PUBLIC HEARING

on

SENATE BILL NO. 82
(Safety Automotive Maintenance Service and Motor Fuels Retail Sales Regulation Act.)

Held:
April 12, 195[illegible]
State House,
Trenton, New Jersey

Before:

[illegible] Legislature. SENATE JUDICIARY COMMITTEE

Members Present:

ALBERT McCAY (Chairman)
HAROLD W. HANNOLD

SENATOR ALBERT McCAY (THE CHAIRMAN): This is a Senate Judiciary Committee hearing on Senate Bill #82. Before hearing from the proponents of the bill, Senator Dumont, President of the Senate, who is the sponsor of the bill, has asked for the privilege of making a statement relative to the bill, and I think it is appropriate to have that statement first before we hear from the proponents and then those who oppose the bill.

We will hear from Senator Dumont at this time.

SENATOR WAYNE DUMONT, JR.: Senator McCay and ladies and gentlemen, I appreciate this opportunity of making a brief statement on the problem that we face here today with some references to the bill before the proponents and opponents of the measure are heard.

In the first place, I might state that when I agreed to sponsor this measure, I knew that I would receive criticism and in some cases severe criticism from certain quarters. It had been my hope that that criticism would at least be constructive and not just negative criticism. In a problem of this kind, which is a difficult one and a controversial one, it has been my experience in the few years that I have been here in Trenton, since 1952, that no controversial or difficult problem can ever be resolved by running away from it or ignoring it. If the Legislature or the Executive Branch take that approach to any problem, it will continue to be with the Legislature and the Executive year after year without any solution ever being found for it, and obviously the controversial problems are those that are challenges because they are the ones that are the most difficult to resolve and the ones, I think, that give us the feeling of most satisfaction when they are finally resolved. In the several cases that I can remember of problems that were before this Legislature year after year, such as those involving the chiropractors, striped bass, and bingo and raffles, the only way conclusions ever came was by virtue of legislation being introduced which may have been passed in its original form or may not have been, or in some instances the original bills weren't passed at all, but eventually a solution was found, and I think that is what must be done with this problem that confronts the gasoline retail dealers.

Now, criticism in my humble opinion, in order to be constructive and not just negative, must say about an approach to a problem not just that that approach is not good, but that some other approach is better. With that kind of criticism we can always sit down and discuss it, discuss with the people the amendments that they propose, and the different approaches that they bring to a problem, but when they say merely that this particular approach is not good, that is no answer to the problem and it's a poor kind of criticism.

Many things have been said. Some of them have been inaccurate and misleading, as well as negative, such as the statement that the passage and enactment into law of a bill of this kind would increase the retail cost of gasoline to the consumer by six or seven cents a gallon. I think that statement is ridiculous, as well as not being accurate. But I am anxious, and I know this Committee, of which our distinguished Majority Leader, the Senator from Burlington County, is the Chairman, is anxious to try to find a solution.

I think it might be desirable if I just explained - and I don't know very much about the entire problem, although it is one in which I have always been interested since 1952, when we had the Gasoline Study Commission here which conducted a number of public hearings in 1952 and filed its report in 1953 - that this particular bill I think tries to do two things in its approach to the problem: One, to create a system of licensing operators, attendants and mechanics by a board of five men, or five people at least, to be nominated by the Governor with the advice and consent of the Senate. One suggestion has been made, and a reasonable one I thought and a fair one, on the legislative television program that we held on the night of March 25th last, that perhaps the public should be represented on this licensing board - npt just representatives of the retailers alone, but perhaps the public too, inasmuch as the motoring public consists of almost everyone who is old enough to drive, and therefore they should have something, certainly, to say in an active way about the operation of this board and the operation of the retail end of the industry. That suggestion was made by Assemblyman Thomas Hughes of Hudson County on the program that night, and it seems like a fair and reasonable one.

The argument of licensing, in favor of it, of course, would be safety; opposed to it would be the argument that it represents an invasion of free enterprise.

On the second point, which provides for a cost survey to be made to determine the average retail price of selling gasoline within the State and then that average cost would be added to the tank wagon price, the objection has been that that is price fixing. In my humble opinion, you have price fixing where you have the same minimum price for gasoline all over the State. As I understand this, the point would be that the tank wagon prices should not be the same. If they are by every supplier, every major oil company to retail dealers, then I think we actually and without question have a monopoly in the field, in the operation of the industry. But if the tank wagon prices differ from supplier to supplier as they should, then when the average cost of retailing a gallon of gasoline is added to that tank wagon price, obviously the retail prices must be different from supplier to supplier or retailer to retailer selling different brands, and that, therefore, would seem not to be price fixing.

Now, one thing that has been generally overlooked about this bill is the fact that it provides for a two-year trial period, and it says in the very last section of it that the act cannot be extended beyond two years without the Legislature, by an amendment or a new bill amending the original bill, agreeing to extend the time; in other words, the trial period to see whether or not this is a good solution and to see whether or not it can work.

One thing I think we all must realize and one of the basic reasons why I sponsored this measure was to give these people, small businessmen - and a small businessman is a very important institution in this nation and in this State, one that we don't want to see pass from the scene - was to give the small businessman an opportunity to present his case to the public, to air his views, and to be given an opportunity to be heard, to have his day in court. That's a basic American institution and shaid never be denied to any group of good, hard-working American citizens.

Now, I hope that out of this hearing today we can find a solution to this problem and the blight which even the most severe critics of this particular measure concede exists. So if we all concede that a problem exists and we don't do anything about it, then we'll never solve it. But out of this public hearing and out of the fact, as I remember on the TV program I solicited and suggested at that time advice-- I hope we can find a solution to this problem together.

Bills sometimes in this Legislature don't pass in their original form - frequently that happens; sometimes they don't pass at all; sometimes they pass in amended form. Any of these things can happen with this measure or any other. If we can find a solution that does not involve even any legislation, and I think such a solution is possible if the major oil companies and the retailers try mutually to resolve this problem. And I might say along these lines that the major oil companies were invited to send a representative to participate in the television program of March 25th. That invitation for reasons known only to them was declined by them. If we are going to arrive at a solution we have got to do it together.

I shall listen intently today to everything that you folks have to say, both for and against the measure. I do hope that the ciriticism of the opposition to this particular approach will be constructive criticism, that if they believe this bill is not the right approach they will have something better to offer by way of a solution, but if we are ever going to find one or to realize one, we must do it together and we must do it in an honest, straightforward manner, recognizing that a problem exists and that that problem ought to be solved for the good of everyone and particularly for the good of the motoring public, who, afterall, cannot get along without either the retail dealers or the major oil companies. And therefore it is incumbent upon both of those groups to solve this problem so that the motoring public can have a good answer and at the same time so that the small businessmen can earn a decent, honest living in return for their efforts.

I want to thank all of you for coming here today. I hope that many of you will testify and give us your views, and I want particularly to thank Senator McCay and the Judiciary Committee, and we hope that more of them will arrive shortly, for this opportunity granted to me to say a few words at the outset. Thank you very much.

THE CHAIRMAN: Thank you, Senator Dumont.

I would like to personally say at this time that Senator Dumont, the distinguished Senator from Warren County and President of the Senate, in my observation, since he has been a member of the Senate, has always approached every controversial matter in an endeavor to solve any particular controversial matter, and I agree with him that the only way a solution can be reached on these matters is the introduction of some measure, followed by public hearing, so that the views of those particularly interested, as well as the views of the general public, can be obtained, after which the Legislature can proceed to a full consideration of the matter and endeavor to find the right solution.

I would like to announce again at this time that if there are others present who desire to be heard for or against the bill, we would like to have them come forward and give their names and addresses to our secretary, and state whether they are proponents or whether they are opposed to the bill. We would also like anyone who desires to speak on the bill to take a seat here on the main floor near a microphone.

At this time we will hear from Mr. John Dressler, Executive Secretary, New Jersey Gasoline Retailers Association. Mr. Dressler.

MR. JOHN DRESSLER: Mr. Chairman and Senator Dumont, we appreciate this opportunity to present our side of the story. I have filed with the Committee a brief, which, as you see, is very extensive and I intend to go through this extemporaneously, quoting at times from it, but holding my presentation within the statements made in the brief.

I would like to pay some tribute to Senator Dumont on this bill, if I may have the privilege, and say not only is an economic minority in a happy situation with a man of Senator Dumont's caliber, but all minorities, in every phase of our life, that some time or another a man is on the minority side and if the majority is considered solely from the majority point of view without justice to the minority, Lord help the minority in this country. Our greatness comes from understanding of minority problems, not from just dismissing a problem by saying it's for the benefit of a majority.

I will be the only spokeman from our side, in order to conserve your time, the Committee's time, and in order to put on the record the feeling of the men in our organization. We didn't want to load this meeting down with hysterics; we feel we have a good case and that we can present that case in a logical, sane way, divested of all hatred or ill feeling.

Establishing first that we have a problem, I would like to make a few quotes from testimony taken before the Senate Small Business Committee in Washington, D.C., by the men in our industry at the upper level:

Mr. Willard Wright said, "Occasionally, the causes of severe price competition are so deeply rooted that the situation persists over a prolonged period that brings distress to all concerned. Such has been the situation in New Jersey, with peculiarities not usually found elsewhere."

Dwight T. Colley, Vice-President of the Atlantic Refining Company: "Retailer cutting the price of retailer has gone on so fast that they have destroyed their own margins, and so in desperation when it became impossible for a dealer to survive, we have taken the responsibility for the operation of the location, including the establishment of the retail price, supported by a direct payroll operation, or by a guaranteed and commission plan."

Mr. J. G. Jordan, Vice President in charge of Marketing, The Shell Oil Company: "Certainly the situation is serious in aspects but I am confident that a practical solution can be found.

Mr. C. J. Guzzo, of the Gulf Oil Company: "During 1955 we put some of our New Jersey dealers on a consignment basis for their gasoline. Under this arrangement, we retain title to the gasoline and pay the dealer a commission for selling it at retail prices set by us to meet the equally low price of our competitor."

Mr. B. W. Pickard, President of the California Oil Company: "I will not minimize the adverse effect upon many New Jersey dealers of the intermittent price wars which have existed in that state for five or six years. I do not deny that many dealers have, as a result of the price wars, been operating over extended periods at little, if any, profit..."

Herbert Willetts, Director and Vice President in Charge of Domestic Marketing, Socony Vacuum: "In the State of New Jersey, there are at least four reasons why dealers have had to give particular attention to the relationship between their margins and their volumes and why perhaps the price war situation tends to be worse in that state than in most states."

Mr. S. C. Bartlett, Vice President in Charge of Domestic Marketing, the Texas Company: "We recognize the fact that New Jersey is a particularly competitive gasoline marketing state."

And Governor Robert B. Meyner, State of New Jersey: "The primary burden of price cutting in this area has been borne by the retail operator, who, of all business interests concerned, is least able to carry the burden.... Today, the retail operator has little, if any, economic self-determination.... I repeat the earnest concern of the State of New Jersey with this problem."

And then, from the Annual Report of the Select Committee on Small Business of the United States Senate, 84th Congress, on Page 62, First Session Report 129, the Committee had the following to say: "Price cutting is a fearsome weapon and its unrestrained use is generally conceded to lead in practice as well as in theory to monopoly."

The greatest obstacle to a sane solution to this problem has been the taboos built around our economic system. By repeatin g the phrase "free competition," those who oppose a solution have develped a fear complex that serves their purpose in their attempt to block a solution.

In the great depression of 1929, every American urged our Government to take steps to bring the depression to an end. When the gasoline retailer today asks for a fair shake, he does not believe he is belittling himself nor is he asking for charity. He is asking for the right that democracy offers every man - the right we assert when we salute the American flag, when we say "With liberty and Justice for All." Justice is all the gasoline dealer is asking.

Now, at this point, in many of the hearings in the past, those opposing state regulation have raised the claim that federal laws cover the issue. And unfortunately it has clouded the issue. In the case of Myers v. Shell Oil Co. in California, the court, and I quote it here, indicated that since the gasoline was refined in the State of California and sold within the State, it was intrastate and therefore not subject to the federal act.

In another action, the Standard Oil Company of Indiana in the famous Detroit case fighting an FTC order seeking its reversal, contended that the gasoline came to rest in the State of Michigan and therefore the interstate nature had been destroyed. The Supreme Court of the United States, in denying that point, in refusing to acknowledge that point, said that the gasoline was in transit and that it came to rest in the State with the intended expectation of selling to the dealers and therefore it became of interstate legality. The implication of the Supreme Court in this case is that if the gasoline was refined within the State, then it would be intrastate.

And now to see how it would work here in the State of New Jersey, the California Oil Company, the Texas Company, Cities Service, American Oil Company, Tydol Oil Company, the Esso and Richfield have wholesale distributors and there can be no question that the gasoline has lost its interstate characteristic when it changes ownership from the company to a jobber; therefore, the relationship of jobber to dealer would be intrastate, not interstate, and while there are some questions of the federal law that would still take jurisdiction, it would serve no purpose for the retailer.

We also have Esso, Socony, Texaco, California Oil Company, Tydol and Cities Service with refineries in New Jersey. Therefore, their transactions would come to rest within the State and would destroy the interstate characteristic and it is very possible that their transactions through their dealers in this State would not come under the federal law.

I would like to add one other thing here, that here in New Jersey we passed a "baby" Robinson-Patman Act and at the present time we have several companies openly violating it or using subterfuges to destroy the intention of this Legislature. When you passed that law three years ago, you intended to correct the inequities among dealers by the use of various commission plans and rental absorption plans. Our suppliers have found a way around that law, whether it is legal or not we don't know. I have registered a complaint with the Motor Fuel Tax Department, but it indicates here that even when we try at state level to clean up our market, they find a way around it.

Now, there's a feature to this bill, too, that involves safety. And it's an important feature. It should not be lost in an effort to find an answer to our problem, We think we are making an offer to society that society should have demanded from us a long time ago, and that is the licensing of operators. There is a total of 1,953,502 vehicles registered in the State of New Jersey. Those vehicles were involved in 91,696 accidents in the year 1954. Of those accidents, there are 726 fatal, 31,629 injury accidents, and 59,341 property damage accidents. There was a total killed of 807; there was a total injury of 48,946. It seems fantastic to me that in the sizw of this figure of automobile accidents that we haven't tried to shore up all the points in safety that could be shored up. We require that a man take a license to show his fitness to drive an automobile. We require that he take that automobile through two inspections a year. Inspections are good. They do a great deal of detection. But then we say to the man who will repair that automobile or service that automobile that he doesn't need any qualifications, and that man can go on, with no experience at all, and put a sign on a place saying that he does repairing. It seems to me that that's a little bit wrong. To service these

1,953,502 registered vehicles, there are approximately 35,000 service station dealers and attendants and mechanics. The gasoline retailer and the service station attendant have the responsibility of servicing these automobiles and in the course of such servicing should be capable of detecting the weak spots, the things that might go wrong if they are not taken care of. Of course, after detecting, unless he's a qualified mechanic, he should not do the repairing. A man with the ability to repair, a man who has been stamped as approved by the State should do the repairing.

The important part these men could play in the prevention of accidents is frequently overlooked. Most big plants in industry employ what is termed a "maintenance man" or a "maintenance mechanic." One of the important functions of the maintenance mechanic is to prevent breakdowns rather than fix the breakdowns, because big corporations have found that a little bit of preventive work saves them a great deal of money in the loss of production and the loss of manpower when there is a breakdown. Now, that plant has usually a master mechanic who has the qualifications and the ability to measure the ability of the man hired as a maintenance man. But the motorist has no assurance that the man behind the pump or the man behind the garage has any ability at all. He goes purely on chance. As a natural thing, the motorist usually has no knowledge of what ought to be done to his car and frequently we have a case of the blind leading the blind. There are many mechanics, many gas dealers today, doing repair work who are as blind as the motorists are, when it comes to an actual knowledge of the business.

I would like to at this point cover the lubrication job because it's overlooked too frequently as a very important part of safety maintenance. Now, lubrication jobs can be done two ways. You can hire some kid who goes underneath with a power gun and he slaps grease on everything he can find, or it can be done by a man who knows what the lubrication is supposed to do. He applies the lubricant to the proper plaaa and then, of course, while applying it, he will note such things as loose steering apparatus, excess of kingpin wear, faulty mufflers - all things that could lead to a serious accident. He is the only man gets under the car; a good man would detect if there were leaks in the brake system. In the modern brake system you can have a leak go along for a little while, suddenly give out and you would be left without any brakes. Now, how important brakes are - at the present time in New Jersey we forbid the use of a certain kind of brake fluid because it has a tendency to vapor lock, and when it vapor locks you have no brakes and you may go along the road and have brakes now, and a vapor lock condition set in - and a vapor lock condition is not a predictable condition; if the vapor lock condition sets in, you would have brakes at this intersection and at the next one you would have absolutely no brakes, and New Jersey forbids the use of the wrong kind of brake fluid. But the man at the station is apt to buy it; it's usually cheaper; he is apt to buy it to save some money.

Another very important thing that we overlook is the exhaust system and here I would like to quote from the "Sunrise Trail," November 1955 issue. This is a trade magazine. The article is as follows:

> "Have you ever been guilty of committing an unsuspecting victim to a gas chamber? Hold your fire, boys, we're not implying that you have any homicidal impulse. Maybe you never thought of a car with a faulty exhaust system as a gas chamber. But that is just what it can amount to if enough carbon monoxide seeps into the car as a result of a defective muffler and tail pipe.
>
> "Too frequently we read in our newspapers an account of a fatal, one-car accident. 'The driver apparently fell asleep,' the police report states. Who knows how many of these drivers were victims of carbon monoxide poisoning!
>
> "A recent study showed that one car out of every three has a faulty exhaust system - needs muffler and tailpipe. It is also conservatively estimated that 5% of the cars on the road contain enough carbon monoxide to present a hazard to the driver, his passengers and other vehicles on the road."

This is not somebody trying to pass a licensing bill; this is a trade magazine from its own observation. And that man going under the car doing a lubrication job is the only person who can ever discover when that system is faulty.

The repairing of a flat is something that requires more skill and knowledge than is usually realized. Improperly repaired tires can lead to a blow out which in turn would take the car out of the control of the operator. From personal survey, this writer has discovered that more than one-half of the dealers do not know how to repair a puncture proof tire. Tire manufacturers will testify that under inflated or over-inflated tires not only increase the hazards of tire blow-out but destroy much of the tire mileage.

I would like to quote here from a report of an accident from the Newark Sunday News, December 18, 1955: "Air brakes lock." Now they are not hydraulic brakes, but it is the braking system. "Scotch Plains Police said that the truck driver, Arthur W. Hampton of Akron, Ohio, told them that the air brakes locked, causing the truck and trailer to jump the dividing island. The students" - they were in the other car - "were eastbound and the truck westbound. Hampton was slated on a technical charge of manslaughter."

Now, I don't say that this particular accident was caused by a poor mechanic. We recall a few months ago that a truck ran away, where the mechanic had put tape on the air brakes, and when the driver applied the brakes that terrific pressure blew the tape off and the truck ran away and killed some three or four people - an accident somewhat similar to the one I cited. A mechanic with so little knowledge as to put tape anywhere on an air brake system should never again be allowed to touch an automobile; yet, under our present system, he can.

We have spoken of the detection of trouble before it happens. It goes without saying that after detection of a possible breakdown, only a skilled mechanic should be permitted to repair it, and here we must acknowledge that there is no standard of measurement at the present time to determine a man's fitness. Under the pressure of price wars, many gasoline dealers who have no knowledge whatsoever of repairing have started to repair on a hit or miss basis. If they guess right, that is to the good. If they guess wrong, the customer either shops around to have the job done properly or maybe becomes involved in an accident.

The service and repairing of automobiles is so greatly related to public safety, yet there are so few who want to enter this business.

The following business magazines and writers have the following to say, based on survey and study:

BUSINESS WEEK, February 25, 1956, issue: In a lengthy treatment of the problem of automobile mechanics under the title "So Few Mechanics for the Job," it states: "Automobile repairing and servicing today is not satisfactory."

I'll go through this a little fast.

SYLVIA PORTER, noted columnist, in an article of April 6, 1955, referring to the problem of all mechanics, states: "While the number of cars on the road has soared almost 25% since 1950, the number of automobile repair shops has risen only a little over 7%.... I found general agreement that there must be more apprentices in the basic trades... It is obvious that an upgrade of the dignity of the mechanic's job would help to attract more into the repair field."

And I state at this time that Senate Bill No. 82 would upgrade the dignity of the mechanic.

LEONARD SCANDUR - The New York Sunday News, January 2, in his article titled "For Drivers Only," states as follows: "License Automobile Mechanics?" "Many years ago, some wise men concluded that doctors, dentists, druggists and others entrusted with the well-being of citizens should be licensed to prevent malpractice by ignorant or unscrupulous practitioners.

The wise men also decided that to protect the health and purse of the citizens, it was necessary to regulate and supervise the work performed by the butcher, baker, plumber, and electrician. But when it came to automobile mechanics, somebody goofed, and it is high time something was done about it."

These are people not interested in our welfare or interested in legislation; they are interested only to the extent that from their observation we had better upgrade the quality of the men servicing these vehicles that are involved in accidents, and encourage good men to come in. I again submit that Senate Bill 82 does that.

From the point of view of safety, the pressure of price wars has caused the vast majority of dealers to discontinue the important practice of cleaning windshields, head lights and rear windows. The pressure of price wars has caused the vast majority of dealers to not keep clean rest rooms. Some night after your tank is filled, you take a ride on a country road and have the headlights hit you on that dirty windshield and then decide for me whether you don't think that that is probably the most important safety function we have. You might dismiss it by saying that the public ought to clean it themselves, but the fact is that the public has been taught through the years to expect us to do it, and the average motorist doesn't have the facilities to clean his own windshield. The facts are that if the dealer did clean that in the course of work, in the course of the sale of a product, the safety of the automobile operation would be greatly improved. And that same thing holds true for the headlights, and that is completely overlooked. The headlights can accumulate enough dirt on them to kill the effectiveness of your lighting system, and some night again, after you have had a bad day in the rain, have the man clean your headlights for you and you will discover that the road lighting ahead of you has been increased sometimes as much as 75%, and that is definitely affected with the public interest and it has been completely neglected due to the price wars.

Now we come to a section called "Restoration and Preservation of Free Competition." I would like to go back just for a second to the statement on the part of those who are opposed to us mainly in this bill, and they all said that we have a problem. If you read between the lines, their solution to the problem was to further destroy any independence the dealer has. When they gave the man a commission and took over the right to set the price at his station, they certainly removed competition between themselves and the dealer and removed any responsibility on the part of the dealer.

So, when I say "restoration," S-62 will restore a great degree of competition and it will preserve at least the amount of competition that we have at the present time.

I have included here extensive remarks on the part of Father Smith, and I would like to quote some of them because I think they are highly important. Too frequently in industry, we have one branch of our economic life saying that the world is dependent on them. The crude oil producer said, "Where would this nation be if we didn't produce crude oil?" And of course the sensible echo from those of us in the city would be, "Where would you be if we didn't use the crude oil?" That is never used on them, and they sit as a highly-organized articulate group who try to make it appear as though they are the whole economic system. Father Smith said:

> "Economics did not create the power and genius of men to devise technological improvements. Economic activity, inso far as it is human action, must fit into the overall objectives of human life itself, just as political, military, education, and domestic activities must be measured by definite standards and norms of human right and wrong, of justice and injustice, of charity and the lack of it... The only type of competition entitled to the proud adjective of 'free' is fair, just, socially sound, and morally defensible competition...

"Unjust competition has its source in greed and lust for power; it feeds on injustice; it grows strong through conflict; it thrives on chaos and ends in monopoly for the strongest and the most unscrupulous.

"It should be perfectly clear to anyone who understands the meaning of the word 'social' that the economically unhealthy conditions now existing in the retail gasoline industry are not exclusively economic in nature. It is not merely a question of efficient and inefficient gas dealers. This is a social problem. It is a problem that affects the public welfare and the families of a great number of men engaged in this particular economic activity. The problems will not be solved by some naive individual waving a mystic wand."

I think that is pretty much what our good friend Senator Dumont said at the opening.

The best protection for the consumer is to have many competitors, for the possibility of price-fixing agreements among many competitors is very small. On the other hand, a few competitors soon learn to respect each other and, consciously or unconsciously, assume the same sale price.

I would like to show how competition in gasoline retailing is being destroyed. In the early 1930's, many dealers were handling several brands of gasoline. They had the ability to play one supplier against the other in order to secure the lowest purchase price. Because he had the ability to influence the consumer, his supplier had to stay competitive. Under this influence, the motorist in the State of New Jersey was able to purchase gasoline for as low as 9.9 cents per gallon. During this period, the dealer exercised complete control over his business, and a very high degree of free competition existed. During the 1930's the major oil companies began to destroy this competitive force; First, by insisting that the gasoline dealer sell but one brand of gas. To encourage the dealer to do this voluntarily, the major oil company would give the dealer who agreed to sell only one brand, one-half cents per gallon extra profit. Later, they supplemented this move with pressure moves, in which they demanded that the dealer go 100% one brand or they would remove their pumps.

This movement caused a great deal of reduction in competition. A contract agreement was entered into between the dealer and his supplier, and for a time the company felt secure. However, it was the general feeling that these contracts would not stand up in court, and when one supplier wanted to raid the other one's customers, they would go through a fictitious change of ownership which voided the contract.

To overcome this difficulty, beginning about 1940, the major oil companies set out to destroy the last vestage of competition between themselves and their dealers. They set up a program which required the leasing of the independent dealer's station to his supplier for periods of years varying from 10 to 20 years. On the basis of that lease, the dealer was able to borrow money for capital expansion. Of course, in the process, he lost his ability to make his supplier competitive with other suppliers But even worse, those dealers who tried to retain their independence, found themselves unable to compete against the new stations built by the dealer who had borrowed from his company.

They were therefore faced with the necessity of surrendering their independence in order to borrow money to make their service station competitive with the one rebuilt by the former independent dealer. Now the supplier had the dealer tied to him irrevocably, as it is nearly impossible to break a lease. In this move, almost the entire area of competition which normally existed between the retailer and the wholesaler was destroyed.

There were still a few hearty souls, however, who were able to finance their improvements through private banks or raised capital from an independent source. They retained their independence and continued to be a thorn in the side of the major oil companies because they were truly independent If the present price war is permitted to continue even this small amount of competition will disappear. No independent gas dealer can hope to compete against the power of the major oil companies.

The logical answer here is "Will the public benefit?" Are the major oil companies more efficient retailers than the independent? It is very difficult to conduce a broad survey to find out whether they are efficient. I would like to cite, however, a few instances of costs the major oil companies do incur in the operation of retail outlets. The first station I will refer to is a service station operated by the Sun Oil Company, at 431 Broad Avenue, Leonia:

In 1947, Sun Oil Company invested approximately $45,000 in the building and property. The station is pumping about 8,000 gallons of gasoline per month. It is company owned and operated since January of 1956. In January, this dealer refused to renew his lease. The payroll at this station is $1650 per month as a company owned and operated station. This represents an approximate labor cost of 22 cents per gallon. When we add laundry, electricity return on investment, etc., it is safe to say the cost of operation at this station is at least 25 cents per gallon. But the total selling price is 22.9 cents per gallon.

Another instance: An Atlantic Refining Station at 168 South Main Street, Phillipsburg, owned and operated by the Atlantic Refining Company, formerly operated by a lessee dealer, now operated with paid employees. The monthly payroll is $988. The monthly gallonage is approximately 9,000 gallons. This brings the cost of labor to operate this station to about 11 cents per gallon. It is safe to assume that including laundry, electricity, return on investment, etc. this cost would be at least 16 cents per gallon. The price at this station for regular gas is 24.9. Deduct selling cost from posted dealer price - this gives us a true tank wagon price of 8.9 cents per gallon compared to the dealer's 19.5.

Another instance: Cities Service Oil Company operated ten service stations on the New Jersey Turnpike, at the year ending 1954. These ten outlets sold 17,026,000 gallons of gasoline. This represents approximately 15% of the total volume sold by Cities Service in the State of New Jersey. It cannot, therefore, be called an advertising cost. Rental costs at these stations is 6.239 cents per gallon of gasoline - not quite 6¼¢ per gallon. According to our survey, their labor cost is approximately 5½¢ per gallon. Incidental costs, laundry, etc., would amount to another one half cent per gallon, bringing the total cost of operation to approximately 12¼ cents per gallon.

Cities Service also has a program of leasing the station to the dealer for $25 per bay per month. In other words, one bay would cost $25, two bays $50, etc. They guarantee the leased dealer six cents per gallon on the first 5,000 gallons sold. The dealer pays for the heat;

the company pays for the water and electricity. It is reasonable to assume that on the first 5,000 gallons sold, there is a cost of at least 10 cents per gallon.

The Atlantic Refining Company has several commission deals. Under one of the deals, the operator is guaranteed $330 a month up to 6,000 gallons sales. Above that he is on a commission arrangement. The labor cost here is 5½ cents per gallon on the first 6,000 gallons. Adding the other costs the company is absorbing, and it is reasonable to assume that the cost of selling gas at these outlets would be approximately 10 cents per gallon.

There are many other arrangements involving other suppliers, using various forms of commission, rental absorption, etc. The independent dealer, who owns his own station, or the lease dealer who wishes to retain his independence, does not receive these deals.

At the present time, the Sun Oil Company has instituted in parts of northern New Jersey, a so-called commission plan. The company purchases the product the dealer has in his tank, the dealer, independent or leased, then signs a commission agreement which gives the Sun Oil Company authority to set the retail price of gasoline at that station. When the driver delivers gasoline to these stations, he determines the amount of gasoline sold by the dealer and makes a charge slip for that amount of product, determining the price by subtracting from the posted price, the allowable commission. Under this plan, one commission dealer may be making 3½¢ net, one 3¢, and another perhaps only 2½¢ net.

In Jersey City, an independent dealer, Stabiles Sunoco, refused to go under this plan. Most of his competitors surrounding his station have accepted the commission plan. The cost of gas to him at the posted 21.9 in that area is one cent higher than the cost to the commission dealer.

In the Cranford area, Baldwin's Sunoco is posting 21.9 under the Commission Plan at a margin of 3½ cents. -- which brings his cost price to 18.4 cents per gallon. About 2 miles away, on the same street, a Sun Station operated by Mr. O. C. Thiele, is posting 22.9 without the Commission Plan, which means he is operating on a margin of 3.4 cents with a tank wagon price of 19.5. Here are two men, two miles apart, one man paying 1.1¢ more for his gasoline.

The cases mentioned above are not isolated ones. They are general practices throughout this market. It must be obvious to anyone that unless Senate 82 is passed, restoring a fair margin to the dealer, that the broadened use of the above-mentioned programs will destroy all competition between the gasoline retailer and his supplier. No gasoline dealer will be able to retain his independence.

He will be forced to give in to one of the various commission plans which in turn will give the supplier authority over his price and welfare.

To show how fearsome this authority is, I would like to quote from the testimony of Willard Wright, of the Sun Oil Company, before the Senate Small Business Committee, December 16, 1955.

The heading on this particular section of the testimony is "Herb Tobman Faces a Problem." - and now we quote Mr. Willard Wright: "It happened that the Rein station was but half a mile from a newly built Sunoco Station which had been opened in December, 1949. This station was of the latest Sunoco design, had excellent frontage and visibility. We leased that station to Herb Tobman, a young man of pleasing personality, very competent, and of some local fame as an athlete. He had been trained in all aspects of service station operation. All the requirements for successful operation seemed present in this enterprise.

"During his first month, December, 1949, this dealer sold 10,230 gallons of gasoline. Then, as had been anticipated, due to a slack travel in the winter months, his volume dropped to around 5,000 gallons in each of the months of January, February and March, 1950. With the coming of Spring and also of a new Blue Sunoco gasoline in April, his sales that month started increasing, averaging in the early part of the month 600 gallons a day or at the rate of 18,000 gallons a month. His price was 24.3 cents a gallon, the prevailing price of the area.

"Then Rein Motors Station, one half mile away, opened, selling its gasoline at 20.4 cents a gallon. Suddenly Mr. Tobman's sales volume commenced falling. Despite his good start he finished up April at about 5,000 gallons or 165 gallons a day. His business continued to slump in May, until one day his sales totaled exactly 35 gallons. His gross operating margin for that day was $1.96. About that time a nearby Texaco station and then a Gulf dealer reduced their prices. Herb Tobman came to us and said he was through-- would we please take back our station and release him from his lease and contract.

"Our District Manager and salesman undertook to persuade him that all was not hopeless. They suggested that he try lowering his price to 21.9 a gallon compared to Rein's 20.4 centx. This meant reducing his margin of 5.6 cents by 2.4 cents or down to 3.2 cents margin. He was dubious, contending that he could not operate at a profit on 3.2 cents margin. Finally he decided to give the suggestion a trail.

"He reduced his price to within 1½ cents of the Rein price just before the Memorial Day weekend. Immediately motorists started turning into his station. In May he bought 17,751 gallons of Blue Sunoco from us, most of it in the last few days of the month. In June he bought 86,371 gallons and in July 115,663 gallons."

Here I would like to add an outside comment before I come to this comment.

Under the commission plan the company has the right to set the retail price. Suppose, for argument sake, that my station is located where the company feels I should not be given the right to post a lower price, but my competitor, as he did in this instance, two miles away is allowed to post a lower price. Here is a statement by Sun Oil Company that when you reduce your price you not only go twice or three times, I believe at one place it went almost ten times in its normal volume.

Of course, we would like to add what Mr. Wright failed to add -- that when the dealers along all those highways met Mr. Tobman, Mr. Tobman did not last a year.

Now, on the advice of his company - and Mr. Willard Wright said it was their advice - he lowered his price, and we are led to believe that by such action he now became successful. The truth of the matter is that eventually Herb Tobman tore down that entire market, all of 17, 4 and 6, and when it all came down Mr. Tobman found he was right originally, that he should have stepped out, and he did step out a sadder and wiser man. And to the best of my knowledge he wants no more part of gasoline. We are left, however, with the headache that he created.

Of course, there are some dealers who contribute to the chaotic conditions and only legislation can control the unscrupulous dealers activities. A little more than a year ago, the Motor Fuel Tax Department announced nine dealers were charged with substitution of gasoline. To the best of my knowledge, none of these nine dealers have yet come to trial.

One of these dealers, Mr. Anthony Lubritazzi, 140 Frelinghuysen Avenue, Newark, an independent Esso dealer located at the above address, was substituting unbranded gas into his Esso tanks. He was a continuous price cutter and kept this market in a turmoil. An Esso dealer competitor of his, found he was buying unbranded gas. He took his Esso salesman to the supplier of the unbranded gas who admitted he was supplying that man with unbranded gas. The complaint, at that time, was turned in to the Chief Inspector, Mr. Shaw, of the Motor Fuels Tax Department, who told the complainant, our dealer, Rene Vielle, that his investigation proved the charges unfounded. This, in spite of the fact that the Esso salesman and the dealer saw the delivery invoices of this unbranded gas. Shortly thereafter, Esso removed their pumps and immediately Mr. Lubrittazzi put up the Amoco banner and sold Amoco products.

This same dealer operated an Esso station at Hawthorne and Jellif Streets, Newark. According to reliable information, he has just purchased another location at 42 Jones Street, Newark, from which he will sell Sun products.

The suppliers, in this instance, made no real effort to protect the quality of their merchandise. They did not refuse to supply a substitute.

Another contributor to the cause of price wars which was brought to our attention is Price's Gas Station, Bloomsbury Road, U.S. 22 - 8 miles East of Phillipsburg. This is a one-pump station but has been increasing volume at a very good rate. The gas is sold as Price's Gas - in other words, unbranded.

It is supplied by the Van Doran Oil Company, Whitehouse, New Jersey, a Gulf distributor. Part of the contract between the distributor and the dealer reads:

"Supplier will sell you regular gas for 6/10 cents under tank wagon price with the understanding that you will post 2 cents above. Dealer tank wagon price today is 19.5. Your cost is 18.9, but you will post 20.9 and you must buy motor oil, lubricants and automobile supplies from Van Doren Oil Company." And we have a Motor Fuel Tax Department with authority to go in and seize these records and if they seize them, they will find that contract between the Gulf distributors and an unbranded dealer in which they fixed the price so low that the Crown Oil nearby, a like product, not too well known and recognized as unbranded, felt it necessary to meet the price of that gas station and you have a turmoil in that area.

Further evidence of the trend to destroy competition between the supplier and the dealer is evidenced by the liberal rent offered when a dealer is willing to lease the service station to a major supplier. This is going on at a pretty steady rate and if it is not checked by restoring a reasonable margin to the independent dealer, it will be a matter of a short time when the lessee, independent dealer will not be around.

The following is an instance, again not an isolated one, of what is taking place: A service station located at 251 Morris Avenue, Springfield, owned and operated by Harry J. Doyle, and subsequently by his son since 1932. As of the early part of this year, the Doyles were forced to surrender the operation of this station because of the lack of profit. They leased it to the Sinclair Oil Company, who leased it for a period of ten years at a rental of $390 per month. The station was pumping 24,000 gallons of gas per month. The rental, therefore, at the Esso gallonage would be approximately 1.6 cents per gallon. However, the station, with Sinclair gas, is now pumping about 14,000 gallons per month, which would bring the rental to 2 3/4 cents per gallon, the rental Sinclair is paying the independent dealer.

According to our information, the dealer is paying $250 per month rent, the company is absorbing a loss of $140 per month. We believe all this adds up to one conclusion, that unless Senate 82 is passed, which would restore the possibility for a man to retain his independence and still make a profit, eventually all competition between the supplier and the dealer will disappear. This represents more than a substantial reduction of competition and is certainly not in the public interest.

Now the title, "Competition is being destroyed," using State-wide licensing figures can give a distorted picture. We therefore made a detailed study and survey of Route #1 from the Woodbridge Circle to the Newark Airport Circle, a distance of 12.2 miles. There are 80 service stations located on this highway within this 12.2 mile span.

Forty of these stations are company leased stations.

Four are company-owned and operated. The balance have some degree of independence. In the past five years, 41 of these stations changed ownership and in those 41 stations, there were 129 operators. Of the 56 stations in which there was no change of ownership, at least two are receiving a special concession. Two others have been among those charged with substitution and four are company owned and operated.

During this period, two independent Sun stations were abolished. The pumps were removed. One independent unbranded has been abolished and one independent Tydol has been abolished. However, during this period, Sun Oil Company built a brand new station, which is less than three years old and have under construction now, another brand new service station which is about ready to open and is company owned.

In this area, there are ten Esso company leased stations; nine of the ten stations have changed dealers at least once and some have changed as many as five times. Bear in mind that Esso is the most popular seller in the State.

This area was selected for the survey because it was one of the first put under the pressure of price wars and for the most time, when concessions were given, this area received them before any other place in northern New Jersey. It always had an advantage of price for long periods of time

OVER ITS IMMEDIATE HIGHWAY AND TOWN COMPETITION. AND YET THESE FIGURES INDICATE HOW WEAK THE RETAIL INDUSTRY IS ON THIS ROAD.

ANOTHER DETAILED SURVEY IN THE TOWN OF SPRINGFIELD INDICATES THE FOLLOWING: SPRINGFIELD BORDERS MORRIS COUNTY WHERE THE DEALERS NORMALLY POST HIGHER PRICES THAN THE PRICE WAR AREA, SO SPRINGFIELD SHOULD NOT HAVE FELT THE IMPACT OF PRICE WARS AS MUCH AS THE TOWNS IN THE HEART OF THE PRICE WAR CONDITIONS.

THERE ARE 23 SERVICE STATIONS IN SPRINGFIELD, OF WHICH ONE IS A GROCERY STORE, FOUR ARE PRIMARILY GARAGES, ONE IS A NEW CAR AGENCY, ONE IS A SHELL COMMISSION AGENT AND ONE IS A SUN COMPANY OWNED AND OPERATED STATION. IF YOU SUBTRACT THE 8 LICENSED OUTLETS FROM THE 23, WE FIND A TOTAL OF SIXTEEN SERVICE STATIONS WHICH HAVE AS A PRIMARY SOURCE OF INCOME, THE SALE OF GASOLINE. FOURTEEN OF THESE STATIONS CHANGED DEALERS AND FORTY-FIVE DEALERS PASSED THROUGH THESE SIXTEEN STATIONS, LEAVING BEHIND THEM HEARTACHES AND LOSSES.

HARRY J. DOYLE HAS LEASED TO THE SINCLAIR REFINING COMPANY FOR A PERIOD OF TEN YEARS, AS MENTIONED PREVIOUSLY IN THIS BRIEF. COULD THERE BE A SORRIER PICTURE OF DESTRUCTION OF COMPETITION? CAN THE MEN WHO OPERATE THESE PLACES MAINTAIN A STANDARD OF MORALE WHICH WOULD MAKE THEM BE CONSIDERATE OF PROPERLY SERVICING MOTOR VEHICLES?

NOW, OF COURSE, WHEN WE TRY TO FIND AN ANSWER TO this problem, we run into, as I said at the opening, that fear of bothering with the free competition. So I took some time out and checked from CCH, and most of this work is from the CCH trade manual, to see what the judges have been doing and what has been happening around the country.

In seeking to pass Unfair Sales Acts, those who find the need for them must always keep in mind the importance of court opinion on this type of legislation. There are 31 states which have below cost laws of general application. There are 21 states which have below cost laws of specific industry. There are a total of 39 states of the 48 which have either or both general application or specific industry below cost laws.

The highest court in Airzona and Maryland ruled their acts unconstitutional. Here in New Jersey, a lower court so ruled and appeals were not taken from the rulings.

Constitutionality seems well established in California, Louisiana, Minnesota, Montana, Nebraska, New Hampshire, Oklahoma, Tennessee, Washington and Wisconsin. The lower courts in Colorado, Connecticut and Kentucky have rendered decisions which seem to support the constitutionality in those states. As a supplement to this we have listed the court opinions of as many states as we could find as reported in CCH Trade Regulation Reports.

~~Excerpts from the decisions declaring the Fair Sales~~

ACT OF NEW JERSEY IN 1938 UNCONSTITUTIONAL ARE AS FOLLOWS: "IT, (THE LAW), DOES NOT ANYWHERE EXHIBIT A PURPOSE TO ACCOMPLISH A VALID OBJECT. IT ARBITRARILY IMPOSES RESTRICTION UPON TRADE, WHEN NO INJURY IS INFLICTED THEREBY AND WITHOUT RESULTANT BENEFIT TO ANYONE."

IN ANOTHER ACTION HERE IN NEW JERSEY UNDER THE BELOW COST CLAUSE OF OUR MOTOR FUELS TAX LAW PROHIBITING SALES BELOW COST, THE COURT CITED THAT THE LAW WAS UNENFORCEABLE "FOR UNCERTAINTY."

THE CALIFORNIA SUPREME COURT IN ITS OPINION STATED: "THE CONSTITUTIONALITY OF THE PURPOSE AND POLICY OF THE LEGISLATURE IN ENACTING THE UNFAIR PRACTICES ACT AND OF THE MEANS EMPLOYED TO SUBSERVE THE LEGISLATIVE PURPOSE BY PROHIBITING SALES BELOW COST MADE WITH THE INTENT TO ; INJURE COMPETITORS OR DESTROY COMPETITION WAS UPHELD GENERALLY AS A VALID EXERCISE OF THE POLICE POWER BY THE DECISIONS OF THIS COURT."

THE COLORADO COURT RULED AS FOLLOWS: "THE UNFAIR PRACTICES ACT IS CONSTITUTIONAL SINCE ECONOMIC POLICY AND REGULATION ARE WITHIN THE SCOPE OF THE LEGISLATURE AS LONG AS THE ENACTMENTS ARE FAIR AND MADE FOR THE PURPOSE OF PUBLIC WELFARE. IT IS SUFFICIENT IF REGULATORY ACTS APPARENTLY TEND TO PROMOTE THE WELFARE OF THE PUBLIC OR A SUBSTANTIAL NUMBER OF CITIZENS. TO BE IN VIOLATION OF THE FOURTEENTH AMENDMENT, SUCH ACTS MUST CLEARLY BE SHOWN TO BE WITHOUT public benefit."

The Kentucky Court of Appeals ruled: "The right to fix minimum prices is a power properly exercised by the legislature regardless of whether or not the industry involved is one affected with public interest."

The Louisiana Superior Court quoted as follows: "The enactment of Unfair Sales Act was within the police powers of the legislature to protect the economic structure and to prevent monopolies."

The New Hampshire Superior Court rules as follows: "The legislature may protect free and fair competition in trades and industries against monopolies or other unfair means."

The Wisconsin Superior Court decided as follows: "The Unfair Sales Act is held a constitutional exercise of the police power in prohibiting 'sales below cost,' which is defined with certainty and definiteness. The provisions of the Act, uniformly applicable to all retailers and wholesalers, impose no limitation upon the right of dealers to fix sales prices at any figure above the statutory minimum."

Summarizing the judicial opinions, the consensus of opinion of the courts seems to be that an Unfair Sales Act must contain the following characteristics: It must set only minimums, permitting variations upward in price. The purpose which it is supposed to serve must be clearly defined.

IT MUST NOT BE ARBITRARY OR CAPRICIOUS.

I THINK IF YOU READ S-82 CAREFULLY, YOU WILL FIND THAT WE FALL WITHIN THESE REQUIREMENTS OF THE JUDICIAL OPINIONS.

I HAVE HERE NOW A BREAKDOWN OF THE DIFFERENT STATES AND THE ONES WITH THE ASTERISKS ARE THE ONES DECLARED UNCONSTITUTIONAL, BUT WITH THE EXCEPTION OF THE MARYLAND ONE, THE ARIZONA ONE WAS DECLARED UNCONSTITUTIONAL, AS WAS THE NEW JERSEY ONE, FOR INDEFINITENESS, NOT BECAUSE IT COULDN'T BE CONSTITUTIONAL. I DON'T BELIEVE IT IS NECESSARY TO GO THROUGH THESE ACTS I QUOTED BRIEFLY FROM THE BEGINNING.

I WOULD LIKE TO COME TO THE CONCLUSION. IT IS ON PAGE 22. THUS FAR, WE HAVE ATTEMPTED TO DEMONSTRATE THE NEED FOR LEGISLATIVE ACTION, SOME OF THE ECONOMIC ISSUES INVOLVED AND THE JUDICIAL APPROVAL OF THE PHILOSOPHY OF SENATE 82.

AS PART OF THE WHOLE PICTURE, WE THINK IT IS NECESSARY TO DISCUSS ECONOMIC FACTORS ABOVE OUR LEVEL, GOING BACK TO THE OIL WELL, BECAUSE WE THINK THAT PLAYS AN IMPORTANT PART IN DEMONSTRATING THE TREND TOWARD VERTICAL MONOPOLY.

ALL OF THE ELEMENTS OF COMPETITION IN THE GASOLINE INDUSTRY ARE NOW UNDER THE CONTROL OF THE MAJOR OIL COMPANIES UNTIL THEY REACH THE SERVICE STATION. HERE THERE IS STILL A LIMITED AMOUNT OF COMPETITION. BUT IF SENATE 82 FAILS TO PASS, THE MAJOR OIL COMPANIES WILL COMPLETE THE CYCLE OF

VERTICAL MONOPOLY.

THE POWERS OF THOSE INVOLVED IN THE PRODUCTION OF CRUDE OIL WAS DEMONSTRATED BY THE EXPOSURE IN WASHINGTON OF THE $2500 "GIFTS." IT IS NOT MY INTENTION AT THIS TIME TO CHARGE THE MAJOR OIL COMPANIES WITH INVOLVEMENT OF THOSE "GIFTS," AND I CLEARLY WANT TO SAY THAT I SAW NO EVIDENCE ANYWHERE OF A MAJOR OIL COMPANY INVOLVED IN BRIBERY. BUT THERE CAN BE NO QUESTION THAT THE COMPANIES HAVE PROFITED FROM THE ACTIVITIES OF THE CRUDE OIL GROUP.

THE FOLLOWING CHART DEMONSTRATES THE EFFECT ON OUR ECONOMY THROUGH THE PASSAGE OF THE CONNOLLY HOT OIL ACT. AND AS WE RUN THROUGH THAT CHART, WE FIND THAT IN THE PERIOD 1919 TO 1926, WE HAD CRUDE OIL VARIATIONS IN PRICE OF ANYWHERE FROM $1 TO $3.50. THERE WERE 46 PRICE CHANGES OR AN AVERAGE OF 6 A YEAR DURING THAT PERIOD. THEY ENTERED A PERIOD OF VOLUNTARY AGREEMENT SOMEWHAT LIKE WE HAVE TRIED TO DO AMONG THE DEALERS, WHERE THE REFINERS TRIED TO GET TOGETHER AND THE CRUDE MEN TRIED TO GET TOGETHER. DURING THAT PERIOD THERE WAS AN AVERAGE OF 3 CHANGES A YEAR. HOWEVER, CRUDE OIL DROPPED AS LOW AS 18¢ A GALLON, ALMOST AS OUR GASOLINE WAR SEEMS TO GET WORSE AS WE TRY TO DO SOMETHING ABOUT IT.

IN 1933 THE NRA OIL CODE STARTED OFF, AND WHEN DECLARED UNCONSTITUTIONAL, SECTION 90 OF THE CODE WAS ADOPTED IN THE FORM OF A LAW CALLED THE CONNOLLY HOT OIL ACT, SERVING THE SAME PURPOSE. AND IT IS THAT PERIOD WE ARE INTERESTED.

IN. FROM 1933 TO 1935, CRUDE OIL SOLD CONSISTENTLY FOR $1 A BARREL, NO CHANGES UP, NO CHANGES DOWN. THEN THE INTERSTATE OIL COMPACT ACT WAS PASSED WHICH SUPPLEMENTED THE CONNOLLY HOT OIL ACT. IT PERMITTED THOSE STATES WHO PRORATED GASOLINE OR PRORATED CRUDE OIL TO GET TOGETHER AND DETERMINE A BASIS FOR PRORATING AND SO FORTH. IT WAS CALLED THE INTERSTATE OIL COMPACT COMMISSION, AND UNDER THAT INFLUENCE WE WENT ALONG FROM 1935 TO DATE. THERE WERE ELEVEN PRICE CHANGES OR ONE PRICE CHANGE A YEAR. AND THE PRICE OF CRUDE OIL IN 1947, WHICH IS THE END OF THIS CHART PERIOD, HAD RISEN TO $2.57 A BARREL. THAT IS FROM A LOW OF 18¢ WHICH WE KNOW IS NOT SOUND ECONOMICS. THE PRICE OF CRUDE OIL TODAY IS CLOSE TO $3.00 A BARREL AND THE TRADE PRESS IS CARRYING A STORY THAT THERE IS AN ANTICIPATED INCREASE OF 60¢ A BARREL FOR CRUDE OIL IN THE WIND. NOW I KNOW THAT 18¢ IS WRONG; I KNOW $2.57 IN MY OPINION IS JUST AS WRONG. AND BECAUSE OF THE EXORBITANT PROFIT MADE AT THIS LEVEL, THE INDUSTRY HAS BEEN ABLE TO USE THAT AS A MEANS OF BRINGING UNDER THEIR CONTROL THE FINANCE, TRANSPORTATION, WHOLESALE MARKETING AND NOW WE ARE NEXT IN LINE FOR THE EXECUTION.

WE MUST BEAR IN MIND NOT ONLY HAS THE CONNOLLY HOT OIL ACT BEEN A BLESSING TO THE MAJOR OIL COMPANIES, BUT HAS CREATED THE POSITION FROM WHICH THEY COULD BUILD THIS VERTICAL MONOPOLY.

THE WELL DEPLETION ACT IS A HARD ONE TO GET ACROSS IN

A BRIEF STATEMENT. BUT I AM GOING TO TRY TO POINT IT OUT THIS WAY AND SHOW WHAT HAPPENED TO US. FOR EACH DOLLAR INCREASE IN THE PRICE OF CRUDE OIL, THE CRUDE PRODUCER IS ALLOWED TO TAKE 27 1/2 CENTS OFF HIS INCOME TAX RETURNS. HE IS ALLOWED TO TAKE THAT AS YOU WOULD TAKE A DEPENDENT DEDUCTION. SO THAT BECAUSE OF THE VALUE OF GETTING THE INCREASED PRICE IN CRUDE AND ALSO THE ADDED VALUE OF AN INCOME TAX DECUTION, THE TENDENCY HAS BEEN TO PUSH THE PRICE OF CRUDE OIL UP AND LET THE REST OF THE BUSINESS IN THIS MARKETING SYSTEM GO TO POT. LET'S TAKE, FORINSTANCE, THE ANTICIPATED INCREASE NOW OF 60¢ A BARREL. IF IT DOES GO THROUGH, THEY WILL NOT ONLY GET THE 60¢ A BARREL INCREASE, THEY WILL GET AN ADDITIONAL 16 1/2 CENTS PER BARREL INCOME TAX DEDUCTION ALLOWANCE. MR. KECK OF THE COMPANY THAT TRIED THE BRIBERY -- HIS COMPANY MADE $1,300,000 ONE YEAR AND PAID NO INCOME TAX AT ALL. THE WELL DEPLETION ALLOWANCE WAS SO GREAT, IT WAS ABLE TO WIPE OUT HIS TOTAL LIABILITY ON THE TAX RETURNS.

IN ONE INSTANCE, THE WELL DEPLETION ALLOWANCE AMOUNTED TO ONE-THIRD OF THE NET INCOME OF ONE OF THE MAJOR OIL COMPANIES. THOSE FIGURES WERE ARRIVED AT AT HEARINGS IN WASHINGTON. IN ADDITION TO THOSE FACTORS ABOVE MENTIONED, THE MAJOR OIL COMPANIES -- IN ADDITION TO THESE BENEFITS THE COMPANIES HAVE HAD GRANTED TO THEM BY THE GOVERNMENT, THE NATURE OF THEIR OPERATION: LENT ITSELF TO AUTOMATION AND BENEFITS DERIVED FROM SCIENTIFIC STUDY. TO DEMONSTRATE THE

ADVANCE MADE FROM 1940 TO 1953, WE HAVE MADE THE FOLLOWING CHART SHOWING THE PRODUCTS NOW DERIVED FROM A BARREL OF CRUDE. THE MAJOR OIL COMPANIES ARE TO BE CREDITED, NOT CONDEMNED FOR THIS PROGRESS. HOWEVER, EFFECTIVE COMPETITION SHOULD CAUSE THEM TO PASS SOME OF THESE SAVINGS ON TO THE CONSUMER.

I WOULD LIKE TO POINT OUT THAT THE GASOLINE RETAIL INDUSTRY DOES NOT LEND ITSELF TO AUTOMATION. IT STILL REQUIRES A MAN TO PHYSICALLY GO TO THE PUMP, SERVE THE CUSTOMER INDIVIDUALLY WITH THE SAME MANPOWER REQUIREMENTS AS IT DID THIRTY YEARS AGO.

AND WE HAVE ON THE NEXT PAGE A BREAKDOWN OF A BARREL OF CRUDE. AS YOU SEE ON THE CHART IN 1940 A BARREL OF CRUDE, WHICH IS 42 GALLONS -- I MISSED THAT SOMEHOW. A BARREL OF CRUDE IS 42 GALLONS. AND IN 1940 UNDER THE REFINING PROCESS WE WERE ABLE TO GET - THE REFINERS WERE ABLE TO GET--1.3 PER CENT OF THE BARREL WAS L.P.G. AND 0.7 PER CENT, ETC. AND THEN ACROSS THE WAY WE SHOW WHAT THE BARREL NOW GIVES. NOW YOU LOOK AT L.P.G., WHICH IS ONE OF THE HIGH RETURN PRODUCTS, AND WE FIND THAT THEY HAVE ALMOST DOUBLED THE AMOUNT THEY CAN GET FROM THIS BARREL OF CRUDE. WE LOOK AT CHEMICAL PRODUCTS FOR RAW MATERIALS AND IT HAS ALMOST DOUBLED. WE LOOK AT GASOLINE. IN 1940 ONLY 25 PER CENT OF A BARREL OF CRUDE WAS GASOLINE; TODAY IT IS 46 PER CENT, AND GASOLINE IS A HIGH RETURN, IN SPITE OF THE PRICE WAR AT OUR LEVEL. KEROSENE HELD ITS OWN, BUT HEATING OIL WENT UP FROM 14 PER CENT TO

19 PER CENT AND IT IS A GOOD RETURN. LIGHT INDUSTRIAL FUEL OIL WENT FROM 6 PER CENT TO 5. THE DIESEL OIL TODAY IS THE LIGHT INDUSTRIAL FUEL OIL OF 1940. RESIDUAL FUEL OIL, WHICH IS A LOW RETURN, DROPPED FROM 32 PER CENT OF THE BARREL TO 8 PER CENT. OTHER PRODUCTS HELD AT 5 PER CENT. THEY WOULD BE WAXES AND SO FORTH. REFINERY FUEL WAS 8 PER CENT IN 1940 AND IT IS ONLY 7 PER CENT NOW. IN 1940 REFINERY FUEL WAS A WASTE-END PRODUCT. TODAY REFINERY FUEL IS USED FOR HEATING AND COOKING, ETC., IN THE REFINERY ITSELF. LOSSES, EVAPORATION AND LEAKAGE WAS 3 PER CENT IN 1940; IT IS ONLY 1 PER CENT TODAY.

NOW, THERE IS NO CONDEMNING THE MAJOR OIL COMPANIES. THIS IS GOOD. THIS IS WHAT WE ARE SUPPOSED TO TRY AND DO. BUT IF REAL COMPETITION EXISTED, EVERY ONE OF THE COMPETITORS WOULD BE SOMEWHERE NEAR THIS AND EVENTUALLY COMPETITION WOULD CAUSE THEM TO PASS AT LEAST PART OF THE SAVING ONTO THE CONSUMER. I AM SORRY I COULDN'T BRING THIS CHART MORE UP TO DATE. IT IS TAKEN FROM A PREVIOUS ARTICLE I HAD WRITTEN. BUT THIS GIVES YOU SOME IDEA OF THE GROWTH OF THOSE SUPPLYING US AND I THINK YOU ARE CONVINCED THAT WE ARE ABOUT READY TO DIE. HERE WE SHOW SUN OIL COMPANY FROM 1946 TO 1950, WITH A PERCENTAGE OF NET INCOME TO CAPITAL STOCK GOING UP 45 PER CENT IN A FOUR-YEAR PERIOD, AND IT HAS RISEN STEADILY FROM THAT TIME UNTIL TODAY. YOU HAVE THE TEXAS OIL COMPANY, NET SALES UP 113 PER CENT, NET PROFITS

AFTER TAXES 110 PER CENT, AND INCIDENTALLY SOME PROFITS AFTER TAXES WERE 147 PER CENT. WE HAVE THE GULF OIL CORPORATION UP 105 PER CENT, AND THE SHELL OIL COMPANY UP 106 PER CENT IN SALES. BUT WE ARE MORE INTERESTED IN PROFITS. THEY WENT UP FOR THE GULF OIL COMPANY - NET PROFITS AFTER TAXES WENT UP 91 PER CENT; FOR THE SHELL, THEY WENT UP 175 PER CENT. FOR THE STANDARD OF NEW JERSEY NET PROFITS WENT UP 130 PER CENT. SOCONY VACUUM WENT UP 120 PER CENT. FOR STANDARD OIL OF INDIANA, THEY WENT UP 83 PER CENT. THIS INCIDENTALLY POINTS UP SOMEWHAT WHAT I SAID. STANDARD OIL OF INDIANA IS A BUYER OF CRUDE ON A LARGE SCALE. THEY ARE NOW DOWN IN THE MARKET EXPANDING THEIR CRUDE HOLDINGS. BUT AT THE TIME THIS REPORT WAS WRITTEN, THE STANDARD OF INDIANA WAS PRIMARILY A REFINER AND BOUGHT MORE CRUDE THAN ANY OTHER COMPANY, WHICH IS IMMEDIATELY REFLECTED IN THE FACT THAT THEY ONLY HAD AN 83 PER CENT INCREASE. ATLANTIC REFINING COMPANY HAD A 325 PER CENT INCREASE.

NOW, THERE ARE SOME EXPLANATORY NOTES ABOUT WHAT THIS IS ABOUT, AND THIS IS FROM A MOODY'S REPORT, NOT BY ME. THIS IS A MOODY'S REPORT AND I THINK THEY ARE CONSIDERED RELIABLE.

THE FOLLOWING CHART SHOULD PROVE THAT THE GASOLINE INDEPENDENT DEALER CANNOT SURVIVE IN THE NEW JERSEY MARKET. WHILE COMPANY EARNINGS WERE ON THE INCREASE AND COST OF LIVING HAD RISEN 2 1/2 TIMES SINCE 1931, THE DEALER MARGIN DROPPED

FROM FOUR CENTS PER GALLON TO APPROXIMATELY 2 1/2 CENTS PER GALLON, AND WE HAVE THE PRICE OF THE CRUDE OIL HERE: IN 1931 66 CENTS; 1955, $2.66. THE WHOLESALE PRICE OF GASOLINE IN NEW JERSEY, EXCLUSIVE OF TAXES, WAS [illegible].1 CENTS IN '31 AND 13.[illegible] CENTS TODAY. THE COST OF LIVING WENT UP 250 PER CENT. THE AVERAGE HOURLY EARNINGS OF THE WORKER IN THE PETROLEUM REFINERIES WENT UP - THAT SHOULDN'T BE PER CENT - FROM NOT QUITE 64 CENTS TO $2.32. THE AVERAGE HOURLY EARNINGS OF THE PETROLEUM PRODUCTION WORKER WENT UP FROM 78 1/2 CENTS TO $2.21. THE AVERAGE HOURLY EARNINGS OF ALL MANUFACTURING WENT UP FROM 44.6 CENTS TO $1.77. THIRTY-FIVE MAJOR OIL COMPANIES NET INCOME WENT UP FROM 2.7 PER CENT TO 10.7 PER CENT. THE TOTAL INCREASE IN DOLLAR VOLUME FOR THE MAJOR OIL COMPANIES IN THAT PERIOD FOR THESE THIRTY-FIVE COMPANIES WAS $7,308,000 IN '31 AND $20,945,000 IN 1955.

NOW DOWN UNDERNEATH IS THAT POOR SUCKER AND IT SHOULDN'T TAKE AN AWFUL LOT OF SENSE TO REALIZE IT. IN 1931 HE HAD A 4 CENT MARGIN. I HAD A TEXACO STATION AND I HAD A GUARANTEED CONTRACT MARGIN WITH MY SUPPLIER, GUARANTEEING ME 4 CENTS A GALLON. AND AT THE PRESENT TIME THE DEALER IS ATTEMPTING TO OPERATE ON 2 1/2 CENTS PER GALLON. IT IS JUST COMMON SENSE THAT IT CAN'T BE DONE. IT ISN'T POSSIBLE. EVEN VOLUME COULDN'T GIVE US THAT ANSWER.

I HAVE NOT CITED THESE CHARTS IN A SPIRIT OF

VINDICTIVENESS, BUT RATHER TO DEMONSTRATE TO YOU THAT IF THE FINAL STEP OF VERTICAL MONOPOLY IS COMPLETED, THE CONSUMER CAN EXPECT TO PAY CONSIDERABLY MORE FOR GASOLINE THAN HE IS NOW PAYING.

ON THE OTHER HAND, IF S-82 IS PASSED AND RESTORES TO THE GASOLINE RETAILER HIS ABILITY TO FORCE COMPETITION BETWEEN HIMSELF AND HIS SUPPLIER, THE RESULT OF THAT COMPETITION WILL BE LOWER WHOLESALE COSTS AND THEREFORE LOWER RETAIL COSTS.

WE HAVE NOT TRIED TO PASS THIS BILL WITH PRESSURE METHODS. WE HAVE GIVEN THE MOTORIST FULL CONSIDERATION IN THIS BILL. ATTACHED CIRCULARS TO THIS BRIEF CONTAIN AN ANALYSIS OF S-82 AND A QUESTION AND ANSWER FOLDER WHICH HAS BEEN DISTRIBUTED TO THE MOTORIST. WE HAVE MADE EVERY EFFORT TO ACQUAINT THE PUBLIC WITH OUR DESIRE TO PASS THIS BILL.

SENATOR DUMONT ALLOWED US TO BE REPRESENTED ON THE NEW JERSEY LEGISLATIVE REPORT PROGRAM, MARCH 25TH, 1955, ON CHANNEL 13, TV. ALSO APPEARING WAS ASSEMBLYMAN TOM HUGHES OF HUDSON COUNTY. THE SUBJECT OF DISCUSSION WAS: "THE NEW JERSEY GASOLINE RETAILER PROBLEM." THE MAJOR OIL COMPANIES WERE ALSO INVITED, BUT NOT ONE OF THEM ACCEPTED THE INVITATION.

I WOULD LIKE TO POINT UP ANOTHER IMPORTANT ITEM FOR THIS COMMITTEE TO CONSIDER. WHILE WAGES AND SALARIES PAID TO EMPLOYEES MUST AFFECT THE ULTIMATE COST TO THE CONSUMER, WE HAVE NOT CALLED SUCH AN ACT AS THE MINIMUM WAGE AND HOUR LAW

PRICE FIXING. THEREFORE, WE SHOULD NOT CALL THIS BILL A PRICE-FIXING BILL. WHILE IT DOES AFFECT ONE OF THE ELEMENTS OF COST TO THE CONSUMER, IT CANNOT BE CALLED PRICE FIXING.

IT IS AS MORALLY, SOCIALLY AND ECONOMICALLY JUSTIFIABLE AS THE MINIMUM WAGE AND HOUR LAW.

THE FOLLOWING STATEMENTS ARE HOW RELIABLE PEOPLE HAVE FOUND, THROUGH SURVEYS, THE AMOUNT OF MARGIN NEEDED TO PROPERLY OPERATE A SERVICE STATION:

DUN AND BRADSTREET INDICATED A MARGIN NEED OF 6.7 CENTS PER GALLON.

THE DEPARTMENT OF COMMERCE IN ITS BOOKLET TITLED, "CAPITAL REQUIREMENTS FOR GASOLINE SERVICE STATIONS," INDICATES A NEED FOR 23 PER CENT MARGIN TO RETURN $560 PER MONTH, WHICH REPRESENTS BOTH SALARY AND RETURN ON INVESTMENT FOR A DEALER WITH SALES OF $84,000 PER YEAR. UNDER NORMAL MARKETING CONDITIONS, THIS 23 PER CENT WOULD GIVE THE GASOLINE DEALER A SIX CENT MARGIN.

A SURVEY OF GASOLINE RETAILING COSTS CONDUCTED BY THE CERTIFIED PUBLIC ACCOUNTANT FIRM OF COOLEY AND MARVIN, BOSTON, MASSACHUSETTS, OPERATING UNDER THE UNFAIR SALES LAW OF MASSACHUSETTS, ESTABLISHED AN AVERAGE COST OF 5.9 CENTS PER GALLON.

WE SINCERELY BELIEVE THAT SENATE 82 WILL BRING THE MOTORING PUBLIC MORE EFFICIENT SERVICE THROUGH MORE COMPETENT operators. It will eventually bring lower prices to the consumer as free competition is established between the retailer and his supplier and the quality of the men who will be encouraged to enter this business will be improved tremendously. We urge you to pass S-82 in the interest of fairness and justice.

The last urgent appeal I make to you gentlemen of the Judiciary Committee comes as a result of reading the April 6th edition of Petroleum Week, a trade magazine. This is the comment.

"There is industry talk of shifts to the consignment system in order to avoid the legal pitfalls which now surround any discounts off tank wagon price to lessee dealers. Under the consignment system, the supplier legally sets the retail price."

Gentlemen, the Sun Oil Company is already doing that now in New Jersey. That is the final end of anything free. A man is required if he owns his own place, to sign a commission arrangement with his supplier and the supplier takes over management of his place. Now the prediction was made in the April 6th issue, and we have one company already following it out. If you don't give us some relief or some help through S-82, there is no question in my mind that the consignment system is the end of free enterprise.

I have one other thing that I would like to make part of the record, showing the indifference of the company toward the quality of the men. We have in S--82 a code of ethics required. A gasoline dealer must be trusted. He is in a position where he can cheat the public. Yet we have this man Emil Frank who operated a Tydol Station on Highway #1 in Elizabeth, New Jersey. He was arrested at that location for peddling narcotics. He had previous convictions for smuggling. The man is now operating a Cities Service Station at 1159 Magnolia Avenue, Elizabeth, New Jersey. It is a Cities Service company-leased station. Gentlemen, when the major companies are so desperate that they resort to a man with an obvious record of this type -- a man who has paid by serving time must be given consideration, but when a man is place in a service station -- Recently we had an instance in Brooklyn where the operator dragged a woman out of the car and committed rape. Now, women aren't exposed to that. It is a logical place to stop when you are in trouble. My wife has to stop there, so does yours, frequently alone. She would stop not only for the use of rest rooms, but also for service, for things that might affect her. And yet this is the type of man that the oil industry is now desperately reaching for in order to get men into their stations. And I think you have an obligation to the public to protect them, to make certain that through a code of ethics that we provide for in S-82 a man like this won't have a license and therefore will not expose the public to any possibility of him continuing to peddle narcotics. It is pretty much agreed that the man who sells narcotics is about the lowest form of criminal there is.

I would like to close my testimony with a sincere appeal to you men to give us S-82. It is only for a two-year trial period. The obligation will be on our shoulders to make it work. If we don't do a good job of satisfying the public and of proving our industry can lift itself up, the obligation comes on our shoulders to come and repass this bill and you can turn us down. It isn't a case of your passing the bill and then later trying to repeal it. We agreed after a conference with Senator Dumont in protection of public interest, protection to the public against those bills which frequently are written into law and never repealed, at his suggestion, that we would take this two-year limitation. Surely no harm can come to the public. If you do too much adjusting with the bill, we will find again that we have lost a terrific value. There are men in our industry who want a code of ethics. They are sincere men. They want to make this into a good business. They believe it should be a good business. They are men that are worthy of public trust. I am certain that if you give us a two-year trial, if you pass this bill and try it as an experiment, we will justify your faith in us and that we will have even greater public acceptance two years from now. I thank you. (Applause.)

THE CHAIRMAN: Thank you very much, Mr. Dressler, for your presentation in behalf of the proponents of the bill. It was my understanding that you were speaking in behalf of all of the proponents and I do not have any record here of other speakers who are sponsoring the bill.

So at this time we will call upon the opponents. The first one I have on the list is Mr. C. A. Sparks, of the Sun Oil Company.

MR. C. A. SPARKS: Gentlemen, I have been in the Marketing Department of the Sun Oil Company since 1917.

THE CHAIRMAN: Mr. Sparks, I don't like to interrupt, but do you have a paper to present?

MR. SPARKS: I have.

THE CHAIRMAN: Do you mind giving that to our Sergeant-at-Arms?

MR. SPARKS: I don't believe I have a copy of it.

THE CHAIRMAN: Could you leave a copy with our secretary?

MR. SPARKS: I will later.

THE CHAIRMAN: Thank you.

MR. SPARKS: I noted Senator Dumont in his introductory remarks touched on one or two items which I would like to explain to the Senator. The television program I heard of myself for the first time today. In contacting my company, I heard that we had heard of that program at ten minutes after five on a Friday before the Sunday that the program went on. I merely touch on that because the Senator, I think, did wonder - and I would think quite rightly - why he hadn't heard from a representative of the oil industry. Perhaps that same problem that I was faced with, might have been with our industry as a whole; the information at the time it was being held seemed so late.

Also the question of tank wagon prices being equal proving monopoly is an interesting thought. Frankly, I believe that tank wagon prices follow themselves in almost the identical ratio to retail prices. They must of themselves reach a happy medium or whoever has the lowest tank wagon price is successful in obtaining all of the business. Certainly in our business which is so competitive, we would not find ourselves in a position to allow any of our strong competitors an advantage in a tank wagon price. I think it follows in great detail the retail price.

Third, I heard the comment that the majors were in competition with their dealers. Speaking for the Sun

Oil Company, our dealers do over 90 per cent of our total business. We are partners in our business. We think it is part of our job to find some way that our dealers prosper. They must prosper in order for us to prosper.

With those few comments, I would like to point out some factors in this bill that we believe are detrimental. I think we can quickly recognize this as a 1956 version of the price-fixing bills which have been before the New Jersey Legislature several times in recent years. The Legislature has rejected such proposals each time they have come up.

In this year's approach a safety angle has been added. In fact, safety is so well emphasized in the title and the opening pages of the bill that the provisions for the setting and policing of minimum retail prices appear almost as an afterthought. But they are there all the same.

Safety and minimum price setting are unrelated subjects and it is difficult to see why they should be coupled in the same bill, except in the hope that the safety provisions will carry with them approval of other provisions which have been repeatedly disapproved by the Legislature.

Nevertheless, the State Board created by the act would have jurisdiction over both. In fact, the powers conferred upon this Board would be so broad that it could reach into virtually every activity of the gasoline retailer. I will amplify that statement in a moment.

I am at a loss to understand why the matter of safety has been brought up at this time unless it is an attempt to camouflage the real purpose of the bill. There have been no serious accidents or fires at service stations in this state. The industry's safety record is a good one.

Excellent safety programs are in operation throughout the industry. We stress safe practices in our training programs for new dealers and follow this up with periodic inspections and additional training material on safety. We conform with all local safety ordinances. Our stations are built to conform with the standards of the National Fire Prevention Bureau and the Insurance Underwriters Association. I believe this is true in the case of other supplying companies.

It has been argued that this bill is needed because several cases involving the adulteration of gasoline have not been brought to trial. The suggestion seems to be that if one law is now enforced, we ought to pass another. That seems to be typical of the sort of logic some people are applying to this situation.

The advocates of this bill are confusing on many other points. They will argue that Bill 82 is necessary because it will help weed out "unscrupulous dealers" who have caused some of the conditions that need to be remedied. Then they promptly insert in the bill a "grandfather's clause" which will exempt from the screening of the examining board all operators who have been in the business for a period of six months.

They argue that there is nothing wrong about requiring service station operators and their helpers to be licensed, pointing out that doctors, dentists, druggists, engineers and plumbers are licensed. People in those categories are not merchants. If the state now undertakes to license businessmen who operate service stations, where will it draw a line on where to stop? What about the corner grocer, the haberdashery shop, the household supply store, the "do-it-yourself" shop?

They draw a comparison between this bill and the minimum wage and hour law. Here, again, we have two entirely different situations. The wage and hour law sets minimum standards for the hiring of workers. Service station operators are not employees but independent businessmen. The wage and hour law does not concern itself with retail prices. This bill does.

What this all adds up to is that the proponents of this bill are hard put to find a real justification of the drastic action of setting up a board of dealers to pass judgment upon the qualifications of those who desire to enter the business. The service station field has always offered opportunities for men who can raise the necessary capital and have an aptitude for the work. Until now, the state has not required them to be screened by a board of examiners.

No other state requires a license for gasoline dealers other than the ordinary merchantile license. And to the best of my knowledge - and we have checked into this - no other state is even contemplating such action.

Bill 82 empowers the State Board of Safety Automotive Maintenance Service to adopt such rules and regulations as it sees fit. Here we would be creating a new bureaucracy with power to compel dealers to produce books and records and, upon discovery of a violation of its rules, impose fines and revoke licenses. In effect, the chairman of the board would be the czar of the gasoline retailing business in this state.

Among other things, the Board members, who are dealers themselves, would be in the position of passing judgment upon their competitors from the standpoint of their competence, whether their advertising is strictly correct, or whether they drink too much.

Those who want to have this bill adopted into law say it is not a price-fixing measure. They contend that it sets only a minimum mark-up over tank wagon price and that is the extent of its control over price. In other words, it sets a floor under prices, but no ceiling. They also point out that it does not control tank wagon prices, but this has never been an issue. The tank wagon price is only one of many components in the retail price structure. All of this is mere quibbling because the whole objective of the measure is to set a floor under retail prices.

The standardized mark-up above the tank wagon price required by this bill would represent the average operating costs of all dealers in the state operating under widely varying conditions. For example, service stations in this state range in size all the way from a small neighborhood station which sells 10,000 gallons of gasoline per month to giant multi-pump stations selling 100,000 gallons or more. I believe you are familiar with the magazine advertisements urging motorists to drive more. These ads point out that the more miles you drive, the less it costs you per mile because you are going to have certain fixed costs anyway in the form of depreciation, insurance and so forth. This is true also in gasoline retailing. The more gallons you sell, the more you reduce your cost per gallon.

Moreover, under this "average cost" arrangement, efficient and inefficient dealers would be placed on a par. The efficient dealer could not take advantage of his efficiency and we must not lose sight of the fact that the motoring public is entitled to the benefits of such efficiency.

One thing the proponents of this measure seem to have ignored completely is the fact that it is set up to regulate retailing operations conducted along conventional lines. This is the usual situation in which a gasoline manufacturer sells to independent retail outlets at a wholesale price or tank wagon price. The regulation intended here is quite clear.

However, there are other types of operations in this state and they are a very important influence in the market. I refer to the operation in which a marketer buys wholesale cargoes of gasoline and sells it through his own stations. He does not operate in the conventional manner and does not deal in a tank wagon price. Since there is no provision in the bill covering this type of operation, it would seem that he is exempt.

If the intent in this bill is to ignore this type of operation and concentrate upon the conventional supplier-retailer relationship, the consequences can be very serious. This would be an open invitation to more and more marketers who do not sell gasoline under the branded name of their supplier to come into the state and operate under the protection of a price umbrella. The retail market would be theirs for the taking. This is just one more example of the harm that this bill would inflict upon the very dealers it is supposed to help.

To sum up, this bill would create a bureaucracy at the expense of the taxpayers, would subject a large segment of businessmen to state control and would impose another tax on dealers in the form of license fees which have to be renewed annually. We have been asked to experiment with this proposal for two years. If we know it is a bad bill, we ought not to experiment with it for even a week.

We have frankly no solution to this New Jersey problem. We know, and your committee I am sure has been presented with many reasons and thoughts as to what has caused this market problem, but we have found that our consignment agreements will enable us to protect our dealers in the face of these bad markets and our problem is our dealers; they are part of our partnership. Thank you.

THE CHAIRMAN: Mr. Sparks, I understood from your last remark that you realize a serious situation exists with respect to gas wars and the fact that many gas dealers have been forced out of business, but that you offer no solution; is that correct?

MR. SPARKS: We have found that most of the solutions that we have contemplated run into the face of anti-trust legislation.

SENATOR DUMONT: Mr. Sparks, you concede that a problem exists. You say that this bill is not the right approach, but you haven't any other approach to offer. Is that correct?

MR. SPARKS: It is pretty much on the basis that two wrongs don't make a right.

SENATOR DUMONT: Well, what would you do about correcting one wrong?

MR. SPARKS: I would like a good solution.

SENATOR DUMONT: So would we.

MR. SPARKS: I am sure you would.

SENATOR DUMONT: Just one more question, Mr. Chairman, if I may: This is not directed towards Mr. Sparks. I would like to clarify one thing on this word about the television program if I may. Mr. Gaffney, do you mind if I ask you when you were first notified of this program on March 25, 1956?

MR. GAFFNEY: Senator, I can't remember, but it was at least a week or ten days prior.

SENATOR DUMONT: Prior to the program. Thank you. (Applause.)

MR. GAFFNEY: I might say that I was asked by the program director to contact one individual, which I did, and after reporting back again, was not requested to pursue the matter any further. However, at that time there was -- it was probably only three or four days prior to the program.

THE CHAIRMAN: The next name on my list is Benjamin Richter. Mr. Richter.

MR. BENJAMIN RICHTER: I have been a dealer in Newark for 30 years. I own and operate my own station. The reason I am against this bill is that I don't want any bosses. I say:

have always maintained my own business - run my own business. It is hard enough to get the men now. If they license the dealers, it will be a whole lot harder to get them when you need them. I like and enjoy my business the way I am now. I have made a fairly decent living all these years. I have seen at least a dozen gas wars come and go. They always straighten themselves out. I do not cut in my neighborhood. I meet competition. If it is good enough for the other fellow, it is good enough for me, and I think in time this would straighten itself out by itself. Thank you.

THE CHAIRMAN: Mr. Richter, do you mind stating what your company is?

MR. RICHTER: Sun Oil Company, sir.

THE CHAIRMAN: Mr. Milton Crystal.

MR. MILTON CRYSTAL: Mr. Chairman and Senator Dumont: I operate a service station in Newark, New Jersey, for the last 23 years, and it is a Sunoco Station. And as far as I can see there is nothing wrong with the Sun Oil Company in their relationship with their dealers. I have heard a lot of talk here today about how bad the major oil companies really are. Well, I have got news for them. I don't think they are so bad.

I got out of school in 1931 and I didn't have too much dough and there wasn't too much opportunity in those days if you gentlemen remember, and I started a service station with a major . I knew nothing about the business. I constantly went to their sales meetings. I have tried to learn the things that they had to try to teach me. Some of it I have learned; some of it I haven't. But I have absorbed a part of it and I have tried to absorb the part that would help me the most and I have used the tools that they have given me all along the years the best way I know how and I have seemed to be able to get along. I got married. I am raising a family and everything seems to be going O.K.

The thing that I fear about this bill, as far as I am concerned, is the multi-pump service station which was mentioned by someone here today. When the multi-pump service station first went in - I don't remember how long ago it was - on Route 25 which is a direct artery to my station, I watched it with interest and I didn't discuss it with anybody. But every time I would drive by there, I would see a lot of cars in the place and my gallonage started to go down. Well, it kept going down. I was pumping about 15,000 a month at the time and it started to dip. Well, I mean, when your gallonage starts to dip, there are a lot of reasons why it dips. Sometimes you think it is yourself; sometimes you think it is economic conditions; sometimes you just don't know what it is. Maybe it is your help or something like that. But that station's gallonage kept going up. Every time I passed there, there were more and more cars. And I started to talk to the salesman from Sunoco - what gives with this thing? He said, "I don't know." And they started watching it. And the first thing you know they came around with some sort of a commission setup like we have. It wasn't a commission. It was some other crazy deal that they came up with. They put me in a position that I was able to compete against those fellows and their gallonage started to dry up.

Now, let's look at the fellow in the multi-pump station position. If his gallonage kept on growing, the first thing you would know, he would have one in the center of Newark. He would have one up on South Orange Avenue. He would have one on every main artery in every community where he could steal gallonage. And the first thing you would know I would be out of business anyway.

This way I have at least had a chance to compete with him on a fair basis. And I mean there have been times when my relationship with the company have been strained. When you are living with somebody or when you are doing business with them, with the Sun Oil or any other company, there are times when situations come up that sort of peeve you a little. But the way I look at the thing is - you look at the long-range picture, and on the long-range picture, I say that the way the major oil companies have treated me over the years, I don't think has been so bad, the way I am right living and the way I am getting along.

The thing about this bill that really scares me is the fact that it is going to give the multi-pump station a chance to live and really live and live. And the fellows that are here that are for this bill don't realize the farreaching effects of that multi-pump service station, and they will realize it. If this bill is passed, within four months you will notice a spread of the multi-pump station or the machinery put in motion to put them in the areas where they aren't now, and the first thing you know they will be down here asking you, Senator Dumont, to repeal the bill, real quick, because they will feel the effects of it.

I don't know whether you are familiar with Newark, but if you are, imagine putting a multi-pump service station on a street like Elizabeth Avenue, Newark. Why it would shake everybody's gallonage in the whole area and if our hands were tied so that we couldn't cut the price to meet that five-cent differential, we'd be out of business. So there is only one way to survive and if this is the way the companies have decided, I have enough faith in it to know that it's all right. What I think is wrong with a lot of these gas dealers is they get enslaved with this price floating in their mind and they refuse to recognize that there are other things in this business beside gasoline and they just want to ride along on the gasoline trade. Well, you can't do it. You've got to fight the thing and fight it in a way that's going to make it better for you. Thank you.

THE CHAIRMAN: Mr. George Priggen.

MR. GEORGE H. PRIGGEN: Mr. Chairman, I have some copies here of a statement. I will give them to you now?

THE CHAIRMAN: Yes, please.

Mr. Sparks, if it would be possible, we would like to have eight or ten copies of your paper.

MR. SPARKS: I will be glad to furnish them.

THE CHAIRMAN: Thank you. Will you proceed Mr. Priggen?

MR. PRIGGEN: Mr. Chairman, Senator Dumont, and I would like to say "Friends". While I have a statement here that we spent some time preparing, I think it well to open up with a sort of informal remark.

I like Senator Dumont's approach to this thing. And our problem should be discussed and I think this is a good opportunity. While I don't expect an applause from the gallery, I think in the long run that the opinions we express will earn for us, and for our opinions, your applause.

In essence, this bill, if enacted, would accomplish two things, each of which would be contrary to the interests of the consumers and the retail motor fuel dealers in the State of New Jersey.

First, it would establish a State Board of Safety Automotive Maintenance Service of New Jersey which would be empowered to license, after examination, persons desiring to be automotive mechanics, service station operators, or service station attendants in the State. Without such a license it would be unlawful for any person to engage in any of these activities.

Presumably the licensing requirement stems from a feeling that motor vehicle operators in the State need protection in their persons and property in connection with the fueling and servicing of their vehicles. Presumably, also, the legislation is an attempted exercise of the police power of the State.

There has been no evidence presented to the legislature nor to anyone else, to my knowledge, that the need for such protection in fact exists. The licensing provisions of the bill would impose an entirely unnecessary burden and expense not only on the State but on gasoline dealers and in turn on the consuming public who would ultimately have to bear the cost of administration of the bill. In the absence of conclusive evidence of the need for such legislation the bill should be defeated.

If the licensing provisions of the bill are not based upon the exercise of the State police power for the protection of the public, they can only reflect the selfish desires of some to employ the law to limit the number of service stations which may operate in the State. Some credence is lent to this conclusion by the provisions of

Subsection 13 (b) which exempts from the necessity of passing an examination to be conducted by the Board those engaged in operating service stations for six months prior to the effective date of the Act. As a result of this "grandfather clause", the purchasing public would continue to be exposed to the assumed perils involved in doing business with service station operators who have not passed an examination; in other words, all of the gasoline service station operators presently doing business in the State of New Jersey.

Two Canadian provinces have learned by unhappy experience that this type of licensing control applied to the oil industry is harmful both to the public and to the dealers. In 1934 a law was enacted in the province of Nova Scotia, which, among other things, limited the number of retail outlets by requiring that each new outlet obtain a certificate of necessity from a control board.

The law at the time of its enactment was not opposed. Existing dealers were apparently satisfied with legislative restrictions against the opening of other competitive outlets. Supplying companies doing business in Nova Scotia were few at the time and they apparently felt that a law which made it difficult for other companies to enter the province could do them no harm.

After 16 years of experience under the statute it became obvious that the lack of competition had produced a stagnant industry. Because of the difficulty in obtaining permission to build new stations, existing ones were not forced to compete aggressively. In 1950 the statute was repealed.

In 1937 the province of British Columbia adopted legislation similar to that passed by Nova Scotia. The British Columbia legislation was repealed in 1951.

It has not been demonstrated that the consuming public of New Jersey is suffering because of too many service station outlets in the State.

The second principal feature of the bill is to empower the State Board of Safety Automotive Maintenance Service of New Jersey to determine the average cost of doing business in the operation throughout the State of New Jersey of retail gasoline service stations with respect to the sale of gasoline only. Following such determination it would be unlawful for any retail dealer to post a price or to sell motor fuels below a price that included such average cost of doing business as determined by the Board, plus the cost of such motor fuel to the retail dealer.

This feature of the bill is purely and simply State-wide gasoline price fixing. To call it anything else is to say that black is white.

It is obvious that such a law would result in higher consumer gasoline prices. The cost of doing business established by the Board would be a State-wide average. Apart from the inherent impossibility of determining the share of overall business costs which would be accurately and fairly attributable to gasoline, only one of many products and services offered by dealers, such a computation would bear absolutely no reasonable relation to a given service station's business costs. It would not even permit the efficient operator to establish his own cost of doing business, which might be below the average cost, as a defense to a complaint of violation of the Act. It would hold an umbrella over the most inefficient operators to the detriment of the hard-working, successful dealer.

I do not believe that the problems of any industry or that the normal economics of any industry can be solved or regulated by legislation. It is to be expected that under our competitive system some will achieve substantial success, some moderate success, and a few will fail. Business success cannot be guaranteed. Any attempt to provide a guarantee by legislation will either fail because it is unworkable or will destroy the benefits of our proven competitive business system. One of the greatest incentives to more efficient business operation, on which long-term savings to consumers are based, is ever-present price competition. Legislation which would eliminate or impair fair price competition would replace progress with stagnation.

My Company, the Socony Mobil Oil Company, does not like price wars, partly because they cost us a lot of money, but primarily because of their impact on our dealers, through whom most of our automotive products are sold. I should like to state firmly and categorically that my Company would never knowingly pursue any course of action which would be opposed to the best interests of our dealers.

We must remember that there are price wars in other spheres today than just gasoline retailing -- particularly in hard goods. Refrigerators, freezers, fans, television sets, even automobiles -- all these lines are finding the law of supply and demand still at work setting prices in the open market, despite some efforts to fair trade such products. There is no public demand to regulate these industries, because the people realize that once you start peacetime regulation and price fixing in a competitive industry, there is simply no logical stopping point short of complete regulation of that industry and ultimately of all industry.

We have tried to look with an open mind at the various possibilities and legislative proposals that have been advanced from time to time as solutions to price wars, particularly to see whether we thought such proposals would improve the situation of our dealers. We have reached the conclusion that various legislative panaceas, such as minimum price laws, minimum margins, fair trade, and the like, will not work when price war conditions are encountered. Any law which runs counter to the natural instinct of the individual will not be obeyed and inevitably the dealer who tries to obey the law finds himself handicapped in his effort to compete against the less scrupulous dealer.

None of us should ever forget that most of the income we derive from our own business we spend on goods and services supplied by other businesses. If any of us in the oil business are to be protected against competition by law, we must expect soon to find that we have to buy our food, clothes, automobiles and all the other good things we want and need from businesses similarly protected against competition. I am sure that even those who are seeking legislative relief against the vicissitudes of the free market would be among the first to oppose any measure to protect all their personal and business suppliers from competition.

In conclusion, I believe that the best interests of the consumers and gasoline retail dealers in the State of New Jersey would be protected by the defeat of Senate Bill No. 82.

THE CHAIRMAN: Thank you, Mr. Priggen.

Mr. Priggen, you heard it stated here today on behalf of the proponents of the bill that the present system eliminates competition. I would like to have your comments on that statement and also what your solution is with respect to gas wars and the fact that so many dealers are going out of business.

MR. PRIGGEN: Let's take the first question first. I assume that stiffling of competition was referring to competition between supplier and dealer, and I can't give you a great many statistics. All I can do is tell you very honestly and sincerely, as a salesman, that you should sit on our side of the desk for a while and see what kind of competition we have. There is an extreme amount of it at all levels, resale, wholesale and every place else.

I just don't believe that it is a fact that any competition has been eliminated or is even intended to be eliminated.

As far as a solution, I don't think that we either are any closer to being able to spell out a cut and dried formula for the answer to this problem. We are agreed that we have a serious problem. In a session like this I am afraid that generalities do seem to prevail.

To shed a little light further, though, on your question, in December of last year the Director of Marketing of our Company appeared before the Humphyr's Committee and had a statement to make and I think, as a partial answer to your question, if I read from the text of his statement, it may help.

"You have asked for my personal recommendations" -- this is Mr. Herbert Willetts of our Company speaking --

was to the most appropriate means of handling price wars. I have concluded that my best response to your request will be to review with you the policies my Company has adopted to guide its activities in gasoline marketing. From press reports it would appear that many of the members of our industry are likewise giving serious thought to the problems involved. As such individual efforts within the industry become more widespread and better understood, it is my hope and belief that price wars will lessen in intensity and the excesses of the past will be avoided."

And I think that all Mr. Willetts here is expressing is a certain amount of faith in the leaders of our industry, in our dealers, in all of us being able to work together within the realm of the experience we have had in the past toward what will be an acceptable state of conditions.

SENATOR DUMONT: Mr. Priggen, you indicate apparently that your company is doing something to try to help your dealers, at least, with their problems. Now just what is your Company doing along those lines?

MR. PRIGGEN: I think we must realize in an approach to a problem of this kind that we are here discussing one phase, one particularly troublesome phase of our business which happens to be price competition. Yet the operation of a service station requires a great, great many things. Basically, first of all, it requires a very competent, a very intelligent and personable businessman to run it.

(Applause)

Gee! I didn't even expect that. Well, we know that. We all know it. It is just human nature. There are a great many things in the operation of a service station that do with other things than gasoline. John Dressler spoke of the services and the other products which are handled in these stations. He, in fact, was talking about the need of every dealer to gain the confidence of the consumer, to gain the confidence of the fellow who owns the automobile so that when he drives into a station he has the right to expect good quality service and good quality products.

So that our basic approach, you might say, to this thing is that first of all we must have good well trained dealers in this business. It matters little whether they own their own stations or lease them from us. The same requirement is there. So, in answer to that end, we, as well as others, have established a great many training facilities in the United States. Through those facilities we hope to bring to the dealer, to the prospective dealer, and to his employees, some ideas as to how maybe to run his business just a little better, and we hope a damn sight better than our competitors can run their stations because then we will do more business.

Surely the price of gasoline has an effect, but it is not the total effect. We have realized over the last few years, just as here today, that there are a great many dealers that have problems they would like answered. We, some years ago, established a group of our people in our Company, made up of managers, salesmen and others, experts of one sort or another, to discuss what we could do in an approach to a plan for dealers. We called it, and call it today, a Dealer Relation Policy. A very sincere attempt to sit down like businessmen should, across the table with the dealer, and talk about our relationship and the ways we should do our business. And in that policy we state, and very clearly, - the policy has been mailed to every dealer we have - that we don't believe in price fixing.

With that kind of an attitude, we are compelled here today to stand up and tell you of our viewpoints on a bill which has price fixing as one of its elements. It is our very sincere opinion - we feel as probably has been expressed here today - that given a bit more of this same hard work, this same energy expended to running our business well, that the intensity of price competition will lessen and our dealers -- particularly our dealers -- will find this business a very attractive one to be in.

I don't know whether you wanted a long answer or a short one, but it took a long one.

SENATOR DUMONT: That's all right. Do you agree with Mr. Sparks that tankwagon prices will usually be about the same or follow the same amount?

MR. PRIGGEN: I think the same reasoning applies to that as to the dealer at the retail level. If he is next door to a fellow selling at a cheaper price, he soon finds he has got to be competitive. We are in the same boat because that dealer next door, if he is buying from somebody else at a cheaper price, we are going to eventually have to meet it. And when we do, then we are at the same price. It is just the extreme competitive nature of a business of this kind that does find a -- I suppose the Lawyers here can give me some legal definition -- What is the word, Arthur? Conscious parallelism, I guess, is the word.

SENATOR DUMONT: Do you believe that same result would obtain if the average cost of selling gas at retail were added to the tankwagon price? Do you still believe there would be no competition among different suppliers as to tankwagon price, that the price would be the same?

MR. PRIGGEN: I would imagine so.

SENATOR DUMONT: In other words --- Just a minute, please. No demonstration. -- if the competition were transferred from where it is now at the retail level to the supplier level, I imagine that is where it would be transferred, the distributors --

MR. PRIGGEN: I don't think we should assume that, Senator.

SENATOR DUMONT: Well, where would it be transferred to then?

MR. PRIGGEN: I don't think it would change at all. I think the forces of competition of supply and demand that we are having are going to occur in any case. We have seen it here. We have history to show that it does happen and that is why we meet here. When a dealer, who is trying to abide by a statutory regulation, finds himself face to face with somebody who doesn't pay any attention to it, he has got to survive, he has got to meet it.

SENATOR DUMONT: Well, now, recognizing that a problem does exist, as you do, and believing that this is the wrong approach to it, or that perhaps any legislation is the wrong approach to it, what would be your approach to solve it?

MR. PRIGGEN: Well, as I tried to say before, Wayne, I can't give any simple two or three sentence answers. As I look around here, for example, I can see that a lot could be accomplished by just joining hands a little bit here and working to run a good business. I think that, perhaps to some extent, this situation in Jersey has been made worse because people have forgotten that there are other things that make a good service station than just price. There have been things done out of spite, out of anger, out of one thing or another, or just plain ignorance of the economics of running a business. A lot of those things can be clarified and they will tend to lessen the severity of these things.

SENATOR DUMONT: Well, I think all of us would be interested in seeing the dealers and the major oil companies do more joining of hands, as a matter of fact.

MR. PRIGGEN: I think it was mentioned here before that we do have other laws, that we do have to be very careful of.

I would like to shake your hand very much.

SENATOR DUMONT: Thanks a lot.

THE CHAIRMAN: Thank you, sir.

That concludes my list of the gentlemen listed in opposition to the bill. Mr. Dressler, would you like to have a few minutes for rebuttal?

MR. DRESSLER: I would but I have here a request from two dealers to speak. I don't know whether you would want to grant it. I imagine they would be proponents, but I know nothing about it, this was just given to me. One is an ex-dealer and --

THE CHAIRMAN: The Committee will hear them but we would like them to keep their remarks as brief as possible, not more than five minutes each. Is the first gentleman ready? Will you state your name and occupation and address, please, and the name of your company, if you are a dealer.

MR. THOMAS TUDESCO: Thomas Tudesco, Jersey City. I am an Esso Dealer and also a representative of the New Jersey Gasoline Dealers Association.

Listening in that gallery there for quite a while I made up my mind I wasn't going to say anything but one gentleman there, representing Socony Vacuum, brought out time and again free competition and while listening to him I was just trying to decide where the free competition is at the wholesale level. We have it at the retail level, definitely. But at the wholesale level there is no competition whatsoever. Within a period of two days either Sun or Socony Vacuum or some other company would post a price in the newspaper of gas to be sold wholesale, and within two days or so fourteen or fifteen major oil companies all had the same tankwagon price. Now, if that is free competition, I would call it more jungle warfare than anything else. I can't see this free competition that they are talking about at wholesale level. It is strictly at the retail level.

Now that's all I have to say. That was the only point that really upset me.

I want to thank this Committee for the fine work it is attempting to do. Thank you very much.

THE CHAIRMAN: Thank you, sir.

(Applause)

MR. DRESSLER: The next gentleman's thoughts will be covered in what I have to say. Of course, he didn't really want to speak, he wanted to call some things to my attention.

THE CHAIRMAN: All right. Will you proceed, please, Mr. Dressler.

MR. DRESSLER: I think it is necessary to have a rebuttal at this time.

First, I would like to cover the issue raised by Mr. Sparks on camouflage and tying safety with price. The Interstate Commerce Commission sets the truckers' rate and the basis for the authority is that it is necessary for the truckers to subscribe to certain safety rules. A driver is only allowed to be on a truck so many hours. The driver must work under certain conditions. He must be provided with sleeping arrangements if on the road too long. These are safety requirements. Because the severe competition would cause the trucker to violate these requirements, ICC sets the rate at a profitable level. So there is a distinct relationship between safety and profit.

Carrying that point just one bit further, the rate turnover in this State of New Jersey at the present time has new dealers who may not have any confidence in meeting the public. The attitude of the dealer, the high degree of discouragement, causes him to just live in his station day to day with no thought of the future because there is no hope for the future. Everyone knows that if a man gets a good salary he works better, and the lower salary you pay, the less a man is willing to put any effort into the job. Discouragement sets in. So that is an important factor.

But I think the opponent gave you the proper answer to this bill. In the statement I made on TV I maintained that if this bill passes the level of competition will move up to the wholesale level, that the price of gasoline in a short time will be restored to a more competitive picture as represented back in the thirties when the dealer margin was protected by contract and the State of New Jersey had wave after wave of price wars and prices to, in South Camden, as low as six and six-tenth cents at one time.

The opposition to this bill gave you the answer. They mentioned the consignment or the wholesale buyer. And we don't want to bother the wholesale buyer. Under the provisions of this bill, that buyer is required to tack on whatever it costs to operate a service station to the price he pays for gasoline. By their testimony they admitted that that wholesale price is considerably lower than the wholesale price to my branded dealers. If this bill passes, it will cause the branded supplier, the wholesale supplier, to meet the competition of the unbranded buyer and, by so doing, bring a consequent reduction of price to the consumer.

give They admitted that the wholesale, or consignment, or large buyer had a lower buying price and under the present arrangement it comes out in a lower price to the consumer. The company encourages the dealer to meet that competition out of his pocket. He has limited resources. Therefore, the competition only goes to a level where the dealer turnover enters in.

Earner If this bill passes and assuming we have somewhere between a five and a half or a six cent margin, and I base that on current surveys that were made, that margin is added on to our cost price. And then, I repeat, unbranded tankwagon price, and I operated an unbranded station and we purchased our gasoline two and six-tenth cents under the branded dealer. Under the formula imposed on the industry by most majors, of allowing only a two cent differential, we have the peculiar picture there of an unbranded dealer, if he wanted to have stability, who had to actually charge the customer six-tenths of a cent more for the gasoline he sold than the branded dealer. In other words, when the branded dealer had a five and a half cent margin, the unbranded dealer had a six point one margin and a big branded dealer had as much as a seven cent margin, and he had to hold that. It was certainly an unsound condition. But, if he didn't hold it, then some company would come in and set the dealers in that location down in their price, give them a subsidy, and create this wave after wave of price wars.

I sincerely protest that the pressure for price wars will not be stopped by this bill but that that pressure will be transferred to the wholesale level. And if you go back over the testimony, that was the remark made by Mr. Sparks and certified to by Mr. Friggen that they were concerned about this man who bought large quantities and bought it cheaper. I am not concerned about him.

If you put competition where it should be there will be a healthy relationship between the price the branded dealer pays for gas and the price the unbranded dealer pays for gas. That healthy relationship will, in turn, be transferred down to the customer. He will make a determination as to whether he wants to buy it cheaper or not. And when the unbranded dealer who buys so much cheaper than the branded dealer passes the saving on to the public, and he ought to so long as he isn't cutting the cost of operation established by law, the branded dealer will lose some volume, but I am not inclined to believe that the companies will worry too much about that. They were worried over the fact when the branded dealer lost volume they lost the volume they were selling for the company, and that was the main interest in the matter. And, therefore, you find an answer in the opponents' testimony.

As we are sitting right now, an unbranded dealer - and I have learned to respect many of them - must live in constant fear that the major companies will set what they call a "distress area". What is a distress area? Well, this chap has found a way to buy cheaper than the majors like to see the wholesale price be and he is passing it on to the public and they surround him with the weight and power of their influence and try to drive him into a bargain. And under this bill they won't do it.

I would like also to say that if there are any questions on this, on our stand, I would sincerely like to answer them.

I would sincerely like to say to the major oil companies that our hands are still extended in the hope of finding an honest answer to this problem. We had it for 12 years under fair trade. This Legislative Body in 1938 amended the New Jersey Fair Trade Law to allow the supplying company to set their retail price. The New Jersey Supreme [illegible] a year ago, verified the legality of the Maguire Act [illegible] applies to the New Jersey Fair Trade Law. The Fair [illegible] Law, therefore, if the companies are pleading for us, [illegible] of the arrangement that exists, the dealer handles that company's product exclusively. I say that that company and that dealer have a partnership. I subscribe to it. The partnership should be one of sharing the responsibilities and the losses. And that partnership can only be verified or certified by law and stay outside the Anti-Trust Law the day the companies are willing to set their retail prices under fair trade. And then we have all dealers treated alike.

If I may be allowed one more remark, referring to the two gentlemen who testified for Sun, I have a lot of respect for the dealers. I had hoped that the Senator would ask the question if they were not on the Commission plan. It is my understanding they are. To the north of them the towns are not on the commission plan, so that while Sun has put these two dealers in the position of competing with the unbranded, by virtue of that position Sun has also put them now in the position of underselling Sun dealers in the nearby areas. If that is a healthy condition, I can't go along with it.

Now, gentlemen, I believe that covers all I can say on rebuttal, except to repeat that I am confident the price of gasoline to the consumer will go down and not up, and that there will be a true play of economics if you pass this bill.

(Applause)

before,

SENATOR DUMONT: Mr. Dressler, you have indicated in your closing remarks that the price would go down and not up. That is certainly the thing that is of great interest to the motorist, and we are all motorists. Now, suppose this legislation were passed, what is your opinion as to what the price would be in contrast to the present [illegible] prices?

MR. DRESSLER: Assuming that suppliers hold the same tankwagon level and don't raise the tankwagon level, I would suspect that the price would go to approximately 24.9 or [illegible] a gallon.

SENATOR DUMONT: For regular gas?

MR. DRESSLER: For regular gasoline. It would be about three cents higher for premium gas.

SENATOR DUMONT: Three cents higher than what? What is it now?

MR. DRESSLER: Three cents higher than the regular. In other words, if regular is 25¢ premium would be about 29¢ - [illegible], rather.

SENATOR DUMONT: Now, would those prices hold or would they be fluctuating?

MR. DRESSLER: They would have to fluctuate, Senator, because at this moment the unbranded market is two and [illegible]-tenth cents under the branded market. Under our law, therefore, when we establish our price, the unbranded would be 2.7 under the branded.

I concede that that differential is so great that the unbranded would start doing more business. My dealer would suffer some loss in business for that period. But the branded wholesaler would not be able to tolerate that much differential and they would have to, therefore, come down to a truer picture of what their costs ought to be.

SENATOR DUMONT: There was some comment by Mr. Sparks and Mr. Friggen about this so-called "grandfather clause". Do you agree that the licensing, if it were to become law, should apply to everyone now in the business, regardless of how long they have been in it?

MR. DRESSLER: Well, the grandfather clause is something used in all licensing and there is a practical reason for it. There are some 35,000 people that I believe would be licensed under this act. It would be physically impossible to conduct an examination of 35,000 people and, therefore, you start from the premise that as of this moment all those who are in the business, and have shown a degree of ability to stay in the business, will be licensed. But all new ones coming in - it would change, the qualifications would change. And, of course, the grandfather clause, as I said, applies in almost every kind of licensing. As the effect of this begins to be shown, the Board can [illegible] that men become more acquainted with their responsibilities, as you know it does with the legal profession and the medical profession, as they do in many professions, and as they do in many things. We request a plumber, he is licensed. He is licensed in the interest of safety. He is required to keep abreast of the codes and the changes of the rules and regulations in the installation of plumbing. So that even those who now have a license would have a respect for it. This license would indicate that they are somebody and it would be a greater temptation, there would be a greater impulse to earn that license.

[illegible] I had a brother who was a Gold Seal Engineer just before he died and he went through the stages of first, the license, and then the "B" license, and then the "A" license. I know my brother attached great pride to it. My [illegible] "B" license, came up to a "B" license, and I know brother spent terrific hours filling in the qualifications to take an examination for a Gold Seal Engineer's License in this State. Automatically we put a stamp on a man, or a label saying that this is a quality man.

SENATOR DUMONT: There was a statement made that the argument was being used to camouflage the fact that actually a price fixing measure. Now this letter have -- well, it is sort of a review of the pro- the bill -- Did you prepare this yourself?

MR. DRESSLER: Yes, sir.

SENATOR DUMONT: You have attached it to your brief here. It reads as follows: "4. Prohibits sales below cost. - Provides for a cost survey. - The average cost of selling gasoline shall be the minimum markup, the dealer will add this markup to the price he pays for gasoline."

What have you been doing with these forms?

MR. DRESSLER: We have distributed approximately [illegible],000 of these forms to the motoring public through our service stations, in an effort to acquaint the motorists with what we are doing - both the questionnaire and the circular - and then we have asked the motoring public would they please write a letter, sometimes to the Legislators and sometimes to the Governor, expressing their opinion on this bill. And I submit also, Senator, that we very clearly [illegible] in big enough letters indicated that we had a cost survey in our bill. We made no attempt to hide it.

SENATOR DUMONT: Now these letters then, when they are directed to the Governor or to the Members of the Legislature -- are the people who are directing them only dealers or are there some motorists writing them?

MR. DRESSLER: There is a terrific number of motorists. I would make a fair estimate -- and the one requirement I laid down at the meeting was to make certain that there was a name and address, bona fide name and address -- I would venture the guess that of the letters sent in, to the Governor particularly, at least seventy-five per cent are from motorists. At least seventy-five per cent of the letters that went to the Governor are from the motorists.

SENATOR DUMONT: This partnership that you mentioned -- that is the partnership I guess you would like to see exist but you don't think exists completely at this time between the dealers and the major oil companies -- you believe that the responsibility - I know you think that the responsibility should lie mostly with the major oil companies. Do you believe that if that partnership were carried out to its fullest extent that this problem could be resolved without legislation?

MR. DRESSLER: Yes, and let me make a correction. Under the partnership as it existed for 12 years under the Fair Trade Law, in the contract the com panies signed with their dealers was a provision that on a normal market the dealer -- and this is way back in 1938 -- on a normal market the dealer would make a four cent margin. When conditions came about that caused subnormal arrangements, unfounded invasion and things of that type, a new marketer coming in, when anything caused a drop from the normal market the dealer took half of the loss and the company took half of the loss down to the level of 2¢ a gallon, after which the company took all of the loss. By the same token, if for some reason they could raise the price above a normal market, they got the full amount of that price above normal market.

I would think that we have been more than fair when we say that we are not asking them to share -- I frankly wouldn't want an arrangement where we didn't share the loss because I have a lot of dealers who are only human. I say that we are willing to take half of the loss of a depressed market, and now the company and the dealer walks hand in hand in the problems they face in the daily market. That existed. We have existing contracts of the fair trade formula as practiced by all but Gulf and Atlantic. All other majors had the fair trade formula in New Jersey for twelve years, all excepting Gulf and Atlantic.

SENATOR DUMONT: That's all. Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

MR. DRESSLER: Thank you.

(Applause)

THE CHAIRMAN: Mr. Sparks, do you have anything further you would like to add?

MR. SPARKS: One or two comments, perhaps. We did try the Fair Trade Law in New Jersey. It didn't work.

THE CHAIRMAN: Mr. Priggen?

MR. PRIGGEN: No, Mr. Chairman, I have no remarks to make.

THE CHAIRMAN: Well the Committee wants to thank everybody who participated in this hearing and the Committee will take the Bill under advisement.

(Hearing concluded)

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