

PUBLIC MEETING
of
ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION SUBCOMMITTEE
on
TRADE PRACTICES

Held:
August 18, 1983
Administration Building
Hackensack, New Jersey

MEMBERS OF SUBCOMMITTEE PRESENT:

Assemblyman John W. Markert, Chairman
Mr. Norman Feldman, Vice Chairman
Mr. Thomas Farrell
Mr. Frank Tripucka
Mr. William Jerlat

ALSO PRESENT:

Director John F. Vassallo, Jr.
Mr. Anthony Napodano
Mr. John J. Garrity
Mr. Leo Bromley
Mr. John McCaffrey

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

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I N D E X

	<u>Page</u>
Barry Lefkowitz Garden State Restaurant Association	2 & 1x
Joseph P. Milza President and Owner Renault Winery	3 & 16x
Joseph Marinaccio Loch Arbour Liquors	11
Fred Guarnieri New Jersey Liquor Stores' Association ✓	19
Edward Mihal Belmont Beverage	29
Richard Knight Oceanport Wine and Liquors	41
Alan Stedman South Jersey Package Stores' Association ✓	45
Frank Pugliese Owner of Package Store Millville, New Jersey	48
George C. Maurer President Hudson/Bergen Package Stores' Association	49 & 44x
Tony Calvino President North Jersey Liquor Stores' Association ✓	55
William Jarvis Essex County Package Stores' Association	61
Steven Wohl Family-owned Retail Liqueore Store ✓ Newark, New Jersey	63
Samuel Wright Wright's Liquor Store ✓	69

INDEX (Continued)

Page

ALSO SUBMITTED:

Correspondence from Donato D'Onofrio 19x

Newspaper Advertisements submitted by
Leo Bromley 28x

mjz:p.1-40
dlt:p.41-73

ASSEMBLYMAN JOHN W. MARKERT (CHAIRMAN): Good morning everyone. This is a meeting of the Subcommittee of the Alcoholic Beverage Control Study Commission. This Subcommittee deals with trade practices concerning all license holders. Today's meeting will deal specifically with "C" and "D" licensees. We have extended leniency at prior meetings to go beyond the point of origin as to the call of the meeting. That leniency today, of course, will be extended.

I will ask all who will address this Committee to please state your name and, if it would be difficult for us at anytime to understand the correct spelling, we would appreciate it if you would spell your name also. If you are a licensee, or a license holder, we would appreciate it if you would give us that information. All proceedings here today will be taped, and that report will be put together for us to study in executive session. It will then be used for reporting to the Commission as a whole.

I will now take the opportunity to introduce those members of the Study Commission who are present today. I am Assemblyman John Markert; I represent Bergen County, District 39; and, I am an appointed member of the Study Commission. I will be chairing this portion of that Commission. To my left is the Vice Chairman, Mr. Norman Feldman, who is an alcoholic beverage wholesaler. To his left is Mr. Thomas Farrell, who deals with the casino industry, namely Harrah's. To Mr. Farrell's left is Mr. Anthony Napodano, who is with Shop Rite Liquors. To my extreme right is Mr. William Jerlat, who is with the New Jersey Licensed Beverage Association; Mr. Leo Bromley, who is with the New Jersey Liquor Stores Association; Mr. Frank Tripucka, who is a beer distributor; and, Mr. John J. Garrity, who represents the Beer Wholesalers' Association of New Jersey. To my immediate right is the Director of the Division of Alcoholic Beverage Control, Mr. John F. Vassallo.

At this time, I will give any one of the members of the Committee an opportunity to make an opening statement, if they so desire. Mr. Director, would you care to say anything at this point?

DIRECTOR VASSALLO: I don't think so, Assemblyman Markert. I think there are a lot of people who want to say something, so we can go right into that.

ASSEMBLYMAN MARKERT: Thank you. Before we start, I will indicate to the members present that we have received a communique from Mr. Donato D'Onofrio, with reference to the "C" license and its use as a main package store outlet. I will turn this over to our secretary, who will make copies and give them to everyone in their next packets. Along with this letter, there are photographs and, before leaving today, I would appreciate it if the Committee members would take the opportunity to at least glance at these, so in reading the correspondence you will have some idea of what the gentleman is speaking about. I would also appreciate if anyone has prepared testimony, if we could receive a copy of that. Please give it to the secretary, and we will then be able to distribute it to the rest of the Committee.

The first person to testify today will be Mr. Barry Lefkowitz, who is representing the Garden State Restaurant Association. Mr. Lefkowitz?

B A R R Y L E F K O W I T Z: Good morning, Mr. Chairman and members of the Committee. We thank you, once again, for allowing us the time and opportunity to come before you.

Basically, Mr. Chairman, out of deference to all the ladies and gentlemen in the audience, because of the pressing issue they have come here about in regard to trade practices relating to advertising, we have opted that we would rather provide each member of the Committee with a kit. Enclosed in this kit are certain materials relevant and pertinent to legislation on the issue about which we have come before you today. What we would like to do is pull back from testifying today, since there are so many people here who want to be able to talk about other issues, and provide the Committee an opportunity to study the material before you. Then at the next hearing, we would like to have an opportunity to testify after you have looked at this material.

In addition, we have on the way from the State of New Mexico, which is the last state to opt for a limited permit for beer and wine, the Parker Study, which is the basis for the legitimacy of why the State of New Mexico has altered its liquor licenses and its laws with regard to this issue. We feel the Parker Study would be most advantageous to the Committee for its purposes and its deliberation.

Since we do not have it with us -- the State Legislature is sending it to us from New Mexico -- when we receive it, which we believe will be by the end of this week, we will then submit it to the Committee for its perusal, so that in the time period before its next meeting it will be able to study that, as well as the material in the kit.

Therefore, we would just like to put into the record that we have the kits here for you for study purposes, as well as a copy of the legislation. At such time as the Committee meets again, when all of you have had an opportunity to peruse the materials, we would then like to testify before the Committee.

ASSEMBLYMAN MARKERT: Thank you very much, Mr. Lefkowitz, and thank you also for your consideration of the others who are here today. Is Mr. Milza here? (affirmative answer) Would you please step forward?

J O S E P H P. M I L Z A: Mr. Chairman and members of the Subcommittee: My name is Joseph Milza. I am President and owner of the Renault Winery. Our winery has been in existence since 1864 in New Jersey. At present, we are talking about an industry that has been a little bit forgotten about in the past. At one time, we had twenty-eight wineries in the State of New Jersey, all located in South Jersey. Today, there are seven. We, ourselves, were the leading domestic champagne producer in the country up until the late '50's -- that is a little bit of history right now.

At the present time, the industry finds itself in a little bit of a precarious position. Over the years, the market share has diminished considerably. In 1978, New Jersey was fourth in the production of wine; now, in 1983, we are ninth in the production of wine in the United States. We employ a decent amount of people, but we are watching an industry just fall apart. We feel there are certain things that perhaps could be done, an awareness we feel we are putting across right now, but, basically, if we are expected to survive, there are some new positions and new strategies that might be helpful to us. As a matter of fact, on December 17, 1982, Governor Thomas Kean proclaimed it was important for the State to recognize the New Jersey wine industry, contribute to a greater public awareness of it and provide assistance to the industry's growth.

We have decided at Renault that, rather than a nationwide winery, we would perhaps better operate as a tourist operation in the manufacture of wine, and we have done that very, very well. We are pretty well known in our area. I don't know about here in Bergen County, but down where we are, we are pretty well known. The point is, we have between 80,000 and 100,000 people going through our facilities each year, tasting New Jersey wines, from grapes grown here in New Jersey, and we are very proud of this. However, there are six other wineries. We are the largest and the oldest winery in New Jersey, but there are six others. I am concerned about them, but I am concerned about our interests, too.

We would like you to consider certain recommendations with tied house statute 33:1-43, "interest in brewery, distillery and retailing, prohibited." We recognize the statute was set up at one time to protect the public from large interests being able to control production and distribution, and perhaps creating monopolies, or something of that nature. However, we feel an amendment, which would allow a New Jersey winery to be able to seek, purchase or have an interest in a plenary retail consumption license, Class "C," to be conducted as a bona fide restaurant, would open various avenues of marketing opportunities to the wine industry.

This is something that is going on in California, and it is supporting the wine industry there tremendously, in that they are putting very quaint, interesting restaurants within the wineries and allowing people to go right to them. It is quite helpful. We put a beautiful restaurant in our winery; it opened five or six weeks ago. We are very proud of it; it is located on-site, but we are limited to what we can offer any tourists coming into the area. An amendment like this would allow me to purchase, perhaps, or have an interest in a plenary retail consumption license for use at the restaurant located on-site at the winery. It would offer a full-service facility, and an opportunity to expose the patrons to New Jersey products, when they visit the establishment.

Basically, that is all, sir. We have this written up, and I hope there will be some discussion on it of some kind.

ASSEMBLYMAN MARKERT: Mr. Milza, your statements today, and the paper which you have provided to us, of course, are very important, and will enable us to follow your thoughts, your testimony and your request. There is another subcommittee of this Commission which deals with licensing. To be honest with you, since we are dealing mainly with trade practices, the licensing aspect should be discussed, and should be studied by the subcommittee dealing solely with licensing. So, with your permission, I would like to have the secretary prepare copies of your statement, and submit them to the members of the Licensing Subcommittee, along with some other facts Mr. Lefkowitz has brought to us which also deal with licensing, for their study and review. If you will leave us your address, I will see that the Chairman of the Licensing Subcommittee's name and address are referred to you so you may contact him. I have your name, so please just leave your address.

MR. MILZA: Thank you very much, sir; thank you, gentlemen.

ASSEMBLYMAN MARKERT: Is there anyone on the Committee who would like to address any questions to Mr. Milza?

MR. FELDMAN: Mr. Milza -- if I may, Mr. Chairman -- just for referring to the Licensing Subcommittee, is it your recommendation that the "C" license be able to sell all alcoholic beverages, including those that you do not produce?

MR. MILZA: Yes, sir. In other words, as it reads right now, a winery owner, a brewery owner, or a distributor may not have an interest, either directly or indirectly, in a license, or in a retail license. My interest is--

MR. FELDMAN: To have a full license?

MR. MILZA: Hold it, let me just point this out too, the most important part of it. If a New Jersey winery owner -- I am trying to be very specific about this -- could have an interest in a "C" license, and if it were even restricted to the site of the winery, so that interests outside of the winery were not just coming into the area, buying small wineries and taking advantage of these practices, I would be open to that too.

MR. FELDMAN: Mr. Chairman, I have a second question. Does this license permit off-premise consumption, that is, a full "C" license?

MR. MILZA: Yes, a full "C" license.

MR. FELDMAN: Would you then also want the privilege of selling for off-premise consumption, products other than your wines, or all products?

MR. MILZA: No, sir, we are not interested in that. We are interested in it to be used only in a restaurant -- on premise -- except for the fact that, of course, our wines are off premise too, our own wines.

MR. FELDMAN: Thank you very much.

ASSEMBLYMAN MARKERT: Thank you, Mr. Milza. Are there any further questions?

MR. JERLAT: Excuse me, Mr. Chairman. Mr. Milza, I would just like to ask one question. Do you feel there would be an increase in the consumption of alcoholic beverages in that particular area? In other words, if you plan on operating a restaurant serving alcoholic beverages, a full "C" license, do you feel that would be bringing new people into the area, or whether that would be just spreading, let's say, the "piece of pie" around a little more?

MR. MILZA: My point, and the interest I have, is to help the wine industry for what it is right now, the New Jersey wine industry. My point there is, that this would allow the seven wineries, and now the new farm wineries, to perhaps do what I have done, add a restaurant, expand their facility -- let's face it, tourism is a very, very important product in this State. If we can offer more to the tourists, if I can offer more in my restaurant, that is, provide a further service, I think it will help us put our whole idea across. Besides that, it introduces more people to more New Jersey wines. We have won twenty-four separate awards for our wines, between two wineries in New Jersey, and I think it has been kept quiet. I think we would like people to understand what we are trying to do.

So, no, I do not think it would introduce any more people to consuming alcoholic beverages. Perhaps, it would interest them in a different way, in our particular business.

MR. JERLAT: I just wonder, how would the consumption of alcoholic beverages, beer, wine or hard liquor, being served in your restaurant at the winery, help promote the wines of New Jersey? That is what I'm wondering.

MR. MILZA: Well, first of all, we would use only our wines. We use only our wines right now. We would again use just our wines, but it would round out the facility, in my opinion. I think we can conduct ourselves as a rounded restaurant more that way, than we can in our present manner.

MR. JERLAT: All right, thank you.

MR. MILZA: Thank you, sir.

DIRECTOR VASSALLO: Mr. Chairman?

ASSEMBLYMAN MARKERT: Yes, Mr. Vassallo.

DIRECTOR VASSALLO: Mr. Milza, right now you serve wine in your restaurant, because you have, as a Class "A" licensee, a plenary winery, the privilege of serving for on-premises consumption alcoholic beverages manufactured on the premises.

MR. MILZA: That's right, sir.

DIRECTOR VASSALLO: How would -- to follow up on Mr. Jerlat's question -- consuming other alcoholic beverages assist the New Jersey wineries?

MR. MILZA: Well, I certainly think it would make it more available for people to have a complete rounded restaurant there. I don't know that I'm getting everyone I should get with just what I am offering right now at the restaurant, nor are any of the other six wineries. I know they are very much interested in the success I have had so far with our restaurant, and are interested in the other wineries doing about the same thing. I believe we are hampered by -- perhaps there are other restaurants in the area -- not offering a rounded product.

DIRECTOR VASSALLO: Is this really helping the winery, or is it helping you to run a successful restaurant?

MR. MILZA: There is no question about it; it is helping me to run a successful restaurant, which is helping our winery, and which, I think, is continuing to employ and help the industry. I would encourage the rest of my colleagues in the wine industry to continue. I think it's great; I think it's good for them, and it opens new horizons for them.

DIRECTOR VASSALLO: How much grape from New Jersey do you use, percentagewise?

MR. MILZA: New Jersey grapes? Our winery uses 95% New Jersey grapes. In my tenure there, we have only used 95% for the past two years. We used 100% prior to that.

DIRECTOR VASSALLO: What is your annual production in gallons?

MR. MILZA: In gallons -- sales, or production out of a field?

DIRECTOR VASSALLO: Your production of wine.

MR. MILZA: We will take out of the fields anywhere from 88,000 to 221,000 gallons of grapes, to produce wines that will sell in our winery of approximately just over 110,000 to 115,000 gallons.

DIRECTOR VASSALLO: What do you do with the rest of it?

MR. MILZA: We put it in storage. We are presently selling what we picked in 1979, 1980 or 1981.

DIRECTOR VASSALLO: Do you have any problem selling your entire production of wine?

MR. MILZA: Oh, no, no.

DIRECTOR VASSALLO: Whether on your premises, or through wholesaling it to retailers?

MR. MILZA: With the present production, no.

DIRECTOR VASSALLO: Do you intend to increase production?

MR. MILZA: Yes.

DIRECTOR VASSALLO: Are there more New Jersey grapes available?

MR. MILZA: There are more grapes available, yes, there are.

DIRECTOR VASSALLO: How much more?

MR. MILZA: Not a whole lot in New Jersey, really.

DIRECTOR VASSALLO: So, you would have to bring grapes in to increase production?

MR. MILZA: We would have to bring grapes in from other states, or grow them ourselves.

DIRECTOR VASSALLO: If you were to be given such a privilege as this, an exception to the tied house prohibitions, and be allowed to also operate a plenary consumption license in addition to the consumption privileges you have on your Class "A" license, I don't see how we could restrict it to wineries. We would also have to give it to

New Jersey breweries, New Jersey blenders and rectifiers, and any other Class "A" licensees.

MR. MILZA: Well, that is one of the reasons why I said the wine industry has been falling behind. We are looking for some help somewhere along the line. There is another winery ready to go out of business of the seven existing now.

DIRECTOR VASSALLO: Which one is that?

MR. MILZA: I don't think it would be a good idea to say, but it's Jake.

DIRECTOR VASSALLO: I think everyone knows Jake, and if anyone visits the premises there, he just has a very small operation, and has done nothing to increase it.

MR. MILZA: I know, but it might be that something like this would offer him the opportunity of turning it over, perhaps, to someone who could do something with it. Jake is an old man right now, and he is not interested in developing his winery. Maybe some of the other winery owners are not interested either. I do know that there are some like myself who are very interested in the industry, and who are pressing the industry to do more -- grow more grapes, make more wine and do their New Jersey thing, and that is what I am concerned about. I think this would open a new avenue, but perhaps too much further. This would even allow the winery license holder to perhaps get involved in other licenses, restaurant licenses, where New Jersey wines can best be presented to the public. I see nothing wrong with that; I don't know, unless there is something wrong I don't see.

DIRECTOR VASSALLO: We won't go into the legal problems here.

ASSEMBLYMAN MARKERT: I believe Mr. Bromley has a question.

MR. BROMLEY: Mr. Milza, there will be some testimony later on about some of the troubles and difficulties suffered by people who hold current consumption and distribution licenses. Therefore, I want to ask if the additional business for your restaurant, which may benefit your restaurant, will not come from existing consumption licensees who may be in trouble at this time?

MR. MILZA: I doubt that very, very much. There are businesses all over the State, and I don't know that--

MR. BROMLEY: Not near your restaurant.

MR. MILZA: Well, there are wineries all over South Jersey. If, in essence, the Winery Association agreed, like I do, that this was a sensible marketing tool and to get into it, I would venture to say, "Yes, there are restaurants in those areas, and in our American way of operating a business, maybe there would be competition." I don't know that competition is so bad.

MR. BROMLEY: Well, I have to question you further then, since you raised the issue of competition, because you would be buying it wholesale, or using it wholesale, and you would be competing with retailers.

MR. MILZA: I still can't sell it for any less than they can sell it for.

MR. BROMLEY: There is no requirement on price in a restaurant as to what you charge. What I'm saying, since you raised the question of fairness, is that you offer your product to us for us to exhibit in our stores at our costs, and then you sell it retail at a basic winery cost, having us completely at a competitive disadvantage.

MR. MILZA: No, no, I'm sorry. Unless I misunderstand--

ASSEMBLYMAN MARKERT: If I may interject at this time, Mr. Milza and Mr. Bromley, I understand the line of questioning, but it is getting beyond the point, I think truthfully, of what this Committee should be sitting on. Although I said that I would extend leniency, I think we have really gotten to a point where I would like to see if we could continue this type of questioning and discussion under the Licensing Subcommittee, where we would be able to address more specifically those areas you are addressing. So, Mr. Milza, I thank you for being with us this morning, and I will see to it that the Subcommittee with reference to licensing gets a copy of your report. You will receive their address in the mail. Thank you very much.

At this time, I want to say we are going to try to keep the testimony down to within ten or fifteen minutes per witness, including questioning, so we will have an opportunity to allow everyone to speak. We, of course, can always come around for the second time, if necessary. If there are any newcomers who have come in, if you would like to testify before this Committee, please give us your name and we will add it to the bottom of the list.

The next witness will be a Mr. Joseph Marinaccio. Would you like to step forward, please? You're from Loch Arbour Liquors? (affirmative response) Would you also give us your address, please?

J O S E P H M A R I N A C C I O: I am Joseph Marinaccio, from 541 Main Street, Loch Arbour. What I would like to say is that I have been in the retail package business for eight years. My business was very healthy for six and a half years. I had healthy growth and good progress, until eighteen months ago. A Buy Rite was formed less than two blocks from my store, and in just the past twelve months I have suffered a \$7,500 loss in gross profits. There is a steady deterioration that I can't seem to stop. The intensity of the competition is just too strong for me to overcome. I have exhausted all of the possible avenues I can think of to try to stop the deterioration, and nothing seems to be working. I am left in a position now where I have no other alternatives except to consider selling my business.

I don't know what else to say, except that I feel the present system we are working under is very unfair to the smaller retailers. I do not have the capital, nor the space, to compete with the larger stores. I don't know what to do.

ASSEMBLYMAN MARKERT: Maybe I can ask a few questions, and we can bring out a little bit more about the problems you've had. In your eyes, what do you feel has been the most detrimental thing about the fact that this, you say, Buy Rite store has opened? What has Buy Rite done, or what do you feel they are doing that is putting you in the position of losing business to the degree you have?

MR. MARINACCIO: Well, I feel the advertising is the most devastating part. For me to advertise competitively with them is just out of my financial capacity. So, the advertising is the most devastating part. Another thing is their buying power. I don't have the space to store, nor the capital to buy as much inventory as is needed to compete with them effectively.

ASSEMBLYMAN MARKERT: Do you feel that if you were to have the same type of buying power they have, regardless of space needed, or whatever, you would then be put in a fairer position of competition?

MR. MARINACCIO: Would you please repeat that?

ASSEMBLYMAN MARKERT: If you had more equal buying power, however it may come about -- if you had a more equal buying power, would that put you in a better position financially to cope with that type of competition?

MR. MARINACCIO: Yes.

ASSEMBLYMAN MARKERT: With reference to -- you mentioned advertising -- exactly what in reference to advertising do you feel is detrimental to your particular type of operation?

MR. MARINACCIO: Their price cutting.

ASSEMBLYMAN MARKERT: Their price cutting? Are you talking about price cutting within their advertising, or is it the quantity of advertising?

MR. MARINACCIO: Well, I would say both, a little of both. It's a lot of advertising we're talking about; it's very powerful, and it's very competitive.

ASSEMBLYMAN MARKERT: Mr. Feldman, do you have any questions at this time?

MR. FELDMAN: No, Mr. Chairman.

ASSEMBLYMAN MARKERT: Mr. Napodano?

MR. NAPODANO: Yes, Mr. Chairman. Mr. Marinaccio, are you a member of the cooperative buying group?

MR. MARINACCIO: No.

MR. NAPODANO: Have you at any time been a member of a cooperative buying group?

MR. MARINACCIO: No.

MR. NAPODANO: Have you ever looked into joining a cooperative buying group?

MR. MARINACCIO: Yes.

MR. NAPODANO: What cooperative group?

MR. MARINACCIO: Price King, and Spirits Unlimited.

MR. NAPODANO: Can you tell us, did you decide not to join a group?

MR. MARINACCIO: Well, the final decision was mine, but I was more or less advised not to, based on the fact that my current volume of sales was very low, and my store size is very small. I was led to believe that my store is not really geared for their type of

operations, and that it would be very difficult for me to use their type of operations. This is the impression I got.

MR. NAPODANO: So, when you say the decision was not yours, are you saying--

MR. MARINACCIO: (interrupting) The decision was mine; the final decision was mine, but I was discouraged in joining them for the reasons I mentioned.

MR. NAPODANO: By the cooperative groups themselves -- is that what you're saying?

MR. MARINACCIO: Yes.

MR. NAPODANO: Can you tell me the selling square footage of your store, the selling space?

MR. MARINACCIO: Approximately 1,400 square feet.

MR. NAPODANO: And, can you approximate for me the selling square footage of the Buy Rite store?

MR. MARINACCIO: I don't know; I don't go in those stores.

MR. NAPODANO: Is it considerably larger, considerably smaller, can you guesstimate it for me? Is it much bigger?

MR. MARINACCIO: I would guess he is slightly bigger.

MR. NAPODANO: Just slightly bigger?

MR. MARINACCIO: Yes, he doesn't have that big a store.

MR. NAPODANO: How long has that Buy Rite been open, eighteen months?

MR. MARINACCIO: Eighteen months, yes.

MR. NAPODANO: And, in the course of the last eighteen months, did I understand you to say your sales volume has dropped \$7,500?

MR. MARINACCIO: My gross profit.

MR. NAPODANO: What effect has that had on your sales volume?

MR. MARINACCIO: Well, my sales are around the same; my gross sales figures aren't that off, but that is due to a lot of lower profit margin items I've been running to try to compete. Gross profit figures are no figures to go by -- excuse me, I mean gross sales figures are no figures to base anything on.

MR. NAPODANO: Well, when you say your gross profit margin dropped by \$7,500, it doesn't really mean anything to me, unless we

relate it to what your gross margin profit was prior thereto and what it is now with respect to that \$7,500. When we are talking about sales, and what effect the Buy Rite has had on your sales, you're telling me that your sales are about level prior to the Buy Rite opening and today. So, you're doing the same sales, so what you have obviously done to compete with the Buy Rite, is to reduce your gross margin.

MR. MARINACCIO: That is correct.

MR. NAPODANO: Okay, but the \$7,500 reduction doesn't mean anything with respect to what it was and what it is now. Do you understand what I'm saying?

MR. MARINACCIO: No.

MR. NAPODANO: It is very possible that you may have been in a locality where you had no competition, and, therefore, were able perhaps to enjoy a very high profit margin. I do not know if that is the case.

MR. MARINACCIO: No.

MR. NAPODANO: That's why I'm asking you.

MR. MARINACCIO: No, I don't think that is the case.

MR. NAPODANO: Who were your competitors before the Buy Rite moved in?

MR. MARINACCIO: There were two other small stores within a three-block range.

MR. NAPODANO: Are they still in business?

MR. MARINACCIO: One of them is the Buy Rite now.

MR. NAPODANO: Oh, I see. The present owner of the Buy Rite store was an independent before he joined the Buy Rite -- it's the same owner though?

MR. MARINACCIO: Yes.

MR. NAPODANO: And, both of these other stores were within -- did you say a three-block area?

MR. MARINACCIO: Yes.

MR. NAPODANO: I have no further questions; thank you.

ASSEMBLYMAN MARKERT: We have been privileged to have join us another member of the Commission. I will introduce him now, and also give him an opportunity to address us. This is Mr. John McCaffrey, who

is representing the New Jersey Conference of Mayors, and Anheuser Busch. Mr. McCaffrey?

MR. McCAFFREY: Joe, hasn't the Buy Rite outfit changed hands over the last eighteen months?

MR. MARINACCIO: Yes.

MR. McCAFFREY: What do you suppose was the reason for that?

MR. MARINACCIO: Excuse me?

MR. McCAFFREY: What was the reason for that changeover -- the reason it changed hands, the reason the ownership of that title changed hands?

MR. MARINACCIO: Well, I do not know for sure; I can only guess about how that happened. My guess would be that the past owner wanted to sell, and he used the Buy Rite image to help sell his store. That is in my estimation; I don't know for sure.

MR. McCAFFREY: Then it is not true that the changeover was due to the fact that he was not making a profit -- a substantial enough profit in spite of the cut prices?

MR. MARINACCIO: In his store?

MR. McCAFFREY: That's right, in his store.

MR. MARINACCIO: Well, that I don't know.

MR. JERLAT: Mr. Chairman?

ASSEMBLYMAN MARKERT: Yes, Mr. Jerlat.

MR. JERLAT: Joe -- do you mind if I call you Joe?

MR. MARINACCIO: Not at all.

MR. JERLAT: Can you tell me how many licenses there are in your municipality at the present time, "C's" and "D's"?

MR. MARINACCIO: In my municipality there is one "C" license and one "D" license.

MR. JERLAT: There is only one "C" license in the township?

MR. MARINACCIO: Yes.

MR. JERLAT: And, one "D" license?

MR. MARINACCIO: Yes.

MR. JERLAT: What is the population of the town, do you know?

MR. MARINACCIO: About 350 people.

MR. JERLAT: Three hundred and fifty?

MR. MARINACCIO: Yes.

MR. JERLAT: Thank you.

ASSEMBLYMAN MARKERT: Is there anyone else? Mr. Bromley?

MR. BROMLEY: Joe -- I'd like to call you Joe, and I'm Leo -- Joe, about the advertising which you said hurt you, was it the cost of the advertising, was it your inability to pay for advertising, or was it the fact of advertising a product at little or no markup, which compelled you to sell at that level? In other words, did the Buy Rite ad make your market? Did your customers come in and tell you they could get the product up the street at a certain price and that you would have to match it?

MR. MARINACCIO: Yes.

MR. BROMLEY: Is that what took place?

MR. MARINACCIO: Yes, and it is still taking place.

MR. BROMLEY: If you offered your store for sale, is it possible that you may not sell it?

MR. MARINACCIO: Yes.

MR. BROMLEY: Would that result in less service to the people in your municipality, since you say there are only two licenses there?

MR. MARINACCIO: Yes. My municipality has only one distribution license, because of the low population. So, if my license was eliminated, they would be forced to go to the next town to buy their package goods.

MR. BROMLEY: Then, it would be your statement that if this continues and you are not able to continue in business, that you will either offer your store for sale, or be forced to close it down?

MR. MARINACCIO: That's right.

MR. BROMLEY: Thank you.

MR. GARRITY: Mr. Chairman?

ASSEMBLYMAN MARKERT: Yes, Mr. Garrity.

MR. GARRITY: Mr. Marinaccio, have you considered trying to join the Buy Rite cooperative, or have you made any approaches in that direction?

MR. MARINACCIO: The Buy Rite?

MR. GARRITY: Yes.

MR. MARINACCIO: No.

MR. GARRITY: Why not?

MR. MARINACCIO: Well, I feel we are a little too close in distance to have two of the same franchises.

MR. GARRITY: Wouldn't it put you on an equal level with your former competitor? I understand you were probably on an equal level with your competitors prior to Buy Rite coming in.

MR. MARINACCIO: That is correct.

MR. GARRITY: Couldn't you equalize that by maybe approaching Buy Rite and trying to join them?

MR. MARINACCIO: Well, it would equalize it, yes, but I don't see why they would do it when we are only two blocks apart.

MR. GARRITY: I am trying to elicit from you a response about whether they would do it or not.

MR. MARINACCIO: I don't know.

MR. GARRITY: You were discouraged in a way by the other cooperatives from joining?

MR. MARINACCIO: Yes.

MR. GARRITY: Have you any knowledge of whether cooperatives sort of space out their members?

MR. MARINACCIO: Yes.

MR. GARRITY: You feel they do? In other words, they wouldn't want another cooperative near you, or another Buy Rite near you, and you probably felt that having two together wouldn't be the best situation either?

MR. MARINACCIO: To my knowledge, they try to keep a radius between their stores.

MR. GARRITY: All right, thank you.

MR. NAPODANO: Mr. Chairman?

ASSEMBLYMAN MARKERT: Yes, Mr. Napodano.

MR. NAPODANO: I have one more question.

ASSEMBLYMAN MARKERT: Yes, certainly.

MR. NAPODANO: I guess I'll continue the practice of calling you Joe, if it is all right.

MR. MARINACCIO: Sure.

MR. NAPODANO: Are you familiar with whether or not Buy Rite is a buying cooperative, or an advertising cooperative -- do you know?

MR. MARINACCIO: As far as I know, it is just an advertising cooperative.

MR. NAPODANO: It's just an advertising cooperative?

MR. MARINACCIO: Yes.

MR. NAPODANO: So, when you were asked before whether or not your buying power could equalize that of Buy Rite, I presume that at the present time that Buy Rite store and you both have the same buying power, do you not?

MR. MARINACCIO: Well, possibly.

MR. NAPODANO: Thank you; I have no further questions.

MR. BROMLEY: Mr. Chairman?

ASSEMBLYMAN MARKERT: Yes, Mr. Bromley.

MR. BROMLEY: May I ask the witness another question?

ASSEMBLYMAN MARKERT: Yes.

MR. BROMLEY: His previous testimony indicated his buying power was affected by his space and his capital, and that he had neither to equal the Buy Rite. If that is so, then even if you joined Buy Rite or any other organization, you would not have the space or capital to compete with that store. Is that not so?

MR. MARINACCIO: Yes, that is true.

MR. BROMLEY: Thank you.

ASSEMBLYMAN MARKERT: I believe that is the indication we got, yes.

MR. JERLAT: May I ask for a point of information? Possibly no one on this Committee may have it, but I think it would be a good idea if we got it. Is there a restriction, as far as an organization such as Buy Rite -- is there any type of restriction regarding the radius of miles, or radius of area, that one store must be located from another?

ASSEMBLYMAN MARKERT: That's a good question, Mr. Jerlat. Maybe we can search out the answer on that.

MR. JERLAT: I think it would be a good idea if we got that information.

ASSEMBLYMAN MARKERT: Director, do you by chance know whether or not there is a restriction under Buy Rite -- whether they would restrict stores within a certain radius?

DIRECTOR VASSALLO: I think in practice they do.

ASSEMBLYMAN MARKERT: This, of course, would be up to the company itself really.

DIRECTOR VASSALLO: I guess it would.

ASSEMBLYMAN MARKERT: Thank you very much, Joe.

MR. FELDMAN: May I ask one question, Mr. Chairman?

ASSEMBLYMAN MARKERT: Oh, I'm sorry, Mr. Feldman.

MR. FELDMAN: I passed before, but with reference to Mr. Bromley's question about servicing the community, do you make any deliveries to local consumers who are customers?

MR. MARINACCIO: Yes, I do.

MR. FELDMAN: So, therefore, if you went out of business, there would be no local delivery, no local service of that sort?

MR. MARINACCIO: Not in our town, no.

MR. FELDMAN: Thank you.

ASSEMBLYMAN MARKERT: Thank you very much.

MR. MARINACCIO: Thank you.

ASSEMBLYMAN MARKERT: The next witness will be Mr. Richard Knight.

MR. KNIGHT: Yes. Mr. Chairman, I would like to defer to Mr. Fred Guarnieri.

ASSEMBLYMAN MARKERT: All right, fine.

F R E D G U A R N I E R I: Rather than have the retailers testify piecemeal, I would like to make a statement for the New Jersey Liquor Stores' Association.

Assemblyman Markert, fellow licensees, ladies and gentlemen: My name is Fred Guarnieri. I am the Executive Vice President of the New Jersey Liquor Stores' Association, and a package store owner. I am here today representing our Association.

Gentlemen, first I would like to make an observation which is clear to all licensees, but not apparent to the Legislature. We are confused by the numerous conflicting, contradictory, and often schizophrenic actions of our regulators and the Legislature in the last few years.

We are regulated by legislative acts, specifically Title 33, which calls upon the Director of the ABC to supervise the sales of alcoholic beverages in such a manner as to promote temperance. The Supreme Court has confirmed his powers to maintain a temperate and orderly market.

The marketplace now demonstrates the failure of past regulators to comply with the legislative intent of Title 33 to promote a temperate and orderly market.

Our elected officials, even back then, saw the need to regulate the sale, the distribution, the promotion, the consumption, and the advertisement of alcoholic beverages. They saw the dangers inherent with alcoholic beverages. They also realized that temperate use was not harmful to New Jersey's citizens. Today, our Assembly and Senate have addressed the dangers of alcohol abuse with many legislative acts, clearly supporting the original legislative intent of a temperate, orderly market, namely, the increased drinking age, the proposed stiffer penalties for drunk driving and the proposed increase in alcoholic beverage taxes to fund alcoholic rehabilitation centers. The public has voiced its concerns, namely, the actions of MADD (Mothers Against Drunk Drivers), the P.T.A.'s, the police chiefs, the A.A., and many others, but yet our regulators, past and present, have failed to heed these many voices for moderation.

We intend to show the marketplace today, under current regulations, has violated the original legislative intent. It has fostered a destabilized market, it has promoted the inducement to greater consumption by predatory prices, it has allowed predatory advertising, it has allowed the destruction of many small retailers, and it is continuing to allow the obvious contradiction that this intemperate marketplace has produced.

We feel the following subjects should be addressed by this Subcommittee, and should be presented to the Commission. First, we would like to see the definition of cost reflect the true cost of selling a product as a means of stabilizing the marketplace and reducing the opportunity for predatory pricing. It seems discriminatory that the regulations prohibit predatory pricing from the distributors and the manufacturers, but fails to address this in the retail segment of the trade. We believe that the true cost at which this regulated, controlled substance should be sold is the cost of the product, plus the fixed costs of doing business. Our fellow retailers feel this alone would go a long way to reestablishing the original legislative intent.

Second, we would like to address the practice of price advertising, especially predatory price advertising. Price advertising is for the inducement to the public to purchase alcoholic beverages.

This inducement can only lead to increased consumption. Price advertising has only benefited those retailers engaged in cutthroat pricing. It has been a windfall to the newspapers, and has accelerated the destabilization of the marketplace. It has violated every intent of the legislative mandate, past and present. How can you glorify the promotion of alcoholic beverages, and decry the inherent dangers at the same time?

These two points are keys to the reestablishment of a temperate, orderly market, and to the resolution of most of our current retail problems. We would bring to your attention some of the other trade practices detrimental to the retail trade:

1. Alcoholic beverages available at Federal bases;
2. Credit regulation as discriminatory to the retail trade;
3. The wholesalers' two-week closing annually as harmful to all licensees, the licensees relying on the seasonal business, the casino licensees who lack sufficient licensed space to stock enough products to serve the public needs, and the inner city licensees, who oftentimes cannot get insurance for additional products, even if they had the additional licensed space;
4. The limitation of Dram Shop liability because of the unaffordable cost; and,
5. False identification. We support increased penalties to those perpetrators inducing illegal sales to the underaged public.

We would like to go on record supporting the Co-op regulations as a beneficial tool to the retail trade. We would support the concept of multiple deliveries for Co-op purchases.

We would like to voice our total opposition to any extension of the licensing privilege. We are pleased to point out that the current licensing laws have helped to maintain strict control of alcoholic beverage distribution. We feel it is important to note that our businesses are dependent on our strict compliance with ABC laws and regulations. The extension of licenses would jeopardize this strict control, as the Director has testified.

I have additional retailers to testify to the economic hardships -- one of whom you heard recently -- the market has brought about, and other retailers to elaborate on the points raised here.

We ask the Subcommittee to recommend to the Commission the appropriate steps necessary to solve these apparent contradictions of legislative intent and regulatory practices.

I thank you very much for your consideration, and I would be happy to answer any questions you may have. I would like to add just one other comment. When I got home last night, I picked up my weekly Newsweek, and on the cover it said, "Drugs on Job." In reading the article, it says, "Alcohol is still the most abused drug, and its impact on industry cannot be minimized." They are referring to the harm of drugs on the job.

ASSEMBLYMAN MARKERT: Thank you, Mr. Guarnieri. I think your paper is quite complete. I have no questions with reference to the statements you made here. No doubt those who come after you and report the types of hardships they are involved in in their own businesses may, at that time, give me some questions. However, please let me offer the rest of the Committee the opportunity to address you on anything that has been presented to us. Mr. McCaffrey?

MR. McCAFFREY: Fred, on Page 3, Item 1, you say, "One of the trade practices detrimental to the retail trade is alcoholic beverages available at Federal bases." Now, how wide a brush are you using with respect to those terms? Are you including the foreign spots that are not available to outsiders? Is that your gripe here?

MR. GUARN No, we are referring to the Federal bases, such as the air bases, the naval stations, Fort Dix particularly in the southern region, where alcoholic beverages have no State excise tax and have no Federal excise tax, and the consumer who has retired from the service has access to this alcohol, which is oftentimes sold at a much lower price than even what the deregulated market makes available.

MR. McCAFFREY: But, are you complaining about the on-premise consumption at these bases?

MR. GUARNIERI: No, we are not complaining about the on-premise consumption; it is strictly the off-premise consumption we are concerned with.

MR. McCAFFREY: All right, thank you.

ASSEMBLYMAN MARKERT: If there are no other questions, I thank you very much.

MR. NAPODANO: I have one question, Mr. Chairman, I'm sorry.

ASSEMBLYMAN MARKERT: Go right ahead.

MR. GUARNIERI: I didn't think you'd let me go, Tony.

MR. NAPODANO: I certainly will let you go. (laughter) I read your paper as you were speaking. There is one statement you have in here that I am wondering if you have any backup study to substantiate your position that price advertising is an inducement that leads to increased consumption. Do you have any study at all that would substantiate that, other than mere speculation?

MR. GUARNIER: I have no comparable data on it. The distilleries have oftentimes shown that the sale of a larger size will lend the consumer to a quicker consumption of that product, be it the availability of it, as opposed to a seven-fifty and, as a retailer, I can only say from experience that we have seen it within the store, both on distilled spirits and wines, that the product that is purchased in a fifth, the consumer will come back and buy a fifth at his regular time, but the consumer who buys a liter will consume it in the same period. It is only the availability of the product in the home that has, I think, a tendency to increase the consumption. If it is not there, then they do not have it. It's like the person who comes in and gets a six-pack. If he buys two six-packs, he'll be back the next night for two six-packs. If he buys one six-pack and consumes the one six-pack, he will stay home and will not go out. This is pretty much a feel, as a retailer for seventeen years, that I'm reporting on. I have no data to back up that statement.

MR. NAPODANO: Okay. I do not believe you're saying -- unless you are -- that there is a correlation between the size of the product and price advertising. Are you saying that, because I asked you the question, and you went on to explain, which I do not question, that the size of a product may increase consumption within a shorter period of time? But, that does not relate itself necessarily to price advertising, does it?

MR. GUARNIERI: Not necessarily, but when the consumer can buy the same product he was paying \$25.00 for the week before for \$16.98 as a "lost liter," we are finding that the consumer is buying as much as he can buy at that price, because he doesn't know when it is going to come back down to that price.

MR. NAPODANO: All right. The reason I asked you the question was not necessarily to put you on the spot, but I have heard among my colleagues as we discuss, this same theory, yet no one has produced any learned study, or detailed study I am aware of, that correlates advertising to consumption.

The second question I would like to ask you is just for informational purposes. Concerning your request that cost be redefined, do you intend there that the cost for each of the 12,000 licensees would therefore be different?

MR. GUARNIERI: Obviously, that would present a monumental task to regulators. I would think the Commission would have to make a recommendation as to what they found to be the average, and I feel they have the tools available to them to find out this information. They have access, I believe through the Commerce Department, to the financial statements filed by every licensee in the State. They could ascertain what their fixed costs of doing business were.

MR. NAPODANO: One of the problems we addressed yesterday at the Enforcement Subcommittee Meeting was the limitation that the Director now has in manpower, and indeed the limitation that the Enforcement Bureau now has in manpower because of budget cuts. What you are suggesting, I believe, would result in a different cost for every licensee in the State. There would be no uniform way of enforcing it, other than for the Director, or the State Police, to require each licensee to be visited and their fixed costs to be audited and analyzed to come up with a dollar, which would change, perhaps, the following week.

MR. GUARNIERI: I would not say in the following week; it could possibly change in the following year. Your fixed cost -- your license is going to cost you the same, your property taxes would cost you the same, your light and power is going to cost you the same, except maybe it will go up every year--

MR. NAPODANO: Your utilities would not necessarily be a fixed cost, would they?

MR. GUARNIERI: Why not?

MR. NAPODANO: All right, but then I'm not quite sure--

MR. GUARNIERI: (interrupting) I mean, you have to pay the utility bill to operate that liquor store.

MR. NAPODANO: All right, but a fixed cost in my terminology means something different, obviously, from the way you're defining fixed cost. But, those costs would change. If you put in your utility bill, and your utility bill could possibly change from month to month, that would obviously change your cost from month to month, would it not?

MR. GUARNIERI: If you rounded it out to an average, I wouldn't think so.

MR. NAPODANO: Thank you.

ASSEMBLYMAN MARKERT: This will be the last question at this point in time -- we will extend it to two more questions, so we can stay within a fifteen-minute time frame. Mr. Feldman?

MR. FELDMAN: Mine is not a question, but simply an answer to Mr. Napodano's question about recent studies in consumption patterns. The Wine Institute recently published a study in which they said the growth in per capita consumption parallels the growth in per capita income. That is the study they have come up with on a national basis.

ASSEMBLYMAN MARKERT: Thank you for that, Mr. Feldman. Mr. Garrity?

MR. GARRITY: Mr. Guarnieri, one of the points you brought out calling to the attention of this Committee a practice which is detrimental to the retail trade, is Number 2, "Credit regulation as discriminatory to the retail trade." Would you please amplify on that a bit? Please tell me how you feel it is discriminatory.

MR. GUARNIERI: The other licensees in the State, the distilleries, the wineries, the breweries, and the beer wholesalers have no State regulation mandating the payment of their bills, and yet the licensees, the retail "C" and "D" licenses, are mandated by regulation to pay our bills in thirty days. If not, we are noticed to every other wholesaler and beer distributor that we are in violation. If we end up in an argument with the supplier and we feel unjustly put upon, and we want to use an economic tool, we have that economic tool taken away from us. I feel the distilleries, the distributors and the breweries do not have this mandated State regulation. Why, if we are going to have a credit regulation, don't we have it for all licensees?

MR. GARRITY: Are you aware that the Federal Alcohol Act on which repeal was based sets a requirement that thirty days is the usual and customary period for the extension of credit from wholesaler to retailer, or from any supplier to a retailer of alcoholic beverages?

MR. GUARNIERI: I am aware of that provision, but this is not a State regulation. Again, there is no State regulation saying that all of your suppliers at the distillery or brewery level must be notified if you haven't paid a bill to one of your suppliers.

MR. GARRITY: Do you know of any state in these United States which extends more than thirty days' credit on alcoholic beverages to retailers?

MR. GUARNIERI: Off the top of my head, I don't, but I have heard forty-five days. I do not know the states, so I am really at a loss.

MR. GARRITY: When you receive deliveries of alcoholic beverages, what frequency do you receive them on?

MR. GUARNIERI: On an average of once a week..

MR. GARRITY: About once a week? What part of your inventory of those beverages would deplete in that week would you say?

MR. GUARNIERI: Forty to fifty percent.

MR. GARRITY: Forty percent to fifty percent? In other words, if you sell a hundred cases of "X" brand of beer, you have fifty left on your floor by the time you receive the next delivery.

MR. GUARNIERI: Mr. Garrity, I have no argument with that. The only thing I am decrying is the discriminatory regulation that mandates that I pay my bills in thirty days, and it doesn't do it to any other licensee outside the retail and tavern industries.

MR. GARRITY: Is there any product that you receive twice a week -- where there are deliveries twice a week?

MR. GUARNIERI: Not usually.

MR. GARRITY: Not usually?

MR. GUARNIERI: No.

MR. GARRITY: Then, you average about four deliveries a month, if we round it out. If you are averaging four deliveries a month, I would assume that a large part of that would deplete every week?

MR. GUARNIERI: It depends. If I happen to be buying Budweiser on a deal and I get 115 cases, that could hold me for two or three weeks.

MR. GARRITY: Mr. Guarnieri, do you extend credit to your customers?

MR. GUARNIERI: Yes, I do.

MR. GARRITY: You do. What percentage of your sales is sold on credit?

MR. GUARNIERI: Approximately 18% of my volume is done on credit.

MR. GARRITY: Do you feel that if you deplete your inventory of a product four times during the month that thirty days credit is unreasonable?

MR. GUARNIERI: I have no difficulty with the thirty days' credit. My only difficulty is the manner of enforcement of that credit.

MR. GARRITY: There doesn't seem to be any choice when the Federal Alcohol Act mandates that to prevent the tied house situations that existed prior to repeal. In order that others cannot gain control over you and your business, that thirty-day law was put into effect to prevent tied houses, to prevent you from getting into the clutches of a brewery, a distillery or a winery because you owe them so much money they could dictate to you, from that point on, what you do and how you run your business, or maybe even threaten to take it over, or in some way put you out of business. That was put there for your protection.

MR. GUARNIERI: I agree with the major premise that tied houses are a very detrimental position, but the difficulty I had was when I had a supplier who noticed me in twenty-nine days, instead of the thirty days. He then proceeded to keep me on the default list for a period of three weeks, because he couldn't get it out of the computer in time. Of course, I had no problem with the other suppliers, because they knew I was a good credit risk. But, the difficulty is, this is economic blackmail that has been used by suppliers constantly within the industry. If it is to be enforced, it should be enforced to all

licensees. Why should you discriminate against the retailer? If I don't pay Budweiser, why should Miller say I can't have any Miller? Budweiser should say, "Fine, you didn't pay me so you only get it for cash." I can solve my problem with them. But, why should I sit there and have the rest of my suppliers, whom I have good credit with, tell me I can't buy from them?

MR. GARRITY: Well, it becomes a matter of unfair competition then. If Budweiser cannot extend credit to you beyond thirty days, and they have to put you on a C.O.D. basis, and you decide you are not going to pay, or are not going to buy his product because you are on a C.O.D. basis, they are in an unfair competitive position with their competitors because they can extend you credit. That would be the basis of it. (laughter)

MR. GUARNIERI: I am in an unfair competitive position right now. I have customers who have approximately 18% of my sales. I have no regulation which provides me with the same type of relief. If they as customers do not pay me, I am in the same cash bind. I now have to come up with a solution because my accounts receivable haven't been paid, and I do not have the State collecting my bills. If that is the case, then I can go to every other liquor store and say, "You can't sell to so and so, because he didn't pay me within thirty days." But, the State is not granting me that.

MR. GARRITY: If you did not have a credit law in the State of New Jersey, as many other states have, controlled credit, what do you think the alternative would be as far as your dealings with a wholesaler are concerned? Let's say, the whole industry's dealings with a wholesaler. What would be the alternatives?

MR. GUARNIERI: I think the marketplace should find its own level. I think suppliers would extend credit to their credit-worthy customers, and would limit credit to the people they felt were not credit worthy.

MR. GARRITY: Do you think they would have a discriminatory situation then too?

MR. GUARNIERI: They shouldn't have.

ASSEMBLYMAN MARKERT: Mr. Garrity, thank you very much. I believe we have some other questions. Mr. Bromley, do you have something?

MR. BROMLEY: This is a follow-up to a previous question asked of Mr. Guarnieri by Mr. Napodano, which inquired about studies as to whether consumption might have been increased.

ASSEMBLYMAN MARKERT: Oh, yes. May we get into that after we have finished with the current witness?

MR. BROMLEY: I would just like to submit to the Subcommittee, yesterday's advertisements, which our aide will duplicate. We would then rest on letting the Committee make up their own minds as to whether these advertisements would tend to stimulate consumption.

ASSEMBLYMAN MARKERT: Fine, we will be glad to take those and put them into the record. Is there anyone else who has a question?

MR. FELDMAN: May I make just one observation in answer to a question that was asked before, where Mr. Guarnieri didn't have the information to answer? There are presently thirty-five states that have a maximum of thirty days' credit. When I say maximum, seven are from cash, and it goes up to thirty-five. Now, that is an unusually high number, because you must remember that seventeen states are monopolies. There are only thirty-three open states in the country, but thirty-five have recognized the dangers of tied house, and have on their books today, not regulations, but actually -- most of them -- laws limiting the credit available to retailers.

MR. GUARNIERI: I have no objection to the credit regulation; my objection is to the cross-notification rules that the State of New Jersey enforces, which say that if you do not pay your bills in thirty days, you must be noticed to every other wholesaler in the State, and you cannot receive credit from them. I believe your credit regulations say strictly, "Credit can only be extended to thirty days." I have no objection to that.

ASSEMBLYMAN MARKERT: Thank you, Mr. Guarnieri. At this time, I would like to recognize the Deputy Director of the Division of Alcoholic Beverage Control, Mr. Robert Pinard, who is sitting in the back of the room. Bob, we appreciate having you here with us today. Thank you for coming. The next witness will be Mr. Edward Mihal.

E D W A R D M I H A L: Good morning everyone. Mr. Chairman, members of the Committee, my name is Edward Mihal. I am the owner of Belmont

Beverage, 79 Belmont Avenue, Garfield, New Jersey. We are retailers of alcoholic beverages, and with this, we are also allowed to sell soda, potato chips and pretzels, period.

When deregulation was first announced approximately three or four years ago, I became very scared and panic-stricken like a lot of other people did in our business. I received an invitation from Buy Rite to go to one of their meetings, so I went, eager to find out what was going on. I learned a lot, and I became more panicked. I don't know whether "high-pressured" is the right word to use, but for lack of a better choice, I would say I was high-pressured into joining Buy Rite, without being asked my financial status, the size and location of my store, the type of clientele I have or what I do.

Well, to make a long story short, Buy Rite proved to be a failure for me. After a short time, I went and met with the operator of Buy Rite, Mr. Dobbs, and he made plans to visit different stores. My store was put on the emergency list. They didn't offer me many suggestions, and I later on realized why, because there wasn't much they could offer me. I am not located on a main street; I am not located on a through street. So, in order to get to my business, you have to come specifically to my store. When you are selling at cost, twenty to thirty items a week, you have to do a large volume of business to try to offset these things. What was happening in my case, was that people were coming in with the ads and picking up only what was on sale. Being a small, 600 to 700 square foot store, I couldn't even properly display other merchandise to catch their eyes, so they would walk up to the counter, ask for or pick up what they wanted, and out they would go. It was a total loss; I didn't even have enough money to pay for the bag, with the cost of joining Buy Rite, the the advertising costs, and all the other paraphernalia that went on.

Well, after a little more than a year, I couldn't pay my bills to Buy Rite, and I went on "default" with them. I had a meeting with them, and we made arrangements that I could pay off "X" amount of dollars. I asked to be released from my contract, but it couldn't be done. Well, near the end of my contract -- I guess it had about two months to go -- I suppose he saw that I wasn't cooperating, because I wasn't selling at cost; I wasn't doing anything that the ad said. He

must have gotten complaints and phone calls from customers, and he decided to let me out. He gave me a chance to pay off my debt to him, which I had to pay by contract.

Now, the biggest complaint is that deregulation scared an awful lot of people. Deregulation is good for those people, perhaps, who have a large store, who have other means of support, or who can sell other products. If I may pick on Shop-Rite, Shop-Rite has ten, twenty, thirty thousand items to sell; so does A&P. So, if they sell something at cost, they can make it up. When you are selling apples, and everyone is selling apples at ten cents a pound, the guy who is selling them for more than ten cents a pound is not going to do that much business. But, when you have ten, twenty, thirty thousand items to sell -- this may be an outrageous number, but when you go to a supermarket it sure looks like that. If he raises every other item a cent, two cents, three cents or five cents, he has just about made up for what he has sold at discount. I believe that in order to maintain the present level of business, where not everyone has the same chance, because not everyone is capable of doing the same amount of business, and not everyone has the same financial backing or the capabilities of running a business, at least if regulations were put more in order, such as pricing and newspaper advertising, it would offer those people a better chance to combat the giants of the industry.

As an example, in yesterday's newspaper there was an ad for St. Pierre Chablis at \$2.99 for four liters. No one in the State can even buy it at that price, because it is a 500-case deal. I called Kaser, and they apologized. They said, "Gee, we're very sorry, we didn't think." I said, "You should have, because I use a lot of your products. Now, I'm trying to run through my head, should I do business with a concern like yours, that only thinks of the big man?" They said, "We are going to compensate for this. Next month, we are going to reduce it to a hundred cases." I would like to know, how many stores can take in a hundred cases of one product? I don't know if there are that many little stores that sell a hundred cases of four liter Chablis, total, in a year, never mind taking it in one shipment. Take it to a co-op; they say we have co-ops. Our co-op has thirteen people. That is approximately eight cases per person. I know some of

my co-op members would say, "Gee whiz, my customers have never heard of St. Pierre. They are not going to take it. Even if they do take it, how can we sell it at \$2.99, if this is what it cost us? It doesn't even pay for the bag." And, what about the time you spend in the store, with unemployment the way it is now, and the tax revenues falling to the Federal and State governments? I believe more concern should be put on the entire industry.

Now, picking on Shop-Rite again -- not Shop-Rite, excuse me. I used that word wrong. The supermarket grocery business has put the little grocery stores and the majority of delicatessens out of business. Then they went to work on the drug stores, the automobile industry, with accessory parts, appliances and garden and house plants. Take my local supermarket, how many people does it employ? Does it employ as many people as it put out of business? I doubt it. This country was based on the idea of a fair price for everybody, and I believe in a fair price. If you can offer something for less, without doing detrimental damage to the entire State, or country, or industry, it's fine, but the way we are proceeding now, not only in the liquor business, but in deregulating everything, it is only the very, very powerful and the very, very rich who are going to exist. If this is what we are leading to, I don't advocate it, and maybe this is the reason all the other countries in the world are having trouble with their people rebelling. You cannot ask a person to work for nothing. None of us here put in time. I understand the wholesalers are having problems, because the people buying are trying to dictate prices to them. "Well, gee, last month you had it for \$50.00 a case, and this month it's \$80.00 a case." Well, isn't a man entitled to make a profit?

The costs of operation are getting higher every year, utilities, insurances, etc. People want raises. Where is this money going to come from? The economy is down, so people are looking to buy things at the best possible price they can. So, where do they go? They open the newspaper, and on the right-hand side are the food items, and on the left-hand side are the alcoholic beverages. Now, it's true, they are not comingling food and liquor in one ad, but they are on the same page. When the lady or the man of the house goes

shopping, where do they go? If they are buying their groceries, they'll pick up that \$1.99 or \$2.99 bottle there. If this continues, the only ones left in business will be the large supermarkets, and where will the rest of us be, on the outside looking in?

ASSEMBLYMAN MARKERT: Thank you, Mr. Mihal. I realize you have come to the end of expressing your thoughts, and I have one question I would like to ask. Earlier, you talked about the St. Pierre from Kaser, and you said you called them. Did you try to purchase an order, or did you ask whether or not you could purchase? If doing this, did they say they didn't have any left?

MR. MIHAL: No, they didn't. The salesman had only one price listed, a twenty-five case price, which is \$3.49 a bottle. The five hundred case price wasn't even listed.

ASSEMBLYMAN MARKERT: How did you find out about this?

MR. MIHAL: I called directly and spoke to the general sales manager.

ASSEMBLYMAN MARKERT: If I may, I would like to turn this discussion over to the Director.

DIRECTOR VASSALLO: Mr. Mihal, what were you told when you called?

MR. MIHAL: He said it was the five hundred case price that was posted, and Shop-Rite took advantage of this. I said to Mr. Murray, "Isn't that playing favorites? How many stores could take five hundred cases?" Then he went into a spiel about making up for it. He said, "We realize we, perhaps, make a mistake."

DIRECTOR VASSALLO: Did you ask him anything about why they told you it was a twenty-five case deal?

MR. MIHAL: Perhaps the salesman wasn't aware of the fact that there was a five hundred case deal.

ASSEMBLYMAN MARKERT: Do you have a salesman who calls on you directly from Kaser's?

MR. MIHAL: Yes, I do.

ASSEMBLYMAN MARKERT: Did he point out the St. Pierre special?

MR. MIHAL: To the best of my knowledge, the only one he pointed out was the small twenty-five case special.

ASSEMBLYMAN MARKERT: And, he did not address the hundred or the five hundred, or whatever it was?

MR. MIHAL: No, the hundred case deal he didn't even know about yet, that is for next month.

ASSEMBLYMAN MARKERT: And, there was no posting in the book from Kaser with reference to five hundred cases?

MR. MIHAL: I couldn't find it .

ASSEMBLYMAN MARKERT: So, to your knowledge then, the bottom price, the maximum deal was three dollars and something?

MR. MIHAL: Three dollars and forty-nine cents.

ASSEMBLYMAN MARKERT: Three dollars and forty-nine cents. And you said Shop-Rite sold it at what?

MR. MIHAL: Two dollars and ninety-nine cents. I believe you will find it in the newspaper that Mr. Bromley handed you.

ASSEMBLYMAN MARKERT: I do not expect the discussion to follow that particular line, but I'll now open the opportunity of questioning Mr. Mihal. Director Vassallo, would you like to continue?

DIRECTOR VASSALLO: No. Thank you, Mr. Mihal. I would just ask that you discuss more on this subject with Mr. Pinard after your testimony, if you would, please.

ASSEMBLYMAN MARKERT: Mr. Pinard is the gentleman who is sitting in the back, the Deputy Director. I'll start to my right with Mr. Jerlat.

MR. JERLAT: Ed -- may I call you Ed?

MR. MIHAL: Certainly.

MR. JERLAT: May I just ask you one question? I can well understand your problem, and I can feel for you. We discussed before the possibility of a cost price, which does not seem an unreasonable plea. What would you feel that your cost -- and I know this would have to be done on an average basis -- but, what would your cost actually include, taking in your insurance, your gas and electric, your rent, etc., etc., taxes, or whatever it happens to be?

MR. MIHAL: Mr. Napodano said it would vary from store to store, but I believe the Federal Department of Commerce has an average of approximately 14% as the average cost of doing business throughout the United States. I feel that if the government could come up with a

figure, you gentlemen can come up with a figure also, or perhaps use the national standard. I'm sure it is not going to make that much of a difference in your markup, a half of a percent or a percent. But, certainly, if everyone had a minimum markup, the tax department would love this. They would know you were making "X" percent. In your cost of operations, you may pay yourself a higher salary than anyone else, but, you know, if you think you're worth \$100.00 a day, and the other guy thinks he is only worth \$50.00 a day, who are we to argue? That is the tax department's problem.

I believe that if there was a minimum markup so as to stabilize the pricing and, also, eliminate the price advertising which is driving people to certain areas thinking they are getting 100% bargains, it would stabilize this industry a lot.

MR. JERLAT: All right, thank you.

ASSEMBLYMAN MARKERT: Mr. Bromley.

MR. BROMLEY: Ed, when you were in Buy Rite, who controlled the items and prices that appeared in the ads?

MR. MIHAL: There was a committee selected, which Mr. Dobbs, his son and a few members -- approximately four or five members of the group -- picked. They were picked, I guess, in conjunction with what was posted for that month. But, the price was always agreed upon at the beginning, and it was going to be a penny above cost.

MR. BROMLEY: The price was agreed upon at the beginning when you entered Buy Rite?

MR. MIHAL: Yes, that was the way it was done.

MR. BROMLEY: It was agreed that the price was to be a penny.

MR. MIHAL: It was not agreed upon 100%, but this was the idea of selling at cost. No one signed a statement, or said, "Yes, I'm going to do it." You had the privilege of doing what you wanted, but the cost price was suggested.

MR. BROMLEY: May I question you on how much freedom you had? If a committee met and determined an ad, did you have the right to keep your name out of that ad?

MR. MIHAL: No, that is what you are paid for, but you had the right of going along with the ad, or not going along with the ad. There was a disclaimer in every single ad which gave you the right to

say, "We don't have this item this week," but then, of course, you were defeating your purpose by not going along with it. It was pointed out to you that if you didn't go along with it, you would be defeating your purpose of belonging to such a group.

MR. BROMLEY: So, it was then an empty freedom you had, because you apparently could not turn anyone away.

MR. MIHAL: Well, if you did, you were hurting yourself, and that is what happened to me.

MR. BROMLEY: As part of the agreement, did you agree to advertise always and only under the Buy Rite name, or could you use your own name?

MR. MIHAL: Nothing was ever spelled out, but when you did run the Buy Rite ad, you had to have the Buy Rite logo or symbol in it.

MR. BROMLEY: And, how about on your store?

MR. MIHAL: It was suggested that you put up a Buy Rite sign, so people would know where you were.

MR. BROMLEY: How about in-store promotional flyers or things of that kind?

MR. MIHAL: At first they were sent out, but a lot of stores didn't want them so they stopped subscribing to them. But, they did have them available, banners, window stickers, or whatever you want to call them.

MR. BROMLEY: Maybe you could help us with some previous testimony we had from the gentleman from Loch Arbour Liquors about geographical exclusivity granted so that members were not--

MR. MIHAL: Yes, he suggested about two miles between stores, I believe. That figure seems to remain in my mind.

MR. BROMLEY: Thank you.

ASSEMBLYMAN MARKERT: Mr. Tripucka?

MR. TRIPUCKA: No questions.

ASSEMBLYMAN MARKERT: Mr. Garrity?

MR. GARRITY: Mr. Chairman, I have one question to ask Mr. Mihal. You said that at one point in your dealings with your cooperative you were unable to pay their bills. Am I correct in that? You said you got to a point where you were unable to pay them for

MR. MIHAL: Oh, the cost of belonging to the advertising group.

MR. GARRITY: Was it the advertising or the cost of being a member there?

MR. MIHAL: Both. You were mailed a statement monthly, and I just found that I could no longer pay for the cost of belonging to the group, the advertising and my merchandise. I decided it was more important to have merchandise in the store than to pay him.

MR. GARRITY: Thank you.

ASSEMBLYMAN MARKERT: May I just follow through on that question? Whether or not you were involved in every ad they placed being a member of that Buy Rite, did you have a certain percentage of the cost of that ad charged to you?

MR. MIHAL: Yes.

ASSEMBLYMAN MARKERT: Whether you wanted to be in the ad or not, it made no difference?

MR. MIHAL: That is correct. That was your understanding when you joined the group, that the cost of the entire ad would be shared among all the members equally. I think the straw that broke the camel's back was when they decided to go on television. That is when I just--

ASSEMBLYMAN MARKERT: They decided to go on television? Who are they?

MR. MIHAL: The membership; it was suggested and you voted. No one said we had to go along with it. The leader never said, "You must do this." It was put up and they voted on it, and majority ruled.

ASSEMBLYMAN MARKERT: So, it was a majority vote of those who were in attendance at a meeting that made decisions on just what would go into the advertising, the method of advertising and the area of advertising?

MR. MIHAL: Yes. I would also like to point out that I am not the only Buy Rite member that has pulled out of the group. There have been several failures in Bergen County. There are approximately four stores I know of that are no longer in business. So, it is not the perfect panacea for everyone.

ASSEMBLYMAN MARKERT: Thank you. Director Vassallo, would you care to ask any questions?

DIRECTOR VASSALLO: Thank you. At the meeting you went to for Buy Rite, you said you were pressured. Can you describe the kind of pressure you got and what you were told?

MR. MIHAL: Well, everyone had a different opinion, the gloomy picture that was painted, what was going to happen, what has happened in other states, the high risk of being put out of business by other groups and that it is the leader who generally succeeds. You know, it is like the captain of the team. He calls the plays, and if he calls the wrong plays, the team suffers. But, they have had experience. They have been in New York State for approximately fifteen years, and in other areas, and he painted a good picture of himself, you know.

DIRECTOR VASSALLO: If they encourage you to sell these advertised things at cost, how could you make up for that?

MR. MIHAL: Well, this was the idea. You were told you would sell at cost and it would stimulate business and bring people in. Unfortunately, we were not told there is a certain group of people who the industry calls "cherry pickers," who only pick what is on sale, regardless of the product. If they can't buy it at cost this week, they will come back next week, or the following week. We were not warned about this.

DIRECTOR VASSALLO: Did you find that happening in practice?

MR. MIHAL: Yes, that was the main reason I had to get out. Basically, I have a neighborhood store, and people could not comprehend that this week it's \$5.99, and the following week, when it is not on sale and you have to go to your 20% or 30% markup -- they could just not understand it. Some people would buy it, but the majority would just leave it. After awhile, I was being told, "Well, Ed, I'll wait. You'll have it on sale again."

DIRECTOR VASSALLO: Can you give us any opinion, from your experience, as to whether these low advertised prices increase consumption?

MR. MIHAL: All I have to say on that is, I have been in both ends of the business, the retail liquor business and the bar business. There are a certain number of people where price counts. So, if they have a dollar and they can get two shots for a dollar, they will go

there. And, if they have a dollar, and they go to the other place and they only get one drink, they are not going to go there that often. There are a certain amount of people who are inclined to drink more because the price is less.

DIRECTOR VASSALLO: Thank you, Mr. Mihal.

ASSEMBLYMAN MARKERT: Mr. Feldman?

MR. FELDMAN: I would like to simply insert in the record the definition of cost which you refer to. From 1967 until 1980, at the time of deregulation, the definition of cost as used at wholesale price settings was set by the ABC, that is, the formula. Let me quote from the 1967 Bulletin of Director Lordi, in which he said, "Actual costs shall include at the least, acquisition costs, warehousing, salesmen's commissions, permissible discounts and delivery charges." So, this is not a new concept. It is something the ABC considered in the past, implemented, and discarded in 1980, at the time of deregulation.

MR. MIHAL: May I point out that no one is infallible. Isn't it possible, perhaps, that the ABC Director at that time erred in his definition of cost? Now, if you will notice, that cost is only the wholesale cost. There is no cost in there to the retailer. Now, what if the retailer added the same facts in percentages as the wholesaler did? That would certainly raise the cost factor, wouldn't it?

MR. FELDMAN: I am simply indicating that this is an area that the Subcommittee can examine, and then report to the Commission.

MR. MIHAL: I am following up on your statements, and perhaps making them a little stronger.

MR. FELDMAN: Thank you.

ASSEMBLYMAN MARKERT: Mr. Farrell?

MR. FARRELL: No questions.

ASSEMBLYMAN MARKERT: Mr. McCaffrey?

MR. McCAFFREY: I would like your long-range opinion on this, Mr. Mihal. You are suggesting that the present price, the one cent above cost, is inequitable in that it is based only on the price you must pay your supplier, and does not include normal overhead?

MR. MIHAL: Correct.

MR. McCAFFREY: And, you are hopeful that down the road someplace the State may come up with a minimum markup that would

include some of the causes of complaints, which are not included right now. In the event that these hopes of yours ever materialize, what do you think the bottom line is, as far as the public is concerned? Right now, we hear stories that this is good for the public because it has resulted in lower prices. Now, how can you answer that argument?

MR. MIHAL: Perhaps my opinion could be prejudiced, because I am in the retail end of the business and I am being hurt, but I am really and truly trying to be objective in this. I feel the only ones who will exist will be the large giants who have something else to sell besides alcoholic beverages. I state, again, that no one can sell at cost and remain in business. I also further state, I believe that most of these people who are the large discount centers are subsidizing their businesses with outside monies they have. I have noticed through voice information, that most of them are in other types of businesses besides the liquor business. They are, perhaps, hoping -- the rumor is that when they drive enough of the little people out of business and gain control of a majority of the liquor industry, they will be able to raise the prices to what they want. When they have eliminated "X" number of people, and there is no choice of where to go, or the choice is so little or so controlled by price advertising in the newspapers, that no one else could afford to fight them, they will do the majority of the business.

MR. McCAFFREY: Thank you.

ASSEMBLYMAN MARKERT: If there are no further questions, Ed, we appreciate your coming before us. The next gentleman will be Mr. Richard Knight. I believe, Mr. Knight, you are the owner of Oceanport Wine and Liquors, is that correct?

R I C H A R D K N I G H T: That is correct. My name is Richard Knight. I own Oceanport Wine and Liquors in Oceanport, New Jersey. Also, I am President of the Monmouth and Ocean Counties' Liquor Store Association.

I will be speaking for myself and my store, and not for the Association at this time.

In 1977, I purchased a liquor store that was doing about \$220,000 worth of business a year, gross. Through regulation to the point of deregulation, I increased the business 100%, which was approximately a two-year period. I did that through providing services for my customers, providing my customers with a wider variety of products, providing services such as charging, charge accounts in the house, as well as credit card charge accounts, by delivering, by packaging items, by making up packages, if there was a product they didn't have or couldn't get, and I was able to get, I would do it for them, also.

Then, we had deregulation. At that point in time, since then, my gross had decreased 29%. I still provide the same kind of services that I did before deregulation. I tried, to some degree in my limited capacity of store size and storage, to hold a few sales on specific items that I could buy at a lower amount of cases. Those particular items I have purchased that I am able to put on sale, I grant you, will sell. My overall business, however, has diminished because I cannot put everything in the store on sale.

I maintained the markup that we had at the regulation period through deregulation. I feel that I am in a business that does not provide an awful lot of markup as it is. It is not like furniture, jewelry or clothes. We have a small markup, and I thought that was a fair markup for the public. Unfortunately, there are others who didn't think so, and they went to the penny-over cost, advertising as such whether they had the product or not. They cut very deeply into my business, as I could tell by not only decreased sales, but by people coming in with the advertised products on sale and asking, "Why can't I have it for the same price?" Primarily, because I don't have the kind of storage where I can purchase them and then offer them. Also, the increased inflation rate that took place during the initial years that

I had the store, had really put me at almost a status quo. I was able to meet my expenses all right. I am making a little bit of a profit, but, there was no cushion to go back on to buy in larger quantities. Knowing my town, if I had the larger quantities, I couldn't necessarily sell them all in the the 30-day period that I had to pay. So, to have fifty cases of Dewar's would do me no good. I couldn't sell fifty cases of Dewar's in three months, let alone 30 days.

So, now I am in the position of a continued decrease in business, to either pour more money into it, as a result of getting more loans, or to sell out. My sellout position is not that great, because I was heavily financed to take on my store initially. If I were to sell it, somebody would have to pick up the financing, and I could probably get that covered, and that is all I would walk out with, without making a dime.

I chose, so far, anyway, to try to hold off and to see what is going to transpire through this Committee or whatever regulation or rules may come down. I don't think I should have to join a coop or a Buy Rite, or whatever the case is, just to have a business. I bought my business in hopes to be a free enterprise and operate in a reasonable way, having reasonable prices. To have to share my profits to stay in business with another person who probably doesn't have a license -- I don't think any of them own a license -- I don't find that to be fair. It is not the American way, if you will. So, I intend to try to stay in the position that I am at.

To reduce my prices, and to take home less money than I am making now, in which case I have taken, personally, a reduction in pay two years in a row, and, if I reduce my prices, all I am going to do is, perhaps, sell a little bit more of the product that I am reducing to no greater profit ratio. So, I don't find that to be a very enlightening thing to do, either.

I really don't know where to go at this point. That is why I am here. That is about what I have to say. I believe that the pricing is predatory in the papers. I haven't, because people bring them in and wonder why I can't sell something for the same price as somebody else. I hate to ask them, "Do you make a profit when you work? Do you get paid, because I am waiting to get paid, too?" The only way I can

do it is by making a profit. It is the only way to run a business. You can't really come out and tell people that.

I have nothing else to say, other than, I don't believe that a liquor store, or any store, for that matter, should be a store that is run just on cost, or just on the financial value of it. If you can't give your patrons something in return for them purchasing something from you other than the best price, it doesn't seem like the proper way to run the store.

ASSEMBLYMAN MARKERT: Mr. Knight, may I ask, how many other stores in your immediate area, or in your municipality, are there? And, do you feel -- I am talking now, since you are in the "D" licensed area -- they are having the same types of problems you are? Do you know of any situation that might be the same?

MR. KNIGHT: In my town, there are no other "D" licenses. There are other licenses on the outskirts of my town, which have several exits to make people go to them. One part of my town can go across the bridge and be at a Buy Rite. So, business that I would have to say I acquired prior to that, through my services and whatever I used as a sales pitch, has, again, or has then changed and has gone back to a Buy Rite for price purposes only.

ASSEMBLYMAN MARKERT: We will start on my left. Mr. McCaffrey?

MR. McCAFFREY: No questions.

ASSEMBLYMAN MARKERT: Mr. Napodano?

MR. NAPODANO: Yes. I just have one question, Mr. Knight. I am not quite sure I understood what you said. Did I understand you, Mr. Knight, to say that you are merchandizing at the present time on pre-deregulation margins?

MR. KNIGHT: That is correct.

MR. NAPODANO: And you are also doing that today?

MR. KNIGHT: That is correct.

MR. NAPODANO: I wasn't sure if you said that.

MR. KNIGHT: I have scotch, rye, vodka, and gin, in the half gallon size, and, perhaps, two wines at a little bit lesser price.

MR. NAPODANO: I have no other questions. Thank you.

ASSEMBLYMAN MARKERT: Mr. Feldman?

MR. FELDMAN: No questions.

ASSEMBLYMAN MARKERT: Mr. Bromley?

MR. BROMLEY: Mr. Knight, do you cash checks in your store?

MR. KNIGHT: Yes, I do.

MR. BROMLEY: Do you know your customers' names?

MR. KNIGHT: Generally? Yes, I do.

MR. BROMLEY: Do you make local deliveries?

MR. KNIGHT: Yes, I do.

MR. BROMLEY: Thank you.

ASSEMBLYMAN MARKERT: Mr. Jerlat?

MR. JERLAT: I have just one question, Mr. Knight. Do you feel that you have lost equity in the store that you may have built up over the past seventeen years?

MR. KNIGHT: No, seven years.

MR. JERLAT: Oh, seven years? I'm sorry.

MR. KNIGHT: Lost equity in the store? Yes. I would have to place it close to -- based on how I purchased it, my increase in business and how I would sell it, and the variable of that gross versus the cost -- if I were to sell it today as opposed to when I could have sold it, maybe in the vicinity of \$100,000. My problem is, though, I don't think I could sell it that easily today because I have a store that is 1,200 square feet. I have an 800 square foot selling area. I have virtually no storage, because the other footage from the 800 is primarily my beer box in the back. I don't have any room to move within the shopping center. In the town, there is no commercial property available. I can't move; I can't get in; I can't get out; and I cannot sell any products other than liquor in the store, as a result of the lease within the shopping center. I am just sort of stuck there. So, if anybody in their right mind, I would have to say, were to come and ask if there was an advantage to purchasing my store, to be honest with them, I couldn't give them one, unless something were to change where price wasn't the only item of a sale.

MR. JERLAT: Thank you.

ASSEMBLYMAN MARKERT: Thank you very much, Mr. Knight. I appreciate your coming here today. The next gentleman is Mr. Alan Stedman, President of the South Jersey Package Stores' Association. I believe that is S-I-E-D-M-A-N. Is that correct?

A L A N S T E D M A N: That is correct, yes. I am a "D" licensee, as well. As you said, I am the President of the South Jersey Package Stores' Association, which consists of seven counties that contain 400 broad "C" and "D" licenses. I am here today, basically, to represent that Association, which is part of the New Jersey Liquor Stores' Association.

As an Association, we would like to state our unequivocal support of our State organization's positions, as they were recently outlined by Fred Guarnieri.

If the State of New Jersey and the Legislature that represents the people of the State of New Jersey, are committed to the concept of temperance and moderation, if they are committed to an orderly marketplace in the liquor industry, if it is committed to proper enforcement of strict control in the distribution market, if they are committed to a fair chance for small businesses to survive in this State, and if they find agreement with these basic comments, I think they will find favor with our solutions to the current problems of the retail licensee. When I am talking about a retail licensee, I am speaking for the overwhelming majority of retail licensees, for there is but a tiny minority of these thousands of licensees in New Jersey who are involved in multiple store chains, franchise operations, who primarily are the licensees that seem to seek to disrupt the marketplace and thereby dominate and destroy other licensee through predatory advertising and pricing. We, as small businesses, oppose this effort, their effort to destroy our businesses, to disrupt the market, and to basically deny the original legislative intent of Title 33, which is to promote temperance. We are not saying that people should have to drink a lot less, but we are in a position with the Legislature and the pressures all around us, calling for strict control, calling for less or more moderate consumption. Why are we in this contradictory position?

We ask your support to rebalance this marketplace and right the wrongs and mistakes that have been made in our recent past.

As a retail licensee myself, I don't generally like sharing specifics about my business. I don't want the Committee to assume that the only licensees who have been hurt by deregulation and by these

practices of predatory pricing, have only been the very smallest of businesses being affected. My stores, and I have two, have approximately 6,000 square feet of selling space, which is, I think, basically larger than most stores in North Jersey. Only the larger stores, chains and so forth, who have sufficient capital and who sell other products at the same time -- such as has been discussed before -- have basically more space than we do.

As I got into my business in 1976 -- I bought my first license in 1977, and the second license with the maximum which you can hold, which is two licenses, I determined a marketing strategy of staying with the wine business, because this was the growing part. This is where your chance to make money was the best. It was the most interesting part of the business -- I determined that this was the best hedge against future problems. The business prospered fairly well under regulation, and even slightly under deregulation. It wasn't until about a year ago that two price cutters came into my area, namely, one very large, committed not only to a few specials advertised, but to a broad range of every product in the store being sold below a realistic cost. It is not until someone like that comes into your area that you really feel the full effect of what they can do to your business.

I think it is fair to say that through one store, which is located in the same town as this price cutter, but not next door and not two blocks away, but, say a half mile away in the same town, we lost 25% to 30% of the business this year. That is significant. If any of you were in business the same way, you would feel the same concern under these pressures and trying to survive in this business marketplace. I have nothing further to say.

ASSEMBLYMAN MARKERT: May I ask you a question that would lead to conjecture on your part? Where do you feel the ABC, the State Legislature and the State of New Jersey, in general, could go with reference to this industry, to right some of these wrongs you have stated as wrongs, and be helpful in, using your phrase, stabilizing the market?

MR. STEDMAN: The first two points that Fred Guarnieri indicated in his presentation, number one being the redefinition of

cost to a realistic cost, which is provided to other segments of our industry but denied to us. This is the main thing that will stabilize the business, because the people who can subsidize their selling of liquor through the selling of other products, such as grocery stores, large supermarkets, these people have an opportunity to subsidize their liquor business. There are other people who are subsidizing their liquor business through not selling products, but just getting money. I am sure if somebody could prove exactly what is going on, there would be action taken. It is very difficult to pin that down. I will not engage in a situation of name calling or accusations, but, there is a joke in our industry that these people exist and do this, and we cannot prove anything about it. It is illegal and they are doing it. If I could give you information, I would, but, naturally I don't stand in somebody else's store and watch what goes on. I don't watch what passes between people's hands. My job is in my store. I sympathize with the ABC in their difficulty, but nevertheless, it is a difficult thing that needs to be corrected. This is why our members ask, primarily, for redefinition of cost, because flowing from that will be a reduced effectiveness of this predatory advertising. The predatory pricing will help take care of predatory advertising, if it is eliminated.

I don't know if that answers your question, but those are the two major things we are looking at - predatory pricing and predatory advertising, which allow certain licensees to attempt to dominate and drive other people out of business.

ASSEMBLYMAN MARKERT: Thank you very much. I will now go to the panel. Are there any questions? Mr. Bromley?

MR. BROMLEY: I have a question for Mr. Stedman, to clarify his reference to predatory pricing. I was wondering if you were referring to pricings stated in Subchapter 24-12, "Alcoholic beverages at unreasonably low prices for the purposes of destroying competition or eliminating a competitor." Is that the type of pricing?

MR. STEDMAN: That is correct. It has been an unofficially stated aim of at least one retailer in my area to do exactly that.

MR. BROMLEY: Mr. Chairman, for the record, retailers are not encompassed in the prohibition, of the Subchapter 24 prohibition of

predatory pricing. It reads, "...that no manufacturer, supplier, importer, brand registrant, wholesaler, distributor, privileged to engage in the commerce of alcoholic beverage in or within this State and those parties alone..." You do not hear retailer. We would be happy if that regulation read, "licensee."

ASSEMBLYMAN MARKERT: That is something we can address in our executive discussions. I am sure Mr. Bromley will remind us when we are ready to sit down, to do just that. Thank you very much, Mr. Stedman. I have on the list before me just four more people who would like to speak. I will name them in order so you will know just where you are. Mr. Frank Pugliese, you will be next, then Mr. Maurer, then Mr. Calvino, and then Mr. Jarvis. If there is anyone else who would like to add their names to that list, please give them to us, and we will be happy to have you join us.

F R A N K P U G L I E S E: Trying to be very popular with the group, I will be very short.

ASSEMBLYMAN MARKERT: You are Mr. Pugliese from Millburn?

MR. PUGLIESE: No. Millville. My name is Frank Pugliese from Millville, New Jersey. I have had a package store for twenty-six years. We are certainly not the biggest and not the largest.

Since deregulation, we find we have to work harder and do more volume, with less profit. This is the nature of the beast. This is not a complaint. The question was asked several moments ago, "What can be done? What single thing can be done?" In my estimation -- short of rescinding deregulation and going back to the industry that we had at one time, which was raped by every portion of the industry, starting with the retailer, the wholesaler, and the legislators all had a hand in ruining a very orderly industry -- I think the very first thing that has to be done is to make it possible for any retailer, "mom and pop" stores, large stores, small stores, intermediate stores, to make a profit. It is the top line that we are concerned with, the profit, the beginning point, gross profit.

So, it seems to me that the starting point is to define cost and add a mandatory gross profit that everybody would work by. That is my statement.

ASSEMBLYMAN MARKERT: Do we have any questions of Mr. Pugliese? (no response) None? Well, thank you very much, Mr. Pugliese. We appreciate your taking the time and coming here today.

MR. PUGLIESE: Thank you.

ASSEMBLYMAN MARKERT: We are interested in even the short statements as you have addressed us. Next, we will hear from Mr. Maurer. Since you seem to be coming well equipped, Mr. Maurer, I am going to make a statement while you are sitting down and getting your papers together.

I notice that we have had mainly representatives of the "D" licenses today. I noticed very little input from the "C" licenses, with reference to the trade practices in the industry. If there are any "C" licensees here today who would like to address this Committee with reference to the practices that are taking place, we certainly will be happy to hear from you also. Thank you, Mr. Maurer, for allowing me to--

G E O R G E C. M A U R E R: Mr. Chairman, gentlemen of the Committee, I am George Maurer, President of the Hudson/Bergen Package Stores' Association. A majority of our members could not possibly attend this hearing this morning, because they do not have the luxury of having an employee to replace them while they come down here. So, a number of them called me when they heard about this and gave me a lot of questions, which I couldn't answer, and a lot of statements that they wanted me to present here today. These are from our members who are interested in what you are doing today, but, because they are small businessmen, they could not get away from their stores.

One gentleman who used to be with the Buy Rite group wanted to know how a man could come over here from New York City, have no beneficial interest in any license, and help set prices for licensees in the State of New Jersey?

Last night, around midnight, a member of our Association came to my house with an ad from a new A & P operation in Westwood, where they advertised that they are a liquor warehouse. Now, I am sure they do not have a warehousing license. As a liquor warehouse, I know I cannot buy from them. I can buy from Riteman, Rheinfeld and other liquor warehouses. I think this is a very misleading word, in fact,

one of the most misleading words that could be used in an ad to the public. I have a copy of that ad here, which I will turn over to you.

Also, I have an ad, "Bergen County Buy Rite Liquor Warehouse, 230 Main Street, Ridgefield Park." That is not a warehouse either. Should we all advertise our businesses as warehouses now? "Brewers' World, 10,000 square foot warehouse of discount liquor, beer, wine and soda." There must be some control as to what these people can say in an ad. They are definitely not warehouses.

The question came up, "If I, as a retailer, went across the street to another retailer and said, "Stan, tomorrow, let's start selling Budweiser beer, loose cans, at a \$1.00 apiece" -- it is my understanding that that would be illegal. However, I have ads with twenty-eight and thirty stores where some committee, some group, or all of them, agreed to set prices. That is something I can't do with the man across the street.

I noticed a disclaimer. I also noticed that the prices were set by one individual store in the group. One of my members would like to know how a man who has no beneficial license in store B-- Let's say the man in Store A has no beneficial interest in the license of Store B. How could he set the price for that store? I think these are questions that this Committee should really take into consideration.

Now, Alexanders. Many times their ads say, "Was \$22.95, is \$18.45" or "now, \$18.45." We have no prices in the State of New Jersey, retail prices. His might have been \$22.95, but somebody else's might have been \$17.44 all the time. I don't know whether or not this should be in an ad. I could say, "Dewar's, was \$42.00 at 1.75, on sale for \$25.00." I don't know.

I had a very interesting experience about three weeks ago. I was having my car serviced on Route 46. While it was being serviced, I stopped in a restaurant for some coffee. There were five or six Riteman trucks. The drivers were at the booth next to me. One mentioned the fact that he didn't have a bad day today. He only had a couple of stops because most of his stuff was going to a new Shop Rite. I heard him mention the name, Singer, stating that this must be his seventh store. I don't know of a Singer, and I am not familiar with his situation. I don't even know what store they were talking about,

but, we have a license limitation in the State of New Jersey. I think there should be some sort of an investigation into two or three price cutting retailers who now have interests, maybe hidden, in more than two licenses.

Selling one cent above cost, gentlemen, is really selling below cost. If you sell an item at one cent above cost and put it in a number twenty heavy bag, you have already sold below cost. That customer is going out of there with an item below cost.

These are the items that my members asked me to bring forward to you. I appreciate your listening to them. I am sorry that they could get here themselves to talk to you. Thank you.

ASSEMBLYMAN MARKERT: Thank you, Mr. Maurer. Are there any questions from the Committee? Mr. Farrell?

MR. FARRELL: Thank you, Mr. Chairman. I have a question. This business of predatory advertising, I guess, is a recurring theme. I would just like to ask whether or not this witness, or any other witnesses who are still here, have any specific proposals on how advertising should be regulated. A couple of things come to mind. Are you suggesting that there should be prior submission of all ads to the government? You cannot think about the bureaucratic problems you might have, and the increase in staff. I would suppose it would be necessary. Another alternative might be a set of criteria which would have to be considered and adopted. I guess you would have to strictly enforce violations. Then you would start running into free speech problems. I think if you are going to address advertising, you really have to tell us how you think it should be regulated and give us some direction as to what you would like, because it is a very sensitive area.

MR. MAURER: You know, in each municipality, I believe it is by State law, there is a limitation as to the number of "D" licenses. I am sure that was set up so there would be enough "D" licenses to accommodate the public or the population of that town. Now, with this type of advertising, you are drawing the people out of that town. Personally, I don't think liquor, as a controlled item, should be advertised at all, especially priced.

MR. FARRELL: All right. So, one suggestion would be an outright prohibition on any advertisements pertaining to retailing alcohol?

MR. MAURER: They are doing it on television. You will never see liquor advertisements on television.

MR. FARRELL: Yes, I am aware of that. And if that is the proposal of this witness, let's have that on record. If the other witnesses have alternative proposals which are less sweeping in scope, I would like to hear them. If we are going to address this, I would like to know how you would propose to address advertising mechanically.

MR. MAURER: Well, why should a liquor store in Wayne, New Jersey advertise in Englewood, New Jersey? In other words--

MR. FARRELL: Don't misunderstand me.

MR. MAURER: This group of business--

MR. FARRELL: I understand exactly what you are saying. I don't agree or disagree with you. I have more to learn about this. But, we need to know how you would propose to regulate it, mechanically, what you think should be known. How can we put your thoughts into action? What would you like us to do?

MR. MAURER: I am going to have to give that some thought

MR. FARRELL: Okay.

MR. MAURER: But, I think if it could be limited to the area served by that license, I mean to the customers that they are supposed to be serving, for the convenience of those customers.

MR. FARRELL: So, a geographical limitation, perhaps, in the newspapers that are only distributed in the municipality in which the liquor license is held?

MR. MAURER: Fine.

MR. FARRELL: All right. That is another suggestion.

ASSEMBLYMAN MARKERT: Are there any other questions? First, we will start on the end. Mr. Jerlat?

MR. JERLAT: George, I would like to ask you a question. I have to agree with what you are saying about selling below cost. If a cost price was set, with your cost built into the price, cost price, and we talked about a one cost bottle price; in other words, what the price of one bottle would be, no one could advertise or sell under that

price. How would you feel, that that may alleviate some of the problem? I'm not talking about alleviating all of the problem, because I can see there is a big problem.

MR. MAURER: Just off the top of my head, I am against it. Any minimum that does not take into consideration, rent, license costs, heat, and employees, for those who have them, would be self-defeating. A definition of cost, I believe, a redefinition, should include items of that nature, which would put it a lot higher than what you are suggesting, Mr. Jerlat.

MR. JERLAT: I think you misunderstood what I said.

MR. MAURER: No, I know.

MR. JERLAT: I'm talking about cost price.

MR. MAURER: If it costs me \$3.00 a bottle, and it costs somebody else \$28.00 a case, you say I cannot advertise it under \$3.00?

MR. JERLAT: No, no. You misunderstood what I was talking about. If we redefine cost, such as, with your gas, electric, insurance, and everything else built in, if the definition of cost was, let's take a figure of 20% or 22%, because I think that is one of the figures that New York may have used, possibly, that would be a cost price beyond whatever that one cost bottle price would be. And, if a one cost bottle price, let's take a case of Seagrams, whatever the one bottle price would be, would be the lowest price that anybody could advertise, including the cost. In other words, actually, what would happen is, there would be no need for predatory pricing because there wouldn't be any predatory pricing whatsoever. I am just asking you how you would--

MR. MAURER: Well, if that would stop predatory pricing, I would be very much in favor of it, yes.

ASSEMBLYMAN MARKERT: Is that all, Mr. Jerlat?

MR. JERLAT: Yes.

ASSEMBLYMAN MARKERT: Mr. Bromley?

MR. BROMLEY: Mr. Maurer, what do you think the benefit might be of a situation with a regulation that provided a licensee who advertised must advertise by himself, his own prices at his own location?

MR. MAURER: That is what I was trying to get across to Mr. Farrell. I believe that would be the only right way to permit advertising.

MR. BROMLEY: Mr. Maurer, I would like to ask you if you have an understanding as to reason with a difference in treatment between people who buy cooperatively and people who advertise cooperatively. And, I would like to inquire as to whether or not you know the reason why people who buy cooperatively have to register and take a license, identify themselves and pay a few (inaudible), and those who advertise cooperatively who have no such process? Have you any idea why that is?

MR. MAURER: No, I don't. You got me there. I think those who are buying cooperatively are being discriminated against.

MR. BROMLEY: Mr. Maurer, I would like to inquire as to whether or not you understand the reason that there is a limitation on people who buy cooperatively; namely, in the current year, while there is no apparent limitation on those who choose to advertise cooperatively?

MR. MAURER: I understand that Mr. Degnan, I believe it was, set up the number who could buy cooperatively as a number that would not exceed the largest buying co-op in existence during regulation, which was, I believe, A & P. But, I don't know why he didn't go any further and limit the number of advertisers. No, I don't.

MR. BROMLEY: Just one question, and that is, is there a reason, Mr. Maurer, for there to be a prohibition against any unlicensed individual participating in cooperative buying while there is no such limit or prohibition on advertisers?

MR. MAURER: No.

ASSEMBLYMAN MARKERT: What I was going to say, Mr. Bromley, is, I am sure that Mr. Maurer is not really the type of person, or the person to be asking the type of questions that you have put forth, but, I am sure they are questions you can put forth to this Committee, that we can investigate and continue further on, as far as making ourselves knowledgeable. Thank you, Mr. Maurer. We appreciate your being here today.

MR. MAURER: With your permission, I would like to leave these ads.

ASSEMBLYMAN MARKERT: Yes. We would be very happy to have them. We will use them in our discussions and deliberations, I am sure. There are two remaining on the list. The next gentleman is Mr. Tony Calvino, from Butler, New Jersey. Then, we will hear from Mr. Jarvis. He is the last speaker today, unless, as I said, others come in and would like to address this Committee. We would be happy to add anyone to the list. Thank you.

TONY CALVINO: Thank you, gentlemen. I want to thank you for this opportunity to be here. My name is Tony Calvino. I am the President of the North Jersey Liquor Stores' Association, which is affiliated with the New Jersey Liquor Stores' Association. I am here to speak not for myself, but just to reinforce what the speakers before me have brought out.

What you have heard this morning from our Association is, thousands of hours of arguing and trying to be helpful to the Director, trying to be helpful to the State of New Jersey, and trying to be helpful to our members, in order for us to come here and be subjected to what we have been so far. You must realize that we, from the New Jersey Liquor Stores' Association, think that perhaps predatory price advertising is the immediate action that can be taken to save our industry. We started with thirteen points when deregulation came into effect. We have compromised to a point, however, I think we only mentioned three or four today. There is so much that I could talk about -- you will notice that I have no notes. Perhaps I would better serve my members if I would offer to be a sacrificial lamb and just say to the panel that I am open to any questions.

My heart is with the retailer. I represent 155 in my own little Association, and I am part of the State Association. So, I would like you gentlemen to feel free to ask me any questions, be it on credit, advertising, or suggestions.

If I may start with Mr. Farrell. Mr. Farrell, you brought up a very good point. I am glad to see that someone wants to do something. My immediate answer to you would be, you can't stop advertising, because as soon as you do that, the newspapers -- and we do have representation here -- would be down on our backs. But, we could stop price advertising. Shop Rite could say, "Why pay more?" and

list every item that they want to sell, but with no prices. That would be something, I think, that would not interfere with any legal ramifications. That would give us a chance to reeducate ourselves and survive.

So, I am open to any questions.

ASSEMBLYMAN MARKERT: Maybe we could get into something with reference to credit, Mr. Calvino. I would like to get a little more input. Let me say that you are not here as a sacrificial lamb, that this Committee has been formed through legislative action, and that we have the opportunity of also having the Director of the ABC with us. You have legislators and representatives of all phases of the industry, on this Subcommittee, as well as on the Commission. We are here with one interest in mind, and that is to help the State of New Jersey. In helping the State of New Jersey, we help its citizens and we also help its businessmen. That is the bottom line. That is what we are here for. Any information that you and the rest of the members of your Association can give us, that we in turn can discuss, we, I am sure, will be putting forth with recommendations to the Governor, to the State Legislature, and to the Director, Mr. Vassallo. So, you are not here as a sacrificial lamb; consider yourself here as a very informative representative of the industry whose knowledge we are going to try to--

MR. CALVINO: Fine. As far as credit, I think I can sum that up in one sentence. I think the only objection the retailers and the licensees have is the cross-reference. I don't think there is any objection to a 30-day credit. We appreciate the fact that Budweiser will lend us their beer for a couple of weeks until we sell it, and we understand that that is a terrific help to the smaller person. I think the only real objection we have is cross-reference. If you buy bread from one place, they can't boycott you from buying milk, if I were talking about a supermarket. It is just so unfair. That is all I have to say about credit. The 30-day credit is fine. We are not asking for an extension. We don't want to turn this into a threat, "if we can't cross-reference, we are going to cut you down." Well, I have an answer to that, too. All you have to do is finance yourself for the first week, and then you are really on C.O.D., anyway. Your bills come due every week, and you are-- It is not a threat.

ASSEMBLYMAN MARKERT: With reference to another area, and this is the purchasing of the number of cases that we heard a speaker earlier in this meeting address, where he had one price given to him for a number of cases purchased, and there were available different prices that were never made available to him, until he so requested the information of the company. Can you give us any input in reference to that area?

MR. CALVINO: Well, I think you heard, from the laughter, that it was perfectly legal. There was a 500-case deal. If you wanted to buy it and there were 500 cases, he is not restricting you from buying it. We can't do that. Like I say, there is a certain amount of common sense that should be addressed when we talk about pricing. And, you also have to understand the complexity. I followed your career somewhat in the past several years, and you were involved in other areas of business. What you are trying to do here, is satisfy a \$50,000 to \$75,000 gross sale per year, and some undoing in the millions. There is just no way you can come up with a purchasing program that can satisfy both ends.

Someone made a suggestion about a single bottle price. There again, conceivably, that could be a way to stop the rapid deterioration of our business. If I am answering your question correctly, there is no way that you can limit the wholesaler from offering 100-case deals or 500-case deals. There is no way. All we are asking for is a fair share of our market. There has been an awful lot of talk about supermarkets. If you follow the trends, you have the small stores, and you have the supermarkets, and there was disaster when they came in. All I can tell you -- this is probably out of order -- when they can person who slices bologna \$179.00 for working on a Sunday, we won't won't have competitors too long, if they keep doing that. So, it is just a question of trying to keep us solvent until this thing stabilizes.

ASSEMBLYMAN MARKERT: Thank you. We will now go to the Committee for questioning. I will start on my right this time. Mr. Jerlat?

MR. JERLAT: I would like to ask one question, Tony. In lieu of the feeling throughout the nation and throughout the State of New

Jersey today regarding alcoholic beverages, and the feeling that there should be educational programs regarding alcoholic beverages, and rehabilitation programs and getting the drunk drivers off the road, do you feel it is important in the State New Jersey that we should be selling alcoholic beverages at the lowest price in the land?

MR. CALVINO: That is a good question. In all fairness to Director Vassallo, it wasn't the present Director. In some of my testimony with the previous Director and the previous Administration, I was told that if I was for tolerance and I owned a liquor store, the next time someone bought a 1.75 liter of Smirnoff, for example, that I should tell them, "Don't you think you should buy just a liter, or a pint?" That is the way I was ridiculed in public. So, in answer to your question, there is definitely a need for education in the use of alcohol. I think, perhaps, we should concentrate on the grammar school level. I hope I'm not asked to back this with facts, but, I believe there is alcohol abuse in grammar schools, as low as the third and fourth grades, as I understand, in the State of New Jersey. So, yes, in answer to that part of your question, we do need an educational program, probably at the kindergarten level.

Now, low prices. Do they necessarily foster more drinking? They would have to, for two reasons. You mentioned drunken driving. If I were to have a party, I think I would probably go to Shop Rite and buy twelve gallons of that \$2.99 wine. Here again, out of order possibly, I resent, "It's Miller Time." Now you have sports idols showing how nice it is to drink beer. I think that is wrong.

MR. JERLAT: Thank you.

ASSEMBLYMAN MARKERT: If I might, I would like to have you, or maybe some of the Committee members also get into the problems of violations of the licensee, which you are representing. I know we have a law of a photo ID in this State. I am just wondering if you feel that there may be any areas that we could address as a Committee with reference to the proofing and the responsibilities of those who are purchasing alcoholic beverages in the State?

MR. CALVINO: As far as that, I know we are on record, the New Jersey liquor stores, as favoring the photo ID, and we think that this would be a big deterrent. I also think what the Committee should

consider is, some kind of serious penalty for a person who gives false proof, perhaps a relative, a sister or brother who is similar in height, size and coloring. That, I think, would be a deterrent. As far as our Association is concerned, if a licensee knowingly sells alcohol to a juvenile purposely to make a profit, we will back the ABC 100% in any kind of penalty they wish to bestow upon them. But, what we resent is the fact that a person can come in with a false ID. And here again, even though the age is twenty-one now, there are some very young looking twenty-one year old people. We just think that some of the responsibility should be, perhaps, put on the person who tries to make the purchase.

ASSEMBLYMAN MARKERT: Thank you. Mr. Garrity, I believe you are next, since Mr. Tripuka had to leave us.

MR. GARRITY: I have just one question, and that has to do with the large quantities of products you mentioned that some wholesalers may offer. You have, I understand from your testimony, 155 members in your Association?

MR. CALVINO: That's right.

MR. GARRITY: On a 500 case price of, let's say a 500-case slot offer, how many of your wholesalers might be able to buy that? How many of your members or retailers might be able to buy a 500 case of Smirnoff, let's say?

MR. CALVINO: If you are saying a 150-case lot of Smirnoff, there would be very few of my members.

MR. GARRITY: If you pin it down, about how many?

MR. CALVINO: I would say, possibly five.

MR. GARRITY: Out of 155?

MR. CALVINO: Yes.

MR. GARRITY: Out of a 2,000 case lot of beer, one brand, how many of your members would be able to buy that?

MR. CALVINO: Maybe 20%.

MR. GARRITY: Okay. Thank you.

ASSEMBLYMAN MARKERT: Mr. Director?

DIRECTOR VASSALLO: There are many, many question I would like to address to Mr. Calvino, since he said he would be a sacrificial lamb. But, perhaps I will pass to the other members of the Subcommittee, since I always have access to him at the Commission.

ASSEMBLYMAN MARKERT: All right. Mr. Feldman?

MR. FELDMAN: I have a very brief question. The Chairman asked you about proofing. He talked about minors. What, in your opinion, is the maximum proof? Should there be a limitation on the alcoholic strength which is available for sale to consumers? We have heard where people will buy a certain brand of a very high proof alcoholic beverage, put it in with a mixer and create a very, very potent kind of product for a sale, or rather for use at a picnic where a lot of minors are available. Do you have any thinking on that? Secondly, we spoke about maximum. Do you feel there is a limitation that the Committee should consider on the minimum size? For example, are miniatures in the public's best interest, in view of the moderate and temperate theme and the fact that minors find it available, particularly when talking about high schools and so on? What is your opinion on those two items, those two questions?

MR. CALVINO: I think there were three. The first question, about the higher proof of a product, which will remain nameless but which was just recently introduced to the State of New Jersey, I happened to have attended a picnic where I saw a garbage bag. Understand, this is a very common thing -- a garbage bag inside a garbage can, filled with Hawaiian Punch and icecubes, spiked with -- we are not mentioning it -- a very, very high proof alcohol, and there were many people drinking it. That wasn't actually a liquor store problem or a consumption problem. It was a private picnic. I'm not in favor it. I think we can live without that particular high proof alcohol.

The next question you asked me was about miniatures. Miniatures are one of the things that the package stores were given in deregulation. That was supposed to help us make up for the business we lost. I can speak for my Association. We would gladly give up miniatures and work something out. I don't think they help.

ASSEMBLYMAN MARKERT: Is that all, Mr. Feldman?

MR. FELDMAN: Yes.

ASSEMBLYMAN MARKERT: Mr. Farrell?

MR. FARRELL: No questions.

ASSEMBLYMAN MARKERT: Mr. Napodano?

MR. NAPODANO: I have a question, but I will defer.

ASSEMBLYMAN MARKERT: All right. Thank you. Mr. McCaffrey?

MR. McCAFFREY: No brief questions.

ASSEMBLYMAN MARKERT: No brief questions? I will come back to you in case some of the information is forthcoming. Do you have anything, Mr. Vassallo?

DIRECTOR VASSALLO: Nothing at this time.

ASSEMBLYMAN MARKERT: We thank you very much for being with us.

MR. CALVINO: Thank you.

ASSEMBLYMAN MARKERT: I will ask the final person to come before us this morning, Mr. Jarvis. If we have someone else other than Mr. Jarvis, I will take someone else.

W I L L I A M J A R V I S: My name is William Jarvis. I represent the Essex County Package Stores' Association. I am a relative newcomer to the alcohol industry. However, in the last forty-seven months since I have been in the business, I have been forced to age rapidly in order to survive in what I consider a volatile industry.

It was of interest to me to note that deregulation seemed to have been geared to the retailers' level, and the retailers were singled out to bear the brunt of deregulation. Entering the business, I noted a dual type of attitude, one regulation or enforcement for the alcohol industry, and another set for our regular business. For example, if a customer or an employee would commit an offense at a department store, that person would be held accountable. On the other hand, if an offense is committed within a retail liquor store by an employee or a customer, the owner of that store is held accountable. In most instances, this is not fair to the retailer.

Deregulation, as I understood it, was designed to benefit the consumer. And, when one reads the newspaper, it appears that may be perceived. I say perceived, but I am not sure that it has. After deregulation, the top twenty-five brands of spirits increased in price. This, coupled with the advertising list that we see every week and the ads that you have seen today, would suggest that in some areas, customers and consumers have received bargains. But, if you look at this statewide, could we say that consumers as a whole have benefited from deregulation, that they get a better price? We questioned this.

Deregulation was supposed to be two-tiered. I call into mind the standing, that is the wholesale level, as well as the retail level. When you check the prices today that a retailer must pay for his product, one would say it would appear that the emphasis and the brunt of deregulation are at the retailers' level, and not at the wholesaler's level.

Wholesalers who have exclusive rights to a product seem to be contradictory to the idea of competitive spirit within the marketplace. It seems to me that that has a tendency to restrict competition, and does not serve in the best interest of the consumer.

If you want to have a fair market for the consumer, then I think, we should deregulate the wholesale level as well. In our thinking, the latter, as well as the spirit of deregulation, have not been met.

The state of the economy adversely impacted on our industry in 1982. As most of you are aware, we had a negative growth rate in our industry last year. In the City of Newark, we had a total of 344 alcoholic beverage businesses on default in March of 1983. Included in this group were approximately 37% of the distribution licenses. Such a picture cannot help the consumer. This impacted on the City's tax base, as indicated by a proposal by the Administration to increase the license fees from \$1,108 to \$2,000 over a four-year period.

We think predatory pricing is unfair, and a contributing factor to some of these problems. When a retailer cannot pay his bills on a regular basis due to predatory pricing, I think in the end, all of us must pay.

A contributing factor, as was stated earlier, to our predatory pricing, is the cost of a product. I don't think we can overemphasize that there is a need to establish exactly what a fair cost should be. When we are reviewing the idea of cost, we should consider what the minimum price should be when selling a product.

Also, as was stated earlier, a critical point that will help the consumer, I think is, to make permanent the idea of cooperative buying. This has a tendency, to some degree, of fair competition to those who are able to advertise heavily in the news media.

A question that you asked earlier about the sales to individuals under age, the present statute, I don't think is fair to the retailer. This is an area that I think and our group thinks that we should review to make it fair across the board. You have retailers who works very conscientiously to enforce the statute. But, if a mistake is made by an employee, inadvertantly, he may have to be severely punished. At the same time, the consumer may use all types of phony ID's in order to purchase products, and some of them look very official. I think those statutes should be reviewed.

Another area that would possibly be of great value to both the consumer and the retailer is, to look at the possibility of having controlled tasting of products in the retail stores. At the present time, this is not allowed. We are confident that this Commission -- and we are very proud to see such a Commission formed -- will come up with a recommendation that will be in the interest of the consumer, as well as the industry as a whole. Thank you for allowing me to appear.

ASSEMBLYMAN MARKERT: Thank you very much, Mr. Jarvis. Are there any questions from the Committee? (no response) We thank you very much for appearing. We want to thank everyone for taking the time out that they have to come before us. I believe we have one more gentleman who would like to speak. Would you come forward, sir?

We on the Committee realize that you people are taking time away from your employment and away from your businesses to be able to present your views and to give us your suggestions. We do appreciate having you here today. Would you please give us your name and who you represent?

S T E V E N W O H L: My name is Steven Wohl. My family has a retail liquor store in Newark. Although there were many things said today that I could comment on or take issue with, there are really two areas I would like to make statements about that are perpetuating certain attitudes that I don't think are accurate.

There seems to be a wide use of certain terms, such as predatory pricing. I haven't heard anybody say competitive pricing; you always hear the term predatory pricing. Also, the issue of temperance has been invoked for issues that will bolster certain stores' financial benefits.

The issue of temperance seems to be an idea that is promulgated, that the only thing that affects temperance is people's reasonable use of alcoholic beverages, whether there are high prices or low prices. It seems to be said, that if somebody is advertising a low price, if somebody is discounting certain beverages, that everybody is going to run out and buy a lot of this, pour it into a garbage can and start feeding it to minors and everyone else.

I believe, at the moment, we have a dipping consumption in this State. Other people here can correct me on that. There does seem to be a lot of advertising and discounting going on.

To give a little perspective to what I am talking about, I think maybe the issue of temperance is really being avoided and is being used for other purposes. If you get a little perspective on other locations, either other states, such as Pennsylvania and Utah, and what their ideas of temperance are, or other countries to see what is going on there-- In Pennsylvania, they have a system where they have state stores, and they promote temperance by having very, very uncomfortable stores you go into, where people are almost treated as if they are going into methadone clinics. That was a statement made to me by people I know from Pennsylvania. I imagine that we in New Jersey could promote temperance by requiring that stores have that kind of attitude also. I don't know that that is the answer.

In Utah, I believe they have severe restrictions on buying alcoholic drinks in restaurants.

If you go into other countries, such as Italy or Greece, where the prices of wine and liquor are very, very inexpensive, I think you will see the abuse of alcohol and alcoholism are far lower than in the United States. So, what I am suggesting is, the problem lies in other things having to do with our culture, rather than somebody putting an ad in the newspaper for a discounted price.

Another term that I have heard repeatedly is the term "predatory pricing," that everybody out there who is advertising is only in the business of putting people out of business. I take issue with that.

I think the advertising and pricing that is going on is a fair type of system, which allows the public to be able to purchase

alcoholic beverages at fair prices, at discount prices, and sometimes, at bargain prices. I think the reason we hear the term predatory pricing so much is because we are going through a difficult period, where for many years, we have had people in a business where they have not had to act as merchants, and have not had to act as business people because their incomes were more or less guaranteed. You had a fixed price situation, where the public was more or less subsidizing any store that wished to have a license and go into business. So, I think these terms of "predatory pricing" and "temperance" are being used to mask these other problems.

Am I correct on the consumption? Right now in New Jersey is consumption somewhat down?

MR. BROMLEY: It is up.

MR. WOHL: How much is it up?

MR. BROMLEY: It is up 3%.

MR. WOHL: Three percent. Is that this month, or is that last year?

MR. BROMLEY: The most immediate last quarter.

MR. WOHL: Another term I have heard used is, the statement, "This country is based on fair pricing for everyone, that is the American way." I seem to hear something else. That statement seems to say that fixed high prices are what this country is based on, rather than something resembling a fair or normal market where people have the ability to choose where they buy products based on the service, based on the price, and based on the selection. I also hear the term, "A stable market and an even market," which seems to be the same type of thing. I think there are other countries, such as countries where all the markets are controlled to be even, which are not democratic countries or capitalist countries where the government sets what it thinks are fair prices for everybody on all products. I don't know if that is the business the State wants to be in, either.

I think what we have in a lot of these statements and a lot of the requests for controlling the market and the State, redefining costs, which interprets into fixing higher prices is, there are retailers who want the government to have the public subsidize their businesses, regardless of the business' viability, or their ability to

run their businesses well. I know many people who have retail stores who do not advertise, who take advantage of the cooperative buying capabilities, and who run very profitable, very good businesses. I know people who have taken advantage of advertising and cooperative buying, who have done terrible, because they have just not done some common sense things in running a business well. It is unfortunate. It is unfortunate when you are changing a system so drastically, as we have done in deregulation, that we are going to have readjustments in the market. Not everybody is going to do well. But, I don't know whether or not the best solution is to try to readjust the market to subsidize every person in the marketplace, to have them make a high profit on whatever their business, regardless of the viability.

I have heard retailers make statements that they are not happy about people traveling a half mile, a mile, or across a town line to purchase an item at a discounted price. I would question whether or not these people, in purchasing their other goods and their other services, go to stores with the highest prices or whether or not they walk around saying, "Are your prices really fair?" Or, do they look for prices that are good for them, and good for our serving the public and the public's interest?

To sum it up, I think the marketplace with advertising, the ability to advertise, the ability to advertise price, is going to reach a balance where businesses are going to be able to make money and be able to survive. There are problems, but, I do not accept the premise that going back to a strict regulation and fixed high prices for the public is the answer.

ASSEMBLYMAN MARKERT: Thank you very much, sir. Does anyone have any questions of Mr. Wohl?

MR. FELDMAN: I have just a brief reference for your own information. The words "temperate sale" start with the law, where the Director is obligated by law to see that the sale of alcohol beverages is held in a temperate manner. If you review decisions of the Supreme Court from the very, very beginning of this industry, going back practically fifty years, you will find that they have defined temperance for the industry, the temperance sale. So, we are not governed by any self-serving definition; we are governed by the law,

implemented by the regulations, interpreted by the Supreme Court, and defined by the Supreme Court. So, in that sense, I would suggest you refer back to those decisions. I don't have them available with me, but you will find the whole history of what they define as a moderate and temperate sale of alcoholic beverages in the State.

MR. WOHL: I was only suggesting that as everyone, including the courts, is trying to improve what they are doing, if fifty years ago the Supreme Court made certain decisions as to what was temperate, we find out that that isn't really what is happening. If three years ago, or five years ago, it was thought that having high prices was going to stop fourth grade children from starting to drink, or earlier, or whatever was implied, we became a little more enlightened afterwards that there may be other things in our culture that affect temperance, truly affect temperance. We really adjusted to meet the problem. I don't think anybody here would have a problem with that.

MR. FELDMAN: Well, the last decision was in the Degnan versus Heir Case in 1980, when they considered the validity of deregulation, not of the regs themselves, but of the concept of whether or not this was a practice which the Attorney General, and through him the Director of the Division, could undertake, and they defined in that decision what temperance sale was.

ASSEMBLYMAN MARKERT: If there is no one else, we will allow the witness to step down. Oh, I'm sorry, excuse me, Mr. Bromley.

MR. BROMLEY: I do not think we understand Mr. Wohl, because I think the answers, and the questions asked by the Vice Chairman lead one to believe that Mr. Wohl just doesn't understand what temperance is. I think what Mr. Wohl is saying to us is, that in his opinion, temperance is a concept that has no meaning in 1983, and is outdated. Am I correct?

MR. WOHL: Well, I'm not really sure what you are implying there. What I was saying, to reiterate it, is, if the boldest temperance is to try to assure that in our society people are going to be healthy people, who are aware that we are not promoting a large number of people to become alcoholics, or something like that, the goal is to do things in our society that are going to promote healthy activity among people. What I was questioning was the implication made

that temperance in our society is simply a matter of raising prices or lowering prices. My statement referring to other parts of the country or other parts of the world, was that the price of alcoholic beverages does not seem to be the main thing that creates alcoholics or abuse of alcoholic beverages.

MR. BROMLEY: Temperance is more than just a question of alcoholism, though. Apparently, temperance is a phrase that means someone shouldn't drink too much. It applies particularly to alcohol, doesn't it?

MR. WOHL: Do you feel that you are going to cut down the abuse of alcohol severely which would lead to alcoholism, or do you feel severe abuse of alcohol is directly and strictly a result of what the price is, whether or not it is advertised, or whether people are allowed to take advantage of reasonable prices on alcoholic beverages?

ASSEMBLYMAN MARKERT: Excuse me, but, I don't really feel that any member of the Committee at this point in time would be able to express a position or condition of position with reference to that question or any other question. The purpose of this meeting is to be able to acquire, and have presented to us, as much information as possible, so that in our deliberation, we will be able to reach the type of conclusions similar to the question that you have just asked. That is something I am sure the Committee as a whole will address when we meet in Executive Session.

MR. BROMLEY: Mr. Chairman, could I ask one following question? I am at a loss to understand the testimony of Mr. Wohl on predatory pricing.

ASSEMBLYMAN MARKERT: Well, we have it on tape, and I am sure you will be able to review it in full, if you feel you would like to reiterate in any particular area. Mr. Wohl has given testimony that is definitely on tape and will be presented to you if you would like to read it further. In the interest of giving an opportunity to one more person who has come before us, I would like to say that we might be able to continue the discussion and questioning of Mr. Wohl after we hear from the next witness. This will be the last witness, and then we can get back to Mr. Wohl so the others can leave, if that is all right with you. Would you please stay around, Mr. Wohl, until after we hear from the next witness?

MR. WOHL: I will stay around, yes. Fine.

ASSEMBLYMAN MARKERT: I would appreciate that. Thank you very much. This will be the final person that we will take testimony from. However, we will go back to Mr. Wohl for the benefit of any members of the Committee, after we have called for a closing statement.

SAMUEL WRIGHT: I am very pleased that this session is going on today. I have been in this business ever since day one. I even helped my dad make home brew. My name is Sam Wright, Wright's Liquor Store in Malaga. Everything that has been on the floor so far I am interested in, but, I want to stress one point. I spent a whole lifetime in the business of alcoholic beverages. I have two children who are involved in it, and I would like you fellows to do some of the things necessary to keep it so they will still have a business.

ASSEMBLYMAN MARKERT: That was a very short statement, thank you. I am sure it had a lot of impact, though.

Before we get back to Mr. Wohl, I am going to allow the members of the Committee to make any type of statement they might like to with reference to closing this hearing. Prior to that, I will inform those who are in attendance that our next, and what I consider will be the last public hearing of this Subcommittee, will be held on September 16, 1983 in Atlantic City. We will be addressing the liquor industry's trade practices of regulations and such with the casino industry, how they could adversely affect the Casino Control Commission and the ABC. So, while we feel we have a confliction in those two areas, we are going to try to address that through this Trade Practices Subcommittee meeting in Atlantic City on the 16th. It will start promptly at 10 a.m. The Committee members will be informed as to the location.

Now, I will start from my left to see whether or not anyone has, at this point in time, any closing remarks. Mr. McCaffrey?

MR. McCAFFREY: I have none.

ASSEMBLYMAN MARKERT: Mr. Napodano?

MR. NAPODANO: Yes, Mr. Chairman. Thank you. I have just two very short things. I want to just put some things on the record so there is no misunderstanding of a lot of what was said here this morning. It should be noted that all Shop Rite Liquor Store owners do

not own supermarkets. It should also be noted that all Shop Rite Liquor Stores are not contiguous to Shop Rite Supermarkets. That is just for clarification.

The other thing, Mr. Chairman, is, I would hope that at some future time, or at your next meeting, you will permit representatives of the buying or advertising cooperatives, if you will, and representatives of the newspapers, to appear before your Subcommittee, and perhaps present the other side of the testimony that we have heard this morning.

ASSEMBLYMAN MARKERT: Mr. Napodano, you have brought up a very good point. I do feel that it should be addressed. Rather than encompass it in the next meeting, I would prefer to have a separate hearing involving ourselves in just that, the co-op buying, the type of situations that would be established, and the newspaper people. I would say that could be done, and we could hold that right in Trenton, so we could address that part of the industry. Mr. McCaffrey?

MR. McCAFFREY: This meeting was not specifically for the "D" licensees. Were there "C" licensees invited?

ASSEMBLYMAN MARKERT: No, it was not specifically-- Yes. The representatives that deal with the industry under the "C" licenses were informed of the meeting, the time and the place, and we did ask them to inform their members. I know we have had no one here from the "C" license group, but evidently, there seems to be no problem in that area. Mr. Farrell?

MR. FARRELL: I have nothing, except to say that I think the hearing in Atlantic City should also allow people to testify who happen to live in South Jersey, who want to talk about things other than casino-related matters. It would be very convenient for them. I don't think we should limit it to the casino industry if there are people down there who want to address the kind of topics that we heard today.

ASSEMBLYMAN MARKERT: Maybe we should go further, then. Are there any thoughts of restricting it to just the casinos, or is it this Committee's wish that we open the next hearing to be held in Atlantic City to address all areas? Mr. Director?

MR. VASSALLO: I would suggest, since it is going to be in Atlantic City, that it go a little bit beyond just the casinos, because

there are a number of trade practices occurring in the Atlantic City area which seem not to be occurring in other parts of the State. A lot of promotions occur in the Atlantic City area which go beyond those that occur in other parts of the State. Perhaps it might be very appropriate for this to be addressed.

ASSEMBLYMAN MARKERT: Do I hear any objection to having this next hearing open to all with trade practices involving the industry? (no response) Well, with no objection, I will ask the secretary to please inform all the groups, once again, of the upcoming Committee meeting in Atlantic City. We will be addressing trade practices in general for the industry, and that should cover everybody. At that point in time, maybe we could also inform the newspapers and the buying cooperative groups to give us testimony also. Mr. Feldman?

MR. FELDMAN: Nothing further.

ASSEMBLYMAN MARKERT: All right. If there is nothing further, we will go back to Mr. Wohl to finish off any discussions Mr. Bromley might have with him. Of course, we will have no further witnesses appear before us today. Thank you for your indulgence, Mr. Wohl.

MR. BROMLEY: Mr. Wohl, the definition of predatory pricing, which I think was used most generally today, is the definition that says, "...the sale of alcoholic beverages at unreasonably low prices for the purpose of destroying competition or eliminating a competitor." My question to you is, is that the sense you were using in the term predatory pricing, and do you speak in favor of predatory pricing or in opposition to it?

MR. WOHL: My disagreement is relates to what predatory pricing is. I have heard just about everybody who used the phrase today throw out the phrase predatory pricing, using it synonymously with any advertising or any discount pricing. I know there are people advertising high prices. If you look at the ads, there are people who are advertising high prices. Nobody has mentioned that. The only thing I hear from anyone's mouth is predatory pricing. I believe that the overuse of that word is trying to perpetuate the idea that any discounting or any advertising is predatory.

As I stated before, I believe the history in New Jersey shows that the pricing that has gone on is not predatory. If you compare New Jersey, I believe -- I don't have all of the facts right here -- with other states, such as New York, where when they have had changes in their regulations, they have had very large percentages of their retailers drop out of the business very quickly. I am talking about figures of 20%, 30% of the stores going out of business in New York City over a one, two, or three year period. Compared with that, from what was predicted, from what I have heard predicted after deregulation, there has been nothing anywhere close to that type of thing. Also, I know what our own attitudes -- my attitude and my family's attitudes -- in running our store and in merchandizing are. We are not looking to put anybody out of business; we are looking to do what everyone else is doing, to make a living, to try to upgrade a business well, to try to serve the public, and to provide the public with good service and fair and reasonable pricing.

ASSEMBLYMAN MARKERT: Are there any other questions?

MR. GARRITY: As I understand it, you make a very good case for (inaudible) in the alcoholic beverage retailing business. Apparently, you do not fear competition and you do not agree with the meaning of the term, predatory pricing as used here.

MR. WOHL: Some of its use. You would have to be specific on what you are saying. Fear competition and predatory pricing? If a company were allowed to come in and give away their goods for two months, that would be predatory pricing, because there is no justification for that other than putting other businesses out of business. What I said was, I think what the history of New Jersey has shown is, that that hasn't been the case, and very largely, the pricing that has gone on and the advertising that has gone, on have not been predatory, as witnessed by what has happened in the marketplace.

MR. GARRITY: May I ask you what area of Essex County your business is in?

MR. WOHL: I have stores in Newark.

MR. GARRITY: In Newark?

MR. WOHL: Yes.

MR. GARRITY: Are you a member of a cooperative buying or advertising group?

MR. WOHL: Yes. I am a member of the Shoppers' World of Liquor, which is a cooperative advertising group. I am also a member of a cooperative purchasing group.

MR. GARRITY: Are you a member of any retailers association?

MR. WOHL: We have been at various times. At the moment, I don't believe we are.

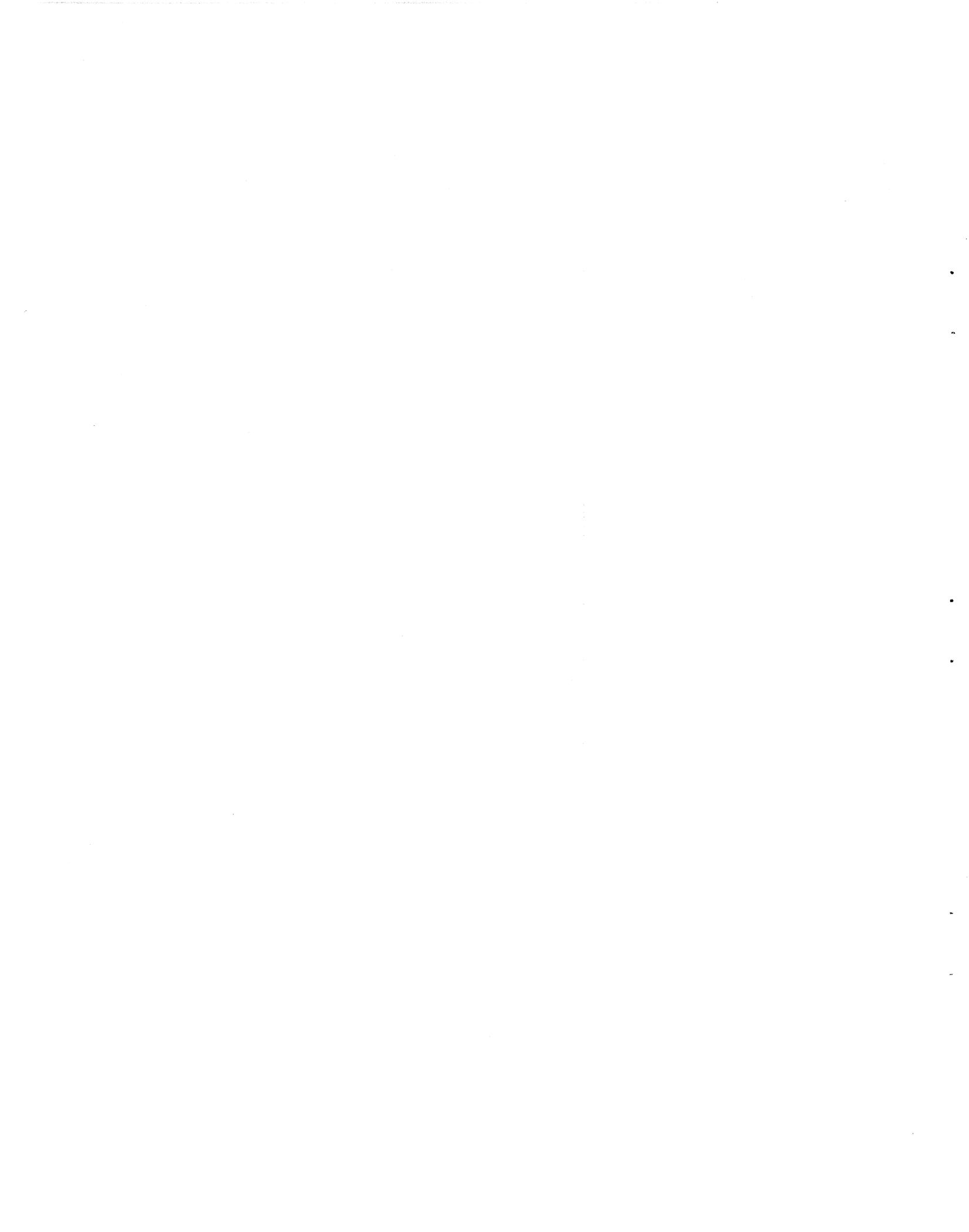
MR. GARRITY: Are you a member of the New Jersey Package Stores' Association?

MR. WOHL: No, I am not.

MR. GARRITY: Thank you.

ASSEMBLYMAN MARKERT: Thank you very much. I certainly, once again, appreciate everyone being here. We will formally close this Subcommittee meeting, and we will meet on September 16th.

(Hearing Concluded)





GSRA

**Garden State
Restaurant Association
for
Beer and Wine**

MR. CHAIRMAN AND MEMBERS OF THE COMMISSION, I AM BARRY LEFKOWITZ, EXECUTIVE DIRECTOR OF, AND ONE OF THE LEGISLATIVE REPRESENTATIVES FOR, THE GARDEN STATE RESTAURANT ASSOCIATION.

I COME BEFORE YOU TODAY TO DISCUSS A MAJOR ISSUE WHICH HAS BEEN SURROUNDED BY MUCH CONTROVERSY SINCE ITS INTRODUCTION...THE ISSUE OF BEER AND WINE PERMITS, AS IT NOW EXISTS IN 46 OTHER STATES. ALASKA, OKLAHOMA, DELAWARE AND NEW JERSEY ARE THE ONLY STATES IN WHICH LIMITED PERMITS ARE NOT AVAILABLE. WE BELIEVE THIS MATTER CAN BE LOOKED AT AND PROPERLY ANALYZED BEFORE THIS COMMISSION IN AN ATMOSPHERE OF ACCURACY.

THE BEER AND WINE LEGISLATION, S1863/A3014, WAS ORIGINALLY INTRODUCED OVER A YEAR AGO. SINCE THAT TIME, THE LEGISLATION HAS UNDERGONE MAJOR CHANGES. MANY OF THESE CHANGES CAME AS RESULTS OF NUMEROUS MEETINGS WITH LEGISLATORS, THE LICENSED BEVERAGE ASSOCIATION, MR. VASSALLO, THE LEAGUE OF MUNICIPALITIES AND THE CONFERENCE OF MAYORS, AS WELL AS MADDO AND THE MANY OTHER TASK FORCE GROUPS FORMED TO COMBAT DRUNK DRIVING.

WE STRONGLY BELIEVE THAT WE NOW HAVE A PIECE OF LEGISLATION THAT WILL BE A BENEFIT TO THE STATE, THE LIQUOR INDUSTRY, AND, MOST IMPORTANTLY, TO THE CITIZENS OF NEW JERSEY.

LET US LOOK AT THE BILL AND THE ACTUAL SPECIFICS. EACH OF YOU HAS

BEFORE YOU THE THIRTEEN MAJOR PROVISIONS OF THE BILL THAT WERE WRITTEN TO PROTECT THE MUNICIPALITIES AND THE EXISTING CLASS C LICENSE HOLDERS. YET, AT THE SAME TIME, THIS BILL WILL PROVIDE THE NEEDED IMPETUS TO A MAJOR ECONOMIC REVIVAL OF 2,000 TO 2,500 MEMBERS OF THE RESTAURANT INDUSTRY. LET ME REEMPHASIZE THAT NUMBER OF RESTAURANTS - 2,000 TO 2,500 - WHICH INCLUDES GROWTH IN THE INDUSTRY.

S1863/A3614 AUTHORIZES THE ISSUANCE OF BEER/WINE PERMITS TO LEGITIMATE, BONAFIDE, TRADITIONAL RESTAURANTS TO SERVE MALT ALCOHOLIC BEVERAGES AND WINE ONLY BY THE GLASS WITH MEALS BY RESTAURANT PERSONNEL TO SEATED PATRONS BETWEEN THE HOURS OF 11:00 AM TO 11:00 PM. INDUSTRY STATISTICS SHOW THAT THE PEAK HOURS IN WHICH DRUNK DRIVING FATALITIES OCCUR ARE AS FOLLOWS:

1. 2:00 AM TO 3:00 AM
2. 1:00 AM TO 2:00 AM
3. 11:00 PM TO 1:00 AM

IN ADDITION, ACCORDING TO THE GRAND RAPIDS STUDY ON DRUNK DRIVING, MOST DRUNK DRIVERS COME FROM THE PRIVATE HOME (E.G. PARTIES), THEN BARS, TAVERNS, AND PUBS.

THE LEGISLATION HONORS A MUNICIPALITY'S HOME RULE OPTION, WHICH STATES

THAT A MUNICIPALITY SHALL AUTHORIZE THE ISSUANCE OF BEER AND WINE PERMITS FOR THAT COMMUNITY BY ORDINANCE. THE BILL EVEN CARRIES HOME RULE A STEP FURTHER. IF A MUNICIPALITY AUTHORIZES THE ISSUANCE OF PERMITS, PRIOR APPROVAL MUST BE GIVEN BY THE GOVERNING BODY TO EACH INDIVIDUAL BONAFIDE RESTAURANT.

THE BILL EXCLUDES ALL FAST FOOD RESTAURANTS. THE BILL HAS BEEN DESIGNED TO RESTRICT PERMITS ONLY TO THOSE RESTAURANTS WITH A MINIMUM SEATING CAPACITY OF 50 AND THAT SERVES A FULL COURSE MEAL CONSISTING OF, SOUP, SALAD, APPETIZER, ENTREE AND DESSERT.

S1863/A3614 PROVIDES FOR A POPULATION FORMULA. THIS FORMULA WILL PLACE A CAP OR LIMIT ON THE NUMBER OF BEER/WINE PERMITS THAT CAN BE ISSUED IN A COMMUNITY. THIS IS VIEWED AS A PROTECTIVE MEASURE FOR THE MUNICIPALITY AND THE LIQUOR LICENSE HOLDERS.

IF WE CAREFULLY LOOK AT THE DIFFERENTIAL CHART BEFORE YOU, YOU CAN CLEARLY SEE THAT THE DIFFERENCES BETWEEN THE PRESENT CLASS C LICENSE AND SPECIAL PERMITS ARE OF SUCH SIGNIFICANCE THAT THE PERMIT COULD NOT INFRINGE ON THE VALUE OF THE SALEABILITY OF A CLASS C LICENSE.

WE HAVE EVIDENCE SUPPORTING THE ABOVE STATEMENT FROM THE STATES OF KENTUCKY AND NEW MEXICO WHICH WERE TWO OF THE LAST STATES TO ADOPT THE SPECIAL CATEGORY OF BEER AND WINE IN RESTAURANTS. ACCORDING TO MR. EDWARD FERRIS, CHAIRMAN OF THE KENTUCKY ABC, THERE HAS BEEN NO

DIMINISHING OF THE VALUE OF FULL LIQUOR LICENSES. A LICENSE IN LEXINGTON WORTH \$100,000 IS STILL WORTH \$100,000. A POSITIVE OBSERVATION MADE BY MR. FERRIS WAS OF THE GROWTH OF ETHNIC RESTAURANTS IN LEXINGTON.

NEW MEXICO, A TOURIST STATE LIKE NEW JERSEY, CONDUCTED A FULL SCALE STUDY OF ITS LIQUOR INDUSTRY, CALLED THE PARKER REPORT. ACCORDING TO MR. JAMES BACCA, FORMER LIQUOR DIRECTOR IN NEW MEXICO, "BROWN BAGGING", CRIMINALIZES THE CONSUMPTION OF ALCOHOLIC BEVERAGES IN A RESTAURANT; AND, IS A DIRECT THREAT TO THE ECONOMIC WELFARE OF THE UNLICENSED RESTAURANT.

NEW MEXICO NOW HAS A SYSTEM, VERY SIMILAR TO THE LEGISLATION BEFORE YOU FOR THE ISSUANCE OF BEER AND WINE LICENSES. ACCORDING TO MR. ROMERO, DEPUTY DIRECTOR, NEW MEXICO'S NEW SYSTEM OF BEER AND WINE LICENSES HAS BEEN VERY ADVANTAGEOUS TO THE TOURIST-ORIENTED BUSINESSES IN PROVIDING FULL FOOD AND BEVERAGE SERVICES, AND HAS PROVIDED NEW MEXICO WITH MUCH NEEDED TAX DOLLARS.

THE NEW MEXICO PARKER REPORT IS FORTH COMING TO OUR OFFICE FOR OUR COMPLETE STUDY AND REVIEW. WE BELIEVE THAT THIS COULD BE OF SOME ASSISTANCE TO THIS COMMISSION IN STUDYING THE LIQUOR LAWS OF OUR STATE SINCE NEW MEXICO WAS FACED WITH SIMILAR PROBLEMS.

THE TIME HAS COME FOR THIS KIND OF LEGISLATION. NEW JERSEY MUST STAND UP AND BE COUNTED AS THE 47TH STATE TO HAVE BEER AND WINE PERMITS. WE MUST BE ABLE TO COMPETE WITH OUR NEIGHBORING STATES AND CONTINUE TO PROVIDE SMALL BUSINESSES WITH THE RIGHT ATMOSPHERE TO SURVIVE IN.



GSRA

**Garden State
Restaurant Association
for
Beer and Wine**

S1863 Fact Sheet

1. S1863, sponsored by Senators Russo, DiFrancesco, Foran, Caufield, Stockman, Hirkala, Cardinale, and Paoletta, is an act concerning special permits to allow bonafide restaurants to serve malt alcoholic beverages and wine by the glass. (Amending P.L. 1939, c.173).
2. The governing body of a municipality shall authorize the issuance of beer and wine permits for that municipality by ordinance. (Home Rule)
3. No beer and wine permit may be issued to individual bonafide restaurants unless prior authorization is given by the governing body of the municipality.
4. S1863 allows those restaurants holding permits to serve malt alcoholic beverages and wine, in glasses, by restaurant personnel providing table service to seated patrons for consumption only with meals.
5. Hours of service of beer and wine shall be from 11:00 AM TO 11:00 PM each operating day allowed by municipal ordinance.
6. Permit holders may only serve malt alcoholic beverages and wine in glasses.
7. Fast food establishments will not be eligible for a special permit.
8. The special permit fee shall be comparable to existing municipal license renewable fees, with a like amount going back to the municipality for enforcement. (up to \$2,000.00)
9. An additional \$500.00 fee to the State will be earmarked as follows:
 - a. \$250.00 to the Division of Alcoholic Beverage Control for the purpose of administering this act.
 - b. \$250.00 to the State of New Jersey General Fund.
10. Public referendum is required for dry communities to approve the issuance of special permits.
11. A restaurant must have a minimum table seating capacity of 50 and primarily serve a full course meal (appetizer, soup, salad, entree, and dessert).
12. Municipal restrictions shall be imposed upon restaurants.
13. Application for permits will be the same as for plenary retail license holders in 33:1-25.
14. Each municipality wherein the issuance of beer and wine permits is allowed shall be restricted in the number of permits which shall be issued by special population criteria.



GSRA

**Garden State
Restaurant Association
for
Beer and Wine**

SIGNIFICANT DIFFERENCES BETWEEN

LIQUOR LICENSE HOLDER

PERMIT HOLDER

Flexible hours based on municipal ordinances

Restricted hours governed by State Statute (11:00 A.M. to 11:00 P.M.)

Any type of alcohol may be served by glass or bottle

Only draft beer and wine by the glass

May have bar or lounge

No bar or lounge allowed

Any type of alcohol may be consumed at anytime without a meal

Beer and wine with a meal only

A broad selection of alcohol may be consumed on premises

Only draft beer and wine by the glass may be consumed

Mixed drinks have a higher profit margin than beer and wine

No mixed drinks -- only beer and wine

Owns license and has right to transfer it and to sell it

Does not own a license -- cannot transfer or sell permit

Packaged Goods can be sold for off-premise consumption

No sale of packaged goods

Licensees are primarily in the liquor business and/or liquor-food business

Permit holders only in the food business

Regular daily/nightly customers

Regular customers - two to four times per month

Banquet privileges already granted

Must receive special permit to provide alcohol for banquet functions

Licensees serving food may provide drinks to waiting patrons

Drinks may not be served other than with meal

ECONOMIC IMPACT

2,000 Restaurants

2,500 Restaurants

New Jobs Created by S1863

4,000 new jobs × \$3.75 hrly/wage
× 25 hrs/wk × 26 wks/yr =

\$9,750,000.00

yearly increase by S1863/A1969

5,000 new jobs × \$3.75 hrly/wage
× 25 hrs/wk × 26 wks/yr =

\$12,187,500.00

yearly increase by S1863/A1969

Expanded Hours

2,000 restaurants × \$3.75 hr/wage
× 20 average # employees × 8
expanded hours × 26 wks =

\$31,200,000

increase in gross pay for expanded hours

2,500 restaurants × \$3.75 hr/wage
× 20 average # employees × 8
expanded hrs × 26 wks =

\$39,000,000

Construction Costs

128 sq. ft. increase × \$65.00
per sq. ft × 2,000 restaurants =

\$16,640,000

128 sq. ft. increase × \$65.00
per sq. ft. × 2,500 restaurants =

\$20,800,000

Equipment

Beer Mizers

\$2,000/mizer × 2,000 restaurant

\$4,000,000

\$2,000/mizer × 2,500 restaurants

\$5,000,000

Wine Coolers

\$2,100/cooler × 1,000 restaurants

\$2,100,000

\$2,100/cooler × 1,250 restaurants

\$2,625,000

Beer Pitchers

\$3.00/pitcher × 48 tables

\$288,000

\$3.00/pitcher × 48 tables

\$360,000

Glassware

150 glasses × \$.75/glass

\$225,000

Wine

150 glasses × \$.75/glass

\$281,250

150 glasses × \$1.00/glass

\$300,000

Beer

7x

150 glasses × \$1.00/glass

\$375,000

ALBUQUERQUE JOURNAL

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Wednesday, September 24, 1980

Editorials

Liquor Study Is Mandate

A study completed by the Bureau of Business and Economic Research at the University of New Mexico on the impacts of New Mexico's liquor licensing laws should serve as an irresistible mandate for incumbent and aspiring legislators to change the quota system.

The UNM study is significant and conclusive not because of its voluminous content, its detail, nor in any new facts it brought to light. Most of its pertinent facts have been stated repeatedly, in the press or on the platform, in recent years.

What is significant is that an experienced and respected research organization has approached the task of assembling and documenting the facts in a dispassionate way and has come up with evidence substantiating the positions of those who have long been crying out — but unheeded — for liquor law reform.

The research team's findings that the high priced quota licenses are restricting the state's economic development, pushing small and moderate scale businessmen out of the liquor business and putting the licenses almost exclusively in the hands of big money and out-of state interests should convince lawmakers that reform can no longer be postponed.

But prompt reform is rendered even more imperative by the fact that the state government, saddled by law with the responsibility of policing the liquor industry and enforcing the law, reaps only negligible benefits from the monopolies its own law creates.

Significantly, the UNM study discreetly steers clear of recommending any specific solution for the problem although it explores a number of approaches employed in other states.

It suffices that the study mandates a commitment from every member of the Legislature, including those who will be elected to their first terms in November, to strive for meaningful changes in an ill-conceived law that has grown into a dreadful Frankenstein. The nature of those changes can best be devised in the free and open interchange that legislative discussion and debate afford.

THE LAW

Are you responsible for the drunk driver?

James E. Peters is an educator and consultant for hotels, restaurants and bars. A graduate of the Hotel, Restaurant and Travel Administration program at the University of Massachusetts in Amherst, he has 15 years experience in the industry and presently teaches courses at the University of Massachusetts titled "Bartending—More Than Mixing Drinks" and "Employee Development in the Hospitality Industry."

With his background in the hospitality industry and the alcoholism treatment industry, he hopes to form a national network of those interested in cooperating in developing training programs for dispensers of alcohol. A conference is planned for this summer. For further information, write to P.O. Box 165, Amherst, Mass. 01004, or call (413)323-6076.

President Reagan began 1983 by calling on Americans to remove the drunk driver from the roads. Many groups are becoming involved. The alcoholic beverage industry and the alcoholism treatment industry, two groups generally considered adversaries, now have the responsibility to work cooperatively in making the highways safer. Education is the greatest force operating today to change the attitude of the public about drinking and driving. Establishing a communication network between these two groups will allow the exchange of valuable information, which then can be brought to the misinformed and confused public.

Each year, more than 25,000 people die in alcohol-related automobile accidents; an additional 1.5 million are injured. The cost of drunk-driving accidents amounts to more than \$24 billion every year in property damage, loss of wages and medical and legal fees. The emotional costs to the victim's family and friends are incalculable.

In many cases, the drinking drivers are coming from a bar or other alcohol-dispensing establishment. Throughout the country, lawsuits are being brought against taverns and bars for serving intoxicated persons or minors who later are involved in automobile

accidents. These suits claim that "contributory negligence" exists when an alcohol dispenser continues to serve an already intoxicated person or provides alcohol to a minor.

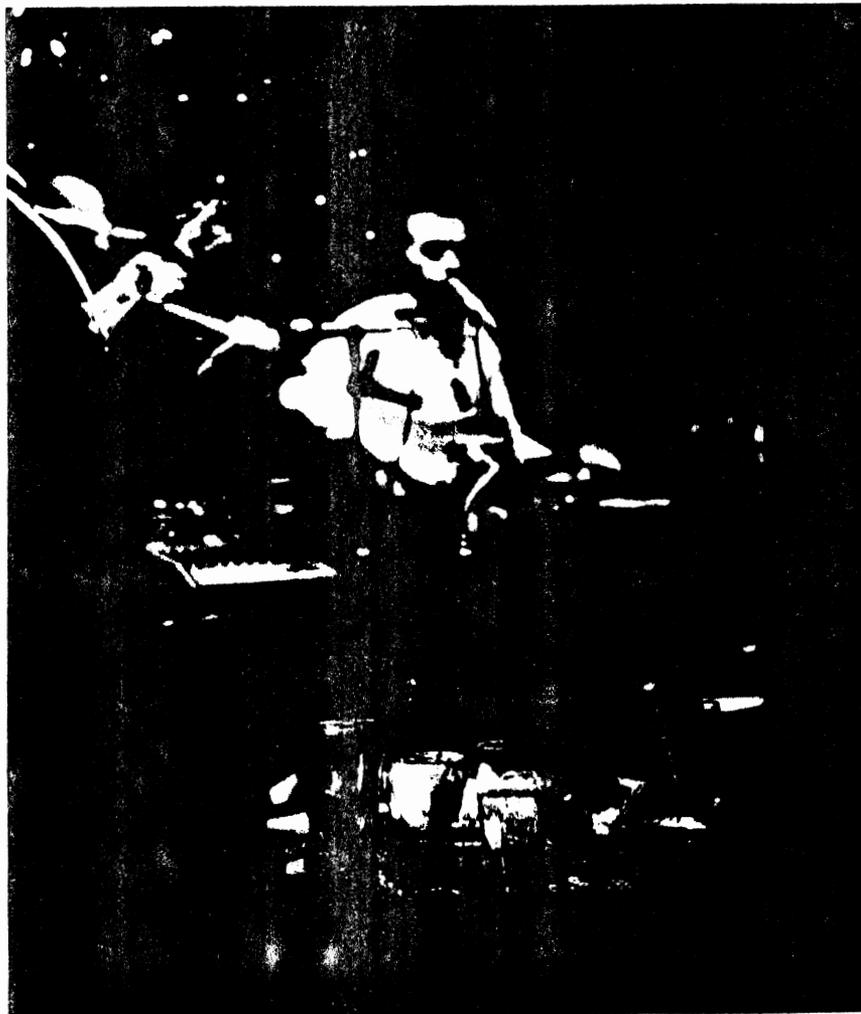
Twenty years ago, lawsuits of this type were rare and generally unsuccessful. In 1959, the ice was broken: A tavern in New Jersey was found negligent for injuries to a person caused by a minor served by the tavern. In this case, the injuries were a "foreseeable consequence" of the furnishing of the alcoholic beverages.

The alcohol dispenser's responsibility of monitoring customer drinking has existed for centuries. According to folklore, the expres-

sion "mind one's p's and q's," meaning be careful of one's words and actions, grew out of a system used in English public houses and pubs. Ale was served in either pint or quart containers and the innkeeper kept track by marking on a board the number of p's and q's the customer drank. The innkeeper who minded his p's and q's never lost money; the customer who did the same was never overcharged or never got drunk.

Today, courts are using Blood Alcohol Content (BAC) levels as the criteria for determining intoxication. BAC is the percentage of alcohol in a person's blood and represents the number of drinks a person consumed. A BAC of 0.10%,

Promoting a bar as a social environment can help discourage drunk driving.



Programs must be instituted to minimize the possibility of a third-party liability suit.

considered legal intoxication in most states, means one-tenth of one percent, or one-thousandth of the person's total body fluid. The greater the volume of body fluid or weight, the more alcohol is needed to reach a 0.10% BAC.

BAC, being more objective, has been used in research and substantial evidence shows a person's driving ability is affected seriously at 0.10%. The person has a seven times greater risk of being involved in an automobile accident; at 0.15% BAC, the person is 25 times as likely to be involved in an accident than someone who has not been drinking. The average BAC of individuals arrested for drunk driving is 0.175%.

How many drinks does it take for a person to reach these various BACs? Although many factors affect BAC, the most significant are body weight, sex, if the person has eaten or not and the rate at which a person drinks. Tabel 1 shows the number of drinks a person needs to reach various BACs in two hours. According to the table, a significant amount is needed to reach a high BAC. The 150-lb. drinker needs five drinks in two hours to reach the point of legal intoxication; this is a drink about every 25 minutes. The same individual would need nine drinks or a drink every 13 minutes to reach a BAC of 0.175%. This clearly is not a typical social drinker or a typical customer.

Because lawsuits against taverns are civil suits rather than criminal, a defendant needs only to show that he exercised "reasonable care" to prevent a person from becoming intoxicated and driving. Besides monitoring the number of drinks, the responsible establishment could develop other policies that would demonstrate "reasonable care" in preventing alcohol-related problems.

Suggested policies could include:

—Provide alcohol education to employees. Many people working in a job where they dispense alcohol are unaware of the potential dangers of alcohol abuse and their legal responsibilities when dispensing it. Massachusetts, North Carolina, New Jersey, Minnesota and New York are states that are considering legislation requiring

training of alcohol dispensers.

—Promote alternative activities to encourage socializing. Because most people go to bars to socialize, encouraging this socializing could increase the volume of business. Promoting appealing foods and offering discounts on meals rather than drinks will take the emphasis off of heavy drinking. In some states, local licensing boards are banning Happy Hours because of the direct relationship to increases in auto accidents.

—Give equal billing to non-

**BLOOD ALCOHOL CONTENT
(Mg./100ML.)**

Number of drinks in two hours	Body Weight*		
	100 lb.	150 lb.	200 lb.
2 1-oz. 100-pr. spirits	0.040%	0.025%	0.019%
2 4-oz. glasses wine			
2 12-oz. glasses beer			
5 1-oz. 100-pr. spirits			
5 4-oz. glasses wine			
5 12-oz. glasses beer	0.150%	0.100%	0.070%
9 1-oz. 100-pr. spirits			
9 4-oz. glasses wine			
9 12-oz. glasses beer	0.260%	0.175%	0.130%

Note: The amount of absolute alcohol is the same in a 1-oz. shot of spirits, a 4-oz. glass of wine and a 12-oz. glass of beer. The amount of liquid in each is different, but the amount of alcohol is the same—½ oz. per drink.

**These figures are for males. BACs for females would be higher by approximately 0.025%.

alcoholic beverages. Be creative and imaginative—33% of the adults in the United States do not drink alcohol, while another 33% are light or moderate drinkers who choose not to drink on some occasions. Training employees to respect the customer's right of choice and having appealing (yet still profitable) non-alcoholic alternatives will not reduce your clientele, but rather will increase it. Employees sometimes act as pushers, intimidating customers to buy alcohol. This not only is rude, but bad business.

—Do not allow more than one drink at "last call." Have food and coffee available at the end of the

night. It will not sober up the person, but it encourages the person to wait before driving. Offering a Happy Hour discounting non-alcoholic beverages one hour before closing also will give the person time to think about driving or finding another way home. Have alternative transportation available—and promote it.

—Measure drinks, do not pour freely. Many people count their drinks. Pouring more than an oz. of spirits or four oz. of wine gives the person more than they think they are getting—and could lead to an arrest or accident. Giving extra is not doing anyone a favor. Besides, it increases costs. A person can have six four-oz. glasses of wine in two hours before reaching 0.10% BAC; the same person only can have four six-oz. glasses of wine to reach the same BAC. You can be responsible and still sell more drinks by being accurate in your measure!

—Finally, strict rules must be enforced concerning drinking on the job and after work by employees. Alcoholism is an occupational hazard in the alcoholic beverage industry. Do not be responsible for promoting unhealthy drinking patterns in your staff and management. An employee with a drinking problem costs you money—absenteeism, lateness, waste, customer complaints, turnover, etc. Also, a problem drinking employee can enable a problem drinking customer to drink—usually at the expense of the establishment. Provide alcohol education and make Employee Assistance Programs (EAPs) available to all employees. Every dollar invested in an EAP returns \$5 in savings.

The alcohol abuser is bad business. Not only does the person increase your liability, but also turns other customers away. Both the alcoholic beverage industry and the alcoholism treatment industry have the common goal of preventing alcohol abuse. Now is the time that these two groups combine resources to address the drunken driver problem and alcoholism. In joining efforts and promoting safe, responsible drinking, these two industries will fulfill their social responsibility by creating safer highways and saving lives. □

SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1863

An Act authorizing the issuance of beer/wine permits to restaurants for the serving of malt alcoholic beverages and wine by the glass under certain circumstances, and supplementing Title 33 of the Revised Statutes.

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

1. The Director of the Division of Alcoholic Beverage Control is authorized to promulgate regulations and issue annual special permits to restaurants, for the purpose of allowing the permit holder to serve its customers beer, other malt alcoholic beverages and wine by the glass. This special permit shall be known as a beer/wine permit.

2. a. No beer/wine permit shall be issued to individual bona fide restaurants for use in a restaurant located in a municipality in which alcoholic beverages are not authorized to be sold at retail. The issuance of a beer/wine permit shall be allowed if authorized by the residents of the municipality at a public referendum conducted for that purpose.

b. No beer/wine permit shall be issued to a particular restaurant by the director unless prior authorization is given by resolution of the governing body or authorized issuing authority of the municipality wherein the restaurant applying for the permit is located.

c. No beer/wine permits shall be issued in a municipality in which alcoholic beverages are authorized to be sold at retail, unless the governing body of the municipality holds a public hearing on the question of whether beer/wine permits shall be issued in the municipality and then passes an ordinance stating that beer/wine permits are permitted in the municipality.

3. a. The director shall issue beer/wine permits pursuant to the procedures and requirements established for plenary retail consumption licenses in R.S. 33:1-25, and the regulations promulgated pursuant thereto.

b. At the request of the municipal governing body, the director shall impose upon restaurants within the municipality seeking or holding beer/wine permits the same conditions that may be imposed by the State and the municipality on licenses issued under R.S. 33:1-12.

4. a. A beer/wine permit may be issued only for use by restaurants that primarily serve a full course meal consisting of appetizer, soup, salad, entree and dessert; and that have a minimum seating capacity of 50 persons; and that are operated and conducted by the permit holder as a bona fide restaurant as further defined in R.S. 31:1-1. The seating capacity requirement imposed by this subsection may be waived by the governing body or authorized issuing authority on application of the person seeking the permit, providing the restaurant is a bona fide restaurant and meets all other criteria established in this act.

b. If the governing body or authorized issuing authority of any municipality in which alcoholic beverages are permitted to be sold at retail does not approve the issuance by the director of a special permit for a particular restaurant, the applicant may appeal to the director.

c. Fast food establishments, that is establishments primarily selling limited lines of refreshments and prepared food for consumption either on or near the premises or for take home consumption, shall not be eligible for a beer/wine permit.

5. Beer/wine permit holders may sell, serve and deliver any draft malt alcoholic beverages, fermented wine, treated wine, blended wine, fortified and sparkling wine by the glass, for consumption with a meal, that is an entree or main item listed on a lunch or dinner menu, on the premises for which the permit has been issued, to patrons seated at a table. The malt alcoholic beverage or wine shall be served by restaurant personnel providing table service. The hours during which the sale, service and delivery of malt alcoholic beverages and wine are permitted are from 11:00 a.m. to 11:00 p.m. each operating day, provided such sale, service or delivery is not otherwise prohibited to licensees under R.S. 33:1-12 et seq.

The beer/wine permit holder shall post a sign or signs on the premises at locations plainly visible to the patrons, stating that beer and wine are permitted to be served by the glass, with a meal, to patrons seated at tables, between the hours of 11:00 a.m. and 11:00 p.m. each operating day.

6. A beer/wine permit holder who serves wine shall offer on the menu to patrons of the restaurant at least one wine produced by a winery licensed in the State pursuant to subsections 2a. to 2b. of R.S. 33:1-10.

7. Nothing in this act shall be construed so as to prohibit a person who, for the purpose of holding a private function, rents a nonpublic portion of a restaurant that holds a beer/wine permit, from bringing into the nonpublic portion of the restaurant for consumption thereon, malt alcoholic beverages other than draft beer, fermented wine, treated wine, blended wine, fortified or sparkling wine.

8. A beer/wine permit shall not be transferred from place to place or from person to person. When a restaurant relinquishes a permit for any reason, the permit shall be returned to the municipality for reissuance.

9. Each municipality wherein the issuance of beer/wine permits is otherwise allowed, shall be restricted in the number of beer/wine permits which may be issued according to the following population criteria as determined by the last preceding federal census.

a. Three beer/wine permits up to a population of 5,000 residents;

b. One beer/wine permit for every 3,000 residents in excess of the original 5,000 for a maximum of six additional beer/wine permits;
up to a population of 23,000 residents

c. In addition to permits allowed pursuant to subsections a. and b., one beer/wine permit for every 10,000 residents in excess of a total population of 23,000 residents;

d. Notwithstanding the foregoing, any municipality bordering the Atlantic Ocean or any tidal bay thereof in counties of the fifth or sixth class may authorize the director to issue up to 25 beer/wine permits. This subsection shall not apply to municipalities wherein casino gambling is allowed by law.

10. A beer/wine permit holder shall pay the following fees for the issuance and renewal of a permit:

a. An annual fee to the municipality in the same amount as the fee imposed by the municipality for the issuance and renewal of a plenary retail consumption license, or if plenary retail consumption licenses are not issued within the municipality but authorized by referendum heretofore noted, then such fee as the municipality sets by ordinance. If an application is denied, 90% of the fee shall be returned to the applicant.

b. An annual fee of \$500.00 to the State, 90% of which shall be returned to the applicant if the application is denied, which fee shall be disbursed 50% to the Division of Alcoholic Beverage Control for the purpose of administering this act; and 50% to the General Fund.

11. A restaurant holding a beer/wine permit shall show the sale of food to be at least 80% of the restaurant's yearly gross receipts.

12. This act shall take effect immediately, but shall remain inoperative until the 90th day following its enactment.

MR. CHAIRMAN, MEMBERS OF THE STUDY COMMISSION, MY NAME IS JOSEPH MILZA AND I AM PRESIDENT OF R.N. RENAULT WINERY IN EGG HARBOR. OUR WINERY HAS BEEN IN EXISTENCE SINCE 1864. DURING THE 1950'S, WE HAVE HAD THE HONOR OF BEING THE LEADING DOMESTIC CHAMPAGNE PRODUCER IN THE COUNTRY. OUR BLUEBERRY CHAMPAGNE IS STILL NATIONALLY RECOGNIZED.

THE NEW JERSEY WINE INDUSTRY OF WHICH MY WINERY IS THE LEADING PRODUCER IN THE STATE, HAS FOUND ITSELF IN A PRECARIOUS POSITION. IN SPITE OF THE NUMEROUS AWARDS OUR VITNERS HAVE RECEIVED OVER THE YEARS FOR EXCELLENCE OF PRODUCT, OUR MARKET SHARE HAS CONTINUED TO DIMINISH. AS LATE AS 1978, THE NEW JERSEY WINE INDUSTRY RANKED FOURTH (4TH) IN DOMESTIC PRODUCTION, TODAY WE ARE NINTH. THE MARKET SHARE IN NEW JERSEY BY OUR INDUSTRY IS THREATENED BY FOREIGN IMPORTS, WHICH NOW CONTROLS APPROXIMATELY 30% OF WINE CONSUMPTION AND OBVIOUSLY THE CALIFORNIA WINES.

THE SEVEN PLENARY RETAIL WINERIES IN THE STATE LACK PUBLIC RECOGNITION AND AWARENESS. MOST PEOPLE WHEN YOU MENTION NEW JERSEY WINE, THEY WEREN'T AWARE THAT NEW JEREY HAD ITS OWN WINES. BESIDES, THE PROBLEM IS COMPOUNDED BY OUR LACK OF OUTLET AND FACILITIES ESPECIALLY IN NORTH AND CENTRAL NEW JERSEY. THE ECONOMIC BASE OF MANY OF OUR WINERIES PRECLUDES BEING ABLE TO COMPETE FINANCIALLY OR TO EMPLOY MARKETING STRATEGIES AGAINST FOREIGN IMPORTS OR THE LARGER OUT-OF-STATE DOMESTIC WINERIES.

IF, WE, AS A NEW JERSEY INDUSTRY ARE TO SURVIVE AND HOPEFULLY REGAIN

OUR POSITION WITH THE WINE CONSUMING PUBLIC, THEN NEW STRATEGIES AND ASSISTANCE IS NECESSARY TO PROVIDE THE MARKETING AND AWARENESS NECESSARY TO COMPETE WITH LARGER WINERIES.

ON DECEMBER 17, 1982, GOVERNOR THOMAS KEAN PROCLAIMED THAT IT WAS IMPORTANT FOR THE STATE TO RECOGNIZE THE NEW JERSEY WINE INDUSTRY AND CONTRIBUTE TO GREATER PUBLIC AWARENESS AND PROVIDE ASSISTANCE TO THE INDUSTRIES' GROWTH.

IT IS FOR THESE REASONS, WE COME TO ASK YOU TO CONSIDER RECOMMENDING AMENDING THE TIED HOUSE STATUTE (33:1-43) INTEREST IN BOTH BREWERY, DISTILLERY OR WHOLESALING, ETC., AND IN RETAILING, PROHIBITED.

WE RECOGNIZE THAT THIS STATUTE WAS CREATED IN ORDER TO PROTECT THE PUBLIC FROM LARGE INTERESTS BEING ABLE TO CONTROL THE CHAIN OF PRODUCTION AND DISTRIBUTION WHICH COULD CREATE MONOPOLIES, POSSIBLE PRICE-FIXING, ANTI-COMPETITIVE ACTIVITIES AND EXCLUDING COMPETITIVE BRANDS.

HOWEVER, AN AMENDMENT, WHICH WOULD ALLOW A NEW JERSEY WINERY TO BE ELIGIBLE TO SEEK AND PURCHASE A PLENARY RETAIL CONSUMPTION LICENSE (CLASS C) TO BE CONDUCTED AS A BONA FIDE RESTAURANT, WOULD OPEN UP NUMEROUS AVENUES OF MARKETING OPPORTUNITIES FOR US.

FOR EXAMPLE, SUCH AN AMENDMENT, WOULD ALLOW ME TO PURCHASE A PLENARY RETAIL CONSUMPTION LICENSE FOR USE AT MY RESTAURANT LOCATED ON-SITE AT THE WINERY. PROMOTING OF THE RESTAURANT AS A FULL SERVICE FACILITY

WOULD AFFORD US THE OPPORTUNITY TO EXPOSE PATRONS TO NEW JERSEY PRODUCTS WHO UNDER NORMAL CONDITIONS MIGHT NOT CONSIDER VISITING OUR ESTABLISHMENT.

IN ADDITION, OUR ABILITY TO BE ELIGIBLE FOR THE PURCHASE OF A LICENSE WOULD GIVE US OTHER VEHICLES FOR EXPOSING NEW JERSEY PRODUCTS THAT PRESENTLY ARE NOT AFFORDED TO US. OFF-SITE RESTAURANT OWNERSHIP WOULD ALLOW, WITH A NEW JERSEY INVENTORY, ALL OUR NEW JERSEY VITNERS WITH AN OPPORTUNITY FOR PRODUCT SAMPLING BY THE PUBLIC, PREVIOUSLY UNAVAILABLE TO THEM.

A RESTAURANT WOULD GIVE THE WINERY AN OPPORTUNITY TO HAVE PEOPLE TASTE PRODUCT FOR THE FIRST TIME IN AN APPROPRIATE SETTING...WINE WITH MEAL. WINE IS A NATURAL BEVERAGE WITH MEAL. IT ENHANCES THE TASTE OF FOOD.

I AM COGNIZANT THAT LEGISLATION OF THIS NATURE WOULD REQUIRE A RESTRICTION WHICH WOULD NOT ALLOW A NEW JERSEY VITNER TO SELL HIS BUSINESS TO AN OUT-OF-STATE WHOLESALER OR SUPPLIER. SINCE, WE BELIEVE SO STRONGLY IN THE NEED FOR THIS AMENDMENT TO AID OUR INDUSTRY, THAT A RESTRICTION OF THIS NATURE WOULD BE MOST ACCEPTABLE TO US.

THEREFORE, WE RESPECTFULLY ASK YOU TO GIVE STRONG CONSIDERATION TO THIS PRESSING ISSUE FACING US.

DONATO D'ONOFRIO
DOVER MALL - RTES. 166 & 37
TOMES RIVER, NEW JERSEY 08753
(201) 349-2710

August 12, 1983

Assemblyman John W. Markert
District 39
372 Kinderkamack Rd.
Westwood, N. J. 07675

Dear Assemblyman Markert:

I have been active in the food and liquor industry in the State of New Jersey since 1947 (36 years). During this time, I have been a liquor license holder in several locations and as a holder of a "C" license I became active in the package liquor sales sector of the industry.

As you are aware, a "C" licensee is entitled to both privileges; that is the sale of alcoholic beverages for on and off premises consumption. Since he is granted both of these privileges, he therefore is subject to exceptionally high fees for same. The law specifically reads that package goods may be sold in a public bar room area. There is no prohibition to package goods being displayed on the floor or on gondolas or shelving. During the past fifteen years we have had regulations and policies instituted by various Directors with reference to floor displays and gondolas. At certain times, gondolas were allowed to display merchandise as long as they were no further than three feet from perimeter walls. Then, changes were made where only a certain percentage of goods could be displayed with reference to floor area. Later on, a Director instituted the policy that a formula of the total licensed premises would have to be reviewed and a percentage utilized for gondolas and counter space. Also, the Director revised the formula for the bar room area. In order to comply under the old rules, it was only necessary to have a six stool bar, now it was necessary to build a bar which would accommodate approximately thirty-five stools. To further complicate and confuse this issue, the Director also implemented the policy which provided that when a licensee who had the privilege of displaying goods on the floor moved or relocated, he would lose that privilege and could not display any merchandise.

I was one of the licensees who relocated his premises (approximately 600 feet from the old location) and I am now confronted with utilizing areas in two shopping center locations which command high rents per square foot and I must now adhere to the previous Director's formula so that I have a thirty-five stool bar and a floor area I cannot use.

RECEIVED
AUG 16 1983

To further illustrate these inconsistencies, I am enclosing several photos. The photos marked 'A' is of one location with a thirty-five stool bar and the open floor area which cannot be utilized. The 'B' photos is of the most recent relocation mentioned in previous paragraph with a thirty-five stool bar and a floor area that cannot now be utilized for the sale of packaged goods but which was approved in its former location. The 'C' photo shows a location which had received written approval in 1974 from the ABC Board and is still operating legally and is selling package goods from gondolas. All of these locations operate under a "C" (Plenary Retail Consumption) License.

Considering today's economy and the competition, this restriction has certainly been unfair to the "C" license holders in the State of New Jersey. I appreciate the competitive nature of today's business but by limiting the "C" licensees under the existing regulations and taking into consideration the high cost of rent, utilities and overhead, we are unable to operate profitably. Also, there is the fact that the "C" licensees have invested hundreds of thousands of dollars in the acquisition of said license and pay for this privilege on an annual basis.

I enclose also correspondence from my attorney who pursued this issue in 1980. He touches on several factual issues and also encloses excerpt from the N. J. Register which relates to floor displays. As you can see, it has always been a major issue and was almost resolved.

I respectfully request you and the Committee review this issue and assist the "C" licensees in obtaining the privileges they are entitled to and for which they pay on an annual basis.

I wish to thank you and the members of the Study Committee for taking time out to consider this most important issue.

Respectfully,



Donato D'Onofrio

DD:mc

Encl.

PILTZER & PILTZER

Counsellors at Law

6 NORTH AVENUE WEST
CRANFORD, NEW JERSEY 07016

DAVID S. PILTZER

(201) 272-3443

ANNE B. PILTZER

August 10, 1983

Dan D'Onofrio
c/o Dan-D Incorporated
Dover Mall
Routes 166 and 37
Toms River, N. J. 08753

Re: State Legislative Study Commission

Dear Dan:

In response to your recent telephone request for material to make a presentation of proposed broad package privilege changes at the next meeting of the above commission scheduled for August 18, 1983 in Hackensack, enclosed please find a copy of my letter of April 22, 1980 addressed to former ABC Director Joseph H. Lerner. Also enclosed is a copy of the present regulation of the ABC dealing with this subject. It is known as N.J.A.C. 13:2-35.1 through 35.6.

I am further enclosing a copy of 12 N.J.R. 343(b) of the June 5, 1980 issue of the New Jersey Register, which contains on page 345 a proposed amendment to the enclosed broad package privilege rules which would accomplish what you now seek. As you know, Lerner never followed through to adopt these proposed changes. Under the law, he had one year in which to do so, after which the proposal expired. Accordingly, the proposal would have to be made anew now and republished in the New Jersey Register.

Please call me if you have any questions concerning this matter.

Very truly yours,

PILTZER & PILTZER



David S. Piltzer

DSP:mfw

Enc.

FOR IMMEDIATE RELEASE

PILTZER & PILTZER
Counsellors at Law

NATIONAL BANK OF NEW JERSEY BUILDING
6 NORTH AVENUE WEST

CRANFORD, NEW JERSEY 07016

(201) 272-3443

DAVID S. PILTZER

ANNE B. PILTZER

April 22, 1980

Director Joseph H. Lerner
Division of Alcohol Beverage Control
Newark International Plaza
U. S. Routes 1-9
Newark, N. J. 07114

Re: Pinewald Villa Corp.
Beachwood Shopping Center
Rte. 9, Berkeley Township
P.O. Bayville, New Jersey
08727
License No. 1505-33-001-001

J & D Enterprises, Inc.
Dover Mall
Routes 166 and 37
Dover Twp., Ocean County
P.O. Toms River, New Jersey
08753
License No. 1507-33-001-001

Dear Director Lerner:

This office represents the two above-captioned licensees, each of whom holds a plenary retail consumption license without the so-called "broad package privilege". These licensees request that certain changes be made in the Division rules which are the subject of the public hearing held by you today.

N.J.A.C. 13:2-35.5(1) prohibits a plenary retail consumption licensee without the broad package privilege from displaying in a public barroom package goods on floor gondolas or on shelving or floor displays not on the perimeter walls of the barroom. Our clients request that this portion of the rule be deleted in its entirety.

The State Alcoholic Beverage Law, in N.J.S.A. 33:1-12.23, provides that a plenary retail consumption licensee without the broad package privilege may sell and display for sale alcoholic beverage package goods in the public barroom of the licensed premises. The statute specifically defines such a barroom as "a room containing a public bar, counter or similar piece of equipment ~~designed for and used to facilitate the~~ sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises".

PILTZER & PILTZER
Counsellors at Law

Director Joseph H. Lerner

- 2 -

April 22, 1980

There is no mention in the statute of any prohibition or restriction concerning areas in a public barroom where package goods may not be displayed. As long as a room contains a public bar as so described, it qualifies as a public barroom in which package goods may be displayed and sold.

Accordingly, there is no statutory basis for prohibiting the display of package goods other than on the perimeter walls in a public barroom. Additionally, there is no sound public interest basis for such prohibition. Today, in order for a retailer to compete with other retailers, he must stock and display thousands of different alcoholic beverage products. This is particularly so now that the deregulation of retail price control and advertising practices has taken effect. However, a retailer who cannot use floor space to display alcoholic beverages is severely limited in his ability to merchandise his products to the public. The Division's requirement, in N.J.A.C. 13:2-35.1(1), that a public bar must occupy at least 15 per cent of the total square footage of a public barroom, further unduly limits the licensee's ability to display an adequate number of package goods in the barroom.

The current rules force a retailer to construct or rent a barroom much greater than his actual needs in order to display solely on the perimeter walls an adequate number of alcoholic beverages for off-premises consumption. This results in extensive wasted, unused floor space and unnecessary extra overhead. In these inflationary times, it is completely unreasonable for the state to compel small businessmen to needlessly expend large sums of money for something such as this, which serves no public purpose. There is no sound reason for prohibiting floor displays of package goods in a public barroom. Such prohibition is supported by neither legislation nor public policy.

The retailer should be freed from this anachronistic limitation so that he may meet the competition of other retailers. The Legislature has given all retail consumption licensees the right to sell package goods. The Division should not encumber this right with any artificial restriction.

For all of these reasons, the rule in question should be abrogated at the earliest possible time.

Very truly yours,

PILTZER & PILTZER


David S. Piltzer

DSP:mfw

13:2-35.1

SUBCHAPTER 35.

SALE AND DISPLAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS BY CONSUMPTION LICENSEES NOT HOLDING THE BROAD PACKAGE PRIVILEGES

13:2-35.1 Definitions

(a) For the purpose of this regulation:

1. A public barroom shall be a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensation of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises, which public bar must occupy not less than fifteen per cent of the total square footage of said room;

2. The public bar, counter or similar piece of equipment must be equipped with hot and cold running water, sink, drainboard, a sufficient number of bar stools (minimum of one for each three feet of bar perimeter), utensils and glassware for the making and serving of mixed drinks, and a sufficient number of opened bottles of alcoholic beverages for the service of drinks to be consumed upon the licensed premises, a substantial portion of the bar must be visible from all public entrances to the barroom;

3. The principal public barroom shall be the room in which the main public bar is located; in determining which public barroom shall constitute the principal public barroom, consideration shall be given to the nature of the operation and volume of alcoholic beverage business for consumption on the licensed premises, the accessibility to the barroom, the size of the barroom, and the hours of operation.

Historical Note

Formerly Alcoholic Beverage Control regulation 32, line 1.

13:2-35.2 Broad package privilege

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25 shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises (the privilege to engage in such sale and display in other than such barroom being known as the "Broad Package Privilege") unless:

1. On or before June 30, 1948, the Director of the Division of Alcoholic Beverage Control received from such a licensee's municipal license issuing authority certification that such licensee, on May 27, 1948, sold alcoholic beverages in original containers for consumption off the licensed premises, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom; or

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a licensee alleging that on May 27, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

- i. Building alteration or construction in progress;
ii. Prior destruction or loss of possession of the licensed premises; or
iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom or had actually undertaken alteration or construction of the licensed premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.

Historical Note

Formerly Alcoholic Beverage Control regulation 32, rule 2.

Case Notes

- Renewal without grant of Broad Package Privilege. English Limited, Inc. v. Woodbury, ABC Bulletin No. 2216, Item No. 1 (December 11, 1975).
Building alteration/construction in progress. Essex Cty. Package Stores in Ass'n v. Newark, ABC Bulletin No. 2168, Item No. 3 (October 10, 1974).
Display other than in bona fide public barroom. In re John Joseph Wasneski, Sr., ABC Bulletin No. 2165, Item No. 4 (September 13, 1974).
Essex Cty. Package Stores Ass'n v. Newark, ABC Bulletin No. 2095, Item No. 1, (February 21, 1973), rev'd per curiam (N.J. App. Div. April 17, 1974, A-2028-72) (unreported).
In re Town House Liquors & Bar Inc., ABC Bulletin No. 2060, Item No. 4 (June 22, 1972).
In re Swiss House, Inc., ABC Bulletin No. 2056, Item No. 12 (June 12, 1972).

13:2-35.3 Notation of privilege on license certificate; daily certification

(a) The issuing authority shall cause the following notation to be made on the face of the renewal license certificate of each holder of a license which includes the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1:

This license bears the "Board package privilege" pursuant to P.L. 1948, ch.98 (N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-34)''.

24X

STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

TRANSIT INSIGNIA NO.
EXPIRES [APRIL 30], AUGUST 31, 19.....

13:2-20.14 Term of transit insignia; renewal

All transit insignia and special transportation permits expire on [April 30] August 31 following their issuance unless previously terminated by order of the director or by surrender, revocation or expiration of the license. Renewals must be applied for in the same manner as new insignia or permits.

13:2-23.1 Serving minors and intoxicated persons

(a) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the [age of 18 years,] legal age to purchase or consume alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

(b) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person actually or apparently intoxicated, or permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

Ed. Note: Delete the current text of N.J.A.C. 13:2-23.8 and adopt the new text therein.

13:2-23.8 Eastern Standard Time change

(a) On the last Sunday of April of each year, at 2:00 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Saving Time. In any municipality having a closing hour later than 2:00 A.M., the official time will then become 3:00 A.M. and the hours of sale will be calculated accordingly.

(b) On the last Sunday of October of each year, at 2:00 A.M., the clocks in each licensed premises will be turned one hour in observance of Eastern Standard Time. In municipalities having a closing hour later than 2:00 A.M., the clocks will be immediately returned to 1:00 A.M. and hours of sale will be calculated accordingly.

(c) In either case, (a) or (b), licensed premises having closing hours of 2:00 A.M. or earlier, will be unaffected.

13:2-23.16 Prohibited promotions

(a) No license or registrant privileged to sell or solicit the sale of alcoholic beverages within this State shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers to the public at large unlimited availability of any alcoholic beverage for a set price; or

2. Offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except branded or unique glassware or souvenirs in connection with a single purchase; or

3. Requires or allows a consumer to pre-purchase more than one drink or product at a time via tickets, tokens, admission fees, two for one, or the like, as a condition for entry into a licensed premises or as a requirement for service or entertainment thereon.

13:2-23.21 Storage of alcoholic beverages

No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed

(b)

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Proposed Amendments to Division's Rules

Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety, pursuant to authority of N.J.S.A. 33:1-1 et seq., proposes to amend portions of the Division's rules.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

13:2-4.3(a) 1. A fee of [~~\$50.00~~] **\$55.00** in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control; and

13:2-4.9 Refund of fees

If the application for new or renewal license is denied for any reason whatsoever or withdrawn statutory refund of 90 per cent of the fee deposited with the municipality shall be made by said municipality to the applicant. The remaining 10 per cent shall be deemed an investigation fee and shall be retained by the municipality. The [~~\$50.00~~] **\$55.00** fee accompanying the supplemental application shall be retained by the director.

13:2-20.11(b) In lieu of affixing the insignia in the manner prescribed in subsection (a) of this section, it may be carried in the vehicle while engaged in the transportation of alcoholic beverages, provided an inscription is painted on the exterior of the body of the vehicle on the left side thereof, clearly visible at all times, which inscription shall, in letters not less than one inch in height and of proper and proportionate width, indicate the number of the current insignia and the date of its expiration in form as follows (inserting the appropriate number and year):

under the alcoholic beverage law, or at other premises pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control, provided, however, that nothing herein contained shall prohibit the storage of alcoholic beverages by a licensee upon the formerly licensed premises for a period not exceeding five days subsequent to the effective date of the transfer of the license to other premises[.] or for a period not to exceed 72 hours following delivery at the licensed premises of a fellow member of a cooperative purchasing agreement pursuant to subchapter 26.

13:2-24.1(b) [3. Price changes from time to time where changes are in response to changing conditions affecting the market for or the marketability of alcoholic beverage products, such as, but not limited to, actual or imminent deterioration of perishable products, obsolescence of seasonal products, distress sales pursuant to court order, or sales in good faith in discontinuance of business in the product concerned.]

Ed. Note: Delete the current text of N.J.A.C. 13:2-24.5 and replace it with new text below.

13:2-24.5 Supplier pricing and marketing information

(a) Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers or distributors within this State shall:

1. For a period of three years maintain on its licensed premises or other principal place of business made known to the Division in a readily retrievable fashion pursuant to subchapter 29:

i. A "Historical Price List," which shall contain the prices at which all products by brand, type, proof, age and size were offered for sale to the trade, inclusive of all discounts, allowances or differentials; and

ii. A "Marketing Manual," which shall contain, by category, on a chronological basis, all services, facilities, equipment, advertising and promotional items and programs offered to the trade or consumers; and

2. By the first day of the month preceding the month for which they are to become effective, make available to all its wholesalers or distributors its current prices, inclusive of all discounts, allowances or differentials; and

3. Prior to any sale or delivery of distilled spirit alcoholic beverages, or annually by August 1 of each year, file with the Division a written statement under oath affirming that its prices to New Jersey wholesalers and distributors have not been and will not be a price or discount higher than the lowest price or lower than the highest discount which has been or will be offered to any wholesaler or distributor or state agency (which operates retail stores) in any other State of the United States or in the District of Columbia.

13:2-24.6(a)3. i. Prices, inclusive of all discounts, allowances and differentials and other terms of sale, at which all products (except private label products owned by a retail licensee) are offered for sale to retailers during the calendar month following filing; and

ii. The correct brand or trade name of the product, its nature and type, size and age and proof of alcoholic content when stated on the label, the standard number of unit containers per standard case and the capacity of each unit container.

4. Except with respect to sales of malt alcoholic beverages, [T]he Current Price List shall be filed with the Division of Alcoholic Beverage Control no later than the [15th] 7th day of each calendar month, shall become effective the first day of the following month and remain effective for that month.

5. The prices contained therein shall be [filed] established independently by each individual [filer] wholesaler or distributor and except for malt beverages, no amendments or changes (except upon approval of the Director to correct bona fide clerical errors) shall be made therein prior to filing of the next monthly price list.

6. No manufacturer, supplier or wholesaler shall offer for sale, sell or deliver to any retailer and no retailer shall accept delivery from any manufacturer, supplier or wholesaler of any alcoholic beverage upon terms other than those set forth in the seller's "Current Price List."

7. [The] Filed Current Price Lists shall be a public record and nothing herein shall preclude any licensee selling alcoholic beverages to retailers from providing it directly to retailers by mail, through sales personnel or through publication in trade journals.

13:2-24.7 Marketing initiatives

Subject to the foregoing provisions of this subchapter, a licensed or registered manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee, except that samples may be provided to retailers, and donations of alcoholic beverages made to qualified organizations, only within the terms and conditions of a special permit first obtained from the Director, issued upon a petition establishing and defining its need and use and verifying that all taxes have been paid thereon.

13:2-24.8 Sales below cost; prohibited

(a) Notwithstanding the provisions of this subchapter, no wholesaler, distributor or other licensee, privileged to sell to retailers, and no retail licensee, shall offer to sell or sell alcoholic beverages at a price below "cost" except for authorized samples and donations pursuant to N.J.A.C. 13:2-24.7 or upon petition to and approved by the Director, pursuant to a bona fide "close out" sale. [consistent with N.J.A.C. 13:2-24.1(b)(3).]

(b) "Cost" is defined as the actual proportionate invoice price and freight charge to a distributor or wholesaler and the actual proportionate invoice price to a retailer, as the case may be, of any given container of an alcoholic beverage product, plus applicable State and Federal taxes. The actual invoice price shall be determined by the "last-in-first-out" method applying generally accepted accounting principles.

13:2-24.9 [Trade Buyer] Combination and tied sales

(a) Notwithstanding other provisions of this subchapter, no [manufacturer, registrant, wholesaler, distributor or licensee privileged to sell alcoholic beverages to wholesalers, distributors, retailers, or other] licensee[s in this State] shall sell or offer to sell any alcoholic beverage product upon terms that permit purchase of that product, by size and price, only when purchased in conjunction with a different product or the same product in a different size.

[(b) Except for sales to retailers of malt alcoholic beverages; no wholesale licensee shall offer to sell or sell any alcoholic beverage product in combination with another product. For purposes of this subsection, a sale of products which are identical, except for size, in mixed lots (a mixed size sale) is not a combination sale.]

[(c) (b) Subject to N.J.S.A. 33:1-12, [N]othing herein shall preclude a retail licensee from selling or offering for sale any product in combination with another product at a single unit price, provided that such unit price shall exceed the cost of the combined products and the individual

unit price of each combined product is provided in advertising and shelf pricing.

Ed. Note: Delete current text of N.J.A.C. 13:2-24.10.

[13:2-24.11] 13:2-24.10 Advertising and Consumer Protection

(a) No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

1. Is false or misleading;
2. Is obscene;
3. Contains the name of or depiction of any biblical character or religious character or symbol;
4. Portrays a minor or child or items or symbols which are generally associated with children or which tends to induce minors [or] to purchase alcoholic beverages;
5. Tends to create or give the impression that the use of an alcoholic beverage has curative or therapeutic effects or enhances athletic prowess;
6. Offers an alcoholic beverage product for sale to consumers which is not immediately available in reasonable supply at the price, size and age specified, unless advertised at a stated limited quantity;

[7. offers any alcoholic beverage product in its original container for sale, by any means whatsoever, that physically or conceptually joins, or connects or combines it to the advertisement or promotion of any non-alcoholic beverage product except non-alcoholic accessory beverages; or

8. offers any alcoholic beverage product for sale by or on behalf of licensees not identically owned, except as consistent with subsection (b) of this section.

(b) No manufacturer, importer, registrant, wholesaler, distributor or retailer may advertise in any form or manner whatsoever unless that individual licensee has paid for such advertising except that consistent with Title 33 and Regulation promulgated thereunder, and its "Marketing Manual," a manufacturer or wholesaler, in a product advertisement, may specify the availability of a particular alcoholic beverage product or products at identified retail outlets, provided that no reference is made to a price at which the products will be or are offered for sale;]

7. Offers alcoholic beverage pricing information in affiliation with other non-identically owned licensees in a communication which fails to truthfully disclose and prominently indicate the identity of the individual licensee who established the pricing information, and that the specific prices and products featured may not be available at all businesses represented or indicated as being affiliated.

13:2-26.1(a)6. All purchases through or by cooperative agreement shall [be made only on terms requiring payment upon delivery, or in the case of multiple delivery, upon initial delivery or earlier; and] be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and require payment upon delivery or prior thereto or upon credit terms consistent with subchapters 24 and 39. Such credit terms may include the posting of a bond, the provision for a guarantor or surety, the joint and severable liability of each participating cooperative member, or such other assurances of payment as may be mutually agreeable between the wholesaler and the cooperative members.

13:2-26.1(a)9. No licensed party to a cooperative agreement shall co-mingle inventory, funds or other assets[; and] inconsistent with this subchapter and N.J.A.C. 13:2-23.21; and

10. Any purchase or transfer in violation of Title 33 or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement.

11. Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if [multiple deliveries to licensees are required for an individual order] there exists no corresponding justification for the differential pursuant to N.J.A.C. 13:2-24.1(b)(1).

(b) No cooperative buying group may participate in any business transaction permitted by subsection (a) of this section unless the cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include:

1. The identity and State issued license numbers of the members; [and]
2. A copy of the cooperative agreement[.

(c) No licensee shall, directly or indirectly, participate in any cooperative purchase unless the cooperative is registered pursuant to this regulation.]: and

3. The issuance of a special permit by the Director, which shall be renewable annually on August 1.

Ed. Note: Delete current text of N.J.A.C. 13:2-33.3.

13:2-35.2 Broad package privilege

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, [except as approved by N.J.S.A. 33:1-12.24 and 12.25] shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide principal public barroom of the licensed premises, unless [()the privilege to engage in such sale and display in other than such barroom [being known as the "Broad Package Privilege"] unless:] has been acquired pursuant to N.J.S.A. 33:1-12.23, 12.24 and 12.25 (commonly known as the "Broad Package Privilege").

[1. On or before June 30, 1948, the Director of the Division of Alcoholic Beverage Control received from such a licensee's municipal license issuing authority certification that such licensee, on May 24, 1948, sold alcoholic beverages in original containers for consumption off the licensed premises, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom; or

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a licensee alleging that on May 24, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

- i Building alteration or construction in progress;
- ii. Prior destruction or loss of possession of the licensed premises; or
- iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom or had actually undertaken alteration or construction of the licensed premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.]

Ed. Note: Delete current text of N.J.A.C. 13:2-35.4, 13:2-35.5, 13:2-35.6 and 13:2-36.2.

3743

New Jersey Alcoholic Beverage
Control Study Commission Public
Hearing on Trade Practices.
August 8, 1983.

DATE	ISSUED TO

OCT 22 1985



