

MINUTES OF THE HOUSE TRANSPORTATION.

The meeting was called to order by Chairperson Gary Hayzlett at 1:40 p.m. on April 3 , 2002 in Room 519-S of the Capitol.

All members were present except:

Representative John Ballou, excused
Representative Nile Dillmore, excused
Representative Bruce Larkin, excused
Representative Judith Loganbill, excused
Representative Dennis McKinney, excused

Committee staff present:

Bruce Kinzie, Office of the Revisor
Hank Avila, Legislative Research Department
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas
Robert Alderson, Casey's General Stores, Inc.
Kevin Brown, President, T & E Oil Company, Hutchinson
Mark Augustine, Triplett Oil Company, Salina

Others attending:

See attached sheet

Substitute SB 62 - constitutional awareness act

Chairman Hayzlett opened hearings on **SB 62** and explained to the committee this bill came out of Fed and State, which is an exempt committee, and is the vehicle in the Transportation Committee as a carrier for **SB 573**. He then called on Tom Palace, PMCA of Kansas, to present his testimony as a proponent of **Substitute SB 62**.

Mr. Palace introduced Kevin Brown, President of T & E Oil in Hutchinson, who told the committee of some of the problems being faced by small businesses with below cost selling of motor fuel. Currently he is selling his gas at 7 cents a gallon below cost. He said fair marketing laws would not keep him in business unless he had a good operation but he would only ask for a level playing field.

Mark Augustine, Triplett Oil in Salina, said he has been fighting below cost selling of gasoline since 1999. He is now selling 4-5 cents under cost. He stated, according to a recent article in USA, 80% of the working people are employed by small businesses. He concluded that when large retailers force small businesses to close their doors who will be there to support the community. He urged passage of legislation that would make the business less competitive.

Tom Palace presented testimony explaining the terms used, petroleum distribution chain, tax rates on motor fuel, copy of litigation in Alabama and copy of articles from various reports showing how Kroger and Wal-Mart pricing is destroying small competitors. He said the practice of selling motor fuel "below" cost has but one goal: the elimination of competition. Independent marketers can show that the competition they face sell their gasoline at 2-12 cents below cost and a small retailer cannot compete with that kind of pricing. The problem is exacerbated when competing on the borders of Kansas because on the Kansas side they not only compete with the discount retailers, they also have to contend with a 4 cent price disparity due to lower state tax rates. He concluded that many marketers throughout the state are closing locations because they cannot compete with the large corporation retailers. Motor fuel sales account for 60 plus percent of the product they sell compared to less than 1 percent for discount retailers. (Attachment 1)

There were no other opponents.

Robert Alderson, Casey's General Stores, Inc. presented testimony in opposition to **substitute SB 62**.

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He said Casey's opposes legislation which prohibits below cost selling of motor fuels as they believe that free market competition should establish motor fuel prices without government interference. He then quoted comments made by the Federal Trade Commission relating to proposed legislation in Virginia that sought to prohibit retailers from selling motor fuels "below cost" to eliminate the possibility of "predatory pricing". and included a copy of this opinion with his testimony. He asked the committee to give this report careful consideration in analyzing any proposed legislation prohibiting the below-cost selling of motor fuels in Kansas. (Attachment 2)

There were no other opponents. Following questions from the committee Chairman Hayzlett closed hearings on **substitute SB 62**.

Sheila Walker presented the committee with information they had requested on the 26th of March concerning dealer licensing fees. (Attachment 3)

The minutes of the House Transportation Committee for March 25th and March 26th were presented for approval or corrections. Representative Long made a motion to accept the minutes as presented, seconded by Representative Phelps and the motion carried.

Chairman Hayzlett adjourned the meeting at 2:30 p.m. The next meeting of the House Transportation Committee will be Thursday, April 4th at 1:30 p.m.