

PUBLIC MEETING
of
ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION SUBCOMMITTEE
on
LICENSING

Held:
July 21, 1983
Room 348
State House Annex

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph D. Patero (Chairman)
Leo Bromley (Vice Chairman)
John McCaffrey
Anthony Napodano
John J. Garrity

ALSO PRESENT:

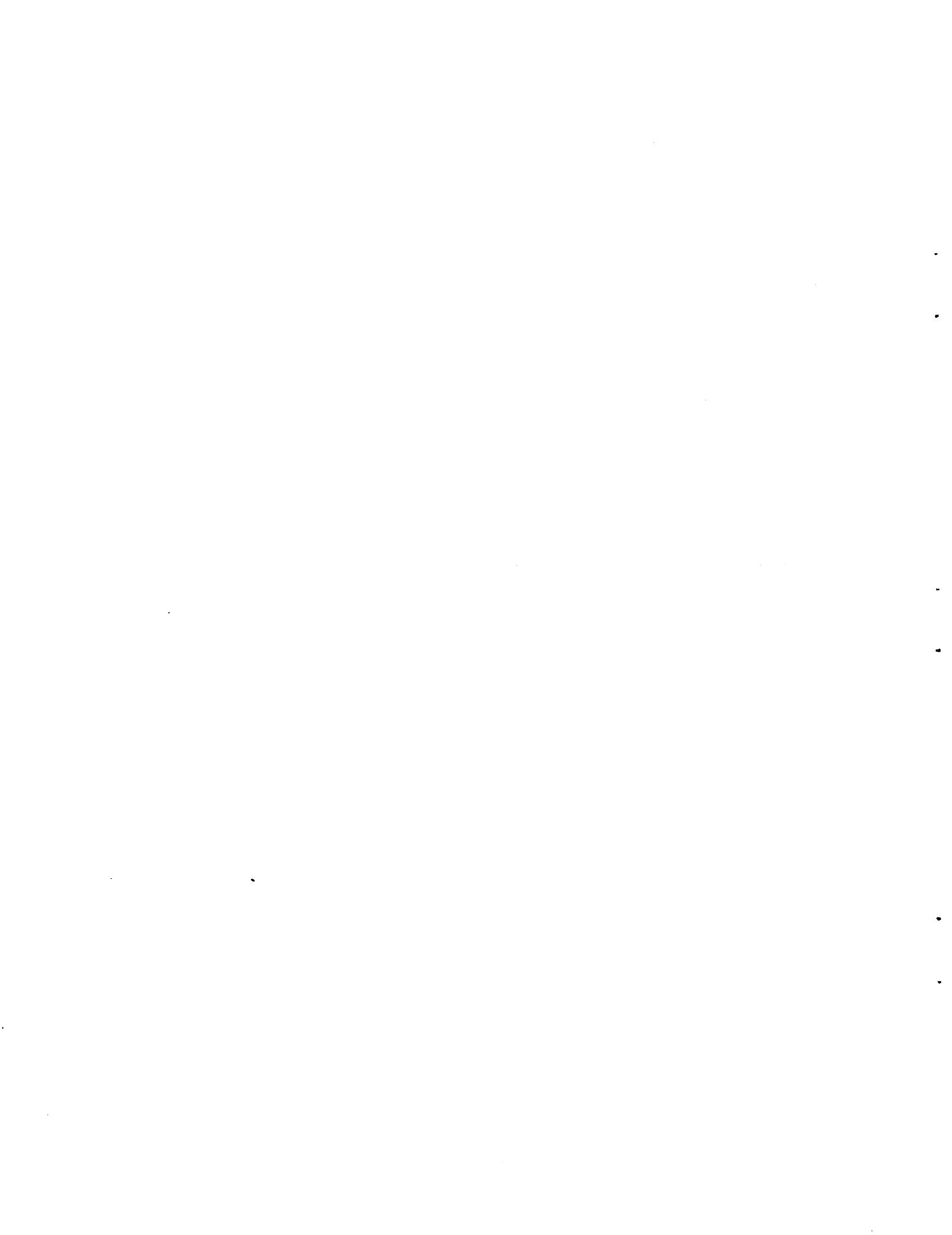
Director John F. Vassallo, Jr.
Deputy Director Harold Damon
Norman Feldman
William Jerlat

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

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I N D E X

	<u>Page</u>
Harold Damon Deputy Director Division of Alcohol Beverage Control	1



ASSEMBLYMAN JOSEPH D. PATERO (Chairman): We are going to call the Subcommittee meeting on Licensing to order.

First of all, I want to say that our Vice Chairman will be Mr. Leo Bromley from the New Jersey Liquor Stores Association. We have with us one other member of the Committee, Mr. Anthony Napodano, from Shop Rite Liquor Stores. And, I am very happy to see other members on the Alcoholic Study Commission here with us also.

To my far left is Mr. William Jerlat from the New Jersey Licensed Beverage Association. Next to him is Mr. Norman Feldman, from the Alcoholic Beverage Wholesalers, who is Vice Chairman of the Commission. To my right, we have Mr. John Garrity from the Beer Wholesalers' Association of New Jersey. And, to my far right, we have Mr. John Vassallo, Director, Division of Alcoholic Beverage Control.

We have, from the ABC Licensing Bureau, Mr. Harold Damon, who will explain the licensing that we have in New Jersey. Most of the members here understand the ABC licenses. I think it is important that we have the background of all the licenses that are available, because we are going to have minutes of these meetings presented to the Legislature as a whole. Not many people are familiar with licensing, so I think if we have a brief explanation from Mr. Damon it would be appreciated. Mr. Damon.

MR. FELDMAN: Mr. Chairman?

ASSEMBLYMAN PATERO: Mr. Feldman.

MR. FELDMAN: To correct the record, I do not represent the New Jersey Wholesalers. My background is that of a wholesaler, but I am not here representing the wholesalers in any capacity.

ASSEMBLYMAN PATERO: Okay. That will be corrected in the record.

Thank you for coming, Mr. Damon.

H A R O L D D A M O N: My name is Harold Damon, and my position is Deputy Director, ABC, in charge of licensing. I would just like to briefly tell you where I am coming from so you will understand my level of expertise, if you want to call it that.

I came with the Division of ABC three months ago -- three and one-half months ago. I formerly served as a Director of the State Law Enforcement Planning Agency, which is certainly unrelated to the

Alcoholic Beverage industry. I have had thirty years of State service, so my experience in coming to the ABC was more administrative capability than one who has a great depth of technical knowledge in the area of the Alcoholic Beverage Industry. That is not all bad, I don't think, for your purposes, because I think I can give you a perspective of the kinds of problems -- if you want to call them problems, or if you want to call them challenges -- that I have observed in my short time with the ABC, from the standpoint of one who hasn't been entrenched in the system for a number of years, and from the standpoint of one who can see the administrative complications that arise from trying to carry forth Title 33 and Chapter 13 of the Administrative regulations.

I would like to acknowledge Mr. Gold, who is sitting here, and who I met for the first time today. I heard his name, in the short time I have been with the ABC, from people all over the State -- clerks, and my colleagues within the ABC -- and they all speak with a great deal of respect for the knowledge and the service that Mr. Gold gave to this State in his duties with the ABC. So, if I say anything that is contrary to his interpretation, I am sure Mr. Gold would be glad to be my advisor while I sit here.

I have the added advantage of having Jack Vassallo, our Director, sitting here. He can caution me if I go too far, one way or the other.

Briefly, the ABC, as you may know -- and if I am telling you things that are very basic, forgive me -- is divided into five functional areas. We have -- we call them bureaus. We have the Regulatory Bureau, the Prosecution Bureau, the Trade Practices Bureau, the Administrative Bureau, and the Licensing Bureau. And, all of the activities that occur within the ABC itself are interrelated, so that you can't simply segment off one function from the other, in that what happens in one area has an impact on what happens in another. So, there is a need within our own agency to have very close coordination, to have relationships with each other so we know what is happening in one area or another, either with regard to specific cases, or with regard to policy under development, etc. Naturally, it is the job of the Director to see that this coordination takes place.

The Regulatory Section, briefly, deals with the regulations, or with the various legal problems. Mr. Pinard, who is in charge of that, is an attorney. He serves as Mr. Vassallo's Deputy, and he is in charge of looking at the regulations, ensuring that the regulations are updated where necessary, and that cases coming into our agency having regulatory impact are taken due note of, and worked on to see that they are resolved.

The Prosecution Section is just what the word implies. We have matters that pertain to violations of licenses come into the agency that have to be resolved. The Prosecution Section does the work in that area. Some cases are transferred over to the Administrative Law judges, but we do the consent and orders on those cases. So, the violation area is handled, largely, through the Prosecution Section. By the way, Mr. Gallerano is in charge of the Prosecution Section.

Trade Practices is headed by John Sinsimer. Many of you who are in the industry may have had contact with him in the past. He has been with the Agency for some time. John was in charge of Licensing and Trade Practices, and those two areas were split when I came with the ABC. I took over Licensing and he took over Trade Practices. That, of course, has to do with the various laws and regulations that deal with the merchandising of the alcoholic beverages, the pricings, and all of the other regulations that have to do with the sale of the product.

John has had, as I said, experience in the licensing area, and has been a great deal of help to me, by helping to acquaint me with the areas of my responsibility.

The Administrative Section is headed by George Lund, and he is also our comptroller. So, any fees that come into us end up with him. He is accountable for our books. He is also accountable for the internal administration of the agency.

My area is licensing, and I do what the name implies. My responsibility is the renewal and issuance of licenses and permits. Basically, I would say that is my major responsibility.

Now, of course, Title 33 and Chapter 13 of the Administrative Regulations are the basis of our work. In addition to that, as you know, we issue bulletins from time to time that give clarification on

different matters that come to us, where we feel the regulations need to be clarified, or where specific cases should be quoted to illustrate the result of a regulation or a law. Also, when we want to issue notices, the bulletins are issued by us for that purpose.

A large volume of activity in licensing occurs at the municipal level. As you know, the municipalities issue plenary retail consumption licenses -- bars and taverns -- and the plenary retail distribution licenses -- package stores. These are licenses of local issue, except in those cases where there is conflict. A case in conflict would be where a mayor or a city councilman has an interest in a licensed establishment. That license is then issued by the State. My last recollection is that there are 54 or 56 of those cases in the State.

I think that Mr. Pinard sent over a list of the various licenses that we issue and the activity that occurs within those licenses -- the number of licenses that are outstanding.

The basic focus on license activity is within the municipal clerk's office in the municipalities, or within the ABC Board in the municipalities that have ABC Boards. ABC Boards may be in municipalities where they have a 15,000 population level, or higher. They can form an unpaid ABC Board. In first class counties they can have a paid secretary on that Board.

But, by and large, the largest magnitude of activity in licensing occurs within the municipal clerk's office. That fact dictates where the largest amount of information requests come from to my office; they come from municipal clerks or municipal attorneys. A large volume of those requests has to do with interpretation of the law and the regulations. What I see out there is a need -- and we are going to address this -- for our agency to do a lot more in the area of education and training of municipal clerks, and orientation of new municipal clerks.

Because of the complicated nature of the regulations and the law, it is very difficult for a person to understand all of the variables that can be brought to the surface with regard to the implementation of a particular law or regulation.

During the renewal period, just briefly prior to July 1st when all local licenses are renewed, our ABC Agency itself is literally bombed out with clerks and licensees calling our Agency to ask for clarification on certain issues that arise in the issuance of licenses and the renewal of licenses.

So, we do get a large volume of information or requests from attorneys and from ABC secretaries and municipal clerks, regarding the regulations.

From the perspective of a person who came into the Alcoholic Beverage Industry a fairly short time ago, I think what first impressed me about the regulations and the law was the complicated way they are put together. And, when I say complicated, it is very difficult for a person to understand until he becomes thoroughly acquainted -- and he has to really immerse himself in it -- with how the law and the regulations are structured. Because, if you are looking for a particular answer to a particular problem, and you go to the regulations, they are not put together in a rational, coherent way, where the answer to one particular problem is clustered together in one area of the law, or the regulations. It is not indexed in a way that one can easily obtain the information. Therefore, one has to almost memorize what is in the law and what is in the regulations, and where to find it, and how to apply it.

That being so, people who are charged on the local level with issuing licenses and acting on license requests, and who don't have a great deal of time because liquor licenses are only one piece of their broad responsibility, don't have time to do what we at ABC do. and that is, we try to immerse ourselves in it. Therefore, this leads to many questions that come to us. I don't think in my whole experience in State government I have found an area where a greater variety of questions can be asked about one particular regulation, because there are so many cases that can be brought to bear in interpretation. And, every day when I get to the office I hear a different question from a different angle. And, in order to answer it -- if you can't answer it from past experience -- of course, you have to research it and get back to the person who asked the question, and hopefully give them some assistance.

The area of activity in licenses that we do the most business with is transfer, and there is a great deal of activity that goes on in the transferring of licenses -- transfer meaning place-to-place transfer or person-to-person transfer, or extension of premises. So, when licenses are transferred, there are procedures that have to be adhered to, procedures such as publication of notice, filling out an application, conducting an investigation of the transferee, having it go before the Municipal Council, and having the proper fees paid -- all of these activities generate around the transfer function. Therefore, since we do have a great deal of activity in this area, there are a great many queries that come to us, and to the municipal clerk, regarding what one needs to do in order to transfer a license.

Transfers -- We have changes in corporate structures -- where corporations change their stockholders. This, again, is an area where there is a great deal of activity on the part of the local clerk, and on our part.

One area in which we also have a great deal of activity is the issuance of permits. A number of permits generate from our office. One of the largest areas of activity is the social affairs permit, which probably many of you are familiar with. When an organization, an eligible organization, wants to have a one-day affair, they have to apply to us, through the clerk and the chief of police, for a permit. We issue the permit if they are eligible, after payment of a fee. So, we issue 300 or 350 of these types of permits each month for social affairs.

We also issue the transportation-- Whenever alcoholic beverages are transported in this State, they have to have a permit, or they have to have an insignia or transportation license. This, again, is an area of a great deal of activity for our staff, in taking care of that function.

We also have an area of special miscellaneous permits. Licensees that want to engage in activities that extend beyond the purview of their license have to apply to us for a special type of permit that would allow them to engage in that specific activity. And, we get a lot of activity in that area.

A lot of questions in our agency generate around inactive licenses. We call them "pocket licenses," and there are laws and regulations that focus around how long a license can be inactive and how a license can be extended in its inactive state. So, when a licensee ceases to operate his business, then the pocket license rules and regulations come into gear, and this in itself generates a lot of activity and a lot of questions.

The special conditions that are applied to licenses generate many questions. Many municipalities want to attach special condition to a license that would meet a municipal need, and in many cases the special conditions that are attached to these licenses are inappropriate because they do not have any reference to the alcoholic beverage laws and regulations. So, we get many questions from municipalities as to whether or not conditions they wish to attach to a license are appropriate.

One area of great activity that we had very recently was the ad interim permit, where the licensee, for some reason, doesn't get his license at renewal time, on July 1st, and for whatever reason -- a municipality, because of a late payment of a license fee, late filing of application, or where the municipality needs more time to consider the licensee's eligibility for renewal -- the approval comes after July 1st. In those cases, where it is an active business, the licensee must come to us for an ad interim permit that allows him to operate until a license is granted. So, obviously, since July 1st is the deadline date for license renewal, we had a great deal of activity in that regard.

I think the problems, and my general impression was that you wanted to focus in on some of the problems from our perspective-- The problems that I see, from the limited time I have been with the Agency, do generate around a need to make the regulations more useful to the people who need them. Of course, there is always the need to examine the regulations and their usefulness. It is absolutely ridiculous to have regulations on the books that no longer serve a useful purpose, or that are contradictory to the times in which we are operating, and obviously that has to do with Title 33 as well. If you look at the pocket part of Title 33, at this point in time, the pocket part is practically as big as Title 33. So, if you are trying to look up the

law, to get the full law that pertains to a particular situation, you have to look at Title 33, and then you have to go back and look at the pocket part, and it becomes rather cumbersome, instead of having it all in one place.

Obviously, the same thing that pertains to the regulations also pertains to the law. There is no question that the law has developed throughout the years, and it is always useful to look and examine the law and its usefulness, and to see where changes need to occur. I assume that is why you folks are here.

I don't know that I should go on, other than to say that I would be happy to respond to any particular questions you may have on any particular law or regulation, if I can answer them. If I can't answer them, I will defer your questions to Director Vassallo, and if he can't answer them, I know you have resources here that can enlighten you.

ASSEMBLYMAN PATERO: Thank you very much, Mr. Damon. I have some questions. Licenses are given on a population size, aren't they?

MR. DAMON: Yes.

ASSEMBLYMAN PATERO: Is that set up by the ABC Commission, or is it by local ordinance?

MR. DAMON: Local licenses are established in the statute by population. Local plenary retail licenses -- and when I say that, I am talking about taverns -- can be given-- One new license can be issued per 3,000 population, and for package stores is it one new license per 7,500 population within a municipality.

Now, there was a grandfathering when that law was passed, so some municipalities may have more licenses in existence than the law provides. But, if a license is surrendered, then they can't issue a new license until they come within the cap that is described within the statute.

Now, of course, new issuances of licenses are not frequent because of the cap, and most activity that occurs in licensing occurs in the transfer of existing licenses.

There is one area that you should know about that is an exception to the cap, and that involves hotels. If a hotel has a residency occupancy of over 100, the municipality in which it operates

may issue a license to that hotel outside the cap, if they so desire, by ordinance.

ASSEMBLYMAN PATERO: Also, on special permits, is there a better way of doing this, or do you have any recommendations? Say I had a fund-raiser and I had to go to the chief of police or the borough clerk, and then I took a ride to your office in Newark and almost got killed on the highway -- is there a better way of doing this, or do you recommend that this stay intact?

MR. DAMON: Well, it is very difficult to devise a system that is convenient for everybody who applies for a special permit. I find that people who send in their request to us, if that request gets to us at least two weeks prior to the event, there isn't any problem. The problem we have is when someone suddenly decides they are going to have to get a liquor permit, and they come down here and want the permit tomorrow. Usually they don't read the application carefully, and they come down with the application not fully completed or they give us a check that isn't certified, or it is not a money order, and we have to send them back. We can't issue the permit. There are a few cases that come up of that nature.

Another thing we have to be very careful about is to ensure that the permit is issued to a qualified organization. There are profit-making organizations who attempt to come to us for a permit who are in no way entitled to a permit, and who would be using the proceeds of whatever event they are applying for for their own self gain. You have to be very careful in reviewing these things to ensure that the permit is given to a legitimate organization.

So, to say, "Is there another way to do it?" I really don't know that there is another way to do it. I think the community is entitled to know what organization is applying for an alcoholic beverage permit. In some communities they even have to have City Council approval before they will sign the application. But, that is a thing they have control over, as to how to do it.

Certainly, a chief of police ought to know that an organization is going to have an event and is going to serve alcoholic beverages. They are responsible. They are the first line of responsibility to see that the ABC laws are adhered to -- that is at

the local level. They ought to know that the event is going to be held.

We have had a great deal of difficulty with carnival-type events that are held by churches, where they have three or four day carnivals, and there has been serving of alcoholic beverage to minors. We have had complaints in this regard. So, we depend on the local police to enforce the ABC laws.

So, the application needs to be filtered through the municipality. It needs to come to us with enough information to determine the eligibility of the applicant. And, it needs to come with the proper fee. So, having said all of that, I don't know that there is an easier way to do it.

ASSEMBLYMAN PATERO: Do you feel that in this part of the licensing there is duplication, or should changes be made? Or, do you feel that what we have is enough and it should stay as is?

MR. DAMON: In the permitting field?

ASSEMBLYMAN PATERO: Right.

MR. DAMON: Well, it is hard for me to answer. Let me tell you what I am doing right now in order to give you some insight. I am in the process now of reviewing every application for special permits and for social affairs permits. I am examining the process to see if the process is rational and to see that the people who come to our agency are properly served. I am very concerned about that, because the people who come to us need to know that someone is there who understands what they are coming for, and that they get prompt service from us. That has been a problem.

Recently, we installed two IBM word processors that are going to allow us to keep information on file much more easily. It is going to allow us to retrieve information more easily. And, it is going to allow us to issue the permit more easily. We are putting all of our permitting functions onto this word processing system. So, we are examining the applications. We are examining the permit function. We are examining the issuance of permits, to ensure that the people who come to us for them are dealt with efficiently and effectively.

Now, I won't sit here and tell you that there are not some permits that we ought to look at in terms of revising, or maybe we need

to look at the system. We are looking at the system, and we may very well come up with some different answers than the ones we have. But, I do think, generally, that the permit function is a very necessary function that we fulfill, basically.

ASSEMBLYMAN PATERO: Did you give the total of how many permits were given out during the year? I don't know if you did that during your testimony or not.

MR. DAMON: No. The social affairs permit is the largest permit that we deal with, and we are averaging between 350 and 400 social affairs permits a month. So, that is by and large the largest.

Now, in terms of the special miscellaneous permits that we give to licensees, I don't have that hard information, but I would guess that we are averaging at least, in all the special permits, as many as we are in the social affairs permits. It may be less, but I would say it averages about 300 if I had to guess, and these are in all areas of permits, other than social affairs.

One thing I am doing as well is -- and I know it is hard to come by hard information sometimes -- a monthly report. We are trying to improve the statistics we gather for our monthly report, and we are trying to work on getting better, harder information in the area of the activity we do generate in the ABC.

ASSEMBLYMAN PATERO: Okay. I have no other questions. Mr. Vassallo?

DIRECTOR VASSALLO: Perhaps I could elaborate a little bit on what my Director, Harold Damon has said. I want to mention, first of all, that I feel very fortunate that I have Harold Damon as Deputy Director of Licensing. I think just the presentation he has made after the three months -- and it is a short three months -- that he has been with us, shows the depth of what he has learned and what he has been doing to try and bring the licensing function of the Division of Alcoholic Beverage Control into the 1980's. When I became Director last year, I was very dissatisfied at what I saw to be the service given by the Licensing Bureau, and I don't think the blame is on any one person as much as the system that has slowly generated, from 1933 on. The ABC was once a large, or a good sized, department, and it has dwindled down into a Division, with very minimal personnel. Anytime budget cuts had to come, it appeared the ABC took the brunt of them.

Mr. Damon is trying to do the licensing function, which is one of our primary functions, with a very minimal staff, and he is doing an excellent job with it. He is trying to give excellent service to the people of the State, and I think this is coming about. Somehow we will do it within the limited resources we have.

I think this Subcommittee, however, might take a look -- as an aside almost -- at the capability of the Division of Alcoholic Beverage Control to fulfill its functions. The number of permits that were spoken of -- I believe the total permits issued during the last fiscal year were in the neighborhood of 10,000 altogether. These include all kinds of permits. I don't recall what the exact figure is.

ASSEMBLYMAN PATERO: I think in 1982 it was 9,000.

DIRECTOR VASSALLO: Yes, 9,000, "something."

MR. DAMON: Nine thousand, eighty-seven.

DIRECTOR VASSALLO: Yes. So, it is close to 10,000. It is a very burdensome task, to do it properly and to do it well.

The statutory language is basically in 33:1-74, which gives the Director the power to issue a permit in any contingency that isn't otherwise covered in the law. I think that is basically a good section because it is almost impossible for the Legislature to pre-guess every circumstance that is going to arise where a permit may be issued, unless, of course, the Legislature should decide that there should be limited control of alcoholic beverages rather than total control, as has been exercised here, and has been exercised, as far as I know, by our 49 sister states. So, I don't know that New Jersey would want to be the first to go to limited control as opposed to total control, pursuant to the 21st Amendment to the U. S. Constitution.

But, there is a discretionary area given so that the contingencies can be met. I would recommend that that be changed. The Subcommittee may want to take a hard and fast look at that.

If I may go a little bit beyond what Mr. Damon said, I would like to suggest some things to the Subcommittee. This whole Alcoholic Beverage Study Commission came about because of a comment I made at my confirmation hearing last year. I had suggested, at a meeting I had with Senate President O'rechio, after my cold review -- and when I say cold review I mean I had no background in the alcoholic beverage

industry, concerning the statutes and regulations -- that I found just what Mr. Damon has alluded to: There is a mishmash of statutes and regulations, with nothing pulling them together, one piled on top of the other, on top of the basic law that was written by the first Commissioner, Bennett, back in 1933 at the end of repeal. I suggested that a commission might be formed to take a look at many of our basic underlying policies, not so much the regulations themselves.

As Mr. Damon said about the mishmash, we can, if I can get some staff, somehow eventually -- now that I understand the problems -- pull them together. We can try and clean them up, in keeping with the statutes. It is the basic concept that has to be looked at, and a lot of it has to do with licensing.

One of the things I envision to be reviewed is our type of licensing. I think basically our Class A licenses, on the manufacturing level, are pretty good. We don't have many problems with those. The way they are issued is very good. The privileges they are allowed are very good. Things that the Legislature has recently done, such as in the farm winery legislation, stand out as a leader throughout the country. So, I really don't see that there is too much that needs to be done to Class A licenses, other than maybe taking a look at the fees they pay. Are the fees what they should be for what is involved with them, for the privileges that are involved, for the excise tax that those manufacturers contribute, etc.? I don't think they are way out of line, but perhaps some review might be done in that regard.

ASSEMBLYMAN PATERO: Excuse me, Mr. Vassallo, how do we rate with the surrounding states regarding the fees -- such as the plenary brewery licenses, \$8500?

DIRECTOR VASSALLO: Offhand, I don't know. I will see if we have some information in that regard. The Distilled Spirits Council of the United States does publish a book. I am inclined to think they also publish the license fees in it. I will check on that I may have it in the office -- one copy -- or I will contact them and see if we can get other copies, or have the information made available. That might be something good to look at.

ASSEMBLYMAN PATERO: Approximately how many breweries do we have in New Jersey?

DIRECTOR VASSALLO: We have two plenary breweries, Anheuser Busch and Pabst up in Newark. Excuse me, there are three, Champale in Trenton is also a plenary brewery. There is also one limited brewery, which I believe is licensed for up to 100,000 barrels.

Incidentally, I noticed on the schedule of State license fees, there is a zero left out on what I am looking at right now. Eastern Brewing Corporation, down in Hammonton, which has recently come into notoriety with this new beer that is being brewed, is a limited brewery. So, there are four breweries in New Jersey. The number of breweries throughout the country has greatly diminished. There used to be many breweries in New Jersey.

We have seven plenary wineries, and there are only three farm wineries issued so far, but I expect there will be more. We have no plenary distillery licenses. I am not sure if we have any limited distillery. We have seven rectifier and blender licenses. There are quite a few bonded warehouses. I don't recall offhand how many there are, but a lot of those are held by the holders of other licenses too.

As for the Class B licenses, the Subcommittee may want to take a look at the wholesale licenses that we have. There is some overlap on them. The plenary wholesale license allows the sale of all alcoholic beverages at wholesale. It also allows direct distribution, the same as the plenary brewery license and the plenary distillery license would allow.

We are under the three-tier system, of course. We have had that since 1933. Our alcoholic beverage economy has pretty much built up on it. I dare say we would be hard pressed to change that. I am not saying it can't be done. There are a lot of economic reasons why I don't think we could do it.

MR. BROMLEY: Director, may I interject a question?

DIRECTOR VASSALLO: Yes.

MR. BROMLEY: Certain of the A's and certain of the B's, have retail privileges, do they not?

DIRECTOR VASSALLO: No, I want to get into that in a minute.

MR. BROMLEY: Yes, I was just going to ask you if you would discuss that, because even in the case of the social permit, apparently it doesn't clearly specify that they must follow the hours of sale in

the municipality where it is issued. I think it may be implied, but I don't see it stated.

DIRECTOR VASSALLO: There is an exception in the law to that, to digress, Mr. Bromley -- 33174 was amended last year, which allows them to have the sale of alcoholic beverages. The amendment reads: "The issuance of temporary permits to authorize the sale of alcoholic beverages by the glass or other open receptacle by civic, religious, educational, or other qualified organization shall be permissible, notwithstanding that the sale of alcoholic beverages has been otherwise prohibited by referendum under 33144 through 147, or municipal ordinance or resolution." The interpretation given there is that hours are established frequently by municipal ordinance, and if they apply for other than those hours, it can be granted because of that language. That is how affairs can be held on Sundays in communities which otherwise don't allow sales on Sunday.

Certainly, there are some questions raised, and maybe it is something that should be clarified. I don't think it has been a serious problem.

You were talking about the retail privileges, and I want to get to that after I mention the State beverage distributor.

Going back up the line to the limited wholesale license, that permits the sale of beer or malt alcoholic beverages, which is a little broader than just beer, and naturally fermented wines. The wine wholesale license permits only the sale of wine.

Then we have the State beverage distributor, which originally -- as far as I can glean -- came about because of the need to have home delivery made of beer. And I guess this goes back into the 30's, in depression days, where not everybody could get to a place easily, and you had a lot of home delivery of soda and beer. The ice man came. Milk was delivered to the home. There was a frequent delivery service. The State beverage distributor has a retail privilege to sell in quantities of not less than 144 fluid ounces. That comes down to 12 cans or twelve, twelve ounce bottles. That statute was amended last year to also permit them to sell cold kegs; whereas, they can't otherwise sell any chilled beer, because of this home delivery concept.

Their privilege, however, allows them to wholesale beer. We took the position a few months ago that although they had that wholesale privilege, that meant warm beer, and since brewers have required wholesalers to refrigerate or temperature control malt alcoholic beverages, any of those wholesalers doing that had to obtain a limited wholesale license.

The statute amended last year, on the State beverage distributors, also froze the number of State beverage distributor licenses at the number in existence on the effective date of the act, which was November 2nd, I believe, or November 5th. The number issued at that time was 72. So, there are now 72 State beverage distributor licenses.

What, in effect, that statute did by so amending it, and limiting it, was it put a value on those licenses, which they never had before. They now can be sold because a new one can't be issued. Previous to that, anybody could walk in and if they met the qualifications they could be issued a State beverage distributor's license. So, there was really no value to them. That, in essence, equates it to a retail license.

I think it would be a good idea for the Licensing Subcommittee to take a hard and fast look at the wholesale licenses and the privileges they have, especially the State beverage distributor's privilege and wholesale privilege. Maybe they should be eliminated altogether, and if they are going to wholesale they should wholesale, and if they are going to retail they should retail. Otherwise, the licenses should be classified as wholesale or retail, with no technical wholesale license.

The other major concept I had envisioned the Commission to look at was the Class C licenses, the plenary licenses -- the plenary retail licenses. We presently have five different licenses issued under that. They are in 3312. Oh, there are more than five, there are seven, but there are basically two types, apart from the club licenses; I will discuss them separately. There is a consumption license and a distribution license. The distribution license, the traditional liquor store, is limited to selling packaged goods -- selling alcoholic beverages only for off-premises consumption, in sealed containers, or in closed containers.

The consumption license -- and that was originally the only kind of license in New Jersey, the distribution license was added later, during the war -- now allows sale for only on-premises consumption, but it has the added privilege to also sell for off-premises consumption. The statute was amended in 1948 to provide that they could sell for off-premises consumption, provided they were sold from the public bar room. At that time, in 1948, when you had this basic kind of license -- the consumption license -- the distribution license grew up, and the consumption licensees had gotten into distribution. The Legislature allowed an election to take place by the filing of an affidavit basically stating that they were selling packaged goods outside of the principal bar room, or to the exclusion of any on-premises consumption. A \$25 fee was required for that, and if the affidavit was filed, and the fee paid, they came to have what is now known as a "broad C license", which gives them the right to retail alcoholic beverages for distribution in closed containers, even if they are not doing it from the public bar room, or even if they don't have a bar room at all.

The way I read the statute, they can continue to do-- What it really allowed them to do was to continue to do what they were doing in 1948, at the time they had the election. There was a lot of confusion generated by this over the years, and it has come to mean that anyone with one of these "broad C licenses" has eliminated bars, even if they had them in 1948, to open package stores, to the exclusion of any on-premises consumption. I believe they can't do that. But, for us to now try and enforce that and say they can't do it, I think would almost be inequitable because of the way it has been handled for the past 25 or 30 years, by allowing this to happen. We would have a lot of problems in doing that.

What I am getting at is, because a lot of consumption licensees are selling package goods from technically other than the public bar room, the bar is a sham. It is sitting there. Sometimes it is covered with bottles to be sold. Sometimes it is there and if you pick up the glasses on it, they are dusty. They haven't been used in months. There are a few open bottles there. We find them frequently with fruit flies in them, and with contaminated matter in them. And,

there are not a large number of these places, but it does happen, and it points to the question: "Do we really want to retain two different types of licenses, or would New Jersey be better served by going to one distribution license?" The holders of the licenses can then elect whether they are going to sell package goods, or whether they are going to sell goods by the drink, or whether they are going to sell both, and how they are going to do it.

This also gets into the question of the population restriction, which right now is in 33:1-12.14. It restricts one consumption license per 3,000 population, and one distribution license per 7,500 population. Are they realistic limits? Are they realistic in view of the grandfathering that took place in many communities in New Jersey? Is it really putting an unfair burden on the newer communities? Should steps be taken to retire licenses that are in existence? Should the exception be continued for the hotel? Should it be expanded? It also goes into the other question of the two license limitation, which presently is on the books. There are some grandfathered under it. The grandfathering has allowed some chains to exist, but it has prevented other chains from existing, so they have had to put together a chain under the guise of not being a chain, doing it within the limit of the law, but, really, skirting the spirit of the law because of the limitations placed on it by the two license limitation.

Others have gotten around the two license limitation by the use of family, by purchasing in relatives names. How does this affect our smaller licensees? I think the basic problem and the basic concept we have to keep in mind, perhaps, is the system we have is not good. Perhaps it could be far better. And, that also applies to beer and wine in restaurants, and beer and wine in food stores. We come down to the basic question of, "What should be done?" We also have to look at it in terms of the 1980's. We have had an economic system in this State growing up over 50 years within this system. Do we want to retain that? Do we want to go back and start from scratch? Is it fair to start from scratch? What does it do to the existing licensees -- people that have grown up in the industry and have put their life's work, their life's earnings, their life's savings into retailing as it

now exists? For better or for worse, they did that. Do we want to go back to square one? -- which in many respects is what some of the amendments that are presently before the Legislature might be attempting to do. That is why I think this Commission and this Licensing Subcommittee, can play a very important role in this regard, a very vital role to continuing practices that were started in the 1930's -- whether they were good or bad, whether they could have been better if they had been done in another way in the 1930's or not. Or, do we change them now?

Some of these things are very serious concerns; they are very serious concerns to a lot of the people of our State. We also want to look at the effect on the consumer and the public -- where it is going to affect them, where they are going to be better served -- because that is the bottom line to everything -- the service that our government gives to the people of this State. But, by the same token, we can't pull the rug out from under a large number of people, and we have tried to estimate the number of people that are involved in the alcoholic beverage industry, and our best estimate is there are about one million people in our State that are at least indirectly employed as a result of the alcoholic beverage industry and the system we have.

You know, if we were back in the 1930's starting over, we might decide to have one class of license; there would be no limitation on it; anybody could have a license, or maybe somebody could have no more than three or five licenses; we would have beer and wine in grocery stores; we would have beer and wine in every restaurant, the way other states do. But, a lot of those states started out that way, we didn't -- for whatever reason, we didn't.

In summary, I would suggest it is important that this Licensing Subcommittee take a look at the retail licenses, primarily. I suggest that because of the limited time that has been placed upon the work of the Subcommittee. I think that is the primary problem -- if problem is the right word -- it is the primary area of importance in licensing. A lot of the details can be worked out - the method of issuing permits, the method of issuing the wholesale licenses, which has some problems but not any insurmountable problems, the manufacturing licenses, which I think basically are problem-free, and

the way the regulations apply. Maybe, as I said before as an aside, the Subcommittee will decide the ABC is too handcuffed, by the limited personnel and the budget cuts that have been imposed on it, to implement these things. But, even if that is not so, somehow we will do it. It may take more time than we would like it to take, but it will be done. Those things can work themselves out. The basic concept, the basic licensing, is what is in dire need of being reviewed, especially in view of some of the serious legislation that has been introduced in the past session.

The one last thing I would like to mention-- A list was given out by Ms. Szilagyi, of the legislation to be reviewed by the Licensing Subcommittee. I think that is basically good. A lot of it fits in with this retail licensing. The only one I note in there is A-2274. Since apparently the President of the Senate and the Speaker have indicated they may hold up any alcoholic beverage legislation pending this, I would suggest this be looked at very quickly, and possibly they would receive communication to proceed with this one.

This is a technical amendment to the club licensing law, which would allow-- Right now, the club licenses are issued only to non-profit organizations and only in communities which are wet. We have 42 communities which are dry, 21 of them by referendum, the others by inaction. The law has an exception in it, which permits a bona fide golf and country club within a dry community to have a club license. This A-2274 would expand that exception to allow local chapters of national organizations, such as the Knights of Columbus, the Elks, and organizations such as that, to also receive club licenses in dry communities. Club licenses are very restrictive licenses -- for sale to members only. Although there has been some abuse of that, we are trying to monitor that and correct the abuses that have occurred so that the licenses are exercised in a proper fashion, and do not encroach on the privileges of the retail licensees, who have their livelihood invested in this. This would allow those club licenses in dry communities.

A technical amendment was made, and as it was about to be signed by the Governor -- after it had almost unanimously passed both Houses -- we noticed that because of the technical amendment, which

would have limited it to a particular dry community, it would have also revoked several of the golf club licenses in the State. The Governor, therefore, conditionally vetoed it, sent it back to the Legislature, and they again unanimously passed it, but it then appeared that there was a typographical error in the bill that had been resubmitted, so the Legislature called it back in order to correct that. And, I believe that one is caught up in the middle of this. I would suggest that the Committee advise the Legislature that that one should probably be put to a vote in order to correct what would have been done a long time ago, except for the error.

And, of course, I will try to make all of the Subcommittee meetings -- because I think I am more aware of some of the problems that exist than a lot of other people are -- just to try and answer any questions. I will also try and have Mr. Damon available. Plus, any other resources of the Division are, of course, at the Subcommittee's disposal.

ASSEMBLYMAN PATERO: Thank you very much. What I will do now is, I will open the meeting to questions, and I will recognize the members of the Subcommittee first. Then, whoever wants to ask questions after the members have asked their questions will then be recognized.

MR. NAPODANO: Mr. Chairman, I found the Director's comments to be very enlightening. Permit me, for one second, to compliment Mr. Damon. I too believe that in three months you have demonstrated some masterful appreciation of the alcoholic beverage statutes and regulations. I have been trying to do that for five years without too much success.

I wonder, just philosophically -- and I recognize that it is a problem that this Committee and the Legislature will have to deal with -- if it is recognized by some, or all, that we embarked upon an improper road back in 1933, and that we continue along that road in 1983. There are unquestionably -- as the Director has pointed out -- some very serious concerns and issues that have to be dealt with, with respect to what apparently the State has sanctioned by way of the system that has evolved. That system has caused many people to, using the Director's words, invest substantial savings -- or their life

savings in some instances, perhaps -- and to disrupt that in one day, one month, or one year would perhaps be inappropriate.

But, if we were to decide, as a Committee -- or as a Commission as a whole -- that the road we embarked upon in 1933 was appropriate, and we set forth a schedule of legislative enactments to get us on the proper road, and er did in a gradual process, maybe we could deal with a lot of these economic issues.

One thing that I would like to know, if the ABC has this available -- and maybe you could make it available to us -- is, is there a national overview of how the fifty-two states deal with alcoholic beverages? How do they deal with the licensing question -- the retail licensing question? Are some states' laws similar to the approach taken by New Jersey? Are there states that are one side of this issue and states that are on the other side? Are there states -- probably most notably California -- that have had some recent drastic changes, and how has that affected the industry? More precisely, how has that affected the public?

Our purpose as a State, and I assume the ABC has this as its primary purpose also, is the public. Is there such an overview study that is available for the Committee to look at?

DIRECTOR VASSALLO: I am not aware that there is anything. There are 52 different types of systems out there, although some of them have many elements in common. There are some that have a number of elements in common with us. California's basic regulatory scheme is very similar to ours. Its licensing scheme is very different. The industry might have something, perhaps. I will make inquiry of some of the national beverage associations, to see if any of their staffs have put together an overview of this that they might be able to make available to us.

There is a model act, which was commissioned by the Wine Institute, initially, and done by a staff at Columbia University. I forget who the person doing it was, but he is now deceased.

There is a review of that which is going to take place by a Committee of the National Conference of Alcoholic Beverage Administrators. That was not done with any states, through. That was done with the sanction of the Wine Institute, suggesting that an

independent legislative drafting agency might take a look and come up with a Model Act that might be suggested to the State. There are a lot of problems with that, as I understand it. I have not seen it.

MR. NAPODANO: Are there any states that have adopted the Model Act?

DIRECTOR VASSALLO: No, nobody has adopted it. It is not even in any kind of form yet to be realistically presented to anyone. It was done by people who were really not aware of the problems within the industry. It has to be put into the context of being able to deal with everyday life as it exists. I don't know whether copies of it are available yet.

ASSEMBLYMAN PATERO: Excuse me, Mr. Napodano, we have a copy of the Model Act on order. We should be getting that at the end of August.

DIRECTOR VASSALLO: I have been trying to get a copy for a number of months and I have been unsuccessful. Hopefully, maybe it is because they weren't ready yet.

MR. NAPODANO: As a general question, and I would be very interested if you would give us your opinion on this, Director. We seem to have an overlapping of agencies and regulations, which deal not only with the licensing issues, because licensing issues--

Under our Home Rule concept, licenses are issued by municipalities, but then there is the State ABC, which has the appeal power and really does get very deeply involved in the issuance of the license in the first instance, with respect to the compliance of regulations.

Mr. Damon pointed out, and I have experienced this myself, that many of the clerks -- no disrespect intended to them -- are really not familiar with the regulations, and yet the municipality has the primary authority to issue licenses.

Do we need to continue to have the licenses issued by municipalities? Is that a realistic continuation in 1983, versus the State, or, converse of that, do we need to continue the ABC overview of the municipal licenses if we are truly under a Home Rule concept?

All of that then goes into the general question of the population restriction. The population restriction, with respect to

the issuance of the license, I think perceives that licenses and the customers who are going to frequent those licenses come from that municipal population. In fact, that is not so, as we all know. There is a lot of movement between municipal borders with respect to the frequenting of licenses.

We have those kinds of issues, where the local police have the enforcement authority, the State Police have the enforcement authority, the ABC is there, the municipal council is there -- now doesn't this cause great confusion and disruption to the licensee, and is there something that we can think of that would eliminate one aspect, or another aspect of this, or -- and I am asking for your opinion on this -- could we come to the conclusion that what we have is the best we can have?

DIRECTOR VASSALLO: I think that in that regard it might be the best we can have in view of Home Rule, as it exists in New Jersey. I don't want to sound like I am opposed to Home Rule; I am not. I think it is important; I think it must be retained. I don't know that it necessarily needs to be retained in the form we have it now.

The ABC overview, if we continue the existing system, is very necessary, I think: One, to assure that State laws and regulations are complied with; and, two, and more importantly, that there is some uniformity in the application of them throughout the State.

I think that becomes important, as you noted, because you are not dealing solely within a municipality. The users of the licenses, or the consumers who purchase from the licensees, certainly aren't confined to a particular municipality. That may have been the concept back in the 1930's, and I think to a large extent it was, but, obviously, with mobility the way it is today, that is not the case.

Perhaps a better way of doing it would be to have a State issuance of the licenses, which would eliminate the burden from a lot of the small municipalities, who really find it, I think, a burden to issue these licenses once a year. They are not set up to deal with them. They are not set up to answer the questions of licensees. They don't know the answers. We try to make information available, but with our limited resources it is almost impossible.

We would love to have a liaison under this present system. I would love to have a staff that could go out and meet with the clerks and work with the clerks and be available to the clerks. I just can't.

Mr. Damon has eleven people in his Bureau that have to do all the issuance of permits, the recordkeeping of State licenses, and the review of the State licenses. It is a formidable task as it is, and he still tries to answer all the questions and get back to every single clerk with every single question. It is impossible.

We could do it with a better liaison there, because we could educate them, locally, on it. But, perhaps a better system might be -- especially in the computer age -- for all licenses to be State issued, but for them to go to the local governing body for approval or disapproval, prior to it being issued. In other words, the State would be the ministerial agency, and in a sense also monitor it, to make sure that there is full compliance with the law. The State would obviously have the authority to say no, even if the municipality had said yes, if there is not compliance with laws. But, if there is full compliance, if there is the approval of the municipality, I think it might be more beneficial for the State to do it.

The fees could still be set by the municipalities.

ASSEMBLYMAN PATERO: They can still be shared.

DIRECTOR VASSALLO: They can still be shared, or a more uniform fee could be imposed, and it might even work to the benefit of municipalities to propose a uniform fee, because right now the statute allows a fee of from \$200 to \$2,000. I believe only three or four municipalities in the State are charging the \$2,000. Perhaps there should be a uniform fee for a retail license. It is the same privilege. There is really no rational basis for there not being the same fee.

If the State were to set the fee, and set it at the maximum amount -- or whatever the Legislature would decide on -- even if it were paid to the state, 90% of it, or whatever is determined, could be remitted to the municipality. As I say, it would probably assist the municipality, and yet let them off the hook with the problems they have in trying to raise the fees. They get a lot of local opposition sometimes, even though they recognize the necessity of doing it. And,

even the statute, the way it exists, limits them to raising the fee no more than 20% at a time. So, if their fee is \$200, they can raise it \$40, to \$240, and then the next year they can raise it \$48, and so on. It takes them a long time to get it up to a maximum amount, only because it has been at a minimum and nobody wanted to interfere with it; or, you know: "These are nice guys, so we will keep them at a low fee." Whereas, the cost of administering alcoholic beverage laws is increasing.

The other thing that has to be considered at the same time is what the municipality's enforcement responsibility is. Right now, we have to look to the municipality as having an equal responsibility, and to utilize their police department to do this. At the same time, we have to recognize that a large number of municipalities in the State don't have police departments. The State Police is the police department in some of these municipalities. So, the State has the burden there.

We also have to recognize that in many cases the local police don't enforce the laws, or can't enforce the laws, because a lot of it takes undercover investigation, and local police are well known.

Then we go on to whether there is an incentive for the municipality to do it because of the low fees they have, and what they get out of it. The present state of the law even allows them -- the local municipality -- to suspend a license, but it gives me the power, as Director, to accept a monetary penalty in lieu of that license suspension. If that is done, the money goes to the State. The municipalities feel, "We don't get the money. The State gets the money. We go through the expense of prosecuting a licensee. Why should we even bother?"

So, all of this has to be tied into the benefit the municipality is going to receive, and, yet, not impinge on their Home Rule and the basic concept of it, which I think could be retained, while still lifting the burden from them.

Certain other legislation can be developed along the line of what is presently pending. I don't recall the name of it. One bill would share the monetary penalties, in the case of a municipally-imposed suspension, between the State and the

municipality. I personally think that would be an excellent idea. I know there is some opposition to it. It is still pending.

But, all in all -- to answer Mr. Napadano's question -- I think the system has to be retained, basically, with the Home Rule idea. At least they should have the approval authority. Maybe that would be better -- just give them the approval authority, or require their consent to the issuance of a license. That still retains the Home Rule, but takes the burden of issuing these licenses off the municipalities, who really are not equipped to do so.

The alternative to that would be to equip the ABC in such a way that we can provide the necessary services to the municipality, to allow a realistic functioning of the way it now exists. As Mr. Damon pointed out, it just doesn't work well because of the lack of information, or lack of knowledge on their part, if nothing else.

It is hard for some municipalities who might issue only one or two licenses a year, to really gain the expertise that could be necessary for this. Or, even if they have this expertise, there are a lot of municipalities who have thirty or forty licenses, but it is a small function, once a year -- except for transfers, which might occur during the year -- and, they just don't get the attention they need.

At the same time, we have to recognize, "What if there is an objection to the filing of a license?" It would be very difficult. Or, maybe to look at it the other way, it is much more convenient for the objectors to be able to appear before the local governing body to voice their objections than to have to appear before a State agency. Of course, there are ways of working that out. Perhaps the ABC could have a small staff that would go out through the State to hear these objections. There are a lot of ways that it can be worked out. But, it will mean a complete revamping of the system, in the sense that it can't be done with a small ABC, the way it is now, assuming the burdens from the municipalities. There is going to have to be an expansion, one way or the other.

I am not here trying to build a bureaucracy. I want to make that clear, on the record, for the ABC. I am very content that the ABC can function - barely function, but function within its present limits. There is not enough personnel. More is necessary in order to

provide the needed services. Obviously, the revenue that comes from the Alcoholic Beverage Industry warrants more importance being given to the function of the ABC, and the service it provides. But, at the same time, a balance is going to have to be achieved.

MR. NAPODANO: Excuse me, Director, but the real question we should be looking at is from an administrative point of view. Is there a necessity for these licenses to be renewed annually? Is it more appropriate for the license to be renewed every two years, three years, or whatever appropriate number of years is decided upon, while still requiring a payment of the annual fee, falling back -- if you will -- upon the regulations you now have on the books, which require each licensee to -- I believe within ten days of any change in the status of the license -- report those facts on an amended license form? If there is no change, why put the burden of administrative paperwork on the municipality and the ABC on an annual basis? And, if you then get involved with this computer age, you can stagger your renewals over two, three, or "whatever" appropriate period of time. That may cut down tremendously on the burden that Mr. Damon and his eleven associates struggle with. Maybe that is the answer. Maybe we are talking about an annual administrative nightmare, that happens to your Department and to the municipalities every June, with all these phone calls and questions that come to you during this period of time.

Is there any reason not to consider that also?

DIRECTOR VASSALLO: I think that is probably a good concept. I really, personally, can't see why there has to be a renewal once a license is issued. It can be at least a formal, almost complete, new process. A renewal process, as it exists because of the requirements of the statute, is almost a new license every year. It is called a renewal, but it is questionable as to whether it is really a renewal or not, or whether it is a complete new application.

I think the one drawback the present system, with the annual renewal has is, it allows objections to be made, and allows a review to be made of the exercise of a license privilege. That is in concept. In reality, that also probably isn't necessary. It could be done in other ways. An objection could be handled by way of a disciplinary proceeding as opposed to an objection at the time of renewal. The

renewal, in many cases, takes the place of a disciplinary proceeding. If there are problems with a license, they are dealt with at renewal time, either by conditions being put on it, or by just not renewing the license, rather than disciplining -- which could be done too, if there is abuse of the license privilege.

So, I don't really see that as a drawback, and I think that a system could be developed, whereby there could be licensing with an annual payment of a fee, subject to review at any time, having a provision for any changed information, and within certain limits, certain changes possibly requiring approval before they can be implemented.

MR. NAPODANO: I think your regulations now take care of that.

DIRECTOR VASSALLO: I think they envision it, and I am sure if the statutory authority were given to do it, the regulations could even be further simplified. I would like to see it become a simple procedure, not burdensome to anyone, yet accomplishing all of the objectives of the control of alcoholic beverages that the Twenty-First Amendment and our statutory scheme, that has been developed, envisions. The State still has all the control that is necessary, without unduly burdening anyone, and yet still retains the basic philosophy of our State -- Home Rule. I think it can all be done very easily, especially in this computer age; it can be done very simply.

ASSEMBLYMAN PATERO: Excuse me. Mr. Napodano, how would your proposal work? What are you looking for?

MR. NAPODANO: I am really not proposing anything at this point. I am questioning these concepts -- and that is what I am dealing with: How we now do it? Are they carved in cement on this annual renewal, or can we think about a staggered renewal, or a permanent continuous license, with annual fees being paid, to eliminate the burden on the communities and towns, and to eliminate the burden on ABC?

I don't necessarily have a proposal. I just wonder if some of these things shouldn't be thoroughly investigated by this Committee with respect to our proposals.

ASSEMBLYMAN PATERO: I think it is a great idea. I think one year is-- It seems that as soon as you get your license, you are renewing it.

DIRECTOR VASSALLO: One of the things that stands out as a big plus in this is the fact that our license really, in a sense, is -- whether it is a privilege or a right -- is a privilege, our statute and our cases are very clear on this point. Our usage raises a lot of questions on that. Once a license is issued, there is a right to that annual renewal. The only way it can be taken away is with due process, showing that there has been an abuse of the license privilege. And, that certainly wouldn't be changed in any way, shape, or form. We don't need an annual renewal ritual in order to have due process. If there is abuse of the privilege, at any time the Director of the ABC can step in and say, "Hold it, you have been abusing the privilege -- or it appears you have been abusing the privilege -- and either we are going to prove that you have, or you show us that you haven't," whichever is appropriate in that particular case.

I think there is a lot to be gained by that, both from the State perspective, because the cost to the State of administering it would be less, and from the municipal perspective, because it would be less to the municipalities. They wouldn't have this annual burden, which they are really not equipped to handle.

Home Rule would still be retained, because either the initial issuance could be retained by the municipality, or it could be passed to the State -- which probably would make more sense in this case -- with the concurrence of the municipality. They wouldn't have to be involved in the ministerial handling of it at all, but at the same time the benefits that are there would be retained.

A system could be set up for hearing objections at a local level, either by a municipality, to be forwarded to the State, or by the State, but with a directive that it be done at a locally-convenient location -- possibly by a county, or possibly in the municipality in which the objection was raised.

MR. NAPODANO: You could perhaps just leave the objection to be heard by the municipality, and let the municipality's concurrence be held until the conclusion of that hearing. So, the license would not

be issued until the municipality has concurred, and you can continue the Home Rule concept with respect to any objection, with the hearing occurring within that municipality.

I always believed that if you have an objection on the municipal level, the hearing should be held in that municipality in order to give all those who wish to come forward and make comment the convenience of going to the municipal town hall to do so and not have to come to Trenton, or some other location, because that could be terribly inconvenient and you may not get as many people out to the hearing.

DIRECTOR VASSALLO: I agree. It is necessary that the hearings be held locally. It could be incorporated into the law that if a municipality, after having given an initial approval to the issuance of a license, has any objection to the continuation of that license, hearings can be held on it and a determination can be made, and that would be cause for cancellation of a license.

MR. FELDMAN: Mr. Chairman, can I just add to the record that effective April 1st of this year, the State of New York adopted a three-year cycle of licenses, and that could be examined to see, first, how it is working out; and, second, how it has been done.

Second, the Federal government has always had licenses of a continuing nature -- never renewable each year. And, if there is an infraction, they take the appropriate action.

Third, the State of New Jersey has already started this with the driver's license. You now have a three year cycle, which means that if you commit a violation within the three years and you got points, your license can be suspended or revoked.

So, this is an area that I think should be examined in addition.

MR. BROMLEY: Mr. Chairman, may I comment on Mr. Feldman's comment?

ASSEMBLYMAN PATERO: Yes.

MR. BROMLEY: Let us be shown on the record that New York went to the three year licensing because New York historically has had State licenses, and the process of issuance was so inefficient that the licenses were not issued to my fellow members of the National Liquor

Store Association in New York. The whole process of State licensure broke down and in an effort to be able to issue licenses at all, they expanded it to three years.

MR. GARRITY: Mr. Bromley, can I ask a question? Are you saying that they were State issued licenses rather than municipally issued?

MR. BROMLEY: Yes, retail licenses in New York are State licenses. If I might be allowed to expand a little on that, having lived in New York and having lived in New Jersey, and having been under both systems, the one thing I found in New Jersey is that you were close to the person who committed the act, and you could get a remedy if you got up and went down to Town Hall. As inefficient as it sounds, and I certainly think the efficiencies Mr. Napodano spoke of by having the license issued for a longer period are very meritorious, the experience in New York was, if you didn't represent five million people, no one listened to you. You could go to Albany and stand for hours and hours and hours. I am not saying that would necessarily happen in New Jersey, but it did happen in New York and the licenses were not issued. And, the Legislature did a "quick fix" and set up a prolonged period, hoping they could get the licenses issued.

MR. GARRITY: Well, basically what you are saying regarding the problem we are discussing here is, in New York it was handled on the State level and in New Jersey it is handled on the municipal level; yet, the problems are similar.

MR. BROMLEY: No, to the best of my knowledge, there has not been a breakdown of licensing here in New Jersey at all. I think New Jersey has an admirable record.

ASSEMBLYMAN PATRICK: For the record, I want it to be known that Mr. John McCaffrey, representing the New Jersey Conference of Mayors and Anheuser Busch is also present at this time.

We will go back to the Director for questioning.

MR. McCAFFREY: Director, did I understand your response. that you are in favor of taking away from the municipalities the right to issue a retail license, is that what you said?

DIRECTOR VASSALLO: Not at all, Mr. McCaffrey.

MR. McCAFFREY: I'm very happy to hear that.

DIRECTOR VASSALLO: I can summarize for you what was said. The municipalities frequently are not equipped to handle it. There are questions they can't answer. We are not equipped to help them because of the limitation on our resources. With the computer age, perhaps all the licenses should be issued ministerially by the State. But, this should only be with the concurrence of the municipality. In other words, perhaps the application would be filed with the ABC, a copy of it would immediately be forwarded to the municipality for their concurrence or their disapproval, with, of course, guidelines to them on how to act on it. They would then hold any hearings at the meeting of their governing body, and adopt a resolution approving or disapproving it. It would then be returned to the State for the issuance of the license.

The license would then remain issued, subject to the payment of an annual fee, unless an objection were filed by some person, or municipality. Disciplinary proceedings could intervene also, as they now do.

In the case of a transfer, the application would be filed the approval would be given by the municipality, but they wouldn't have to get involved in the ministerial handling of the applications and things like that. That is the only thing that was discussed here in concept, and the necessity of the annual renewal because of the burden it imposes on the municipalities.

MR. McCAFFREY: Can I continue, Mr. Chairman?

ASSEMBLYMAN PATERO: Yes.

MR. McCAFFREY: We had a meeting with some mayors yesterday, Director. I know you are strapped for manpower. There is no question about it. These things may appear minute from an administrative standpoint, but we do have a problem with the fingerprinting. We must get the fingerprints, right?

Formerly, the FBI checked those out, and they are no longer doing that. Now, they go to the State and it causes a delay there. That is no fault of yours, I understand that. But, that is one of the complaints of the municipalities.

Another complaint again is in a minor area. There are a host of special licenses, as you know -- seasonal, one-day permits

throughout the season. And, that application must be filed at the municipal level and sent to your Division. Previously, they notified the chief of police and the municipal clerk when the license was issued -- when that one-day permit was issued. Apparently, again because of manpower problems -- and I am not sure what the answer to this is -- they were not notifying the chiefs of police who are responsible for seeing that the affairs being run in the municipalities did have a license -- a one-day permit. They are not being notified now, sir.

DIRECTOR VASSALLO: They know it in the first instance, Mr. McCaffrey.

MR. McCAFFREY: When the application is submitted?

DIRECTOR VASSALLO: Because they approve the application for those dates.

MR. McCAFFREY: They have to send it to you, do they not?

DIRECTOR VASSALLO: Yes, but they send it to us for the ministerial issuing of it after they--

MR. GARRITY: Could I comment on that for one second? We received in April, May, and early June, an avalanche of social affairs applications. Many of these came to us, misdirected to the old Newark office. The mail, as efficient as it is, seemed to have a breakdown, and we were getting, two or three weeks late, mailbags full of mail for social affairs that were to occur. Some of them had already happened before we got the application, and some of them were to happen within the next two or three days, or the next week. Very frankly, we had to put a great deal of resources into just seeing that these social affairs permits were issued by us. What we did was, we laid aside the other activities that are usually generated around the social affairs, which include sending copies to the police and the clerk and putting them in the files, and all of those types of things, because we were fully extended simply doing the issuing process, and the application review process.

Now, our intention is to go to an exception system, and that is, when we get an application for a social affair, signed by the chief of police and signed by the clerk, in the eventuality we do not issue the permit for the affair, we will send notice to the chief and tell the chief that that permit for that affair will not be issued.

MR. McCAFFREY: That won't solve the problem, I don't think.

MR. DAMON: They can, when they sign the application, take note that the affair is to be held, and if they don't get notice from us to the contrary, then they will know that the permit was issued.

DIRECTOR VASSALLO: We are also trying to set up communication with the clerks and have some seminars, within the availability of our resources. I think you are aware of what the problems are.

MR. McCAFFREY: I recognize these one-day permits must come like a ton of bricks in July and August.

MR. DAMON: We really get our fill of them.

MR. BROMLEY: I have a question. Of the approximately 9,000 permits that were processed in the past year, would the ability to process have been greater -- or less troublesome to your department -- if there was a system on prior-qualified organizations? I think if those were reviewed, you would find they are a repeat, time after time.

MR. DAMON: We do keep a card file on every applicant, and if the person has qualified -- or the organization has qualified -- then they don't have to requalify. We go back to the record and see if they had a permit. If we issued one before, then we simply don't go through that exercise. So, it is only people who never had a permit that we have to qualify in the first instance. We are already doing that.

MR. BROMLEY: Is it widely known? You see, a good deal of time is spent by people coming up with papers which they may not need. I know they think they need membership lists, and so forth.

MR. DAMON: Well, I think it is widely known, because generally we only get the evidence -- the attachments -- with those social affairs requestors who have never had a permit before. In many cases, we get the application without the evidence from new applicants who simply don't read the application form properly. So, then we have to go back and forth with it, which takes administrative time and effort.

I would say it is generally known by people who have had an application with us before, that they will be issued a permit without a lot of red tape.

ASSEMBLYMAN PATERO: Are there any further questions?

MR. NAPODANO: Yes, Mr. Chairman, I would like to move off this area. I have two other concepts that I would like the Director and the Deputy Director to explore and examine for us.

The first concept is the limitation on the number of licenses -- the two license issue, simplified.

The second one -- and I will pose the same question to both, if you will -- is the prohibition of tier ownership. You commented upon that in your talk before. It was my understanding that you said there is, "Nothing you can do about that." I apologize if I am inaccurate.

The question I would like put to the Director and to the Deputy Director is, are there justifiable reasons to continue both prohibitions in 1983, and, more precisely, are there to be justifiable reasons to continue these prohibitions in 1990? Because what I think we as a Commission, and a Committee, are really looking at is the longevity of that which we will report to the Legislature and to the Governor.

DIRECTOR VASSALLO: Let me first talk about the two license limitation, because I notice Mr. Garrity has stepped out of the room, and I am sure he would be very interested in any comments on the three-tier system.

The two license limitation law, which is 33:1-12.14, came about basically in-- Excuse me, it is not point fourteen, it is what, point forty-six? No, it is point thirty-one; it is twelve point thirty-one. (continuing) That came about in 1962. It was amended in 1971, but it was a technical amendment to the statute. So, prior to 1962, a person could hold any number of retail licenses, and I am speaking only about retail now, because I will address the other problem in a moment.

The law was grandfathered, of course -- as I mentioned before. There were a couple of large chains, large in the sense of having a fairly good number of licenses. The largest is 34 licenses. There are some other groups with as few as three licenses that exceed this limitation.

As a result of the two license limitation, no others have been able to either merge or acquire more licenses, so that in one

sense these grandfathered groups have a competitive advantage. In an attempt to meet that, cooperatives have been formed. Regulations permit buying cooperatives with no more members than the largest grandfathered groups. So, no more than thirty-four members are allowed in a co-op. The spirit of that has been skirted by groupings of co-ops within the overall concept of what would be a group.

Because of the grandfathering, it has, in many ways, worked inequities within the industry. If the grandfathering could have been eliminated, the problem might not be there. But, it is there, and again it goes back to what I mentioned earlier: What was started in the '30's, or thereafter, may not be what should have been done. But we are also faced with a lot of realities that exist today, and we have to look, certainly, at the equities that people have because of it.

I don't know that a two license limitation is appropriate. There are exceptions to it, for hotels, for restaurants, and now for bowling alleys. The only limitation on that exception is that those consumption licensees that are exceeding the two license limitation cannot sell packaged goods.

We recognize the problem of enforcement in this. We are trying to work on that, within the concept of the law. But, I am not sure that the concept of the law is really what was intended. There are advantages to the two license limitation that protect the investment, in one respect, of a small licensee having one or two licenses.

By the same token, it limits competing forces, which may be able to benefit the consumer. I know Mr. Napodano raises the question because we have to recognize the reality of one of his clients. One of his clients is caught in this situation, and he has rightfully expressed some serious concerns about what this statute, which is now 21 years old, brings about. This is one of the very serious concerns that this Committee should address.

Is a limitation necessary? I think there are many good arguments for it.

MR. NAPODANO: And perhaps against it.

DIRECTOR VASSALLO: We are talking about arguments against it so there are arguments against it. These have to be weighed

carefully. I don't think-- The resources aren't in the room right now to bring these considerations to the Subcommittee's attention.

MR. NAPODANU: What would those resources be?

DIRECTOR VASSALLO: I think they would have to be clients like yours. What they intend. What they are doing. The concept they have. I think the Package Stores Association and the Licensed Beverage Association, the Licensees Association--

MR. NAPODANU: You are really talking about the various segments of the industry.

DIRECTOR VASSALLO: Segments of the industry would have to present input to this Subcommittee. I realize the Associations are represented, but I think it would have to be presented with a little broader brush than any of our limited knowledge could impart.

MR. BROMLEY: Director, may I ask a question? What, in your opinion was the Legislature attempting to achieve other than to protect someone's investment?

DIRECTOR VASSALLO: I really don't know, Mr. Bromley. That is why I am saying I think there is a lot-- Mr. Gold is in the room, and maybe he could shed some light on why it was passed if he knows. He was around and active with the Division of Alcoholic Beverage Control at the time.

MR. GOLD: Merely being an observer, I'd rather not give an opinion.

DIRECTOR VASSALLO: I had mentioned that, hoping that Mr. Gold, as a citizen would-- (laughter) --and as a former employee would tell us, objectively, why it came about, if he knew -- not an opinion -- but apparently he declines to do so.

MR. BROMLEY: We were told as licensees that there was an effort by the State to make certain that a municipal body could control the activities of the licensees in its area. And, their prime control would probably be suspension of a license for a period of time. I think back when this was done, that was the most usual penalty. They closed them. They felt that if a person had 50 or 70 or 100 licenses, the effect of a closing would not be a strong deterrent, so therefore they would not issue. I am not trying to say it has worked that way at all. That is what was explained to me by a very old legislator as his reason for participating in that.

DIRECTOR VASSALLO: If that is the case, maybe it should limit the number within a particular municipality, whether it be done by population, or just no more than two within a municipality.

MR. NAPODANO: Of single ownership, is that what you are saying?

DIRECTOR VASSALLO: Yes.

MR. NAPODANO: No more than a certain number within a municipality.

DIRECTOR VASSALLO: If what you just mentioned were the case. The other thing that jumps into my head is, possibly the licensing should not be of the location but of the individual, with a sub-license for locations with any given number, limited or unlimited, of locations of that license to be designated. Of course the fees-- That whole type of licensing could be reviewed.

If a person is in violation, then the license privilege of the person would be affected. If it is a serious enough thing, and if he happens to have 100 locations, it could mean 100 locations would be closed. But, you would only envision that occurring in very serious matters. And, there certainly can be restrictions on that so it can't be exercised in any arbitrary manner.

It is almost the same thing as the wholesale licensing, where there is no limit on the number of wholesale licenses. You know the question has arisen -- it has been presented to me hypothetically - "What will I do if I get a serious violation against one of the larger wholesale houses?" You can suspend them -- suspend that license -- and the sister houses will just take over the business during that period of suspension. So, that same concept would apply here.

MR. BRUMLEY: That's been the practice at this time, that if a violation occurs at a location, even if there is multiple ownership, the Division has not suspended the second license at the same time.

DIRECTOR VASSALLO: We can't, because the violations now are charged against the license -- the particular license, not the licensee. Maybe what we should do is take a look at who should be licensed, the location or a person? We do license the person.

MR. JERLAT: Or, perhaps both.

DIRECTOR VASSALLO: Well, you would have to license the location, but the primary licensing might be of the person. In other words, a license is issued and then a sub-license would be issued for a location. I may not be using the right terms. This is a concept that is cropping up right now, and I think we are groping for something. But, this might be something for this Subcommittee to think about and to take a look at.

MR. JERLAT: Excuse me. I think one of the original thoughts behind this type of legislation -- the two limit license -- was the fear of the chain operator taking a very heavy control of licenses throughout the State of New Jersey, and there would be no control. I think this was one of the original thoughts behind it. Then there would be no control over the corporation that may be licensed in the State of New Jersey, but who may have interests in many other states throughout the country. I believe, if I remember correctly, that is one of the concepts and one of the reasons why we set that two license limit within the State of New Jersey.

DIRECTOR VASSALLO: But, in essence, that is happening because of the restaurant exception. And, our consumption licensees, which are the largest majority of our licensees, bear the brunt of this. To name a few, Steak and Ale has come in with six or eight licenses. That is a Texas Corporation. The Ground Rounds, which are Howard Johnson's affiliates, the Corporation is an out-of-state corporation. They have any number of locations. I have mentioned those two, but there are several more. TGIF -- Thank God it is Friday -- is another one. There is McDoogals and there is Howard Johnson's itself. So, there are any number of them.

What Mr. Jerlat has brought up, sounds very plausible as being one of the reasons. Now, I am not doubting you, Bill, but we are trying to get at what the reasons may have been. The exception for the restaurants has gotten around that.

MR. JERLAT: That came at a much later date, when they made that exception for the restaurants.

DIRECTOR VASSALLO: Right, but still by putting that exception in it has made it all the more serious.

MR. JERLAT: Oh, yes.

DIRECTOR VASSALLO: Again, it all gets back to, really, is there any rationale for retaining the two different types of licenses, and the limitations on the licenses? Maybe there is; maybe there isn't. These are the questions I think have to be seriously examined. And, this limitation is one of them.

MR. JERLAT: The prime mover behind that 1962 statute was Harry Perskie, who represented the Package Stores at that time, and even though Mr. Gold was non-committal, I have no hesitancy in giving my thoughts as to why Harry wanted this in the first place. He had a well-founded fear that there would be a group of licensees, say five or six in different towns. In other words, the revenue from those six licenses owned by the one individual would gravitate upward to the one owner, and then he would compete against the retailers in those towns. So, he would take a loss in one town in order to drive out opposition. That was one of his fears and it was well founded at that time.

I don't know that he had the thought in mind concerning an extremely wide brush to include the population explosion, particularly in south Jersey, and also the growth of the supermarkets. I for one am interested in how chains operate now. I know one of Perskie's fears with respect to the chains was the fact that the chains might use my product -- the beer product -- as a loss leader in order to get them into the stores. That was one of his fears.

I think the problem would be solved if you left to the municipality the right to determine what license, if any, should be allowed in the town.

DIRECTOR VASSALLO: But, it has to be within certain guidelines or it is not going to stand up. That is the problem. If you just leave it up to an arbitrary determination, even if it is not ostensibly arbitrary, if there is not some objective criteria, the law is not going to stand.

MR. McCAFFREY: There are some 47 towns now that have absolutely no license, much to the chagrin of Jack Garrity and myself.

DIRECTOR VASSALLO: But, I think, Mr. McCaffrey, once you get into the situation where they do opt to allow licenses, then they have to have objective criteria for the issuance of them, and not say, "Well, he can't have one because he already has 10 licenses, but he can have one because he only has 9."

MR. NAPODANO: Mr. McCaffrey, are you suggesting that the townships have absolute authority to decide whether or not they will issue one, two, four, or four hundred -- and I know that is absurd -- licenses to the same entity?

MR. GARRITY: If we are allowed to issue the license -- and that is another one of the complaints of the mayors -- we should be able to revoke the license or penalize the licensee. What happens now is we close them down. What was happening before our Embcument was, you closed somebody down for thirty days for an outright violation. This would be the township. Then it would go before an ABC hearing officer, and the culprit, the licensee, would hire the best attorney in town, he would be one level below the Attorney General of the State, and the result would be that either the suspension of the license would be lifted -- and they had a fine in lieu of that in some instances -- or it was lowered, and the municipalities are complaining about this. If we have the power to issue a license, we should have the power to revoke them.

I am saying what the mayors would like is the right to issue retail licenses in their own towns. Now, whether or not they want to observe standards, statewide, based on population -- I think that should be left up to the individual municipality. Home Rule is what I am suggesting.

DIRECTOR VASSALLO: If I may answer that, I don't think anybody is questioning the Home Rule concept, we are just trying to explore possible ways of easing the burden on municipalities without in any way encroaching on their power. Let the State take some of the ministerial burden off of them because they are not equipped to deal with it, and so they don't have to suddenly become equipped to deal with these problems once a year. That's all we are saying here.

I think as for disciplining the licenses, they certainly have the power to suspend or revoke, just as I have the power to suspend or revoke, but it has to be subject to review by someone. Mine is subject to review by the Appellate Division of the Superior Court. The statute as it reads now says that the ABC reviews their determination. We certainly respect the municipality's power and what it does. The fact that monetary penalties are imposed in lieu of suspension -- there is a

bill right now dealing with that, which would give half of the money back to the municipality for that.

MR. McCAFFREY: That's another one of the gripes, Director that I close them down for thirty days, and then the ABC recommends a fine and the money goes to the State.

DIRECTOR VASSALLO: No, I'll point out that the policy of the present administration, Mr. McCaffrey, is to ask the municipality if they have any objection to the taking of a monetary penalty in lieu of the suspension, and if there is any objection -- which we find there generally is not -- that is given very serious consideration, almost to the point of control.

MR. McCAFFREY: We have no complaints against the Encumbent, Director. It is his predecessor I am talking about.

DIRECTOR VASSALLO: We are trying to remedy the abuse.

MR. GARRITY: I think it is very important that we recognize, from a Home Rule standpoint, that this is very basic to Home Rule, and we can go right back to the Federal Alcohol Act, which everything is based on that we are doing right here, whether it is the State or the municipality. Every municipality, and the citizens of that municipality, has a right to determine what kind of a town or a municipality it is going to have from the standpoint of liquor control: who it would like to have in business, what type of person it wants, what type of services it wants, and how many licenses it has. I think we have to recognize that, because if we don't, we are taking something away from the municipality that we have no right to take away.

I think each municipality can and should determine what kind of a municipality it wants, what the standards are going to be in that town, and if it wants to be licensed, that's its business; if it wants to be strict, that is its business too. I think we have to keep that in mind.

I agree with the Director, there has to be some administrative control. I also agree that from the standpoint of evaluating the type, character, or background of the people that hold these licenses, I think perhaps the municipalities could get some help on the State level for that part.

But, basically, don't take it away from the municipalities to determine what kind of climate they want to have concerning the alcoholic beverage industry.

MR. McCAFFREY: The alternative, Mr. Chairman, is a series of local options throughout the State to dry up certain municipalities where there are licensing abuses. That is the alternative. And, I am fighting local option fights all over the State just because one or two licensees step out of line.

ASSEMBLYMAN PATERO: Are there any more questions. If not, I think we should take a ten minute recess.

(Recess)

AFTER RECESS

ASSEMBLYMAN PATERO: We will now resume the Subcommittee meeting on Licensing.

DIRECTOR VASSALLO: Mr. Chairman, I think the second half of a question put to me is still pending, regarding the three tier system that we have, and whether or not that should be retained.

I think, again, the basic problem goes back to 1933 when we adopted a three tier system -- that is, a supplier or manufacturer selling to a wholesaler, who in turn sells to a retailer. Basically, there is no direct distribution from the manufacturer to the retailer, although our plenary brewery and I think our plenary distillery -- we don't have any of them issued -- and our limited brewery licenses allow a direct distribution. Although in most cases I do not believe it is exercised as such, and where it is exercised it is generally done through a wholesale license. But, other than that exception, there is no direct distribution allowed.

The question is raised mainly because of these larger co-ops, who feel that, as in the food industry, it might be more advantageous if they could purchase directly from the manufacturer.

Again, we have Statute No. 33:1-43, which does not allow a tie-in between one tier and another. The statute was amended some time after the original adoption to prevent a tie-in between the

manufacturer and the wholesaler, but our State Supreme Court held that unconstitutional; therefore, there can be a tie-in between the manufacturer and the wholesaler. There cannot, however, be any tie-in, or any interest, of a manufacturer or a wholesaler in the retailing of alcoholic beverages.

I think that if we were to opt to eliminate the three tier system, it would again be pulling the rug from under people who have made this their life's work and who have used their life's savings because of this three tier system that was set up -- in the wholesale investment that exists and in some cases in the manufacturing investment that exists.

Obviously, as Mr. Napodano pointed out, if it were going to be changed, it couldn't be done fairly overnight. It would have to be done by timetable. I really question whether or not it could realistically be done at all though, because of the large investments that there are in it.

The other thing to look at -- and I don't know the answer to this - is, is there any advantage to doing it? I just held some extensive hearings on transhipping, and I don't want to go into that at all, or comment too much, because decisions have not been made and there are still briefs to be filed in the actions. But, there was some related testimony. Some of the testimony fits this issue. There are very serious concerns, and that is all I will say at this point. There are some very serious concerns as to what would happen if we didn't have the three tier system, and there is some evidence to show that this three tier system greatly benefits the consumer, and therefore the public, which is our primary concern as government.

Again, it gets into the licensing question on the three tier system, because that is the way they are licensed. Whether it should be looked at is one thing. For me to suggest -- I think I was asked, and as I commented, on the two license limitation, I have some serious doubts about the validity of that, especially in view of the exceptions that exist to that statute. But, I really have some serious doubt about trying to change the three tier system. I think there may be definite benefit to it and to the retention of it. But, I am not really prepared to go into that.

MR. NAPODANO: Director, you are speaking now with respect to the distribution. Can I have you focus for a moment on the ownership prohibition?

DIRECTOR VASSALLO: Sure.

MR. NAPODANO: (continuing) Leaving the distribution within the three tier system.

DIRECTOR VASSALLO: Okay. The basic idea behind the "tied-house" statute was to prevent, as I understand it, breweries -- many of which existed in 1933 -- from setting up and controlling taverns. In other words, running it just as an outlet for their product. Most states have "tied-house" laws, very similar to ours -- if not identical, in effect they are very similar. I personally feel it is probably good to keep the manufacturer away from the retailing of the product, so there isn't an undue pushing of the one product to the exclusion of the other products that are available.

I think there is a lot to be said for an independent retailing of products manufactured by others, so there can be a fair offering to the public of the alcoholic beverages that are available, especially in view of the very large numbers there are. I dare say, there are more alcoholic beverage varieties than any other product or commodity in existence.

The argument in favor of allowing it is, it is antiquated. It just doesn't make sense in terms of today's economy, and certain economies could be derived from allowing an interest to be held by a manufacturer or a wholesaler in the retailing of it. I think the problems that can generate outweigh the argument for the economies. And, certainly the economies are conjecture and they are not demonstrated, because there is still cost in the distribution and retailing of it.

I really don't know whether we want to get into that. We probably want to get into modifying our "tied-house" statute. In fact, I have even drawn -- at the request of certain persons, I have helped in drawing some modification to the "tied-house" legislation. One of the primary areas concerns hotels, which have liquor licenses. And, today the small hotel is pretty much a thing of the past, and the better hotels are as a result of large chains. Many of these large

chains' financing only comes through corporate mergers, and inevitably one of the subsidiaries of some of these large corporations holding it has a distillery in Europe, or an interest in a winery in Europe, or something like that. So, technically, there would be a "tied-house" violation in that. We have suggested some legislation to eliminate that problem, and Delaware has recently adopted similar legislation. California has also recently adopted similar legislation, recognizing this problem. And, this seems to be the trend throughout the states. They are doing it because of this one unique problem dealing with hotels.

All in all, though, I think there are sound reasons, giving us better control, behind keeping a divorcing between the manufacturing and the retailing. But, certainly, it is open to be looked at. It is my personal opinion, after dealing with it for a year, that the reasons for it outweigh doing away with it. But, it is certainly not written in concrete. It is not something that I am saying shouldn't be reviewed by this Subcommittee.

MR. NAPODANO: Are the same reasons prevalent with respect to keeping the retailer and the wholesaler separate?

DIRECTOR VASSALLO: I think so.

MR. NAPODANO: They are?

DIRECTOR VASSALLO: I think so.

MR. NAPODANO: Would you be in a position, Director, even if not today, to amplify what those reasons are?

DIRECTOR VASSALLO: I think there are people better qualified than I am who can comment on that.

MR. GARRITY: I think you ought to amplify the other side of it too, why it might be beneficial to eliminate the wholesaler, if you want to put it that way.

DIRECTOR VASSALLO: That's why the arguments I am trying to put together are something that I believe come from all parts of the industry, and I think it might be good for the Subcommittee to hear them, if it wants to hear that issue. There may be time limits, so I suggest that there are more pressing issues than that one, especially in view of the fact that we are trying to give some review to the "tied-house" problems. But, it would be better to hear it from the industry itself, as opposed to me.

MR. NAPODANO: Thank you. I have no further questions, Mr. Chairman.

MR. FELDMAN: Mr. Chairman, I have just two brief comments, and then two questions. First, regarding that Supreme Court ruling, or decision, which invalidated the separation of the wholesaler and the supplier. The major concern of the Supreme Court was in the grandfathering. They said if it is there, then it is there for those who are doing it today, and not there for those who contemplate doing it in the future. That was really the reason for the grandfathering.

Second, the number of brands of distilled spirits, beer, and wine, currently being sold throughout the United States, not only New Jersey, is 200,000. So, in line with the comment you made about the number of brands, there are 200,000 brands of alcoholic beverages currently being sold.

Now, to the two questions, Director. The first concerns alcohol permits. There is, currently, under Subchapter 34, the issuance of alcohol permits. Those were very popular many years ago, when the foreign born groups bought alcohol and wanted to flavor it with syrups and flavorings, and do their own home rectifying.

I understand at the present time -- I just asked the Deputy Director, Damon -- there are none of them issued now, and I think there is no real reason why they should be continued. They are only issued by pharmacies, unless you can think of some specifics.

DIRECTOR VASSALLO: Yes. I think he is wrong. There are a couple that are issued. They are not really any problem though. They are in the real spirit of the alcohol permit. One of the reasons is, there is no problem getting almost pure neutral spirit alcohol now, right off the shelf in the liquor store. I wish there was. Up to a couple of years ago, we had no problem, but we are now seriously concerned. We are bringing it to the attention of the Governor and the Legislature. And, I have a question before the Law Division right now as to whether or not I can limit the proof of alcohol that is sold. I believe the statute may be so broadly written that I cannot limit it, because of its definition of alcohol and alcoholic beverage.

We have a situation where 190 proof, neutral grain spirits are being sold under the brand name "Everclear." They are available in

liquor stores in containers as small as the miniature. They are potent. They are dangerous. The bottle is even labeled, "Do not use near open flame." But, aside from the flammability point, I am advised by licensees that young people come in asking for it, and also asking if they carry Hawaiian Punch. It makes a very potent punch, in very small quantities.

Tavern owners, and the Licensed Beverage Association have told me that by and large the majority of them won't even carry the 151 proof rum, because all it does is lead to danger and problems. I have seen this as recently as last week in a disciplinary case, where there was a sale of two drinks, but they were 151 proof rum. The licensee was arguing, "I only sold two drinks." The person was intoxicated.

We feel it would be beneficial to limit the proof of alcoholic beverages that can be sold, to somewhere in the 120 range. That allows some of the products that are in the 114 range, which really may even be too much, to still be recognized.

But, to answer your question, because of this availability, nobody has been applying for the permits because it is being sold over the counter now. It is being distributed through normal distribution channels.

MR. FELDMAN: One final question. A recent Supreme Court decision of the United States Supreme Court gave greater authority to the states in the administration of the activities of Indian Reservations. I don't know whether you are familiar with that or not.

DIRECTOR VASSALLO: I have read the case. I am familiar with the problems.

MR. FELDMAN: Well, I was thinking of whether the ABC could review the activities of the military installations in New Jersey, and see if the decision gave greater opportunities, since they use New Jersey's highways in order to get to these reservations, for you to take authority -- I am talking now about the Agency -- to monitor their sales in order to make sure they are only for personnel who are on the military reservation, so that no one living in the immediate area can give an order to someone on the reservation, and have them buy it, of course, at substantially lower prices.

DIRECTOR VASSALLO: We are aware of that question, and it is of great concern to us. The analysis we have had from states where the Indian question was of prime import was that it will not affect the military question. The issue is different.

The issue in the Indian case was whether or not-- In the Indian case, the tribes themselves were licensing, and the holding was that the supremacy clause does not apply to them.

There is a holding in a Texas case at a military reservation, and Texas has the same concern, holding the opposite way. That is on appeal to the Supreme Court. There is doubt that they are going to grant certiorari, and the feeling is that the government and the Supreme Court will go along with the idea that the supremacy clause exempts the military reservations, although it did not exempt the Indian tribes. They don't equate the two, apparently.

It is something of concern to us. We don't know how to deal with it. Licensees in the areas of the military reservations are unquestionably being hurt. The question comes down to one of proof. If we can prove they are abusing it, we can then go to the Federal government and say, "Look, they have the privilege, but they can't buy for their friends, which is what is happening." Proving it, though, is a very difficult situation.

MR. FELDMAN: Just for the record, the State of New Jersey also loses because of the sales tax.

This is just a comment I would like to conclude with and not a question. At one time there was some enforcement proceeding worked by the ABC, against the use of the highways, and so the Air Force -- the Navy, rather than the Air Force -- flew in their alcoholic beverages into the reservations -- in Lakehurst -- because they couldn't use the highways. So, the thing is a little more complex than meets the eye.

ASSEMBLYMAN PATERO: Are there any more questions?

MR. JERLAT: I'd like to make a comment.

ASSEMBLYMAN PATERO: Mr. Jerlat.

MR. JERLAT: I have a few things I would like to comment on that were said. The first thing I would like to know is, as we go along with this Commission, we keep talking about consumers, and we

know that down through the years we have talked about consumers, and about the patrons -- or the general public. We always try to insert the general public. But, we also have lived with a word called temperance down through all of these years. I am sure you will find it is in the regulations, many times over. I wonder, are we going to disregard temperance? Because I think we have a two tier type of situation in trying to change regulations, or trying to do something about legislation and this whole system.

When we talk about temperance, we either have to wipe out temperance and say it is a wide open ball game, or we have to keep referring to the word temperance. Because, as far as the consumer is concerned, and this is my own opinion, I feel that-- And also, our organization has gone on record as asking for the lower-proof alcohol from the distillers. This has been done through resolution at a convention. We feel that if you are going to try and make alcoholic beverages available for the least amount of money, and at the same time talk about trying to moderate people's drinking, we are talking about two separate animals. I think we have to kind of decide which way we are going on this thing, whether we are going to make liquor cheap -- or cheaper than anyplace else in the United States of America if you buy it in the State of New Jersey -- or whether we are going to handle this sort of thing with a moderate type approach. That is a question that I personally have -- to find out just exactly where we are going with this thing.

Second, I feel that the Director's comments have been great. He has done a great job. A couple of things that I would like to make plain, though, are, we have the Home Rule concept, and I think we are pretty much in agreement that we would like to see Home Rule continue in the State of New Jersey. I think we would have a big job with Jack McCaffrey and the Mayor's Association, and everybody else, if we tried to change that.

But, I believe we talked about licensing before and where licensing should start. I think the idea -- which Mr. Napodano brought up before -- of possibly not renewing the license every year -- pay the annual fee, but renew it on a three-year basis or a five-year basis, or whatever -- is a good way to go. But, I do believe that all licensing

-- application for a license, transfers, and everything else -- should start at the municipal level.

I think the Director referred to a possible standard fee. The concept of a standard fee -- there is a certain thought behind it except for one thing, we have the economic situation in the State of New Jersey that is so different from one municipality to another, where in one municipality a license is a very lucrative license, it is worth a lot of money, and in another municipality is is worth zilch, all because of possibly an overabundance of licenses due to the economic situation and because of the location of the municipality and the license. I think these are things that we have to take into consideration.

MR. McCAFFREY: Bill, can I interrupt you?

MR. JERLAT: Sure.

MR. McCAFFREY: You are talking about all licenses at the municipal level. You are not including distillers and brewers, are you?

MR. JERLAT: No, we are talking about retail licenses.

MR. McCAFFREY: Okay. Fine.

MR. JERLAT: We also referred to the 20% per year increase. I think there are a lot of municipalities, and I think there is an abuse by the municipalities at the present time, as far as license fees are concerned. What the original intent of the license fee, to my knowledge, by the Legislature, was to co-administrate the cost -- not to put monies in the General Treasury to be used in any municipality. And, I find at the present time -- and we certainly have a lot of complaints about this -- municipalities, in trying to hold the line on their tax base, are raising license fees -- everything from the dog license to liquor licenses fees, certainly. Video game machines -- I think you have seen some of them going crazy with some of the license fees they come up with on them. It was more a move to try to put some money in the Treasury without going to the tax base.

Certainly, there would be more municipalities with much higher license fees at this time if they could take that 20% cap off. It is fortunate that it is there because raising the license fee by 20% in any particular municipality is fine for that one year, and maybe

fine for the second year, but after that it could get a little bit out of hand. I think there are a lot of towns, if they charge \$2,000 for a license fee -- which is the highest amount they can charge at the present time-- I think you would find licensees who would be tearing up their licenses and going totally out of business.

I think if we look at the figures, there is a great reduction in not only the number of D licenses, but also in the number of C licenses throughout the State of New Jersey in the last few years, all due to bankruptcies, all due to people just not renewing their licenses. It is not so much in the retirement area, because the retirement area, which has been working well over the last 15 years, has now come down to their not retiring that many as fast, they are just going out of business and not renewing licenses.

So, I think these are areas we should look at. Incidentally, there was one other thing. You are looking for input on the national level. We have a book that has every state in the Union, and it has everything that you can possibly look into in it. You need some pretty good brains to try and disseminate the whole thing, let me tell you that much. Because I have gone through it a dozen times, and, boy, it is a job. But, we will make it available to the Committee, if they can use it.

ASSEMBLYMAN PATERO: Are there any further questions?

MR. McCAFFREY: Mr. Chairman, I have heard Mr. Jerlat, on several occasions, mention the decline in the number of licenses. At one time he pointed out his own county, and the drop of C licenses in that one particular county where his place of business is. I am wondering if we can get this on a statewide basis. Is there any way we can get, from the Division of ABC, an annual listing -- say 1981 versus 1980 -- of the number of C's and D's, to see just how these bankruptcies are affecting the number of retail outlets in the State?

ASSEMBLYMAN PATERO: Do you have any record on that, Director?

DIRECTOR VASSALLO: Are you talking about the total number each year?

MR. McCAFFREY: Mr. Jerlat mentions that there are a number of licenses on the decline. I am also interested in the breakdown of

C and D -- package stores and taverns -- and also how many walk-around licenses -- pocket licenses -- are still in existence.

DIRECTOR VASSALLO: I don't think there are any statistical records on pocket licenses. We may start compiling them this year, because we noted new questions on the front page of the application. That was precisely for that reason. And, the photograph was for that reason also -- so we could identify pocket licenses.

But, there may be statistics on the other numbers floating around; I don't know. If there are, I will get them for you.

MR. BROMLEY: Director, is it possible that there was a publication from the Division, called "Deregulation Process?" The Attorney General was John Degnan and Joseph Lerner. It did list the licenses -- retail -- broken down into groups, December 7, 1979 - January 13, 1981.

DIRECTOR VASSALLO: That is the kind of information that may be around. I am sure that was obtained from Division sources. I'd rather go by other records.

MR. GARRITY: Mr. Chairman?

ASSEMBLYMAN PATERO: Mr. Garrity.

MR. GARRITY: Yes, I'd like to make a comment regarding the three tier system. I think it might be useful to go back to the Congressional debates and everything that took place at the time the FAA Act was being considered and voted on and put into law. The abuses that were brought about prior to prohibition is what they tried to avoid for the future, and apparently in the last fifty years they have done a pretty good job of seeing that we did not repeat those abuses. That was all built into the FAA Act. There was a great amount of debate. There is quite a history on it. It is available. There is a book that is quite extensive, that goes into the reasons why the three tier system was set up originally, and what the abuses were.

In fact, under the FAA Act today, it is illegal, on both the State and the Federal level, for there to be any inducement for the sale of alcoholic beverages between a wholesaler, a brewer, and a retailer. It has to also involve exclusion of someone else's products, so that no one can be excluded from an opportunity to sell his product.

There is another involvement there, there has to be an involvement with interstate commerce. But, this has been followed on the State level, where both inducement and exclusions are violations also.

One of the reasons at the time, as the Director pointed out, was that breweries, particularly, bought corners of places. They owned them. If they didn't own them, they had the owners of those places so indebted to them, in credit and other things, that they had to handle their product, to the exclusion of other products -- Brewery A would have one cornered and Brewery B would have another cornered, and this type of thing. It was found to produce a great many evils in the industry, where actually the people who were licensees really didn't own the license. The retailer didn't own it. He didn't have any control over it. He was controlled by an entity above him.

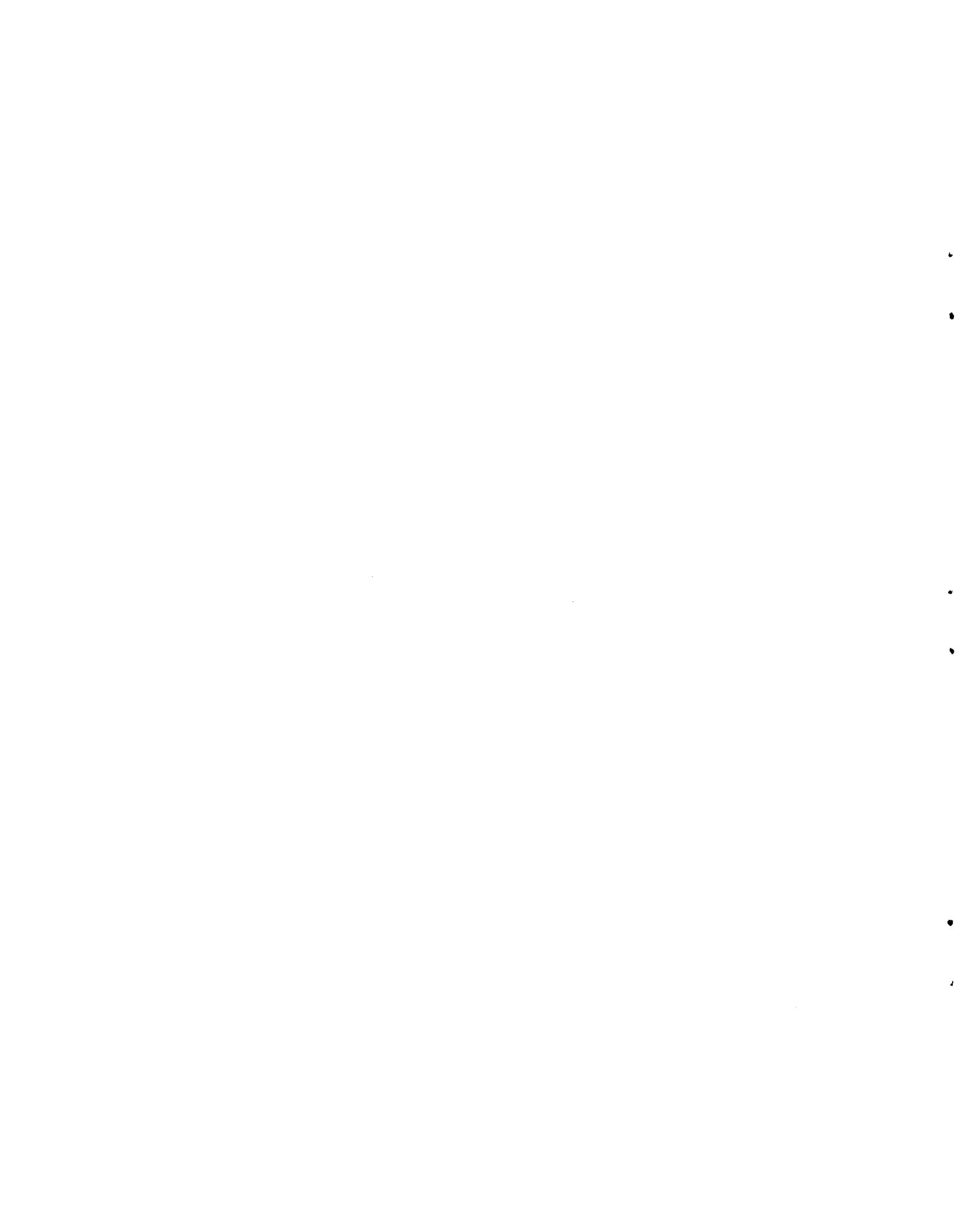
So, there were many, many things that went into the thinking and the debates and the discussions that might be of value here if we could in some way review them, or just summarize them, in fact.

I have tried, in a brief way, to give you an indication of just why it was done. I think it served its purpose, and I think this Committee should keep that in mind.

ASSEMBLYMAN PATERO: We are having that kind of problem with the gas industry right now, where they are opening their own gas stations and they are putting a lot of small businessmen out of business.

If there are no further questions, I will adjourn this meeting.

(HEARING CONCLUDED)



3744

New Jersey.Alcohol beverage
control study commission Public
meeting on Licensing.
July 21, 1983.

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