Approved 1-28-92
Date

MINUTES OF THE House COMMITTEE ON Transportation.

The meeting was called to order by Representative Herman G. Dillon at
Chairperson

1:35 a.m./p.m. on January 21, 1992 in room 519-S of the Capitol.

All members were present except:

Committee staff present:
Hank Avila - Legislative Research
Tom Severn - Legislative Research
Bruce Kinzie - Revisor of Statutes
Jo Copeland - Committee Secretary

Conferees appearing before the committee:

John Campbell - Deputy Attorney - Attorney Generals Office
Ken Suter - Kansas City, Ks. - Ks. Oil Marketers Association
Chuck Hessenflow - Beloit, Ks. - Ks. Oil Marketers Association
Dave Patrick - Salina, Ks. - Ks. Oil Marketers Association
Bryan Beaver - Overland Park, Ks. - Carter Petroleum

Chairman Dillon introduced Hank Avila to brief the Committee on HB 2628 Kansas Motor Fuel Marketing Act.

Hank Avila briefed the Committee on the Conclusions and Recommendations from the Interim hearings held on October 8, 1991. The Committee believes that the enactment of any below cost sales legislation requires careful deliberation. To interject government between competing business entities absent the existence or clear predatory practices should be avoided. Testimony of conferees who favor or oppose below cost sales legislation is persuasive. Based on the Committee's time constraints and on the complexity of the subject matter, the Committee recommended that the concept of predatory pricing of motor fuels and other related issues addressed in the Kansas Motor Fuel Marketing Act be further considered by the House Transportation Committee during the 1992 Legislative Session. In addition, the Committee believes that, where possible, the interested parties ought to collaborate jointly in suggesting ways of resolving areas of conflict. (Attachment 1)

John Campbell testified in support of HB 2628). (Attachment 2)

Ken Suter testified in support of HB 2628. (Attachment 3)

Chuck Hessenflow testified in support of (HB 2628) (Attachment 4)

Dave Patrick testified in support of HB 2628. (Attachment 5)

Bryan Beaver testified in support of HB 2628. (Attchment 6)

Questions and discussion followed the above testimonies.

Meeting adjourned at 2:51 P.M.

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.

GUEST LIST

COMMITTEE: HOUSE TRANSPORTATION COMMITTEE DATE: 1-21-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gary N Davies	Box 125 Troy, KS	Davies Oil Co Inc
Kevin G. Brown	Box 1303 Hutchinson, KS	T&E Oil Co.
Randy Flaming	Box 480 Belle Plain KS	Stop-A-Trip
Troy M. Botkin	4002 E Central Wichita	Rock Road Amoco
A.F. Bud Rout	4807 E. Kellogg Wichita	Bud Rout Amoco
P. Madell	1500 SW Arrowhead Topeka	KS Corp Comm
Frank Horn	735 Front BS KS	Frank's Auto
Dale Lybarger	Box 99 Garnett KS	Lybarger Oil Inc
George [illegible]	Box [illegible] Mankato Ks	[illegible] Oil [illegible]
Shawn Harrelson	Topeka	KOMA
Judy Conklin	Topeka	KOMA
Ken Bahr	Topeka	Ks Petroleum Council
Sam Sarkani	TOPEKA	SAM CONV STORES
Leo Trickwell	Shawnee KS	Sac Petro
Bob McBride	Lawrence,	McB Oil Co.
Wally McBride	Lawrence	McB Oil Co.
Harold Clarke	Wichita Ks	Clarke Oil Co
Earl Mueller	Marion, Kan	[illegible]
Elaine Mueller	" "	" "
John R Tolen	JNT Enterprises Inc	FINA - K.C KS
Bob Conner	1332 [illegible] Wichita	Conner Enterprises Inc
Dolan Pelley	Derby KS	D+B Amoco
Donna Pelley	" "	" "
Deborah Painter	K.C.	Carter Petroleum
Wallace H [illegible]	Sears, Kan	Baldwin [illegible] Inc
Paul Cheek	Overland Park	Phillips 66

GUEST LIST

COMMITTEE: HOUSE TRANSPORTATION COMMITTEE DATE: 1-21-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
James Brewer	13500 Santa Fe, Salina KS	JB's One Stop
Ken W Suter	12836 Polger Rd KCK 66109	SACO Petro Corp
Chuck Hessenflow	221 North Chestnut Beloit, KS 67420	Farmway Co-op Inc
Sam Carter	Fina - Topeka Blvd. Topeka, KS	Topeka KS
Mark Augustine	549 N. Ohio Salina KS	Triplett Inc.
Larry Triplett	549 N. Ohio Salina Ks	Triplett Inc
FRANK LOERCHER	5833 NIEMAN SHAWNEE, KS 66203	OK GARAGE PHILLIPS 66
Mabelle Loercher	5833 Nieman Shawnee Ks 66203	OK Garage Phillips 66
Wayne Bluhm	RT 1 Box 93 Dwight KS 66849	Total Stop 2 Shop
VERNON HAGER	COUNCIL GROVE	STOP 2 SHOP
Rick & Cynthia Jaccard	3603 NW 46th st Topeka Ks	Petro Deli
Michelle Lester	Topeka	KCC
Charles Nicolay	Topeka	KOMO
DEAN WALTHERS	Cuba Ks	WALTHERS OIL CO
Joe Yost	Greensburg, KS	Wilmore Oil Co.
EARL DAYLOR	WAMEGO, KS	HOME OIL CO
Ken Peterson	Topeka KS	KS Petroleum Council
Bob Anderson	Topeka, Ks.	KOMA
Pat Hubbell	Topeka, Ks	KOMA
PAUL W. MATTHEWS	OKLA CITY, OK	HIGHWAY USERS FEDERATION
Don Howell	Wichita KS	WESTLINK AMOCO
Norman Anderson	Topeka KS	KOMA
Lee Eisenhauer	Topeka	KLPGA
Wayne Reed	Minn Ks	Bennington Oil Co
Larry Lynch	Wichita Ks	Westlink Amoco

(Over)

Steve McBride	HCR 1, Box 64-A Beverly, Ks.	Carter Petroleum
George Leighley	Clay Center	Leighley Oil
[illegible] Strummitz	Valley Falls Ks	Strummitz [illegible]
Dave Milligan	Olathe	Carter Petroleum
Kim Suter	K.C., KS	Saco Petro.
Phyllis Osborn	Elk Falls	O & B Oil
Frank Garrett	Wakarusa	Garrett Oil Co
Ed Haselwood	Berryton	Haselwood Oil
Neal Osborn	O & B Oil Co	Elk Falls, KS
Al & Anna Schwartz	Topeka	A & J Conoco
Jack T. Ginder	Topeka	Quality Gas & Shop
Ron Brummit	Leavenworth	Brummit Oil Co.
Brad Nelson	Topeka	Quality Gas & Shop
Marvin Spees	Topeka	Capital City Oil
C. D. Kloepper	Hiawatha	Kloepper Inc
Rex Ekwall	Marysville	Rite-Way Oil & Gas.
Marshall Ticehurst	Topeka	Kaw Valley Oil Co
Gary Jackson	Edwardsville	Jackson Service Center
John Ely	Topeka	A & J Conoco
[illegible]	Topeka	Highway Oil, Inc.
David C. Patrick	Salina	East Crawford Amoco
Robert Bales	Wichita	Klepper Oil Co.
David Maxwell	Salina	West Crawford Amoco
John R Lewis	Topeka	Super Stop C Store

RE: PROPOSAL NO. 22 – KANSAS MOTOR FUEL MARKETING ACT

Proposal No. 22 directed the Committee to study the proposed Kansas Motor Fuel Marketing Act to explore the extent that motor fuel marketed is affected with a public interest and evaluate current trade practices in this area.

Background

Structure of the Gasoline Industry

Refiners. Most large refiners are integrated oil companies that are involved in petroleum products marketing at the wholesale and retail levels and in crude oil exploration and production. Most of these companies operate worldwide in exploration and production. Refiners move gasoline to retail outlets through a complex transportation system. From the refineries, gasoline is transported by pipeline, tanker, and barge to bulk stations and terminals. Gasoline is transported from bulk stations and terminals, primarily by truck, to distributors, retail outlets, farms, and other large commercial customers.

Wholesale Distribution. Refiners distribute their products through both direct and indirect channels. Each of these channels in gasoline marketing, "direct supply" and "distributors" (often called jobbers), carries about half the volume of gasoline sold in the United States. A separate category of distribution to "other end users" classifies direct refiner sales to commercial accounts. The percentage of gasoline sold in this category is small.

Direct supply means that a refiner's output is delivered to a retail outlet without the involvement of a third party. These retail outlets may be operated by dealers or company employees. Direct supply typically involves branded, *i.e.*, trademarked product, although some refiners operate under several brand names.

Distributors and chain marketers are independent businessmen who purchase gasoline from a refiner at terminal prices and resell it to independent retailers or to their own lessee dealers or who deliver gasoline to salary-operated service stations, intending to cover costs and make a profit on the spread between terminal and resale prices. Some large distributors, or super-jobbers, sell gasoline to other jobbers who in turn distribute to service stations. Distributors may be "unbranded," selling private-brand or unbranded gasoline, "branded," operating under the brand name of one or several refiners, or both. Chain marketers purchase gasoline in bulk for sale through their own chain of largely salary-operated retail outlets.

Gasoline sold at retail outlets is categorized by the degree of ownership held by the operator. Stations fall into three major classes: salary-operated (or company-operated) stations, lessee dealer stations, and open dealer stations.

Salary-operated stations are run by employees or agents of a refiner or distributor. The company typically owns the station, but it also may lease it from a third party. In addition to bearing responsibility for the investment in the facility and equipment, the company sets retail prices, hours of operation, employee salaries, and other operating policies. The objective is to cover costs and make a profit on the spread between retail and wholesale prices.

In a lessee dealer management situation, the land, buildings, and major equipment at the station can be owned or leased by a refiner or distributor, who in turn leases them to an individual, the lessee dealer. Lessee dealers are independent businessmen who are responsible for the investment in other equipment and in inventories. A dealer's business relationship with the lessor refiner is generally defined by the terms of both a lease and a gasoline supply contract.

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Open dealers are independent businessmen who operate stations and who either own their stations or lease them from someone other than a supplier of gasoline. Open dealers contract with either refiners or distributors to supply them with gasoline.

Relationship Between Refiners and Dealers. The relationship between directly supplied, branded dealers and refiners is contractual and, at times, is characterized by competing interests. A supply agreement defines the terms under which wholesale gasoline is provided to a dealer. Additionally, in the case of lessee dealers, a lease contract sets the rent and other terms governing a dealer's use of the land, structures, and equipment owned by the refiner. Dealers operate the leased facility, take title to product inventories, set retail prices, and recruit and pay their workforce.

Under the terms of supply agreements, each dealer buys gasoline from a refiner at wholesale prices set by the refiner, *i.e.*, the dealer tankwagon (DTW) price plus all appropriate taxes. DTW prices vary across time in response to gasoline market conditions, crude oil prices, and other factors. They also vary across geographic areas, often known as "pricing zones," established by most refiners. Most refiners have a number of pricing zones, sometimes several within a single metropolitan area.

Issues

Recently, some states* have enacted laws prohibiting the sale of motor fuel at retail at prices "below cost." Dealers and jobbers who have requested this legislation claim major oil refineries engage in unfair competition, using company-operated outlets to sell motor gasoline at prices below cost. Proponents of below cost laws point out that these laws prevent predatory practices by refiners. Predatory pricing is defined as the practice of selling below cost with the intent to drive competitors out of business and subsequently recover losses through price increases and high long-run profits. The proponents also claim that such legislation is necessary to forestall the domination of the market by large firms, and to assure reasonable and stable prices in the long run.

Opponents of below cost legislation argue that gasoline markets are competitive and that below cost selling legislation results in inefficiency in competitive market operations. Such legislation also encourages higher retail margin and higher prices to consumers and introduces an entry barrier for new entrants that would like to penetrate the market by implementing a discount pricing policy for promotional purposes.

House Bill No. 2628

In 1991, a bill known as the Kansas Motor Fuel Marketing Act was introduced in the House Transportation Committee. The bill, H.B. 2628, is carried over in that Committee to the 1992 Session. The bill declares that the pricing of motor fuel is subsidized when: refiners use profits from refining to cover less than normal returns on motor fuels sales; a marketer uses profits from one location to cover losses from below-cost sales at another location; and a business uses profits from nonmotor fuels sales to cover losses from below-cost sales.

Under the bill, refiners must establish and publicly disclose a price on each grade of motor fuel transferred to the refiner or an affiliate for resale at another marketing level of distribution. The bill also makes it unlawful to sell or offer to sell any grade of motor fuel below cost or at a price lower than that charged others on the same day and on the same level of distribution within the same market area, where the effect is to injure competition and prohibits using the profits from the sale of services, commodities, or other grades of motor fuel to subsidize the price of any grade of motor fuel.

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* These states include Alabama, Florida, Georgia, Massachusetts, New Jersey, North Carolina, Tennessee, and Utah.

Other practices that are made unlawful include selling motor fuel as a loss leader with the intent or effect of injuring competition, offering or giving a rebate with the intent or effect of injuring competition, or, in the case of a retailer, attempting to purchase motor fuel at a price less than cost to the wholesaler.

The bill does allow prices to differ due to difference in shipping method, transportation, marketing, sale, or quantity sold. It also allows prices to be established to meet the price of a local competitor. Penalty and enforcement provisions include: making illegal and void any contract made in violation of the Act; making violations subject to a maximum civil penalty of $10,000 per violation, attorney fees, and injunctive relief; making each day that a violation occurs a separate violation; requiring penalties recovered in action brought by a district attorney to be paid to the county treasury; and requiring penalties recovered in action brought by the Attorney General to be paid equally to the county treasury and the State General Fund.

Committee Activity

The Committee held hearings on this issue on October 8, 1991. The following persons appeared in support of the issues associated with 1991 H.B. 2628: Mike Jilka, Attorney General's Office; Kenneth Suter, Kansas City, Kansas; Chuck Hassenflow, Beloit; and Wint Neal, Seneca. Persons who testified against the concepts contained in 1991 H.B. 2628 included: Bud Grant, Kansas Chamber of Commerce and Industry; Dick Brewster, Amoco Corporation; Jim Glass, Phillips Corporation; John Darnley, Texaco Corporation; and Ken Peterson, Kansas Petroleum Council.

Larry Knocke of the Kansas Department of Health and Environment also presented testimony pertaining to the Environmental Protection Agency requirements regarding underground storage tanks.

The Attorney General's representative testified that the Legislature should achieve a balance between encouraging persons engaged in the sale of gasoline to pursue their businesses without unnecessary interference from government and, at the same time, protecting the general public by insuring competition among these business entities. It was pointed out that the Kansas Motor Fuel Marketing Act (1991 H.B. 2628) would help preserve competition by prohibiting certain practices which, if left unchecked, could alter the structure of the petroleum business in Kansas.

The representative from the Kansas Department of Health and Environment presented an overview of the Environmental Protection Agency requirements regarding underground storage tanks. He pointed out that costs associated with these requirements have added an additional strain on many gasoline service station owners who are already financially troubled.

Conferees who testified in support of 1991 H.B. 2628 pointed out that salaried station operators sell gasoline at a price that is less than that available to a distributor at the refiner's terminal. They explained that refiners can engage in this practice by subsidizing retail gasoline operations with profits from other refinery operations. With this type of refiner-controlled predatory pricing, Kansas distributors cannot compete.

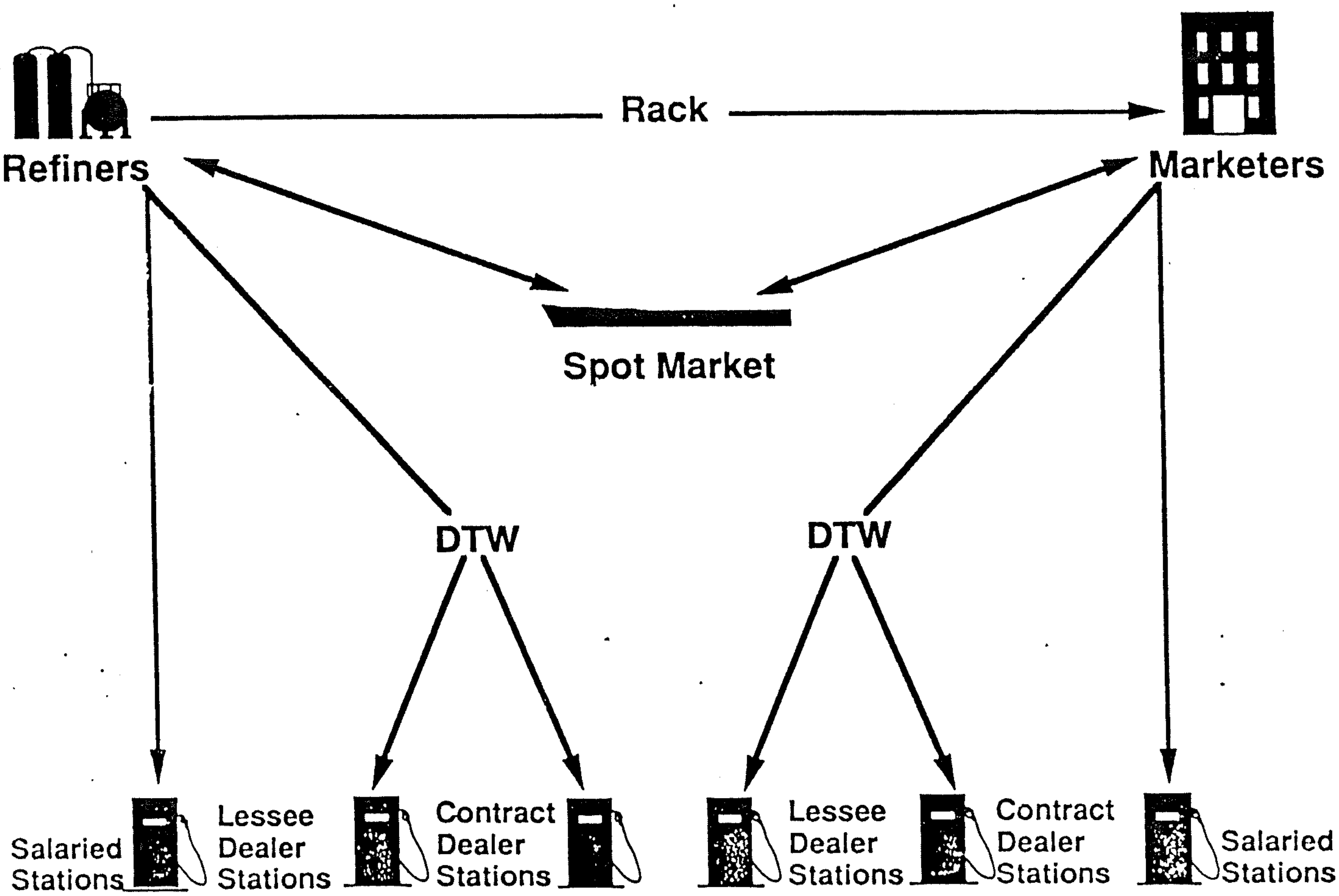
Proponents also pointed out that efforts to comply with regulation intended to cleanup the environment have stressed wholesale petroleum operations.

Opponents of below cost sales legislation pointed out that independent studies have shown that allegation of predatory pricing by refiners is not based on fact. They stated that the bill would result in higher rather than lower gasoline prices. Opponents pointed out that enforcement costs by the Attorney General's Office were estimated to be high. Opponents also stated that Kansas has retained a high number of independently owned gasoline stations and that refiner-owned operated stations account for only 5 percent of the total number of branded outlets in Kansas.

Committee Conclusions and Recommendations

The Committee believes that the enactment of any below cost sales legislation requires careful deliberation. To interject government between competing business entities absent the existence of clear predatory practices should be avoided. Testimony of conferees who favor or oppose below cost sales legislation is persuasive. Based on the Committee's time constraints and on the complexity of the subject matter, the Committee recommends that the concept of predatory pricing of motor fuels and other related issues addressed in the Kansas Motor Fuel Marketing Act be further considered by the House Transportation Committee during the 1992 Legislative Session. In addition, the Committee believes that, where possible, the interested parties ought to collaborate jointly in suggesting ways of resolving areas of conflict.

U.S. Gasoline Distribution Channels



Refiners supply gasoline to their own salaried outlets, to their dealers at **dealer tankwagon (DTW) prices,** and to marketers at **rack prices**. Marketers may in turn supply gasoline to their own salaried outlets and to their dealers at the marketers' DTW prices.

Dealers are either **lessee dealers** (who lease their stations and equipment from a refiner or marketer) or **contract dealers** (who own their stations or lease them from a third party).

Marketers (also called jobbers or distributors) vary greatly in the size and complexity of their operations. At one extreme is the small jobber, who buys gasoline wholesale and sells it to a few contract dealers in rural areas. At the other extreme, is the large chain marketer, who buys gasoline wholesale and supplies hundreds of dealers and his own salaried outlets.

Like refiners, some marketers both buy and sell gasoline on the **spot market**. This gasoline is sold in large volumes off barges or tankers in the Gulf Coast and New York Harbor areas, usually for prompt delivery at auction prices.

State of Kansas

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HOUSE COMMITTEE ON TRANSPORTATION

Testimony In Support of

House Bill 2628

By

John W. Campbell
Deputy Attorney General

January 21, 1992

Mr. Chairman, Members of the Committee:

My name is John Campbell. I am a Deputy Attorney General for the State of Kansas. Attorney General Robert T. Stephan has asked me to testify in support of House Bill 2628.

Since August of 1990, the Attorney General's Office has been studying the structure of the gasoline industry and the laws which govern it. Based on that work, it is the Attorney General's conclusion that competition within the various levels of the industry will best serve the

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consumer's need for quality gasoline at an affordable price. One of the threats to that competition is predatory pricing.

Predatory pricing is the deliberate selling of a product for less than its costs. This form of price fixing can have the effect of eliminating other competitors. With some or all of the competition disposed of, prices can then be greatly increased, thus costing the consumer more money in the long run. The structure of the gasoline industry is such as to make it particularly susceptible to predatory pricing.

The foundation of the gasoline industry is a small group of corporations which own and operate refineries. These corporations distribute gasoline to consumers either by company owned or controlled retail outlets, or by sale to independent wholesalers, who in turn sell gasoline to independent retailers. With the refiners in direct competition with independent wholesalers and retailers predatory pricing is a very real concern.

It is the purpose of various federal and state antitrust laws to maintain competition in the market place. Kansas was the first state in the nation to adopt antitrust legislation which even predates federal antitrust laws. The Attorney General's staff has examined these laws, including the Sherman Act, the Robinson-Patman Act and the Kansas antitrust statutes, specifically K.S.A. 50-101, 50-112, 50-118 and 50-149. It is our conclusion that current federal and state laws fail to offer adequate protection against predatory pricing in the gasoline industry.

Predatory pricing is fundamentally unfair and will result in an increase concentration of market power to the refiners. Competition is the consumers best hope for fair prices. House Bill 2628 will help ensure a more competitive gasoline market.

The Attorney General endorses the principles of House Bill 2628. He recommends to the committee that it adopt this legislation.

STATEMENT OF THE
KANSAS OIL MARKETERS ASSOCIATION
Presented to the House Committee on Transportation
The Honorable Herman Dillon, Chairman

Statehouse
Topeka, Kansas
January 21, 1992

Mr. Chairman and members of the committee:

My name is Ken Suter. I live in Kansas City, Kansas, Wyandotte County. I own an independent gasoline distributing business in Wyandotte County.

I am testifying on behalf of the Kansas-owned independent gasoline distributors, retailers and their employees.

The oil refiners have been building new stations in many cities across Kansas and on the interstate highway system. These locations are in competition with small independent distributors and retailers within a 20 mile radius of the new refiner-owned locations.

Gasoline marketing is a very price-sensitive business. Kansans driving to and from urban areas see these refiners selling at a below cost price and will buy from them. If Kansas distributors and retailers match these prices, they lose money. It's a catch-22. If they don't match the prices, they lose volume.

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Refiner-owned retail gasoline stations are systematically selling gasoline at a price that is less than a distributor can purchase gasoline directly from a refiner's terminal. This is with no adjustment for the cost of doing business. The only economic efficiency in effect here is the financial power of "big oil."

With this type of refiner-controlled predatory pricing, Kansas independent oil distributors cannot compete. The refiners have the luxury of subsidizing the retail gas operations with profits from crude oil, refining, and predatory prices charged to Kansas independent distributors.

Predatory pricing by refiners started in the larger metro areas a few years ago. Now, there are refiner owned retail gasoline stations in more than 80 towns and cities in Kansas which includes the majority of the counties.

Predatory pricing has become a marketing tool over the last 2 and 1/2 years. I have documented evidence where refiners have sold at retail near or below my distribution cost.

In September, 1989, one of my major oil refiner suppliers was selling gasoline 6.7 cents per gallon below my wholesale cost. This occurred on State Avenue in Kansas City, Kansas where I also own a station. I hired a common carrier transport truck and went to their station to fill it up.

They refused to turn the pump on, saying that I should go to the terminal. When I refused to leave, the company threatened to call the police and have the transport hauled off. My point is a simple one: why should I, as an oil customer of a major supplier, be forced to pay 6.7 cents a gallon more just to distribute their products than the public was paying at a station that was in direct competition with my own retail outlet?

In late summer of 1990, another refining company was retailing at the pump 7.5 cents per gallon below my wholesale cost.

In early 1991, a refiner was retailing at the pump, 7.2 cents per gallon below wholesale cost.

In the spring of 1991, two oil refiners were selling unleaded for 2 tenths of a cent above my wholesale cost. Just in the last few weeks, four refiners were retailing from .05 to 4.1 cents below wholesale cost.

It's been said that independents are trying to cover their inefficient operations. I believe all of the inefficient distributors and retailers have left the market place, and the very efficient cannot remain with continuing predatory pricing.

Predatory pricing is not just a Kansas problem. Many states have passed, or are in the process of passing, legislation to stop such practices.

Your Research Department has done an excellent job in researching and compiling legislation from other states.

An oil refiner testified right here in this statehouse in October, 1991, that he would have to adjust his price by 6 cents per gallon if he had to allocate all of the real cost to his retail gasoline outlet.

Apparently this means the refiners are subsidizing their retail outlets. If the refiners allocate all of the real cost to retail, like the independents have too, then they could lower wholesale prices.

This would mean that prices in small towns and to farmers would come down because distributors and retailers would have a lower wholesale price.

Like the many distributors here today, I have gained a lot of competitive experience in my 28 years as a distributor. But my days are numbered if predatory pricing is allowed to continue here in Kansas.

The proposal being studied today does not guarantee profits; it does not keep us from failing in the gasoline distribution business. It protects public interest by preserving competition; it reduces monopoly powers exercised by the big oil companies. It simply tries to level out the playing field.

States have been very reluctant to allow vertical integration of businesses. Big oil now controls their product from the oil patch to the ultimate consumer. In doing so, it can manipulate the price at any level, whether it be wholesale or retail, to maximize their profits. I know of no other business so important to the welfare of Kansas and the Kansas economy that has been allowed to operate vertically from the raw material to the ultimate consumer without being heavily regulated or totally outlawed.

We are not asking for divestiture of retail operations. Again, we simply want the real cost to be reflected in the prices charged. The ultimate winner will be Kansans.

Remember, when you buy gasoline from a refiner-owned retail outlet, that money leaves the state every day, not to be used in Kansas. Revenue from gasoline that is purchased at an independent oil marketer supplied retail outlet stays in Kansas, to be used in Kansas, by Kansans.

I appreciate the opportunity to testify today and ask you to support HB 2628. I look forward to answering your questions.

Statement of
Chuck Hessenflow

Presented to the House Transportation Committee
The Honorable Herman Dillon, Chairman
January 21, 1992

Statehouse
Topeka, Kansas

Thank you for the opportunity to visit with this committee. My name is Chuck Hessenflow. I am here representing the interests of my fellow cooperatives and non-cooperative rural gasoline retailers.

The rural businesses I represent are located in the small communities of North Central Kansas. These businesses are typically small two bay service stations or convenience stores with tankwagon delivery services.

Farmway Co-op is headquartered in Beloit. It is a full service farm supply cooperative involved in grain, fertilizer, and fuel sales for farmers and their communities. We have service stations located in the towns of Beloit, Glen Elder, Cawker City, Hunter, Tipton, Lincoln, and Scottsville.

As rural marketers, we are faced with the same financial burdens being addressed by the rest of the petroleum marketing industry. All marketers want a clean

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environment. Our efforts to comply with the necessary regulations have severely stressed our business.

As you know, fuel retailing is highly price sensitive. Rural markets are shrinking as the economies in small rural communities adjust to the consolidation trends in farming. This places an additional burden on rural fuel retailers.

If you are thinking things really sound tough for those poor old country boys in North Central Kansas, well that's the picture I'm trying to describe. However, as marketers we understand and accept these conditions and the competition they are creating. What we are concerned about is not competition, but rather unfair competitive tactics.

We specifically wish to expose and address the unfair tactic of selling gasoline below cost as a predatory pricing strategy. This practice is designed to secure market share and reduce competition at this time we are experiencing extreme financial stress. This tactic or strategy is subsidized by profits from other areas of "big oils" business. This strategy has had a significant economic impact in our area this past summer and fall, and is continuing to have an adverse effect.

Two strategies are attacking rural markets with predatory pricing. First, direct refinery to retail competition is a growing problem. These are retail locations owned by major oil companies which are vertically integrated from the oil patch to the street. They can, and are, using profits from other areas of the industry to subsidize a retail predatory system.

Second, I believe larger chain operations can and are using profits from one region to subsidize their below-cost selling in another.

The rural marketers in North Central Kansas believe competition should be based upon local marketing conditions and opportunities. It should be illegal to price below cost in rural markets when those losses are subsidized by unrelated activities. This is especially so when the intent is to reduce or eliminate competition. This is a classic case of pay me a fair price now or pay them much more later.

Beloit is a community of about 4300 people. It is the largest town in the area and is the county seat. Three years ago 10 service stations were in operation. Currently, two of those stations are closed, four are for sale, one has had three different tenants. Since that time, one new convenience store has been built.

Marketing practices in Beloit have significant effects on nearby towns. At Beloit our markup on fuels in the months of July, August and September were less than 4 cents per gallon. On many days, our retail price has been below our wholesale replacement cost. These margins are often well below anyones cost of operation in Beloit. The same situation, if not worse, has existed in Osborne.

Last summer our customers have received a short term benefit in lower fuel costs. However, in the long run, predatory pricing by urban or big oil money will severely destroy many parts of the rural competitive fueling infrastructure. This situation will encourage the monopoly of both price and supply.

Vertically integrated and unregulated oil companies feel these tough financial times are an opportunity to gain market share. They are using predatory pricing and subsidized business operations to gain control of the retail fuel marketing infrastructure. This can be accomplished by forcing out small local owners who do not have the resources to withstand this marketing strategy

Major oil companies are opposing H.B. 2628 with massive resources. As a cooperative, we are fortunate that our supplier, Farmland Industries, is not involved in predatory pricing. This is one reason I can address this committee with little fear of retaliation. Retaliation is a main reason more independent marketers will not speak out.

Please remember, this legislation does not ask to keep big oil or anyone from fuel retailing. It does not guarantee profits to anyone.

If passed, this legislation will allow all those in the marketing chain to be treated equally. In the environment created by this legislation, only the most efficient and best managed businesses will be successful.

Please think of this legislation as a hometown marketing act. It provides retailers the right to compete under fair conditions on a level playing field at the local level.

Thank you for allowing me to appear today. I will attempt to answer any questions you wish to ask.

ıary 21, 1992

To Members of The House Committee on Transportation
Room 519
Capitol Bldg
Topeka, KS

I am Dave Patrick of Salina, Kansas, doing business as East Crawford Amoco in Salina, Kansas. I leased the station effective January 1, 1987 and employ 10 people.

I urge the support of H.B. 2628, a bill restricting predatory pricing for the following reasons.

A major oil company-operated store across the street from my location, after being in business for approximately four months, lead the retail prices down to a price below their posted rack price, making the street price 3 cents per gallon below my cost. To further emphasize the problem, a competitor who was paying rack price hired a transport to purchase fuel from the major oil companys' retail outlet due to the fact that the retail pricing was considerably below his rack price.

These tactics were obviously a method of increasing their volume through below cost pricing at the expense of competitors who are not able to offset below cost selling with refining profits.

In other instances, this company-operated station led retail price increases when the wholesale price did not increase proportionately, and I assume these margins are to offset predatory pricing in other areas since many of these increases are as much as 10 cents per gallon.

As a business owner aware of my costs and margins needed to do business, and desirous of making an honest margin from my customers, I must also be concerned about matching the inflated price, afraid that they will retaliate against me if I don't go along with their price increasing by again lowering the price below cost to make me succumb to future higher retail prices when they dictate.

My interest in eliminating predatory pricing is to protect me from their wrath of below cost pricing if I don't go along with their price gouging so that I may service my customer with fair and competitive prices.

As a result of my previous employment with a major oil company for five years, and having been in business for five years, it is my sincere belief that the restriction of predatory pricing will be a benefit to the consumer of products in this essential industry in our great state.

David C Patrick

Dave Patrick
dba East Crawford Amoco
707 South Ohio
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House Transportation
1-21-92
ATTACHMENT 5

KANSAS OIL MARKETERS ASSOCIATION

KOMA

KANSAS OIL MARKETERS ASSOCIATION EST 1914

CSAK

Convenience Store Association of Kansas

<u>The Impact of Predatory Pricing Laws on the Consumer</u>

In the 8 states with laws similar to the proposed Kansas Motor Fuel Marketing Act, gasoline prices are often lower than national and regional averages. In fact, U.S. Energy Information Administration data for three recent periods shows nothing unusual about gasoline prices in these states. At times gasoline prices in some of these states were lower than prices in Kansas.

The states identified by the Legislative Research Department as having laws similar to the proposed Kansas bill are Alabama, Florida, Georgia, Massachusetts, New Jersey, North Carolina, Tennessee and Utah. The provisions of the laws vary, but all prohibit gas stations from selling gasoline at less than the wholesale price.

To analyze the prices, the June 1991 Petroleum Marketing Monthly and the 1989 Petroleum Annual were consulted. Both are published by the U.S. Energy Information Administration. Both list the price of gasoline sold to end users before federal and state taxes have been applied. The June 1991 publication, which reports data for February and March 1991, was consulted because it is the most recent issue available at the University of Kansas. The 1989 annual was consulted to provide a year-long view of the situation. Table 28 from both books provided the data.

In February 1991, prices for all grades of gasoline were less than the regional average in 6 of the 8 states. Prices for all grades were less than the national average in 5 of the states. For unleaded regular, prices were less than the average for their region in 7 of the 8 states. Prices for unleaded regular were less than the national average in 5 of the 8 states.

In March 1991, prices for all grades were less than the regional average in 6 of the states. Prices for all grades were less than the national average in 4 of the states. For unleaded regular, prices were less than the regional average in 6 of the 8 states. Prices were less than the national average in 4 of the 8 states.

In 1989, prices for all grades were less than the regional average in 5 of the states. Prices for all grades were less than the national average in 4 of the states. For unleaded regular, prices were less than the regional average in 6 of the 8 states. Prices were less than the national average in 4 of the 8 states.

Kansas, by the way, bounces back and forth on both sides of the national and regional averages.

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House Transportation
1-21-92
ATTACHMENT 6-1

Sales to End Users -- Average Prices -- February 1991

(Excluding Taxes)

	Unleaded Regular	All Grades
United States	77.6	80.6
Kansas	75.3	76.7
Subdistrict IA Region	81.9	85.3
Massachusetts	77.9	81.9
Subdistrict IB Region	83.5	87.2
New Jersey	81.9	87.4
Subdistrict IC Region	76.3	80.5
Florida	77.7	82.0
Georgia	74.5	78.9
North Carolina	74.8	78.5
District II Region	75.7	78.1
Tennessee	73.4	77.5
District III Region	78.6	81.6
Alabama	77.0	80.1
District IV Region	78.5	80.1
Utah	72.2	73.8

Sales to End Users -- Average Prices -- March 1991

(Excluding Taxes)

	Unleaded Regular	All Grades
United States	73.7	76.5
Kansas	75.0	76.3
Subdistrict IA Region	80.7	84.2
Massachusetts	78.4	82.3
Subdistrict IB Region	79.6	83.5
New Jersey	77.9	83.3
Subdistrict IC Region	72.8	77.1
Florida	73.8	78.4
Georgia	71.4	76.0
North Carolina	72.0	75.7
District II Region	73.8	76.1
Tennessee	70.9	75.0
District III Region	73.9	76.8
Alabama	75.4	78.5
District IV Region	70.5	72.1
Utah	64.4	65.9

Sales to End Users -- Average Prices -- 1989

(Excluding Taxes)

	Unleaded Regular	All Grades
United States	73.2	76.8
Kansas	72.9	74.3
Subdistrict IA Region	78.5	83.8
Massachusetts	76.7	82.7
Subdistrict IB Region	73.5	79.1
New Jersey	75.2	83.0
Subdistrict IC Region	72.1	77.1
Florida	72.9	78.8
Georgia	70.5	75.0
North Carolina	70.4	74.9
District II Region	72.7	75.6
Tennessee	70.5	74.8
District III Region	71.9	75.3
Alabama	77.1	80.4
District IV Region	75.7	76.9
Utah	74.8	75.7

U.S. Energy Information Administration Regions

PAD* District I:

Subdistrict IA: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Subdistrict IB: Delaware, Washington, D.C., Maryland, New Jersey, New York, Pennsylvania.

Subdistrict IC: Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia.

PAD District II:

Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Oklahoma, Tennessee, Wisconsin.

PAD District III:

Alabama, Arkansas, Louisiana, Mississippi, New Mexico, Texas, Federal Offshore Gulf.

PAD District IV:

Colorado, Idaho, Montana, Utah, Wyoming.

PAD District V:

Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, Federal Offshore California.

*PAD is Petroleum Administration for Defense District

This price analysis was conducted by Diane Silver. A former Statehouse reporter for The Wichita Eagle, Ms. Silver can be reached at Silverword Enterprises, (913) 841-6575.

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The editor's opinion

Running on empty

Gasoline pricing law should be rejected

Members of the Kansas Legislature have a long, difficult session before them.

One small but beneficial way for them to lighten that load would be for them to make short work of a silly bill that would prohibit gas stations from selling gasoline too cheaply.

The House Transportation Committee is to begin hearings this week on a bill that would make it a crime for anyone to sell gasoline "below cost." That is, for less than they paid for it, or less than they would sell it to someone else, or something that may or may not be defined by law.

The bill is being pushed by independent gas station owners who claim that stations owned by the major oil companies are deliberately selling their gas below cost to drive the independents out of business.

That's American capitalism for you. Everybody believes in the free market until they think they might lose. Then they run to government to make the other guy "fight fair." It sounds too much like those American automakers who blame all their problems on the nasty old Japanese.

It isn't that we should like cheap gas. If anything, gas ought to be more expensive to encourage conservation, more efficient cars and the development of alternate forms of energy.

And it isn't that, someday, there might not be a genuine threat to independent gas stations posed by some giant gasoline version of Wal-Mart that Amoco or Conoco would build on the outskirts of town.

[redacted]t. [redacted] Big Oil would be crazy to put the independent retailers out of business, because they are the ones getting their product to the consumer.

The proposal would hurt the consumer by removing an incentive to keep prices low, but none of the higher cost would go into research and development or transportation improvements. It would just go into the pockets of the retailers.

Worse, the bill would allow anyone who suspects his competition of selling gasoline below cost to get a restraining order and tie the whole thing up in court without anything approaching the proof a criminal prosecutor would need to file charges.

This bill is a complicated mess that would benefit only those gas stations that are too lazy, greedy or outdated to compete without handicapping their more efficient rivals.

Let us hope it runs out of gas very soon.

Let them know

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■ STATE REP. ELOISE LYNCH, Statehouse, Room 155-East, Topeka, KS 66612. Phone: 296-7669.

■ STATE REP. LARRY TURNQUIST, Statehouse, Room 278-West, Topeka, KS 66612. Phone: 296-7647.

■ STATE REP. ALLAN WHITE, Statehouse, Room 285-West, Topeka, KS 66612. Phone: 296-7665.

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PMAA
WEEKLY REVIEW

Friday, January 17, 1992
WR-92-3

PETROLEUM MARKETERS ASSOCIATION OF AMERICA
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(202) 331-1198 FAX (202) 467-6330 Annual Subscription Fee $75.00

MAJORS CONTINUE MOVE INTO DIRECT RETAILING: Major oil companies are continuing to move aggressively into the retail gasoline market according to a report just released by the Energy Information Administration (EIA), and that move is coming at the expense of dealers and independent marketers.

The report reflects a long-term trend in the decline of independently-owned stations versus the number of major oil company-owned and operated outlets. The number of dealer stations, for instance, declined from approximately 91,000 in 1981 to 42,000 in 1990, according to the report, while the number of company-operated outlets rose from 9,000 to slightly over 11,000, and that number is rising.

Perhaps even more significant than the number of stations involved in the shift from independents to refiners, is the amount of product being moved through company-ops. Between 1980 and 1990, sales through company-operated outlets increased 92 percent, while the total volume of gasoline distributed nationally increased by about 7%. Additionally, company-ops currently account for 21% of total major-supplied stations, up from 7% in 1980.

21% of these stations

Major oil companies have also concentrated their retail efforts in the highest volume, most profitable locations. In fact, company-operated stations in 1990 sold an average of 120,000 gallons monthly, exactly twice the average volume sold by dealer stations. While the average company-operated volume was up over 6% in 1990, per-station dealer volumes declined over 5%.

For a summary memo of the EIA report contact PMAA and request document E-92-13.

API SOUNDS ALARM ON DOMESTIC OIL PRODUCTION: The American Petroleum Institute has released its 1991 annual report, and has warned that domestic oil production will almost certainly continue to fall unless the industry gains access to promising sites which are now off limits to the industry.

Among the report's highlights:

--Domestic production in 1991 was 7.2 million barrels per day, the lowest level in 30 years;

--U.S. consumption in 1991 was 16.6 million barrels per day, versus 16.9 in 1990;

--Imports accounted for 45.5% of U.S. consumption in 1991, versus 47% in 1990; and

--Refineries operated at 85.9% capacity in 1991, versus 87.1% in 1990, the first decline since 1985.

NORTH CAROLINA TANK REPLACEMENT POLICY DEFENDED: The Farmers Home Administration (FmHA) has responded to PMAA's complaint about the State of North Carolina's requirement that exempt tanks be replaced prior to the issuance of a loan (*WR-91-46*), and in essence, the FmHA has said the practice is the state's prerogative.

The FmHA says an exception to the rule may be granted if the seller can show the tank is not leaking, is in serviceable condition, the tank's remaining life expectancy will exceed the term of the loan, and there is no contamination on the property.

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