

Members

Rep. David Crooks, Chairperson
Rep. Phil Pflum
Rep. Alan Chowning
Rep. Mary Kay Budak
Rep. Woody Burton
Rep. William Ruppel
Sen. Thomas Wyss, Vice-Chairperson
Sen. John Waterman
Sen. R. Michael Young
Sen. Anita Bowser
Sen. Glenn Howard
Sen. Timothy Lanane



INTERIM STUDY COMMITTEE ON PROFESSIONAL LICENSING AND CONSUMER ISSUES

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Authority: Legislative Council Resolution 04-01

MEETING MINUTES¹

Meeting Date: August 16, 2004
Meeting Time: 10:00 A.M.
Meeting Place: 200 Harned Avenue, City Council
Chambers, City of Washington
Meeting City: Washington, Indiana
Meeting Number: 1

Members Present: Rep. David Crooks, Chairperson; Rep. Phil Pflum; Rep. Alan Chowning; Rep. Woody Burton; Rep. William Ruppel; Sen. Thomas Wyss, Vice-Chairperson; Sen. John Waterman; Sen. R. Michael Young; Sen. Timothy Lanane.

Members Absent: Rep. Mary Kay Budak; Sen. Anita Bowser; Sen. Glenn Howard.

Chairperson David Crooks called the meeting to order at 10:03 a.m. After his thanks to Mayor David Abel for the accommodations, the members introduced themselves. Chairperson Crooks stated that the subject for discussion was predatory gasoline pricing (SR 13-2004), introduced by Senator Waterman (Exhibit A).

1. Presentation from the American Automobile Association

Sherry Deane, with the American Automobile Association (AAA), stated that her organization is neutral about tracking gasoline prices, and makes a website and fuel cost

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

calculator available to consumers. Its position is that no one is able to predict the future price of gasoline, although trends may be stated, and that consumers can be proactive in improving gasoline efficiency. She gave the Committee copies of two brochures that are available to consumers regarding fuel economics (Exhibit B). In response to a question from Senator Lanane, Ms. Dean stated that it is unknown why gasoline prices have remained fairly flat when crude oil prices are rising.

2. Presentation from the Indiana Petroleum Council

Maggie McShane spoke on behalf of the Indiana Petroleum Council, representing the major oil companies and refineries. As with Ms. Deane, her council is neutral as to pricing, and agrees that no prediction can be made as to future pricing. Ms. McShane furnished the Committee with various documents (identified as Exhibit C). The crude oil market has been very volatile, and it changes due to weather, political instability, product reserves, demand, and a myriad of other factors. Regulatory requirements raise the cost of refined oil products. In response to Chairperson Crooks, Ms. McShane stated that America is not investing in refineries but importing more product; very few communities invite a refinery into their midst. Ms. McShane stated that many refineries can manufacture all products, and they change their output based on the demand for the particular product. However, there are fewer and fewer refineries, and that is a direct result of attempts to achieve environmental requirements. Senator Wyss noted that the public is unable to understand why there is tremendous fluctuation in pricing in a short geographic distance. Representative Burton asked Ms. McShane to determine how much fuel produced in the U.S. is exported, and how much American investment there is in Venezuelan production.

3. Presentation from the Indiana Petroleum Marketers and Convenience Store Association

Scott Imus, Executive Director of the Indiana Petroleum Marketers and Convenience Store Association (IPCA), stated his association's desire for legislation that would offer protection to businesses and restore sanity to gasoline pricing. Darlene Stanley, IPCA member and owner of five convenience stores selling motor fuel in north central Indiana, spoke about her company's experience and marketing economics when a Kroger store recently began selling fuel under cost. Her community oriented company recently had to close that branch as unprofitable. She feels that not only does the community lose out, but the state loses sales tax revenue from selling under cost.

Senator Young wondered if the Robinson Patman Act of 1954 regarding low pricing and competition might apply to this situation. Curtis Bodine, IPCA member and station operator from Terre Haute, states that this has been investigated for him and that he believes the Act does not apply. A discussion ensued regarding rack (wholesaler to the retailer) and retail price and how dealers decide on a daily price for their motor fuel. A branded operator must exclusively purchase fuel from one company, and an independent operator is free to shop around. Nationwide, about 13-15% of fuel outlets are company owned.

Mike Ackerman, a third generation fuel dealer from Jasper, Indiana and president of IPCA, gave the Committee a press release from IPCA and a request for legislation to regulate fuel pricing (Exhibit D). The organization's stance is that this would offer protection for the consumer and create a level field for its members, and that Wisconsin has enacted a law that might be followed. In response to Representative Burton, Mr. Ackerman stated that the proposal would be based on an average rack price, so the lesser cost to larger retailers would even out the computation. After Senator Young raised a concern that this proposed legislation would favor the gasoline sales industry over other businesses that now face increased competition, a discussion ensued concerning the "beer baron" law and

the minimum markup law on cigarettes. Mr Ackerman and Mr. Imus agreed to furnish a University of Wisconsin study on its state law to the Committee.

4. Presentation from Murphy USA Marketing Company

Charles Ganus spoke next, representing Murphy USA Marketing Company which places independent motor fuel sales locations next to Wal-Marts. He emphasized that his company is not used by Wal-Mart as a loss leader in pricing, and that gasoline has always been sold with promotions. His company has only 24 stations in Indiana as opposed to about 3,300 motor fuel outlets in the entire state. He believes that an important thing to remember is how the profit margins level out over time, and that a minimum markup bill requirement becomes another tax-like add-on to the price of motor fuel. He answered Senator Waterman's query by stating that no one from Sam Walton's family was on the board of directors of his company. In response to Senator Lanane, he believed that it is possible that on any given day, his company's fuel prices are below cost, but that spikes will even out the profits and losses. Mr. Ganus acknowledged to Senator Waterman that his company has been sued in other states for selling under price, but that his company has won many more cases than it has lost. Chairperson Crooks commented that in his opinion federal laws on pricing competition are usually anti-consumer.

5. Indiana Retail Council

Grant Monahan, president of the Indiana Retail Council, acknowledged that for purposes of his presence today he was representing the larger retailers. His position is that competition should be preserved and that competitive retailers do their best to provide customer satisfaction and value. In response to Senator Young, Mr. Monahan commented that the "going out of business" law prevents a retailer from bringing in new merchandise. Agreeing with Senator Waterman, Mr. Monahan stated that all retailers are sensitive to legislation that sets a price for goods.

6. Other Interested Parties

Jennifer Thuma, representing Attorney General Steve Carter, stated that the Attorney General's office has no position on a bill to regulate gasoline prices. The office has no legal authority to investigate below cost pricing. She commented that the office receives about 2,000 complaints a year about gasoline pricing, but the office can only investigate price gouging during a declared emergency. Senator Young commented that the attorney general's office would be hard-pressed to find staff resources to investigate gasoline pricing.

Curtis Bodine again commented that there are companies that use fuel pricing as a loss leader; the basis of America is small business and fair competition. Lance Gallihan, of Gallihan Oil Company, in Peru, Indiana, stated he had the same experience as Ms. Stanley; a larger retailer came into town and underpriced the fuel. A discussion ensued regarding sales, competition, and distribution. Chuck Taylor, Jr., of C.E. Taylor Oil, Washington, Indiana, with 22 stores in southwest Indiana, spoke concerning the credit card usage fees his business incurs and about rack prices.

George Raymond, representing the Indiana Chamber of Commerce, said that though the Chamber is sympathetic to small business, it is fundamentally opposed to the government setting prices and would oppose a bill setting a minimum fuel price. Mr. Raymond acknowledged that he represents the state Chamber, and not any local Chamber. Tom Dersch, of Dersch Energies in Evansville, Indiana, stated that predatory pricing destroys competition, therefore sacrificing consumer protection. He gave members of the

Committee a handout entitled Crude Pricing, Production, and Consumption Trends and Implications (Exhibit E). He believes the larger corporations involved in what he believes is predatory pricing are located outside of the state. He stated that 11 states have enacted some type of minimum pricing for motor fuel, including Wisconsin, Minnesota, Alabama, and Colorado.

7. "Pump and Run" Statistics

Chairperson Crooks reported on statistics furnished by Marilyn Cage, Legislative Liaison for the Indiana Bureau of Motor Vehicles, concerning driver's license suspension under IC 9-25-6-21 from the 2001 Session (P.L. 117). In 2002, 171 persons, in 2003, 366 persons and through June 30, 2004, 246 persons have had their driver's licenses mandatorily suspended after a conviction for theft of motor fuel ("pump and run"), IC 35-43-4-8.

8. Selection of Next Meeting Date and Topic

Chairperson Crooks announced that the topic of mortgage lending policies (HB1229) would not be heard by the Committee. The next (second) meeting of the Committee will be September 14, 2004, at 10:00 a.m., at the Wayne Township (Marion County), Emergency Services Education Center, 700 N. High School Road, Indianapolis, Indiana. The topics of discussion will be (1) SCR 24 (2004) regarding minimum mandatory training standards for firefighters; and (2) SR 24 (2004), regarding certification of emergency management organizations and professional emergency managers.

The meeting was adjourned at 1:25 p.m..