Study Commissions efforts in this area.

I sincerely appreciate the work that the study commission has done in this and other areas.

Sincerely:

Samuel G. Wright



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October 13, 1987

Members, Task Force VII

Re: Proposed Statutory Changes

Dear Commission Members:

There are five hundred twenty five municipalities in the state of New Jersey in which licenses to sell alcoholic beverages are issued. There are numerous forms of governmental bodies that these municipalities have chosen to rule them, such as township councils, township committees, city commissioners, etc. As a result some municipalities are governed by three persons while others may be governed by perhaps seven committeemen or council members. In dealing with alcoholic beverage licensing and control, in addition to the above, some municipalities have opted to have their alcoholic beverage licensing and control problems handled by a municipal board of alcoholic beverage control consisting of three members appointed by the governing body of the municipality.

Some municipalities deal with licensing problems or situations on a fairly regular basis, while others may go for several years before they are faced with an alcoholic beverage license problem, other than routine renewals.

Thus, it can be seen that when dealing with municipal alcoholic beverage licensing problems, you are dealing with hundreds of persons with hundreds of ideas, and hundreds of philosophies and prejudices, not to mention the difference in exposure to and experience in dealing with these problems.

If this great divergence of experience, personalities and lack of standardization is coupled with the right to assess monetary fines against a licensee, God help the licensee. What happens to the licensee who may have been friendly with or supported a councilman's opponent, or may have had in the past, some disagreement with the councilman?

There is a great danger to the licensee in the proposal to allow the municipality the right to assess a fine against the licensee. This not only presents the municipality with a golden

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Members, Task Force VII

-2-

October 13, 1987

opportunity to sanction a licensee with whom it or one or more of its members may not be too friendly but, it also gives them the subconscious feeling that it is a good revenue raising device, be it for the state or the municipality. Even though the present proposal states that the funds must be paid into the state treasury, I think we would have to be very naive if we did not recognize that it would not be too long before the municipalities would be clamoring for a change whereby the municipalities would be permitted to keep the fines that its assesses against the local licensees. This temptation is much too attractive for the municipality to ignore.

Thus, the proposal to allow municipalities to assess fines against its licensees is fraught with danger because of the great divergence in the composition and experience of those who would supervise it, and particularly because it would make the licensee vulnerable to local pressure, politics and prejudice.

The above addresses only one problem area in the proposal, since I have previously pointed out that the language used throughout the entire proposal would allow lawyers to open a pandora's box in attempting to interpret and apply the vague language of some of the proposals.

The position of the New Jersey Licensed Beverage Association, therefore, is that the proposals as presently written should be rejected.

Very truly yours,



Robert Wilinski
Counsel for the New Jersey
Licensed Beverage Association

RW:bw

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