Approved August 4, 1989
Date

MINUTES OF THE House COMMITTEE ON Transportation.

The meeting was called to order by Rex Crowell (Chairperson) at

1:30 a.m./p.m. on March 14, 1989 in room 519-S of the Capitol.

All members were present except:
Representatives Dean, Everhart, Campbell

Committee staff present:
Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:
Representative Bob Vancrum
Mr. Ed Roitz, Kansas Oil Marketers
Mr. Dale Miller, Tanana Oil Corporation
Mr. Frank Sabatini, E-Z Shop Company, Inc.
Mr. Bob George, Amoco, Leawood, Kansas
Mr. Tom Plattis, Highway Oil Company
Mr. Ross Martin, Kansas Petroleum Council
Mr. Bud Grant, KCCI

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on HB-2291 concerning motor fuel marketing and pricing.

Representative Bob Vancrum briefed the Committee on the contents of HB-2291. (See Attachment 1)

Mr. Edward Roitz, Kansas Oil Marketers Association, testified in support of HB-2291. (See Attachment 2)

Mr. Dale Miller, Tanana Oil Corporation, testified in support of HB-2291. (See Attachment 3)

Mr. Frank Sabatini, E-Z Shop Company, Inc., testified in support of HB-2291. (See Attachment 4)

Mr. Bob George, Amoco dealer, Leawood, Kansas, testified in support of HB-2291. (See Attachments 5, 6 and 7)

Mr. Tom Plattis, Highway Oil Company, testified in support of HB-2291 and said it is difficult for the smaller service stations to stay in business when larger stations sell gasoline at below market prices.

Mr. Ross Martin, Kansas Petroleum Council, testified in opposition to HB-2291. (See Attachment 8)

Mr. Bud Grant, Kansas Chamber of Commerce and Industry, testified in opposition to HB-2291. (See Attachment 9)

Committee discussion and questioning followed.

The hearing on HB-2291 was concluded.

The meeting was adjourned at 2:50 p.m.

Rex Crowell, Chairman

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

COMMITTEE: Transportation

DATE: 3-14-89

PLEASE PRINT

| NAME | ADDRESS | COMPANY/ORGANIZATION |
| --- | --- | --- |
| FRANCES Kastner | TOPEKA | Ks Food Dealers Assn |
| Whitney Damron | Topeka | Coastal Corporation |
| Robert George | Leawood Kansas | Lenexa Amoco |
| Dennis Anderson | Topeka, Kansas | Ks. Oil Marketers Assn |
| [illegible] | Topeka Ks | Cook Oil Co. Inc. |
| Dedra Bolung | Topeka KS | Dept. of Revenue |
| William A Larson | Topeka KS | Gehrt & Roberts |
| MARVIN STEES | TOPEKA KS | CAPITAL CITY OIL |
| FRANK C SABATINI | Topeka KS | E-Z Shop Co |
| Charles Nicolay | Topeka | KOMA |
| Robert Anderson | Ottawa | MidContinent Oil & Gas |
| Dale Miller | Topeka | Tanava Oil Corp. |
| Tom G. Flotz | Topeka | Highway Oil, Inc. |
| Sandra French | Topeka KS | Fairway Oil, Inc |
| John Peel | Topeka KS | Workingmans Friend Oil |

3-14-89

STATE OF KANSAS

BOB VANCRUM
REPRESENTATIVE, TWENTY-NINTH DISTRICT
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609
STATE CAPITOL, ROOM 112-S
TOPEKA, KANSAS 66612
(913) 296-7678

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: ADMINISTRATIVE RULES AND REGULATIONS
MEMBER: APPROPRIATIONS
JUDICIARY
TAXATION

March 13, 1989

SUMMARY OF PROPOSED
MOTOR FUEL MARKETING ACT

Key Features:

A. Below Cost Selling.

(1) Prohibits below cost selling by refiners, wholesalers, and retailers.

(a) Defines cost to refiner as the refiner's rack price of product available to the wholesale class of trade.

(b) Defines cost to wholesaler as invoice cost or replacement cost within five days, plus freight, taxes and the cost of doing business.

(c) Defines cost to retailer as invoice cost or replacement cost within five days, plus freight, taxes and the cost of doing business.

(2) Cost of doing business is defined to include items which ordinarily are involved in petroleum marketing (see Section 4(q)) and such costs are to be computed using generally accepted accounting principles.

(3) Prohibits the sale of motor fuel as a "loss leader" for other products or services.

(4) Establishes a good faith, meeting competition defense to below cost selling, only in cases where a marketer establishes a lower price to meet the specific price of a competitor in the same market area on the same level of distribution selling the same product or similar product of like grade and quality, and marketed in the same manner.

(5) The meeting competition defense requires that notification be given to the attorney general stating the marketer's name and business location, the competitor's name and business location, the specific product and price involved, and the date and time of the price change.

B. Discriminatory Pricing.

(1) Requires refiners to establish and disclose their transfer prices for product transferred or sold to affiliates.

(2) Prohibits price discrimination to customers in the same class of trade, but allows differences in prices based

Attach. 1

upon actual cost differentials incurred because of a difference in shipping method, transportation, marketing, sale or quantity in which motor fuel is sold.

C. General.

(1) Penalties -- any person who violates the Act is subject to a civil penalty not to exceed $10,000 per violation for each offense. Each day that a violation occurs is a separate violation.

(2) Any party injured by a violation of the Act may obtain injunctive relief and may seek damages, costs and attorneys' fees in a suit against the violator. Upon proving damages, the plaintiff in any such action is entitled to recover triple the amount of damages proven.

To: Representative Vancrum
From: Kelly McElhinney
Re: Motor Fuel Marketing Act - How other state statutes compare.
Date: February 20, 1989

ALABAMA §8-22-1

Applies to any person engaged in commerce.

Unlawful to: sell or offer to sell motor fuel at wholesale or retail where the effect is to injure competition, to offer a rebate or concession of any kind in connection with the sale of motor fuel, and to induce or attempt to induce or to procure or attempt to procure the purchase of motor fuel at a price below cost.§8-22-9

Exception: good faith competition.§8-22-13.

Other sections: definition (-4), legislative findings (-2), transfer price disclosures (-5), between wholesalers (-11), applicability generally (-12), penalties (-16), equity action (-17), prima facie case (-18).

CALIFORNIA §526-301

Applies to refiners, distributors, manufacturers, or transporters (in amounts of more than 50,000 barrels daily).

Unlawful to: discriminate in price between different purchasers where effect is to lessen competition.

Exception: Seller may rebut prima facie case by showing his lower price was made in good faith competition. Also, Lower price with term contracts with discriminatory price not valid for more than year are permissible.

Other Sections: Actions for damages (21202), Legislative findings and declarations (21203).

FLORIDA §526.301

Applies to persons engaged in commerce, refiners and non-refiners.

Unlawful to: refiners- to sell below refiner cost where effect is to injure competition §526.304(1)(a).

non-refiners- to sell below non-refiner cost... §526.304(1)(b).

Exception: Good faith competition is not a violation, nor is bona fide clearance sale for discontinued products, final business liquidation sales, sale by a direct order of any

court, the grand opening of a new or remodeled business. §526.309.

Other Sections: Legislative findings (.302), Definitions (.303), Unlawful discriminatory practices (.305), Enforcement(.311)

GEORGIA §10-1-250

Applies to person engaged in sale of octane or cetane fuels.

Unlawful to: knowingly sell product below cost or discriminate in price between different purchasers where the effect may be substantially to lessen competition. §10.1.254.

Exception: May rebut prima facie case by showing sellers sale was made in good faith competition.

Other Sections: Definitions (.251), Reasonable transfer price (.252), Computation of cost (.253), Civil actions (.255), Legislative intent(.256).

MASSACHUSETTS §94:295A

Applies to retail dealers.

Unlawful to: sell, advertise or offer to sell retail motor fuel at less than cost with intent to injure or destroy substantially competition. §94:295P.

Exceptions: Final liquidation sales of dealers, good faith competition, and under the order or direction of any court. §94:295R

Other Sections: Definitions (A), Licensing (B), Costs(Q), Penalty (S), Jurisdiction (T), Conflicting laws (U).

MONTANA §82-15-110

Applies to person, firm, company, association, and corporation.

Unlawful to: demand or collect from any person a higher price for a product in one part of state than price being demanded at same time in another part of that state or adjoining state. §82-15-203.

Other Sections: Definition (-201), Purpose (-202), Investigations (-204), Prosecution (-205), Penalty (-206), Liability (-207).

NEW JERSEY §56:6-20

Applies to distributors, refiners, wholesalers, and suppliers.

Unlawful to: Offer a rebate, concession.... of any kind or nature, in connection with sale or distribution of motor fuels or other products with the intent to injure or lessen competition. §56:6-22.

Exception: Discounts uniformly applied for timely payments, quality or quantity.

Other Sections: Definitions (-21), Action to restrain violation (-25).

NORTH CAROLINA §75.80

Applies to retail sales of motor fuels at motor outlets.

Unlawful to: sell below cost with intent to injure competition. §75-82.

Exception: Good faith competition, if the price will remain in effect for no more than ten days after first sale at new retail outlet, good faith disposal of discontinued product, or pursuant to order of court or govermental agency.

Other Sections: Definitions (-81), Civil penalty (-83), Injunctions (-84), Investigations (-85), Private actions (-86).

RHODE ISLAND §5-55-1

Applies to refiner, distributor, producer, or transporter of petro products (with total production of 15,000 gallons a day or more).

Unlawful to: discriminate in price between purchasers of petro products of like grade and quality, and to sell at retail level less than four cents below wholesale price to wholesale accounts who resell at retail in same area. §5-55-5.

Other Sections: Legislative findings (-2), Definitions (-3), Franchised dealers and distributors (-4).

SOUTH DAKOTA §37.2.1

Applies to person, firm, company, association, corporation, engaged in selling of gasoline, kerosene, or liquified petro gases.

Unlawful to: Intentionally sell at lower rate in one section than same person shall

charge in another section for the purpose of creating a monopoly or of destroying the business of a competitor. §37.2.1.

Exception: Price differential to meet competition. §37.2.2.

Other Sections: Definitions (-5), Prima Facie case (-3).

TENNESSEE §47-25-601

Applies to dealers and retailers.

Unlawful to: Willfully and knowingly offer or advertise sale at retail at below cost to retailer where effect is to injure competition. Same as to petro distillates in 100 gallon or larger containers. §47-25-611.

Exceptions: Good faith competition in accordance with §47-25-611(b).

Other Sections: Definitions (-602), Purpose (-603), Damages (-606), Action by dealer (-607).

UTAH §13-16-1

Applies to any person engaged in commerce, refiners.

Unlawful to: sell or offer market fuel below cost if intent is to injure competition, or to sell at a lower price than seller charges others, same goes for refiners. §13-16-4.

Exception: Good faith competition.

Other Sections: Definitions (-2), Transfer price disclosure (-3), Civil actions (-7), Burden of proof (-8), Right to obtain cost information (-9).

WYOMING §40-4-117

Applies to person, firm, company, association, or corporations manufacturing, producing or distributing petro and petro products,

Unlawful to: discriminate by selling at lower rate in one section than another, §40-4-117.

Other Sections: Prosecution (-118), Ousters (-119), Penalty (-120), Remedies (-121).

**STATEMENT PREPARED FOR THE**
**HOUSE TRANSPORTATION COMMITTEE**

House Bill 2291

Edward Roitz
Chairman of the Board
Kansas Oil Marketers Association

March 14, 1989

Attach. 2

My name is Ed Roitz, president of Fleming Petroleum Company, Pittsburg, Kansas. I appreciate the opportunity to be here today to address an issue that is of great concern to members of the Kansas Oil Marketers Association and to all wholesale and retail distributors of motor fuels in Kansas. House Bill 2291 is a proposal designed to eliminate the practice of selling motor fuel below cost and also to eliminate discriminatory pricing of motor fuels.

As small, independent business men and women, we are, not surprisingly, accutely aware of the workings of the free enterprise system, especially the right to fail and go bankrupt. Even though we strongly defend a "free market," we must at times be realistic and pragmatic and know that the system requires some fine tuning to ensure that the rights of all the participants in the process are protected equally and impartially.

House Bill 2291 is one such safeguard.

If passed, the legislation would protect hundreds of sellers of motor fuels in Kansas from a small minority whose intent it is to injure competition by either pricing the fuel they sell to their downstream operations or to their affiliates in a discriminatory manner or by selling below cost to the consumer.

It is our belief that the marketing of motor fuel is indeed affected with the public interest. The product is a 20th century staple, an indispensable

commodity that allows most of our citizens the means to conduct the many facets of their lives that depend on mobility in the form of the automobile.

The practice of subsidized pricing of motor fuel threatens competition within the petroleum marketing industry, and in some rural areas of our state such pricing can easily guarantee a virtual monopoly of local trade.

In an effort to help clarify our position, and cut through the simplistic criticism of this bill, I would like to remind members of this committee of the origins of some of the actions taken by the Federal government before and around the turn of the century, and what concerns they were meant to deal with.

In 1890, the Sherman Antitrust Act was passed by Congress. The Clayton Act was later enacted to deal with discriminating pricing, and in 1914, the Federal Trade Commission was created to enforce the laws against unfair business practices.

I think it most important to explore the Sherman Antitrust legislation and what originally caused the need to take such action. Late in the nineteenth century, small groups of powerful men tried to control markets for their goods and services and seize enough control to regulate the prices they would command from the consumer. They could then sell their products only to those people they chose, and at what prices they chose.

Absolute control.

They, in the process, forced their competitors out of business and effectively intimidated any new companies from wandering into their field of control. As a result, these powerful commercial interests could then pay their workers any low wage they deemed desirable, because there were no other jobs open in that industry.

This type of monopolistic situation is illegal in the United States of America, and can easily be said to be, in the long haul, not in the best interests of the American consumer.

House Bill 2291 is a reasonable approach to a problem that threatens to eliminate competition in the motor fuel marketplace. The bill addresses the critical problem of determining what constitutes cost at each level of the distribution chain: refiner level, wholesale level and retail level. And it does so in a manner that leaves little room for doubt. This aspect of the Kansas legislation places it in a far more favorable light than that of similar, earlier legislation in other states which have recognized this problem and taken steps to rectify it.

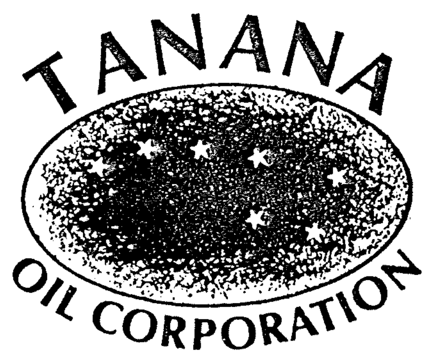
The Board of Directors of the Kansas Oil Marketers Association, after careful consideration, has gone on record in support of this piece of legislation. The group believes that the approach is justified from the standpoint of protecting the consumer and the small business person.

Thank you for the opportunity to speak to you today on this very important topic. The matter before us today encompasses more than just a simple solution to a questionable business practice; the issue before us is about the responsibility of the free enterprise system to safeguard the consumer's right to selection of products.

I look forward to answering any questions you may have.

HB 2991

Phone: (913) 749-5741
FAX: (913) 749-2851




P.O. Box 3947
Lawrence, KS 66046

March 17, 1989

The Honorable Rex Crowell
Room 431 North
State Capitol
Topeka, KS 66612

Dear House Transportation Committee Member:

I am writing to you to solicit your support for HB 2991, the Marketing Practices and Pricing Act.

It is indeed very important for the small Kansas petroleum marketer to be able to compete in today's market. We do not mind competing on very small gross profit margins; we have always done this. Unfortunately, when large, integrated companies come into the market place to sell gasoline as a loss leader or establish a pattern of eliminating the small marketer, this is not in the best interest of the people of Kansas in the long run.

I understand how philosophically this is a tough issue. However, by educating the legislature on what is truly going on in the market place, I am confident that, like 16 other states have already done, the Kansas legislature will pass a bill similar to HB 2291.

Please call upon me to discuss with you and furnish you with any facts I have about this situation. I am at your disposal any place or time.

Sincerely,

Dale L. Miller
President, Tanana Oil Corporation

DLM/LAO

trans

Att. 3

**eZ shop** CO., INC. CONVENIENCE STORES: 3706 S.W. Topeka, Blvd., #201. Topeka, Kansas 66609 (913) 267-2951

March 14, 1989

My name is Frank C. Sabatini, 2423 SE 37th Street, Topeka, Kansas. I am secretary and one of three stockholders of E-Z Shop Co., Inc. which has its headquarters here in Topeka.

Our company has 35 outlets of which 28 are located in Kansas in the cities of Topeka, Lawrence, Olathe, Leavenworth, Holton, Louisburg, Paola, Wamego, Concordia and Atchison. We have been in business since 1978 and are locally owned. Since 1978 we have invested over 10 million dollars in the Kansas economy and have created 250 new jobs.

Last Tuesday, March 7, 1989, Hypermart USA was selling motor fuels at 71 and 72 cents when the cost of the product was 75 to 76 cents, or they were selling at 4 cents below cost.

Since the opening of Hypermart, our E-Z Shop at 21st and Wanamaker has been severely affected and the gasoline volume has been reduced by 50%. The gasoline volume in Topeka overall since the opening of Hypermart has been reduced by almost 40%.

Energy is a scarce and vital commodity and affects the public interest.

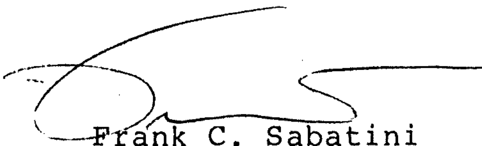
We support <u>HB 2291</u> as it encourages free independent enterprise. If this bill is not enacted, there will be fewer and fewer independent dealers resulting in a lessening of competition and the eventual control of this vital

Attach. 4

of competition and the eventual control of this vital commodity, motor fuel, sold to the public by a few, resulting in a monopoly. The public will eventually be at their mercy.

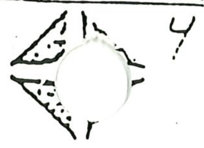
Free independent enterprise creates jobs, encourages investment in our Kansas cities, and keeps the money at home. Monopolies take the money out of town and strangle the public. The public and the public interest demands fair trade. This bill, if enacted, will bring that result.

Thank you.



Frank C. Sabatini

HB 22-91



Bob
George

CONFIDENTIAL

January 14, 1982

Subject: SPU MEETING
January 26, 1982

From/Location: J. S. Morrison

To/Location: E. M. Benson
L. M. Cook
R. F. Cox
J. P. Downer
B. W. Duker
W. F. Kieschnick
R. E. Wycoff

We have a significant agenda to cover at the January 26th SPU. We think it fair and constructive to provide you, in advance of the session, with two pieces:

1. An outline of the preamble I shall be giving, and

2. A paper that has been circulated and discussed among a small, select group within ARCO Petroleum Products Company.

It is requested this material be treated on a very confidential basis with no copies or further distribution.

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ATTACH.

cc: Mr. J. W. Simmons

Bob, Kiesch

I hereby attest and certify on May 15, 1987 that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
By ________ Deputy

000656

Ex. 23

Att. 5

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# SPU DISCUSSION OUTLINE

## ROLE OF REFINING - MARKETING

- Stand-alone cash generator
- Crude price buffer (not captive market)

V

## ESSENTIAL INGREDIENTS

- Refining with its high entry cost
- A critical mass of market control (meaning a stable, reliable portfolio of customers)

## THE PROCESS

- Market control provides refinery (and crude utilization) stability
- Refining and marketing, as a unit, absorb marketplace fluctuations --- product prices increased a[illegible] period of losses
- Refineries pay relatively stable posted crude price

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PROCESS BREAKING DOWN

- Surplus refining with condition to worsen
- Market control eroding as consumer goes to lowest price mode of delivery (independent stations)

CONSEQUENCES OF LOSING MARKET CONTROL

- Marketers drive refinery prices down --- competition moves from street to refinery gate.
- Refiners get lower crude prices or perish
- Equalibrium comes only when enough refining closed (40-50%).
- Equalibrium restores value of captive refinery for proprietary crude

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CONCLUSIONS

- Control of a critical mass of marketing essential

- Traditional two-tier, major-independent, market system no longer able to co-exist

REQUIREMENT

- Head off loss of market control!!!

SPU MAIN DISCUSSION

- Demonstrate need, how to do it and range of results

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The decline in gasoline demand is causing a fundamental shift in the balance of power in the refining and marketing business. It is a shift mainly favoring the independent marketers. Prior to the seven-year hiatus of controls, demand growth enabled major companies to maintain the status quo volumetrically even though independent marketers were gaining share of market during the sixties and early seventies. During the control period, price competition was essentially eliminated and the entire problem papered over because refineries were pushed to the hilt and every barrel earned some profit.

Price competition has now been restored and the environment is one of declining demand for the next few years. To the extent independent marketers grow, as they are, or even just hold their own, the drop in demand falls on the majors. This produces two very deleterious and broad reactions which constitute an unfavorable, self-perpetuating dilemma for the majors:

1. Under-utilized refineries must be cut further or increased sales made to independents. Cutbacks in partially used refineries are costly. Independents, with purchase options, demand and receive a price enabling them to grow or, at least, retain share of market. With surplus refining capacity, the individual refiner is powerless to break the cycle --- and because of incremental economics driven to participate because the alternative, at least over the short-term, is worse.

2. Static to declining volumes in the major brand marketing, coupled with inflation, cause branded dealers to require higher margins which can be obtained by either:

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(i) raising the retail price which ultimately drives more business to the independents, and/or

(ii) obtaining assistance from the major company supplier (rebates, rent concessions) which eventually leads the independent to demand a comparable price cut.

The closure of sufficient refining capacity could theoretically solve the problem. And a case can be made that the majors will resort to this because taxation has capped producing profits and the enormous capital needed to find replacement reserves will simply not permit downstream subsidization. While some further refinery closings and marketing regionalizations may occur, it is unrealistic to expect, or rely on moves of this nature to solve the problem. Pride, ignorance of the real losses, the desire to avoid write-offs, simple inertia, vested interests and a "wait for the other guy" approach all work against enough such closures and withdrawals in a reasonable time frame. But most of all, the incremental refining cost feature ensures resistance to partial closures.

The consumer preference for lower prices is making the traditional higher priced (and higher cost) branded outlet concept un-workable. Trying to maintain this structure while supplying the lower price independent outlets is becoming impractical and may soon be economically impossible. The root problem that really must be changed is the two tier market system for gasoline.

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the branded gasoline market was founded on conditions and circumstances no longer dominant in the marketplace. A complete paper could be written on the subject, but briefly the branded market rested on the combination of superior locations and facilities (the independent was a middle-of-the-block-dump); full service and a lock on oil, battery, tires, tune-up and "running repairs" work; a one or two cent price spread on a thirty cent gallon with free credit at that and a constant, wide-spread advertising effort to convince the motorist the branded gasoline was qualitatively better. Except for free credit, not a one of these conditions is any longer present or viable.

The statistics are quite clear about price becoming more the dominant factor with the motorist. The customer demanding pump service will leave a niche for some traditional branded outlets, but these will primarily be "neighborhood" units. The customr demanding the credit privilege will also be locked into branded; however, the majority of these are thought to be the same customers that want service. The sector of the market growing by leaps and bounds is the customer quite willing to pump his own gas and, even at a major brand station, save more than a dollar for three minutes effort.

Most alarming of all is that this customer no longer feels the product is differential and he clearly sees independent locations are abundant, clean, handy and, in many cases faster. How long is he going to pass up another five to seven cents per gallon saving available at the independent self-serve? One might postulate the credit card will help but there is no trend to indicate the self-serve business is differentially heavy in credit cards.

If the price spread between branded and independent self-serve widens, as the balance of power shift alluded to earlier makes likely, the "switch over" rate will accelerate. At some critical threshold, the process could snowball very rapidly.

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[illegible] insulated from much of the problem so far because of earlier closings of stations and territorial consolidations; elimination of the archaic commission marketer system and the accounts that went with it; an extraordinarily successful sales effort to convince its dealers to be competitive, which is differential to the industry; the coupling of an ancillary business in some 20% of the lessee units and a lean cost structure that took several years to achieve. The recent refinery cutbacks from a system that had become bloated during the control years, eliminated some volume that would not be viable in today's market. Nevertheless, it would be folly to think these moves alone will provide enduring advantage or isolation from the ravages of a generally depressed market.

Well, what's to be done about this state of affairs? Withdrawal from the entire business or branded marketing are options; however, there are high profits to be made from a business that sells 120 billion units (gallons) per year and ARCO is among the strongest major company contenders at the moment. So these alternatives will not be pursued here.

To remain in the business, the majors must compete nearer to head-on with the independents or eventually be placed in an untenable position. As stated earlier, a niche will remain for the station catering to the customer unconcerned about price who wants service and/or credit. This market will settle out at no more than 20% so, in effect, the present two tier market will disappear. In its place will be one large, price competitive market and a smaller, neighborhood type specialized market. Some majors may, intentionally or by default, end up fighting for the "neighborhood niche." Most, however, must convert or gradually attrite.

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Can the majors --- or to be more specific, can ARCO compete with the independents? There are two obvious road-blocks immediately apparent. The credit card and the dealer apparatus.

credit card problem is relatively straightforward; namely, eliminate it. Competing for the price customer is just not possible while burdened with all the real costs of credit. There will be some mechanical problems, including the employee discount, but nothing appears insurmountable. What it will represent is an irrevocable abandonment of the higher-priced "major brand" notion as a workable concept. ARCO would be telling the motoring public it hears their call for economy. Quite an appealing campaign can be constructed around this theme.

The dealer apparatus is far more complex and difficult. Among other things, it could have political implications. The simple fact is only a portion (perhaps 50%) of today's dealers would be able to handle, or would want to work hard enough to handle the volume entailed in independent type operations. If ARCO dropped its price to the point where a dealer should be able to closely match the independents, many dealers would retain high pump prices and pocket the ARCO cuts. What is needed are means to motivate the dealer to the high-volume mode. The answer is twofold: (i) station rent, and (ii) a price that declines with volume. The volume discount pricing is already in place in the industry-wide rebate system that has arisen in the past year. The rent must be set at the level commensurate with the commercial value of the property which we call "economic rent."

With "economic rent" we become, to a degree, indifferent about the dealer's performance. If he fails to sell the volume potential, the station investment at least yields a commercial return. Although this cannot be endured permanently, corrections can be evolutionary in these circumstances. In most cases, though, the dealer will not be able to afford the rent unless volumes are increased.

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IDENTIAL

The trouble is that rent is an emotional and potentially political issue. Even though justified and even though we concurrently give the dealer the means to survive and prosper (i.e., a low price which should lead to higher sales), there will be a knee jerk reaction and a howl when rents are raised for some by factors of three and four. Furthermore, due to three-year leases, it takes that time to fully cycle an implementation and a phased approach to lessen the reaction would also have to cover a couple of years.

Let's say, for discussion, economic rent is implemented --- what happens to the 700-800 stations that dealers would leave? A search, requiring time, might find some capable replacements as dealers, but most would have to be closed permanently or become company operated. Closing might be bearable, but would clearly be less attractive than company operated. Here again, the risk of political interference arises, but the lower prices afforded to consumers by these company operated stations (at independent prices) should prevail over dealer resistance.

The mini-mart stations should prosper even more with independent pricing and, by and large, these operators can be expected to see the advantages of pricing to attract more volumes (and store customers).

So, what is the reward for ARCO if it takes on this not easily implemented strategy? There will be a discontinuity period where profits will be lower than would otherwise be the case if we hung onto what we have now. However, ARCO will be postured in the only stance having any hope of long-term viability. Lastly, depending on the degree and rapidity of competitive attrition, a lasting period of quite acceptable profitability could ensue.

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WITH THE LITIGATION ENTITLED CADI et al. v. ARCO et al.
L.A.S.C. C423917

... the other majors did not conform, and some are sure to miss the boat, ARCO could end up a buyer of product from idle refining capacity of others for resale at a profit. The balance of power shift is, indeed, placing the marketer in control. Furthermore, if the majors lose the market and crude remains abundant, it is not inconceivable to have the marketers not only bargaining down refinery returns, but those of crude oil as well.

At this stage, the urge to hold on to the status quo seems attractive. Why not ride the current cash generation mode even if it goes into a declining trend? In other words, why lead the pack into a period of discontinuity before it is absolutely imperative -- because when the need for change is better perceived, it will be better received and, thus, easier to accomplish.

The answer boils down to a couple of key premises. First, that within a couple of years, an upheaval is inevitable and some of the present operators will not survive. Secondly, the relative strength of ARCO's refining and marketing will slip with the passage of time. Once other majors revamp their refineries and strengthen their marketing, their stake in the contest for survival will rise so the struggle will be more intense and the ARCO advantage will have decreased. Call it a pre-emptive strike or whatever, but the contention is that ARCO will be best served by moving sooner rather than later.

The best response would be for some players to opt out at the prospect of a discontinuity period. The worst response, which cannot be dismissed, is for other majors to refuse to concede ARCO's withdrawal from the major ranks with a price advantage. This could lead to a "blood-bath" price war period. The most likely response, which would be favorable on balance, would be early emulation by a couple of majors and moves by the rest later --- after we have established a clear edge. Attempts to place financial parameters on these possibilities must be covered in the January 26, 1982 SPU meeting.

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For all the difficulties, not all of which have been covered here, it is being suggested that there is no really viable alternative to joining the independent marketer ranks, and the first convert should have it easier than those coming later.

The move to challenge the independent and move away from trying to walk both sides of the street will serve as a rallying point for an organization who's more perceptive members see as treading water in a changing world.

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JSM (1/4/82)

CONFIDENTIAL

# Amoco dealers charge pricing strategy fails

Amoco's "Retail Pricing Survey" guaranteed margin scheme is a flop because competitors don't react to Amoco tankwagon prices, dealers complain.

**How RPS works:** Amoco surveys prices of about 30 to 40 stations of various brands in a given market.

Company takes an average of those street prices, then posts its regular unleaded DTW at 4¢/gallon below the average, regular leaded 1¢/gallon below the average, dealers say.

The intent: Increase market share through lower prices.

But dealers in several RPS markets say Amoco fails to survey the right stations.

**Examples:**

• Kansas City, Mo., dealers say Amoco DTW prices jumped 7¢/gallon in one day about a month ago. Increase came "in anticipation of a market restoration," dealers say company reps told them. Market didn't respond to Amoco's price prodding and Amoco took two weeks to bring prices down 3¢/gallon, they say.

Kansas City DTW prices jumped again March 1, this time 3¢/gallon. Market didn't respond and Amoco dropped the price by 2.3¢/gallon over the next two days.

Company hiked prices 5¢/gallon last Tuesday as competitors' prices were on their way down, dealers complain. Average street price was 74.9¢/gallon for regular unleaded; Amoco's DTW was 77.9¢.

Worse, local Amoco company-ops are selling unleaded on the street for 77.9¢, dealers say.

• Denver dealers also report wild fluctuations in DTW prices since Amoco instituted RPS there last June (OW 6/6).

Between Jan. 27 and Jan. 30, Amoco's regular unleaded DTW shot up 10¢/gallon, putting dealers 12¢/gallon out of the market. Amoco dealers are typically 5¢/gallon higher than other major brands, dealers say.

**Amoco responds**

Amoco denies that its RPS program operates on one set formula. Instead, it varies from market to market, depending on local competitive factors, Amoco says.

"We've got 150 terminals in our western zone and we make 150 pricing decisions daily about gasoline," a company spokesman said. "Not all of our decisions are perfect, and if they're wrong, we'll correct them." —Sandra Hamorsky

# More Phillips company-ops

Phillips plans to build seven more company-ops in Salt Lake City, jobbers were told at a Western Petroleum Marketers Association brand meeting.

A spokesman says the company does plan "additional units" in the city, but he wouldn't say how many.

Phillips now has six company-ops and one more under construction in Salt Lake City, the company says.

Conoco recently acknowledged it plans to build its first six company-ops in Salt Lake City if it can find acceptable sites (OW 10/24/88). —Susan Farrar

## *News brief*

**FTC OKs Rock Island sale:** Marathon's now the proud owner of Rock Island's 280 "United" brand stations, a 50% interest in 38 "Wake Up"-branded stations and a 50,000 barrel/day refinery in Indianapolis. Most of the United stations—all company-ops—will be reflagged to Speedway.

Att. 6

THE VIEW FROM

# THE DRIVER'S SEAT

ROBERT LONGSDORF JR.

## *Fuel Monopolies*

Trying to predict gasoline prices and the world oil supply has never been an easy task. Take a look at today's headlines and you find reports of the Organization of Petroleum Exporting Countries (OPEC) once again, but unsuccessfully, trying to limit production in order to bolster the price of crude oil. Then there's the sudden specter of a huge increase in the federal gas tax plus state gas hikes that could drive up pump prices astronomically.

While our attention has been focused on the changing headlines, though, there has been some very consistent behind-the-scenes maneuvering by the major U.S. oil companies. The top priority on their agenda, not surprisingly, is making larger profits. It's an old story, but this time there is a new twist.

Five years ago when the bottom started falling out of the crude-oil market, oil exploration in this country dried up. Refiners turned to cheaper foreign oil—raising legitimate concerns about increasing levels of imports—in order to keep their plants running profitably. As the price of crude continued to fall, the major oil companies recognized that a fundamental change was underway in the oil business that was likely to last for some time. Suddenly, the profit potential was no longer at the well; instead the big bucks were now at the refinery and the pump.

Thus, beginning in 1985, the major oil companies began buying out their independent competition. In much of the country today—especially in the East—the major oil companies have reduced competition significantly. Very quietly, the marketing of gasoline—unchecked by federal and state regulators—has passed into the hands of about a half-dozen major oil producers. The result is a profit picture that hasn't been this rosy for them since gas prices peaked in the early '80s.

Like a lot of other motorists, RVers have been asking when the much-publicized drop in crude-oil prices during the past year would reach the pump.

"It's true that the price of crude has continued to go down," Ed Rothschild, assistant director of the Washington, D.C.-based Citizens/Labor Energy Coalition, says, "but during 1988 we didn't see much of a drop at the pump. And that is what the future has in store for us. The major companies that now have no real competition at the refining level are reaping their profits from refining and marketing. That means that gasoline prices will be much higher than they normally would or should be. They aren't a true reflection of the crude-oil market."

As of this writing, gas prices in the East are about 20 cents a gallon higher than in many metropolitan areas on the West Coast. According to Rothschild, that disparity exists because a few independent retailers are still holding on in the West. It doesn't seem likely that they will be able to hold on forever, though, and Rothschild predicts that eventual total control by the major oil producers is "inevitable."

To add insult to injury, Rothschild accuses the major oil companies of taking a very irresponsible approach to marketing, designed to help them further control the supply of gasoline. "What the majors are trying to do now is convince everyone that they need high-octane gasoline," he charges. "High-octane gasoline requires more oil to produce, which means an increase in consumption of crude oil. Also, high-octane gas, being harder to produce, means [there's] less gas produced overall. That tightens the market even more. What we have now is a situation where demand is up, refinery capacity is limited because of acquisitions, and gasoline production is down. The handwriting is on the wall for consumers." TL


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HB 2291

**The Motor Fuel Marketing Act**

Testimony for the House Transportation Committee

By the Kansas Petroleum Council

March 14,1989

Thank you, Mr. Chairman. We appreciate time to comment on HB 2291 today. I am Ross Martin, representing the Kansas Petroleum Council, a division of the API -the American Petroleum Institute.

KPC represents what you would term the major oil companies. Some of our members sell gasoline at retail in Kansas. They include familiar names like Amoco, Conoco and Phillips Petroleum. One member company, Texaco, has a refinery at El Dorado. Texaco also sells gasoline at retail locations in Kansas.

We are opposed to the bill. We think it violates long-established principles of free enterprise. The bill would make a mess out of the gasoline marketplace, give the industry in general a black eye and, to the detriment of the state and its citizens, promote higher pump prices.

The bill is written such that its controls would apply to just about anybody who sells gasoline: independently-owned and company-owned retail stations, wholesalers, jobbers, refiner-marketers and convenience stores. In fact, some of the people who might want to apply the bill's protections could someday very easily wind up being its victims.

Proponents offer the bill as a way to supposedly protect small businessmen from what is called "below cost selling". The bill is designed to prevent anyone from selling gasoline for less than a competitor's price. In effect, it could work to subsidize those who are not holding down their costs or willing to cut their profit margins in order to meet competition on the street.

One of the worst features of this bill is that it would work against new competitors trying to enter a market. This would happen because one of the important things any new business normally does to attract customers is offer them lower prices, at least on a temporary basis. In many cases, that price may have to be at or below cost. In fact, this is a fairly common practice among those in any retail business. In the gasoline business, for example, dealers frequently offer a free car wash with a fill-up. Under the bill such an offer could be prohibited because it would become a factor in figuring the cost of gasoline.

Attach. 8

In recent weeks, you probably read about Sears' plans to cut their prices across the board. According to news articles, Sears is slashing prices to compete with other department stores. They in turn are apparently going to do the same. These stores, not unlike retail gasoline outlets, are responding to competitive market conditions, which so far favor the consumer. When is the last time you heard a consumer complain about gasoline prices being too low?

No one in the gasoline business would dare to lower his price if this bill were law. Anyone who did, could be threatened with a potentially very expensive lawsuit. It be far safer, and easier, to raise prices than it would be to lower them.

The bill makes it easy to threaten a competitor. Any "person" could file a simple court motion and get a competitor's entire line of cost information. No actual damages would have to be alleged or proved. In fact, the bill is so complicated that dealers would have to refigure their "cost of doing business" almost everyday in order to avoid making the mistake of selling gasoline at below cost.

Any businessman would love to have access to a competitor's cost information. Why? Because knowing your competitor's costs is a tremendous advantage in building your own profits. Actually, the kind of price collusion this bill could bring about violates federal antitrust law.

Another objection to the bill is that it would effectively bar gasoline marketers from using "loss leaders" --a practice almost any other kind of retailer is allowed to use. Yes, there is some language about " the intent to injure", but it is illusory and only serves to complicate the issue in the courtroom. This is the stuff that expensive lawsuits are made of.

We are calling this bill a wolf in sheep's clothing for some pretty good reasons. Last year they passed a similar bill in Tennessee. And, sure enough, pump prices went up. Newspaper reports say some dealers were raising their prices within hours after the bill became law.

I have included editorials by newspapers in Tennessee who are extremely upset about the below cost law. The gasoline industry in general, and the state legislature, are taking plenty of heat. I hope you'll take time to read through the attachments to my statement.

Also, you may want to consider how much this bill would cost state government. I am advised the Attorney General thinks it might require his office to establish and equip a new division to handle complaints and investigations. This new division would be similar in size to the Consumer Protection Division. Operating costs would be high. For FY1990, the AG's estimated figure is over half a million dollars.

Finally, it appears we are already on the verge of higher gasoline prices in Kansas. The Federal government is talking about raising taxes by as much as fifty cents a gallon to pay for the budget deficit. And we have state road problems to solve. Given these price pressures and the fact that gasoline sales volume is already flat, we suggest it would be a mistake to pass this bill.

For all of these reasons, we urge you to vote "no" on HB 2291.

Thank you Mr. Chairman and members of the Committee. Are there any questions we might try to answer for you?

THE TENNESSEAN
Nashville, TN 8/25/88

# Price-fixing laws are not needed

THE retail gasoline market in Tennessee is in a confused mess, thanks to the legislature, and as usual when the legislature begins tinkering with the free market, the consumer is taking it on the chin.

It all started July 1 with a new law fixing the price of gasoline intended to protect the profits of certain oil retailing groups. But the law is so vague and confusing that the state attorney general has thrown up his hands when faced with enforcing it.

Oil retailers are filing complaints against competitors who undersell them. The competitors claim they are being harassed by the complainants. Meanwhile, the price of gasoline is going up in Tennessee.

Proponents of the price-fixing law said the law would not cause gasoline prices to go up. Now that prices have gone up, the proponents say the increase was not caused by the law, but it will be difficult to convince Tennessee consumers of that.

Attorney General W. J. Michael Cody said the law does not give his office authority to determine whether allegations are factual and take action on complaints, and he is not sure he has the authority to enforce the law. In addition, he said, dealers who attempt to comply with the law could be in violation of federal antitrust laws that bar collusion in setting prices.

The attorney general's position apparently means that dealers who want to press charges must go to court. But Mr. Cody says any state law on gasoline will be superseded by federal antitrust laws. The state courts do not need to be cluttered with hundreds of questionable price-fixing cases.

Mr. Cody has indicated he would be reluctant to take any action on the price-fixing law until the legislature clarifies his office's authority. Better still, the legislature should repeal the law and stop trying to regulate prices on consumer goods.

A state law fixing the price of milk has cost Tennessee consumers millions of dollars over the past three decades. Now the legislatures is forcing gasoline consumers to hike the profits of the special interests.

Federal antitrust laws are adequate to deal with any genuine price-collusion cases. The legislature should repeal all price-fixing laws now on the books and stop passing new ones. ■

8-4

TIMES
Chattanooga, TN 8/29/88

# Worse than no gasoline bill at all

When the Legislature capitulated to dealers last spring and passed a pricing bill barring the sale of gasoline below cost, critics warned that it could lead to a flood of litigation. Sure enough, that's already happening, but the litigation is probably irrelevant. As state Attorney General W.J. Michael Cody stated in an opinion the other day, the pricing law is so complex it's doubtful anyone could ever win a lawsuit by proving a fellow dealer was illegally selling gasoline below cost.

The bill was a shameful exercise in special interest legislation, but complexity is not its only problem. Dealers who attempt to comply with the law, Mr. Cody said, risk violating the federal antitrust laws that forbid dealers from setting prices. Why? Because if dealers discuss among themselves the costs or prices of gasoline as a way to avoid violating the state pricing law, they risk charges of collusion — a violation of the antitrust act.

The pricing law, which took effect July 1, forces dealers into complex calculation. They must determine the retail price of gasoline by such factors as its purchase or replacement cost, the cost of transportation, taxes and the "reasonable cost of overhead for petroleum distillates at that location."

That last bit of vagueness would be a lawyer's dream, but even the sharpest lawyer would have trouble with this legislative mess. Mr. Cody argued that it would take expert testimony to prove any violations of the law, and even then the number of variables involved would probably make lawsuits fruitless.

But suppose a Tennessee version of Perry Mason did prove that Dealer A is selling gasoline below his cost. That's only the beginning. He still has to prove the effect was "to injure or destroy competition or substantially lessen competition." And the complainant also apparently must determine if such destruction was intended. But if the "offending" dealer then raises his price to render the litigation from another dealer moot, then he, or both of them, risks violating federal antitrust statutes.

Enforcement of this act naturally falls to the attorney general — except according to Mr. Cody, the law doesn't make clear "who the attorney general may sue ... and for which violations." Not surprisingly, Mr. Cody himself made clear that until the state attorney general's authority is made explicit, his office probably would not sue anyone.

Who needs this mess? Nothing can be done immediately about this, but when the Legislature reconvenes in January, it should repeal the law. Better yet, each legislator should keep a copy of the law. It would make an excellent reminder of how the Legislature ill-serves the public with such blatant special interest legislation.

8-5

# Cody: gas pricing laws hard to enforce

Gannett News Service

Tennessee's gasoline pricing law is so unwieldy that it is doubtful anyone could ever prove that a dealer is illegally selling gas below cost, Attorney General W.J. Michael Cody says.

In addition, dealers who attempt to comply with the law's provisions may end up with a much bigger problem on their hands — violation of federal antitrust statutes that bar collusion among retailers in setting prices, he adds.

"Although the substantive provisions of Public Chapter 1033 are constitutionally permissible, there is uncertainty about this office's enforcement authority and what particular conduct is actually proscribed," Cody said in a recently released opinion.

"Establishing a below cost sales in violation of the act would most likely prove extremely difficult in practice.

"If dealers discuss costs or prices in an attempt to comply with the act, they assume a substantial risk of engaging in conduct which violates the federal antitrust laws."

"If dealers discuss costs or prices in an attempt to comply with the act, they assume a substantial risk of engaging in conduct which violates the federal antitrust laws.'

Tenn. Attorney General J. Michael Cody

The law, which took effect July 1 after being passed earlier this year by the General Assembly amid heavy lobbying, bars the selling of gasoline below cost "where the effect is to injure or destroy competition."

It requires dealers to calculate the retail price of gasoline, using a formula that includes the purchase or replacement price of the gasoline, transportation costs, taxes and "the reasonable cost of overhead for petroleum distillates at that location."

It also bars vertically integrated oil companies — those involved in the distribution of gasoline from the oil well to the pump — from selling gas cheaper to their own companies than they sell to independent dealers.

But Cody says that proving each of the elements required in the formula would be so difficult that expert testimony would be required and would involve so many variables that one probably could never prove violations.

The law also provides a number of exemptions from its provisions.

"Whether a particular gasoline sale falls within the definition of 'sales at retail' and whether 'cost to the retailer' may be effectively computed to ascertain if a sale is below cost within the meaning of the legislation will likely be difficult to establish," Cody said.

"Even where there has been such showing, a complaining party must also demonstrate an 'effect to injure or destroy competition or substantially lessening competition.' This statutory language creates another serious evidentiary and legal hurdle for a complaining party."

In addition, dealers who attempt to determine the actual costs of their competitor to decide how to set their prices risk the possibility that they may violate federal antitrust laws, Cody said.

"In short, where there is no active state supervision or direction, as here, private parties may not use state law to shield or immunize themselves from the consequences of the federal antitrust laws," Cody said.

The law provides that the attorney general may take legal action, but "who the attorney general may sue ... and for which violations is not clear," Cody said.

The law was passed as what proponents described as an attempt to protect independent dealers from being driven out of business by big oil companies. Oil company representatives say it will drive up gas prices.

9-8

Kinsport Times News

July 8, 1988

243

# Opinion

## Under new gas law, consumer loses again

It is too soon to gauge the impact of a new law prohibiting the sale of gasoline below "cost" in Tennessee. But the law, which went into effect last week, certainly won't help the situation in the Tri-Cities — a sort of island of high gasoline prices.

On average, gasoline prices are about 11 cents a gallon lower in the Knoxville area and generally four to seven cents a gallon lower in Asheville, N.C., and Roanoke, Va. Nor is there a satisfactory explanation for the higher prices here.

One local dealer says service stations in the Tri-Cities pretty much get what they can. Another attributes the higher prices to lack of competition among stations here.

But the much-lobbied gas sales law promises only to make matters worse.

The law prohibits dealers from selling gasoline for less than their cost — defined as the dealer's purchase price or replacement cost, plus transportation costs, plus taxes, plus the reasonable cost of overhead.

The effect of the law will keep independent stations in business by protecting them from dealers selling certain grades of gasoline as loss leaders, thus preventing gasoline pricing wars, and limiting competition.

The penalties for violating the law are quite stiff. The law imposes a $1,000-a-day civil penalty that can be collected by an adversely affected plantiff in a private cause of action. The plaintiff also can collect triple damages for willful and knowing violations.

Dealers are going to be reluctant to risk any violating the law. Bad enough that they are denied the ability to compete in a free marketplace. Government has no business interfering with the price of gasoline until or unless anti-trust laws are violated.

If lack of competition really is responsible for higher gasoline prices in this area, there's going to be even less of it. The consumer loses again.

• From Attorney General Edwin Meese on his announcement he will resign this summer:

- He will be leaving "in order to accept new opportunities in the private sector."

Uh huh.

- The 14-month investigation into his personal ethics "fully vindicates me."

Right.

- "This decision is something I made totally on my own, and I was not pressured by anybody."

You bet.

- And, he might be willing to work with Vice President George Bush should Bush be elected president.

Sure thing, Ed. No doubt George will be calling any day now.

8-7

PRESS

Johnson City, TN 9/14/88

# A gas-pricing mess

The 1988 Legislature passed a bill which barred the sale of gasoline in Tennessee below cost.

Independent dealers said the measure was aimed at national oil companies with company-owned outlets.

But with the measure in place, there's a mass of confusion over its complexity.

For instance, Tennessee Attorney General Mike Cody says that it would be problematical that it could be proved that anyone was selling gasoline below cost.

Moreover, if gasoline dealers discuss the costs of gasoline among themselves, they risk federal charges of violating the antitrust act.

It was predicted last spring, when the bill was passed, that it would result in a avalanche of litigation. That now seems to be occurring.

The pricing law forces dealers into deep calculations — the retail price must be determined by such factors as its purchase or replacement cost, the cost of transportation, taxes and "the reasonable cost of overhead for petroleum distillates at that location."

As Cody notes, even the best legal minds in the state would have trouble with this legislative ball of wax. Cody is charged with the enforcement of the law. But he points out that the law doesn't make clear "who the attorney general may sue ... and for which violations."

Unfortunately, Tennessee's legislators let themselves be pressured into enacting this mess. Come January, they should hastily repeal it.

8-8

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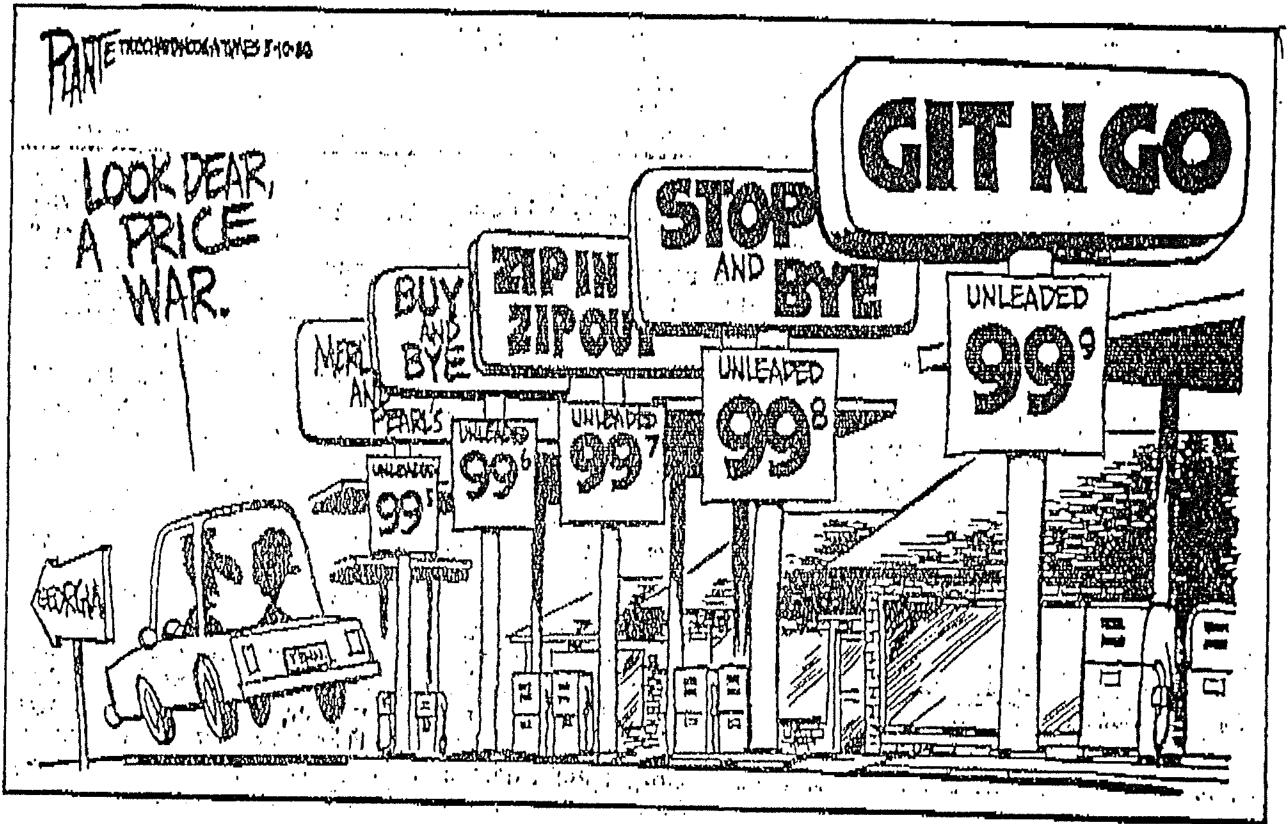
THE CHATTANOOGA TIMES
May 11, 1988



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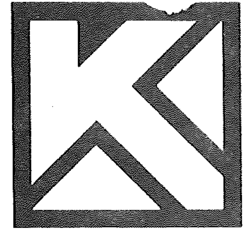

Kansas Chamber of Commerce and Industry

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A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

HB 2291

February 27, 1989

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Transportation

by

Bud Grant
Vice President

Mr. Chairman and members of the Committee:

My name is Bud Grant with the Kansas Chamber of Commerce and Industry and I appreciate the opportunity of appearing before you today in opposition to HB 2291.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

If there is one thing business in this country is built on Mr. Chairman, and Committee members, it is free trade and the opportunity to rise or fall, to succeed or not succeed, to sell or not to sell, based on one's own ability or desire. HB 2291 would

Attach. 9

erject into this private enterprise system the heavy hand of government and would obviously result in restraint of trade.

Without a doubt Mr. Chairman, there are those who think Sears sells washing machines too cheaply, K Mart sells dresses too cheaply, and Dillards sells shoes too cheaply. But Westside Appliance, or Rosie' Showoff, or Brown's Shoe Fit have remained in business, without asking for governmental protection.

HB 2291 is a bad bill, it would set a bad precedent, and KCCI urges that it be reported unfavorably.