

SB 478 PROHIBITS USE UNDER CERTAIN CIRCUMSTANCES OF CERTAIN TERMS IN THE BUSINESS OF INSURANCE (BDR 54-1514)

Mr. Dave Byington, representing the Nevada Life Under-
Writer's Association, presented amendments to the
bill. See Exhibit R.

SB 475 CLASSIFIES REAL ESTATE BROKERS AND SALESMEN FOR PUR-
POSES OF INDUSTRIAL INSURANCE AND OCCUPATIONAL DIS-
EASE COVERAGE (BDR 54-1735)

Mr. Bob Bowers, from the Nevada Association of Real-
tors, read from a prepared statement. He explained
the problems with legislation passed two years ago
which allowed independent contractors to cover them-
selves. See Exhibit B.

Mr. Bill Cozart, from the Nevada Association of Real-
tors, presented two amendments to the bill. See
Exhibit A. In answer to a question about how this
insurance would be paid, Mr. Cozart said each real
estate licensee would have his own account with the
NIC and would be responsible for paying their own
premium on the deemed wage. The broker would not be
responsible for paying the insurance. He can collect
it and disburse it to the NIC. The individual lic-
ensee would be responsible for paying it.

SENATOR ASHWORTH stated there is the conception that
the Nevada Industrial Insurance is a benefit for the
injured workman, for which he gives up the right to
sue the employer. That employer-employee relation-
ship does not exist between the salesman and the
broker. This bill would tend to get away from the
concept of the original purpose of the NIC.

Mr. John Reiser, Director of NIC, replied to questions
regarding the proposal to keep the money in a separate
fund. He said it would be in a separate class. The
\$900 figure was determined as the deemed wage by
averaging the amount of the 29 claims filed in the
last six months.

SB 471 CHANGES CERTAIN ADMINISTRATIVE AND ACCOUNTING PRO-
CEDURES OF INSURANCE DIVISION OF DEPARTMENT OF
COMMERCE (BDR 57-1704)

Mr. Dick Rottman, insurance commissioner, stated this
is a house-cleaning bill. He pointed out the changes.
The NAIC assessment is increased from \$10 to \$15
as a maximum on page one, line four. The valuations

of securities fund is abolished and the monies which would be collected for this purpose are placed into the Insurance Division National Association fund on page two. The law is amended on page four so that if a rating bureau is examined, the fee generated for the cost of examination would go into the insurance examination fund. A minor amendment is made on page five, lines 4-10, which permits a new method for keeping a list of people who may be entitled to unclaimed funds in a different manner. Two sections are repealed on line 11. One section would require an annual report, which has not been made since 1967. The second, is a publication in newspapers of unclaimed funds. Neither practices are followed presently.

SB 492

RESTRICTS DEDUCTION FROM DISABILITY INSURANCE BENEFITS
FOR OTHER DISABILITY INCOME (BDR 10-1474)

SENATOR WILL FAISS stated the thrust of this bill is stated on page three, lines 20-19. This bill was requested by a constituent who had an accident policy and was old enough to retire but was not retired. The problem is that his benefits were reduced to the point where he might just as well have been retired. He has refused to take the reduced benefit and intends to return to work as soon as he is able.

Mr. Milo Terzich, representing the Health Insurance Association of America, stated the insurance company made a mistake in this matter. If this person had merely reported this to the insurance commissioner, the insurance commissioner would have forced the company to pay the complete benefits. The insurance company involved was American Fidelity. The HIAA, as well as the insurance commissioner, has had problems with this company. Thus, there is no need for this particular type of legislation because a remedy presently exists.

Mr. Rottman said the insurance commission has worked extensively on this case and has discovered that this person is trying to take advantage of the insurance company. The subject matter of this bill and this person's problem does not have any relationship. The bill would eliminate the coordination of benefits in disability income, which is a major step.

SB 477

REGULATES FRANCHISE AGREEMENTS OF REAL ESTATE BROKERS
(BDR 54-1736)

Mr. Cozart stated this bill addresses a situation which is new to the State of Nevada. Presently, there are no real estate franchise operations in the state. This legislation is important because the statutes have never envisioned this type of a real estate operation. Real estate franchise operations must be regulated and supervised like all other real estate operations in the state. He referred to the underlined portion of Exhibit D and submitted Exhibit C, an advertisement which refers only to the franchise, not the broker. Exhibits are attached.

Mr. Chuck Ruthie, from the Nevada Association of Realtors, stated the problem with franchises is the representation to the public. He felt the broker should be predominant in advertising rather than the franchise.

Mr. John Moravek, an attorney for Century 21 Real Estate Corporation, opposed SB 477 because it is poorly drafted, unwarranted and would not be effective. Rules presently exist in Nevada for franchises. Those rules are subject to a law suit, which is pending in the Federal District Court in Reno. He submitted a complaint for the case. See Exhibit E. He questioned giving regulatory power to a body of real estate brokers. He submitted Exhibit F, a speech by Mr. Donald I. Baker, the head of the Federal Antitrust Division, and Exhibit G, a study on the impact of real estate franchises. Exhibits are attached.

Mr. J. Stephen Peek, an attorney representing Century 21, stated there has been indication in previous testimony that there will be errors in omissions on the part of the broker. The statutes presently have standards for financial responsibility, truthfulness and moral character.

Mr. Cozart submitted suggested amendments. See Exhibit H.

Mr. Angus McLeod, of the Real Estate Division, said he did not have enough information to make a decision as to whether this legislation was needed or not.

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SB 481 PROHIBITS RESTRICTIONS ON MEAT SALES AT CERTAIN
BUSINESS ESTABLISHMENTS DURING BUSINESS HOURS
(BDR 53-1537)

Mr. Dennis Sabbath, an attorney representing Meat-cutters Local #457, said this bill makes it unlawful for a supermarket or any other retail establishment to refuse to sell or offer for sale meat or meat products during business hours or for a labor organization or union to enter into a collective bargaining agreement which provides that the retail establishment cannot, during its business hours, sell meat or meat products. Presently, Local #457 does not have any provision which prohibits the sale of meat. There is a provision in the collective bargaining agreement which requires the presence of a journeyman meatcutter during the hours meat is offered for sale. Local #457 is concerned about any legislation which either prohibits or requires the inclusion or exclusion of any matter for a collective bargaining agreement, as this bill would do. This bill is an undue interference of the right of private parties to bargain and reach agreements between themselves and interferes with the operation of a businessman.

SENATOR ASHWORTH moved to indefinitely postpone the bill. It was seconded by Senator Blakemore and passed unanimously.

SB 462 ESTABLISHES REGULATIONS FOR SALE OF CERTAIN LODGING
AND RECREATIONAL FACILITIES (BDR 10-1474)

Mr. Mike Melner, State Commerce Director, stated the bill's proponents are willing to withdraw the bill.

SENATOR BRYAN moved that the bill be indefinitely postponed. Senator Hernstadt seconded the motion and it passed unanimously.

SB 480 AMENDS PHARMACY LAW CONCERNING ADMINISTRATIVE PRO-
CEEDINGS AND EXPENSES OF MEMBERS OF STATE BOARD OF
PHARMACY; PROPOSES AMENDMENTS FOR OPERATION OF
PHARMACIES AND PRESCRIPTIONS FOR DANGEROUS DRUGS
(BDR 54-1655)

Mr. George Bennett, Secretary of the State Board of Pharmacy, said this bill makes some changes in the statutes and clarifies other points. The expenses of board members are changed on page nine, line 11.

Presently, board members are allowed \$28 per day for expenses. Expenses usually run from \$35-\$40 per day because convention facilities are required. The language on line 15 is clarified. Dangerous drugs are added to what was previously considered before a controlled substance on page three. line 18. A designee may conduct hearings, as stated on page three. lines 29, 33, 36.

SB 479

PROVIDES FOR REGULATION OF RETAIL SALE OF CONVENIENCE DRUGS (BDR 54-1711)

Mr. Bennett stated this bill would protect the public by enabling the yearly inspection of retail drug outlets selling over-the-counter drugs. The bill would allow the Board of Pharmacy to charge \$10 per year for a permit for this type of outlet and to conduct yearly inspections.

SENATOR HERNSTADT stated this bill would force the small businessman to stop selling convenience items such as aspirin.

Mr. Pete Kelly, representing the Nevada Retail Association, said his organization is opposed to the bill. The \$10 charge would add to the cost of being in business. The board presently charges \$150 for the investigation of the license to conduct a retail pharmacy and another \$150 for the annual renewal of the license.

AB 426

REQUIRES TEMPERATURE-CORRECTED QUANTITIES OF GASOLINE TO BE BILLED TO SERVICE STATIONS (BDR 52-1386)

Mr. Pete Wooley, President of the Northern Nevada Petroleum Retailers, Inc., stated this bill may not answer all the questions, but it is a step in the right direction. The bill was introduced by the southern group because, in hot temperatures, this is a prevalent problem. Whereas this bill may be helpful to the southern dealers, it would not apply to the northern dealers. He submitted Exhibit K, which is attached.

SENATOR HERNSTADT stated the retailer has no protection under this bill unless it is mandated that the distributor must participate.

Mr. George Vargas, representing the major oil companies, stated this bill could create a chaotic situation. The bill makes it a crime for any delivery of gasoline of 5,000 gallons or more unless there is a correction in the quantity of gasoline loaded for delivery. That would require a temperature reading for every load of gas sent out for delivery. He submitted retail service station leases following the meeting. Exhibit T is attached.

Mr. Mark Barr, of Exxon, opposed the bill, stating that oil companies are not victimizing dealers by not temperature-correcting gasoline to 60 degrees. He presented maps indicating where the 60 degree isotherm is located. See Exhibits L, M and N. The 60-degree line runs through the extreme south end of Nevada. Studies have discredited the claim that volume is lost because gasoline is not temperature corrected. He submitted two studies. See Exhibits I and J. Temperature-correction is just one element of the contract signed between the supplier and the retailer. It's not appropriate for the legislature to tell oil companies to give temperature-correction solely on the basis that another oil company gives it.

Mr. Guy Yates, of Shell Oil Company in Scottsdale, Arizona, stated the key in this issue is the temperature of the gasoline in the underground storage tank at the service station and in the temperature of the gasoline in the truck at the time of delivery. Based on this and a study in Phoenix, which has a comparable climate as Las Vegas, the dealers actually gained a small percentage of gasoline. The bill will force the increase of gas prices to make up for the costs of paperwork and other administrative costs.

SB 280

REQUIRES DISCLOSURE OF REASON FOR DISCHARGE OF CERTAIN EMPLOYEES AND PROHIBITS CHARGES AGAINST CERTAIN EMPLOYERS' EXPERIENCE RATING RECORDS WHEN BENEFITS ARE PAID (BDR 53-883)

Mr. Lawrence O. McCracken, Executive Director of the Employment Security Department, said the proposed amendment does not accomplish anything. The department has two problems with the bill. Firstly, it is incumbent upon the department notifying an employer that they have to fill out a form within 30 days if they want to transfer the experience rating. This is presently done by regulation. He felt there must be a law to do this. The problem with the amendment is that it says the employer must not only

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tell them that a change has been made but they must apply for a transfer within 90 days. He submitted Exhibits O and P. See attachments.

SB 474

ADDS CERTAIN VEHICLES TO MOBILE HOME STANDARDS ACT
AND REMOVES ENFORCEMENT FROM STATE FIRE MARSHAL
DIVISION OF THE DEPARTMENT OF COMMERCE (BDR 43-1566)

Mr. Mike Melner, State Commerce Director, and Ms. Pam Wellmore, Deputy Director, appeared in support of the bill. Mr. Melner stated this bill includes the transfer of the mobile home function from the fire marshal division of the Department of Commerce. That has already taken place under NRS 232.005. Ms. Wellmore submitted amendments to the bill. See Exhibit X.

Mr. Lee Moses, representing the Recreational Vehicle Industrial Association, stated, with such a small market place for recreational vehicles as is the case in Nevada, the economic feasibility of providing bonds and licenses, paying for plant approvals, inspection fees and an insignia for recreational vehicles is questioned by manufacturers. This bill proposes to protect the citizens of Nevada from hazards to health, life and safety. He questioned whether the citizens of Nevada are presently suffering from such hazards without regulation. The Recreational Vehicle Industrial Association presently has self-policing policies which regulate the very standard which SB 474 proposes to mandate. Nevada has required certification of travel trailers through insignia sales at the fee of \$20 per trailer. The industry has looked upon this as being defacto taxation. SB 474 would extend this fee collection to other types of vehicles in addition to travel trailers. SB 474 is filled with requirements which are inconsistent with the national standard; it contains conflicting definitions; it applies mobile home rules to recreational vehicles; it uses terms which are not defined, working which is unclear and makes no attempt to provide input from the recreational vehicle industry on the existing advisory commission. Consequently, the manufacturing members of the Recreational Vehicle Industrial Association requests that SB 474 be amended to eliminate all references to recreational vehicles and that consideration be given to the abolition of the requirements for travel trailers. The most objectionable part of the bill is the penalties in NRS 489.500.

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Mr. David Hoy, an attorney for the Northern Nevada Mobile Home Dealers Association, stated the industry's primary concern with the bill are the provisions which allow the department to transfer this function back from the fire marshal's division to the department itself. Specifically, it supports allowing the commission to make rules and regulations to license installers and servicemen. One of the biggest problems in the industry has been with warranties by manufacturers and problems with set up. He submitted suggested amendments. See Exhibit Q.

Mr. Tom Terry, representing the Nevada Manufactured Housing Association, stated the bill is much needed.

Mr. Wade Allred, owner of a recreational vehicle center in Las Vegas, stated he supported the bill because it offers a remedy for a dealer who has a complaint against the manufacturer.

Mr. Roland Tate, Superintendent of Building and Safety for North Las Vegas, stated he objected to section eight, which appears to allow trailers to be put anywhere in the cities and counties without regard to zoning ordinances of the local jurisdictions. There was no objection to the remainder of the bill.

Mr. John Pishoda, Clark County Building Director, stated he supported the bill because it will clean up some of the problems there have been in the past.

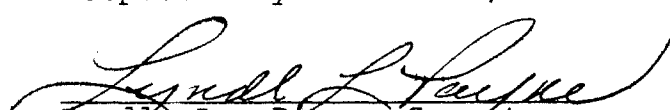
SB 464

CHANGES TIME WITHIN WHICH TO FILE RECORD OF LAND SURVEY (BDR 54-1504)

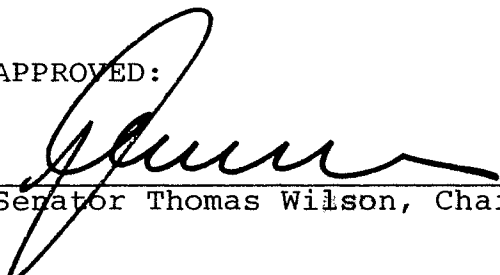
Mr. Hoy stated there was an inconsistency between chapters 625, 278 and 116. He added he would further research the bill and report back to the committee.

There being no further business, the meeting was adjourned at 7 p.m.

Respectfully submitted,


Lynd L. Payne, Secretary

APPROVED:


Senator Thomas Wilson, Chairman

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SENATE

AGENDA FOR COMMITTEE ON..... COMMERCE & LABOR
 Monday

Date April 18, 1977 Time 1:30 P.M. Room 213

Bills or Resolutions to be considered	Subject	Counsel requested*
S. B. 483	Makes vehicle lessee's insurance primary in accidents caused by negligence or misconduct of lessee (BDR 43-1659)	
S. B. 478	Prohibits use under certain circumstances of certain terms in the business of insurance (BDR 54-1514)	
S. B. 475	Classifies real estate brokers and salesmen for purposes of industrial insurance and occupational disease coverage (BDR 54-1735)	
S. B. 471	Changes certain administrative and accounting procedures of insurance division of department of commerce (BDR 57-1704)	
S. B. 492	Restricts deduction from disability insurance benefits for other disability income. (BDR 57-1799)	
S. B. 477	Regulates franchise agreements of real estate brokers (BDR 54-1736)	
S. B. 462	Establishes regulations for sale of certain lodging and recreational facilities (BDR 10-1474)	
S. B. 481	Prohibits restrictions on meat sales at certain business establishments during business hours (BDR 53-1537)	
S. B. 480	Amends pharmacy law concerning administrative proceedings and expenses of members of state board of pharmacy; proposes amendments for operation of pharmacies and prescriptions for dangerous drugs (BDR 54-1655)	
S. B. 479	Provides for regulation of retail sale of convenience drugs. (BDR 54-1711)	
A. B. 426	Requires temperature-corrected quantities of gasoline to be billed to service stations (BDR 52-1386)	
S. B. 474	Adds certain vehicles to Mobile Home Standards Act and removes enforcement from state fire marshal division of the department of commerce (BDR 43-1566)	

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*Please do not ask for counsel unless necessary.



PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHONE
Yes	DENNIS M SABBATH	Butchers & Meatcutters Local 457	927 DI BL L.V.	738-13
No	ED CROCKETT	MEAT CUTTERS LOCAL 457	2101 WESTLUND L.V.	878-658
YES	GEORGE BENNETT	STATE BOARD OF PHARMACY	1281 TERMINAL WAY RENO 89502	322-069
?	GEORGE R. TUCKER	STATE BOARD OF PHARMACY	1225 RANCHO DR. FALLON NEV	423-4437
No	FRANK L. TITUS	NEV. STATE BOARD OF PHARMACY	4240 TRUCKEE RIVER TR RENO, NEV	747-4089
YES	PETE WOOLLEY	NORTHERN NEV. PETROLEUM MOBIL Dealer	1740 MILL RENO NEVADA 89502	324-7744
?	John Gledhill	So. Nev. Dealer	3376 L.V. Blvd. So. L.V., Nev.	735-7424
YES	Bill Cozart	REALTORS		
YES	BOB Bowers	REALTORS	230 E Liberty	786-153
No	GENE MILLIGAN	REALTORS	NEV. STATE LEGISLATURE	883-2771
No	H. B. Albertson	DMV	C.C.	883-5376
No	Jeanne-Hanna	Real Est. Div	Nye Bldg	985-428
No	ANGUS McLEOD	REAL EST DIV	"	"
No	Robert Edmondson	At-Large Genl	Nye Bldg	425
No	Buster Stewart	Secy of State	Capitol Bldg	885-5003
Yes	Pete Kelley	NeV. Retail Assn	PO BOX 722 Carson	882-1943
NO	R.G. PARKER	SECURITIES DIV	CAPITOL BLDG	885-520
AB-602 OPPOSE	C.A. SODERBLOM	NEV. R.R. ASSOC	1 E. 1st ST, Reno	329-2449
493	G.L. CIAPUSCI	STATE FARM INS	1735 UASSAR RENO	329-1011
483	Vigil P. Anderson	AAA	Ormsby House	882-1092
Yes	Poland Tate	City North Las Vegas	2200 Civic Center Dr	649-8811
Yes	George F. Dargatzis	Major Oil Co's	201 W. Liberty Reno	786-5000
Yes	Mary Yates	Shell Oil Co.	2800 N. 24 Phx AZ	602 956-452
Yes	MARK S. BARR	Exxon U.S.A.	LA. CALIF 90667	213 558-1509
?	Daryl E. Capurro	NMTA & NFADA	1800 Av. of STARS	323-5139
			RENO NEV.	729-4241

Dell Cozart
4-18-77
Exhibit A

SUMMARY---Extends compulsory industrial insurance and occupational diseases coverage to include all real estate licensees.

EXPLANATION: Matter underlined is new
Matter in [] is deleted

AN ACT relating to Workmen's compensation extending compulsory industrial insurance and occupational diseases coverage to include all real estate licensees.

NRS 616 is hereby amended by adding the following new section.

SECTION 616.078 "Employee" and "workman": real estate licensees. All real estate licensees doing business within the State of Nevada and receiving wages, commissions or other compensation based upon sales, shall be deemed an employee for the purpose of this chapter at a deemed wage of \$900.00 a month and entitled to the benefits of this chapter.

NRS 617 is hereby amended by adding the following new section.

SECTION 617.105 "Employee" and "workman": real estate licensees. All real estate licensees doing business within the State of Nevada and receiving wages, commissions or other compensation based upon sales, shall be deemed an employee for the purpose of this Chapter pursuant to the provisions of NRS 616.078.

Spike

JOHN RISER AND I REVIEWED S.B. 475
FURTHER AND BESIDES THE AMENDMENTS I HAVE
ALREADY OFFERED THERE ARE SEVERAL OTHER DRAFTING
ERRORS AS FOLLOWS:

PAGE 2 LINES 13 AND 15

BRACKETS SHOULD BE REMOVED - LANGUAGE
STAYS IN

PAGE 2 LINES 26 AND 28

BRACKETS SHOULD BE REMOVED - LANGUAGE
STAYS IN

PAGE 2, LINE 16

ADD LANGUAGE ... AND SHALL SUBMIT PROOF OF
COVERAGE UNDER CHAPTERS 616 AND 617 OF NRS IN
ORDER TO OBTAIN OR RENEW A LICENSE.

PAGE 2, LINE 29

ADD SAME LANGUAGE AS ABOVE

PLEASE PROCESS - THANK YOU

Bill Cozart

April 1977

Exhibit B

I AM APPEARING ON BEHALF OF THE NEVADA ASSOCIATION OF REALTORS TO URGE THE PASSING OF THIS BILL TO REQUIRE ALL REAL ESTATE LICENSEES TO BE COVERED UNDER NIC AS A CONDITION OF THEIR REAL ESTATE LICENSE.

THIS MAY SEEM TO BE A STRANGE REQUEST UNTIL YOU EXAMINE THE IMPOSSIBLE POSITION THAT LICENSEES HAVE BEEN PUT INTO WITH REVISIONS OF THE ACT UP TO THIS TIME.

TWO YEARS AGO, LEGISLATION WAS PASSED ALLOWING INDEPENDENT CONTRACTORS TO COVER THEMSELVES, HOWEVER, THE RATES AND BENEFITS UNDER SUCH SELECTIVE COVERAGE AS OFFERED WOULD ONLY APPEAL TO THOSE WHO ARE CONFIDENT THAT THEY WOULD HAVE A MEDICAL CLAIM IN THE NEAR FUTURE. AS AN EXAMPLE, THE CHEAPEST PREMIUM WOULD HAVE BEEN ABOUT \$36.00 PER MONTH TO A HIGH OF \$115.00 PER MONTH, PLUS A YEARLY PHYSICAL AT THE INDIVIDUALS PERSONAL EXPENSE. UNDER THIS COVERAGE, THE MAXIMUM DISABILITY INCOME WOULD HAVE BEEN \$200.00 PER MONTH.

THEREFORE, THE INDEPENDENT CONTRACTORS REFUSED TO COVER THEMSELVES AND THE OFFICE OWNERS (GENERAL CONTRACTORS), WERE FORCED TO COVER THEM UNDER THEIR OWN POLICIES, AND THEY ARE NOT ALLOWED, BY LAW, TO COLLECT BACK FROM THE INDEPENDENT CONTRACTOR.

AT THIS TIME, PROBABLY 40% OF THE LICENSEES ARE COVERED, AND THE BALANCE HAVE NO COVERAGE AT ALL WHICH PRESENTS A PROBLEM TO THOSE WHO ARE FORCED TO COVER THEMSELVES AS WELL AS A PROBLEM OF LIABILITY TO THE NIC.

FOR EXAMPLE: MY OFFICE COVERS ALL OF US WHO ARE PRINCIPALS AND EMPLOYEES AS WELL AS THE INDEPENDENT CONTRACTORS WHO DO NOT CHOOSE TO PAY THE EXORBITANT SELECTIVE RATE.

2005

NOW, CONSIDER IF ONE OF THE INDEPENDENT CONTRACTORS IN MY OFFICE LISTS A PIECE OF PROPERTY AND PUTS IT INTO THE MULTIPLE LISTING SERVICE, IMMEDIATELY, OVER 600 LICENSEES HAVE AN OPPORTUNITY TO SHOW THE PROPERTY TO THEIR PROSPECTIVE BUYERS; IT MAY EVEN BE A VACANT PROPERTY AND THE LISTING CONTRACTOR OR OUR OFFICE WOULD NOT EVEN KNOW WHAT LICENSEES WERE WORKING ON OUR PROPERTY, EVEN THOUGH, AT THAT TIME, THEY ARE WORKING AS OUR SUB-CONTRACTOR.

THE QUESTION THEN ARISES; ARE THEY COVERED UNDER OUR POLICY? IS THE INDEPENDENT CONTRACTOR, ASSOCIATED WITH US, THE GENERAL CONTRACTOR AT THAT TIME? DOES ~~THE~~ THE NIC HAVE LIABILITY OF COVERAGE OF THIS LICENSEE WHILE SHOWING OUR LISTING?

FURTHER, CONSIDER THAT IF A LICENSEE, WITHOUT COVERAGE, PUTS A LISTING IN THE MULTIPLE LISTING SERVICE, AND ANOTHER LICENSEE, THAT IS NOT COVERED BY NIC, WORKS ON THE PROPERTY; HAVEN'T THEY CREATED A GENERAL AND A SUB-CONTRACTOR RELATIONSHIP NEITHER OF WHOM ARE COVERED, AND DOESN'T THE LISTING LICENSEE AND THE NIC BOTH HAVE EXPOSURE IN THIS SITUATION?

FURTHER, WHEN THE NIC AUDITS A REAL ESTATE OFFICE, THEY ASSESS THE OFFICE NIC PREMIUM FOR WORK PERFORMED BY HANDYMEN, PAINTERS, LAWN SERVICE, ETC., WHO ARE NOT COVERED UNDER NIC. THIS LEAVES THE DOOR OPEN FOR ALL CO-OP TRANSACTIONS BETWEEN REAL ESTATE OFFICES.

THE LISTING OFFICE HAVING COVERAGE, MUST THEN BE ASSESSED, BY THE NIC, PREMIUMS ^{FOR} ~~AGAINST~~ THE LICENSEE WITHOUT COVERAGE ON ALL MONEYS EARNED UNDER A CO-OP SALE.

FURTHER, IF THE TWO OFFICES WITHOUT COVERAGE, AS MENTIONED AS AN EXAMPLE BEFORE, WERE REALLY A GENERAL AND INDEPENDENT CONTRACTOR, AS EVERYONE SEEMS TO THINK THEY ARE, WOULD NOT THE NIC BE REQUIRED TO AUDIT ALL REAL ESTATE OFFICES AND ASSESS THE ONES WHO WERE THE LISTING OFFICE (GENERAL CONTRACTOR) FOR THE PREMIUMS ON THE SELLING OFFICE (SUB-CONTRACTOR) WHO SOLD PROPERTY IN COOPERATION WITH THEM?

Exhibit C

PAGE 36

San Francisco Chronicle

Thurs., Feb. 12, 1976

600 BUSINESS OFFERS

SMOKE SHOP, FOOT TRAFFIC GADORE. \$20,000+. NORTH BEACH. Call Bobby Agt. 661-0409

SUPERMARKET including liquor license. Geneva Ave. \$24,000 + inventory. PETTY REALTY 533-8217

TRAVEL AGENCY located in San Fran Financial Dist. Sales vol. exceeding one million. Fred Shepherd 415-668-9700

TROPICAL FISH STORE \$1000 mo. net profit Mid-Penin. Open to all offers. Agt. 349-2323.

VARIETY & HARDWARE STORE. Lake Tahoe (916) 536-3664

WASHINGTON COAST Recreational Business. Boats, fishing, trailer park & commercial property. 1975 net over \$60,000. For info, write this paper ad no. 93552.

WORM CITY, Red worms, starter beds. You raise, we buy back. P.O. Box 21476, San Jose, Ca. 95151. (408) 233-2250.

BUYING or Selling Business property? Call SAXE REALTY, Milt. 349-7700 or Ray. 348-3100.

Wanted 600-1

HAVE clients for non-tech bus. or partnership from \$12000 to \$137,000. dn. WHITCHURCH & Assoc. (415) 348-3035

RESTAURANT 3000 sq ft min. Fully/pt equip. Lse/buy. Mission Dist only 824-2871

DEAN VINCENT INC. Expertise, Integrity, Service SINCE 1909 638-9160

WANTED

710 BAY AREA LOTS

BERKELEY HILLS. Wooded. Owner anxious 863-0371 Agt.

720 COMMUNITY APTS.

THE CLAY HILL SEE SAN FRANCISCO'S BEST CONDOMINIUM VALUE TODAY Enjoy the Prestige of NOB HILL LIVING At unbelievable prices! From \$33,500. Financing avail. Open 10-5 daily; 12-5 wknds. 1250 Clay Brkr. 885-2000

The Summit 999 Green St.

3 bdrm. 3 bath Condominium. Finest San Francisco value now available. Carpets & drapes of your choice \$144,000 For appt. Call 673-2770

PACIFIC HTS. CO-OP Spacious LR, sep. dining room, 3BR., 2BA., roof deck, Maint. \$154/mo. Garage, \$702,500. Ask for Doris Morse FRED BRAUN CO. REALTOR 931-3669

Pacific Hgts Place CONDOMINIUMS 2295 vallejo Open 7 days a week. Call 553-8495

SAUSALITO lux new adult condos 1 & 2 BR, concrete const. AEK, lg. priv. bath, W/W cpts/drps. 10x23 MB, extra, 5000 sq. ft. 80 LINCOLN DR. 332-4372

TWIN PEAKS view, 2 BR, 1 Ba. W/W cpts, drps, AEK, dshwshr, frpic, private deck. By owner. \$49,500. 824-2000.

NOB HILL CONDOMINIUM One bedroom at Clay/Jones with Blorious SF view. Sep.din/rm. Stewart Morton Bkr. 441-3322

SPECIALIZING in Luxury Apts. in Practice since 1950

730 HOMES, S.F.

GOOD VALUE HERE

For those families needing 3 Bd. 2 Ba. & wanting AEK, new carpets, plus beautiful view. Call us to see! Asking \$46,950. 334-5000

WAS IT YOU

who wanted a big house? Like 4 Bdrms-2 1/2 Bath-Dining Room-large kitchen, detached & in St Cecilia's Parish. 661-2121

VERY AFFORDABLE

Super sharp full 5 in Monterey Hgts. w/copper, drapes, w/w carpets, bit-ins all at \$42,500! 334-5000

SAXE

SEACLIFF SPECIAL

\$129,500. Delightful 4 bdrm. home - handsome living & dining rms., family rm. - modern kitchen, 2 1/2 baths - maids rm., garage, garden.

SEACLIFF UNIQUE

EXQUISITE FRENCH VILLA Superbly appointed - luxuriously decorated - handsome living & dining rms., charming library, 4 bdrms., 2 1/2 baths, Latest kitchen, breakfast rm - maid's rm. & bath, fabulous playroom, 2 car garage.

Miltorr Meyer & Co. One California St. 781-5100 Realtors Eves 751-3325

Green & Kaufmann

SUNSET, Nr. Noriega, 2 bed 1 bath & lge bed dn. \$48,900

RICHMOND, On 34th Ave. 4 bed 2 baths, full base. \$58,500.

730 HOMES, S.F.

Century 21

WEST PORTAL. Secluded 3 BR w/possible in-law/fam. r m. Ocean view. 665-0330

UC MED CENTER. Charm, comfort, 8 rm. Vict. Garage, Copper, yard. 1 blk. to UC 922-8484

BAYVIEW BARGAIN. Clean modern full 5 with extra two rms. down Only \$32,500. 864-6140.

ST. FRANCIS HTS. Immac. 3 BR, social rm. + bar, patio, super kitchen. \$57,950. 587-4212.

SUNSET. Immac. mod. 5 + in-law. Trans. shops. Seller has bought. 668-2010.

Century 21 Realtors

ON THE LEVEL

Great Home & Great Buy 3 Bdrm.-Firpl.-Redmod. Kitch. This & More-Only \$39,950

ON THE BEACH

Hear The Surf Crash Sparkling 2 Bdrm. + in Law Super Everything-\$54,950

NEAR SLOAT

Parkside 3 Bdrm. Dream Spacious L.R.-Redmod. Kitch. Unique Fireplace-\$59,950

SCANDIA

Realtors 586-7400

621 LAGUNA HONDA

OPEN SAT. & SUN. 1 TO 5 OPEN DAILY 3 TO 5

Deluxe Spanish style custom built detached "full 5" + large cheerful pentroom w/tile bath & frpic. Lovely sunken living rm. w/cathedral beamed ceil.

735 HOMES, PENINSULA

North Peninsula 735-1

Gilmartin

SAN BRUNO. Beginners. 2 BR DOLLHOUSE. \$38,000

BRENTWOOD Custom 2 BR. Decorated to a "T" \$52,500

MILLBRAE. Meadows. 23 BR, 2 ba. Beautiful. \$73,950

MILLBRAE. 3 BR, 1 1/2 ba. Ultra modern kitchen. \$78,950

Gilmartin

873-2020 Realtors 348-2020

??CHALET IN MILLBRAE?? YES!! FANTASTIC redwood architecture. Gothic windows, "woody" interior. 4 bdrms plus MANY EXTRAS! Top quality const. \$132,000

NEEDS WORK--PRICED LOW 3 br. 2 ba. elev ranch. AEK. Good potential! \$48,500

WANNA PARTY?? Easy with this huge sep. family room plus unf. extra rm. 3 br. 2 ba. AEK. Spotless! \$61,500

TROTTER

REALTY, INC. 697-0860 342-1813 588-6271

MILLBRAE 4 BR, 2 1/2 BA, fam/ rm, view, pool. \$96,900

SAN BRUNO. New listing, 4 BR, 3 BA, remodeled. \$65,950

WESTBORO condo. 3 BR, 1 1/2 BA, all furniture. \$43,950

PACIFICA-Fairmont 3 BR, 1 1/2 BA, immaculate. \$45,950

WANTED

Exhibit A

CENTURY 21 REAL ESTATE FRANCHISE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 197____, by and between CENTURY 21 _____ a corporation, and a licensed real estate broker, with principal offices in the State of _____, hereinafter called "Century 21," and _____ of _____ hereinafter called "Franchisee."

RECITALS:

1. Century 21 has developed a system for the promotion and operation of individual real estate brokerage offices, and has devised policies, procedures and techniques designed to enable such offices to compete more effectively in the real estate sales market. The system includes, but is not limited to, common use and promotion of the name "Century 21," centralized advertising programs, recruiting and sales training programs, and inter-office referral program. Century 21 is constantly working to revise and improve upon the system.
2. Century 21 franchises real estate brokerage offices to use the system and operate under the name "Century 21," and Franchisee desires to obtain a franchise to operate a real estate brokerage office under the terms and conditions hereinafter set forth.
3. Franchisee is a licensed real estate broker under the laws of the State of _____ and is familiar with Century 21 and its operation. Based upon the information supplied by Franchisee, Century 21 believes that Franchisee possesses the necessary skill, experience and financial ability to successfully operate a franchised real estate brokerage office.
4. Century 21 has been granted the right to use the Century 21 name, logo, and other identifying marks used in the "system" by Century 21 Real Estate Corporation (California) for certain regional territory which includes Franchisee's location.

AGREEMENT

5. FRANCHISE:

For and in consideration of the initial franchise fee to be paid by Franchisee to Century 21 and the execution of this Agreement, Century 21 hereby grants to Franchisee, and Franchisee hereby accepts a franchise to operate a Century 21 Real Estate Brokerage Office.

The initial franchise fee payable concurrently with the execution of this Agreement is \$_____. The term of the franchise is ten (10) years commencing _____, 19____ and ending _____, 19____.

6. LOCATION:

Franchisee is hereby granted the right to operate a Century 21 Real Estate Brokerage Office at the following described location: _____

Franchisee may move the office to a new location in the same general vicinity with the written approval of Century 21, which approval will not be unreasonably withheld.

With the written consent of Century 21, Franchisee may open a temporary tract sales office within or immediately adjacent to a new subdivision or development for the sole purpose of selling property in the subdivision or development. Century 21 may impose such conditions as it deems necessary to insure that such temporary tract sales offices are, in fact, temporary and are used only in conjunction with the initial sales program for a particular subdivision or development.

7. FRANCHISE FEE:

In consideration of this Agreement and the services to be rendered by Century 21 as herein described, Franchisee agrees to pay, in addition to the "initial franchise fee" set forth in paragraph 5 above, a "service fee" equal to 5% of Franchisee's gross income derived from all transactions for which a real estate license or securities license is required except income from leases or rentals for a term of less than one (1) year. Income from property management services shall also be excluded from Franchisee's income for the purpose of computing service fees unless more than 25% of Franchisee's income derived from all transactions for which a real estate license or securities license is required is income from property management services. Said fees shall be paid to Century 21 by Franchisee forthwith upon receipt thereof, or at the close of the subject transaction. Century 21 has the right to establish procedures from time to time for verifying and processing said fees.

The "initial fee" is fully earned by Century 21 upon execution of this Agreement, and the "service fee" is earned upon receipt of income by Franchisee except as may be provided elsewhere in this Agreement. Franchisee agrees to direct the escrow company, attorney or other party handling the closing of any transaction in which a commission is to be paid to pay the service fee directly to Century 21; in other transactions, it shall be paid on receipt of income by Franchisee. Service fees more than ten (10) days late shall bear interest at the highest legal rate.

Commencing four months from the date of this Agreement, Franchisee agrees to pay to Century 21 on the first day of each calendar month for the month immediately preceding said payment date a "minimum service fee" of \$100.00. Any service fees paid to Century 21 during the preceding month shall be credited against said minimum service fee.

8. NATURE AND VALUE OF FRANCHISE NAME, TRADEMARKS AND GOODWILL:

The franchise granted hereby authorizes Franchisee to use Century 21's trade name, trademarks, goodwill and trade secrets in the operation of a real estate brokerage business at the location set forth above. Nothing herein contained shall be construed as authorizing or permitting Franchisee to use such trade name, trademarks, goodwill or trade secrets at any other location or for any other purpose. It is expressly agreed that the ownership of all right, title and interest in and to said trade name, trademarks, goodwill and trade secrets is and shall remain solely in Century 21, and that the material and information now and hereafter provided or revealed to Franchisee under and pursuant to this Agreement are revealed in confidence, and Franchisee expressly agrees to keep and respect the confidence so reposed. Upon termination of this franchise for any reason, all manuals, bulletins, instruction sheets, forms, marks, designs and other material furnished to Franchisee under and pursuant to this Agreement, shall be returned to Century 21, and Franchisee shall cease to use any materials bearing the name "Century 21."

So long as this Franchise Agreement shall remain in effect, Franchisee agrees to maintain a clean and attractive office, give prompt, courteous and efficient service to the public, comply with the Office Procedure Manual (as it may be changed from time to time), and generally operate the franchised real estate brokerage office in compliance with the Century 21 system so as to preserve, maintain and enhance the reputation and goodwill built up by Century 21 and its Franchisees and the value of Century 21's trade name and trademarks.

9. NAME:

Franchisee shall operate under the trade name "Century 21" and shall use no other name in conducting business for which a real estate license is required, except that Franchisee shall incorporate in the logo his own name, or other identifying words approved by Century 21, immediately following the trade name "Century 21," provided, however, (1) Franchisee's name, or other approved words, shall not exceed 20% of the surface area of the entire name and logo, and (2) the total appearance of the trade name and logo incorporating Franchisee's name or other identifying words shall be approved in advance by Century 21. Century 21 shall not withhold such approval unreasonably. If applicable, Franchisee will file for and maintain a "Certificate of Fictitious Name" in the county where Franchisee's office is located in a manner approved by Century 21 with evidence of such filing.

Franchisee shall include a statement on his letterhead, deposit receipt forms and other printed materials that each Century 21 Real Estate Brokerage Office is independently owned and operated and display a notice to this effect in a prominent place near the main entrance to Franchisee's office.

10. RELATIONSHIP OF PARTIES:

Franchisee is and shall be an independent contractor and nothing herein contained shall be construed so as to create a partnership or joint venture between the parties. Neither Century 21 nor Franchisee shall act as agent for the other, and neither Franchisee nor Century 21 shall guarantee the obligations of the other or in any way become obligated for the debts or expenses of the other unless mutually agreed in writing.

The conduct of Franchisee's business and the time and manner in which Franchisee shall obtain listings and sell properties shall be determined by its own judgment and discretion, subject only to the provisions of this Franchise Agreement and the Office Procedure Manual, as it shall be adopted or revised from time to time.

11. SERVICES OF CENTURY 21:

A. Century 21 will impart to Franchisee all of its selling, promotional and merchandising methods and techniques, and shall maintain a staff

Section Missing

15. ASSIGNMENT:

This Agreement is personal, being entered into in reliance upon and in consideration of the singular skill, qualifications and representations and trust and confidence reposed in Franchisee, and Franchisee's present partners or officers if Franchisee is a partnership or corporation, who will actively and substantially participate in the ownership and operation of the franchised business. Therefore, neither this Agreement nor any of its rights or privileges shall be assigned, transferred, shared or divided, by operation of law or otherwise, in any manner, without the prior written consent of Century 21. Such consent shall not be unreasonably withheld and upon receipt of such consent Franchisee shall pay a transfer fee to Century 21 in the sum of \$500.00.

A. RIGHT OF FIRST REFUSAL:

If Franchisee shall desire to assign his franchise, he shall serve upon Century 21 a written notice setting forth all of the terms and conditions of the proposed assignment, a financial statement prepared by the proposed assignee, and all other pertinent information concerning the proposed assignee. Within thirty (30) days after receipt of such notice, (or if Century 21 requests additional information, within fifteen (15) days after receipt of such additional information), Century 21 may either consent to the assignment or, at its option, accept the assignment to itself upon the terms and conditions specified in the notice. If Century 21 shall do neither, then consent to the assignment shall be deemed granted. Consent to an assignment upon the specified terms and conditions shall not be deemed to be a consent to an assignment upon any other terms or conditions, nor to any other person, nor to any other or subsequent assignment.

B. INCORPORATION:

If Franchisee is a sole proprietorship or partnership, Century 21 expressly consents to the assignment without payment of a transfer fee of this Franchise Agreement to a corporation formed, owned and controlled solely by Franchisee to operate the franchise business. If Franchisee is a corporation or if this Agreement shall be assigned to a corporation pursuant to the preceding sentence, any merger or sale or transfer of more than 40% of any one class of stock or any series of sales or transfers totalling in the aggregate 40% or more of any one class of stock in such corporate Franchisee, whether by operation of law or otherwise, shall be deemed an assignment of this Agreement requiring the prior written consent of Century 21.

16. REPRESENTATIONS:

No representations, promises, guarantees or warranties of any kind are made by Century 21 to induce Franchisee to execute this Agreement except as specifically set forth in writing in this Agreement. Franchisee acknowledges that the success of the real estate brokerage office to be established pursuant to this Agreement is dependant upon the personal efforts of Franchisee or Franchisee's partners or officers, if Franchisee is a partnership or corporation. Unless otherwise approved in writing by Century 21, Franchisee (or the officers or partners of Franchisee, if Franchisee is a corporation or partnership) shall devote his full time to the management of the real estate brokerage office to be established. Franchisee acknowledges that neither Century 21 nor any other party has guaranteed Franchisee success. Franchisee represents to Century 21 that this franchise is not being acquired on speculation, and that Franchisee has no present intention to attempt to sell or transfer its business.

17. REMEDIES FOR BREACH:

If Franchisee shall violate or omit to perform any of the terms and conditions contained herein, or if Franchisee's office or offices shall become vacant, abandoned or deserted, Century 21 or its authorized agent may, in addition to any other remedies it may have under this Agreement, at law or in equity, remove all Century 21 identification without incurring any liability therefor.

Franchisee expressly consents and agrees that Century 21 may, in addition to any other remedies, obtain an injunction or the appointment of a receiver for franchised business to terminate or prevent the continuation of any existing default, or to prevent the occurrence of any threatened default by Franchisee of this or any related agreement.

Upon any such default by Franchisee, Century 21 may give Franchisee ten (10) days notice of its election to terminate the Franchise Agreement if the default specified in the notice is not cured within that time.

18. ATTORNEY'S FEES:

If any legal action shall be instituted to interpret or enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonably attorney's fees.

19. AMENDMENT:

Any modification or change in this Agreement must be in writing, executed by an officer of Century 21. No field representative of Century 21 has the right or authority to make oral or written modifications of this Agreement, and any such representations shall not be binding upon either party hereto.

20. WAIVER:

No waiver of any breach of any condition herein shall constitute a waiver of any subsequent breach of the same or any other condition.

21. AUTHORITY AND ACCEPTANCE:

Each of the undersigned parties warrants that he has full authority to sign and execute this Agreement. If Franchisee is a corporation or partnership, the individuals executing this Agreement in behalf of such corporation or partnership warrant to Century 21 both individually and in their capacities as partners or officers that all of the partners in the partnership or all of the shareholders of the corporation have read and approved this Agreement including any restrictions which this Agreement places upon their right to transfer their interests in the partnership or corporation. The Agreement shall become valid on the date it is accepted by Century 21. Century 21 will notify Franchisee of such acceptance by sending Franchisee a copy of the Agreement executed as hereinabove provided. If this Agreement is not accepted by Century 21 within fifteen (15) days of receipt, then all moneys paid hereunder shall be returned to Franchisee.

22. CONSTRUCTION:

This Agreement shall be construed according to the laws of the state of _____.

If any provisions of this Agreement are or shall become in conflict with laws, ordinances or regulations of any jurisdiction in which the franchised location is situated, said provisions shall be automatically deleted and the remaining terms and conditions of this Agreement shall remain in full force and effect, provided such deletions can be made without materially affecting the basic agreement and relationship between the parties hereto. If such deletions cannot be made without materially affecting the basic agreement and relationship between the parties hereto, this Agreement may be terminated by either party hereto and in such event the parties agree to negotiate in good faith to establish a new agreement which is not in conflict with any applicable laws, ordinances or regulations.

Article or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in any article or paragraph. All words in this Agreement shall be deemed to include any number or gender as the context or sense of this Agreement requires.

23. BINDING ON SUCCESSORS:

This Agreement is binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns. Century 21 reserves the right to assign, pledge, hypothecate or transfer this Agreement, provided that such assignment, pledge, hypothecation or transfer shall not affect the rights and privileges granted to Franchisee herein.

24. NOTICES:

Any notices to be given hereunder shall be in writing, and may be delivered personally, or by registered mail, with postage fully prepaid.

Any notice to be delivered to Century 21 shall be addressed to Century 21, _____

_____ at _____
The address specified herein for service of notices may be changed at any time for any party by giving written notice to the other.

Any notice to Franchisee shall be delivered to the address set forth on page one of this Agreement or to the address of Franchisee's office.

25. EXCLUSIVE PROPERTY:

The form and content of this contract are the exclusive property of Century 21 Real Estate Corporation and may not be reproduced in part or in whole by Franchisee or others.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first set forth above.

Franchisee: _____

BY: _____

BY: _____

ACCEPTED on this _____ day of _____, 197____.

FRANCHISOR: CENTURY 21 _____

BY: _____

BY: _____

Century 21 Representative

Exhibit E

RECEIVED
AND FILED

JUL 19 4 29 PM '76

CAROL C. FITZGERALD, CLERK

BY _____
DEPUTY

1 SAMUEL W. BELFORD II, ESQ.
2 J. STEPHEN PEEK, ESQ.
3 Hale, Belford, Lane and Peek
4 201 West Liberty Street
5 Reno, Nevada 89501
6 Telephone: (702) 786-7900

7 JOHN P. MORAVEK, ESQ.
8 18872 MacArthur Boulevard
9 Irvine, California 92715
10 Telephone: (714) 752-7521

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF NEVADA

14

15 CENTURY 21 REAL ESTATE
16 CORPORATION, a California
17 corporation; CENTURY 21
18 REAL ESTATE OF ARIZONA,
19 INC., an Arizona corporation;
20 SOUTHERN NEVADA FRANCHISE
21 SERVICE CO., INC., a Nevada
22 corporation; and ROBERT E.
23 BARRETT, and BARRETT & CO.,
24 INC. REALTORS, a Nevada
25 corporation,

Plaintiffs,

vs.

CIV. No. R 76-136 BRT

19 THE NEVADA REAL ESTATE
20 ADVISORY COMMISSION;
21 ROBERT W. HASS, ELIZABETH M.
22 KROLAK, FRED M. SCHULTZ,
23 OLIVIA D. SILVAGNI and CARL
24 F. FUETSCH, members thereof;
25 and ANGUS W. McLEOD, Adminis-
trator of the Nevada Real
Estate Division,

Defendants.

COMPLAINT FOR INJUNCTION

COME NOW plaintiffs and allege as follows:

I

This action arises under the First and Fourteenth Amendments to the Constitution of the United States and under Article I, Section 8, Clause 3 (interstate and foreign commerce clause) of the Constitution of the United States. This court has jurisdiction

-1-

under Title 28 U.S.C. §§1331, 2281 and 2284.

II

The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs.

III

Century 21 Real Estate Corporation, a California corporation ("Century 21"), Century 21 Real Estate of Arizona, Inc., an Arizona corporation, ("Century 21 of Arizona"), and Robert E. Barrett and Barrett & Co., Inc. Realtors, a Nevada corporation ("Barrett"), constitute, respectively, the franchisor, sub-franchisor and franchisee of a real estate franchise organization doing business under the service mark "Century 21". Southern Nevada Franchise Service Co., Inc., a Nevada corporation ("Southern Nevada") is a wholly owned subsidiary of Century 21 of Arizona. Southern Nevada enters into franchise agreements with licensed real estate brokers in the State of Nevada.

Hale and Belford
Attorneys and
Counsellors at Law
Reno, Nevada 89505

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IV

Century 21 was organized in 1971 to engage in the business of developing and operating a network of franchised real estate brokerage offices. Since 1971 plaintiff, Century 21 Real Estate Corporation, has entered into twenty-nine (29) regional sub-franchise agreements with various corporations which authorize the subfranchisees to license the Century 21 service mark and system to real estate brokers. At the present time the twenty-nine (29) subfranchisees of Century 21 are operating in approximately forty (40) states and have over 2,200 real estate brokerage offices as Century 21 franchisees.

V

On July 1, 1973 Century 21 executed a subfranchise agreement with Century 21 of Arizona. Pursuant to the terms of said subfranchise agreement Century 21 of Arizona caused Southern Nevada

1 to be formed for the purpose of doing business within the terri-
2 torial limits of the State of Nevada. Southern Nevada is organized
3 for the purpose of, intends to engage, and has been engaging in
4 the business of licensing the use of the Century 21 service mark
5 and system to real estate brokers within the State of Nevada. On
6 December 29, 1975 Southern Nevada entered into a franchise agree-
7 ment with Barrett which grants Barrett a license to use the service
8 mark "Century 21" as well as to utilize policies, procedures, copy-
9 wrighted materials and techniques developed by Century 21 to enable
10 real estate brokerage offices to compete more effectively in the
11 real estate sales market.

12 VI

13 Barrett is a licensed real estate broker in the State of
14 Nevada and intends to engage in the business of real estate broker-
15 age in the State of Nevada by utilizing the service mark Century 21
16 and the policies, procedures, copywrited materials and techniques
17 developed by Century 21.

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VII

There is at the present time within the State of Nevada an economic need for the services which the plaintiffs are attempting to furnish. Such economic need exists with respect to independent real estate brokers within the State of Nevada who are unable individually to maintain the advertising programs, recruiting programs, referral operations, sales training and management consulting services which are necessary to compete effectively with larger real estate brokerage chains. Such economic need also exists with respect to consumers in the real estate market place who have come to associate the service mark Century 21, and those real estate brokers operating thereunder, with a unique system of high quality services.

VIII

The standard Century 21 franchise agreement, utilized by

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Hale and Belford
Attorneys and
Counsellors at Law
Reno, Nevada 89505

1 plaintiffs throughout the United States, grants to the individual
2 franchised real estate broker, inter alia, the right to use the
3 service mark and tradename "Century 21" in the following manner:

4 "Franchisee shall operate under the name 'Century 21'
5 and shall use no other name in conducting business for
6 which a real estate or securities license is required,
7 except that franchise shall incorporate in the logo
8 other identifying words approved by Century 21
immediately following the tradename 'Century 21', provided, however, (1) Franchisee's name, or other approved words shall not exceed 20% of the surface area of the Century 21 name and logo."

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IX

The standard franchise agreement imposes the aforesaid 80:20 ratio on the use of the service mark Century 21 in order to maintain nationwide uniformity of service mark usage, thereby enhancing the public recognition and goodwill associated with the mark, and to provide those franchisees associated with the system the benefits of cost savings which result from production of standardized material for use in the operation of a real estate brokerage office. With over 2,200 brokerage offices, representing some 20,000 brokers and sales agents, operating within the Century 21 system, the cost advantages that result to the Century 21 franchisees through the purchase of standardized products produced en masse are substantial.

X

During the period of 1971 to the present plaintiffs, other than Barrett, collectively have expended substantial sums of money far in excess of \$10,000.00 in carefully building up among the public a valuable reputation and goodwill for the service mark Century 21 which constitutes a substantial asset of the plaintiffs respective businesses.

XI

Robert W. Hass, ("Hass"), Elizabeth M. Krolak, ("Krolak"),

///

1 Olivia D. Silvagni, ("Silvagni"), Fred M. Schültz ("Schultz"),
2 and Carl F. Fuetsch, ("Fuetsch"), are the duly appointed, qualified
3 and acting members of the Nevada Real Estate Advisory Commission,
4 ("the Commission"). Angus W. McLeod, ("McLeod"), is the duly
5 appointed, qualified and acting Administrator of the Nevada
6 Real Estate Division, ("the Division"). The Commission and the
7 Division are parts of, or instrumentalities of, the State of
8 Nevada. At all material times, Hass, Krolak, Silvagni, Fuetsch,
9 Schultz and McLeod were acting under color of State law;
10 specifically, but without limitation, Chapters 233B and 645 of
11 Nevada Revised Statutes.

12 XII

13 On January 20, 1976 McLeod, acting in his official capa-
14 city and under color of State law, requested an opinion from the
15 office of the Attorney General of the State of Nevada as to whether
16 Century 21's proposed method of operation within Nevada would
17 violate either Chapter 645 of N.R.S., or the Rules and Regulations
18 for Chapter 645 of N.R.S. On March 25, 1976 Robert List, Esq.,
19 Attorney General of the State of Nevada, and James I. Barnes,
20 Esq., Deputy Attorney General for the State of Nevada, responded
21 to McLeod's request and that opinion is attached hereto as Exhibit
22 "A" and made a part hereof by reference. In response to the

23 question of whether use of the tradename "Century 21" would
24 constitute misrepresentation per se the Attorney General's
25 opinion letter states inter alia at page 13:

26 "No viable argument can be made that a broker
27 who did business using the trade name "Century 21"
28 would be making a misstatement of fact, or that
29 he would be presenting as true that which was
30 false. Each Franchisee must inform the public
31 that his office is "independently owned and
32 operated." Nothing within either the proposals
presented by Century 21 or the Agreement indicates
prospective misrepresentation as a matter of law."

XIII

At all material times Hass, Krolak, Schultz, Silvagni,

-5-

1 and Fuetsch were actively engaged in the real estate brokerage
2 business; derived a substantial portion of their individual incomes
3 from the real estate brokerage business; and presently are, and
4 will be, in direct economic competition with Barrett and with
5 those existing and future franchisees of Century 21, Century 21 of
6 Arizona and Southern Nevada.

XIV

On March 30, 1976 Hass, Krolak, Schultz, Silvagni and Fuetsch acting in their joint capacity as the Nevada Real Estate Advisory Commission, purportedly under powers granted by N.R.S. 645.050(2), adopted the following rule amending Section VII of the Rules and Regulations for Nevada Revised Statute 645:

"Section VII (4) Any broker who operates under or uses a franchise name shall:

- a. register such franchise name with the Division on a form to be supplied by the Division; and
- b. incorporate in the franchise name and logotype his own name; however, the broker's name may not be less than 50 percent of the surface area of the entire combined area of both the broker's name and the trade name or logotype; and [Emphasis added]
- c. conspicuously display on or in all his advertising; and on his letterhead, deposit receipt forms, listing agreements and other printed materials generally available to the public a statement to the effect that his real estate brokerage office is independently owned and operated.

For the purposes of this section, the term "Broker's name" is that name which appears on the real estate broker's license granted by the Nevada Real Estate Division."

Hass, Fuetsch, Schultz and Silvagni voted in favor of the adoption of said amendment. Krolak voted against the adoption of said amendment.

XV

On March 30, 1976, plaintiffs, other than Barrett, ap-

1 peared at a public hearing conducted by the Commission pursuant to
2 Section 233B.010 et.seq. of N.R.S. (Administrative Procedure Act).
3 At said hearing, plaintiffs, other than Barrett, objected to the
4 aforesaid amendment. Said objections were made, inter alia, on
5 the specific grounds that the adoption of said amendment would
6 deprive plaintiffs of rights protected by the First and Fourteenth
7 Amendments to the Constitution of the United States and Article I,
8 Section 8, Clause 3 of the Constitution of the United States.

9
10 XVI

11 On April 7, 1976 plaintiffs, other than Barrett, pur-
12 suant to N.R.S. 233B.060, requested from the defendants a concise
13 statement of the principal reasons for and against adoption of
14 said amendment. A copy of said request is attached hereto marked
15 as Exhibit "B" and incorporated herein by reference.

16 XVII

17 On April 9, 1976 plaintiffs, other than Barrett, pur-
18 suant to N.R.S. 233B.110, requested that defendants pass upon the
19 validity of said amendment. A copy of said request is attached
20 hereto marked as Exhibit "C" and incorporated herein by reference.

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XVIII

On May 18, 1976 Hass, Krolak, Silvagni, Fuetsch and Schultz responded to said requests referred to in paragraphs XVI and XVII in the following manner:

"1. The Real Estate Advisory Commission is charged with creating guidelines for the orderly practice of Real Estate in Nevada, and feels that its regulations passed for the conduct of real estate franchisees are valid.

2. In addition, the regulations as enacted, protect the general public from being misled."

A copy of defendant's response is attached hereto marked as Exhibit "D" and incorporated herein by reference.

XIX

Defendants are presently enforcing said amendment, and

-7-

and Belford
neys and
Counselors at Law
Reno, Nevada 89505

1 threaten to enforce it in the future, under color of State law.

2 WHEREFORE, plaintiffs pray as hereinafter set forth:

3 FIRST CLAIM FOR RELIEF

4 I

5 Plaintiffs' reallege paragraphs I through XIX first set
6 forth above as if set out herein in haec verba.

7 II

8 The amendment to Section VII (4) promulgated and adopted
9 by the Real Estate Advisory Commission violates plaintiff's rights
10 under the First and Fourteenth Amendments to the United States
11 Constitution in the following particulars:

12 a. Said amendment will materially infringe on the
13 ability of the plaintiffs to inform the consuming public of the
14 availability of plaintiff's services through the service mark
15 Century 21, thus depriving the plaintiffs' of freedom of speech.

16 b. The imposition of a 50:50 advertising ratio by
17 subsection "(b)" of said amendment is not in pursuance of a legiti-
18 mate state interest and is wholly without a rational basis, thus
19 depriving plaintiffs of due process of law.

20 c. The imposition of a 50:50 advertising ratio by sub-
21 section "(b)" of said amendment creates a conclusive presumption
22 of fraud or misrepresentation against a particular class of per-
23 sons (of which plaintiffs are members) without affording plaintiffs
24 a hearing, thus depriving plaintiffs of due process of law and the
25 equal protection of the laws.

26 d. Hass, Krolak, Fuetsch, Silvagni and Schultz, acting
27 in their official capacities, are so impermissably biased by reason
28 of their direct economic competition with plaintiffs that plaintiffs
29 are deprived of due process of law.

30 WHEREFORE plaintiffs pray as hereinafter set forth:
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SECOND CLAIM FOR RELIEF

I

Plaintiffs' reallege paragraphs I through XIX first set forth above as if set out herein in haec verba.

II

The amendment to Section VII (4) promulgated and adopted by the Real Estate Advisory Commission substantially hinders the free flow of interstate commerce and its freedom from local restraints in a matter which requires uniformity of regulation among the several states, thus depriving plaintiffs of rights guaranteed under the Interstate and Foreign Commerce Clause of the United States Constitution.

WHEREFORE plaintiffs pray as hereinafter set forth:

THIRD CLAIM FOR RELIEF

I

Plaintiffs' reallege paragraphs I through XIX first set forth above as if set forth herein in haec verba.

II

Plaintiffs' will sustain permanent and irreparable injury and damage by reason of the application to them and enforcement against them of the amendment to Section VII (4) by reason of the following:

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a. To comply with the provisions of said amendment, plaintiffs will be forced to materially alter, within the State of Nevada, the manner in which the service mark Century 21 is presently displayed in interstate commerce. The amendment will force plaintiffs to depart from the standard 80:20 ratio used in the United States and adopt a 50:50 ratio of service mark usage, thereby severely diluting the value and public recognition attached to the service mark Century 21 by creating inconsistent patterns of usage within the United States.

Hale and Belford
Attorneys and
Counsellors at Law

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b. The application of said amendment to plaintiffs' service mark Century 21 will result in substantial damage to the reputation and goodwill of plaintiffs' businesses.

c. The application of said amendment will force plaintiffs to redesign and reprint art work, stationery, and business supplies all at substantial cost to plaintiffs.

d. The application of said amendment will result in existing and future Nevada franchisees of plaintiffs being unable to partake in the substantial cost savings which result from nationwide standardization of the production associated with the Century 21 service mark, all to the loss of plaintiffs.

e. The diluted and crippled franchise system which will result from the application of such amendment to plaintiffs' respective businesses will result in an incalculable loss of income to plaintiffs.

16 f. The application of said amendment to Southern
17 Nevada and Barrett's businesses will result in an unconstitutional
18 denial of a right to a hearing on the issue of fraud or misrepre-
19 sentation in advertising through the creation of a conclusive pre-
20 sumption that the members of the class of which plaintiffs, Barrett
21 and Southern Nevada, are members are guilty of fraud, misrepresen-
22 tation or deceptive advertising if they use the standard 80:20
23 format. The enforcement of said amendment by defendants will
24 result in suspension or revocation of Barrett's and Southern
25 Nevada's real estate brokerage licenses without any factual
26 determination that fraud, misrepresentation, or misleading
27 advertising has taken place, all to the great and irreparable
28 injury of plaintiffs.

29 g. The amendment to Section VII (4) constitutes a
30 prior restraint on plaintiffs' first amendment guarantee of freedom
31 of speech, thus materially infringing on the ability of the plain-
32 tiffs to inform the consuming public of the availability of the

1 plaintiffs' services through the service mark, Century 21.

2 III

3 Plaintiffs have no plain, speedy and adequate remedy except
4 by way of an injunction to restrain the defendants from enforcing
5 against plaintiffs the provisions of the said amendment.

6 WHEREFORE, plaintiffs' pray;

7 1. That this court decree that said March 30, 1976 amend-
8 ment to Section VII of the Rules and Regulations for Nevada Revised
9 Statute 645 is unconstitutional and void in its application to said
10 plaintiffs in that it denies said plaintiffs that due process and
11 equal protection of the law guaranteed under the First and Four-
12 teenth Amendments to the Constitution of the United States and
13 that a said amendment violates Article I, Section 8, Clause 3 of
14 the Constitution of the United States.

15 2. That a permanent injunction be issued by this court
16 after trial permanently enjoining and restraining defendants Hass,
17 Krolak, Schultz, Silvagni, Fuetsch, McLeod, and their successors
18 in interest from enforcing against plaintiffs the provisions of
19 said amendment.

20 3. For costs of suit and attorneys' fees.

21 4. For such other and further relief as is just.

22 DATED: This ____ day of July, 1976.

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J. Stephen Peek, Esq.
26 Hale, Belford, Lane and Peek
27 201 West Liberty Street
28 Reno, Nevada 89501

29 Attorneys for Plaintiffs



Department of Justice

*Exhibit
7*

ANTITRUST ENFORCEMENT IN THE SERVICE SECTOR

Remarks by

DONALD I. BAKER
Assistant Attorney General
Antitrust Division

Prepared for Delivery Before the
Washington State Bar Association
Antitrust Section

Sheraton Park Hotel
Spokane, Washington

September 15, 1976

ADVANCE FOR RELEASE 5:30 p.m. EDT
TODAY, WEDNESDAY, SEPTEMBER 15, 1976



2108

In my first two months as head of the Antitrust Division, I find a great deal of my time is devoted to basic restraints on competition -- price fixing, customer allocation schemes, and the like -- and to the opportunities and issues which our new felony statute present for antitrust enforcement.

I am particularly struck by the number of these basic restraints in the service sector. Why this is so I am not sure.

For years, of course, many service industries regarded themselves as exempt from the antitrust laws on the ground that they were not engaged in "commerce" -- or because (as in the case of baseball) they achieved de facto exemption for quaint reasons. Now, many are being disabused of this notion. Going back at least as far as the South-Eastern Underwriters decision in 1944, the Supreme Court has been willing to apply modern notions of what constitutes interstate commerce to an old statute -- and thus to bring within its ambit various activities which once might have been thought outside it. Needless to say, I think this is the right way to go.

Many service sector firms are indeed "small" by the standard of manufacturing firms, and many service sector industries are not "concentrated" on a national scale. These facts are heart warming to the populist, but hardly

very controlling for the antitrust enforcement. If bigness is not badness per se, then we can hardly expect smallness to be goodness per se. The consumer faced with a price fix or market allocation scheme among all the local plumbers, lawyers, or realtors is hardly consoled by the fact that there may be thousands of other firms in these fields, not engaging in such activities, but located in other towns or states. "Size" and "national concentration" are not crucial to some antitrust problems.

A final reason why so many service sector restraints have so long escaped antitrust scrutiny is that they have been able to hide behind the Parker v. Brown antitrust exemption for state-mandated restraints of trade and behind the antitrust labor exemption. In the last year and a half, the Supreme Court has reminded us that these two exemptions may not be as broad as many in the service sector may have expected or hoped. In Goldfarb v. Virginia State Bar, (decided in 1975) and Cantor v. Detroit Edison, decided only two months ago, the Court made clear that mere state participation in a privately-inspired restraint does not provide automatic immunity. Rather, the courts will now have to look at what the real state interest is and determine whether the state as sovereign is in fact mandating the scheme in question. Similarly, in Connell Construction Co. v. Local

Union 189, decided in 1975, the Court sent us a message -- not entirely precise, but generally that when a labor union gets outside of its collective bargaining role and seeks to control market competition in services, or for that matter goods, then the antitrust laws may sometimes be applicable. This is not a new message, but the Connell opinion gives it renewed vitality.

All these developments, taken together, help explain why we are seeing more antitrust enforcement today in the service sector than we saw a decade ago and why we are likely to see still a lot more enforcement in the decade to come.

This is not an issue of law, but economics. We are no longer, as we were in Senator Sherman's time, largely a nation of farmers and industrial workers in a nation primarily consuming agricultural and manufactured products. We are increasingly a nation of urban dwellers with all the complex demands of a more complicated society. We need lawyers and electricians and psychiatrists to deal with problems that may never have existed (or in some cases at least weren't recognized) before. We need automobile repairers to look after the increasingly complex machines that dominate our life. We may need the bank and the telephone company to help us deal with problems in distant cities. In sum, the service sector is big business for

the modern American, accounting for at least a third of the GNP. And that figure is rising.

Antitrust represents a fundamental commitment to free markets -- to individual choice for individual businessmen and for individual consumers. Our national commitment to antitrust is bottomed on the proven fact that free markets deliver the greatest abundance of material goods because they assure constant pressure on business costs and the availability of products based on those costs. This message is equally applicable in the service sector.

We in the Antitrust Division intend to work hard to get that message across -- principally by filing complaints and indictments in appropriate cases, but also by serving as an advocate for less protective regulation. Too often, government regulation supposedly designed to protect the public is in fact a thinly veiled scheme to protect those who are regulated. I am all for professional standards of competence, for ethical dealings -- but these labels are often used to mask all kinds of restraints imposed by public, quasi-public and sometimes almost entirely private bodies in the name of "regulation" or "self-regulation." One can be for professional standards and ethics without being a champion of featherbedding, price fixing, market allocation, or just old fashioned ways of doing business.

When the Antitrust Division -- or anyone else -- suggests fundamental change to make a service industry more competitive, there is normally a violent uproar. We are variously

described as ranting zealots, as naive, and as hopelessly ignorant on the subtleties of what is always a "unique" industry.

Well, I remember the bellowing from the New York Securities community when, in 1968, we had the temerity to suggest to the Securities & Exchange Commission that the Exchange's ancient scheme of brokerage price fixing was questionable legally and unsound economically. We were threatening the world with the elimination of the finest market for securities that existed anywhere; we were bringing destructive competition into a key business; and we were introducing a Greshams law in which the unethical and unprincipled would drive out those who had been providing this splendid service.

Of course, we now know what happened. Over the next seven years the cartel rate-making scheme was eliminated and brokerage services were priced on the basis of the cost of providing them. We still have a stock market, and a very good one, located not only on the floor of the New York Stock Exchange, but on regional exchanges, and with over-the-counter dealers using increasingly sophisticated electronic trading systems. The stock market is not less principled than it was before. Sure, some inefficient brokerage firms have gone out of business -- but most have

survived and certainly enough have survived to provide the typical customer with a reasonable range of choice, competitive choice. The saving to the investing public has been several hundred million dollars a year -- savings that in many cases are not very visible, because it only affects the value of their mutual funds shares or their pension rights.

We ought to bear this message in mind as we look at other protective schemes of "regulation" and "self regulation". Occupational licensing is a good place to start.]

While state occupational licensing requirements are familiar to members of the legal profession, the number and breadth of state occupational licensing laws will astound you. As recently as ten years ago, five states required occupational licensing of a least sixty-seven occupations. Not only were the traditional "learned professions" subjected to occupational licensing restrictions, but so, too, were such diverse commercial enterprises as dry cleaning and well-digging.

One can get the impression that occupational licensing is regarded as the legislative quick-fix when abuses in a particular occupation raise the public's ire. A state licensing board is created. It is given the power to

establish eligibility requirements; to prescribe educational, training, or experience requirements; and to supervise the conduct of licensed members. The proffered purpose is to protect the public from incompetent and unscrupulous practitioners and to promote high performance standards. The effect is often to minimize competition, stifle innovation and creativity, and control entry and output as effectively as the classic monopolist.

These licensing boards are generally comprised of practitioners in the licensed fields; rarely are consumers of the service represented. Daily they make decisions that impact directly upon the profitability of their own business operations. They deserve thorough outside scrutiny to assure that they are necessary; and, if necessary, that they are using their powers to protect us rather than themselves. Let me illustrate.

-- When the Alabama Board of Optometry, which was composed solely of optometrists in private practice for their own account, charged optometrists working in optical departments maintained by business establishments with engaging in unprofessional conduct, was it really a surprise that the Supreme Court affirmed a finding by a District

Court that the pecuniary interest of Board members disqualified them as a matter of due process from adjudicating the charges? */

-- When the Florida Construction Industry Licensing Board flunked all 2,149 aspiring general contractors who took the examination in 1973, was it surprising that the Florida legislature undertook an investigation to determine whether the Board had consciously decided to bar new entrants so as to restrict competition? Incidentally, the Board reassessed its grading curve and decided that 1,887 applicants had passed after all.

The Antitrust Division does not disparage the legitimate objectives of professionalism and high performance; nor, as a matter of Federalism, does it fall to the Division to review or determine the wisdom or propriety of state enactments. But we are directed by the Congress to enforce the Sherman Act, and we shall be watchful for attempts to use state regulatory schemes as a convenient cover under which private parties develop, maintain and enforce fundamental competitive restraints -- restraints which deprive consumers of choices and information.

Decisionmaking of this kind involves, as the Supreme Court indicated in Cantor, "a blend of private and public */ Gibson v. Berryhill, 411 U.S. 564 (1973).

decisionmaking...[S]tate authorization, approval, encouragement, or participation in restrictive private conduct confers no antitrust immunity." The Division is currently investigating a number of apparently anticompetitive practices that have been imposed in the name of state regulation. Only after a careful factual assessment of the precise role played by the State will we be able to determine whether the conduct can properly be said to be a state mandated policy or whether suit is warranted under the Sherman Act. And there may be other tests. For example, the fact that a "state body" is not sufficiently independent to satisfy the due process requirement of the Fourteenth Amendment would at least raise the question of whether it was sufficiently "sovereign" to provide the basis for an antitrust exemption under Parker. We are going to ask the hard questions. And in the absence of the right answers, we will file cases.

Our bottom line is clear: service industries will be carefully scrutinized for fundamental restraints -- regardless of whether these are in small towns or big cities, regardless of whether they involve big firms or small ones, and regardless of whether they have some government or labor encouragement.

Where we find violations -- conduct which restrains competition and is not properly exempt -- we shall prosecute.

The small case in the small town may deter persons ~~in~~
other small markets from doing the same things, and
therefore have an importance out of proportion to its
size. If deterrence does not work, then more suits ~~will~~
be needed -- and these will increasingly be felony
prosecutions.

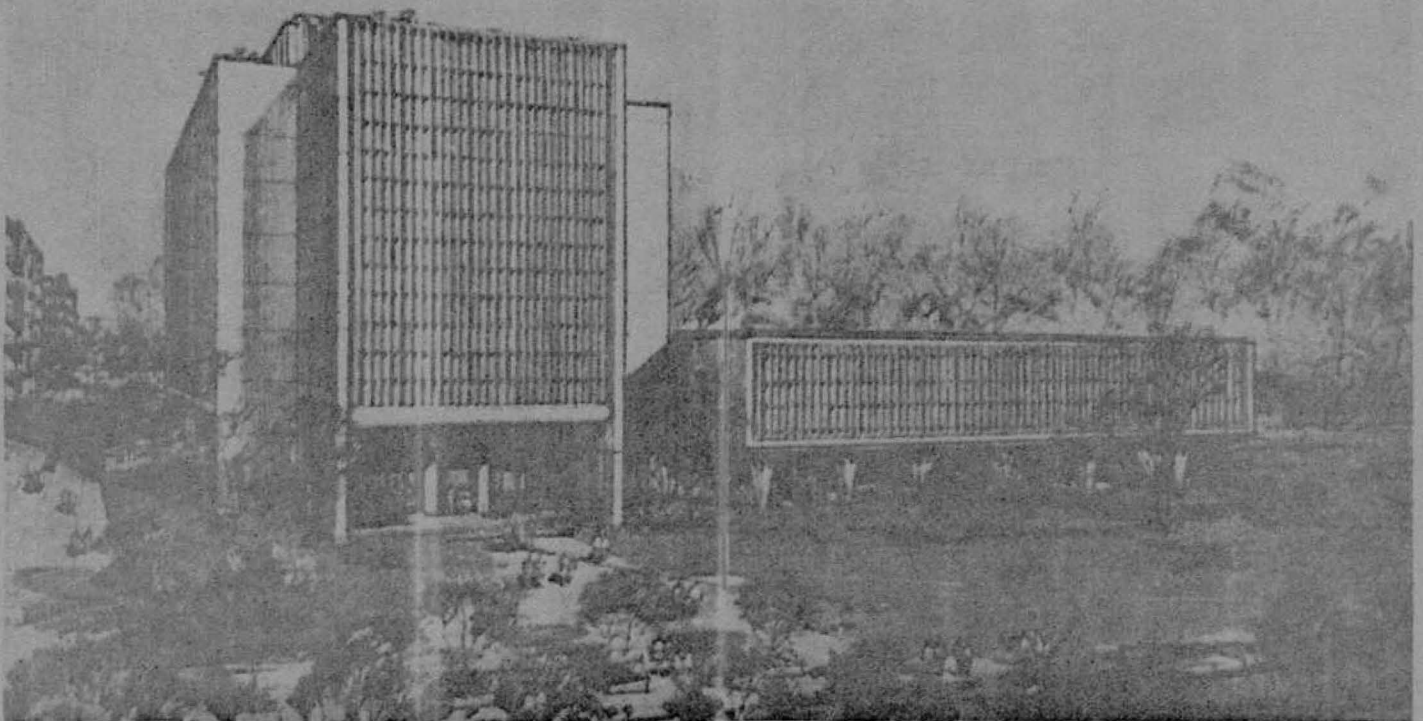
E. Sheehan

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SCHOOL OF BUSINESS ADMINISTRATION AND ECONOMICS
DEDICATED TO THE DEVELOPMENT OF EXCELLENCE IN EDUCATION

THE IMPACT OF REAL ESTATE FRANCHISE
ON THE REAL ESTATE INDUSTRY

by
Peter Mlynaryk, DBA
Associate Professor of Finance

December 1975



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CHAPTER 1

INTRODUCTION

Imagine the reaction of an independent real estate broker the first time he sees a Real Estate Franchise System being advertised coast-to-coast during his favorite television show. Today, independent brokers are finding themselves in competition for the same property sale with real estate franchises, co-operatives, chains, and all broker associations. Does this mean the traditional ways of selling real estate are in jeopardy? And if so, how must the independent broker adapt in order to survive in this new business environment?

Specifically, the basic question is, how can the independent real estate broker develop and maintain a more effective market identity? Must he join a franchise chain or co-operative to remain competitive, or are there ways available of remaining independent yet commanding a strong market identity? Actually, market identity and independence can be mutually exclusive goals or they can complement one another. Each broker must decide how much emphasis he wishes to place on each goal, then determine the course of action to be taken.

What exactly is the independent broker's loss of identity upon affiliating with the franchise system? Is this loss total, as in cases where the franchise system requires the broker to abandon the present name of his business, or partial, as in cases where the

broker relinquishes a portion of his market identity in exchange for the use of the franchise's trademark and logo in his advertising?

How does this affiliation and name change affect the independent broker's business, given the fact that many people will remember only his original business name? In other words, with the acquisition of a new business name, does the broker also acquire a new clientele, or is the only change the new name painted over the existing one? Considering the many alternatives available to him, the basic question to be asked in 1976 is: What options do I as an independent broker have and which of these is best suited to my specific business objectives?

Before that question may be answered, each independent broker must make a self appraisal of his individual goals and objectives. Only by knowing what his goals and objectives are, can the individual effectively evaluate the business opportunities available and then determine which one will maximize his chances for success.

One major consideration of the independent broker must be what can be done for him by each of the different types of business organizations that he couldn't do for himself. Only after determining this can the broker select the alternative which provides the most effective and efficient ways of achieving success.

Another factor which must be considered is the identification of major competitors. After identifying his competition, the broker must then determine which of the available alternatives will meet that competition. Are the alternatives based on organization, market identification, business structure, or simply the procurement of sufficient listings for his sales personnel? Each of these elements

must be considered when deciding whether to remain independent or become part of a franchise system, corporate chain, broker co-operative, or broker association.

HYPOTHESES

To assist the independent broker in making a decision, a review of the impact of real estate franchise organizations on the real estate brokerage industry in the State of California will be considered. Several questions and review hypotheses have been developed with the notion that their answers may result in a better evaluation of the alternatives available to the independent broker. The basic hypotheses may be enumerated as follows:

1. Brokers that are part of a real estate franchise organization have a higher success rate than those brokers who remain independent.
2. Operating procedures are better defined in offices of brokers who are members of a franchise system than in offices of non-franchise brokers.
3. Brokers find that the attraction of sales personnel and retention of those sales personnel is easier as a member of a franchise organization than as an independent.
4. The marketing impact of a franchise operation is greater than the marketing impact of an independent broker organization because:
 - 4.1 Franchises obtain more clients than independent brokers.
 - 4.2 Belonging to a franchise system can lift a broker into a position of prominence within his market area.
5. Franchises have a higher net income than independent brokers.

These hypotheses were used as a basis for the study of the impact of the franchise organization on the real estate brokerage industry. Acceptance and rejection of the several hypotheses lead to the

following conclusions.

CONCLUSIONS

On the surface, there appears to be no way of determining the success or failure rate of either the franchise broker or the independent broker. The major factor that limits the ability to determine whether the first hypothesis is true, is the lack of statistics which can effectively define success and failure rates of brokers. Members in the real estate profession do not have specific criteria for defining success; therefore, it cannot be statistically measured. Marginally successful brokers have been more successful upon joining a franchise system, but the cause and effect relationship is not specific. Therefore, hypothesis 1 is unsupportable.

Operating procedures are better delineated in franchise offices than in nonfranchise offices because all franchisors must know what their brokers' sales volume is in order to determine royalty fees. Because of this requirement, many newly franchised offices have had to institute better accounting systems in order to keep track of the data requested by the franchisor. Hypothesis 2 is supportable.

Obtaining sufficient sales personnel is simplified by affiliation with a franchise system because of the increase in identification that comes by assuming a well-known franchise's name. The present market environment is such that individuals associate success with a brand name and therefore would rather work for a well-known organization. The franchisee's retention rate of sales personnel is directly related to the rapport its operator has with the salesperson, since the salesperson enters into the normal independent contractor

relationship upon his employment. The key element for retention seems to be the ability of the franchisee to deliver listings and customers to the salesperson. Thus hypothesis 3 is supported with respect to attraction of salespersons but inconclusive with respect to retention of such salespersons.

A franchise system's market impact is greater than that of an independent broker's in those areas in which the independent broker does not aggressively market his business name. No one can deny the impact of national and local media advertising. What is not known is how effective this advertising is in expanding the broker's market. In general, there is strong client attraction, but the magnitude of that attraction cannot be specifically stated. It was determined that an independent broker attained a position of prominence in a market area on his own merits, rather than on whether or not he affiliated with a franchise. Hypothesis 4.1 is supported while 4.2 is not supportable.

There is no supporting evidence to indicate that franchisees have higher incomes than independent brokers. In fact, very few people know the net income of their business and even fewer know whether there has been a significant change upon associating with a franchise. This hypothesis is not supportable.

Primarily, this report will evaluate the alternatives available to the independent broker by examining the advantages and disadvantages of each. The report concludes with information which each broker needs in order to choose the alternative that will give him the best chance of operating a successful business.

CHAPTER 2

RESEARCH METHODOLOGY

The research methodology utilized for this study consisted of three basic elements: 1, a literature review; 2, a mail survey (discussed in Chapter 4); and 3, interviews with brokers and other real estate executives within the State (discussed in Chapter 5).

As the study developed, it was discovered that there seemed to be a lack of specific literature concerning business operations of real estate franchises, real estate corporations, and independent brokers. A reasonable amount of theoretical literature was found on franchise operations in general and eventually some dealing specifically with real estate was found. The professional literature within the field consisted predominantly of articles in trade magazines which discussed the pros and cons of a real estate franchise operation. Probably the most widely read articles were those entitled "Franchising-Trend of the Times", which described the benefits of franchising and John Kirchner's article entitled "The Franchising Trend: Is It Friend or Foe?", which described the pitfalls of associating with a franchise system.¹

These two articles summarized the impact of real estate franchise operations within the State of California. Additional data comes primarily from two sources: newspaper articles reporting on new firms that entered the real estate business and literature distributed by the franchisors to potential franchisees.

All of this literature was reviewed in order to develop the hypotheses and the types of questions to be used in the survey and interviews.

The mail survey consisted of a one-page questionnaire mailed to each of the 174 real estate boards within the State of California.² The questionnaires were returned from 62 of the member boards (a 36% response ratio). The purpose of this survey was to determine the amount of franchise activity within the state and whether such activity is greater in one region than another region.

After tabulating the results of the mail questionnaire survey, a telephone interview was conducted with several boards who had indicated a willingness to provide additional information.

Since the questionnaires were mailed exclusively to real estate boards, a certain bias was introduced: those licensed real estate brokers who are not members of boards were precluded from the sample. This fact must be considered with respect to certain conclusions drawn from this sample.

The last element of the research methodology consisted of telephone and personal interviews with real estate brokers throughout the state. Individuals were contacted based either on board referrals or on suggestions from persons about others who might be willing to discuss certain aspects of the industry's development. In developing an interview profile of the real estate brokers, the following interview sample was utilized.

1. Independent brokers approached by franchisors who had
 - 1.1 accepted franchise
 - 1.2 rejected franchise

1.3 accepted franchise and subsequently relinquished their franchise operation to return to an independent non-affiliated broker status.

2. Franchisors who

2.1 are still in business

2.2 have liquidated their business for whatever reasons.

The interviews were structured in a way that would elicit from each of the interviewees his interpretation of the major advantage and disadvantage of each of the forms of organization under discussion. The final conclusions were based on a qualitative analysis which developed major categories considered important.³ This methodology is such that each interviewee discussed those aspects of the questions he believed important. Each of these items was then cataloged. When sufficient supporting elements were placed in each category, they were considered to be major elements and identified as such; they received further amplification in future interviews. Additional points obtained from these interviews were determined to be the major elements of the theory of real estate franchise systems and operations within the state.

The next chapter contains the first element in this research methodology: a review and analysis of the theory of franchising.

CHAPTER 3

LITERATURE REVIEW

Literature pertaining to the real estate franchise industry is almost nonexistent; very few articles have been written or research studies made on this subject. Literature on franchising in general is much more prolific. The review of literature for this study, therefore, consisted of two parts: (1) a review of the literature concerning the franchise industry, in general, and (2) a review of the literature which specifically deals with franchising in the real estate industry.

GENERAL INDUSTRY REVIEW

The most definitive book on the franchise industry entitled, Franchising: Its Nature, Scope, Advantages and Development, was written by Charles Vaughn. Vaughn says one must first define the franchise system analyzing its purpose and function. The term "franchising" is exceedingly simple and yet simultaneously complex in meaning. The most descriptive definition of it is as follows:

Franchising as it is generally known today is a form of marketing or distribution in which a parent company customarily grants an individual or a relatively small company the right, or privilege, to do business in a prescribed manner over a certain period of time in a specified place. The parent company is termed the franchisor; the receiver of the privilege, the franchisee; and the right, or privilege itself, the franchise.¹

The rights and privileges granted the franchisee by the franchisor vary with the complexity and marketability of the product in question. In some cases, a franchise consists of a grant for the use of any or all of the following: a tradename, a company's product, a method of doing business, marketing symbols, a style of building architecture, and a trademark. The most visible franchise chain in the United States is McDonald's; this particular franchise consists of a series of licensed rights with respect to architecture, menu, signs, and service qualities.

Other well-known franchisors are A & W Root Beer, Pizza Hut, Kentucky Fried Chicken, Burger King, Seven-Eleven, Mr. Donut, Bonanza Steak House, Holiday Inn, Travel-Lodge and Ramada Inns. The franchisor may grant the franchisee exclusive operating rights and privileges in a small market area or in an area as large as a city, a county, or an entire state. There is no way to categorically define the specific rights the franchisor may grant to the franchisee in a particular industry.

As described earlier, a franchise is a set of rights or privileges granted to the franchisee; an analysis of the concept may be facilitated by considering four basic types of franchise systems. Vaughn used the four types as a basis for pointing up the differences between the different franchise systems. The four franchise system categories are described as follows:²

Type I--the manufacturer-retailer system. Included in this system are the automotive group, including the automobile manufacturers and their dealers, the petroleum companies and their dealers (retailers), as well as several other automotive-related groups.

Type II--the manufacturer-wholesaler franchise system. This particular agency is typically exemplified by the bottler-syrup-supplier chain systems within the country; recognizable franchisors of this type would be Coca-Cola, Pepsi-Cola, and Seven-Up.

Type III--the wholesaler-retailer franchise system. This group may be split up into two subgroups: (1) the automotive aftermarket chains and (2) hardware and drug store chains. The automotive aftermarket group includes such well-known franchisors as Firestone, Goodyear, Goodrich Uniroyal and Western Auto Stores.

Type IV--the trademark/tradename licensor. In the last 25 years, this category has experienced the most growth. "The franchisor-who is seldom a manufacturer and usually not a wholesaler-generally has a common tradename and standardized methods for successful operation of a retail unit."³ Retail units may market a product, a service, or some combination of these under a tradename or trademark. Some type of franchisors within this category are the motel chains, including the Hilton Inn, Holiday Inn, Sheraton Inn, Quality Courts and Travel-Lodge; restaurant chains and fast food outlets such as McDonald's, Kentucky Fried Chicken, Burger King, A & W Root Beer, Baskin-Robbins, Howard Johnson's, Dunkin' Donuts, Burger Chef, and Pizza Hut; and automobile and truck rental firms, like National, Avis, Budget, Hertz and Ryder.

Vaughn argues that the development of the Type IV franchise was based on the mobility of the American public, that a majority of the services provided by franchisors within this category are in response to the needs of a transient society with a complex economic system.

Many of the original firms in this category based their business upon road travel; however, as the American economy matured, the continued profitable operation of these franchisees became dependent upon a local market area adjacent to the business location. Success of a Type IV franchise system depends on consumer recognition of a trade-name. The franchisor evolves into a management consultant firm which has the legal right to sell or allow utilization of its trademark or tradename. Within this category of trademark/tradename licensors are most of the business agent services, construction, remodeling, and homecleaning establishments, convenience groceries, various educational products and services, fast food chains, retail food chains which are not either of the convenience or fast food variety, hotels and motels, laundry and drycleaning establishments, recreational, travel, and entertainment groups and rental services. Franchisors in this last category have exhibited the greatest strength and growth during the last few years.

Success of the Type IV franchise system generally mirrors the success of its originator. Many individuals who have started businesses which became successful have had friends or relatives who wanted to start a similar business and have helped them to do so by lending their expertise on the subject. And when the friend or relative's business became successful, the individual has decided that it would be more lucrative to sell franchises than run his own business.

Vaughn noticed that many firms place more emphasis on the sale of the franchise than on the product or service being offered to the consumer--so much so that in some cases the product or service

deteriorates to the point where the success of the business may be jeopardized.

An alternative definition of a franchise operation is suggested by Don Thompson. According to him, the following four parameters must be fulfilled: 1. Although the franchisee may be economically dependent on the franchisor, he is a legally independent member of a franchising system; 2. the franchisee's business is operated with the advantages of name and standardization of the franchisor accruing to the franchisee; 3. the franchisee's business came into being in its present form (although not necessarily physically), with the express purpose of marketing the franchisor's product or service; and 4. a formal agreement, commonly called a 'franchise agreement' or 'franchise contract', is in existence. The agreement calls for a continuing, although not necessarily intermediate relationship.⁴ Taking these criteria into consideration, Thompson describes the franchise as follows: "The franchise system itself may be defined as an organization, composed of marketing, production, and/or research units, created and administered by a franchisor (or group of franchisees in the role of a franchisor), as a medium for expanding and controlling the distribution of a good or service."⁵

The advantages and disadvantages of franchising as compared to alternative market distribution systems may be evaluated according to the following four criteria:

1. The current stage in the life cycle of the company considering franchising.
2. The alternatives open to the company.
3. The type and extent of franchising possible.

4. The type and size of the product or service that will be the nucleus of the franchise.⁶

COMPANY-OWNED FACILITIES

The following are advantages that accrue to a company that chooses to franchise rather than operate on its own. Vaughn says that franchising offers the franchisor an indirect way of securing capital. Specifically, the franchisor does not have to put up capital for all of the desired facilities. Rather, the franchisee furnishes the capital either by purchasing a franchise or by paying for the construction of the business establishment. Thus, the franchisor's capital is free for other uses.

Many well-known franchise executives note that a franchisee's motivation is increased by owning a franchise because there is an opportunity for profit or earnings, an incentive not available if the facility were company owned.

Also, franchisees can save money because they reap the benefits of the franchisor's ability to purchase essentials like advertising and office supplies at volume discounts.

Also, the likelihood of community hostility towards a nationally-known franchisor is lessened if the business is owned by residents of the community; the stigma of a "foreign chain" is removed because local citizens in fact own the business. Also, local owners tend to be more knowledgeable about and responsive to local restrictions, ordinances, taxes, realty evaluations and other similar factors.

Advantages of a company-owned facility over a franchise unit.

While there are several advantages in developing a franchisee operation, there are also several advantages in having company owned

facilities. First, a company normally has more control than a franchisor over the unit. Second, because there is more control in a company-owned unit, there is a greater flexibility in management vis-a-vis changes in operations. Third, operational feedback is better in a company-owned unit than in a franchise system. Fourth, a franchisee may set his sights on some "satisfactory level of income," and upon reaching that goal may become so content that he decides to reduce his efforts. Fifth, within two or three years, a franchisee should expect a return on the initial capital he invested of between 33-1/3 and 50 per cent--a seemingly lucrative proposition for many small businessmen. In many situations, a franchisor could obtain the needed capital at a lower rate and develop a series of company-owned facilities. While earning this high rate of return on capital, the franchisee must pay royalty fees plus some markups to the franchisor for various other services. So, actually, in many situations, the return to the potential franchisee wouldn't be sufficiently high to bother about affiliating with a franchisor.

FRANCHISE OWNED FACILITIES

What alternatives are available to the individual who wants to start a business? Vaughn suggests five:

1. The purchase of a going business in the manufacturing, wholesaling, or retailing field from an owner who wants to dispose of the business.
2. Starting a business from scratch in one of these lines, without the aid of a franchisor.
3. Securing a salaried job with a small or large company in one of these lines.
4. Acquiring a franchise from a franchisee.
5. Acquiring a franchise from a franchisor.⁷

Many alternatives are available in the area of franchising, but most exist in the retail field. For example, one could probably acquire a franchise in any field from A--Automotive--to Z--Zoology-- but the specific question that must be asked is "What are the advantages and disadvantages 'to me of this particular franchise' over the other ways in which I can operate?"⁸

Advantages to the franchise.

Vaughn believes that there are normally five broad advantages available to the franchisee:

1. Many franchisees who have been in business for several years are generally content due in large measure to the fact that they have reasonable income and have a sense of independence.
2. In starting a new business, a franchisor will have had some experience and is able to provide the "know-how" to start the business successfully. Many franchisors provide on-the-job training and classroom experience to assist the inexperienced businessman in starting the franchise.
3. In general, the franchisor is a continual source of know-how and is of great help to the franchisee in updating his operation.
4. Many franchisors have an accepted trademark that not only attracts customers, but also provides a competitive advantage in the community with respect to access to such things as credit.
5. Normally, the franchisee feels independent in that he is able to run his own business his own way.⁹

Disadvantages to the franchisee.

Vaughn notes that the following may be disadvantages:

1. Services that may be provided by the franchisor are an expense item to the franchisee and in some cases may be of questionable value.
2. Many franchisees who are satisfied in the beginning may later become dissatisfied because the franchisor does

not live up to his initial promises. In addition, many franchisees may experience marginal income and lack of prestige.

3. In some instances, there may have been misleading or fraudulent franchise sales to the franchisees, who then may become victims rather than beneficiaries.
4. In some situations, a tradename may be of questionable business value. If repeat customers are required, the importance of the reaction of these customers to the product or service may be more important than the tradename.

Vaughn suggests that there are several factors in which the franchisor's experience may be helpful in starting a business; some of these may be described as follows:

1. Obtaining credit.
2. Selecting a site.
3. Drawing architectural plans for a building.
4. Employing the builder and supervising the construction.
5. Selecting (and perhaps designing), purchasing, and installing fixtures and equipment.
6. Training on the job and occasionally in the classroom.
7. Preparing and opening the unit for business, including advertising and publicity, and
8. Operating the unit for an initial break-in.¹⁰

If the business is new, then all of these items would probably have to be taken care of, but if the franchise has already been in operation, many or all of them would not have to be considered. In any case, the franchisee must keep one thought in mind: What are the reasons for starting the business and for affiliating with a franchisor?

Vaughn states that there are various levels and types of assistance available from a franchisor and that the franchisee must determine what kind and how much of this assistance he wants provided by the franchisor, particularly if the franchise system has just been organized. In many start-up situations, the franchisor may know less about starting a business than the franchisee. Many times, the fran-

chisor's major activity is selling franchises rather than providing the necessary technical and business skills needed by the franchisee to successfully run the business.

In some situations, after several years of successful operation, the franchisee may feel that the fees being paid to the franchisor may be of questionable or exorbitant value; in fact, the franchisee may believe that the franchisor is not fulfilling his contract requirements by receiving these fees and providing nothing in return.

One benefit to the franchisee would seem to be the opportunity to use a well-known trademark. Yet, this may work to his disadvantage. For example, customers who receive sloppy service by one franchisee may associate this sloppiness with other franchisees. The franchisee must also consider the tradename's value in his particular market area. If the market is local, is there any benefit in using a nationally known trademark? Vaughn says a national trademark may bring in local customers and may also retain customers who are brand-name conscious.¹¹

Thompson provides an alternative description of franchising in which a franchise consists of the following four elements:

1. Although the franchisee may be economically dependent on the franchisor, he is a legally independent member of a franchising system.
2. The franchisee's business is operated with the advantages of name and standardization of the franchisor accruing to the franchisee.
3. The franchisee's business came into being in its present form (although not necessarily physically) with the express purpose of marketing the franchisor's product or service.
4. A formal agreement, commonly called a 'franchise agreement' or 'franchise contract' is in existence. The agreement

calls for a continuing, although not necessarily indeterminate, relationship.¹²

Considering these four elements, Thompson describes a franchise system as follows: "The franchise system itself may be defined as an organization, composed of marketing, production, and/or research units, created and administered by a franchisor (or group of franchisees in the role of a franchisor), as a medium for expanding and controlling the distribution of a good or service."¹³

Thompson notes that before an adequate discussion of a franchise may be made, one must consider the ramifications of a "trademark licensing franchise system." He notes that in virtually all industries where a local operation is advantageous, but where a national reputation and promotion are important, a franchising system of some sort has been created: one which is run by independent businessmen, but whose standards are national in origin.

A trademark/tradename franchising system offers substantial benefits to the franchisor, franchisee, and the public. Through the use of a trademark, the franchisor is able to penetrate regional or national markets that he might not otherwise be able to reach because of financial, geographic, or other considerations. Thus, the franchisor attains a good income from licensing while investing only a minimum of capital. No management responsibility is necessary other than the maintenance of the quality and standards associated with the trademark.

The trademark licensor normally provides services in a given geographical area but is unable or unwilling to expand into other areas, due to either financial or personal limitations. In order to

expand the market area, therefore, the franchisor may make his trademark or tradename available for use in a new market area as long as certain quality control standards are met. Today, this is the fastest-growing type of franchising.¹⁴

REAL ESTATE FRANCHISES

In a trade magazine article, Thomas Dooley states that during the last 50 years, a successful residential real estate broker was community based and that his activities were centered around that community. But because the typical home buyer now is a corporate transferee pursuing professional advancement, Mr. Dooley argues that the role of the broker has changed: the real estate broker of the 1970's must accept the fact that a home purchaser is not a resident of the broker's community, but rather a transferee from without and therefore, the broker must either have a larger marketing area or else some means of being identified outside of a specific market area. This reasoning has led to the formation of national brokerage networks whose basic function is to ... "maximize business by creating area wide consumer confidence, recognition, and loyalty."¹⁵ Mr. Dooley describes four basic brokerage networks as follows:

1. Pure referral systems.
2. National corporate entities.
3. Full-fledged franchisors.
4. Hybrid networks of independent realtors, quasi-franchise and quasi-cooperative in structure.¹⁶

A pure referral system is one whose goal is to control the home transferee market. To be successful, there must be immediate contact with the prospect and there must be persistent contact with that

prospect until the transfer and transaction have been completed. This requires adequate communication between the originating broker and the destination broker. Early referral brokerage operations were started in the 1950's; pioneers in the field were AIMS, ARMS, and Transamerica. The National Association of Realtors and the National Institute of Real Estate Brokers attempted to set up a pure referral system, but their bylaws prevented them from doing so. Enthusiasts of this movement developed an independent cooperative system called the "Inter-City Relocation Service." The success of this operation was based on the low participation fee and not only reduced the market impact of the first three pioneers in the field, but brought about the development of two additional referral systems: Nation-Wide Find-a-Home Service and National Multi-List.

The National Multi-List system is now called the Homes for Living, and Inter-City has been renamed RELO. While these referral systems have been successful, Mr. Dooley argues that due to the sophistication of the business transferee, the success of a pure referral system is limited and must develop into one that provides full services rather than just a referral.¹⁷

The next type of organization in the evolutionary process are the national brokerage entities, which "... foster a similarity of name, business logo, and advertising presentation across the continent."¹⁸ The major difference between a national brokerage firm and a referral system is that there is a brand name identification in a national brokerage company, while there may not be one in a referral system. Therefore, in order to develop a national brokerage system, sufficient capital resources must be on hand within the

parent company to provide the funds necessary for long-term expansion throughout the country. The most well-known corporate brokerage entity is Coldwell Banker and Company, a west coast firm operating primarily in commercial and industrial brokerage which has just expanded into the residential business by acquiring the Forest E. Olson Company. Coldwell Banker has grown by acquiring other brokerage companies along the west coast.

Another corporation that is becoming national in scope is Berg Enterprises, a New Jersey-based firm. Berg has initiated an expansion program in major metropolitan areas throughout the United States, specifically in Florida, Texas, Arizona, and California. One problem that Berg Enterprise is experiencing is that acquisitions are made through an exchange of stock, and with the current depressed securities market, exchanging stock has been difficult. Upon acquiring a real estate brokerage's operation, Berg Enterprises normally attempts to remove all traces of its former identity and integrate it into the parent operation as quickly as possible. Recent Berg Enterprise acquisitions within California were Valley Realty in Northern California and S.G.S. Realty in Southern California.

Another means of achieving market identification is by undertaking a full franchise approach to national brokerage; specifically, the franchisor attempts to get independent brokers to follow a rigid standard of office operations. The earliest and most successful venture of this type is the Red Carpet Real Estate franchise system. Started in California, Red Carpet is now well established in the Pacific Northwest, California, Texas and is moving eastward in market

scope. A competing franchise system, Century 21, also started in California and now operates nationwide. These franchise operations are based on the ability of the franchisor to provide the franchisee with a "bundle of expertise." Mr. Dooley states that the Red Carpet operation requires that the affiliating broker utilize the Red Carpet name, logo, and other means of identification. Mr. Dooley notes that his study of the Red Carpet franchise system indicates that most of the individual brokers who have joined believe they have improved their overall business.

Mr. Dooley likens the Century 21 franchise operation to an inverted pyramid. The franchisor grants exclusive territorial franchises covering large regional market areas; these regional areas are then subdivided into local territories where actual customer contact franchise operations are developed. In the Century 21 concept, the individual broker does not completely forfeit his identity as is the case in the Red Carpet system. Instead, the individual broker's logo and business name is placed on a parallel and equal level with the Century 21 logo and name.

The last stage in the evolution is the quasi-franchise operation, an example of which is the Gallery of Homes concept. Mr. Dooley himself is associated with the Gallery of Homes which was started in 1949 by a New York realtor, John T. Nothnagle.

In the Gallery of Homes concept, properties for sale are put on public display in a living room format. Avoidance of the hard sell is the basic marketing idea. "The hallmark or the Gallery office identification, however, is the use of photographs, both to merchandise properties currently for sale and to visually present outstanding

attractions of the community served by the Gallery member."¹⁹ The shadow box concept is a marketing team describing an attempt by a broker to sell a house even before he takes the customer to inspect the property.

Mr. Dooley notes that since 1970, the Gallery of Homes organization has initiated a vigorous program of expansion and now has members in 49 of the 50 states and several Canadian provinces. He argues that the Gallery of Homes is currently the only genuine nationwide brokerage-affiliated operation.

Dooley also states that there are two major differences between the Gallery concept and the full-fledged franchise operation: (1) the license name identification, and (2) the exclusiveness of the territory in which the broker operates. He says that according to the Gallery concept, the quasi-franchisor looks for any well-established realtor with a multi-office operation in an area. A realtor who qualifies can then place his own company's name alongside the Gallery of Homes identification logo--the purpose being to effect a blend of National and local identity. Another difference has been that a full-franchise operation looks for smaller franchisees which may be in an embryonic stage, while the quasi-franchise operations are extremely exclusive and seek associations with one or two brokers in each of the respective boards throughout the United States. Now, many quasi-franchise operations are reevaluating this conceptual framework with an eye towards granting brokers exclusive name identification in smaller market areas; Dooley places the redefined market size at between 30 and 50 thousand people.

After discussing each type of nationally oriented brokerage activity, Mr. Dooley surmises that the nationally based firms have had a significant impact upon the real estate brokerage business and that this impact will increase in the future. Real estate brokers are looking at each of the available alternatives and attempting to determine which one would bring the most success to their operation. Dooley also comments on customer trends: "... the home buying and home selling public is rapidly identifying with 'brand name' real estate brokerage."²⁰ Mr. Dooley envisions five trends of the future:

1. As with any rapid growth industry, a backlash or "washout" of marginal entrance into the field will probably occur. This already is happening, especially with a number of undercapitalized franchisors on the west coast.
2. The survivors will probably expand their operations into numerous and auxiliary activities such as mortgage financing, title insurance, escrow departments, and of course, non-residential brokerage.
3. The impetus of expansion--both in numbers and in auxiliary activities--will force many national entities to expand their capitalization base, either internally or by maximizing the parent company's borrowing power, coventuring with investors or investment groups, or merging with well-capitalized corporations
4. ... The inherent advantage of a large-scale corporate entity should indicate that the national brokerage alliances will have an edge in coping with the challenge of change.
5. It is extremely difficult to predict which of the several forms of national entities will dominate the future. Probably each form will survive, with each serving a somewhat different facet of the business or using a somewhat different approach to serve the same facet.²¹

Dooley's analysis differs markedly from an earlier unsigned December 1972 article appearing in a trade magazine which implied that the trend was away from the independent broker to the franchise system.²²

The article discussed several contrasting franchising systems, ranging from the Red Carpet system, in which the individual franchisee relinquished his own business name and accepted the Red Carpet name, to the franchise system in which the realtor's business name received equal billing with the franchisor's. At the time of this article, franchisors argued that they could provide cheaper advertising rates through volume discounts received from newspapers, television and radio stations, and schools. Also, franchisors stated that they could provide M.L.S. systems which could compete with those of boards. In addition, franchisors stated that they could provide additional help not only in recruiting sales personnel but in training the personnel. The article's major premise was that real estate franchising was here to stay and that brokers should accept the concept and join a franchise system.

Several months after this article appeared, a rebuttal by John N. Kirchner was published in the same magazine. Kirchner argued that there are many disadvantages to affiliating with a real estate franchise system. First and foremost, he said, was the loss of identity which came with the loss of the business' original name. Another disadvantage, according to the author, was the fact that if one franchisee had business problems, other franchisees were bound to suffer by association. Kirchner also argued that there was tremendous initial expense involved in changing and/or redesigning advertising signs, sales material and other items. He wondered whether the independent broker would be as effective when he became a franchisee owner but had nothing to sell. That is, would the franchisor have the market

power based on market identification associated with the franchise name, which in effect would leave the independent broker an empty shell of responsibility and the costs of ownership, but no decision-making power.

Kirchner argues that there are a number of ways the independent broker could be successful without having to affiliate with a franchise system. He mentions that many of the supplemental services necessary for the completion of a real estate transaction are also provided by other independent businessmen, each of whom achieves a certain amount of profit. If the franchisor is to effectively provide these services to the franchisee, who would reap the profit, Kirchner asks, the franchisor or the individual broker? He argues that the franchisor and not the franchisee would make the money.

The basis of Kirchner's article is that independent brokers may associate with one another on a joint basis and provide the same services at a lesser cost to each broker than would accrue by affiliating with a franchisor. Kirchner insists that the franchisee receives little more from the franchisor than better-packaged items. Kirchner's major point is that when an independent broker evaluates the alternatives available to him, he must consider that the independent broker is the key in the people-to-people business of real estate purchases and sales, and that an awareness of this fact is necessary in understanding the way in which the business functions.²³

CHAPTER 4

REAL ESTATE BOARD SURVEY

GENERAL ANALYSIS

The initial phase of the research involved mailing a questionnaire to the real estate boards within the State of California for the purpose of obtaining general information about the impact of real estate franchising. The questionnaire was sent to 174 boards; replies were received from 62 boards (a return ratio of 36%). These 62 boards have a total of 6,383 members (Question 1).

Assuming that large boards are located in large cities, the population was divided into two groups, those boards with more than 100 members and those with less than 100.

1. Seventeen boards have more than 100 members; while these boards total 27% of the return population, they contain 69% of the total number of board members. One question asked is whether there is a significant difference in franchising trends within the state based on the size of the city, using the member boards as a pseudo proxy. A comparison of the 1973 and 1975 questionnaires shows that 31% of all board members had been approached by a franchisor in 1975, 21½% in 1973.²
2. A large versus small boards analysis shows that in 1975, 20% of large board members had been approached by franchisors as com-

pared to 36% of the small boards. Thus, in 1975 expansion is being undertaken mainly in areas containing small and low population board areas. This is in contrast to the 1973 study which indicated that franchise activity was strong in large boards (30%) and relatively weak in small boards (17%). One may calculate that the franchisors have reached some level of maturity, that they now are expanding their operations throughout the state rather than concentrating on large metropolitan areas. (Question 2.1).

3. As regards franchising activity of these brokers in 1975, 7.85% of the members of large boards and 7.58% of the members of small boards affiliated with franchisors. Thus, in 1975, there was little difference between members of small and large boards in franchise activity throughout the state. In 1973, 7% of the members of large boards and 2% of the members of small boards joined. The conclusion is that while there has been little appreciable change in activity in large boards, there has been increased activity in small boards. This would also support the conclusion that franchise activity is now reasonably uniform throughout the state.

With respect to merger and franchise activity in 1975, 28% of the members of large boards and 35% of members of small boards rejected all offers. This compares with 10% and 20% rejection rates, respectively, in 1973. One consistent tendency is that a larger percentage of small boards reject franchising offers than larger boards. Also in 1975, there is a higher overall rejection rate

of franchising overtures than in 1973. (Table 1 and 2 in Appendix).

An interesting point is that in larger boards, 16% of the members have multiple office operations as compared to 30% of the members of small boards. However, there were only 1/4 as many mergers as there were franchise affiliations. (Table 1 and 2 Appendix - Question 3.2 and 3.3)

An examination of franchise activity within the boards showed that a total of 31% of all board members were approached by a franchisor, 20% of these were members of large boards, 36% in small boards. This is compared to 1973, in which 21% of all board members were approached by a franchisor; 29% of whom were members of large boards, 17% of small boards. The current trend, then, seems to be an effort by franchisors to concentrate on affiliating members of smaller boards.

A comparison of merger and franchise activity in 1975 indicates that franchising is more popular. Franchisee rejections of affiliation seem to run on the average 4 rejections for every acceptance; this is about the rate of rejection for large boards, but it rises to 5 rejections for each acceptance in small boards.

GENERAL CONCLUSIONS

Merger activity among member or non-member real estate board firms increased in importance, in contrast to 1973 figures. Franchising is becoming an important element in the market structure of the real estate industry, an importance equally apparent in both large and small communities. An alternative trend to multiple office

operation is also gaining in importance and may eventually be as important a trend as franchising.

A factor which several real estate boards believed important was the positive impact and influence of organized training programs. Such programs helped many small brokers provide a good sales training program for their sales personnel which they otherwise could not have furnished. Indirectly, the sales training programs have aided the small broker in attracting more sales personnel to his business. Several real estate boards believed that these sales and licensee training programs will help brokers provide better service to the public as well as increase the industry's professionalism.

Some real estate boards indicated that they felt that the development of franchise organizations had weakened the client-broker relationship. In many situations, they believed that the buyer and seller had less knowledge of the actual licensees primarily responsible for the transaction and that the fiduciary agency obligation seems to be less pronounced under a franchising system. The same erosion seems to have occurred in corporate chains and multiple office firms as well. This trend could be likened to getting lost in a crowd: no specific individual is responsible for the total transaction.

Specific conclusions are:

1. Franchising activity is still on the increase and more brokers are affiliating with franchise systems.
2. Franchise organizations are becoming a major market element in the competition for business.
3. Merger activities are also on the increase and may become a major factor in the future.

This concludes the analysis of the questionnaires to the real

estate boards. In the following chapter, a study will be made of the major participants in the franchise systems and what trends in franchising may develop in the future.

CHAPTER 5

INTERVIEWS

Interviews for this study were conducted during a four-month interval from July to October of 1975. These interviews were semi-structured in that the major emphasis was on developing specific category elements the participants believed important with regards to the advantages and disadvantages of a real estate franchise system. The major categorical elements were then catalogued with an eye towards developing the major points essential to an understanding of the real estate brokerage business.

The groups interviewed included real estate boards, franchisors, franchisees, and independent brokers. Several interviews were also held with executives of corporate chains so that their thoughts on the real estate industry could be compared to those people involved in real estate franchising.

FRANCHISORS - THOSE CURRENTLY IN BUSINESS

Franchisors gave many reasons for going into business; these reasons depended in large part on what time in the development of the franchise system, the franchisor organized his business. Most of the original franchisors said they started their franchise systems because they felt the independent broker needed to develop an image. Those who became franchisors after the franchise system was pioneered gave different reasons for setting up their organizations. The most

prevalent were a desire to make the industry more professional, a means of competing against chains and other franchisors, and a way of providing certain items for a lesser cost to the franchisees.

REASONS FOR DEVELOPING A FRANCHISE SYSTEM

A major reason given by the original franchisors was the element of competition. They pointed out that many small brokers were losing business to the expanding corporate chains. In addition, many brokers were expanding into multiple office operations. The corporate chains were able to compete with independent brokers because of their advertising and market identification potential. To compete with the chains, other franchisors began providing the independent broker with various services in addition to those related to market identification. Several franchisors knew that many independent brokers were not aware of modern management and business practices and saw the franchise system as a means by which these brokers could learn and then implement modern business techniques.

One franchisor attempted to set up a quality franchise system and did have some success in one part of the state for several years, but eventually disbanded his organization. The principals of this organization said they were interested in the quality rather than quantity of the franchisees: they wanted to upgrade the professionalism of members, rather than enlist as many franchisees as they possibly could. Their organizational problem was that while many brokers stated that the franchisor's objectives were good and that the proposed system was adequate, they refused to affiliate for one reason or another. Those brokers that were willing to join were not of the quality professional

status or the market factor that the franchisor desired and he eventually had to disband his franchise.

Another franchisor stated while there were many franchise operations in existence, he felt that there was still enough room in the field for his organization to become a market factor and offer yet another alternative for the independent broker.

Several franchisors stated that achievement of increased market identification was the primary motive for setting up a franchise system. They believed that most consumers think that a firm with a national identity offers products and services superior to a local concern.

The aforementioned reasons were the ones most often given by the franchisors when asked what influenced them to start up their franchise systems and then actively seek additional franchisees.

ADVANTAGES OF ASSOCIATING WITH A FRANCHISOR

The franchisors thought the franchisees benefited from affiliation for several reasons. The three most mentioned may be described as 1) market identification, 2) sales personnel recruitment assistance, and 3) management services.

Market Identification - The Image Element.

The elements of market identification are image development and advertising--each having separate subsets. The basic parameter of image development is a common name. Franchisors argue that the association of an individual broker with a nationally known franchise system provides him increased consumer identification simply because the public associates bigness with success. They also argue that a well-known name also implies professional service. This image of

business may be created through an active advertising program, utilizing the printed media, radio and television. Many of the advertisements are institutional, while others are prepared for the general market. The franchisors added that the concept of business is tempered by the fact that each broker is independent and therefore can provide local professional service to the customer. Many brokers hesitate to join a franchise system because of the normal reluctance to give up their own business names. Franchisors answer by saying that most real estate businesses operate under a fictitious name anyway and unless this name is readily identifiable outside the local market area, the independent broker has not really given up much.

Market Identification - The Advertising Element.

Franchisors state that individual brokers who affiliate with a franchise achieve volume discounts not otherwise available. A prime example is advertising; the total cost for the advertising program is reduced as is each broker's advertising budget. The franchisors say that such savings are nothing more than good business: advertising rates are normally based on the volume and duration of the advertising program and are reduced as the volume or length of the program increases. Obviously, then, there are certain cost advantages associated with a three or six month program--which could more easily be afforded in a franchise system--that are not available in a one or two week program.

Subtle advertising can be achieved through a series of planned press releases. Franchisors point out, however, that independent brokers usually have a great deal of difficulty distributing press releases. The franchisors state that the basic purpose of their

advertising programs is to increase market identification of their brokers.

Sales Personnel Recruitment.

The increased market identification that a broker obtains upon affiliation assists him in recruiting sales personnel. Prospective employees gravitate to those organizations which have strong consumer market identification. A franchisee who is affiliated with a well-known franchisor has this strong market identification and, therefore, finds it easier to recruit sales personnel. Many franchisors provide sales training programs and licensing schools to assist their franchisees in obtaining and keeping a sales personnel staff. A good sales training program is the first step in the recruitment process.

Management Services.

Another way in which the franchisor assists the independent broker is by helping manage his business. The franchisor aids in several ways, the most important of which is by providing a reference manual that guides the broker in his office and planning functions. This manual may also be considered an operation binder and is extremely helpful in solving management problems. Some franchisors have described them as "how to" reference manuals.

Many franchisors feel that most independent brokers are adequately trained to sell, but are not sufficiently trained or knowledgeable in the field of business administration, particularly in the areas of management systems, accounting, finance, and marketing. This essential information, therefore, is contained in these management service reference manuals. For this reason, many franchisors point to these

manuals as the key to the success of their franchise systems.

The franchisor may also provide marketing and sales tools as another management service. These items are something the individual broker could obtain for himself, but at a considerable expense in time. And since time is in effect money, these reference manuals provide high levels of data information input at low levels of consumed time.

A majority of the franchisors also provide professional consulting services to the independent broker; they can assist the franchisee in solving problems he may encounter in his business. The franchisors feel that a franchise system can only be as successful as their individual franchisees, so they try to assist the franchisee in every way possible.

Miscellaneous Services.

Some franchisors offer a referral system by which franchise members trade leads and listings. Franchisors believe that if the individual has had a successful property transaction with one franchisee, he would be eager to do business with another franchise office. This is the key element of a franchise referral system.

To be truly effective, the selling and purchasing brokers of a particular franchise system must interact well. In some referral systems, the interaction between the buying and the selling brokers has been good, while in others, there has been very poor internal management control.

Furnishing various types of point of sales material to the franchisee is another service provided by the franchisor. Types of point of sales material include signs, stationery letterheads, and

other such items. Common articles containing trademark, tradenames and/or logos may be acquired at a reduced cost through volume purchasing.

Franchisors may now (or quite possibly in the future) assist their franchises in such areas as title insurance, mortgage brokerage, and mortgage banking. However, in most cases, assistance in these areas is not yet that well developed.

DISADVANTAGES OF ASSOCIATING WITH A FRANCHISE.

Franchisors do not readily admit to any specific disadvantages of their system. Yet after many interviews and hours of discussion with many of them, it appears that there could be several disadvantages. A motivational impediment might cause a franchisee to negatively view the franchise concept. If this should occur, some of the advantages of associating with the franchise may become expensive disadvantages to the franchisee.

Resource Availability.

Franchisors believe that a franchise system would be disadvantageous to any franchisee who did not make use of the available resource material. They feel that to be successful the franchisee must become actively involved in the managerial, marketing, and advertising programs and seminars set up specifically for his benefit. If such resources are not adequately utilized, then the attendant costs may in fact be a financial burden to the franchisee. However, franchisors say that the benefits that accrue to the franchisee from the use of a well-known tradename outweigh any disadvantage caused by failure to use these programs. In other words, the franchisors believe that just

their name alone will bring to the franchisee a certain amount of drop-in or walk-in trade. In many of these situations, however, the broker will not attribute such trade to affiliation with the franchise. Association during system start up.

Several franchisors have indicated that there may be some disadvantages to associating with a franchise system during the initial stages of its development. Because of the heavy expense involved in setting up a large program, franchisors may, during the system's start up, accept brokers they otherwise wouldn't have considered for affiliation. Such brokers may have poor customer service records or may be less than enthusiastic about franchising and their activities may indirectly taint the other franchise brokers. Many franchisors believe that if the individual broker is not 100% committed to the concept of the franchise system, he may perform his services inadequately and could, therefore, give other excellent brokers in the system a bad name. Most franchisors have not developed an adequate methodology to alleviate this performance problem.

Costs.

One franchisor indicated that the 6% override is a rather heavy cost, particularly for a successful broker who has devoted so much time to the franchise system. Such brokers may be permanently locked into the franchise system; they could not leave the system and once again become independent without incurring heavy financial costs. Once the broker has become associated with the franchisor, it may be difficult or impossible to successfully return to an independent status.

Referrals.

Several franchisors noted that there are problems with respect to

customer office calls. Specifically, consumers do not usually differentiate between individual franchise offices. This has lead to tension among offices when there should be better interoffice communication between individual franchisees in large market areas. Several franchisors have attempted to correct this problem by providing large market areas for each franchisee, thereby reducing overlap among brokers. This is the only method franchisors have found which is effective with respect to the problem of the customer incorrectly reading the signs placed on properties.

Franchisors strongly believe that the many advantages associated with a franchise far outweigh the possible disadvantages.

INVITATION FOR NEW FRANCHISES.

Franchisors obtain new members primarily through mass mailing techniques (saturation mailing and specific mailing). Saturation mailing is used primarily by franchisors when they are entering a new market area. The franchisor uses this method when he does not have a strong market name or identity and thus has to solicit all brokers within a market area in order to enlist members. Specific mailing is utilized by franchisors with a known tradename, track record, or sufficient time to carefully consider prospects. In this case, the franchisor normally develops a regional organization to solicit new franchisees. According to this methodology, only successful brokers within an area are normally solicited. These franchisors believe that saturation mailing is a marketing error in that it engenders much negativism.

Those brokers who expressed an interest in affiliating after the

mailing were asked to a meeting at which the franchisor explained the advantages of affiliation. Response to these meetings was generally quite good; however, several franchisors mentioned that while many brokers stated that the presentations were good and that they would like to join, they preferred not to join for various reasons.

Another methodology used by franchisors to obtain new members was exactly the reverse: let the brokers come to them. Those franchisors with either a well-known name earned from previous business activities or a reputation for excellence within the real estate industry found that independent brokers would ask to join their system. If a broker had a successful business, other brokers, desirous of being as prosperous, wanted to become part of his organization. In these cases, the franchisor had the best possible development program: he would select his franchisees from among the interested parties.

Some franchise systems obtain new members through current members who often provide from fifty to one hundred percent of the leads for new members. Many times, brokers who had been successful as part of a franchise brought their business associates into the system.

SELECTION PROCESS.

The process by which the franchisor evaluated potential franchisees depended upon the state of his business. Franchisors just entering the business needed brokers and often very little discriminatory judgment was made to separate acceptable from marginal brokers. The key factor was the franchisor's need to obtain many offices; the more outlets he had, the easier it was to give the public the impression his organization was big and successful.

Business ethics and standards have now become more important considerations to a franchisor who is evaluating a potential franchisee. Franchisors believe that since there must be a considerable amount of interoffice communications between franchisees with respect to referrals and the listing of properties, a desire or a willingness to cooperate with others on the part of each franchisee is a critical element in the system's success.

Several franchisors indicated that they would not accept a newly licensed broker into the system, preferring to enlist brokers with a going concern. Such franchisors wanted to avoid the problems associated with the opening of a new office and did not want to provide the management and training required to make the system successful. One franchisor said that the idea of screening potential franchisees had merit, but he wondered if such action was legal. Since all real estate brokers were licensed by the State, he didn't see how any business organization could presuppose that brokers were not qualified to perform their legally required services. This franchisor believed the industry would be involved in considerable legal entanglements over this question.

Performance Standards.

Franchisors indicated that there were several criteria that had to be fulfilled by the potential franchisee. First and most obvious, the franchisee had to be a licensed real estate broker. However, there appears to be very little consistency among the franchisors as to what performance standards had to be met. Several of the different standards mentioned will be discussed in the following paragraphs.

Success.

Several franchisors stated that they were looking for individuals who considered the real estate brokerage business to be a profession rather than a job; the distinction being that a broker who put an emphasis on professionalism possessed an entirely different business outlook from that broker who felt that the real estate business was just a job.

Business Record.

A good business record was deemed essential. Undesirable were potential franchisees who had had problems with other brokers. Several franchisors indicated that they normally required the potential franchisee to provide the names of 10 or 20 of his previous closings so that they could be adjudged as to the level of performance. A good business record was considered necessary because other members of the franchise organization would have to transact with the new member. And once the broker acquired use of the franchisor's name, all of the franchisees would be praised or hurt by his performance. They were professional associates and wished only to associate with another professional.

Capital Requirements.

Most franchisors do not have any minimum capital requirements. Those franchisors who accepted newly licensed real estate brokers as franchisees, particularly those without an existing office, usually evaluated the new franchisee's capital requirements in terms of funds needed to secure an office and the amount of funds remaining after the initial start up costs. Other franchisors believed that by accepting

only brokers who already had offices, they keep the capital requirements at a relatively insignificant amount--if the funds used in acquiring the franchise weren't considered.

Credit Check.

Most franchisors ran a credit check on the potential franchisee to see whether he had any financial problems. They wanted to make sure that no new franchisee had a financial problem that could become a liability to the other franchisees.

Psychological Profile.

Many franchisors felt it necessary to obtain a psychological profile of potential franchisees. Most were looking for a broker whose psychological profile indicated a strong will to succeed, since successful franchise operation was based on the individuals associated with the system and only those with an inherent desire to succeed could make the franchise system successful. One franchisor said, however, that he looked for brokers whose professional profile indicated they were 'builders.' This franchisor said that the most successful offices within his system were organized by people who had been classified as 'builders.'

FEES AND TERRITORY.

Fees received by franchisors may be divided into two categories, the initial franchise fee and a continuing royalty or override. There are several factors a franchisor considers when setting the initial franchise fee. Several franchisors utilized the franchise fee as a means to allot territory. This territory was based either on land area or on population.

Several franchisors indicated that the initial franchise fee was purposely set low to attract new brokers into the organization and that the low franchise fee was often insufficient to pay out of pocket expenses. However, after such expenses had been paid, any additional amount collected would be considered to be a fair fee for territory in which there were no others of the franchisor's office. While the territory allocation limited location of offices, there was no restriction on actual market areas; since such restrictions would be anti-competitive, franchisors could not restrict duly licensed brokers from performing anywhere that their license was valid. Other franchisors indicated that their fees had no relationship to the franchisee's particular market area.

Territorial areas were apportioned in several different ways. Some franchisors based territory on population; the franchisee normally paid a fee per 100 or 1,000 population. The more population he wanted to service, the higher his fee was. Another franchisor believed that there should be one office per 15,000, 20,000, or 25,000 population. This franchisor simply looked at a large territory and determined that there would be so many franchisees in that territory and then proceeded to sell the franchises until he reached that number. Several franchisors indicated that they had certain territory limits with respect to where franchisees could locate an office. These territorial limits were established to prevent too many franchisees from being located in one area; this office separation usually ranged from 1/4 mile to 1 mile.

Several franchisors believed that success was based on complete market saturation, and, therefore, sold franchisees until they felt

the market was effectively saturated. However, these franchisors had no objective or subjective standards by which to determine when this saturation occurred. Most decisions of this type tended to be of the subjective variety. Other franchisors believed that achieving the opposite result was important; that is, they wanted to prevent market saturation, and therefore, controlled the number of franchises that were sold within a particular territory.

Use of the Initial Franchise Fee.

Most franchisors stated that the initial franchise fee was levied to recoup money for services rendered, specifically, the initial costs of setting up the organization and providing the franchisee with certain amounts of promotional material. Most franchisors indicated that the initial franchise fee was not utilized to acquire additional capital, but to cover the initial operating costs in the business.

Organizational Structure.

Most franchise systems were organized in one of two ways, as a rather specific franchisor-franchisee organization, or as a more diffuse line structure consisting of the franchisor, regional franchisor, and franchisee.

The major principle in the franchisor-franchisee operation is that the franchisee specifically contracts with the franchisor for the exclusive use of the franchise. Within this relationship, there may be national, regional, or local councils which are responsible for performing some functions relating to marketing or advertising programs.

The other option, the franchisor-regional franchisor-franchisee structure is much more complex. It is predicated on the idea that the

franchisor could not effectively control a large national system and in order to maintain reasonable managerial lines of control, should sell or relinquish territories to regional franchisors. The regional franchisor then acquires legal possession of the trademark and other system programs, and in turn sells the franchises to interested brokers.

National, regional and local councils may be organized if the franchisor believes that they would be the best way of integrating the decision-making process. The major factor in developing a national franchise organization is the type of managerial structure chosen; franchisors must determine from among different organizational structures which will be the most efficient and effective for the type of control desired.

ADDITIONAL SERVICES.

The various types of services provided by the franchisor to the franchisee often depend upon the genesis of the individual franchise. Some franchise organizations that developed from existing corporate structures provide more services than the franchise system that started from scratch. Several additional services that may be available to franchisees include assistance in such areas as mortgage banking, termite inspection, and escrows, as well as the opportunity to use an established in-house referral system. In addition to these specific customer related supplemental services, a majority of the franchise organizations provide some management guidance, educational development opportunities, and assorted accounting, bookkeeping and printing services.

A factor which most franchisors seldom discuss is the question of stock ownership in their corporations. There are only a few organiza-

tions that allow franchisee ownership of parent company stock. Usually there appears to be a general decision by the original franchisor to restrict stock ownership and there does not seem to be any tendency to increase the distribution of such stock.

This in effect concludes the general analysis of the franchisor and his impressions of and impact on the franchise real estate industry. The basic idea appears to be that most franchisors entered into the business with the intent of increasing the individual broker's market identification--the purpose being to increase the small independent broker's visibility to the point where he can successfully compete with the large chain organizations. While the individual franchisor believes that he does offer a package of goods to the franchisee, franchising has by no means completely transformed the industry. Many successful independent brokers have been approached and declined affiliation with the franchisor. Their comments on and assessment of the competitive market situation will be discussed in the following section.

INDEPENDENT BROKERS
WHO DECLINED TO ASSOCIATE WITH A
FRANCHISE SYSTEM

The independent broker who is disinclined towards associating with a franchise system provides an alternative viewpoint of franchising. A majority of the independent brokers who declined to affiliate with a franchise system gave four major reasons for their decision.

DISADVANTAGES OF JOINING

Name Change.

Because of their long tenure in the business, many brokers felt

that the major disadvantage in affiliating with a real estate franchise was that they would have to relinquish their business name. These brokers believed that the surrender of what they considered to be a successful business name would precipitate economic disaster. They felt that the reputation they built up under their present name would be all but destroyed if they were to acquire a new name. Several brokers stated that many consumers were under the impression that a successful broker had sold out or otherwise left the business when in fact he had only changed his name. Many brokers, aware of this response to brokers who had joined a franchise system by some of the public, felt that their own business name and community reputation was too important a market tool to relinquish for a franchise name.

Royalties or override fees.

Another reason given for not affiliating was royalty or override fees. One successful broker said that paying the royalty fee asked of him was equivalent to losing \$25,000 in commissions. Another indicated that the royalty fee was so large that it could not be offset by profits he could derive from using the franchise referral system. Another broker stated that he would have to double his business volume to justify the royalty fee.

Initial fees.

Another disadvantage often cited was the initial cost involved in affiliating. Several brokers had multiple office operations at the time they had been approached by the franchisor, and they felt that the cost involved in affiliating three, four, five or more offices was excessive. Other brokers with multiple office operations believed that what the franchisor was offering could be done in-house.

Miscellaneous.

Some brokers also felt that they would have no choice in the selection of business associates, especially in cases where franchisors were interested in the quantity rather than the quality of franchisees. Because many franchisors thought it necessary to enlist to a large number of franchisees, the brokers said there was little or no screening of potential franchisees. And many existing franchisees believed that there was no means by which they could evaluate potential franchisees. They were fearful that "one bad apple might spoil the barrel." Since their professional reputation was on the line, they felt strongly that an adequate screening process of potential business associates should be implemented. Many brokers believe that franchisors who try for a "body count" usually experience a tremendous turnover of offices. In addition, several of the brokers believed that there was also an excessively high turnover of sales personnel. They added that they felt there were too many part-timers in the business which degraded the level of professional standards and service within the industry. Several independent brokers believed that many of their competitors had for one reason or another affiliated with a franchise organization in order to obtain a new name. However, many brokers questioned the referral system much more than the change of names. How could one continue to have a good referral business if there was not one office with a particular business name, but several? How would his satisfied customers find him again? Because of this presumption of traffic generation, the brokers believed that there was no need for signs, cards, or the other amenities which franchisors said franchisees needed to run a successful

business. Several brokers stated that they believed many of their customers came to see them specifically because they were small businessmen and therefore able to give them a high level of personal and professional service. Some brokers indicated that they operated from a small office, and they were going to continue to do so--they said they did not need the big image associated with a franchise.

When franchisees began proliferating within an area, some brokers found that the customer was unable to differentiate between the individual brokers of a particular franchise. Several brokers told of cases in which the customer called the wrong franchise office whose personnel were unable to help the caller locate the correct office. The bad feelings generated by such incidents badly tarnished the franchise's good image.

The most critical person in any franchisee's office is the salesperson--and nothing can replace the good salesperson. Without adequate professional sales personnel, no broker firm could be successful. Several brokers stated that they did not believe that there was any need to pay an outside organization to recruit sales personnel when they were just as able to recruit their own. After all, they argued, hiring decisions must be based on a person-to-person contact; the broker himself has the final obligation to choose his own professional staff. A number of independent brokers had heard rumors that several of the franchisors had been unable to adequately fulfill their education element of their contracts. In addition, some questioned the level of competence of the sales training programs developed by the franchisors, and several even suggested that sales and license training be done by

professional schools or professional educators in a college or university.

For a brokerage firm to be successful, the owner eventually must become a manager--which means that individual must give up selling. Due to the high ego status of many of the individuals within the business, the broker then must decide when to give up selling and become a full-time business administrator. His judgment will sometimes affect the ultimate success of a franchisee.

ADVANTAGES OF JOINING

While many of the independent brokers believed that there was no inherent advantage to joining a franchise and therefore did not, they nevertheless accepted the basic premise of the franchisor that the image of bigness would benefit their business. Several believed that if they were just starting out in the business and therefore had no previous market identity, affiliating with a franchisor would definitely assist them in becoming known to the public.

Affiliating with a franchisor who is able to provide an adequate sales and licensee training program would be beneficial since training groups is cheaper than training individuals. An effective training program would assure the broker of receiving a steady stream of new licensees.

One benefit of affiliation would be the constant prodding for performance which would have kept them on their toes. Individuals would then be kept abreast of the latest news in the real estate industry and things could be done on a more current basis. Also to be considered is the element of comradeship among affiliated brokers; they would be able to provide moral support to one another.

Some brokers had indicated that a referral system was a good idea, but it was not critical for a successful business operation. Several brokers indicated that referral systems--particularly those on a national basis--left something to be desired.

COMPARISON OF SUCCESS-FAILURE RATE.

A majority of independent brokers who did not affiliate believed that there was no significant difference between the success and failure rates of independent brokers and franchisees.

This conclusion seemed logical since the successful broker would very probably be a success either as an independent broker or as a franchisee. The critical element of success is perseverance, whether or not one affiliates.

A large number of brokers leave the business each year because of a high rate of incompetence within the industry; up to now franchise organizations have been no more successful in eliminating incompetent brokers than have industry regulators. For the marginal or status quo broker, affiliation with a franchise may be the stimulus necessary to make him successful. He may very well receive a psychological lift by associating with other more successful brokers. Also, the franchisor can assist the marginal broker upgrade his operation by providing numerous managerial and business opportunities. Yet, the independent broker will not find something in a franchise system that is not available.

A problem might exist in cases where the broker is so successful he could not sell his franchise--especially when the success is based on effort rather than the tradename. In effect, there would be nothing to sell. This might lead to a franchise problem and the

disbanding of the franchise system as brokers attempt to leave the business. It is currently a seller's market: the demand for franchisees exceeds the supply. Now, everyone is able to get the franchise name he desires; however, the future might be altogether different, particularly if a market develops in which brokers attempt to sell their business and can't.

CHANGES ANTICIPATED.

Affiliation with a franchisor normally helps a broker achieve stronger control of his business organization because it would be better managed, but association would also lead to more meetings. What would happen if no new trainees were forthcoming from a franchisor's training program and a broker's own established professional sales staff decided to leave? Without their own business name, many brokers did not see how they could recruit. Would they lose their community or local identification?

MEASURES OF SUCCESS.

When the question was asked whether success was measured by market share or profits (net income), the answer was not clear-cut. Within the industry, success has been equated with market share; but many brokers believed that profit or net income from the business was a better indication of prosperity. Other parameters mentioned were the number of successful real estate transactions closed and an evaluation of the quality of service provided to the customer.

In general, the major reason given by brokers for not joining a franchise is that they would have to relinquish the current name of their business; the next most cited factor for not affiliating is the cost involved. Yielding to some market factors joining a franchise

in certain market areas would be of value because of the increased customer identification and a fast build-up of potential clients that would be generated. The viewpoint of those who have joined will now be considered as an alternative to those who have declined to join in order to determine any similarities in thought.

INDEPENDENT BROKERS
WHO
ACCEPTED A FRANCHISE

Independent brokers who affiliated with a franchise believed that there were several business advantages inherent in such association. Brokers interested in franchising may choose from between two groups of franchise systems that seem to have developed in the industry. One group may be described as the original franchisors, those persons who were first to offer a competitive vehicle for the broker. The second group, developed as a competitive reaction to the original franchise organization, is a series of associations and coops, comprised of brokers who believed that the initial cost and the royalty fees of franchise systems were excessive, and that the same benefits could be obtained by utilizing some other type of market association. In all situations, the brokers created or joined these franchise organizations to achieve a stronger market identification.

ADVANTAGES OF JOINING

Obtaining a readily identifiable tradename and trademark is considered the basic purpose of joining. The desirability of having a strong market image is necessary because most American consumers feel more comfortable doing business with large, well-known firms. Since the public prefers to transact business with large organizations--

equating size with success--the independent businessman finds his one or two office operation can't successfully compete in the market. A majority of brokers who associated with a franchise organization believed that this was the only viable alternative to going out of business or working for a real estate chain. The umbrella effect of the franchisor's name would confer a strong image upon the independent broker.

Image and advertising.

In addition to the image factor, name recognition was also important; the acceptance by the public of the franchise name as that of a large business organization was the goal. This could be obtained if many offices with the same name operated throughout a particular market area. Because of the transient character of the American public, the need for area or regional identification is important, particularly in large market areas. Within California, these market areas are the Southern California area, extending from the Los Angeles Basin to the San Diego area, and the San Francisco Bay Area, running from San Francisco to Sacramento and San Jose. Because of the importance of name recognition and the increased competition from other large firms, especially the corporate chains and other franchise organizations, the necessity for strong regional and national identification or name recognition has become critical. Because of the consumer's tendency to deal with large nationally known firms or brand names, the small independent broker with an unknown business name in a large market is at a distinct competitive disadvantage.

Affiliation of many brokers with franchisees does not constitute acceptance of the franchise concept only the competitive response taken

because of what many brokers believe is a misconception or misinformed public to the effect or importance of a national brandname with respect to services. Many believe that the American public is hooked on the image of bigness--which in many cases does not equate with good products and services. To some, success can be achieved by doing nothing more than joining a multiple listing service which provides the necessary inventory--a service generally adequately provided by local real estate boards.

Access to a strong advertising program is considered a major reason for joining a franchise. This advertising program is normally carried out at national, regional and local levels.

A local market broker does not have sufficient capital to initiate a national advertising campaign yet by affiliating with a franchise system along with hundreds or thousands of brokers throughout the country, he can reap the benefits of that system's institutional type advertising on national television, radio, and billboards. To be successful, this type of program must be carried out professionally--through budgets and multiple office operations. Institutional type advertising basically promotes name identification. Some regional and most local advertising programs provide each broker with a program that identifies his particular office--usually through newspaper advertisements. Newspaper advertising is expensive, but a franchisee receives volume discounts because he belongs to a big system with tremendous buying power. The franchise organization usually reserves preferential locations in a newspaper, in order to effect more rapid customer identification of its name.

While many franchisees have accepted the premise that a strong national advertising program is necessary to create a good image, they also believe that the assessment levied by the franchisor--4 to 6 percent of the franchisee's gross--to implement the program is excessive. Some franchises argue that they could initiate a program which would just as effectively promote their image if they were allowed to spend this percentage of their gross on an advertising program--but most admitted they would not willingly invest that much money on an advertising program.

A large advertising program creates one of the most important institutional marketing advantages of the franchise: increased market power. Many franchisees believe that effective use of signs advertising listed property is an effective supplement to newspaper advertising in achieving a strong market impact. After joining the franchise, many brokers believe that the spillover effect of the advertising program has significantly increased their walk-in trade.

Join a successful organization.

The marketing impact of the franchise system has not been lost on the independent broker. At first, the initial franchisors had to utilize hard-sell tactics in order to recruit franchisees. Since the franchise concept has been widely accepted, many brokers have voluntarily tried to join a franchise. However, success of the concept has raised the initial entry fee and royalty override--sometimes to such excessive amounts that the franchise system, broker association, or broker cooperative was wrecked. Many brokers who have joined these competing organizations did so for the marketing advantages they would

realize at a reduced cost. Many of the brokers who have joined newer franchises believe that professionalization of the industry is a must-- a concept that they feel the original franchise organizations did not emphasize. Affiliation with a franchise has been beneficial to many brokers because of the increase in customer awareness of their services, but success can only be achieved when customers are adequately serviced --which means the salespersons must spend a good portion of their time out in the field, not in the office. However, because of the increased drop-in or non-solicited trade generated by the advertising program, many sales personnel are becoming extremely sloppy and lazy in their work.

Referral Systems.

Since we are a very mobile society, the broker has a much greater chance of being successful if he affiliates with an organization that has a good referral system. Success of a referral system depends on the quality of the broker contact at each end, and by joining a franchise system, excellent contacts are made available.

While many brokers believed that the referral system was important, they also believed that their own franchisor's referral system was not sufficiently operational or structurally adequate to provide the desired level of service needed by the customers.

OTHER LESS IMPORTANT REASONS FOR JOINING.

Since the real estate fraternity is basically a gregarious organization, friendships influence many decision. Some brokers felt that if a friend affiliated they may as well join.

Some joined because they felt their small operation's chance of

succeeding against the chains or other franchise operations was practically nil and that they must give up their complete independence and affiliate with a franchise to stay in business.

Several brokers stated that they joined competing second or third tier organizations because of the low fees charged. In this case, the realization of reduced overhead made possible through volume purchasing was especially important.

Some joined specific franchise organizations because they felt such operations had reasonably good screening criteria. While many of the independent brokers felt that it was important to join a franchise, they believed that it was also important to join a franchise that provided the independent brokers with some means of effectively reviewing the business worthiness of a potential franchisee.

Tools for growth.

A broker stated that given enough time, he could probably put together a business and market organization package similar to the franchise system's package; however, he said it would cost a lot less time, money and effort to join a franchise.

Better showmanship than other competing organizations.

The excitement of becoming involved with a new concept like franchising was important to many brokers who affiliated.

One broker indicated that he joined a particular franchise because it offered him a much larger market area than other franchisors. The exclusive areas in question had nothing to do with non-competitive factors, but instead, were related to market size in terms of square miles and population.

In reviewing all of the comments made by independent brokers who have associated with a franchise, the major factor in deciding to affiliate was market identity. Many brokers do not understand marketing concepts and the procedures necessary to create a successful market identity. Realizing that he is being involuntarily forced into competition against corporate real estate chains with multiple offices, the independent broker begins looking for a way to compete against the chains and other franchise organizations: joining a franchise system is a viable method for many. Yet, all franchisees are not completely satisfied with their association. They have numerous complaints which they believe must be corrected if their organizations are to be more effective.

DISADVANTAGES OF JOINING.

Even though many brokers felt their franchise was the best in the business and had no qualms about joining, others evaluated the risk-reward equation and, though finding some disadvantages, felt that they were outweighed by the rewards. They affiliated only after thoroughly analyzing the market environment.

Costs.

Many franchisees questioned the amount of the initial fees. They were unsure whether their return was worth their cash outlay. Though some franchisor's fees went down, others increased, causing brokers to wonder whether their fees were used to pay for services rendered or to provide capital for the franchisor.

Most brokers felt the initial fee was justified in that they were paying for the use of the franchisor's name, but they questioned the

amount of 6% charged for the advertising program: they felt the program was necessary, but they thought the cost was unreasonable.

Another mentioned that the costs of expansion were excessive because of the high franchise and royalty fees required for the establishment of each office. Although a broker could gain a foothold in the market by expanding, this expansion was often precluded by the high costs of opening another office.

Identity Loss.

Several brokers believed that the disadvantages stemming from the loss of their market name (DBA - doing business as) were critical and they evaluated the different franchises based on how much name loss would occur. They grouped these franchises into: 1) those in which there was a 100% loss of previous name, 2) those which involved approximately a 75% loss, and 3) those where a 50% loss occurred. Brokers believed that the disadvantages of losing their market identity outweighed the advantages of a new franchise name and selected their franchise accordingly.

In addition to losing an established business name, there was the additional problem of receiving a bad name because of incompetent or poor service provided by another franchisee. While all franchisees worked to increase the market stature of their franchise, one broker, who operated unethically or unprofessionally, could, in effect, destroy the market name of all. For this reason, many brokers stressed the importance of having the right to review and interview potential franchisees; by having some right of refusal of association, it was possible to avoid affiliation with those brokers who they felt had low

professional standards.

Bookkeeping Requirements.

Excessive bookkeeping requirements were considered a nuisance by some franchisees. While they accepted as a legitimate requirement the franchisors desire to have an adequate bookkeeping system in order to obtain his royalty fee, they considered some bookkeeping requirements absolutely ridiculous from a business practices viewpoint. Some questioned the franchisor's true intent when they heard rumors that they would be required to adopt a bookkeeping system created by the franchisor, one which he developed without even consulting his franchisees. Their major gripe was that there was inadequate communications between the franchisor and the franchisee with respect to the development and purpose of this new system.

Agreeing on Actions.

Several franchisees mentioned the difficulty of attempting to get 50 people to agree on anything--particularly with respect to developing institutional market strategies. Many brokers found that meetings called to develop such strategies were often chaotic and unproductive and wondered whether the benefit derived was worth the trouble of these meetings.

FRANCHISE STRUCTURE.

Success of many franchise systems depends on the ability of district managers, a fact which many franchisees agreed was a disadvantage of affiliating. In fact, many franchisors felt that the major disadvantage of franchising was that the success of the system was based on the district director rather than the franchisor. Several brokers believed

that the corporate structure of many franchisors was similar to the structure of the California Association of Realtors or of the local boards. If a franchise is to be successful, the area director must police his districts to prevent infractions. If he fails to do this adequately, the advantages of affiliating with a franchise are negated. Poor management by the franchisor is a major problem, especially if he does not have sufficient capital to implement his marketing objectives and acquire the additional brokers necessary for completing his franchise system. Many franchisees believe that they have been given insufficient information or misled as to the capital sufficiency of the franchisor, especially when contractual obligations had not been fulfilled.

Tangentially, many franchisees felt that franchisors had not adequately met contract terms. Yet, these franchisees admitted that there was a difference of opinion between them and the franchisors as to the obligations each had as specified by their contracts. Some franchisees stated that the performance level of their franchisors was significantly below what they had expected. This variance seemed to be the result of an inability to effectively define performance standards required of the franchisor. Another problem was that many franchisees believed that they should have had the option of rejecting the franchisor's training programs if they felt such programs were costly, inefficient and ineffective. Franchisees complained that in some cases training programs were operated 25 or more miles away from their office.

On joining a franchise system, a franchisee must make a very

difficult decision: whether to continue selling or to become a manager. Many believed that joining a franchise system would require them to do less selling and more administrative office work. Also many franchisees pointed out that the franchisor's training school was sending them a steady stream of new licensees when they really needed experienced personnel to provide good professional service to the public.

These comments by franchisees suggest that there are some minimum service performance standards that must be met by the franchisor to have continued success in the business.

CHANGES THAT HAVE OCCURRED ON AFFILIATION

In addition to professing a certain amount of dissatisfaction with performances by franchisors, many franchisees experienced some changes in their operations after affiliation--several of which will now be considered.

Office Procedures.

One of the most important changes wrought by affiliation has been the implementation of more bookkeeping and accounting systems. Some franchisees believed this an unnecessary burden, while others felt that implementation of these new systems made their businesses better.

Some franchisees indicated that they did not change their bookkeeping and accounting system because they believed it already efficient and effective. Some offices believed that they were helped by using supplemental management tools provided by the franchisor.

Sales Personnel.

The ability to attract sales personnel increased significantly, especially since sales personnel are attracted to a big name with a

strong market image. Thus, affiliation was a tremendous influence in obtaining additional sales personnel. One broker mentioned that he'd never had a waiting list of sales personnel to join his organization before affiliating. Yet there was one drawback. Many of the sales personnel were so poorly motivated, for one reason or another, that they expected customers to come to them rather than vice-versa.

The training programs provided by the franchisor or regional council were very effective marketing devices for attracting sales personnel. However, while such programs were successful, the franchisee's retention rate of personnel from these programs was no better than an independent broker's retention rate of people who did not come from training programs. Since the matter of whether a salesperson remains employed depends almost solely on whether he and the broker can interact effectively, affiliation did not influence the retention rate. Some brokers believed that certain salespeople used the franchise name as a crutch. One broker indicated that the key to success was neither the sales training program nor the well-known tradename, but whether a broker could find and keep sales personnel who could average a minimum of two sales per month.

Changes in Net Income.

Changes in net income after affiliation has been poorly measured by these franchisees. Several believed that their net income had increased significantly, while others stated that gross income went up strongly, but costs rose proportionately resulting in no net change in income. One problem was that many sales personnel did not aggressively solicit business after affiliating because they believed that the

franchisor's advertising would bring in more than enough customers. Consequently, though they increased their sales, the increase was not sufficiently large enough to offset the costs of affiliating. A substantial increase in sales volume is necessary to cover the high front end costs and royalty fee the broker must pay to affiliate. Several brokers mentioned that they realized increased profits in the years following affiliation, but they were unable to pinpoint the reasons; that is, they did not know whether to attribute the increase in net income to their affiliation with a franchise, or to the advent of a strong market. One broker found out that his ad budget had increased 300% upon affiliating and was not sure whether this additional outlay had generated that much more income.

Control by Franchisor.

A majority of new franchisees have indicated that there was no measurable level of control by the franchisors over their organization. However, several stated that the franchisor controlled some minor areas, which were important but not significant. There was no specific franchisor management control, but there was some area or regional council control. Because they had affiliated with a franchise, these brokers were expected to participate in regional area councils which did have a certain level of ad expenditure control. When a broker was independent and his business volume was poor, he could cut back substantially in certain areas. However, upon joining a franchise system, many brokers felt they were locked into certain budgets and had no way of reducing costs. For example, since the local council normally controlled the advertising budget, there was no way that advertising could be cut

back without obtaining its approval. One specifically distasteful fact to many brokers was that upon joining a franchise, they were required to contribute for advertising, even though they had no specific veto power to prevent such contributions.

Other than being forced to contribute to the advertising council budget, most franchisees believed that the franchisor could not compel them to do anything. While there was no specific control by franchisors at this time, there have been rumors that some franchisees were going to be required to implement an unwanted accounting system. The general feeling among brokers was that the accounting system has been dumped on the franchisor and he was going to dump the system on the franchisee. Whether or not such rumors were true, they created a negative attitude among many franchisees. Several brokers believed that the monthly council meetings were an indirect form of control, even though these meetings were usually worthwhile because they provided a chance to meet people in the franchise. However, other brokers stated that they would prefer to exchange ideas with people in competing business organizations--that is, other competing franchisees or chain operators.

Success-Failure Rate.

Most franchisees believed that there was literally no difference between the success or failure rates of independent brokers and franchisees. Several franchisees indicated, however, that marginally successful brokers might be a bit more successful if they affiliated, because they would benefit by the group association and common assistance. The institutional marketing would also provide additional business. Several franchisees believed that most brokers who affiliated

when franchising was a new concept did reasonably well, but they wondered if such success would be possible now. In any case, it was almost unanimously agreed that franchisees were doing much better business than small brokers, corporations or large independent multi-office firms. A self-screening process was evident in that many of the early franchisees were already successful, the resulting franchise organizations would tend to be more successful.

In addition, many offices have changed hands once or more since affiliation, but such turnovers aren't general knowledge because there has been no visible name change. Several franchisees stated that the franchisor filled a marketing void. Many successful independent brokers spurned the franchise system, but have continued to grow and prosper. Marginally successful brokers do better during adverse economic conditions simply because the franchisor provides them with the assistance needed to keep afloat. A major shakeout will occur during a period of stormy economic weather. Since practically anyone can be successful during boom periods, the success of a broker should be measured during a bust phase of the real estate market. Franchisors do not seem to consider length of time a factor when screening potential franchisees, because new franchisees have been in business anywhere from one to thirty years before affiliating.

Several franchisees have been in business for many years before affiliating, but never as brokers in charge of their own offices. These new franchisees said that without the image provided by the franchise name, they could not have successfully started a real estate business. In reviewing the success or failure rates of franchisees,

one must also consider how success is actually measured.

Measures of success.

The previous group of franchisees measured success by net income (profit), market share or a combination of the two. There was no clear cut choice among the franchisees as to which of the three alternatives was the best measure of success. Market share was mentioned more often than profit, which was mentioned many times more than the combination of the two, yet each alternative was mentioned approximately 1/3 of the time. While the share of the market was considered by most brokers as an important index of success, they agreed that if adequate cost control did not accompany market share, reasonable profits would not follow. It was also agreed success was usually achieved when adequate service was provided to the customer. Also, long-term success seemed to be related to the implementation of a specific financial plan; by using such a plan, the broker could determine a specific market from which reasonably good earnings could accrue if service was stressed. If the emphasis was placed on earnings, the importance of providing services was subordinated and the bottom line suffered accordingly. Before success can be measured, specific goals have to be defined, of course; once the broker decides how much money he wants to make, he can start determining the market share he needs to earn that desired share of income.

Trends in the Industry.

A majority of franchisees believed that the emphasis on professionalism would lead to a reduction in the number of part-time personnel in the industry. Small firms would be especially hurt by this trend

since they utilize most of the part-timers.

The small independent real estate broker would effectively be squeezed out of the business due to this competition from both the real estate corporations and other franchises.

The present problem of classifying real estate salespersonnel as employees or independent contractors will eventually be settled through the implementation of various employer/employee regulations and the changing of the tax code--the trend is to have employees on a fixed salary plus commission. Because it is much more expensive to maintain a salesperson as an employee than on an independent contract basis, a complete reorganization and restructuring of the industry will occur. The net effect of these changes will be a drastic reduction in the number of firms in the business.

FRANCHISEES

THOSE WHO HAVE GIVEN UP THEIR FRANCHISE

Numerous factors have influenced many brokers to relinquish their franchise and return to an independent status. During discussions with several ex-franchisees, they gave numerous reasons for disaffiliating, but each believed that there were certain inherent advantages in associating with a franchise system.

WHY LEAVE.

There was no discernible pattern among the many reasons given for disaffiliating because the franchisees, for the most part, left under different circumstances. One factor mentioned often as a major influence was the failure of a franchisor to keep his promise. A number of brokers said that there may have been a misunderstanding as

to the obligation of each party according to the contract, but that, in any case, they felt that, generally, the franchisor was not fulfilling his promises.

Another factor often cited was the failure of the franchisees to cooperate among themselves. Ex-franchisees mentioned that there was a significant amount of competition between the offices; personal rivalries took precedence over assisting one another in trying to service the customer. Some brokers said that they felt their franchisors were interested in quantity rather than quality of franchisees. Several ex-franchisees pointed to a lack of professionalism within their systems. They thought the problem lay in training programs, which they said helped the new sales personnel, but by no means rendered them professionals.

The fees charged by the franchisor posed problems for several of the ex-franchisees. One mentioned that he was forced to pay a minimum royalty fee each quarter, regardless of the volume he produced. He thought such a fee was oppressive, because even though in some periods his sales volume was very good and the royalty fee equitable, other times his volume was not even sufficient to cover the minimum royalty. This broker added that he believed that these fees were collected more as a means of obtaining additional front money for the franchisor than as a payment for use of tradename trademark licenses.

One broker said that he had joined the franchise system out of fear that this was the only way he could stay in business. Once he discovered that his fears were unfounded, he simply gave up his franchise and returned to an independent status.

ADVANTAGES.

While the franchisees who disaffiliated cited numerous reasons for leaving, they all agreed that the advertising and the image provided by the franchise system was superior. They all benefited from the institutional advertising which was repetitive enough that it ingrained the franchisor's name in many customers' minds.

Disadvantages of Association.

A majority of those who relinquished their franchise indicated that the fees they had to pay were the primary cause of their disaffiliation. Another factor that helped influence disaffiliation was the ineffectualness of the signs posted at the houses for sale. They were ineffective because of the overlap in market area among the various franchise offices. When a customer found a property he was interested in, he almost always went to the closest office of the firm on the sign. The customer seldom, if ever, read the phone number of the brokerage company that had the property up for sale--which in many cases was not the closest office to the house. And, as mentioned, cooperation among offices of a particular franchise was often sadly lacking.

This then leads into a consideration of the image created by institutional advertising. The emphasis of such advertising is on getting the franchisor's name before the public; however, accomplishing this objective can hinder as well as help the franchisee. Such hindrance occurs when a particular franchisee develops a poor reputation and many customers then wrongfully associate this image with all franchisees in the system.

While many franchisees felt that the educational programs provided by the franchisor were excellent, they added that the programs were, in effect, body shops. They were characterized as such because the general feeling was that people could qualify for a license before they attended these schools. In any case, upon completing these schools, these sales people were not professionally qualified to carry on the business activities. What was occurring was that these people were being trained again at their individual offices.

Several new franchisees thought they spent too much time in business meetings. Several felt that this was a waste of their time, particularly when they could be back at the office either selling or organizing their new sales personnel staff.

These various disadvantages eventually outbalanced the advantages accruing from the increased name identification.

CHANGES THAT OCCURRED ON AFFILIATION

Many changes took place within the business of brokers whose organization affiliated with a franchise system. It is impossible to say which changes are most important, but each did leave an impression on the brokers.

The first change occurred in internal operations, specifically to the bookkeeping and accounting control systems. Since the franchisor's income is directly related to business gross, he favored accounting systems which could get such information to him as quickly as possible. In addition, most franchisors made available a policy manual. A number of ex-franchisees felt that these policy manuals were effective.

Attraction of sales personnel.

The majority of the ex-franchisees indicated that the franchise name did attract sales personnel. However, many franchisees added that extremely successful sales people left to become brokers themselves, many joining broker coops. Several brokers felt that broker coops would not be a future threat to the franchise system. Broker coops have a good image and since the overhead costs are lower the broker needs fewer sales to make a certain amount of money.

While the franchise image was especially effective in attracting customers, some brokers were unsure of the cost benefit relationship of such an attraction. One broker said that while in business for himself, 40% of his business was the result of referrals; after joining a franchise, 50% of his customers walked in strictly from name identification. The net result was a 60% increase in gross volume. Such an increase would have been profitable, except that the cost of operation went up proportionately, so that the net change of income was minimal.

Because of high operational costs and royalty fees (between 6 and 8%), many brokers said that affiliating reduced their net income, some up to 20%. Several brokers concluded that they would be better off financially to operate on an independent basis. Several of the ex-franchisees felt that the overhead was too high in both chains and franchise systems--causing affiliates to realize a low net income. Several brokers believed that a broker coop is a viable alternative to the franchise system since coop has good personal contact and an individual's earnings are based solely upon his productivity. Since

the coops have very little overhead, most of the gross ends up as profit.

DIFFERENCES IN SUCCESS-FAILURE RATES

A majority of the real estate brokers believe that there is no significant difference between the success and failure rates of the franchise and non-franchise broker. They felt that a weak broker would fold up regardless of the system under which he operated. Some ex-franchisees indicated that success or failure of a broker often depended upon his market area. Several had implied that the less productive salespeople were found in the franchise system; one broker stated that regardless of the system, the optimal number of sales personnel needed to make an office successful was 7.

Most ex-franchisees agreed that the success or failure of the broker was dependent upon his management capabilities prior to affiliation.

MEASURES OF SUCCESS

A majority of the ex-franchisees said that net income is the best measure of success. They noted that broker income is inversely proportioned to his salesman's income. The reason they give is that the more salesmen you have, the more management functions you must perform, and therefore, the less income you realize as the owner/broker. Several indicated that profit was more important than market share, but that both were critical.

Thus, those brokers who relinquished their franchise did so for a multiple of reasons. While the affiliation was beneficial, the benefits were not sufficient to require continued affiliation.

The last group to be analyzed is the franchisor who has disbanded his business.

FRANCHISORS

WHO HAVE DISBANDED THEIR FRANCHISE SYSTEM

Even though the real estate franchising concept is reasonably new, there already have been several franchisors that have disbanded their business. Very few ex-franchisors were willing to discuss what factors were of major import in influencing them to liquidate or close their business. There are only a limited number of former franchisors, so it is extremely difficult to generalize as to why franchisors leave the business. The discussion with former franchisors was limited to three potential areas, financial, market structure, and management. Each of these areas was considered to be of significant importance in determining what factors influenced franchisors to discontinue their business.

FINANCIAL

Basic to finances is the question of general capital adequacy; related to this is the necessity of realizing an adequate return on an investment. The former franchisors were asked whether or not there were any major problems within this area that may have hindered their ability to continue in business.

One problem the franchisors mentioned was that they were not receiving enough money in the form of royalty payments to cover required overhead. It appeared that most of these franchisors were in business during a particularly bad real estate market. Several franchisors did admit that the real estate market was especially poor when they organized.

Other franchisors complained that they lacked sufficient capital, in addition to having the problem of royalty payments. However, their franchise systems were really no different than any other fledgling concern: all new businesses seem to have insufficient capital. These franchisors also questioned their timing with respect to expansion. The expansion question is, in effect, related to the capital sufficiency question, which is, in turn, related to the royalty problem. While many franchisors indicated that there was a capital problem, they conceded that the financial question in and of itself was not the major reason for dissolution of the franchise.

If the franchisors believe that the capital or financial problem was not the significant factor, then one should consider the market problem.

COMPETITIVE MARKET SITUATION

An examination of the market problem must focus on the franchisor's ability to obtain sufficient franchisees.

A major problem seemed to be the franchisor's inability to enlist quality brokers. Many franchisors indicated that it was extremely difficult to obtain the right type of franchisees. One franchisor told of the problems he had trying to draft top-flight brokers in a large market area; he said that since his organization was not the first in the area, many of the good brokers had already been signed up by other franchise systems or else were not interested in joining any franchise system. The difficulty in acquiring good franchisees became a problem for many of the franchisors.

The franchisors also had problems implementing an advertising program effective enough to develop a strong market image for their

franchisees. One franchisor said he had a great deal of difficulty achieving what he thought was a positive market. Franchisors with a poor market image had difficulty acquiring new franchisees, and, by the same token, existing franchisees had trouble securing enough customers.

Most franchisors prefer not to affiliate with one-man offices, because they feel such brokers are not interested in expanding and, therefore, would hinder the development of a good franchise network.

Generally, the franchisors concluded that market problems were not of major importance in their decisions to discontinue their franchises, so we must consider the third category, management. MANAGEMENT.

The management problem is a broad one, because franchisors attempted to run their operation at numerous levels.

One management problem--though perhaps inadvertent on the franchisor's part--is the lack of availability of adequate financial statements. One franchisee told a franchisor that if he'd known of the franchisor's financial difficulty, he would not have affiliated. The franchisor countered by saying that he really did not know the financial condition of his business, because the accountants were behind with the books. This suggests that there were internal management problems, at least with respect to information retrieval.

Several franchisors indicated that individuals who draw parallels between franchise systems and the restaurant (or fast food) systems are being unfair. The franchisors argued that in the fast food business, one could hire inexperienced employees and quickly train them--and be

successful. In the real estate business, however, sales personnel must be experienced if one's office is to be successful. This experience comes only from much time and training. This brings up a management problem all franchisors face: how can they increase the professionalism in the industry to benefit both the broker and the real estate sales personnel?

Several franchisors said that their franchisees complained that they had not performed the duties specified in their contract. The franchisors disagreed, however, stating that any misunderstandings stemmed from the way the contracts were worded. Several franchisors indicated that their contracts were written fairly loosely, and as such, there could often be more than one interpretation of certain terms.

Problems of management seemed to be the major factor which influenced franchisors to discontinue their organizations. The franchisors' inability to delegate authority now seems to be very crucial.

Also, there is an obvious need for adequate management personnel who can understand and cope with the problems inherent in a franchise system. Several franchisors said they believed that they understood these problems, but that those within their organizations did not. One major problem agreed upon by all the franchisors was the high overhead. The franchisors had to hire a management staff to help run their organizations; however, all too often these staffs became too big too quickly and the franchisor found himself without sufficient finances to keep the staff. The necessary trimming or even dissolution of the staff in many situations caused the eventual dissolution of the franchise system.

The franchisor wants to saturate the market with franchisees, so he can increase his royalties. This same franchisor said that such a saturation campaign may very well benefit the franchisor, but may shackle the franchisee. The reason, he said, is that if a franchisor signs up too many franchisees within a market area, they will find themselves competing against one another. Therefore, franchisors should be more careful in choosing the number of franchisees in a market territory.

This brings up the problem of what would happen if a franchisor put out a feeler for interested brokers in a particular area and received positive responses from many more persons who are licensed and capable than he could effectively use in that area. No franchisor has had to grapple with this problem as yet.

Apparently, the majority of franchisors discontinued their business because of management problems; specifically, there seemed to be insufficient depth in the management structure as well as the presence of too many people in the franchisor's corporate organization. In some cases, the straw that broke the camel's back--or in this case, caused the franchise to collapse--occurred when key management people left the organization, leaving an already inadequate staff in shambles.

CHAPTER 6

SUMMARY AND CONCLUSION

SUMMARY

The basic philosophical question an independent broker must answer in 1976 is: What is my relative competitive position in the real estate industry? Usually, the answer involves a determination of the factors which relate to the market identification the broker needs to stay in business. Customers want to deal with firms that have a nationally known name. Brokers with one and two man offices, therefore, are under a great deal of pressure, especially if these offices are located in large metropolitan areas where the competing brokers use mass consumer advertising methods and techniques.

In response to this type of market environment, many new types of business organizations have come into existence in the real estate brokerage industry; the independent broker now has several means of increasing his market image and identification. The impact of the real estate franchise system must be reviewed and understood as it relates today to the franchisor, the franchisee and the broker who continues to remain independent.

FRANCHISORS

The franchisor must adapt to changes within his environment. Originally, the franchisors organized to help the independent broker

overcome the disadvantage he had in competing with real estate chains. Emphasis was placed on achieving increased market identity through image development and mass advertising techniques.

Many franchisors feel that their role has changed from assisting the broker in developing an increased market identity to raising his professionalism. Many franchisors believe that this is not just a self-serving goal, that, in fact, their system must have professional franchisees if it is to have a good market image. In effect, the franchisors may be moving away from a system dependent on the number of franchisees in favor of attempting to develop a more professional attitude among the franchisees. However, any new franchise system must consider the number of franchisees, because if there aren't a sufficient number of brokers in the franchise system, the overhead costs of running the system cannot be supported.

Several of the original franchisors no longer exist. Generally, their business failed because of inadequate capital. This lack of capital usually resulted because of overexpansion by the franchisor. Specifically, the franchisor did not have enough capable people in management to oversee his expanding business system.

FRANCHISEES

The franchisees have viewed the real estate market differently. Many brokers originally joined their franchise systems out of fear. The original franchisors told the brokers that they must join a franchise system or else lose their share of business. Today, many brokers feel that such a premise is just not true. Those independent brokers who have joined franchises believe that there are several

advantages to affiliation and have enumerated them as follows:

1. Market identification is available through the use of a tradename and trademark.
2. A good market image is provided through mass advertising techniques.
3. Association with a successful operation has been beneficial.
4. A referral system has certain advantages.

Yet, there are also disadvantages in joining a franchise system;

the major ones are listed below:

1. Fees, whether initial or a royalty override, may be higher than necessary in terms of the benefits derived.
2. There is an original identity loss which cannot be recaptured.
3. There are certain bookkeeping requirements which many brokers feel are unnecessary.
4. Because of the necessity of group approval for certain activities--specifically those related to marketing--there are difficulties in agreeing on concerted unified actions.

Most franchisees, of course, believe that the advantages of affiliation outweigh any disadvantages.

BROKERS WHO HAVE DECLINED TO JOIN

Many brokers approached by franchisors have declined to affiliate.

Their major reasons for refusing to associate are as follows:

1. The name change is too high a price to pay for affiliation.
2. Fees, both the initial and the royalty override, are in excess of the returns they would receive.
3. A series of miscellaneous points lesser in importance than the first two mentioned.

While many independent brokers have declined to join, most nevertheless agree that a well-known tradename is a major advantage of the franchise

system. However, these brokers believe that the disadvantages of affiliation outweigh that advantage of increased market identification.

FRANCHISEES WHO HAVE RELINQUISHED THEIR FRANCHISE

Many franchisees have given up their franchise for one reason or another. The most often stated ones are the following:

1. Franchisors have not lived up to their contractual obligations (both perceived and actual).
2. The franchise system has dissolved or disbanded because of management problems at the franchisor level.
3. A lack of cooperation among the franchisees in agreeing on a course of action from among different alternatives available.
4. Fees in excess of what the franchisee believed expedient.

While many brokers have given up their franchises, most still feel that affiliating has certain advantages, which may be defined as:

1. Stronger image obtained through mass advertising.
2. Easier attraction of sales personnel because of their tradename and/or trademark.
3. Easier attraction of customers, again because of the well-known trademark.

So far this chapter has dealt with the major points determined in study. Using this information as a frame of reference possible future trends in real estate will be discussed.

CONCLUSIONS AND TRENDS

One always must be careful in speculating on the future, especially in an industry as dynamic as real estate. One certainty is that the independent real estate broker will have a number of alternatives available to him. However, before making a specific decision, each

individual must personally assess his goals and objectives. Unless he has specific goals, the individual cannot effectively select the alternative which will allow him the opportunity to maximize his success in the real estate business. There are at least seven choices available to the broker, each of which is sufficiently diverse to allow him a reasonable choice of alternatives.

1. To remain independent. The broker may continue a small office operation which normally consists of himself and up to six sales personnel. This low key operation will necessarily be limited to a small market area and have a marginal impact.
2. Expansion. To expand the present business operation in size to that of a modest-sized real estate chain. If the independent broker wants to increase his business activity, a good way of doing so is by adopting the methodology of the real estate chain, because his major competitors will be the chains and franchisors. Expansion can effectively spread business overhead over more and more sale units; however, a dozen or more offices may be needed to actually achieve this goal--brokers who have expanded in this manner differ as to the exact number of offices necessary to obtain the benefits of cost reductions. Since success in an expansion program depends on efficient organization, the broker must give up selling for the most part and concentrate on managing the business.
3. Franchise. In this situation, the independent broker must decide whether he wishes to affiliate with a local regional, or national organization. Each of the franchise systems will provide a different range of marketing alternatives. In any case, the broker will benefit from the acquisition of a real estate trademark and tradename as well as marketing and advertising assistance.
4. Broker association. Many brokers have chosen to give up their offices and affiliate with other brokers in order to reduce initial capital and continuing overhead costs. A major advantage in joining an all-broker association is that a broker can reduce virtually all the costs involved in operating an office.
5. Merger or sale. Joining forces without another broker is a viable alternative--provided a good partner can be

located. Upon completion of the merger, the broker may not continue in a decision-making capacity or he may even leave the business. If he sells the business, he must decide whether to accept cash or stock as payment.

6. Join a broker co-operative. An alternative to joining a franchise is a broker co-operative. In this instance, a well-known trademark or tradename provides the needed market identity; yet, the broker maintains a strong element of individual control over his business. In this situation, the individual may spend more time on sales than on marketing the business name.
7. Leave the business.

In considering these alternatives, the broker must understand that the public has been conditioned to associate success with brand names. The independent broker must decide which alternative provides him with the best means of competing in this type of business environment.

The broker must also consider the competition from real estate chains, which provide a full service package to the customer. An independent broker can only provide a small part of such a package, so he is hard-pressed to compete with these chains. One alternative is to associate with a franchise system. While the franchise systems have had problems in their formative years, these organizations are now a formidable market factor. Several older franchises have matured and are now consolidating their operations in certain market areas while expanding their operations in others. Many franchisors are attempting to start up competing franchise systems. The success or failure of a franchise system is dependent upon the specific management capability of the original franchisor, or his ability to acquire a good strong management team. Many franchisors originally anticipated

that they would eventually become full service organizations; however, because of anti-trust regulations concerning contracts, the franchisor is severely limited in what he can require the franchisee to utilize in the way of supplemental services. In the end, the franchisor may be limited to nothing more than a licensing of a trademark or trade-name. This question has still not been settled.

The role of the independent broker is changing. Each broker must consider his goals or objectives--and then choose from the alternatives available to him.

FOOTNOTES

CHAPTER 2

1. California Real Estate Magazine, "Franchising: Trends of the Times", December, 1972, pp. 4-6 and John Kirchner, "The Franchising Trend: Is It Friend or Foe?", California Real Estate Magazine, March, 1973, pp. 36-37.
2. A copy of the questionnaire and the cover letter accompanying the questionnaire are contained in the appendices.
3. Glaser, Barney; and Anselm L. Strauss, The Discovery of Ground Theory: Strategies for Qualitative Research, Chicago: Aldine Publishing Co., 1967. A sample of the types of questions asked of each of these groups is provided in the Appendix.

CHAPTER 3

1. Charles L. Vaughn, Franchising: Its Nature, Scope, Advantages, and Development. (Lexington, Massachusetts: Lexington Books, 1974), pp. 1-2.
2. Ibid., p. 2. Vaughn says that the most effective method of considering the available alternatives is by thoroughly understanding the four types.
3. Ibid., p. 7
4. Donald N. Thompson, Franchise Operation and Antitrust. (Lexington, Massachusetts: Heath Lexington Books, 1971), p. 8.
5. Ibid., p. 8.
6. Vaughn, op. cit., p. 29.
7. Ibid., p. 33.
8. Ibid.
9. Ibid.
10. Ibid., p. 34.

11. Ibid., pp. 34-36.
12. Donald N. Thompson, op. cit., pp. 7-8.
13. Thompson, op. cit., p. 8.
14. Ibid., pp. 12-17.
15. Thomas Dooley, "Residential Brokerage Enters a New Era," Real Estate Review (Vol. 4, No. 3, Fall 1974), p. 50.
16. Ibid.
17. Ibid., pp. 50-51.
18. Ibid., p. 52.
19. Ibid., p. 55.
20. Ibid., p. 56.
21. Ibid. The previous discussion concerning real estate brokerage is based on Mr. Dooley's article.
22. California Real Estate Magazine, "Franchising: Trend of the Times," (December 1972), pp. 4-6.
23. John Kirchner, "The Franchising Trend: Is It Friend of Foe?", California Real Estate Magazine, March 1973, pp. 36-37.

CHAPTER FOUR

1. See Table 1 (Appendix) for gross figures. The percentages given in the body of the report are based on the figures in those tables. The results of the questionnaire must be adjusted for certain inherent weaknesses: Real estate boards did not have specific quantitative data available when they made their estimates. Some boards stated that they did not know if a member had been approached by a franchisor unless the realtor mentioned this to the board. There may be a certain amount of double counting as many board members had been approached by 2 or 3 franchisors, yet would be counted as only having been approached by one.
2. Peter Mlynaryk, Critical Analysis of Emerging Trends in Franchising and Expansion by Merger and Acquisition of Real Estate Firms, Fullerton, California, California State University, Real Estate Research Institute, 1973, pp. 9-12.

CALIFORNIA STATE UNIVERSITY, FULLERTON

FULLERTON, CALIFORNIA 92634



Office of the Director
Real Estate Research Institute
School of Business Administration
and Economics

April 3, 1975

Gentlemen:

The State of California Department of Real Estate and The California State University, Fullerton, Real Estate Research Institute have joined in a research effort to determine the impact of real estate franchises on real estate brokerage operation throughout California. This study was requested by your industry colleagues to update a previous study completed in 1973.

As part of this study, we are conducting a survey to determine franchise activity which has occurred since January 1, 1973, in the various Real Estate Boards within California. A second part of this survey will consist of interviews with selected licensees as in the earlier study.

Your cooperation and prompt return of the completed questionnaire is solicited. Please note that this questionnaire is anonymous, so you need not identify yourself unless you wish.

Sincerely,

Dr. Peter Mlynaryk
Associate Professor

PM:bjw
Attachment

Impact of franchise operations on real estate brokers.

A Survey

1. What is the total number of firms in your Board? _____
2. What is your estimate of the number of member firms of your Board who have been approached for:
 - 2.1 Joining a franchise real estate firm _____.
 - 2.2 Merger with another member firm broker _____.
 - 2.3 Merger with a non-member firm broker _____.
3. What is your estimate of the number of member firms of your board who have:
 - 3.1 Joined a franchise real estate firm _____.
 - 3.2 Merged with another member firm broker _____.
 - 3.3 Merger with a non-member firm broker _____.
 - 3.4 Rejected all offers of merger or franchise _____.
4. How many of your Board members have multiple office operations. _____
5. Could you please give your Board's assessment of the impact of franchise operations, corporate and multiple office real estate brokerages on (1) the industry and (2) the local real estate board.

If you or your Board are willing to discuss this survey in greater depth, please place your address or business card here:

Please return the completed questionnaire in the prepaid envelope or mail to:

Dr. Peter Mlynaryk
Department of Finance
California State University
Fullerton, California 92634

TABLE 1

SUMMARY OF REAL ESTATE BOARD QUESTIONNAIRE

Question	Board Members	Approached			Action			Reject All Merger or Franchises	Have Multiple Offices
		Franchise	Merger		N Joined Franchise	Merger			
			Member	Nonmember		Member	Nonmember		
	1	2.1	2.2	2.3	3.1	3.2	3.3	3.4	4
Gross Figures	6386	1992	419	58	496	137	3	1952	1294
Percentages	100%	31.19%	6.56%	.90%	7.77%	2.15%	.05%	30.57%	20.26%

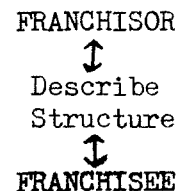
TABLE 2

ADJUSTED GROSS FIGURES BASED ON SIZE OF REAL ESTATE BOARDS

Question	Board Members	Approached			Action				Have Multiple Offices
		Franchise	Merger		Joined Franchise	Merger		Reject All Merger or Franchise Offers	
			Member	Nonmember		Member	Nonmember		
			1	2.1		2.2	2.3		
Boards Having Greater Than 100 Members	4406	1285	230	11	346	101	0	1254	720
(Percentages)	100%	29.16%	5.22%	0.25%	7.85%	2.29%	0%	28.46%	16.34%
Boards Having Less Than 100 Members	1980	707	189	47	150	36	3	698	574
(Percentages)	100%	35.71%	9.55%	2.37%	7.58%	1.82%	0.15%	35.25%	28.99%
Total	6386	1992	419	58	496	137	3	1952	1294
Total Percentages	100%	31.19%	6.56%	.90%	7.77%	2.15%	.05%	30.57%	20.26%

FRANCHISORS

1. What was the major factor that influenced your decision to organize and develop the franchise system within the real estate industry?
 - 1.1 Describe competitive factors that influenced you.
 - 1.2 Which particular competitors (chain/franchise system/ other).
2. How do you solicit or attract new franchisees?
 - 2.1 What marketing techniques are utilized?
 - 2.2 What selection process do you utilize to determine which franchisees you will accept into the franchise?
 - 2.3 What performance standards or other standards must the applicant meet before acceptance as a franchisee?
 - 2.3.1 Experience broker/salesmen
 - 2.3.2 Capital requirements (equity)
 - 2.3.3 Success as a broker
 - 2.3.4 Other factors
3. With respect to the initial franchise fee:
 - 3.1 How are the fees determined?
 - 3.2 What is the relationship of the fee to market area the franchisee will have?
 - 3.3 How are territories determined?
 - 3.4 What are the purposes of the fees with respect to:
 - 3.4.1 A means of raising franchisor capital
 - 3.4.2 Services of items of franchisee use.
4. Franchise structure
 - 4.1 What is the line or staff relationship between the franchisor and franchisee?
5. What advantages do you offer the franchisee to affiliate with your franchise that the franchisee would not have had if he had remained an independent broker?
6. What do you consider as some of the disadvantages of belonging to franchise system?
7. What additional services do you offer with respect to:
 - 7.1 EDUCATION
 - 7.2 MANAGEMENT ASSISTANCE
 - 7.3 REFERRALS - INHOUSE
 - 7.4 ESCROW, LEADS, MLS



BROKERS WHO DID NOT AFFILIATE WITH A FRANCHISOR

1. What was the major factor that influenced your decision not to join a real estate franchise system? (Perceived disadvantage)
2. What other factors influenced your decision not to join? (Other disadvantages)
3. Although you did not join a franchise system, what were the advantages that may have been available had you joined?
4. How do you see the success or failure rate of franchisees compared to non-franchised brokers?
5. If you had joined a franchise-system, what changes did you perceive with respect to the following:
 - 5.1 Operating Procedures - Management, Organization, Accounting
 - 5.2 Attracting and keeping sales personnel
 - 5.3 Attracting clients - Market Impact
 - 5.4 Change in Net Income (Earnings) or costs
 - 5.5 Measure of control by franchisor
6. How long have you been in the Real Estate Business?
 - 6.1 As salesman
 - 6.2 As broker
 - 6.3 As a real estate business owner
7. In measuring success in your business, which of the following is most important:
 - 7.1 Your control of a percentage of the market area with respect to sales?
 - 7.2 Earnings or net income from the business?
8. What changes do you foresee occurring in the real estate industry during the next 10 to 20 years?

BROKERS WHO JOINED A FRANCHISE

1. What was the major factor that influenced you to join a franchise system? If because of competition, who was the competitor?
2. What other factors influenced your decision to join a franchise system?
3. What do you perceive as the advantages of belonging to a franchise system over remaining an independent non-affiliated broker?
4. What do you perceive as the disadvantages of belonging to a franchise system over that of remaining an independent non-affiliated broker?
5. Were there any changes in your operations on becoming affiliated with a franchise system in contrast to remaining an independent broker in these areas:
 - 5.1 Operating procedures - (Accounting, Bookkeeping, Office, General Business Procedures, Management Control)?
 - 5.2 Attracting and keeping sales personnel?
 - 5.3 Ability to attract clients (customers). What has been the market impact?
 - 5.4 Measure of control of your operations by the franchisor?
6. How do you see the success or failure rate of franchisees as compared to non-franchised brokers?
7. How long have you been in the real estate business?
8. In measuring success in your business, is control of a percentage of the market area with respect to sales important or is earnings and net income important; which, or both and why?
9. What changes do you foresee in the real estate industry during the next 10 to 20 years?

BROKERS WHO HAVE LEFT A FRANCHISE

1. What was the major factor that influenced you to relinquish your franchise and return to another form of business organization to continue your real estate brokerage business?
2. What other factors influenced your decision to relinquish your franchise?
3. What do you perceive as the advantages of belonging to a franchise system rather than remaining an independent non-affiliated broker?
4. What do you perceive as the disadvantages of belonging to a franchise system rather than remaining an independent non-affiliated broker?
5. Were there any changes in your business operations on becoming affiliated with a franchise system in contrast to your previous operations as an independent broker in these areas:
 - 5.1 Operating procedures - (Accounting, Bookkeeping, Office, General Business Procedures, Management Control)?
 - 5.2 Attracting and keeping sales personnel? How do you attract sales personnel?
 - 5.3 Ability to attract clients (customers)? What has been the market impact after joining a franchise?
 - 5.4 Net income or earnings - higher or lower than previously?
 - 5.5 Measure of control of your operations by the franchisor?
6. How do you see the success or failure rate of franchisees as compared to non-franchised brokers?
7. How long have you been in the real estate business?
 - 7.1 As a salesman?
 - 7.2 As a broker?
 - 7.3 As an owner of a real estate brokerage?
8. In measuring success in your business, which of the following is most important?
 - 8.1 Your control of a percentage of the market area with respect to sales?
 - 8.2 Earnings or net income from the business?
9. What changes do you foresee occurring in the real estate industry during the next 10 to 20 years?

FRANCHISORS WHO HAVE LIQUIDATED THEIR BUSINESS

What factors influenced the decision to dissolve the franchise system (why go out of business).

1. Financial

1.1 What factors involved inadequate (Insufficient capital)?

1.2 Inadequate return on investment

2. Market

2.1 Competition from other franchisors and chains

2.2 Inability to cover sufficient market area with franchisees

2.3 Inability to meet market contract terms

3. Management

3.1 Lack of sufficient depth

3.2 Lack of sufficient people to keep organization going

3.3 Inability to meet contract terms to franchisees

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Exhibit #

NEVADA ASSOCIATION OF REALTORS®
TESTIMONY PRESENTED TO SENATE COMMERCE COMMITTEE
PROPOSED AMENDMENT TO S.B. 477

DELETE SECTION 4 IN ITS ENTIRETY

ADD NEW SECTION 4

NEW SEC. 4 Any broker who operates under, or uses, a franchise name shall;

1. register such franchise name with the division on a form to be supplied by the division; and
2. incorporate in the franchise name and logotype his own name; however, the broker's name shall be predominant.
3. conspicuously display on all advertising and materials available to the public that his real estate brokerage office is independently owned and operated.

For the purposes of this section, the term "broker's name" is that name which appears on the real estate broker's license granted by the Nevada Real Estate Division

SEC. 5 The Commission may adopt regulations relative to the requirements contained in Section 4.

[COMMITTEE PRINT]

Exhibit
I

REPORT ON LOSSES OF GASOLINE
AT RETAIL SERVICE STATIONS
THROUGH SHRINKAGE, EVAPORATION,
OR OTHER CAUSES

SUBMITTED TO
THE COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
BY
THE DEPARTMENT OF THE TREASURY



JULY, 1962

NOTE.—This document has been printed for information purposes
only. It has not been considered or approved by the
committee or any member thereof

U.S. GOVERNMENT PRINTING OFFICE

87240

WASHINGTON : 1962

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LETTER OF TRANSMITTAL

THE SECRETARY OF THE TREASURY,
Washington, July 10, 1962.

HON. WILBUR D. MILLS,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The attached report on losses of gasoline at retail service stations through shrinkage, evaporation, or other causes is sent to you in response to the request of the Treasury Department by the Committee on Conference on the Federal-Aid Highway Act of 1961 (H. Rept. No. 564, 87th Cong., p. 4). Parts I through V were sent to you as an interim report on January 25, 1962. These parts review previous studies on this subject. Part VI gives the results of a new survey by the Treasury Department for the year 1961. The Treasury Department survey confirms the findings of prior surveys that there is relatively little net loss of gasoline at retail service stations. The average loss for the year 1961 was one-eighth of one percent for the sample of 79 stations covered by the Treasury study.

Sincerely yours,

DOUGLAS DILLON.

REPORT ON
SURVEY OF LOSSES OF GASOLINE AT RETAIL SERVICE
STATIONS BY SHRINKAGE, EVAPORATION, AND OTHER
CAUSES

Prepared by the Treasury Department in accordance with the request of the
Committee of Conference on the Federal-Aid Highway Act of 1961

I. SOURCES OF DISCREPANCIES

The amount of gasoline delivered to a retail service station and the amount withdrawn from the storage tanks of the station are unlikely to be exactly the same over any given period of time, even after adjustment for opening and closing inventories. The difference is due to shrinkage or expansion from temperature changes, evaporation, and other more irregular causes. Temperature induced losses occur when gasoline warmed by the air and sun as it travels in the delivery truck is delivered to cooler underground storage tanks; gains are realized when the temperature change is in the opposite direction. Temperature changes and evaporation are universal factors. In individual cases there may be losses from leaks in the tanks, and, more rarely, from casualties such as fires, explosions, and floods.

While the amount of evaporation varies according to various factors, it appears to be quite minor.¹ The change in volume due to temperature changes has been calculated to vary almost directly with changes in temperature to the extent of 0.0006 percent for each degree Fahrenheit of temperature change.²

Determination of actual physical variations at stations resulting from temperature changes, evaporation, and very small leaks is not a simple matter because all measures are subject to possible error. Even when there is an actual physical loss, the accounting figures of the retailer may show a gain, and vice versa. Or if the accounting figures show the same direction of change as the actual physical change, the accounting figures may show a greater or lesser change. The discrepancy between accounting data and actual physical changes can arise from one or more of a large number of factors. A description of many of these factors, not necessarily complete, follows.

The first possible source of discrepancy arises in the measurement of the amount "delivered" into the tanks of the retailer. The meter in the delivery truck may not be accurate and show more or less gallons than are actually delivered. If purchases are made by compartment rather than by meter, the amount of gasoline in a compartment may differ from the accounting statement thereof.

When the gasoline is dispensed through the service station pumps, the meters may be faulty, showing either more or less gasoline than is actually delivered. Even if the pump meters are "accurate," they are only accurate if they are run at a certain speed. Meters are designed to maintain accuracy within certain ranges of speed—the

¹ "Refunds to Service Stations for Gasoline Losses," report of the Virginia Advisory Legislative Council to the Governor and the General Assembly of Virginia, Richmond, 1961, p. 9.
² ASTM-IP Petroleum Measurement Tables, ASTM, Philadelphia, table 7.

normal pump speed being about 15 gallons per minute. By reducing the stream of gasoline to a trickle, or to a spray, to fill a tank to capacity, the dealer will actually be delivering more gasoline than is being registered on the meter.

In addition, the retailer may err in measuring the inventory in the storage tanks, or mistakes in the recording of the figures can be made in the invoicing by the wholesaler, and the recordkeeping of the retailer. In most of these cases, there can result either a gain or a loss to the retailer.

The chances of accounting errors are so numerous that, even without any physical changes in the gasoline, it would be unusual within a given period of time for a retailer to show no gain or loss between purchases and sales volume (after adjustment for inventory changes). On the other hand, errors of this type, if truly errors and not due to deliberate human bias, tend to cancel out over long periods of time or as between a reasonably large number of cases. Under these circumstances, a representative survey of accounting records of service stations keeping complete records may yield a reasonably close estimate of physical changes in the amount of gasoline received and the amount delivered through the pumps (after adjustment for inventory changes).

II. PRIOR SURVEYS—PURPOSE AND SCOPE

The extent of the physical losses of gasoline from retailers' tanks (exclusive of major casualties) has been of concern to wholesalers (or producers), retailers, and State legislatures. The magnitude of losses has been at issue in connection with billing of sales by wholesalers to retailers. Probably the most extensive study of service station losses ever conducted was made in Texas as a result of a request by the service station operators for enactment of a law requiring wholesalers to make an adjustment of billings to retailers to reflect losses of gasoline at the retail station. State legislatures have been concerned because the retail dealers in many States have requested an adjustment in the State gasoline tax to reflect the assumed loss of volume in retail tanks.

Requests of retailers for adjustments from wholesalers and the States have resulted in the preparation of several reviews of the situation in the last 25 years. Methods used to obtain data on gasoline losses have varied widely. Use has been made of data obtained by petroleum companies at company-owned stations, past records of retailers have been compiled, and finally a representative sample of stations have supplied data on a current basis in accordance with carefully devised instructions.

The studies also varied in the types of losses and gains measured: temperature shrinkage and expansion, evaporation, leakage, meter errors, and accounting errors. The following section summarizes the methodology, coverage, and results of studies available to the Treasury Department.

III. PRIOR SURVEYS—PROCEDURES AND FINDINGS

A. RICHMOND, VA., 1934³

Complaints by service station operators of shortages in gasoline deliveries to them led the Richmond Bureau of Weights and Measures in 1934 to undertake to measure the expansion or shrinkage of gasoline following its transfer from the delivery truck to the underground retail storage tank. This survey measured a delivery in each of 9 weeks selected as representing average weather conditions. Normal summer and winter temperatures were taken advantage of. Checks were made of the temperature of the gasoline in the delivery truck at the time of delivery and in the underground storage tank before and after delivery.

The nine separate tests revealed an average temperature for the gasoline in the tank truck of 57.7° F. while the temperature of the underground storage tanks average 65.1° F. As a result, the test showed a gain of approximately 0.18 of 1 percent in volume after the gasoline was placed in the underground tank. In absolute terms, there was an expansion of 6.83 gallons out of a total of 3,854 gallons delivered. Eight of the nine tests showed a gain in volume, and one showed no change.

B. LOS ANGELES, CALIF., 1951-55⁴

The California State Board of Equalization, at the request of the State legislature, in 1955 made an audit of service station records in the Los Angeles area to determine the experience of dealers in the warmer portion of the State. This audit covered the records of four dealers in the Los Angeles area. Since the audit showed gallons delivered to the dealers and sales by the dealers per dealers' records, the differences between the two sets of figures reflect all possible physical and accounting factors which can result in discrepancies between purchases of gasoline by dealers and their sales thereof. It might be pointed out, however, that since the stations were in a warm area of the State, there would presumably be a possibility of loss to the dealers from physical shrinkage as the gasoline was delivered into underground tanks. It is generally assumed that in warm weather the temperature in underground tanks is less than the air temperature.

The audits of the board covered a 56-month period for one station, and 34 months, 19 months, and 1 year, respectively, for the others.

Audit figures showed that the four dealers, according to accounting records, purchased 36,028,129 gallons and sold 36,124,077, or 95,948 gallons in excess of the amount purchased. This represented a 0.27 of 1 percent expansion in gasoline volume between the amount recorded as purchased and the amount recorded as sold to motorists.

³ Ragland, B. W., "Temperature of Gasoline in Underground Storage," paper prepared for delivery before the 25th National Conference on Weights and Measures, June 6, 1935. "Refunds to Service Stations for Gasoline Losses," report of the Virginia Advisory Legislative Council to the Governor and the General Assembly of Virginia, Richmond, 1961, p. 11.

⁴ Data supplied by California State Board of Equalization.

C. STATE OF WASHINGTON, 1951-55⁵

Similar in form to the Los Angeles audit was an audit of 30 retail service stations in three areas (Seattle, Vancouver, and Pasco) of the State of Washington. The Washington survey, however, revealed a loss in volume of gasoline stocks at service stations.

During the audit periods covered by the Washington survey, the 30 stations purchased a total of 11,709,347 gallons and sold 11,685,145 gallons, a loss of 24,202 gallons. Closing inventories were 22,516 gallons less than opening inventories, so that the total loss was 46,718 gallons. The loss was 0.40 of 1 percent of purchases.

D. STATE OF VIRGINIA, 1961⁶

The introduction of bills in the 1960 session of the General Assembly of Virginia to compensate retail service station owners for State tax on motor fuels lost as a result of evaporation and shrinkage caused the assembly to direct the Virginia Advisory Legislative Council to make a study of the desirability of the proposals. While the council undertook no new compilation of gasoline volume changes at service stations, it reviewed material collected in the past by other interested parties. The council's report cited the results of the Richmond and Los Angeles studies already mentioned herein. It also referred to the Texas study which will be discussed at a later point. Data also were obtained from surveys by four petroleum companies on gasoline variations at company-operated stations. The companies surveyed revealed variations ranging from a loss of 0.1546 of 1 percent to a gain of 0.0001 of 1 percent.⁷

After reviewing prior studies and the testimony of interested parties, the council came to two major conclusions as to the magnitude of losses. It stated that losses from evaporation are inconsequential, according to evidence presented to it.⁸ Furthermore, any changes in volume resulting from differences between air and tank temperatures should work to the benefit of the average dealer in Virginia, since the average year-round temperature in the State is less than 60° F.⁹ The temperature of underground storage tanks is often assumed to average 60°—in reality it is sometimes higher than this, as was shown by the 1934 study in Richmond, Va.

E. STATE OF TEXAS, 1954-55¹⁰

1. Background

This study was the result of the introduction of a bill in the Texas Legislature in the spring of 1953 to require suppliers to bill retail dealers for gasoline volume adjusted to 60° F. As it was felt that more data were needed to evaluate the situation, an agreement was reached to have a study made by interested industry members. Representatives of dealers, jobbers, bulk commission agents, and suppliers met and formed an organization designated as "The Texas Motor Fuel Marketers' Committee." The committee was authorized to formu-

⁵ Data compiled by Liquid Fuel Tax Division, Department of Licenses, State of Washington. Time periods covered by the audit varied from 1951 through 1955 although the most common period was for the calendar year 1955.

⁶ "Refunds to Service Stations for Gasoline Losses," report of the Virginia Advisory Legislative Council to the Governor and the General Assembly of Virginia, Richmond, 1961.

⁷ *Ibid.*, p. 9. ⁸ *Ibid.*, p. 9. ⁹ *Ibid.*, p. 11.

¹⁰ Hill, Leo and Niland, J. E., "The Findings of the Texas Service Station Stock Variation Study," North American Gasoline Tax Conference, 30th annual report, 1956, pp. 16-31.

late and conduct the study, and publish the results, without any responsibility, however, for recommendations as to application of the results. It required approximately 1 year to produce the plan and a 60-page manual for its implementation.

2. Survey methods

Since the survey was to attempt to measure the effect of physical factors (temperature changes and evaporation) on the amount pumped by service stations as compared with the amount delivered to the stations, the survey went to great lengths to minimize differences resulting from meter discrepancies, leaks, and bookkeeping errors. At the same time, the sample stations were selected to be representative of large and small stations, and stations with varied types of equipment.

The study was conducted for the 12-month period November 15, 1954, through November 14, 1955, among 60 test stations, divided among the five natural temperature zones of the State in accordance with the percent of the State's volume marketed in each zone. The test stations were also allocated among suppliers according to the percentage of the State's volume marketed by each supplier. Every effort was made to maintain a balance of all the varying factors that might affect volume as a result of any physical or operating conditions, such as size of underground storage, type of driveway material, location of pumps with respect to storage, age of pumps, and type of deliveries.

To insure accuracy, pumps and meters were thoroughly checked, calibrated, and sealed before the start of the test. Underground storage tanks were sealed. All serial numbers of seals were recorded at the time of their installation and at subsequent breaking. All trucks used in making deliveries were checked for accuracy of compartment measurements or meters, if metered deliveries were made. At the beginning of the test all tanks were filled within 2 feet of the top of the fill pipe and thereafter at the end of each test month they were filled to this same level. This procedure was designed to eliminate any variations resulting from tank irregularities, settlement, errors in gage tables, daily gages and other variables. The meters in the dispensing pumps were checked every Tuesday for accuracy and adjusted if necessary. All deliveries were verified by the two parties to the transactions, the supplier and the retail service station dealer. Reports were forwarded monthly by the dealers to area chairmen. After transfer of the material to punchcards, the tabulation from the punchcards and the original reports were reviewed by a special audit committee.

3. Results

Although the original sample of 60 stations gave a theoretical coverage of 720 station months, attrition normal to a voluntary survey resulted in only 636 station months being reported. The audit committee reduced this to 580 station months because of unreconcilable errors, no matter how small. However, the audit adjustment did not affect the computed ratio of losses. Both the audited and unaudited figures show that the dealers sold 997.5 gallons of gasoline for each 1,000 gallons delivered to them, a loss

ratio of 0.25 of 1 percent. The unaudited figures show that of 14,133,697 gallons delivered to the stations, the stations pumped out, by their meters, 14,098,186 gallons, a loss of 35,511 gallons.

F. PROVINCE OF MANITOBA, CANADA, 1953-54¹¹

1. Background

A survey of service station gasoline losses was conducted in the Province of Manitoba, Canada, for the 12 months ended January 1954 by the Comptroller-General of the Province in cooperation with the Automotive Trade Association of the Province. The survey was undertaken after the Automotive Trade Association requested legislation to give retail dealers an allowance for gasoline tax to compensate for losses by shrinkage, evaporation, and other physical factors after purchase of the gasoline on a taxpaid basis.

2. Survey methods

The Comptroller-General and the Automotive Trade Association selected by mutual agreement stations considered to be representative in terms of size and geographic coverage. Fifty test stations were selected.

Although intended to obtain a measurement of the differences between quantities purchased and sold by retail dealers as a result of physical losses, the Manitoba study did not go quite as far as the Texas study in the degree to which controls were instituted to prevent intrusion of the effects of measurement discrepancies in pumps, meters, and records. Even so, a reasonable degree of control was instituted.

Pumps of the stations were inspected and adjusted at least once during the survey by the Dominion Inspector of Weights and Measures. Opening and closing inventories of participating stations in the Winnipeg area, 20 in number, were measured by members of the staff of the Comptroller General. Except in a few cases, where examinations were made on the dealers' premises, suppliers' invoices were submitted by the dealers with their reports to substantiate their statements as to quantities purchased. Dealers made monthly reports to the Comptroller General (with carbon copies to the trade association). The official compilation of data was made by the Comptroller General's office.

3. Results

Since this was a voluntary survey, only 39 of the 50 stations provided full data for the 12-month period. The data from stations which participated for periods of less than 12 months were excluded in order to eliminate incomparabilities which might otherwise have existed because of seasonal weather conditions or other variable factors during the broken period of participation. On the other hand, no adjustments were made for abnormal losses incurred in a few test stations as a result of leaking tanks.

The 39 stations comprising the final sample reported net purchases of 4,325,252 gallons and sales of 4,311,357 gallons.¹² Sales were smaller than purchases by 13,895 gallons, or 0.32 of 1 percent.

¹¹ "Gasoline Measurements Survey, Report of the Comptroller-General," Winnipeg, Manitoba, Feb. 24, 1954. Greater detail is given in the Comptroller-General's brief, dated Jan. 20, 1955, at Winnipeg, which he submitted in competition for the Louisville award, an award given by the Municipal Finance Officers Association.

¹² Net purchases are actual purchases adjusted for opening and closing inventories.

IV. SUMMARY OF PRIOR SURVEYS

Omitting the survey of the Virginia Legislative Council because it contains no original data, we have reviewed five original studies. The five studies range in geographic coverage from the east to the west coast and from Texas on the south to Manitoba, Canada, on the north. Two of the studies (Los Angeles and the State of Washington) were compilations of data already on the books of the service stations. In this respect, the results represent the net effect of all possible causes of differences between sales and purchases (temperature determined shrinkage or expansion, evaporation, leaks, meter and pump errors, and accounting errors). The Richmond study was a rigidly controlled study of the effect on volume of differences in tank truck and underground storage tank temperatures. The Texas study was a strictly controlled study designed to measure physical variations in the amounts delivered to the stations and the amounts metered through the station pumps. Extremely extensive controls were effected to prevent the intrusion of faulty pumps and meters and accounting errors. The Manitoba study had the same purpose as the Texas study but was carried out with less extensive control over the pumps and meters.

Even with the varied objectives and procedures of the five studies, they all show a very small variation between the amount of gasoline delivered to retail service stations and the amount delivered through the pumps of the stations. The range in the five studies varies from a gain of about one-quarter of 1 percent to a loss of four-tenths of 1 percent.¹³ The exact ratios are shown in the summary table that follows.

Summary of surveys

Survey area	Test period	Percent of gain (+) or loss (-) in gasoline volume between time of purchase by dealers and time of delivery through station pumps
Los Angeles, Calif.....	1951-55 ¹	+0.27
Richmond, Va.....	1934 ²	+ .18
State of Washington ³	1951-55.....	- .40
State of Texas.....	Nov. 15, 1954, to Nov. 14, 1955.....	- .25
Province of Manitoba, Canada.....	Feb. 1, 1953, to Jan. 31, 1954.....	- .32

¹ 4 test stations were used. This audit covered a 56-month period for 1 station, 34 months, 19 months, and 1 year, respectively, for the others.

² Tests made in 9 weeks selected so as to represent an average of weather conditions.

³ Study measured only effects of differences in temperature between tank truck and underground storage tank.

⁴ Covered stations in the Seattle, Vancouver, and Pasco areas. The time periods covered varied, with most being for the calendar year 1955.

¹³ The report of the Virginia Advisory Legislative Council also refers to a study in Wisconsin which we have not obtained for purposes of this review. However, the report of the council (p. 11) states that the Wisconsin study, among others, indicates that on a year-round basis temperature changes result in a gain in gallonage when gasoline is transferred from tank trucks to underground storage tanks.

V. LOSS DATA PRESENTED BY THE NATIONAL CONGRESS OF PETROLEUM RETAILERS, INC.¹⁴

A. VARIANCE FROM OTHER SURVEYS

Data presented by a representative of the National Congress of Petroleum Retailers, Inc., to the Senate Committee on Finance and the House Committee on Ways and Means in connection with the 1961 highway legislation is at variance with that presented so far. The retailers requested that retail dealers handling taxpaid gasoline be granted a refund of 2 percent of the tax paid on gasoline handled by them to compensate them for losses of volume by shrinkage and evaporation. The 2-percent figure was supported by three exhibits. Two of these, which relate to tests conducted at the U.S. Naval Base, Key West, Fla., are advanced as showing only evaporation losses. The study at the Navy exchange of the base (July 27–August 13, 1954) is reported as showing losses of 2.2 percent for high-test and 2.8 percent for regular-grade gasoline. The study at the fuel depot of the base (August 9–20, 1954) is reported to show a loss of 2.2 percent of the total gasoline dispensed. The third exhibit presents data for 391 retail stations in Macomb, Oakland, Washtenaw, and Wayne Counties in the State of Michigan for the month of September 1949. Being derived from dealers' records, it includes not only evaporation losses, but shrinkage, leakage, pump errors, and accounting errors. The data collected from the 391 questionnaires are reported as showing an average loss of 1.6 percent.

The significant discrepancy between the exhibits presented by the National Congress of Petroleum Retailers and data from the other sources reviewed raises a question as to the reason for the discrepancy. It is believed that a valid explanation, or really explanations, is possible.

All three of the exhibits presented by the retailers cover very short time periods. The study at the Navy exchange covers 18 consecutive days in 1954, the fuel depot study included only 12 consecutive days in 1954, and the Michigan survey relates to 1 month in 1949. The time periods are too short to be representative. Different seasons of the year have different effects on evaporation and shrinkage. No study which does not cover a year or representative parts of a year in one area, therefore, can give a reasonable showing of differences in receipts of gasoline and deliveries from pumps of service stations.

The Key West studies also are deficient in that they each cover only one unit. Any one unit cannot be considered as representative of the norm. An individual station can deviate greatly from the average for any number of reasons.

Aside from these general weaknesses, there are deficiencies relating to each survey which are further considered below.

B. NAVY EXCHANGE, KEY WEST, FLA.

No information is available as to whether control measures were instituted to insure accuracy of delivery figures, pumps, and meters. The condition of the tanks may or may not have been checked. While

¹⁴ "Highway Financing," hearings before the Committee on Finance on title II of H.R. 6713, 87th Cong., pp. 116–120. Also, hearings before the Committee on Ways and Means on the "President's Proposals for Financing the Federal-Aid Highway Program," 87th Cong., pp. 632–642.

over a long period of time, discrepancies resulting from faulty meters, etc., may tend to offset each other, it cannot be assumed that they will do so over an 18-day period.

The Treasury Department tried to obtain further information on this and the fuel depot study from both the Navy Department and Mr. Joseph Abelow, president, Vapor Salvage Systems, Inc., which prepared the Key West data. Neither the Navy nor Mr. Abelow had retained records of the details of the studies.

C. FUEL DEPOT, U.S. NAVAL BASE, KEY WEST, FLA.

This study also is lacking in the presentation of information as to the checks placed on the accuracy of tanks and delivery figures. An adjustment is reported, however, for an inaccuracy of the service station pump.

The basic data presented show a loss considerably smaller than the 2.2 percent stated in the exhibit. All actual volume data in the exhibit are adjusted to a 60° F. level before determining the loss ratio. In making the adjustment, an important error occurred. Measured gallons in inventory at the beginning of the test were 2,563 and are shown adjusted upward by the 60° formula to 2,611.6 gallons. According to footnote 1 of the exhibit, the inventory registered 86° F. and therefore should have been adjusted downward rather than upward. If this is done, the adjusted opening inventory figure is 2,523 gallons. This corrected opening inventory results in an adjusted total of 5,303.9 gallons dispensed per accounting records. Total gallons dispensed per the records (5,303.9) minus adjusted pump readings (5,277) gives a loss of 26.9 gallons or 0.51 of 1 percent under the method of computation used in the exhibit.

D. MICHIGAN, 1949

While, as mentioned previously, the Michigan survey is lacking in that it covers only a 1-month period, there are also other factors reflecting on the representativeness and accuracy of the survey. This exhibit was placed in both the House hearings (p. 640) and the Senate hearings (p. 125). Some of the figures on sales and purchases differ between the two exhibits, but these will be ascribed to typographical errors. Both exhibits have errors of addition, subtraction, and division. In the aggregate, the arithmetical errors, as revealed in the Senate hearings, make little change in the computed loss ratio, merely lowering it from 1.6 percent to 1.5 percent. However, the obvious errors raise a question as to the accuracy of the underlying tabulations.

Possible inaccuracies in the underlying data are further evidenced by the figures for the sixth group of 40 stations shown in the exhibit. These stations are reported as having purchased 720,221 gallons and sold 688,176 gallons. The "loss" of 32,045 gallons is almost 4.5 percent of purchases. No other group in the survey shows a percentage loss, after correcting arithmetical errors, of anywhere near this ratio. To have a 4.5 percent loss due to shrinkage alone requires the underground storage tanks to be 74° F. cooler than the tank truck temperature of the gasoline; an obvious impossibility in September in Michigan. Some few stations might have had large losses from leaks, but it would be doubtful that they could have had such excessive losses as

to bring average losses for a group of 40 stations up to 4.5 percent. Bookkeeping and meter errors could account for the large loss ratio only if all stations, or practically all, were biased in the same direction. With a group of 40 stations this is practically impossible to conceive. In the aggregate, it would appear that this group of figures is just incorrect. Yet the weight of this group in the total of 391 stations is so large that the apparent loss ratio drops from 1.5 percent to 1.14 percent if this questioned series is removed from the sample.

VI. TREASURY DEPARTMENT SURVEY, 1961

A. SURVEY METHODS

The Treasury Department survey, made in response to the request of the committee on conference on the Federal-Aid Highway Act of 1961, measured the net losses or gains of gasoline at retail gasoline service stations as shown by the stations' own records of inventories, deliveries of gasoline, and metered sales for the calendar year 1961. Since no special tests or controls had been established to assure accuracy of pumps, delivery records, or inventory measures, the data collected represent the net effect of all physical and accounting factors which can result in a showing of losses or gains.

While the use of the stations' own records made it impossible to tell whether differences between purchases and sales of gasoline were due to physical factors or accounting errors, an attempt was made to secure a varied group of stations for the survey and to give account to the diverse weather zones of the country.

To give effect to variations in climate, stations were selected from 12 Internal Revenue districts in 2 longitudinal geographical strips; 6 districts were along the Atlantic coast, and the other 6 generally followed the Mississippi Valley. The guidance of the U.S. Weather Bureau was obtained in the selection of locations.

In order to limit coverage to a typical retail operation, only independent dealerships were reviewed. Furthermore, stations receiving deliveries on a consignment or bailment-type of delivery were not included. Stations with above-ground gasoline storage tanks also were excluded. Internal Revenue agents who collected the data were requested to attempt to obtain records from stations with various sizes of gasoline sales. The size classes suggested were over 500,000 gallons per annum, 300,000 to 500,000 gallons, and less than 300,000 gallons.

Each of the 12 Internal Revenue districts was directed to examine a minimum of 5 and a maximum of 10 stations for purposes of the study. The examination and collection of the accounting data were carried out by excise tax revenue agents or income tax revenue agents experienced in the audit of stations selling motor vehicle fuel at retail. Cooperation of the stations was voluntary.

The report form used by the agents is attached hereto as appendix A.

B. RESULTS

1. Average losses

The reports from the 12 Internal Revenue districts provided completely filled out forms for 79 stations. The stations showed book shortages for the year of 52,077 gallons out of total gasoline available for sale of 41,543,822 gallons. The average shortage was 0.125 of 1 percent. The average loss was the result of plus and minus variations, ranging from a gain for the 10 stations in San Antonio, Tex., of 0.255 of 1 percent, to a loss of 0.595 of 1 percent for 8 stations in Columbia and Charleston, S.C.

Details for the 12 districts are shown in the table attached as appendix B.

2. Losses by size of station

Of the total of 79 stations, 34 stations had gasoline sales of between 100,000 and 300,000 gallons, 21 stations sold between 300,000 and 500,000 gallons, and 24 sold over 500,000 gallons. No direct relationship between the volume of gasoline handled and losses or gains appear from the tabulation of the data for these stations. The 34 stations in the smallest size class showed an average shortage for the year of 0.074 of 1 percent. The 21 stations in the next size class actually had a gain for the year of 0.100 of 1 percent. Finally, the 24 stations handling over 500,000 gallons had a loss of 0.196 of 1 percent. The average loss for all 79 stations was 0.065 of 1 percent. These ratios are computed as a simple average of the losses or gains for each individual station. As a result of the fact that the largest losses were shown by the largest stations, the average of 0.065 of 1 percent is just about half of the average for all stations computed by using the loss or gain of the individual station weighted by the volume of gasoline it handled.

APPENDIX A

NAME	COMPUTATION OF RETAIL SERVICE STATION GASOLINE SHORTAGE OR OVERAGE FOR CALENDAR YEAR 1961 (in gallons)											
	CITY AND STATE											
ITEM	LOCATION											
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1. Opening physical inventory (stick)												
2. Add: Purchases												
3. Total gasoline available for sale												
4. Deduct: Metered sales												
5. Balance												
6. Deduct: Closing physical inventory (stick)												
7. Shortage or (overage) in gallons (line 5 minus line 6)												
8. Shortage or (overage) as percent of total gasoline available for sale (line 7 or a percent of line 3)												

ANNUAL RECAPITULATION

(Please answer the following questions)

- Number of gasoline pumps at this station (All brands and grades of gasoline)
- Average life of station gasoline pumps
- Capacity of all underground gasoline storage tanks (in gallons)
- Average approximate depth (in feet) from surface of ground to top of each gasoline storage tank
- Type of ground underlying over underground storage tanks (Concrete, asphalt or other)
- Average number of full-time employees at this station
- Method of measurement of gasoline delivery to this station (bulk or otherwise)
- Number of months between inspection of station by revenue and measure authorities
- How is the gasoline which is pumped out for test measurement or other purposes and returned to storage tanks reported on this form?
 - Added to purchases
 - Deducted from sales
 - Other adjustment (Specify)

NAME OF AGENT _____ DATE _____

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE (See instructions on reverse) Form 1403 (11-61)

INSTRUCTIONS

A. Instruction for Data to be Collected:

Item 1 - Opening Inventory--Start collection of data with opening physical (stick) inventory for the beginning of the month of the period under examination.

Item 2 - Purchases--Purchases shall be established by invoices covering deliveries if the station's records fail to show the detail. If metered sales include gasoline pumped for test or other purposes which was returned to storage tanks, such amounts of gasoline must be reflected in purchases or sales. (See paragraph C below).

Item 3 - Total Gasoline Available for Sales--This is the sum of line 1 plus line 2.

Item 4 - Metered Sales--Deduct metered sales from line 3. Metered sales are derived from the meter readings on the gasoline pumps.

Item 5 - Balance--The difference between total gasoline available for sale and the metered sales.

Item 6 - Closing Inventory--The closing inventory must be a physical (stick) inventory. Note that the closing inventory on line 6 is also the opening inventory for the next consecutive month shown on line 1. There should be no difference between the closing inventory of one month and the opening inventory of the next consecutive month.

Item 7 - Shortage or Overage--If the closing inventory shown in line 6 is less than the balance shown on line 5 the result on line 7 will be a shortage of gasoline inventory. Conversely, if the closing inventory shown on line 6 is greater than the balance shown on line 5, the result on line 7 will be an overage of gasoline inventory. Show inventory overage in parentheses.

Item 8 - Shortage or Overage of Gasoline Inventory as a Percent of Total Gasoline Available for Sales--The percentage is derived by dividing line 7 by line 3.

$$\text{Thus: } \frac{\text{Line 7 (Inventory shortage or overage)}}{\text{Line 3 (Total gasoline available for sale)}} = \frac{\text{Percent shortage or percent overage of}}{\text{total gasoline}}$$

B. Annual Recapitulation--Determine the annual recapitulation by taking the physical (stick) inventory for the beginning of 1961; add to it the purchases for all months of 1961; deduct the physical (stick) closing inventory for the final month of the test period from this balance. The final result will be the inventory shortage or overage for the year. Show inventory overage in parentheses. Compute the shortage or overage as a percent of total gasoline available for sale, as was done for each month of the test in line 8.

C. Gasoline Pumped Out for Test Measurement Purposes--If gasoline has been withdrawn through the metered pumps for test, measurement or other purposes and subsequently returned to the underground storage tanks, an adjustment in the station's accounting records is necessary to reflect this fact. The amount of gasoline pumped for such purposes and returned to the storage tanks is ordinarily reflected by a bookkeeping adjustment increasing the amount (in gallons) of purchases. In some cases, however, stations will make a bookkeeping adjustment which reduces sales (in gallons). At each station the revenue agent should ascertain that the bookkeeping adjustment properly reflects the correction of inventory for the amount of gasoline pumped out for such purposes and subsequently returned to the storage tanks. If such is not the case, an adjustment should be made by the Revenue Agent for purposes of this report so that the inventory changes are properly reflected. Evidence of the amount of gasoline withdrawn is usually available in the form of a receipt from weights and measures authorities.

In some cases, the revenue agent may discover that gasoline pumped out is not returned to the storage tanks. In this event, no adjustments to the bookkeeping records are necessary.

D. Submission of Computation--The completed form should be submitted as indicated in the guidelines for the gasoline loss study in sufficient time to permit transmission thereof to the National Office, not later than March 15, 1962.

APPENDIX B

Treasury Department survey of retail service station gasoline shortage or overage by geographic locations for 1961

Internal Revenue district	Number of stations	Opening inventory (Jan. 1, 1961)	Purchases	Total gasoline available for sale	Metered sales	Closing inventory (Dec. 31, 1961)	Shortage or (overage)	
							In gallons	As percent of total gasoline available for sale
Grand total.....	79	Gallons 567,394	Gallons 40,976,428	Gallons 41,543,822	Gallons 40,942,544	Gallons 549,200	52,077	0.1254
Augusta ¹	7	33,218	1,890,319	1,913,537	1,866,847	37,911	8,779	.4588
Austin ²	10	63,695	4,583,040	4,646,735	4,596,577	62,002	(11,844)	(.2549)
Baltimore.....	12	80,594	5,335,253	5,415,847	5,314,328	91,987	9,532	.1760
Columbia ³	8	76,921	5,832,095	5,909,016	5,808,862	65,007	35,147	.5948
Dallas ⁴	4	31,108	1,581,692	1,612,800	1,582,192	28,781	1,827	.1133
Des Moines.....	5	27,478	1,471,191	1,498,669	1,467,979	33,694	(3,004)	(.2004)
Hartford ⁵	4	21,783	1,551,134	1,572,917	1,546,433	26,006	478	.0304
Jacksonville ⁶	6	34,196	2,480,099	2,514,295	2,496,432	29,729	(1,856)	(.0742)
Kansas City.....	10	67,401	5,002,601	5,070,002	5,017,300	53,447	(746)	(.0147)
Oklahoma City.....	6	36,502	1,555,750	1,592,252	1,582,356	29,316	580	.0364
Richmond.....	7	48,504	3,178,630	3,227,134	3,173,532	42,159	11,443	.3546
St. Paul (Minneapolis).....	1	45,994	6,524,624	6,570,618	6,519,706	49,161	1,751	.0266

¹ Station data from Portland.

² Station data from San Antonio.

³ Station data from Columbia and Charleston.

⁴ Station data from Fort Worth.

⁵ Station data from New Haven.

⁶ Station data from Miami Beach, Orlando, and Jacksonville.

Exhibit J

FINAL RESULTS
TEXAS SERVICE STATION STOCK VARIATION STUDY

Attached are 13 exhibits that constitute the statistical tabulations and complementary graphs of the final results of this study conducted in Texas during the 12 month period November 1954-55.

While a brochure with a more complete outline of the origin and procedures of this study will be mailed to all members of the O&E Committee within the next 30 days, the following brief resume of statements made in previous meetings is appropriate:

The initiation and conduct of this test resulted from the introduction of a Bill in the Texas Legislature in the Spring of 1953, the aim of which was to have suppliers bill dealers on the basis of atmospheric volumes adjusted to 60° F. As the investigation of a House Committee disclosed that there was very little research data to support or refute the claim of abnormal or uncontrollable loss, the Governor asked for the design of a plan under which interested segments of the Industry would develop this data, to promote a mutually satisfactory settlement within industry as it did not appear to be a legislative problem. After a year of planning by representatives of all segments of the marketing group, there were 60 stations selected to start the test on November 15, 1954, under the following general conditions:

The test stations would be subdivided among the five natural temperature zones, in accordance with the percentage of the State's volume marketed in each zone and allocated among the suppliers according to the percentage of the State's volume marketed by each supplier. Every effort would be used to maintain in balance all the varying factors that might affect volume as a result of any physical or operating conditions, such as the size of underground storage, the location of pumps with respect to the storage, the age of the pumps, the material of the driveways, the type of deliveries--whether by

transport or bobtail truck, compartment or metered. It was the aim of the Committee to assure that the average gallon through a test station was truly representative of the average gallon marketed throughout the State. All equipment at each station was conditioned to permit the sealing of tanks, pump shells, meter totalizer and calibration mechanism. All trucks used in making deliveries were checked as to the accuracy of compartment measurements or meters, if metered deliveries were made. At the beginning of the test all tanks were filled within 2' of the top of the fill pipe and thereafter at the end of each test month they were filled to the same position, thereby eliminating any of the variations resulting from tank irregularities, settlement, errors in gauge tables, daily gauges and other variables. Each station was supplied with a Taylor thermometer, a 1-gallon and 5-gallon standard measuring can, an adequate number of serially numbered lead seals, a sealing iron and several complete sets of special design reporting forms and a very complete manual of procedures. The temperature of each compartment of gasoline delivered was taken and recorded at the supplier's dock and at the service station immediately before dumping into underground storage. Each compartment and draw-off line on the tank truck was sealed at the supplier's dock with seal numbers recorded on the invoice and these numbers were checked at the service station before breaking, with appropriate recording of their numbers on the proper form. The volume above or below the compartment indicator at the time of delivery was determined and recorded. The number of every seal placed on the underground storage tanks and pumps and thereafter broken was recorded. The temperature of the underground storage was taken and recorded before and after every delivery and on the second day following each delivery. The meters in the dispensing pumps were checked every Tuesday for accuracy. On every occasion that there was any seal broken or any delivery made a supplier's representative was always present and the breaking of seals, taking of temperatures,

and other important procedures of the plan were a joint operation conducted by him and the dealer. Both signed all reports rendered. Every precaution was taken to assure an accuracy of results that would not be subject to successful challenge.

At the end of each month all dealers transmitted to Area Chairmen all of the forms that they had prepared and these were ultimately forwarded to one of the suppliers who had the responsibility for the placement of the information on IBM cards. It required approximately 127,000 of these cards to record all of the results. A tabulating machine run was made by stations by months and it along with all of the handwritten records were delivered to a special audit committee of ten men, that required slightly more than four weeks for detailed inspection and recording of every error and omission, regardless of its degree of significance. This audit committee ultimately made recommendations as to the elimination of those months in which errors occurred that could not be reconciled, with the net result that there remained 580 acceptable station months of 636 presented, 16% in excess of the minimum that had been designated, by agreement, as satisfactory for an accurate cross section.

The over-all results as finally reported by the Industry Committee were that the dealer sold 997.5 gallons of each 1,000 gallons delivered and 998 gallons of each 1,000 gallons for which he was invoiced.

Exhibits I through IV are self-explanatory.

Exhibit V was prepared to provide explanation as to the manner in which permissible tolerance in the mechanical devices used in the handling and the marketing of the product could affect individual stations.

Exhibits VI and VII are the four basic temperature graphs indicated numerically by 1, 2, 3 and 4 representing the average of the following factors for all stations in the test: temperature of tank truck compartments immediately before delivery; temperature of underground storage immediately before delivery;

temperature of underground storage immediately after delivery; temperature of underground storage on the second day following delivery. Charts VIII, IX and X are selected significant comparisons of various pairs of the temperature graphs shown on Exhibits VI and VII. The most significant conclusion, and incidentally the one of greatest accuracy, is that every gallon delivered into underground storage had an immediate temperature increase of 1.31° , representing a volume increase of approximately .79 gallons for each 1,000 gallons delivered. After this volume remained in storage until the second day following delivery, there was a further increase of $.56^{\circ}$, resulting in a total volume increase of 1.12 gallons for each 1,000 gallons of a delivery that remained in storage for that period. This additional increase in volume of approximately .33 gallons per 1,000 gallons was dissipated, however, for that undetermined portion of the volume that yet remained in the tank on the next delivery as there was a drop in temperature of $.52^{\circ}$ in the original content of each tank on the occasion of each delivery.

Exhibits XI, XII and XIII provide the comparison between the temperature of truck compartments and the temperatures of underground storage on the second day following each delivery for three selected stations, one having a percentage loss nearest the average of $-.25\%$; a second having a variation nearest zero, and a third having the largest gain. The dealers had expressed a pronounced interest in the temperature variation that developed during the approximate 48-hour period succeeding each delivery.

In the brochure to be issued it is planned to emphasize the care to develop unquestioned accuracy and the most outstanding feature throughout the entire test that there was not only no single question as to the sincerity of anyone but the utmost of cooperation by everyone. It is hoped that this will be an influencing factor in promoting the acceptance of these results in other areas where the question exists or arises.

**SERVICE STATION STOCK VARIATION TEST RESULTS
BY ZONES AND BY PRODUCTS
BEFORE AUDITORS' ADJUSTMENT**

Test Station Zone and Product*	Service Station Pump Metered Gallons	Billed Gallons	Amount by which Service Station Pump Metered Gallons were more (/) or less (-) than Billed Gallons		Delivered Gallons	Amount by which Service Station Pump Metered Gallons were more (/) or less (-) Than Delivered Gallons	
			Number	%		Number	%
AP	410,900	412,026	1,126-	.27-	412,034	1,134-	.28-
AR	432,429	436,599	4,170-	.96-	436,602	4,173-	.96-
Total	843,329	848,625	5,296-	.62-	848,636	5,307-	.63-
BP	2,964,377	2,969,387	5,010-	.17-	2,970,694	6,317-	.21-
BR	2,592,599	2,599,101	6,502-	.25-	2,600,091	7,492-	.29-
Total	5,556,976	5,568,488	11,512-	.21-	5,570,785	13,809-	.25-
CP	2,868,996	2,872,641	3,645-	.13-	2,873,083	4,087-	.14-
CR	2,596,574	2,602,557	5,983-	.23-	2,604,485	7,911-	.30-
Total	5,465,570	5,475,198	9,628-	.18-	5,477,568	11,998-	.22-
DP	776,157	777,599	1,442-	.19-	778,061	1,904-	.24-
DR	1,097,553	1,098,974	1,421-	.13-	1,099,496	1,943-	.18-
Total	1,873,710	1,876,573	2,863-	.15-	1,877,557	3,847-	.20-
EP	181,034	180,714	320/	.18/	180,733	301/	.17/
ER	177,567	178,377	810-	.45-	178,418	851-	.48-
Total	358,601	359,091	490-	.14-	359,151	550-	.15-
SP	7,201,464	7,212,367	10,903-	.15-	7,214,605	13,141-	.18-
SR	6,896,722	6,915,608	18,886-	.27-	6,919,092	22,370-	.32-
GRAND TOTAL	14,098,186	14,127,975	29,789-	.21-	14,133,697	35,511-	.25-

* Zones are indicated by A, B, C, D & E, while Premium & Regular grades are indicated by P & R and State Total is indicated by S.

EXHIBIT II

SERVICE STATION STOCK VARIATION TEST RESULTS
BY ZONES AND BY PRODUCTS
AFTER AUDITORS' ADJUSTMENT

Test Station Zone and Product*	Service Station Pump Metered Gallons	Billed Gallons	Amount by which Service Station Pump Metered Gallons were more (/) or less (-) than Billed Gallons		Delivered Gallons	Amount by which Service Station Pump Metered Gallons were more (/) or less (-) than Delivered Gallon	
			Number	%		Number	%
AP	410,900	412,126	1,226-	.30-	412,134	1,234-	.30-
AR	348,198	349,910	1,712-	.49-	349,913	1,715-	.49-
Total	759,098	762,036	2,938-	.39-	762,047	2,949-	.39-
BP	2,881,394	2,887,775	6,381-	.22-	2,889,045	7,651-	.26-
BR	2,467,730	2,473,539	5,809-	.23-	2,474,496	6,766-	.27-
Total	5,349,124	5,361,314	12,190-	.23-	5,363,541	14,417-	.27-
CP	2,702,602	2,706,570	3,968-	.15-	2,707,602	5,000-	.18-
CR	2,500,390	2,504,457	4,067-	.16-	2,505,658	5,268-	.21-
Total	5,202,992	5,211,027	8,035-	.15-	5,213,260	10,268-	.20-
DP	666,511	667,539	1,028-	.15-	668,437	1,926-	.29-
DR	831,020	832,508	1,488-	.18-	833,862	2,842-	.34-
Total	1,497,531	1,500,047	2,516-	.17-	1,502,299	4,768-	.32-
EP	181,034	180,714	320/	.18/	180,733	301/	.17/
ER	177,567	178,377	810-	.45-	178,418	851-	.48-
Total	358,601	359,091	490-	.14-	359,151	550-	.15-
SP	6,842,441	6,854,724	12,283-	.18-	6,857,951	15,510-	.23-
SR	6,324,905	6,338,791	13,886-	.22-	6,342,347	17,442-	.28-
GRAND TOTAL	13,167,346	13,193,515	26,169-	.20-	13,200,298	32,952-	.25-

* Zones are indicated by A, B, C, D & E, while Premium and Regular grades are indicated by P & R and State Total is indicated by S.

SERVICE STATION STOCK VARIATION TEST RESULTS
THE PER CENT LOSS OR GAIN FOR COMPARISONS SHOWN,
BY INDIVIDUAL STATIONS BY TEST STATION AREAS BY PRODUCTS
AFTER AUDITORS' ADJUSTMENT

Test Station Zone	Station Number Code	The Per Cent by which Service Station Pump Metered Gallons were more (✓) or less (-) than Billed Gallons		The Per Cent by which Service Station Pump Metered Gallons were more (✓) or less (-) than Delivered Gallons	
		Premium	Regular	Premium	Regular
A	101	.20✓	.14-	.20✓	.14-
	102	.22-	.47-	.22-	.47-
	103	.41-	.47-	.41-	.47-
	104	.71-	.74-	.71-	.74-
B	201	.44-	.49-	.52-	.55-
	202	.58-	.18-	.68-	.25-
	204	.12-	.64-	.17-	.70-
	205	.18-	.38-	.18-	.38-
	206	.39-	.28-	.39-	.28-
	207	.46-	.42-	.48-	.48-
	208	.29✓	.30-	.17✓	.40-
	209	.35-	.25-	.35-	.27-
	210	.13-	.04-	.20-	.13-
	211	.25-	.16-	.32-	.19-
	212	.30✓	.10-	.30✓	.10-
	213	.36-	.36-	.40-	.41-
	215	.15-	.25-	.22-	.30-
	216	.53-	.05-	.53-	.05-
	217	.62-	.37-	.64-	.38-
	218	.08✓	.02✓	.03-	.09-
	219	.16✓	.01✓	.16✓	.01✓
	220	.01-	.01✓	.04-	.04-
221	.34-	.30-	.34-	.30-	
222	.32-	.28-	.31-	.29-	
223	.71-	.62-	.73-	.64-	

SERVICE STATION STOCK VARIATION TEST RESULTS
THE PER CENT LOSS OR GAIN FOR COMPARISONS SHOWN,
BY INDIVIDUAL STATIONS BY TEST STATION AREAS BY PRODUCTS
AFTER AUDITORS' ADJUSTMENT

Test Station Zone	Station Number Code	The Per Cent by which Service Station Pump Metered Gallons were more (+) or less (-) than Billed Gallons		The Per Cent by which Service Station Pump Metered Gallons were more (+) or less (-) than Delivered Gallons	
		Premium	Regular	Premium	Regular
C	301	.01-	.27+	.11-	.13+
	302	.39+	.43-	.39+	.43-
	303	.51-	.39-	.51-	.40-
	304	.87+	.66+	.87+	.66+
	305	.42-	.50-	.43-	.51-
	306	.02-	.18-	.10-	.28-
	308	.68+	.28+	.68+	.28+
	309	.92-	.46-	.93-	.46-
	310	.22+	.14+	.22+	.14+
	311	.06-	.40-	.09-	.42-
	313	.15-	.58-	.17-	.57-
	315	.05+	.06-	.01+	.17-
	316	.67-	.33-	.67-	.34-
	317	.47-	.66-	.49-	.68-
	318	.51-	.19-	.57-	.30-
	319	.54-	.34-	.50-	.36-
	320	.22+	.17+	.14+	.08+
321	.19-	.00-	.20-	.02-	
322	.10+	.15-	.10+	.15-	
323	.29-	.15-	.31-	.16-	
D	401	.19-	.22-	.35-	.36-
	402	.18+	.37-	.15+	.37-
	403	.32+	.58-	.35+	.55-
	405	.47-	.25+	.57-	.03+
	406	.13+	.55+	.66-	.25-
	409	.42-	.63-	.42-	.63-
	411	.21-	.41+	.21-	.41+
E	501	.18+	.98-	.18+	.98-
	502	.17+	.04-	.16+	.08-

SERVICE STATION STOCK VARIATION TEST RESULTS
STATE SUMMARY BY MONTHS
AFTER AUDITORS' ADJUSTMENT

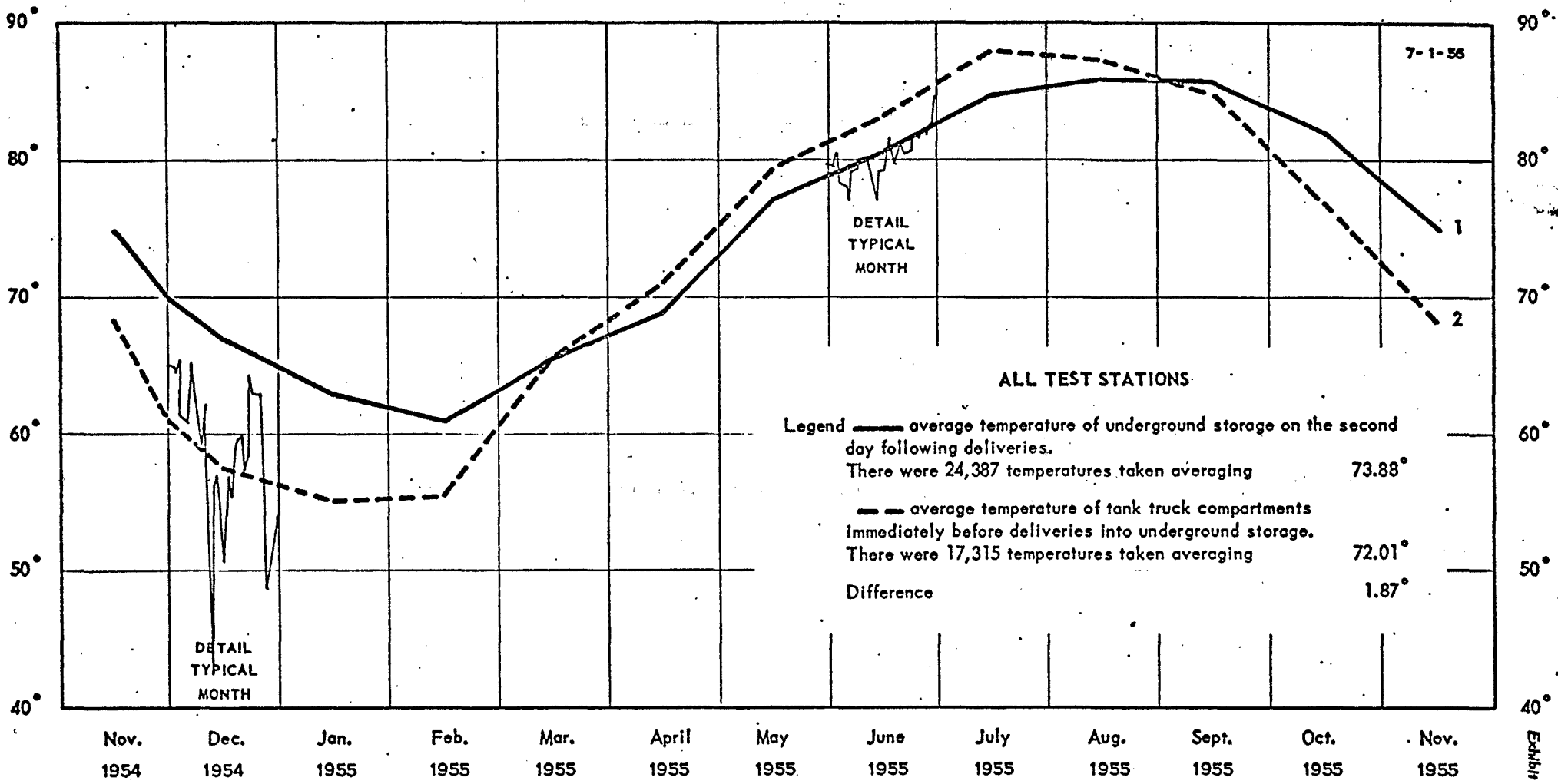
Month	Service Station Pump Metered Gallons	Billed Gallons	Amount by which Service Station Pump Metered Gallons were more (/) or less (-) than Billed Gallons		Delivered Gallons	Amount by which Service Station Pump Metered Gallons were more (/) or less (-) than Delivered Gallons	
			Number	%		Number	%
1	1,140,656	1,141,867	1,211-	.11-	1,142,304	1,648-	.14-
2	1,048,733	1,048,207	526/	.05/	1,048,657	76/	.01/
3	1,098,464	1,099,137	673-	.06-	1,099,571	1,107-	.10-
4	1,016,071	1,016,017	54/	.01/	1,016,626	555-	.05-
5	1,120,746	1,122,619	1,873-	.17-	1,123,156	2,410-	.21-
6	1,087,199	1,088,802	1,603-	.15-	1,089,292	2,093-	.19-
7	1,125,445	1,129,729	4,284-	.38-	1,130,444	4,999-	.44-
8	1,075,050	1,076,559	1,509-	.14-	1,077,274	2,224-	.21-
9	1,136,855	1,141,290	4,435-	.39-	1,141,956	5,101-	.45-
10	1,123,597	1,127,309	3,712-	.33-	1,128,007	4,410-	.39-
11	1,037,527	1,041,696	4,169-	.40-	1,042,231	4,704-	.45-
12	1,107,674	1,110,927	3,253-	.29-	1,111,421	3,747-	.34-
13*	49,329	49,356	27-	.05-	49,359	30-	.06-
TOTAL	13,167,346	13,193,515	26,169-	.20-	13,200,298	32,952-	.25-

* Due to delayed initiation of test by a few stations.

LATITUDE OF TOLERANCES PERMISSIBLE IN MECHANICAL DEVICES
USED IN THE VOLUME MEASUREMENT OF GASOLINE
BY SUPPLIERS AND RESELLERS

<u>Type Tolerance</u>	<u>% Tolerance Permissible</u>	
	<u>Type Truck Delivery Compartment</u>	<u>Meter</u>
Manufacturer - Truck Meter		.10 ^t
Weights & Measures - Truck (A)	.20 ^t	.22 ^t
Manufacturer - Pump Meter	.10 ^t	.10 ^t
Weights & Measures - Pump Meter (B)	.52 ^t	.52 ^t

- (A) These tolerances are based upon a delivery of 500 gallons from the truck compartment. If less than 400 gallons constitutes the size of the compartment or metered delivery, this tolerance increases modestly, and conversely if the delivery is greater than 600 gallons the tolerance decreases modestly.
- (B) These tolerances are based upon a delivery of 10-gallons through the pump meter as the average sale to a customer. If less than 10-gallons were delivered then this tolerance would increase modestly and if more than 10-gallons it would decrease modestly.



7-1-56

DETAIL
TYPICAL
MONTH

DETAIL
TYPICAL
MONTH

Exhibit VI

0131

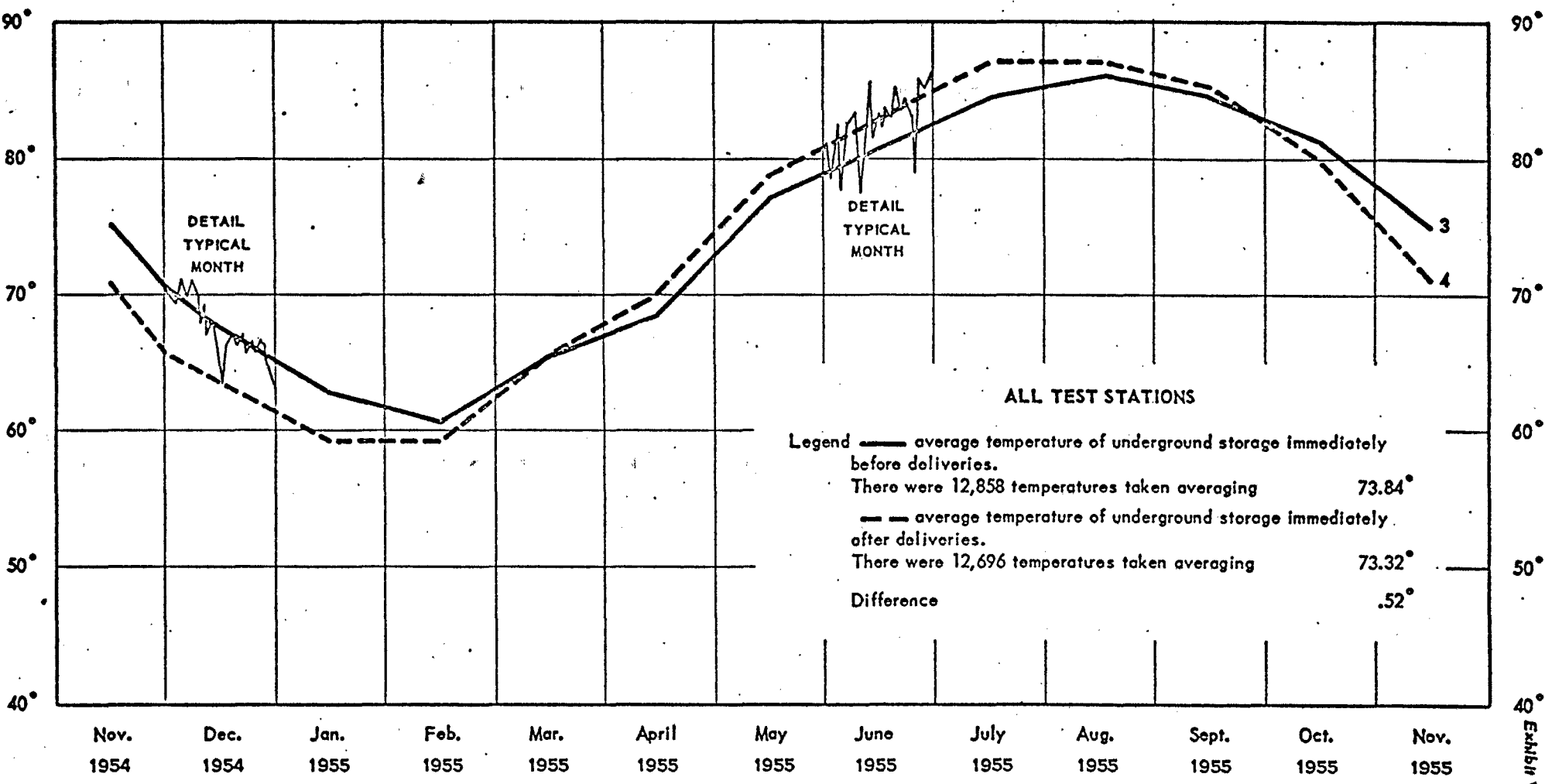
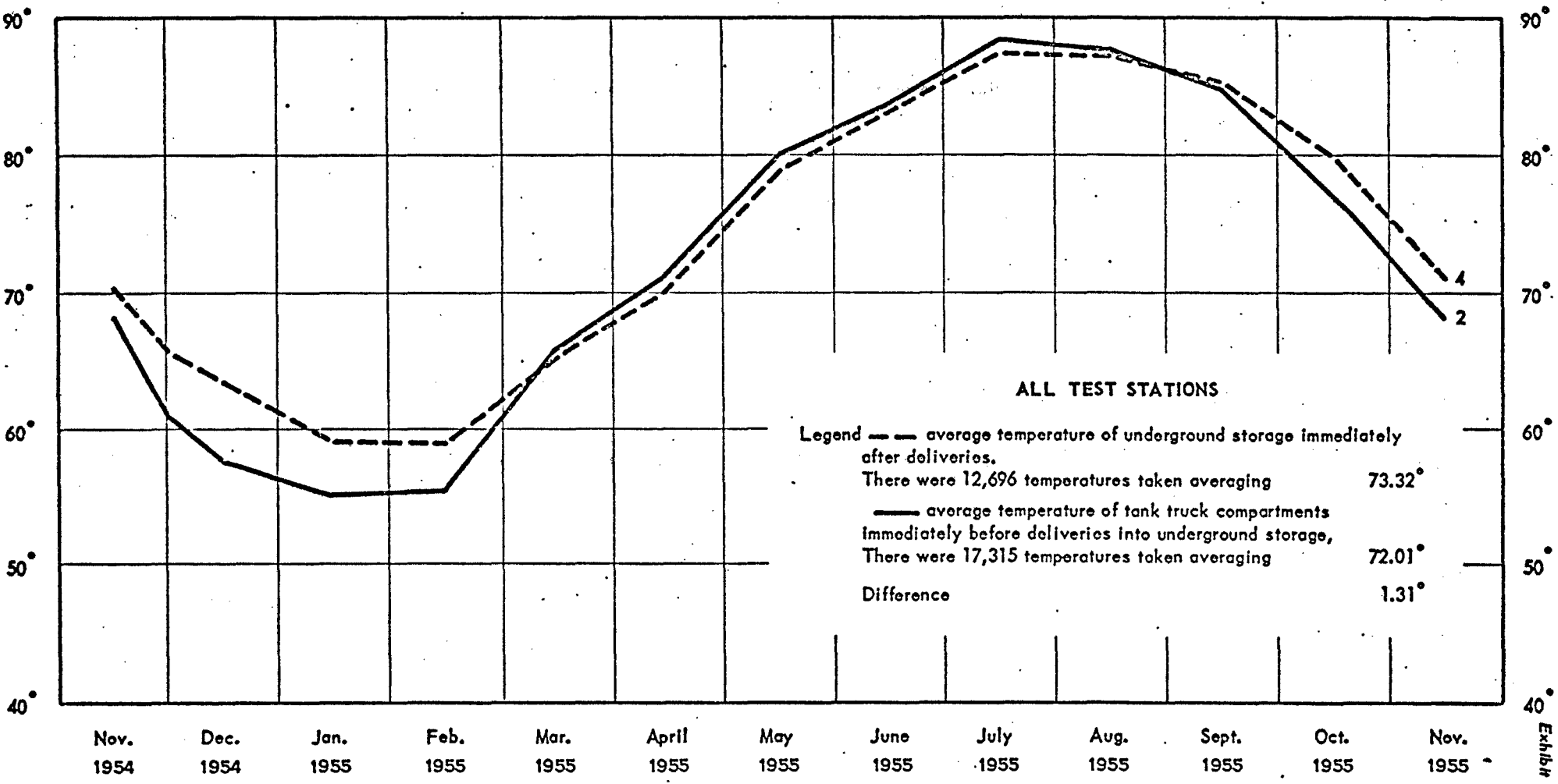
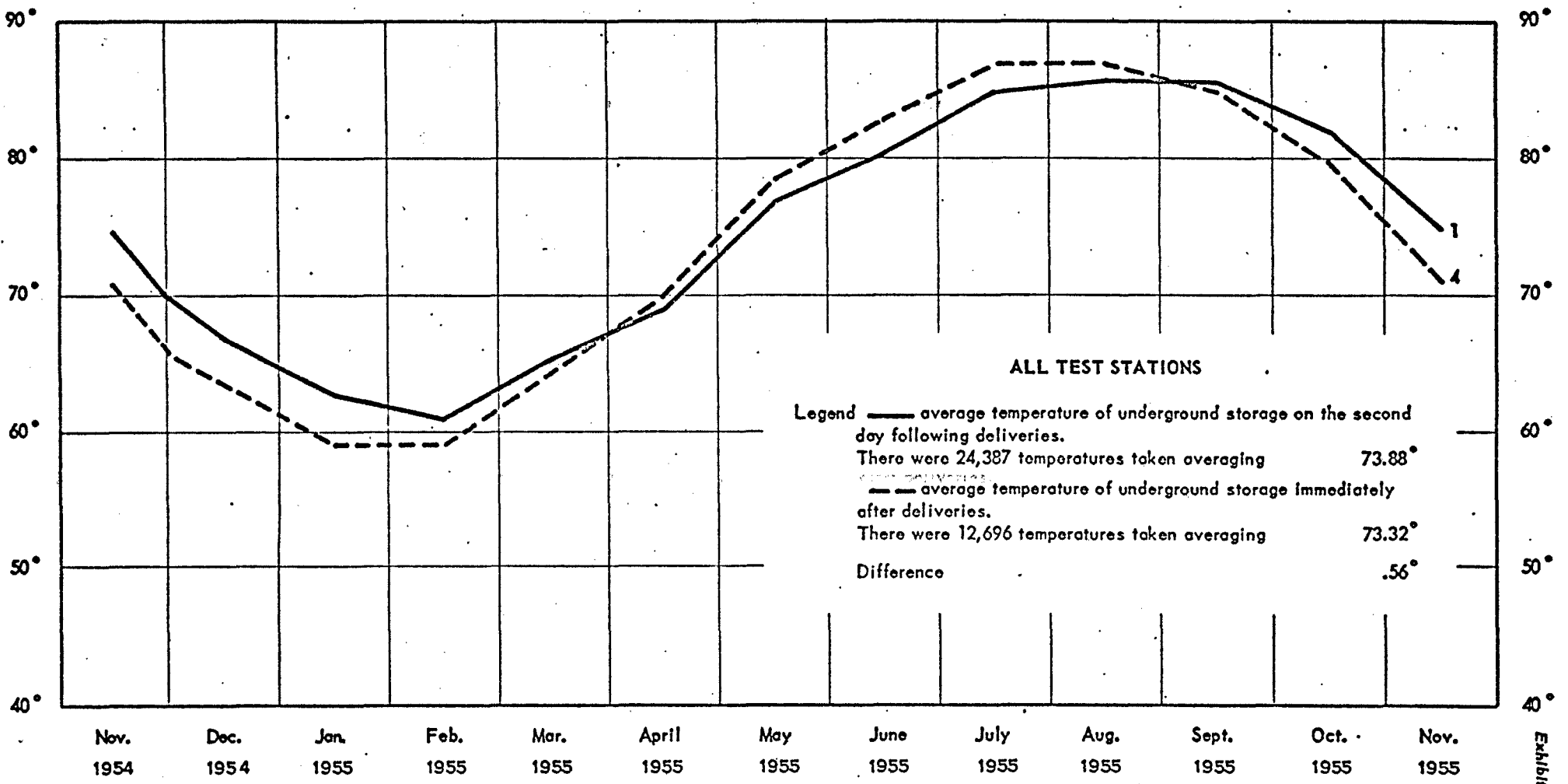


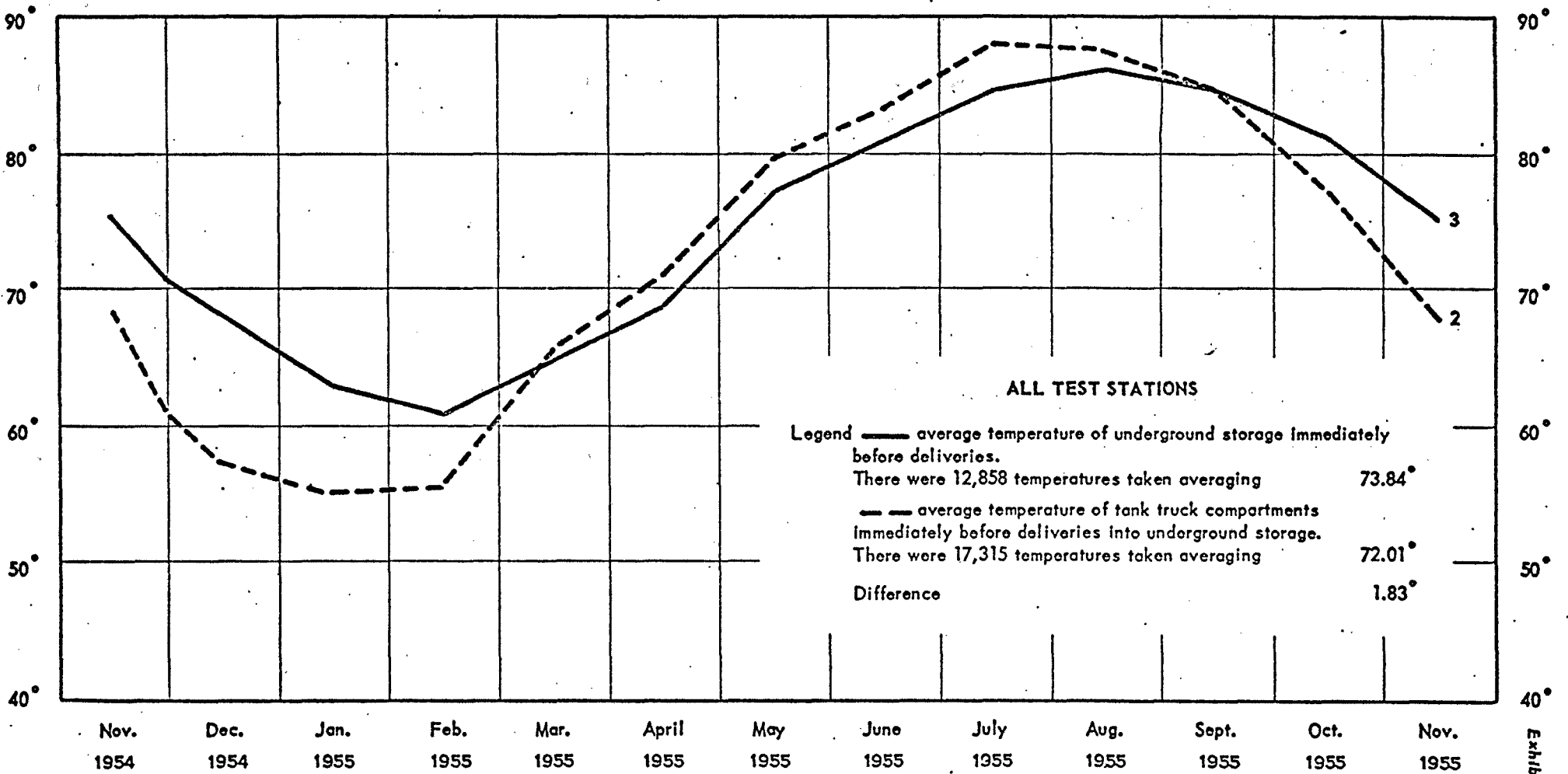
Exhibit VII





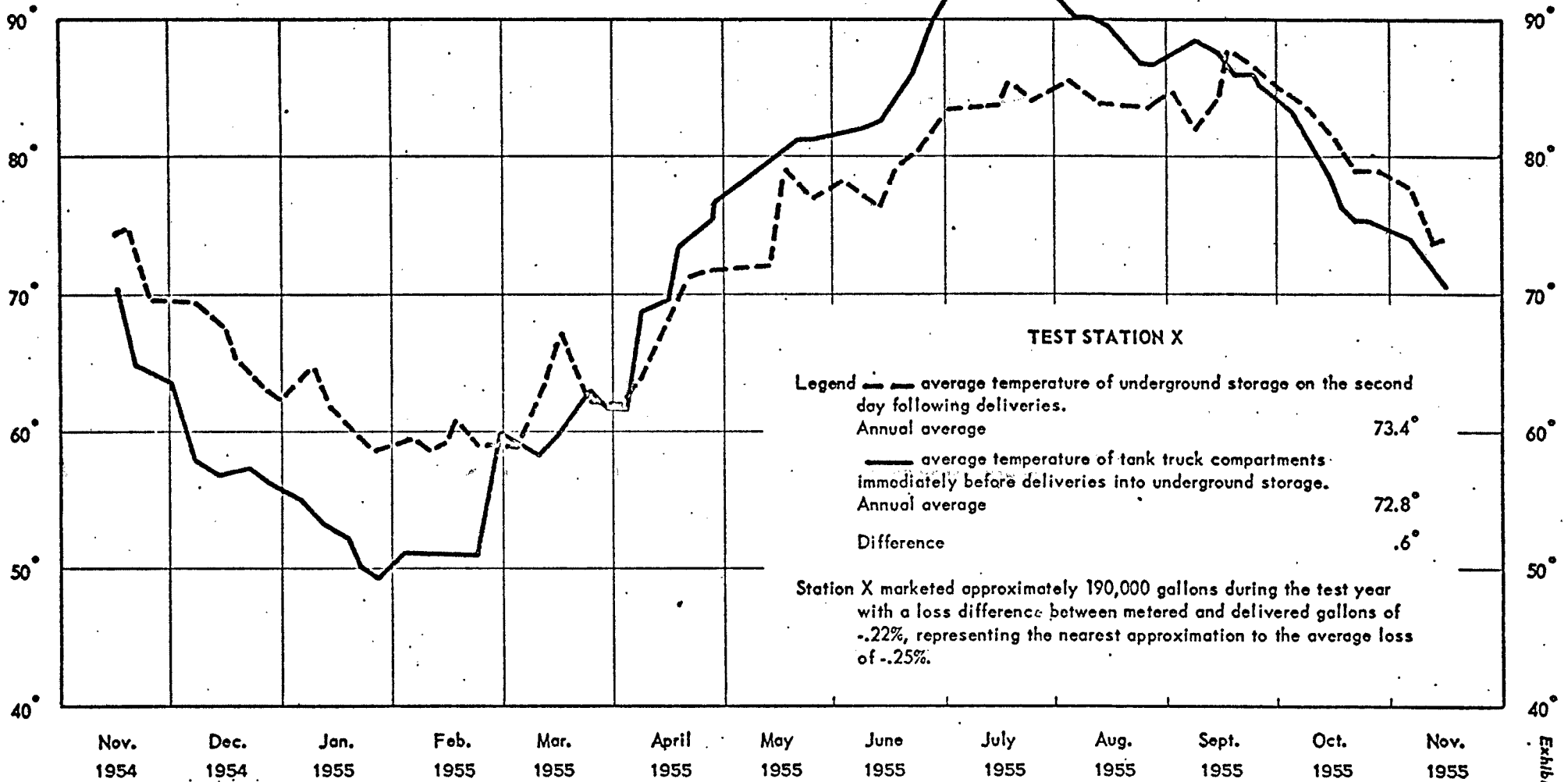
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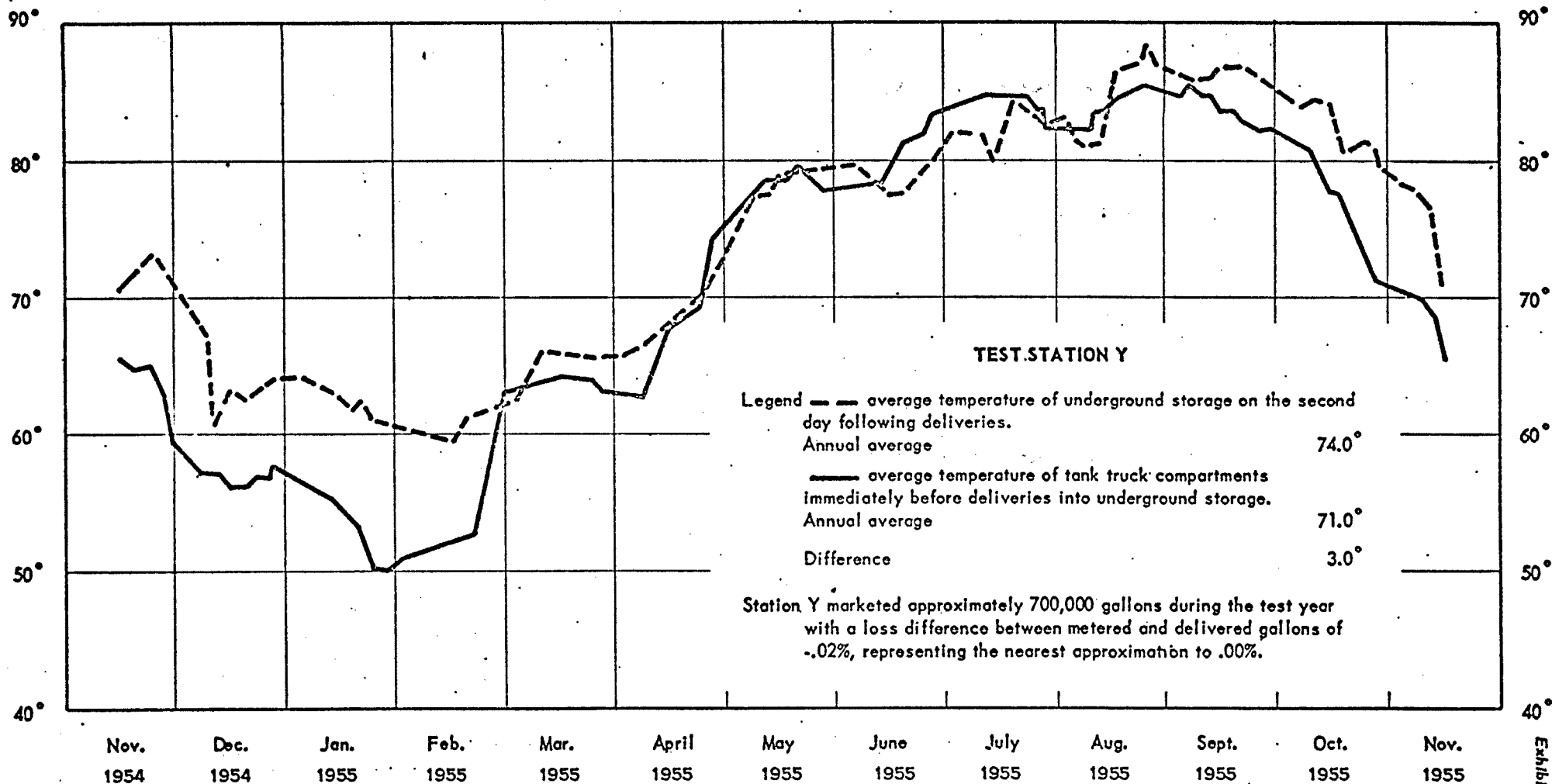
Exhibit IX



2135

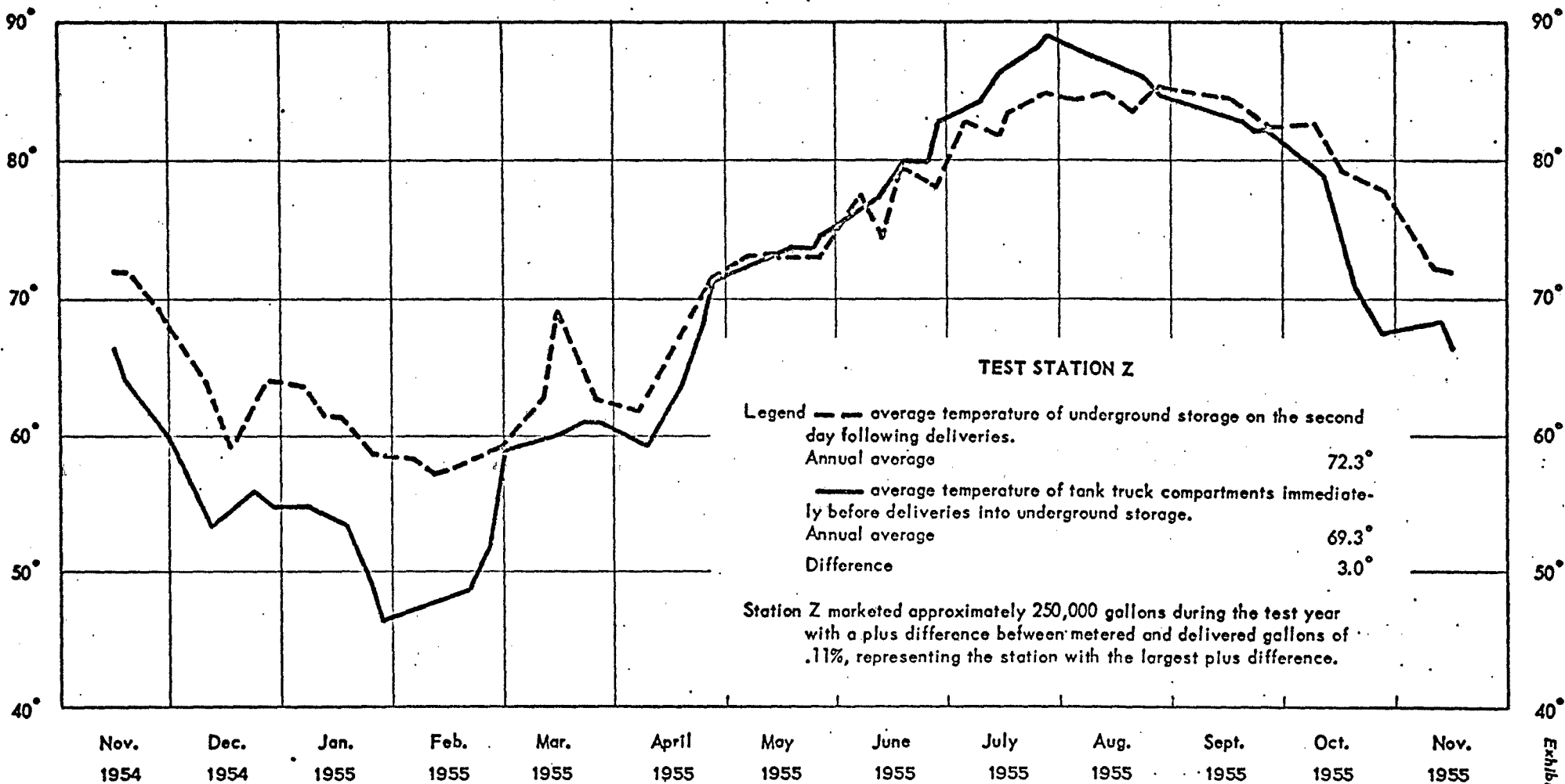
Exhibit X





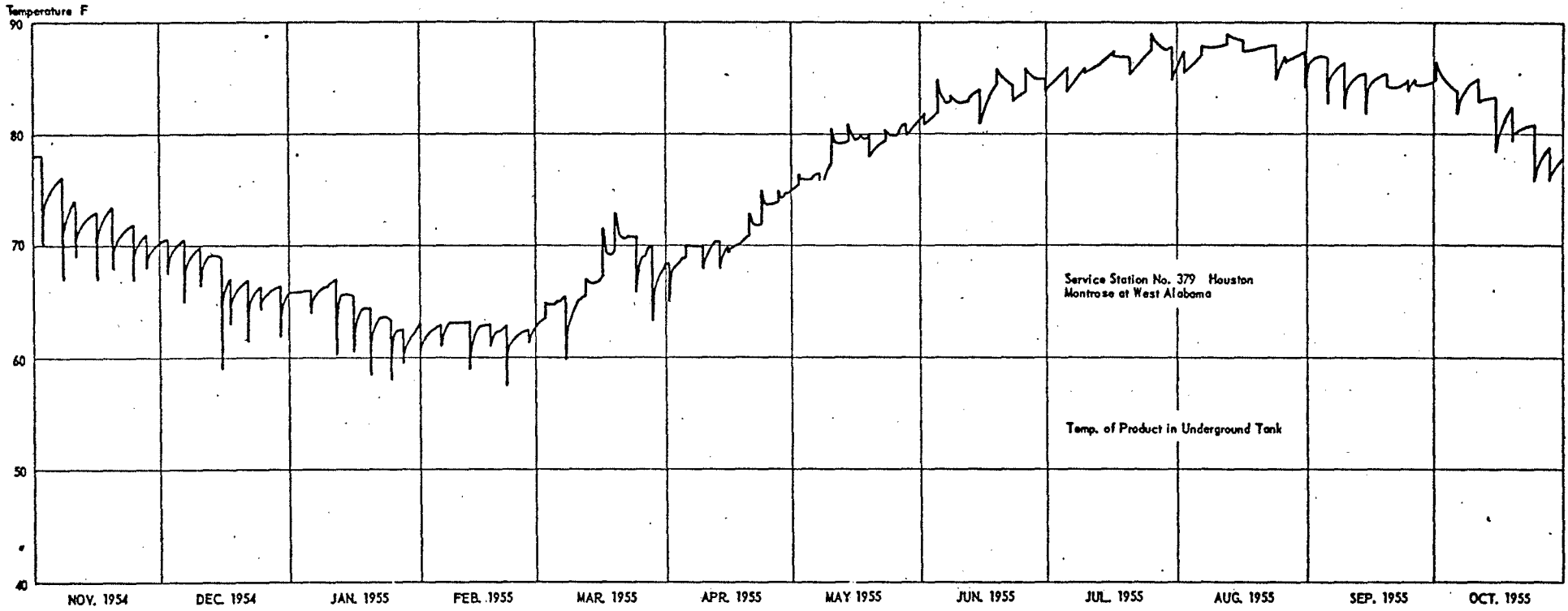
2137

Exhibit XII

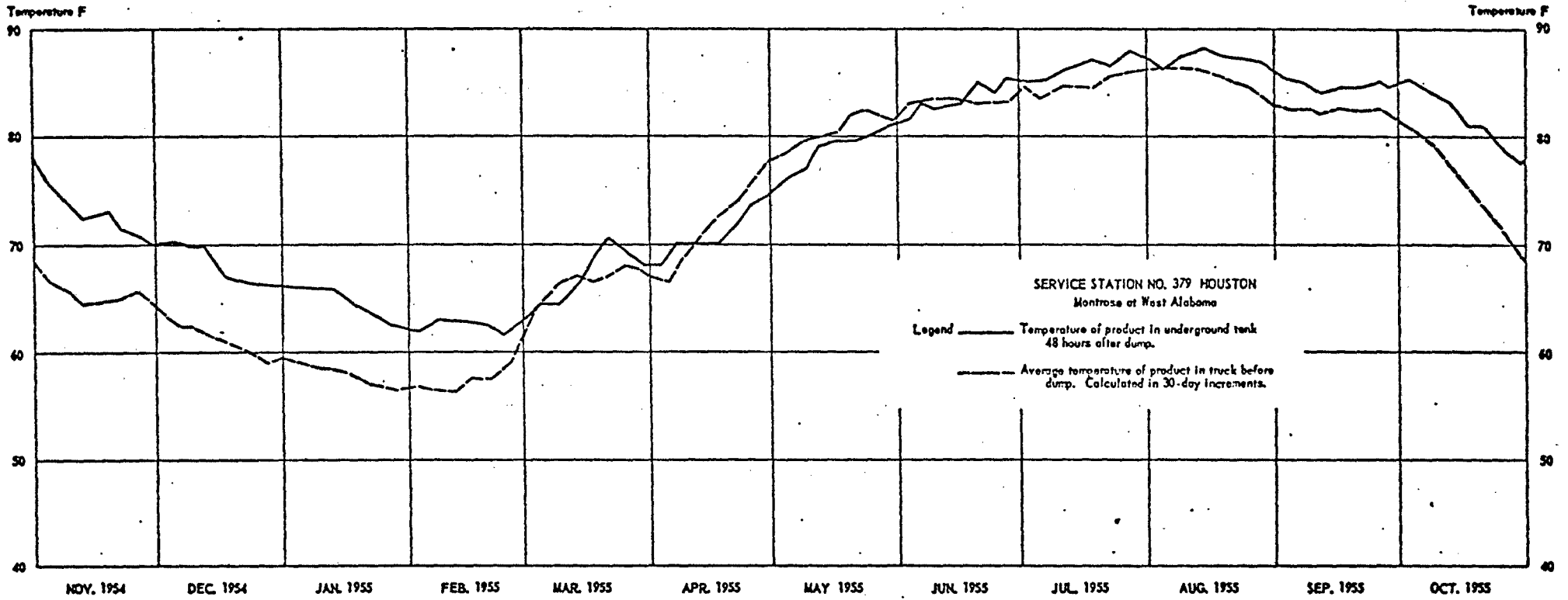


2138

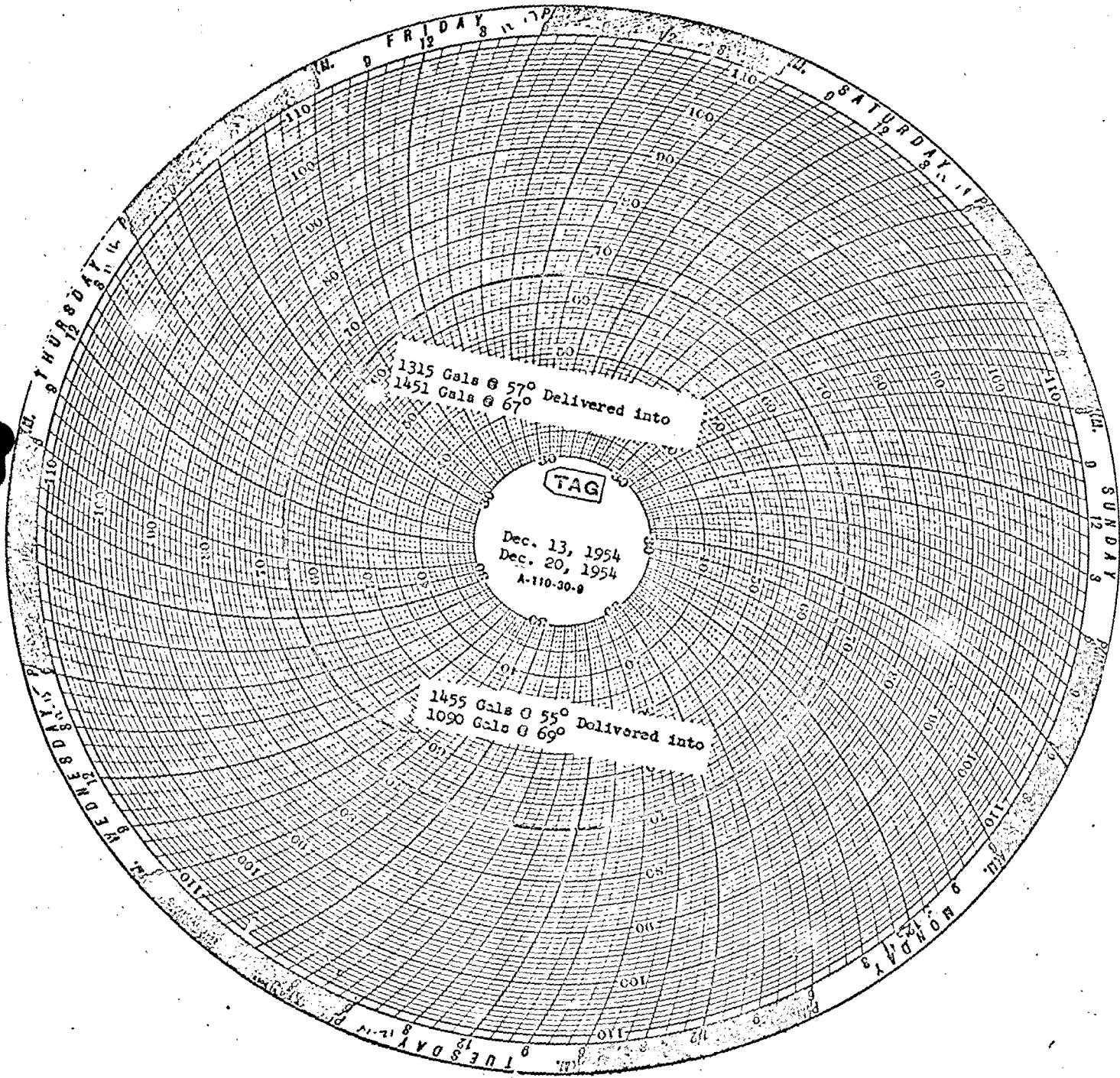
Exhibit XIII

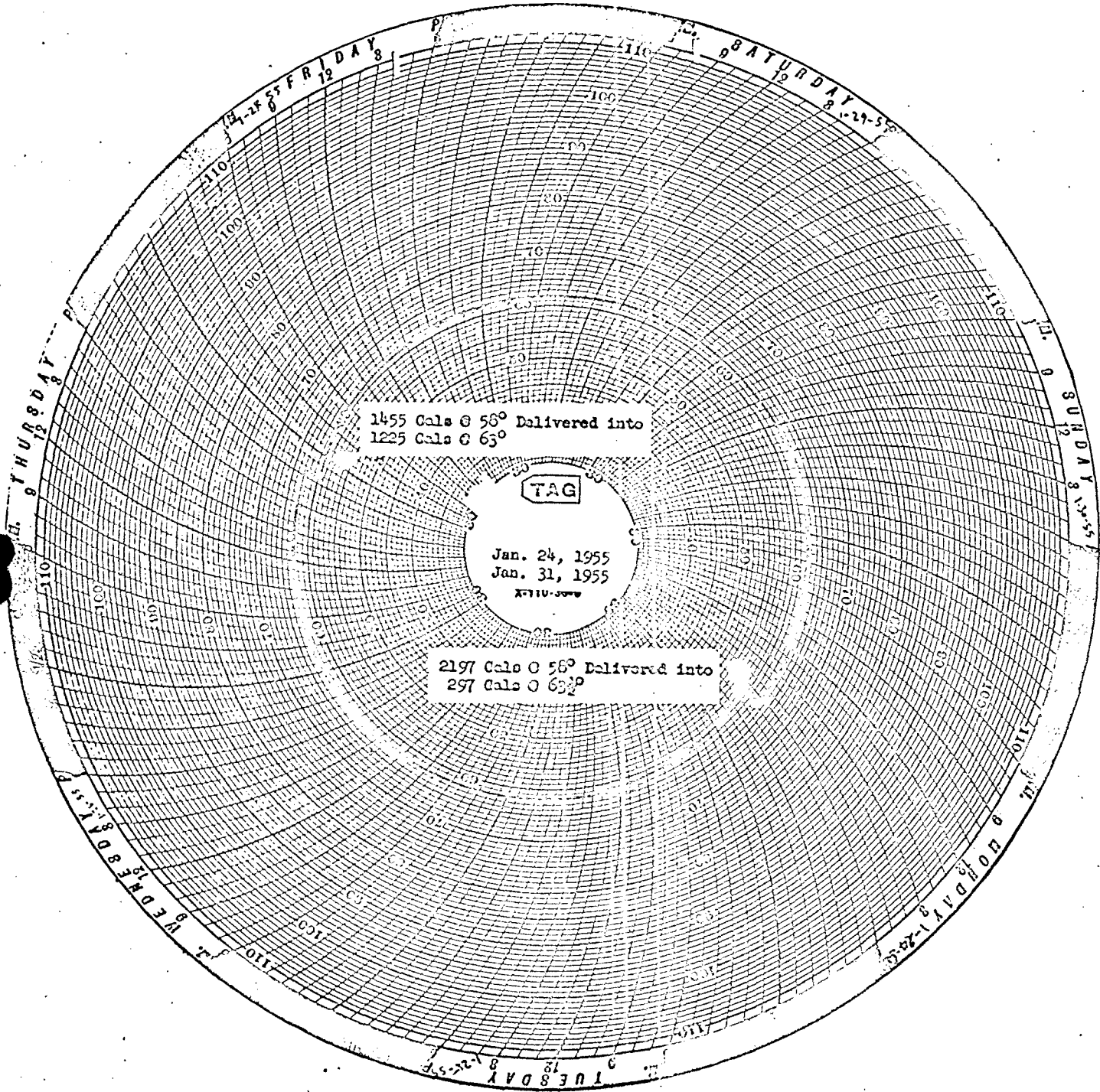


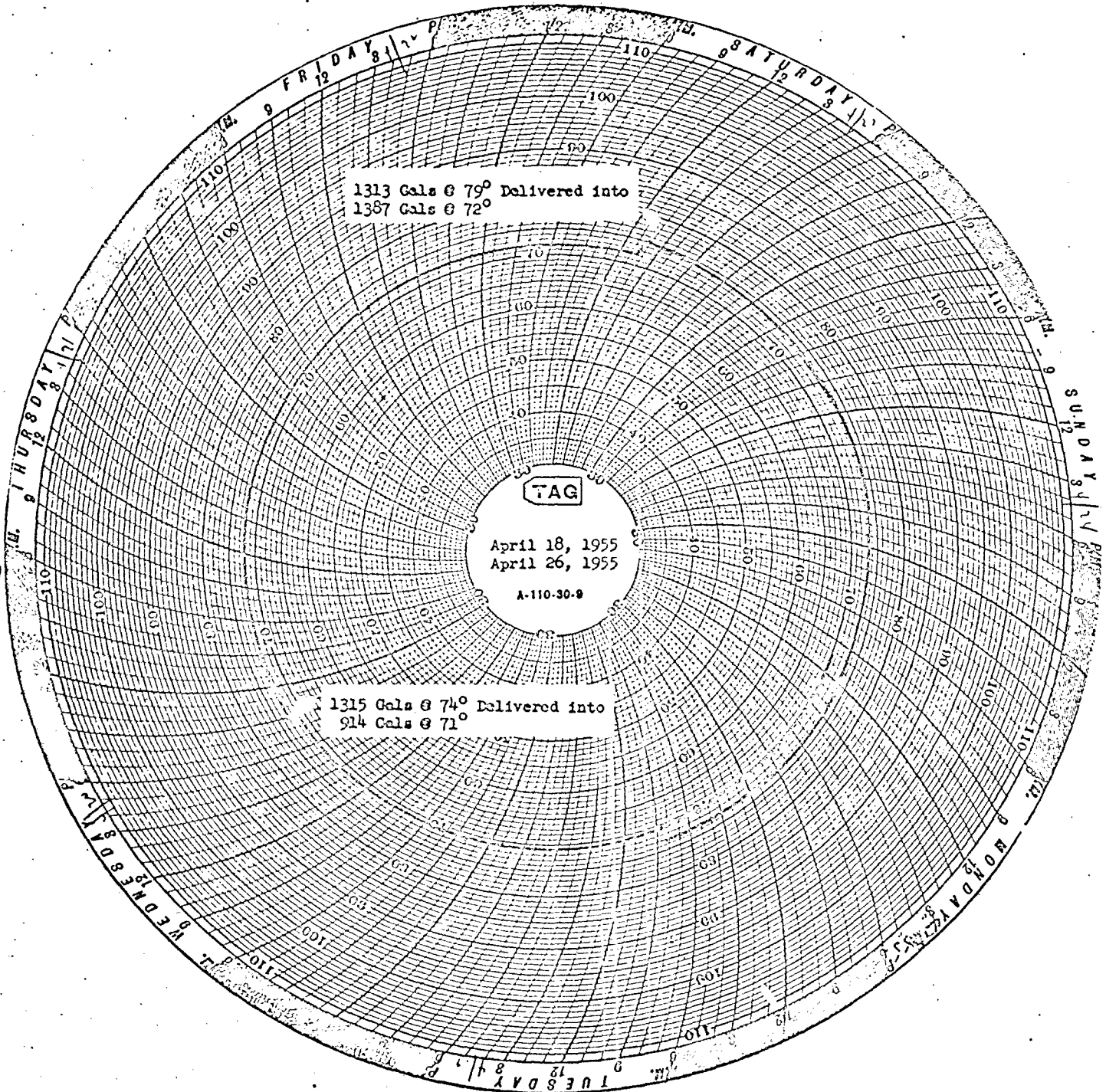
2139

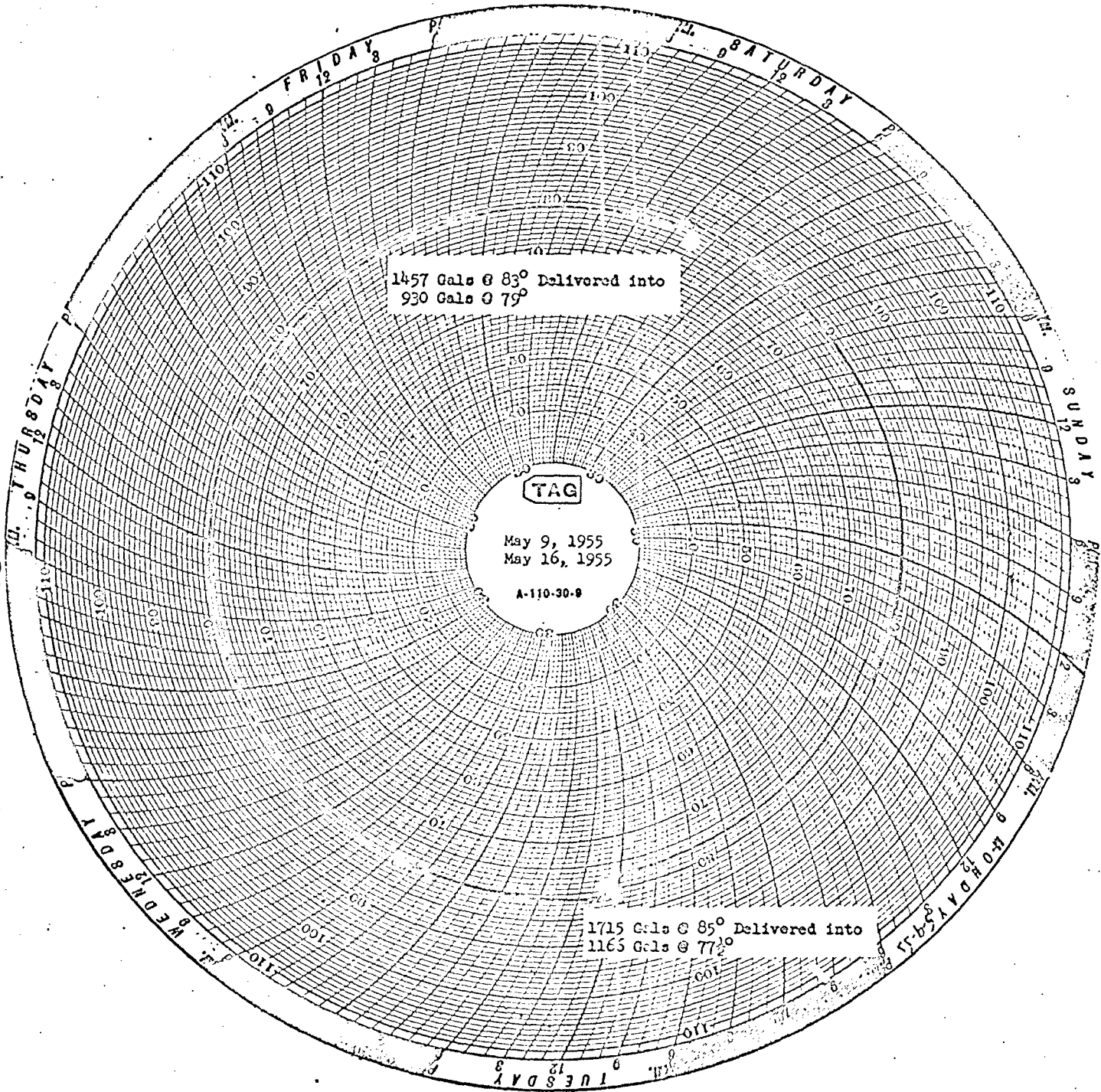


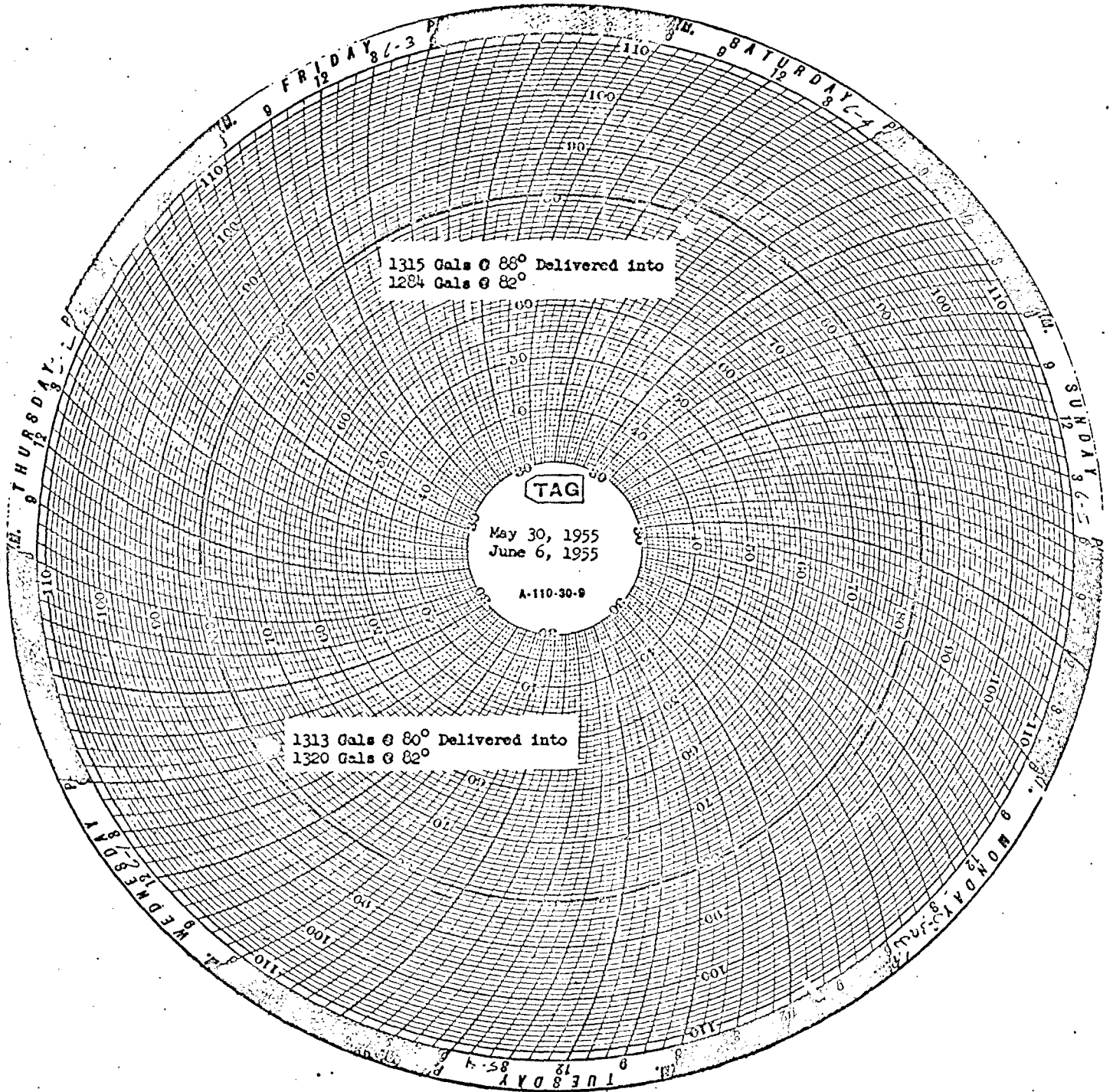
2140











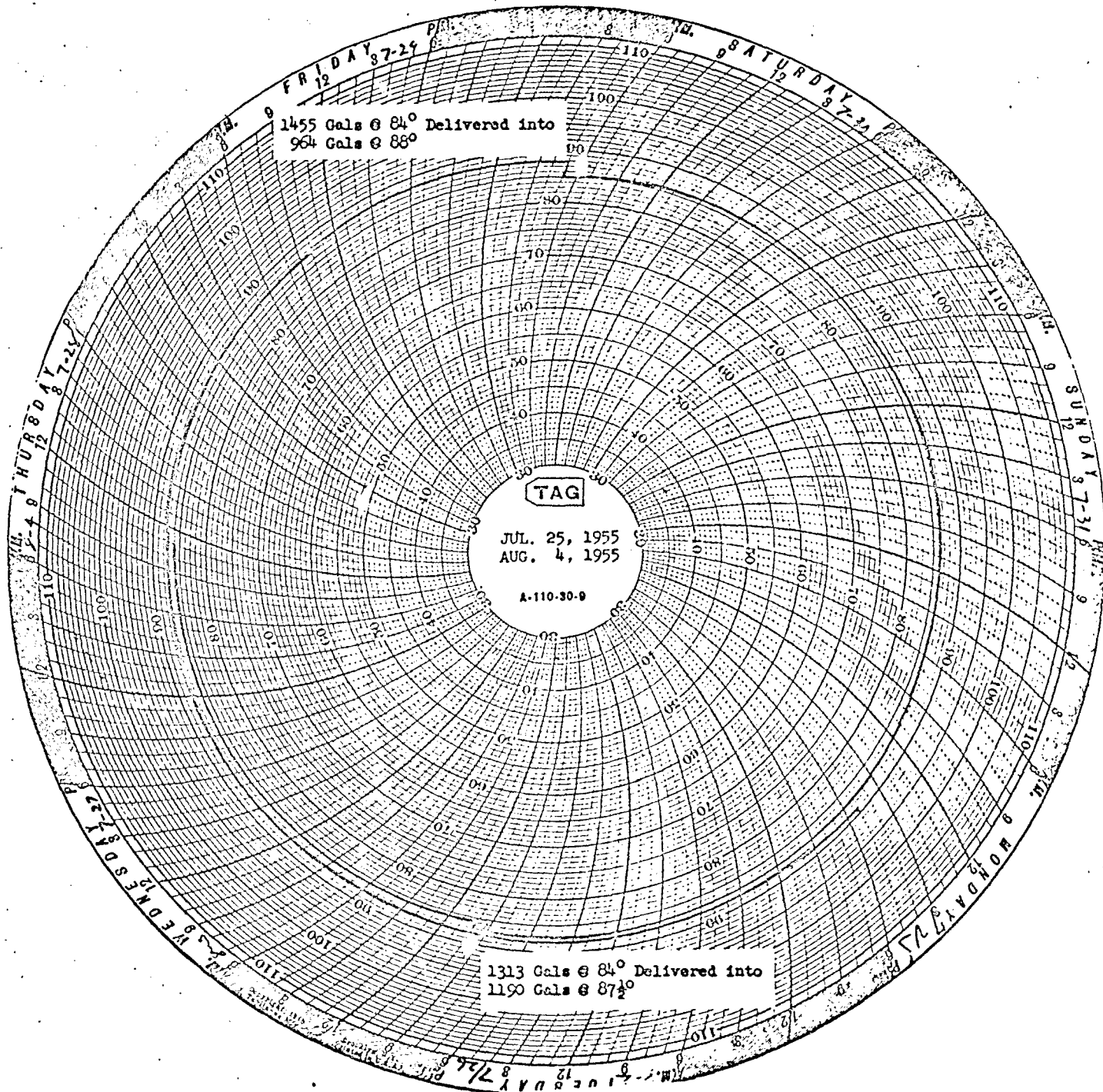
1315 Gals @ 88° Delivered into
1284 Gals @ 82°

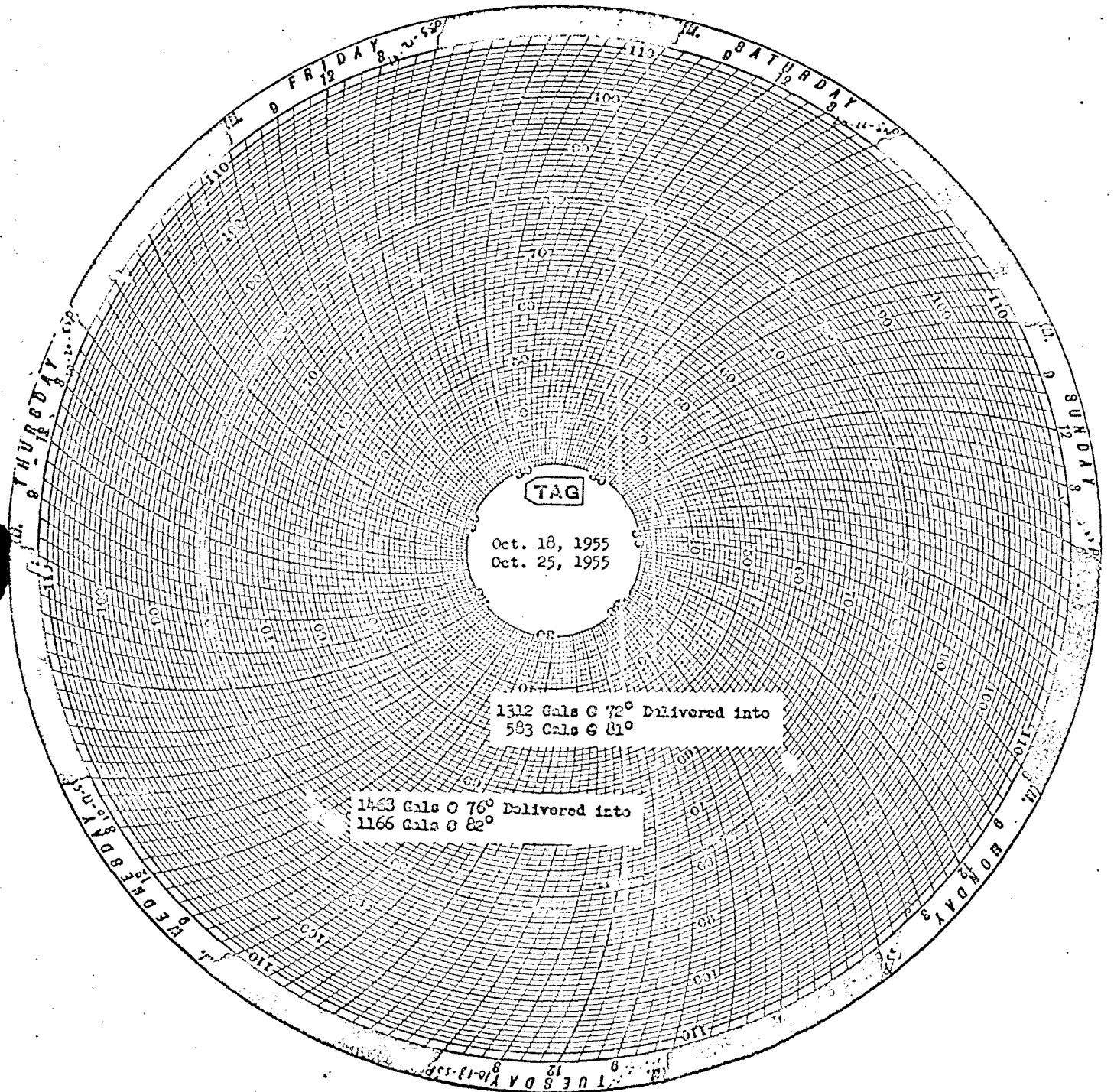
TAG

May 30, 1955
June 6, 1955

A-110-30-9

1313 Gals @ 80° Delivered into
1320 Gals @ 82°





TAG

Oct. 18, 1955
Oct. 25, 1955

1312 Gals @ 72° Delivered into
583 Gals @ 81°

1443 Gals @ 76° Delivered into
1166 Gals @ 82°

Exhibit
File
April, 1976

"Temperature Correction"

Re: SB 1109 - Temperature Correction

The Dealers Association is requesting the Legislature to require that all gasoline sold to them be billed on a temperature corrected basis of 60°F. for deliveries of 500⁰ or more gallons. The bill now before you was first sponsored by a dealer association and introduced in the Arizona Legislature in 1962 and, as I recall, it has been before this body at least four or five times.

Now, as to temperature correction, some companies give temperature correction to dealers but it is on a basis of full truck or full truck and trailer loads, and some companies do not give temperature correction.

If the sole basis for the Dealers Association asking the Legislature to require by law that all companies bill on a temperature corrected basis is because some companies do and some companies don't and, therefore, there should be uniformity, then the dealers are asking the Legislature to exercise an unauthorized use of the police power for their personal benefit, unrelated to public health, welfare, safety or morals.

If the basis of the request is that the dealers are suffering from losses because they are selling less gasoline than they are buying because of temperature variance, then let's look at the facts and see if any loss does result to a dealer because of the difference between the temperature of the gasoline delivered and the temperature of the gasoline in the dealers' underground tank.

Many studies have been made to see if there is a loss due to temperature variation, beginning back in 1954 when the Dealers

Association introduced in Texas such a bill as you have before you. At that time there was little research data to support or refute the claim of the dealers, and the Governor of Texas asked the industry for a design of a plan under which all interested segments of the industry could develop the data to promote, in the words of the report, "a mutually satisfactory settlement within the industry as it did not appear, the Governor said, to be a legislative problem." A plan was designed, and 60 stations throughout Texas were tested for a year. The overall results showed that the dealer sold 997.5 gallons of each 1,000 gallons delivered, and 998 gallons of each 1,000 gallons for which he was invoiced, a loss ratio of .25 of 1%. None of this loss was due to temperature correction because the tests showed that each gallon delivered to underground storage had an immediate temperature increase of 1.31°. After this volume remained in storage until the second day following delivery, there was a further increase of .56°; however, for that portion of the volume that yet remained in the tank on the next delivery there was a drop in temperature of .52° in the original content of each tank on the occasion of each delivery.

This gain in product is shown on a chart of a service station in Houston - Exhibit A which I have given to you. The reason I use the Houston test is because of similarity of temperature between Houston and Phoenix, as shown on the compilation in Exhibit B.

Now, as the Texas Study shows, there is an average loss of .25 of 1% of the gallons delivered into the underground tank and the amount sold by the dealer; what, then, are the causes of this loss?

At the insistence of a national dealers association, the United States House of Representatives' Ways and Means Committee asked the Treasury Department to make a survey of the extent of loss and its cause, and the Treasury Department did; its survey showed a total loss of 1/8 of 1% for the sample of 79 stations covered by the Treasury Department Study. The Treasury Department then made its report and cited the Texas Study, together with its own, and studies by the City of Richmond, Virginia, the California State Board of Equalization, the State of Washington, the State of Virginia, and the Province of Manitoba, Canada. The Treasury Department concluded that all studies showed a very small variation between the amount of gasoline delivered to retail service stations and the amount delivered through the pumps of the stations.

The range in the different studies varied from a gain of about 1/4 of 1% to a loss of .4 of 1%. These losses were attributable to such things as evaporation, allowable meter tolerances, human error in accounting, billing and inventories.

Some loss is usual when bulk goods are divided and sold in smaller quantities. For example, if you take a 100-pound sack of sugar and divide it into four 25-pound sacks, it is estimated you will have a loss of 4 ounces.

In the distribution of gasoline, a loss is also demonstrated in the above-ground tanks of a supplier at the tank farm terminal of the pipeline. I call your attention to Exhibit C showing what these allowable losses are.

2151

Now what is the nature of a temperature correction allowance? It is what it says: an allowance, and constitutes one element of the total price package of the supplier to the dealer. This total price package is made up of many items, such as: the price charged for a product, the rent charged for the service station, allowance for utility bills, promotion costs, advertising, charges of handling credit card use and charge slips, repair and maintenance, finance available for purchase of products, the schooling available for teaching merchandising, mechanic skills, business management.

The oil companies all have different policies as to whether or not charges are made on specific items, and the amount of the charge if a charge is made.

Take any one of these allowances; it would not be within the authority of the Legislature under the powers granted to it by the Constitution to tell all suppliers that the same rent, for example, should be charged by all suppliers to all dealers, or each to adopt the same repair and maintenance program, or require that the same schooling should be made available, or that each station should have the same number of bays, pumps and hoists.

Temperature correction allowances are no different than any other allowance.

Therefore, we submit that a dealer, so far as temperature is concerned, is selling the same number of gallons that he purchases and that a dealer who purchases gasoline without temperature correction is no more entitled to have the Legislature give him temperature correction than he would be to have the Legislature say that he only has to pay the lowest rent charged by a company, or to re-

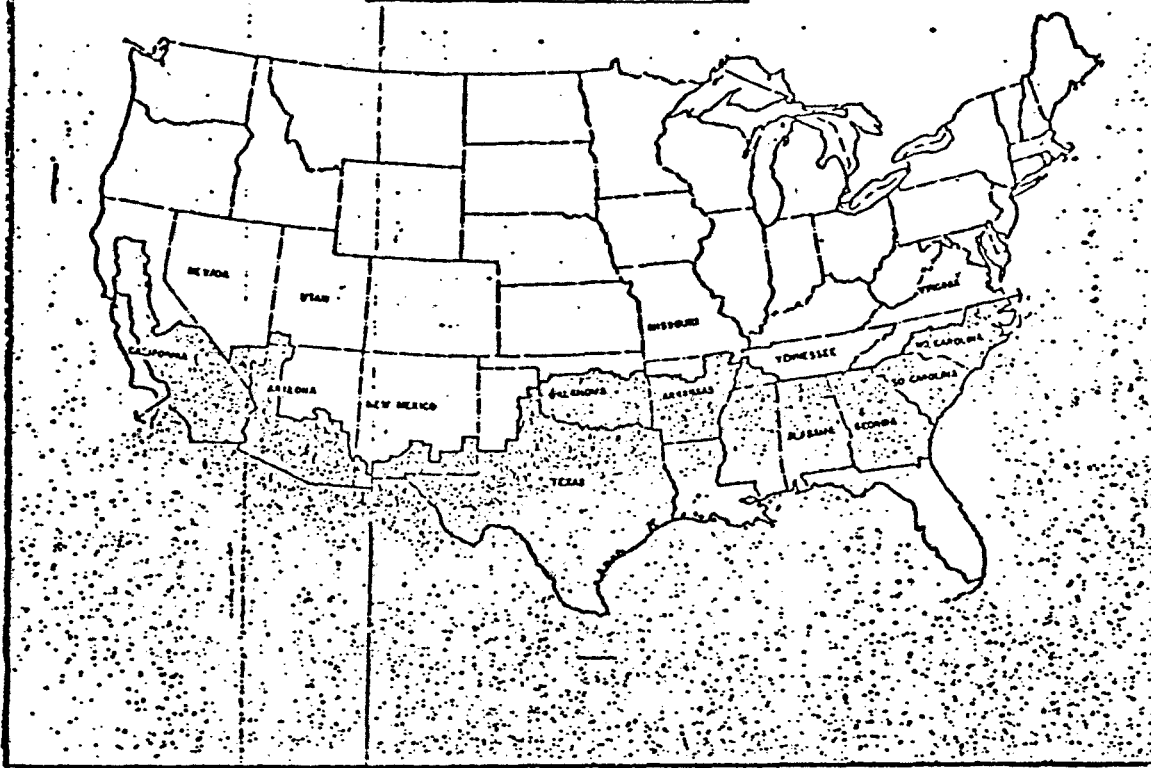
ceive the lowest of all the other programs, costs and charges.

If there were a bill before the Legislature that all service station dealers should pay the same wages to their employees, it would be subject to the same objection as this bill; it would be an improper exercise of legislative power.

If you should desire further comment on the price package, I have with me Jim Green, State Manager of Exxon, who will be pleased to further discuss the matter.

*Exhibi.
L*

60° F. AMBIENT ISOTHERM



API TEMPERATURE COMPENSATION STUDY
DISTRIBUTION OF M.F. VOLUME VS. 60°F.
STATES GEOGRAPHICALLY ABOVE/BELOW ISOTHERM

TOTAL PRODUCT SOLD MONTHLY (1972)

X

AMBIENT TEMPERATURE MONTHLY =

"DEGREE - GALLON" DETERMINATION

WEIGHTED AVERAGE PRODUCT TEMPERATURE
 DETERMINATION

E. K. H. M.

60° F. AMBIENT TEMPERATURE

Chart 25

MOTOR FUEL CONSUMPTION

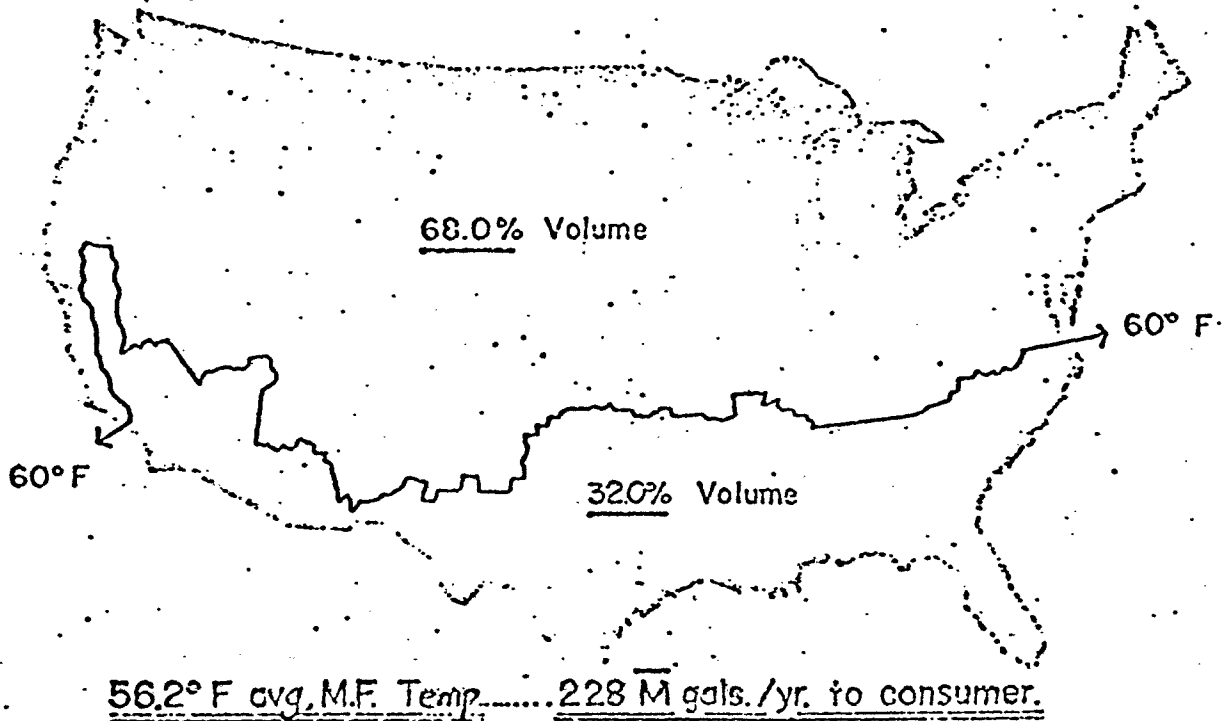


Chart 26

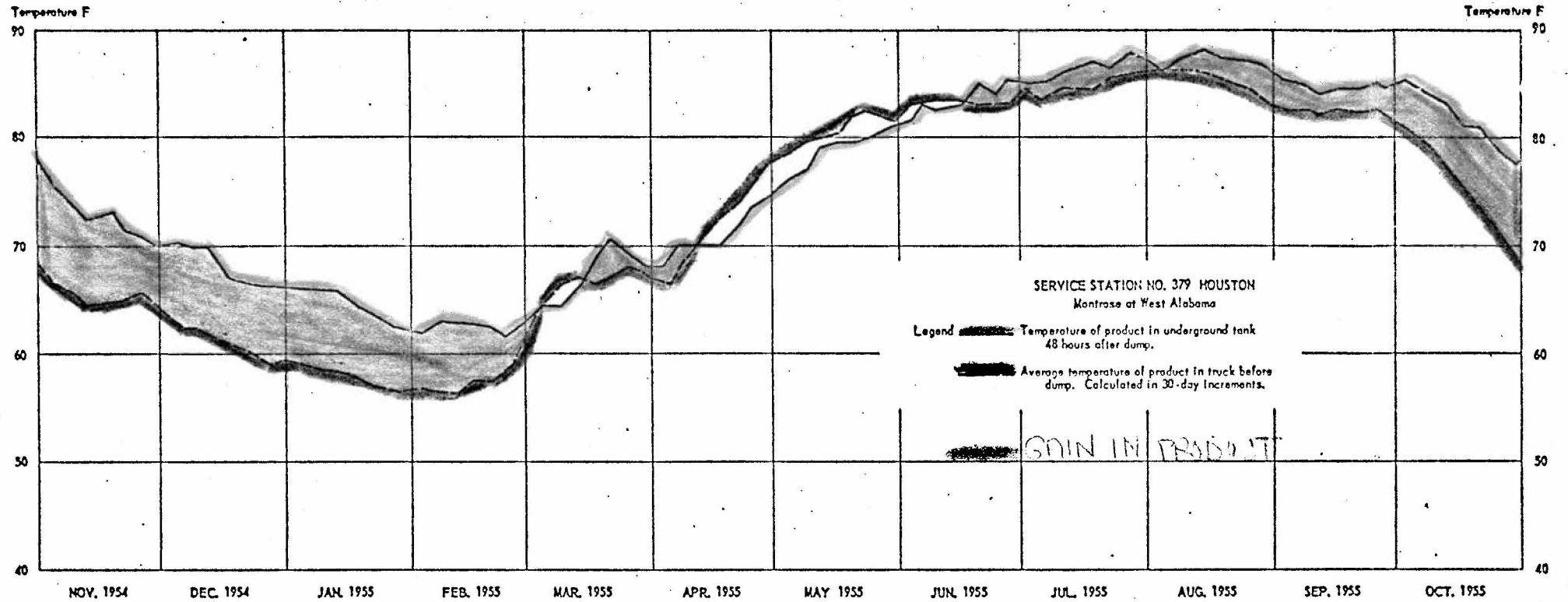
API TEMPERATURE COMPENSATION STUDY

NOTED TRENDS

- 60° F. AMBIENT ISOTHERM MOVING SOUTH TO NORTH
- DISTRIBUTION OF M.F. CONSUMPTION MOVING NORTH TO SOUTH
- TRAVEL FACTOR (WARM VS. COOL) REMAINING CONSTANT

MEMO:
ACTUAL DISPENSED PRODUCT TEMPERATURE NEEDS
TO BE DETERMINED.

Exhibit *W*



0156

McCracken
Exhibit O

DECISION OF RETENTION OR TRANSFER OF EXPERIENCE RECORD

(This form must be completed and returned not later than)

The Nevada Unemployment Compensation Law provides that for purposes of determining contribution rates employers shall be classified in accordance with the record of their actual payroll, contribution and benefit experience. This record, together with the contribution rate assigned, is known as the experience record. When a change in business organization occurs the predecessor employer may retain his experience record or he may authorize the transfer of his experience record to the successor, subject to acceptance by the successor.

If a change in ownership involves only a severable part of the business of the predecessor the experience record will not be transferred unless there can be established a separate experience record attributable to that part of the business involved in the change.

1. CHANGE IN BUSINESS ORGANIZATION Date of change

PREDECESSOR: Name
.....
(Account Number)
ADDRESS

SUCCESSOR: Name
.....
(Account Number)
ADDRESS

- The successor acquired the entire business of the predecessor.
- The successor acquired a severable part of the business of the successor. Severable payrolls for the separating unit must be furnished before the transfer can be effected.

2. DECISION BY THE PREDECESSOR TO RETAIN HIS EXPERIENCE RECORD FOR
(Account Number)

.....
.....
(Signature of predecessor Owner, each Partner, or Authorized Agent of Corporation, etc.)

IF DECISION IS MADE TO RETAIN, RETURN THIS FORM TO THE EMPLOYMENT SECURITY DEPARTMENT

3. DECISION BY THE PREDECESSOR TO TRANSFER HIS EXPERIENCE RECORD TO
(Account Number)

.....
.....
(Signature of predecessor Owner, each Partner, or Authorized Agent of Corporation, etc.)

IF DECISION IS MADE TO TRANSFER, FORWARD THIS FORM TO YOUR SUCCESSOR

4. DECISION OF THE SUCCESSOR

Transfer of the experience rating record of the predecessor is Accepted Rejected

.....
.....
(Signature of successor Owner, each Partner, or Authorized Agent of Corporation, etc.)

THE SUCCESSOR SHOULD RETURN THIS FORM TO THE EMPLOYMENT SECURITY DEPARTMENT

2157

*McCracken
Exhibit 4*

TO Senator Thomas R. C. Wilson DATE April 18, 1977
 FROM Lawrence O. McCracken, Executive Director SUBJECT Legislative Request

The following information is furnished as requested earlier today:

1. Justification for November 30, 1977 Forecasts

As of November 30, 1976, it was estimated that by November 30, 1977, the UI Trust Fund would have approximately \$15.5 million computed as follows:

	<u>1976</u>	<u>Estimated 1977</u>
Beginning Fund Balance	\$ 8.5	\$ 7.5
Contributions	42.9	48.0
Payouts	<u>43.9</u>	<u>40.0</u>
Fund Balance as of November 30	\$ 7.5	\$15.5

Experience to date indicates that, if anything, the estimated ending Fund balance is conservative. For the first four months of the solvency year, contributions exceeded the similar period in the previous year by 39.7 percent, while payouts are down 4.7 percent. In view of these data, it appears the contribution figure is low and that it may actually be in the \$50 million plus range, with the payout figure holding fairly close to the estimate. As such, the Fund balance as of November 30, 1977 may be closer to \$20 million.

2. Solvency Forecast - Underlying Assumptions

The underlying assumptions behind the forecast that the UI Trust Fund will achieve solvency in the mid-1980's is as follows:

- a. No legislative changes.
- b. Average economic growth (i.e., reflecting trends during the 1970's).
- c. An average tax rate of 3.2 percent.

3. Federal Loan - Excluded from Fund Balance

It should be understood that the Fund balance of \$15.5 million at 11/30/77 does not include the federal loan outstanding of \$7.6 million. The total amount in the Fund at 11/30/77, including the \$7.6 million owed the federal government, is projected at \$23.1 million.

bam

Attachment

2158

FIVE-YEAR TRACK RECORD
OF ESTIMATED FUND BALANCES

<u>Year</u>	<u>Estimate per Advisory Council Charts***</u>	<u>Actual per Comparison Reports</u>
1972	\$33,444,898	\$29,332,685
1973	33,130,686	33,127,878
1974	37,062,833*	29,649,085
1975	5,304,085**	8,432,470
1976	7,562,440	7,482,687

* Recession

** Increase in taxable wage base from \$4,200 to \$5,800 on July 1, 1975

*** Estimates made at end of one year to project balance as of November 30 of following year

*Hay
Exhibit Q*

Amendments to SB 474:

Page 2, Line 14: After the word "of" ~~██████~~ add "zoning."

Page 3, Lines 30 and 31: Delete "travel trailer or recreational vehicle."

Page 5, Line 16: Delete "or recreational vehicle".

Page 6, Line 5: After the word "requirements" add "or installation"

Page 8, Line 16: Delete "motor vehicle" and insert "highways"

Page 8, Line 38: New section to read as follows:

"8. Every local city or county building department shall enforce all regulations promulgated pursuant to this chapter and make all inspections in their respective jurisdictions required by such regulations pertaining to the setup, tie down and installation of mobile homes except as hereafter provided. In the event that any local city or county building department shall elect not to enforce or fail to enforce the regulations or the inspections required thereunder, the department shall enforce such regulations and make inspections in such jurisdictions and may engage independent contractors to perform any inspections."

Page 10, Line 26: After the word "standards" insert "or the National Fire Protection Association"

Page 11, Line 12 and 13: Delete "certificate" and insert "license"

Page 12, Line 30: Delete the "." and insert "licensed under this chapter"

Page 14, Line 32: Delete "registered" and insert "licensed"

Page 14, Line 33: After the word "manufacturer" add "and installer or serviceman"

Page 14, Line 40: After "State general fund" add a new section to read as follows:

"Any person who knowingly or wilfully violates any of the provisions of this chapter is guilty of a misdemeanor".

*Dave
Dymington
to
Exhibit R*

SB 478

SUMMARY: To prevent use of misleading terms in the selling of insurance.

686A.020 UNFAIR METHODS, DECEPTIVE ACTS PROHIBITED. A person shall not engage in this state in any practice which is defined in NRS 686A.030 to 686A.150, inclusive, or NRS 686A.310, or determined pursuant to NRS 686A.170 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

New Subsection

#1. The use of term such as Financial Planner, Investment Advisor, Financial Consultant, Financial Counselling, Consultant, or Analyst, to imply that the insurance Agent is generally engaged in an Advisory Business in which compensation is unrelated to sales unless such is actually the case.

RETAIL SERVICE STATION LEASE

Exhibit T

AGREEMENT made this _____ day of _____, 197____
by and between Exxon Company, U.S.A. (a division of Exxon Corporation), having an office at _____
_____, hereinafter called "Exxon", and
_____ of _____ Street, City of
_____, State of _____, hereinafter called "Lessee".

Exxon does hereby demise and lease unto Lessee and Lessee hereby leases from Exxon the retail
automobile service station premises located at _____ situated in

City or Town County or Parish State
more fully described as follows:

together with all rights-of-way, easements, driveways and pavement, curb and street front privileges thereunto
belonging and together with all the buildings, improvements and equipment thereon or connected therewith,
including the property and equipment now located thereon as listed in the Fixed Assets Investment Ledger form
(or other accounting form listing said property and equipment) attached hereto and made a part hereof and
together with any additions, replacements or substitutions thereto (collectively "premises"), on the following
terms and conditions:

(1) Term: Subject to the other terms and provisions hereof, this lease shall be for a period of one year
beginning at 12 o'clock noon on the _____ day of _____, 19____ and ending
at 12 o'clock noon on the _____ day of _____, 19____. During the
term hereof, Lessee may terminate this lease at any time by giving Exxon 60 days' prior written notice of such
termination.

(2) Rent: Lessee shall pay the following rent to Exxon:

It is agreed that Exxon will charge and Lessee will pay no higher rent pursuant to this lease than is permitted under valid applicable Federal or State regulations. It is further agreed that Exxon will not require nor shall Lessee be obligated to make any repairs or perform any maintenance other than permitted under valid applicable Federal or State regulations.

All rent and other sums payable by Lessee hereunder shall be paid at Exxon's office designated above (or such other office as may be designated) or, at Exxon's option, to its authorized representative.

(3) Extensions and Renewals: In consideration of the granting of this lease, it is understood and agreed that there shall be no contractual or other obligation on the part of either party to extend or renew this lease; however, if this lease agreement should be extended or renewed by effect or operation of any law for any reason, it is understood and agreed that: (a) upon Exxon's giving written notice to Lessee of Exxon's intention to exercise its right under this section to adjust rentals, Exxon and Lessee shall negotiate an adjustment of rental. If no rental adjustment agreement is reached by the parties within 15 days after said notice, Lessee shall be required at his expense to furnish to Exxon an appraisal of the premises by a professional real estate appraiser acceptable to Exxon establishing the then market value of the premises based upon the highest and best use for the fee interest in said property without regard to the interest owned by Exxon or of the existence of this lease. The monthly rental thereafter, until otherwise adjusted hereunder, shall be 1/12 of the sum of the following: (i) 10% of the appraised value of the fee interest in said premises, (ii) the total property taxes paid on the premises by Exxon in the preceding lease year, and (iii) Exxon's actual cost of repairs and maintenance performed on the premises during the preceding lease year. Such rental to be payable monthly in advance not later than the 10th day of each month during any such renewal or extended term. The right to rental adjustment under this section shall be a reoccurring right, which may be exercised by Exxon at any time and from time to time after any extension of the term hereof by operation of law. (b) Exxon shall have the right and privilege, at its sole option, to make additions, changes and amendments to the term of such renewal or extended lease and to the other covenants and provisions hereof or to substitute a new lease agreement all as Exxon may determine to be necessary or desirable.

(4) Underlying Estates: It is understood and agreed that if Exxon is not the owner of the premises herein leased, then the within lease and the estate created hereby are subject to all of the terms, provisions and conditions of the lease or other arrangement under which Exxon holds said premises, and effective upon the expiration or cancellation or termination for any reason (including without limitation of the foregoing the voluntary or negotiated release by Exxon of its rights under said lease or other arrangement) of such lease or other arrangement under which Exxon holds the said premises, the within lease shall be automatically terminated and cancelled without further act of the parties hereto and without any liability on the part of Exxon. This lease is also subject to all easements, rights of way and other encumbrances, whether of record or not, previously granted by Exxon or its predecessor in title, and Exxon expressly reserves the right to grant easements, rights of way and similar encumbrances to third parties affecting the leased premises without the consent of Lessee.

(5) Exxon's Right to Sell or Assign: It is understood and agreed that Exxon shall have the right to sell, or assign its right, title and interest in the premises in whole or in part.

(6) General Covenants: Lessee agrees—

- KRS's
premise* //
- (a) to use and operate the premises only as a retail drive-in automobile service station for the sale of gasoline, petroleum products, automotive accessories, minor repair services and other merchandise and services for motor vehicles normally sold at such stations (Lessee shall not use the premises or any part thereof for the parking, storage, rental, or sale of motor vehicles, trailers, or other equipment without Exxon's prior written consent) and to keep such station open for such purpose at least from _____ a.m. to _____ p.m. each day excepting

Lessee's obligation to have the premises open for such purpose shall be modified by mutual written agreement entered into by the parties hereto during any period when Lessee's supply of gasoline at the premises is substantially allocated or limited;

- (b) to make no unlawful or offensive use of the premises; to comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state and municipal governments and administrative bodies;
- (c) to keep the premises, including buildings, driveways and ramps in a clean, sanitary and orderly condition; to maintain any lawns, shrubbery and other landscaping;
- (d) to operate the business conducted on the premises in a safe and orderly manner, allowing no fire hazards, unsanitary or dangerous conditions to exist;
- (e) to keep the driveways, ramps and pump islands open for motor vehicle access;
- (f) to pay the rent herein specified at the time when the same is due;
- (g) to make no assignment of this lease nor sublet the premises herein demised; any such purported assignment or subletting shall result in automatic termination of this lease without further act by Exxon; and Exxon shall be under no obligation or standard of reasonableness to approve any tendered assignee or subtenant;
- (h) to make no additions, changes or alterations to the structure of the buildings, improvements or driveways, to cause no additional improvements to be placed on the premises, and to make no repairs at the expense of Exxon without obtaining Exxon's prior written consent;
- (i) to place no signs on the premises which do not relate to the retail automobile service station business conducted thereon without first obtaining Exxon's written consent;
- (j) to maintain at Lessee's expense the equipment owned by Lessee and to perform the following maintenance and repair: clean sewage disposal system, if any; clean gutters and downspouts; clean and unstop wash bay sumps and sand traps; necessary ordinary maintenance, replenishment of oil, lubrication, examination and inspection of air compressor and all other mechanical equipment; necessary ordinary maintenance, lubrication, examination and inspection of hydraulic lifts provided that Exxon, upon notice by Lessee, shall furnish and replenish the hydraulic oil supply for such lifts and Lessee shall not furnish or replenish such hydraulic oil supply; replace electric light bulbs, tubes and lamps on the interior or exterior of buildings, canopies and islands; replace broken glass; repair, as necessary, toilets, basins and other plumbing fixtures; repair and maintain heating equipment except for major component repair or replacement; repair and maintain water softener; repair and maintain door closers; make minor repairs to maintain previously existing condition of storage room, display area and shelving (it being understood that Lessee is to make no additions to such facilities); repaint curbing, pump island sides, building walk sides, and striping of parking area; repair and maintain air conditioners and water cooling equipment;
- (k) to replace at Lessee's risk and expense the following: mirrors, water and air hoses; door locks and keys; window latches knobs and hinges; air gauges and stands;

- (l) that Lessee has inspected the premises, structures and equipment and finds them to be in a good state of repair and in good working order;
- (m) to make at Lessee's expense all repairs to the premises and the equipment caused by the neglect, misuse or carelessness of Lessee, Lessee's employees, agents, representatives or contractors; and to give prompt written notice to Exxon of the need for repairs to the premises that are not so caused, and which are the responsibility of Exxon hereunder;
- (n) to quit and surrender peaceably and quietly to Exxon, its agent or attorney possession of the premises at the expiration or other termination of this lease without further notice in as good order and condition, ordinary wear and tear and acts of God excepted, as when delivered to Lessee, and not to make or suffer any waste thereof, replacing or paying to Exxon the reasonable value of any damage to the premises or equipment caused by the neglect, misuse or carelessness of Lessee, Lessee's employees, agents, representatives or contractors.

(7) **Repairs:** Exxon agrees, at its own expense, to make all repairs (which Lessee is not required under Article (6) hereof to make) to the premises leased hereunder upon written notice from Lessee to Exxon or its designated representative; provided, however, that such repairs are, in Exxon's opinion, necessary and have not been caused by the neglect, misuse or carelessness of Lessee or Lessee's employees, agents, representatives or contractors; and provided further that Exxon reserves the right but shall not be obligated to inspect the premises and its equipment from time to time and to perform such repairs, painting and maintenance Exxon considers necessary as a result of such inspection. Lessee agrees that Exxon shall have right of entry and access to the premises to examine and inspect the premises to ascertain Lessee's compliance with the terms and conditions of this lease.

Exxon shall have the right but shall be under no obligation to perform any maintenance or repair which is the responsibility of Lessee under this lease, in the event Lessee shall fail to perform such maintenance or repair within 15 days following notice by Exxon to Lessee. Lessee shall pay to Exxon the cost of such maintenance or repair upon Exxon's billing for same.

Exxon reserves the right, upon not less than thirty (30) days prior written notice to Lessee, to reconstruct, remodel, or make additions to the building, equipment or other facilities covered hereby. During the period of such reconstruction, remodeling or addition, Exxon shall reduce the rental due hereunder by an amount which, in its sole judgment, would adequately compensate Lessee for the restrictions in use of the premises by Lessee resulting from such reconstruction, remodeling or addition. Thereafter Exxon shall adjust the rent by an amount which shall equably reflect its additional investment. Lessee shall have the right to terminate this lease on ten (10) days written notice to Exxon if such rental reduction by Exxon is not satisfactory to Lessee.

(8) **Acceptance of Premises and Indemnity:** LESSEE ACCEPTS THE LEASED PREMISES, AND ALL BUILDINGS, IMPROVEMENTS AND EQUIPMENT WITHOUT ANY WARRANTY BY EXXON AT ANY TIME, EXPRESS OR IMPLIED, AS TO THEIR CONDITION OR FITNESS FOR ANY PURPOSE; and Lessee assumes the risk of and sole responsibility for and hereby agrees to indemnify and save harmless Exxon from any and all claims for injuries, death, loss and damage of any kind or character, to person or property, by whomsoever suffered or asserted, resulting from or arising out of the condition or use of the leased premises, all buildings, improvements and equipment or Lessee's operation thereon during the term of this lease or any renewal or extension thereof, and whether due to any latent or patent defect, except, however, when Lessee shall have given Exxon written notice of the existence of a defective condition for the repair of which Exxon is responsible under this lease and shall have taken all reasonable precautions to prevent the occurrence of any injuries, death, loss and damage attributable solely and directly to such defective condition.

(9) **Insurance:** During the period this lease is in effect, Lessee further covenants and agrees to maintain solely at Lessee's expense the following insurance or the equivalent thereof: (i) garage liability insurance including coverage for all automobiles in minimum limits of \$50,000 each person and \$100,000 each occurrence for bodily injury liability and in the minimum limit of \$25,000 each occurrence for property damage liability, or alternatively a minimum combined single limit of \$100,000 for bodily injury and property damage liability; (ii) **garagekeepers' legal liability insurance in a minimum limit of \$25,000 per location;** (iii) **fire legal liability insurance covering the premises in an amount not less than \$50,000.** Lessee shall furnish Exxon with certified copies of each such policy of insurance and/or certificates of insurance.

(10) **Casualty Damage:** If said premises or any part thereof shall, during said term or previous thereto, be damaged by fire, storm, explosion or other casualty, whether or not of the same class or kind enumerated, not caused by the neglect, misuse or carelessness of Lessee, Lessee's employees, agents, representatives or contractors, and Exxon shall elect to repair the same, reduction will be made in the rent corresponding to the time during which and the extent to which the said premises may have been untenable, but if the building or buildings should be so damaged that Exxon shall decide not to rebuild, the term of this lease shall cease and the aggregate rent be paid up to the time of such occurrence.

(11) **Taxes:** No obligation is imposed on Lessee by the terms of this lease for real estate and personal property taxes and assessments on the premises herein demised, but Lessee agrees to pay personal property taxes on Lessee's property and all other taxes, license fees, assessments and charges levied against or necessary for the operation of Lessee's business on said premises, including charges for sewer rent or service, water, telephone, gas and electric current consumed on said premises and any other services that may be furnished said premises.

(12) **Condemnation:** If the entire premises shall be taken by condemnation or sold to the condemning authority under threat thereof, this lease shall be automatically terminated on the date of such taking or sale. If a part only of the premises shall be so taken or sold, and the balance of said premises is not suitable for the operation of a drive-in gasoline service station, either party may terminate this lease at any time within forty-five (45) days following such taking or sale without liability to the other party therefor by giving written notice of termination to such other party. Any and all payments made for or arising from any such taking or for damages to the premises resulting therefrom shall belong and be payable entirely to Exxon, and Lessee hereby waives any right to any part of the award and hereby assigns same to Exxon.

(13) **Termination:** It is agreed that if Lessee has made any false or misleading statements in order to induce Exxon to grant this lease, or if Lessee becomes insolvent or commits an act of bankruptcy or takes advantage of any law for the benefit of debtors or Lessee's creditors, or if a receiver is appointed for Lessee, or if the premises are vacant or unattended for any period in excess of five (5) consecutive days, or if Lessee abandons the premises, then Exxon may at any time thereafter (immediately or otherwise) terminate this lease by giving Lessee written notice of Exxon's election so to do and this lease shall expire and come to an end on the date fixed in such notice as if said date were fixed herein for the expiration of the term hereof. It is further agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then Exxon may at any time thereafter terminate this lease by giving Lessee five (5) days written notice of Exxon's election so to do and this lease shall expire and come to an end on the date fixed in such notice as if said date were fixed herein for the expiration of the term hereof. In the event of the death of Lessee or in the event Lessee is declared incompetent to manage his property or affairs by any court, this lease shall terminate automatically. Upon any termination or expiration of this lease, Exxon may without formal demand or notice of any kind re-enter said premises and remove all persons and property therefrom. Lessee shall reimburse Exxon on demand for all reasonable costs (including attorneys' fees) incurred by Exxon in enforcing its rights or remedies hereunder.

(14) **Notices:** All notices required or permitted to be given by this lease shall be deemed to be duly given if delivered in writing personally or sent by mail to Exxon or to Lessee, as the case may be, at the addresses set forth above or to such other address as may be furnished by either party to the other in writing. The date of mailing shall be deemed the date of giving such notice.

(15) **Quiet Enjoyment:** Exxon covenants that Lessee on paying said rent and performing the covenants aforesaid shall and may peaceably and quietly have, hold and enjoy the said leased premises for the term aforesaid, subject to the provisions hereof.

(16) **Prior Leases:** This lease cancels and supersedes any prior lease between Exxon, as Lessor, and the above named Lessee, as Lessee, covering all or any part of the premises covered by this lease.

(17) **Waiver:** No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

(18) **Lessee's Business:** It is understood that Lessee operates an independent business. Nothing in this lease shall be construed as reserving or granting to Exxon the right to exercise any control over Lessee's business or the manner in which same shall be conducted; but the control and direction of such business and operations shall be and remain in Lessee, subject only to Lessee's performance of the obligations of this lease.

(19) Severability of Provisions: Both parties expressly agree that it is the intention of neither party to violate public policy, statutory or common law and that if any sentence, paragraph, clause or combination of same is in violation of any law, such sentences, paragraphs, clauses or combinations of same shall be inoperative and the remainder of this agreement shall remain binding upon the parties hereto unless in Exxon's sole judgment, the remaining portions hereof are inadequate to properly define the rights and obligations of the parties, in which event Exxon shall have the right, upon making such determination, to thereafter terminate this agreement.

(20) Entire Agreement: THIS LEASE CONTAINS THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN EXXON AND LESSEE PERTAINING TO THE SUBJECT MATTER OF THIS LEASE AND THERE ARE NO ORAL REPRESENTATIONS, STIPULATIONS, WARRANTIES OR UNDERSTANDINGS RELATING THERETO WHICH ARE NOT FULLY SET FORTH HEREIN. No amendment, addition to or alteration, modification or waiver of any provision of this lease shall be of any force or effect unless in writing and signed by Lessee and an authorized representative of Exxon, and except as provided herein, Lessee acknowledges no employee or representative of Exxon is authorized to make any representation or agreement modifying or amplifying the terms and conditions hereof.

(21) Headings: The headings of the paragraphs of this agreement are for convenience only and do not in any way limit, amplify or otherwise affect the covenants and agreements contained in this instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in duplicate.

Exxon Company, U.S.A.
(a division of Exxon Corporation)

Witness

By _____ (Lessor)

Witness

(L.S.)
(Lessee)

DEALER LEASE

Dated _____, 19____

1. Chevron U.S.A. Inc., a California corporation ("Chevron"), with an office at _____, _____ hereby leases to _____ ("Dealer"), for a term of _____, commencing on the _____ day of _____, 19____, and ending on the _____ day of _____, 19____, the premises located in the City of _____, County of _____, State of _____, described as follows:

together with all buildings, improvements, fixtures, facilities and equipment (except signs) located thereon and together with any additions, replacements or substitutions thereto (hereinafter sometimes collectively called the "premises").

2. USE OF THE PREMISES — PETROLEUM MARKETING

The purpose of this Lease is the effective use of the premises by Dealer as a service station for the retail sale of petroleum products, merchandise and services normally available at Chevron service stations, and Dealer acknowledges that by this Lease Chevron has furnished him with a facility possessing the capability of meeting the requirements of the motoring public for such products, merchandise and services.

Dealer brings to this relationship the advantages and benefits of a private businessman and the commitment to develop the available business for such products, merchandise and services in the locale of the premises for both the Dealer's financial benefit and to maintain the value of the premises as a service station. Dealer recognizes and agrees that this commitment requires his personal management of the premises and that his failure to comply with the provisions of this Lease would adversely affect the motoring public's patronage at the premises and at other retail service stations supplied by Chevron. Dealer agrees to fulfill this commitment and the purpose of this Lease and:

- A. To operate and manage the premises personally on a full-time basis;
- B. To keep the premises open for such hours and days as are necessary to fully serve and develop the available business, and in no event less than those business hours of operation required to compete effectively with competitive service stations in the vicinity of the premises;
- C. To maintain the premises in a clean and safe condition, with an appearance that is inviting to the motoring public, and to comply with all applicable Federal, state and local laws, ordinances, statutes and regulations pertaining to the use and operation of the premises;
- D. To render professional driveway and automotive service to customers by providing trained, acceptably groomed, and uniformed service station personnel in numbers adequate to handle available business; and
- E. To engage in no major motor vehicle repairs or other sales or service activities of a type that would conflict with the purpose of this Lease.

Competitive marketing practices within the petroleum industry may indicate that the use of the premises be changed to ensure its highest and best use. In the event Chevron elects to make such changes during the term of this Lease, such changes shall be made only with the consent of Dealer (although at the expiration of this Lease changes may of course be made without Dealer's consent).

Dealer shall secure Chevron's written consent prior to engaging in new sales, service or other revenue-producing activities in a manner which would require expanded use of any part of the premises. Where given, such consent will be conditioned upon the use of only such part of the premises for such purpose as agreed to by Chevron and Dealer, and upon the payment by Dealer to Chevron for such use of an amount to be provided in a "License-Non Service Station Use Agreement" which Dealer hereby agrees to enter into as a condition of such approval.

3. ASSIGNMENT — SUBLEASING

This Lease is personal to Dealer, and Dealer shall not: assign this Lease, or any interest therein; let or sublet any part or the whole of the premises; mortgage this Lease; become associated with any other person, directly or indirectly, as a partner or otherwise in regard to Dealer's interest or operations under this Lease; permit or suffer any lien or encumbrance to be placed upon the leasehold interest hereby created or any part thereof; or permit any other person, firm or corporation to occupy the premises or any part thereof as a tenant or otherwise.

4. RENT

Dealer agrees to pay Chevron a rental for use of the premises as follows:

A. **Basic Rent** — A basic rent during the term of this Lease as follows:

payable (1) equal monthly installments or (2) in accordance with a schedule, as shown below:

(1) Payable in equal monthly installments in advance on the first day of each and every calendar month (prorated for any period less than a calendar month) during the term hereof as follows:

	<u>1st Lease Year</u>	<u>2nd Lease Year</u>	<u>3rd Lease Year</u>
Basic Rent			
Per Month	\$ _____	\$ _____	\$ _____

(2) Payable in advance on the first day of each and every calendar month (prorated for any period less than a calendar month) during the term hereof in accordance with the following schedule:

	<u>Per Month During Calendar Quarter Shown</u>		
<u>Quarter</u>	<u>1st Lease Year</u>	<u>2nd Lease Year</u>	<u>3rd Lease Year</u>
First	\$ _____	\$ _____	\$ _____
Second	\$ _____	\$ _____	\$ _____
Third	\$ _____	\$ _____	\$ _____
Fourth	\$ _____	\$ _____	\$ _____

B. **Rental Surcharge** — Chevron shall have the right at its option to add a rental surcharge to the basic rent to be paid by Dealer during the term of this Lease by written notice to Dealer at any time prior to the effective date of such rental surcharge. Any rental surcharge to be added will be determined by Chevron prior to the first day of each calendar year and shall be payable by Dealer as additional rent in equal monthly installments in advance at the time of the basic rental payments described above; provided, however, that the rental surcharge imposed by Chevron and payable by Dealer for any calendar year (prorated for any period less than a calendar year) shall not be more than ten percent (10%) of the total rent (basic rent plus rental surcharges) payable under this Lease by Dealer during the preceding calendar year.

5. MAINTENANCE — UPKEEP — REPAIRS — REPLACEMENTS — ALTERATIONS — CONDITION OF PREMISES

- A. In order to provide a clean, attractive facility, Dealer and Chevron shall perform the respective maintenance and other responsibilities assigned to them on Exhibit A, attached hereto and made a part hereof.
- B. Dealer shall not make any additions, alterations, rearrangements or improvements to the premises, or any property thereon, or remove any such property therefrom, without Chevron's prior written consent. Dealer shall not, without Chevron's prior written consent, alter, remove, cover, add to or deface any paint or signs on the premises or on any property located thereon, or add additional paint or signs to the premises or to any property located thereon. Such pumps, tanks, containers or receptacles as have been furnished to Dealer by Chevron and are or may be marked as such, shall be used solely for the storing, handling or dispensing of products supplied by Chevron. Chevron will not unreasonably withhold consent to the required identification of, and installations to dispense, products Dealer desires to sell at the premises.

6. TERMINATION

A. **Termination by Dealer**

Dealer may terminate this Lease without cause at any time during the term hereof, upon giving Chevron ninety (90) days' prior written notice of such termination.

B. Termination by Chevron — First Twelve (12) Months

Chevron may terminate this Lease without cause upon thirty (30) days' written notice of termination given at any time during the first twelve (12) full calendar months in which Dealer has been a tenant of the premises.

C. Termination by Chevron for Cause

Chevron may, in addition to its other remedies, terminate this Lease at any time during the term thereof upon giving Dealer ninety (90) days' prior written notice of such termination if any one of the following occurs:

- (1) Violation of Chevron's trademarks, including commingling, mislabeling or misbranding of Chevron's motor fuels by Dealer;
- (2) Continued customer complaints concerning Dealer's operation, the nature of which was communicated by Chevron to Dealer, or one such complaint involving a serious, improper act or omission, including unlawful, fraudulent or deceptive acts or practices;
- (3) Physical or mental disability which renders Dealer unable to provide sufficient personal management to the business as a service station;
- (4) Dealer by act or omission breaches or defaults on any covenant, condition or other provision of this Lease, which breach or default can be cured (such as nonpayment of rent as herein provided) and Dealer fails to cure said breach or default within ten (10) days after said written notice from Chevron which shall specify such breach or default; or
- (5) Dealer by act or omission breaches or defaults on any covenant, condition or other provision of this Lease which breach or default cannot be cured.

D. Automatic Termination

In the event of Dealer's death, or if the premises are abandoned, or if the premises are closed for the operation of a service station for sixty (60) consecutive hours (this provision being in addition to Dealer's obligations under Paragraph 2 above), or if any bankruptcy, insolvency or receivership proceedings are instituted by or against Dealer, or if Dealer is convicted of fraud or criminal misconduct relevant to the operation of the premises, this Lease shall automatically terminate.

E. General

Waiver by Chevron of one or more breaches or defaults hereunder by Dealer shall not be deemed to be a waiver of any other or continuing breach or default hereunder. Termination of this Lease shall not relieve Dealer of responsibility for obligations incurred prior to termination.

7. DEALER — INDEPENDENT BUSINESSMAN

Dealer is engaged in an independent business and nothing herein contained shall be construed as granting to Chevron any right to control Dealer's business or operations or the manner in which the same shall be conducted, Dealer's obligation to Chevron hereunder being the performance of the terms and conditions of this Lease. Chevron has no right to hire or fire any employees of Dealer or to exercise any control over any of Dealer's employees, all of whom are entirely under the control and direction of Dealer, who shall be responsible for their acts and omissions. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws or other payments under any laws of similar character as to all persons employed by and working for him.

Dealer shall, during the term hereof, at his own expense, maintain full insurance under Workmen's Compensation Laws, public liability and property damage insurance and fire legal liability insurance in the amounts and upon the terms specified in Exhibit B, attached hereto and made a part hereof. Chevron shall have no obligation to Dealer under this Lease until Dealer furnishes Chevron with certificates verifying that said insurance coverage has been obtained.

Dealer shall pay when due all license fees and privilege, occupational, sales, excise or other taxes of any character whatsoever now or hereafter levied, assessed or otherwise imposed by Federal, state or local governmental authorities, upon or as a result of the operations or improvements or property of Dealer on the premises.

8. INDEMNITY

Dealer shall indemnify, defend and hold harmless Chevron, its officers, agents and employees, together with its parent company, Standard Oil Company of California, from and against all expense, liability and claims for damage to property (including Dealer's property) or injury to or death of persons (including Dealer) directly or indirectly resulting, or alleged to result, from anything occurring from any cause on or about or in connection with the maintenance, upkeep, repair, replacement or operation of the premises, or anything located thereon.

9. DEALER EQUIPMENT

Upon termination of this Lease, neither Chevron nor any incoming Dealer shall have any obligation to purchase from Dealer any of Dealer's inventory, tools, equipment or supplies. Chevron agrees, however, to credit Dealer's account for the reasonable value of resale merchandise in merchantable condition which Dealer has purchased from Chevron, such credit not to exceed Dealer's cost; no credit shall be allowed for goodwill.

10. DESTRUCTION OR CONDEMNATION

In the event the premises or a substantial portion thereof are destroyed or taken by eminent domain (the filing of an eminent domain action shall be deemed a taking), or should the operation of the premises as a service station be prevented by any law, ordinance or act of lawful authority, either party may terminate this Lease upon seven (7) days' written notice to the other; provided, however, that Dealer shall have no right or interest in any damages or compensation awarded as the result of taking by eminent domain, which shall be the sole property of Chevron.

11. SURRENDER

- A. Upon termination of this Lease, by expiration or otherwise, and Chevron's demand, Dealer shall peaceably and quietly surrender and yield up to Chevron the premises and all appurtenances in as good order, condition and repair as the same were in at the execution of this Lease, or into which they may be put, reasonable use and wear thereof excepted.
- B. If Dealer holds over after the expiration of the term hereof with or without Chevron's express or implied consent, such holding over shall not create a renewal of this Lease by operation of law or otherwise, but shall create only a tenancy for month-to-month and for no longer term, upon all the terms and conditions hereof.

12. EFFECT OF THIS LEASE ON PRIOR LEASES BETWEEN THE PARTIES

This agreement supersedes and terminates all prior leases or subleases between Chevron and Dealer covering the premises.

13. UNDERLYING ESTATES

- A. Chevron's interest in the premises is or may be a leasehold estate derived from a third party whose interest in the premises may or may not be of record. This Lease is subordinate to all the terms and conditions of any lease now in effect, or hereafter entered into, with such third party evidencing such leasehold estate of Chevron. This Lease, at Chevron's option, shall terminate if said lease with such third party is terminated in any manner or by either party thereto and Chevron shall in no way be liable to Dealer for such termination, whether voluntary or involuntary. Dealer agrees that he will not, by act or omission, breach any of the terms and conditions of Chevron's lease with the third party of which Dealer has notice.
- B. In order that Chevron may ascertain and verify the calculation of rents under the above-mentioned third party lease, if the rent thereunder is based on receipts from sales of products or services at the premises, Dealer agrees to keep accurate books and records of the quantity and dollar amount of all his sales of merchandise and services, and of his merchandise cost prices, and to make such books and records available to Chevron for inspection during regular business hours. Dealer further agrees that, if requested by Chevron, Dealer will give Chevron on or before the 10th day of each month a written statement of all business done at the premises during the preceding month in such form and detail as to substantiate the calculation of rents under the third party lease for the preceding month.

14. SUPPLY CONTRACT

Concurrently herewith Chevron and Dealer have entered into a Three Party Dealer Supply Contract for the sale by Chevron and purchase by Dealer of Chevron's products (as therein defined). Dealer, as a covenant of this Lease, agrees that the breach of or default on any of the terms or conditions of said Supply Contract shall constitute a breach of this Lease, and that the cancellation or termination of said Supply Contract shall, at the option of Chevron, cancel or terminate this Lease.

15. PARAGRAPH HEADINGS

The captions and headings throughout this Lease are for convenience of reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain or modify the meaning of any provision, or the scope or the intent of this Lease.

16. NOTICE

All notices to be given under this Lease shall be in writing and shall be made by Certified Mail, Return Receipt Requested, addressed to Dealer at _____, and to Chevron at _____.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first above written.

CHEVRON U.S.A. INC.

By _____

2171

Dealer

SERVICE STATION LEASE

THIS IS A LEASE dated _____, 19____, between SHELL OIL COMPANY, a Delaware corporation with offices at _____ in _____ ("Shell"), and _____ of _____ in _____ ("Lessee").

1. LEASE. Shell hereby leases to Lessee, and Lessee hereby leases from Shell, the automobile service station premises located at _____, consisting of the land there owned or leased by Shell, to the extent now occupied for use as an automobile service station, and the buildings, improvements and equipment now comprising the service station on the land (collectively "Premises"). Lessee acknowledges receipt of the Premises in good and safe condition and repair. Shell shall have the right from time to time, without liability to Lessee, to make alterations or additions to or remove any buildings, improvements or equipment on the Premises, but any such alteration, addition or removal shall not unreasonably interfere with or restrict the use for which the Premises are herein leased.

2. TERM. This lease shall be in effect for the term beginning on _____, 19____, and ending on _____, 19____, but may be terminated by Lessee at any time by giving Shell at least 90 days' notice, or may be terminated by Shell as provided in the succeeding articles hereof.

3. RENT. Lessee shall pay Shell, as rent for each calendar month:

Lessee shall keep accurate records of all motor vehicle fuels delivered to and sold at the Premises, and shall permit Shell at any time to inspect the same (including the pump meters) and to gauge the storage tanks. Lessee acknowledges that the rent payable to Shell hereunder for the use of the Premises is in the nature of a percentage of gross sales rental and that therefore Shell has an interest in assuring maximum potential motor vehicle fuel sales at the Premises, consistent with the public interest and consumer needs, in order to insure to Shell the receipt of the full rental value thereof. Lessee further acknowledges and agrees that all obligations undertaken by Lessee under this Lease are essential and reasonable for the purpose of assuring to Shell the realization of such rental value.

4. SECURITY. Shell acknowledges receipt from Lessee of the sum of _____ Dollars (\$ _____) as a non-interest bearing deposit (which may be mingled with Shell's other funds) to secure Lessee's performance of Lessee's obligation under this Lease and the payment of any indebtedness of Lessee to Shell, whether under this Lease or otherwise. Shell may, from time to time, apply all or any part of that sum to the payment of such indebtedness; and upon Shell's demand, Lessee shall deposit with Shell additional sums equal to those so applied. Within a reasonable time after termination of this Lease, Shell shall return to Lessee any unapplied balance of the sums deposited by Lessee hereunder.

5. USE. The Premises shall be used only for operation of the automobile service station existing on the date of this Lease, including the retail sale of petroleum products and automotive accessories, and minor repairs and services for motor vehicles (but excluding the selling, leasing, parking or storing of motor vehicles, trailers, boats or any other mobile equipment). Lessee shall devote Lessee's best efforts to maximize sales of motor vehicle fuels, consistent with the public interest and consumer needs, in order to insure to Shell the receipt of the full rental value of the Premises, and, to that end, shall keep the service station open and fully illuminated at least from _____ A.M. to _____ P.M. each day, excepting _____. Lessee shall satisfy all regulatory requirements and timely pay all charges incident to Lessee's use of the Premises and the business conducted thereon, including all Federal, state and local taxes and assessments, and license, permit, occupation and inspection taxes and fees, all water, sewer, waste disposal, gas, electricity, telephone and other utility charges (all meters and accounts for which shall be in Lessee's name unless Shell, in its discretion, directs otherwise to protect the Premises or itself against possible liens or claims), and all taxes on Lessee's property on the Premises; and if Lessee fails so to do, Shell may (but shall not be obligated to) pay the same and charge them to Lessee. Lessee shall not maintain or permit any dangerous animal or other dangerous condition or attractive nuisance on the Premises. Lessee shall comply with all Federal, state and municipal laws, ordinances, regulations, orders, licenses and permits relating to the Premises or any use thereof or to any act or activity on the Premises; and Lessee shall not commit or permit any fraudulent or illegal act or activity or any consumption of intoxicating beverages on the Premises. Without Shell's prior written consent, Lessee shall not make any attachments or additions to, or any alterations of, any building or other improvement on the Premises, or construct any additional buildings or structures thereon. Any such change to which Shell may give its consent shall be made in accordance with Shell's specifications and by a contractor approved by Shell, which consent and approval shall not be unreasonably withheld, and upon completion shall become a part of the Premises and property of Shell.

6. **MAINTENANCE-REPAIRS-REPLACEMENTS.** Subject to the following provisions of this article 6, Lessee shall at all times maintain the Premises (including adjacent sidewalks and driveways, easements and all landscaped areas) and Lessee's own property and equipment thereon in good condition and repair, and keep the same (including the rest rooms) neat, clean and orderly. To those ends and always promptly as needed, Lessee shall perform the maintenance and make the repairs and replacements to Shell's property (or any of Lessee's property) which are specified in Exhibit A attached hereto and made a part hereof, including any such maintenance, repairs or replacements as may be required by any new or amended Federal, state or local law, ordinance, regulation or order; and if and whenever Lessee fails so to do, Shell may perform or make the same. Shell shall make all other repairs and replacements to Shell's property which Shell deems necessary or desirable, provided that Lessee gives Shell prompt notice of each such other repair or replacement which Lessee deems necessary. As to any maintenance, repair or replacement specified in Exhibit A which Lessee fails to perform or make, or as to any such other repair or replacement concerning which Lessee fails to give Shell the above-required notice, or which is necessitated, either partly or solely, by any negligent or otherwise wrongful act or omission of Lessee or Lessee's employees: Shell may charge to Lessee its actual cost of performing such maintenance or making such repair or replacement, or, in lieu of performing or making the same, may charge to Lessee what would have been the reasonable cost thereof. If the Premises are made unfit for occupancy by any cause, either Shell or Lessee may terminate this Lease by giving the other notice. Shell may enter the Premises at any time for the purposes of inspecting the same, performing maintenance, and making repairs, replacements, alterations, additions and removals. Lessee shall not be released of any obligation for maintenance, repairs or replacements hereunder by any termination, for whatever cause, or the expiration of this Lease.

7. **INDEMNITY-REPORTS.** Lessee shall defend and indemnify Shell against all claims, suits, loss, liability and expense on account of injury or death of persons (including Lessee and Lessee's employees and including injury to personal rights and relations) or damage to property (except Shell property as to maintenance, repairs or replacements for which Shell is responsible under article 6), or for liens on the Premises, caused by or happening in connection with the Premises (including adjacent sidewalks and driveways) or the condition, maintenance, possession or use thereof or the operations thereon. Within 24 hours after every occurrence of any such injury, death or damage, or the imposition of any such lien, Lessee shall report the same to Shell by notice (or verbally promptly confirmed by notice), including all circumstances thereof known to Lessee or Lessee's employees.

8. **ASSIGNMENT-SUBLEASING.** Lessee shall not assign or encumber this Lease or permit any assignment or encumbrance hereof by operation of law or otherwise, or sublease, or permit any other party to occupy or use, all or any part of the Premises,

without Shell's prior written consent. The foregoing shall apply, without limitation, to any assignment, encumbrance or sublease in favor of, or use or occupancy by, a corporation, partnership, association or other business entity in which Lessee has an interest.

9. **DEFAULTS-REMEDIES.** If Lessee (a) commits or permits any violation of law, fraud or criminal misconduct involving the business conducted on or from the Premises, or (b) causes or permits any adulteration, commingling or contamination of, or misrepresents any product sold on the Premises, or (c) defaults in payment of rent or any other indebtedness to Shell under this Lease and fails to remedy the same within 10 days following written demand from Shell, or (d) fails, for whatever reason, to keep the service station regularly open for business, as required by this Lease, for any period exceeding 72 consecutive hours, or (e) fails to act in good faith in carrying out the terms of this Lease (which failure shall be deemed to exist, without limitation, whenever Lessee's past breaches of the terms of this Lease, although individually perhaps not sufficient to justify a termination, cumulatively reflect an unwillingness or inability of Lessee to acceptably perform his obligations as a whole under this Lease), or (f) voluntarily or involuntarily enters any bankruptcy, receivership, insolvency or other like proceeding, or makes an assignment for the benefit of creditors, or (g) dies, or (h) defaults under any provision of this Lease not embraced in this article 9: Shell may, at its option and subject to any limitations imposed by applicable law (including any limitations on notice periods), terminate this Lease upon notice to Lessee. Either Shell or Lessee, at their respective options, may terminate this Lease on giving the other notice if at any time any Federal, state or local law, ordinance, regulation or order shall prevent the continued use or occupancy of the Premises (either directly or by requiring specified alterations at a cost which is disproportionate with the value of the Premises for such continued use or occupancy) for the purposes for which such Premises are being used immediately prior to the effectiveness of such law, ordinance, regulation or order.

Following any termination pursuant to the foregoing provisions of this article 9, or any other provisions of this Lease, Shell may re-enter and repossess the Premises, without prejudice to any other rights or remedies provided hereunder or by law. At any termination of this Lease, Lessee shall peaceably surrender the possession of the Premises to Shell. As to any of Lessee's property which Lessee fails to remove from the Premises at termination of this Lease, Shell shall have the right to sell all or any part of same for Lessee's account on such terms as Shell may desire, but with the rights in Shell to apply the proceeds of such sale, after reimbursing itself for the costs thereof, to the payment of any indebtedness of Lessee to Shell, whether under this Lease or otherwise, and to purchase any or all such personal property. All sums charged to Lessee by Shell under the provisions of this Lease shall be payable by Lessee to Shell on demand, and shall bear interest therefrom at the rate of 8% per annum (or, if less, the maximum rate permitted by applicable law) until paid. **Either party's right to require strict performance of the other's obligations hereunder shall not be affected by any previous waiver, forbearance or course of dealing.**

10. **UNDERLYING ESTATES-CONDEMNATION.** If Shell does not own the Premises, this Lease (a) is subject to all the provisions of the lease under which Shell is now entitled to possession and (b) shall terminate automatically upon expiration or any sooner termination (by Shell or otherwise) of such lease; and Lessee shall not commit or permit any act or omission which would impair or jeopardize Shell's interest under its lease. If all or any part of the Premises is condemned for public or quasi-public use so as to prevent or substantially restrict the continued use or occupancy of the Premises for the purposes hereof, or is (as it may be) voluntarily conveyed by Shell to any party having and intending to exercise the power so to condemn, either Shell or Lessee may terminate this Lease by giving the other at least 60 days' notice; and whether or not this Lease is so terminated, Lessee assigns to Shell all of Lessee's right to or interest in any award or settlement for such condemnation or conveyance in lieu thereof.

11. **LESSEE'S BUSINESS.** Nothing in this Lease, or now or ever hereafter on or part of the Premises, shall be construed as granting to Lessee any franchise, license or other right to use any of Shell's trademarks, trade names or color schemes; and Shell reserves the right to remove or obliterate any thereof now or ever hereafter on or part of the Premises as to which Lessee does not have the right of use under any separate agreement. Nothing in this Lease shall be construed as reserving to Shell any right to exercise any control over, or to direct in any respect the conduct or management of, the business or operations of Lessee on the Premises; but the entire control and direction of such business and operations shall be and remain in Lessee, subject only to Lessee's performance of the obligations of this Lease. Neither Lessee nor any person performing any duties or engaged in any work on the Premises for or on behalf of Lessee shall be deemed an employee or agent of Shell.

12. **NOTICES.** Every notice hereunder shall be in writing, may be given to Lessee by personal service or to either Lessee or Shell by certified or registered letter or telegram, and, in the latter instances, shall be deemed given when the letter is deposited in the mail or the telegram with the telegraph company, postage or charges prepaid, and addressed to the party for whom intended at such party's address first herein specified, or at such other address as such party may have substituted therefor by notice so given to the other. If any time period provided herein for giving notice is less than that required by applicable law, the period provided herein shall be deemed amended so as to conform with the requirements of such law.

13. **SUBSEQUENT LEASES.** If by operation or effect of law Shell is required to continue its relationship established hereunder with Lessee beyond the term specified in article 2 hereof and the parties do not conventionally extend or renew this Lease, then the extended or renewal lease thus required after such specified term shall be in accordance with the same terms and conditions as were last provided in this Lease, except that it shall be for a term of one year regardless of the term specified in said article 2 or, if a longer term is required by law, for the minimum term so required. Nothing in this article 13 shall be construed to limit Shell's right to propose amended or additional terms (including, without limitation, rent terms) in any such lease required by operation or effect of law subsequent to the term specified in article 2 hereof, or subsequent to the term of any such extended or renewal lease. If Shell desires such amended or additional terms in any such subsequent lease, or in any other lease proposed to replace this Lease, Shell shall give Lessee notice at least 120 days prior to the last day of the term of this Lease, or of any such extended or renewal lease, that it proposes to renew the lease then in effect

on such amended or additional terms which shall be specified in the notice or in a modified form of lease furnished therewith. If, by the 100th day before the end of the term of the lease then in effect, the parties, notwithstanding their mutually good faith efforts to do so, have not agreed in writing on the terms of the renewal lease, Shell shall have the right (and shall be deemed to have good cause) to not renew the lease then in effect by giving Lessee at least 60 days' notice of non-renewal prior to the end of the term thereof.

14. NONRENEWAL. Without limiting any rights which Shell may otherwise have hereunder or by law, Shell shall have good cause for the nonrenewal of this Lease, within the meaning of any applicable Federal or state law, regulation or order requiring cause for nonrenewal of a lease, if at the expiration of the term of this Lease, or any extension or renewal hereof, Shell: (a) has the right under any particular provision hereof to terminate this Lease, or (b) as the owner of the Premises, elects to sell, exchange or otherwise transfer the Premises to a third party, or (c) as the lessee of the Premises, elects to relinquish its leasehold estate or interest in the Premises to its lessor or to assign same to a third party, or (d) as either the owner or lessee of the Premises, elects to discontinue use of the Premises for the purposes for which then leased hereunder for a continuous period of not less than one year.

15. SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstances is found or held to be invalid for any reason, the invalidity shall not affect other provisions or applications of this Lease which can be given effect without the invalid provision or application in a manner which will not frustrate the essence of the lease bargain, and to this end the provisions of this Lease are severable.

16. ENTIRETY-EXECUTION-SUCCESSION. This Lease terminates, as of the beginning date of its term, any prior lease by Shell to Lessee of the Premises, and merges and supersedes all prior representations and agreements, and constitutes the entire contract between Shell and Lessee concerning the subject matter or in consideration hereof. Neither this Lease nor any subsequent agreement amending, supplementing or terminating this Lease shall be binding on Shell unless and until it is signed for Shell by a representative duly authorized by its Board of Directors. Subject to articles 8 and 9, this Lease shall bind and benefit Lessee's heirs, estate and assigns, and Shell's successors and assigns.

EXHIBIT A IS ON PAGE 5 HEREOF.

EXECUTED as of the date first herein specified.

SHELL OIL COMPANY

By _____

Lessee

Exhibit A
to Service Station Lease
LESSEE'S MAINTENANCE, REPAIR AND REPLACEMENT OBLIGATIONS

A. Yard

1. Natural landscaping: water, fertilize, weed and trim (or replace) grass and shrubbery as necessary to maintain healthy and attractive condition.
2. Artificial landscaping: Maintain and replace as necessary to preserve original appearance.
3. Repair and replace sprinkler heads.
4. Regularly remove leaves, debris and litter.
5. Remove snow and ice from the Premises (including adjacent sidewalks, driveways and easements).

B. Lighting

Maintain and replace all lamps and bulbs, ballasts, starters and sockets in the interior and exterior of building, canopies, pump islands and yard (excluding internally illuminated Shell identification signs).

C. Plumbing

1. Clear catch basins, clogged toilets, building lube bay drains and on property sewer lines.
2. Repair toilet flush mechanisms and leaky faucets.
3. Drain water lines to prevent freezing.

D. Heating-Air Conditioning

Replace air filters.

E. Glasswork

Replace all window and door glass and mirrors, whenever cracked or broken, including damage due to vandalism and accidents.

F. Floors

Restore floors to original condition upon removal of equipment installed by or at request of Lessee.

G. Painting

Minor touch-up, in accordance with Shell's specifications.

H. Tanks

1. Check for leakage and water (daily).
2. Empty waste oil tank.

I. Pumps-Dispensers

1. Lubricate any gasoline suction pumps in use. (Where motor and pump are contained in dispenser housing, lubricate suction pump weekly or as needed. Also check and adjust belt tension.)
2. Maintain and replace gasoline hoses and retractor cables.
3. Maintain and replace pump glass.
4. Maintain, repair and replace air and water hoses, nozzles, couplings and air chucks.
5. Maintain, repair and replace gasoline nozzles.

J. Air Compressor

1. Drain water once each week.
2. Add or change oil per manufacturer's operating instructions.
3. Maintain air filter per manufacturer's operating instructions.
4. Oil motor bearings once each month.

K. Other Equipment

Maintain, repair and replace motor oil cabinets, tire changer, driveway bell system and all lubrication equipment.

L. Miscellaneous

1. Repair and replace all locks and keys, door closers and latches.
2. Lubricate overhead door tracks as needed.
3. Replace electrical fuses and/or reset circuit breakers.
4. Check weekly all fire extinguishers. Recharge as needed.
5. Take necessary pest control measures.

SERVICE STATION LEASE

CO-1699A (12-71)

THIS LEASE is made, 19..., between MOBIL OIL CORPORATION, a New York corporation, hereafter called Landlord, having an office at and jointly and severally, if more than one, hereafter called Tenant, of

1. Premises. Landlord hereby leases to Tenant and Tenant hereby hires and takes the following premises:

.....
.....
.....
.....
.....
.....

including the improvements and equipment, except Mobil identification signs, now or hereafter placed thereon (hereafter collectively called the premises), subject to any state of facts an accurate survey might show, to easements, encumbrances, restrictions of record, existing or future mortgages and any underlying lease, but excluding any of the premises which are the subject of any prior lease by Landlord, its predecessors or assignors.

2. Term. The term of this lease shall be for an original period of year(s) beginning and ending and for successive renewal periods of thereafter, at the last year's rent stated herein, provided, that it shall terminate at the end of any current period (original or renewal) by notice from either party to the other, given not less than 90 days prior to such termination, and provided further that it may be terminated by Tenant at any time on not less than 90 days' notice to Landlord. Landlord may terminate this lease at any time during the first 12 months of the term on not less than 30 days' notice to Tenant, provided that said 12 month period shall be reduced by the length of time that Tenant has operated as a dealer of gasoline supplied directly by Landlord at the premises prior to the execution of this lease. If the term of this lease or any renewal thereof extends beyond the current term of any underlying leasehold interest owned by Landlord, this lease shall automatically terminate on the termination of such interest for any reason, including Landlord's failure to exercise any renewal option.

3. Rental.

4. Use. Tenant acknowledges that the value of the premises to each party to the lease is in direct proportion to the successful operation of an automotive service station and agrees that the premises shall be used principally for such purpose and operated:

- (a) from a.m. to p.m. on weekdays
and from a.m. to p.m. on Sundays
and holidays during the months of
and from a.m. to p.m. on weekdays
and from a.m. to p.m. on Sundays
and holidays during the other months of the year;
- (b) 24 hours per day, days per week;
- (c)

Tenant further acknowledges and agrees that the premises shall not be used in connection with the sale of alcoholic beverages or any purpose prohibited by law, ordinance, covenant, condition or restriction.

5. Maintenance Obligations—Landlord. Landlord, at its expense, shall make repairs (including painting) deemed necessary by it to keep such of the following improvements and equipment as are covered by this lease in good operating condition, provided the necessity therefor is due to ordinary wear or to damage by the elements; air compressors, lifts, air towers, fuel pumps (including non-automatic nozzles and hoses), fuel tanks and lines, lubricating equipment, pavements and driveways, signs, wiring, piping, overhead doors (except glass therein), roofs, walls and foundations of buildings. Landlord's obligation to repair shall not arise until (a) Landlord is notified that the item in question is not in good operating condition and (b) Landlord shall have determined in its uncontrolled discretion and within a reasonable period that the necessity for repair is due to a cause referred to above. Tenant shall either make the item harmless or shall not use it or permit it to be used until repaired. In lieu of repairing, Landlord may make replacements.

6. Maintenance Obligations—Tenant. Tenant agrees at its expense (a) to maintain the premises in good, safe and operating condition and promptly to make all repairs or replacements necessary for that purpose, including but not limited to plate glass damage (except to the extent that Landlord shall make repairs or replacements as provided in Section 5), (b) to keep adjacent sidewalks, curbs and drives in good and safe condition and free from snow, ice and obstructions, (c) to provide adequate water, maintenance and care necessary to sustain all plants, shrubs and grassy areas on or about the premises, (d) to keep filled and ready for operation all fire extinguishers on the premises, (e) in order to contribute to the health, safety and comfort of the motoring public and to promote the cleanliness and good appearance of the general community, to keep the rest rooms clean, neat, sanitary and supplied adequately with towels, toilet paper and soap and to keep the premises in clean, orderly and well-lighted condition, free of trash, junk and debris, and (f) to dispose of all wastes such as waste oil, used tires, batteries and other refuse so as not to contribute to water and air pollution. Tenant further agrees to comply with all the requirements of local, state and federal authorities with respect to water and air pollution. If Tenant does not dispose of such waste in a proper manner or is not, in Landlord's opinion, complying with said water and air pollution requirements, Landlord at its option may do so without liability to Tenant for business loss, and the cost thereof shall be paid by Tenant. If Tenant does not maintain and repair the premises and make replacements, Landlord at its option may do so, without liability to Tenant for business loss, and the cost thereof shall be paid by Tenant.

7. Other Obligations of Tenant. Tenant agrees: (a) to supply and maintain all equipment necessary for Tenant's operations hereunder not supplied by Landlord as part of the premises, (b) not to make or permit alterations or additions to the premises or to place any additional structures on the premises without Landlord's prior written approval, except that Tenant may, without such approval, install storage and merchandising equipment for petroleum products, tires, batteries and automotive accessories if removable without damage to the premises, (c) not to place rental devices or equipment on the premises without Landlord's prior written consent, except that Tenant may, without such approval, install storage and merchandising equipment for soft drinks, candy and tobacco products if removable without damage to the premises, (d) to keep legible and visible all brand names, trademarks and signs of Landlord on Landlord's pumps, containers, and equipment now or hereafter placed on the premises and to use such pumps, containers, and equipment solely for Landlord's products, (e) to permit Landlord to enter the premises to make inspections, to post notices or for any other purpose without liability for any interference with Tenant's business, (f) to pay all utility charges and other expenses, except as otherwise provided in this lease, and all taxes and fees imposed on the premises or the use thereof, except real and personal property

taxes on the land and buildings and on Landlord's equipment unless otherwise provided in any underlying lease between Landlord and Tenant, (g) to comply with all requirements of competent authorities with respect to the premises and sidewalks, drives and curbs adjacent thereto, and of the Board of Fire Underwriters and similar organizations, (h) to accept the premises in their present condition which is known to Tenant, (i) not to hold Landlord responsible for any defect in, or change in conditions affecting, the premises or for any damage to the premises except as provided in Section 5, (j) to keep the premises free of all liens and claims, (k) to waive all present and future rights of redemption or repossession and all demands or notices for rent, entry or re-entry, or in connection with any action to recover possession, (l) to waive any right in any appropriation, condemnation or eminent domain awards, and (m) on any termination of this lease to surrender the premises to Landlord, without notice from Landlord, in good order and condition.

8. Termination. If tenant has made false or misleading statements in order to obtain this lease, or is in default hereunder, or if any supply contract between the parties covering the delivery of products at the premises is terminated, or if the premises are closed for the operation of a service station for 60 or more consecutive hours, or if any insolvency, bankruptcy, or receivership proceedings are instituted by or against Tenant, or if Tenant takes advantage of any law for the benefit of debtors, or if any execution or levy shall issue against Tenant or Tenant's effects, or if any disability on the part of Tenant, other than Tenant's death, prevents personal supervision by Tenant of the performance of the obligation under this lease, or if any part of the premises shall be taken for public or quasi-public use, Landlord may, on the happening of any such event, terminate this lease on notice to Tenant. In the event of Tenant's death, this lease shall automatically terminate. On any termination, Landlord may re-enter and repossess the premises without prejudice to Landlord's accrued rights.

9. Notices. All notices hereunder shall be in writing and shall be delivered personally (to an officer or manager in case of Landlord) or sent by registered or certified mail to the address specified above unless changed by notice. Notice by mail shall be deemed given on the date such notice is deposited in the United States mail, postage prepaid, and properly addressed.

10. Miscellaneous. Any assignment, mortgage or pledge of this lease or any interest therein or any subletting of the premises, in whole or in part, by Tenant without Landlord's written consent shall be void. This instrument, including any documents incorporated herein, contains the entire agreement covering the subject matter and supersedes any prior lease between the parties with respect to the premises. All rights and remedies of Landlord are cumulative. Landlord's right to require strict performance shall not be affected by any previous waiver or course of dealing. If Tenant fails to perform any obligation hereunder, Landlord may perform same and charge Tenant with the expense as rent hereunder.

Witnesses:

MOBIL OIL CORPORATION

By
Manager

Tenant

.....

.....

..... (L. S.)

.....

..... (L. S.)

Service Station Lease
Union Oil Company of California



Station # _____

DATE: _____, 19 _____

LESSOR: Union Oil Company of California (Union)

Street Address _____

City and State _____ Zip Code _____

LESSEE: _____

Residence Address _____

City and State _____ Zip Code _____

STATION PROPERTY:

Street Address _____

City _____

County and State _____ Zip Code _____

See Exhibits B & C for leased property description ("Station")

The provisions of this lease are set forth in the "Recitals" and "Terms and Conditions" (Paragraph 1 through 22) and Exhibits A, B, C and D attached hereto and made a part hereof. A subject matter index will be found at the end.

LESSOR

LESSEE

Union Oil Company of California

By _____

2183

RECITALS

It has been explained to Lessee and Lessee acknowledges that he thoroughly understands that the successful operation of the Station depends on the ability of the parties to generate acceptance by the public of products and services sold at the Station. The responsibility of promoting acceptance of Union's products rests primarily with Union through its continued development of quality products for sale by Lessee and through its national and local advertising on behalf of Union and all sellers of its products. Lessee agrees that the responsibility to develop and retain service acceptance by the motoring public at the Station, to supplement product acceptance, rests entirely with the Lessee. Lessee acknowledges that such acceptance can be generated only through courteous and efficient customer service, the maintenance of a clean, neat and orderly business establishment, the adherence to regularly scheduled hours of operation, fair and honest selling techniques, and the maintenance of a complete inventory of good quality merchandise to serve adequately and quickly the needs and desires of the motoring public. Since Lessee may use Union's trade names and trademarks in the sale of merchandise obtained from Union, Lessee agrees to render the type of service that will maintain the integrity and good reputation which Union's name has attained.

NOW, THEREFORE, Union leases to Lessee and Lessee leases from Union the real and personal property described in Exhibit B and C subject to the following terms and conditions:

TERMS AND CONDITIONS

1. TERM

The term of the Lease commences _____, and terminates _____. The Lease ends automatically and without notice on the termination date. If the Lessee remains in possession of the Station after the termination date with Union's express or implied consent, Lessee is a tenant from month to month on the terms and conditions specified herein. This Lease may be cancelled prior to the expiration date pursuant to Paragraph 11, 14, 15, or 17.

2. RENTAL

Fixed S_____ per calendar month
Motor Fuel Gallonage _____ ¢ a gallon
Minimum Rent S_____ per month - annum

Lessee shall pay gallonage rental on motor fuel delivered to or at Union's option dispensed from the Station, and computed during each lease year. Gallonage rental shall be due and payable at the time of each settlement or delivery of motor fuel. Fixed rental shall be paid in advance on or before the first day of each month.

Lessee shall pay any deficiency in the minimum rental within 30 days following the monthly/annual applicable period. Rental shall be prorated for any fractional period of a calendar month or lease year.

3. LESSEE AS INDEPENDENT CONTRACTOR

Lessee is an independent contractor with the right and obligation to direct and control the business operations of the Station including the establishment of the prices at which products and merchandise are sold. Union reserves no control over the business at the Station. Lessee has no authority to employ anyone as an employee or agent of Union for any purpose. Any person performing work at Lessee's request is an employee or agent of Lessee and not of Union.

4. STATION MAINTENANCE AND SERVICES

Lessee shall:

- (a) Operate the Station responsibly, with care, prudence, good judgment, skill and courtesy, and not engage in dishonest, fraudulent or scare selling practices;
- (b) Promote diligently the sale of all products and services;
- (c) Perform all services in a good, workmanlike manner;
- (d) Maintain a complete supply of motor fuel and other petroleum products and inventories of tires, batteries and accessories normally handled by a service station;
- (e) Maintain the restrooms in a clean, sanitary and well lighted condition and adequately provided with necessary supplies;
- (f) Keep the Station open for business and properly lighted during all hours of operation specified in Exhibit D;
- (g) Provide sufficient trained, courteous and neat appearing personnel to serve the needs and desires of the motoring public;
- (h) Keep the Station, driveways, yards, lawns, shrubs and other plantings, neat and free from weeds, debris, snow, ice and rubbish;

5. STATION USE

Lessee shall:

- (a) Use the Station solely for the purpose of operating a first class motor vehicle service station for the sale of motor fuel and other petroleum products, tires, batteries, accessories and other merchandise and services customarily supplied by a service station;
- (b) Not use the premises for storage of junk, disabled vehicles, used tires or batteries;
- (c) Not perform automobile services not included in Union's Certified Automotive Service Program;
- (d) Not use the Station, without the prior written consent of Union, for auto, truck or equipment rentals or as a parking lot;
- (e) Not obstruct any entrance, exit, pump island or service area so as to deny free access to the motoring public or block delivery carriers' access to storage fill pipes;
- (f) Store and dispense products only from pumps, tanks or containers identified with the supplier's trademarks or trade names;
- (g) If the construction, maintenance and/or operation of the Station is pursuant to a conditional use permit or other approval ("permit") by a zoning board or other governmental agency, use the Station in accordance with all the requirements contained in such permit. If the Station is subject to such a permit a copy will be delivered to Lessee and Lessee agrees to acknowledge receipt of the copy on a form provided by Union.
- (h) Conduct all operations in strict compliance with all laws, ordinances and regulations of governmental authorities;
- (i) Not display signs except those usual and customary to advertise products and services offered for sale at the Station by Lessee;
- (j) Not place any buildings or other permanent improvements at the Station or remove or make any alterations or changes in or to the existing buildings and permanent improvements at the Station, except such additions or alterations as may be necessary for the purpose of identifying, storing or dispensing the products sold at or from the Station; provided, however, that no additions, alterations or improvements may be made which reduce or diminish the value of the Station.
- (k) Not store or sell intoxicating liquors or illegal or prescription drugs, or permit the same to be used or consumed at the Station.

6. MAINTENANCE, REPAIR AND OPERATING EXPENSES

- (a) Lessee shall, at his expense: (i) Maintain the Station in accordance with the standards enumerated in Paragraph 4; (ii) Make all repairs and replacements described in Exhibit A; (iii) Pay all water, gas, electricity, telephone and other utility bills and arrange for the transfer of all meters and accounts to Lessee's name; (iv) Pay all premiums and contributions required by Workmen's Compensation, Unemployment Insurance, old age benefits and other programs measured by the remuneration paid by Lessee to his employees; (v) Pay all license, occupation and business fees connected with Lessee's operation of the Station; and (vi) Pay all costs of withdrawing,

distributing and selling products at the Station. If Lessee fails to fulfill the obligations set forth in (i) or (ii) above, Union may take care of such maintenance and make repairs and replacements, and Lessee shall reimburse Union on demand.

- (b) Union shall be responsible for all maintenance, repair and replacements not specifically covered above.

7. TAXES

Lessee shall pay all taxes levied or imposed on (i) Lessee's property located at the Station, and (ii) Lessee's operations pursuant to this Lease including the withdrawal, distribution, sale or delivery of the products handled at the Station.

8. LESSEE'S INSURANCE REQUIREMENTS

- (a) Lessee shall obtain insurance as follows: (i) Garagekeeper's Legal Liability insurance covering fire, theft of an entire automobile, and collision, with a minimum limit of Nine Thousand Dollars (\$9,000.00) each occurrence; (ii) Comprehensive General Liability insurance covering operations and premises, complete operations and products liability and contractual liability, all with minimum bodily injury limits of One Hundred Thousand Dollars (\$100,000.00) each person, Three Hundred Thousand Dollars (\$300,000.00) each occurrence, and a minimum property damage limit of Twenty-Five Thousand Dollars (\$25,000.00) each occurrence; (iii) Comprehensive Automobile Liability insurance covering all owned, hired or otherwise operated non-owned automobiles with minimum bodily injury limits of One Hundred Thousand Dollars (\$100,000.00) each person, Three Hundred Thousand Dollars (\$300,000.00) each occurrence, and a minimum property damage limit of Twenty-Five Thousand Dollars (\$25,000.00) each occurrence.
- (b) The insurance will name Union as an additional insured and will be primary as to any other existing, valid and collectible insurance. The foregoing are minimum insurance requirements only and may or may not adequately meet the entire insurance needs of Lessee. If Union requires, before Union delivers possession of the Station to Lessee, Lessee shall furnish Union with certificates of such insurance which provide that coverage will not be cancelled or materially changed prior to 30 days advance written notice to Union. The insurance required hereunder in no way limits or restricts Lessee's obligation under Paragraph 16 as to indemnification of Union. Further, the insurance to be carried shall be in no way limited by any limitation placed upon the indemnity therein given as a matter of law.

9. LESSEE'S RECORD KEEPING REQUIREMENTS

Lessee shall maintain at the Station, in a form to permit calculation of rentals due under this or any underlying lease, accurate records of (i) all deliveries and sales of motor fuel, and (ii) gross revenue from sales of all products (including motor fuel) and services. Union and/or its lessor may examine and audit the foregoing records at any reasonable time and Union agrees to keep the records confidential. Lessee shall, on request from Union, provide statements, verified before a Notary Public, of deliveries, sales and gross revenue within 5 days after the end of each calendar month, twelve month lease period, and/or any cancellation or termination of this Lease.

10. EVENTS CONSTITUTING DEFAULT

The occurrence of any one of the following events constitutes a default of this Lease:

- (a) Lessee's death, personal incapacity, or conviction of a felony or offense involving moral turpitude;
- (b) Lessee's failure to supervise the operation of the Station personally;
- (c) Lessee's abandonment of the Station (Lessee is deemed to have abandoned the Station if it is not open for business for 72 consecutive hours);
- (d) Lessee's failure to remove, within 5 days after the levy thereof, any lien, attachment, execution or encumbrance against the Station, Lessee's interest therein, or Lessee's business, arising from an act or default of Lessee;
- (e) Institution by or against Lessee of insolvency, bankruptcy or receivership proceedings, or an assignment for the benefit of creditors;
- (f) Lessee's failure to pay Union when due any indebtedness, however arising, owing by Lessee to

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Union;

- (g) Lessee's violation of any conditional use permit or other special zoning requirements as referred to in Paragraph 5 (g);
- (h) Lessee's failure to provide Union with any statement referred to in Paragraph 9 within the designated time;
- (i) Lessee's failure to pay rent or make any other payment to Union required under this Lease, within 5 days after written demand;
- (j) Lessee's failure to maintain the standards for Station Maintenance and Services enumerated in Paragraph 4 (a);
- (k) Lessee's failure to perform any other of his obligations and responsibilities under this Lease.

11. CANCELLATION PRIVILEGES

- (a) Lessee may cancel this Lease at any time on 90 days written notice to Union.
- (b) Union may, with or without prior notice to Lessee, cancel this Lease and take immediate possession of the Station on the occurrence of any one of the events listed in Paragraph 10(a) through (j) inclusive.
- (c) Except for the defaults set forth in Paragraphs 10 (a) through (j), Lessee's failure to perform any of his other obligations under this Lease shall be a default which shall give Union the right to cancel this Lease unless such default is remedied by Lessee within 15 days after receipt of the written notice from Union specifying the nature of the default. If Lessee has received notice of 3 or more defaults, then upon the occurrence of any subsequent default, Union shall have the right to immediately terminate this Lease and take possession of the premises notwithstanding the fact that Lessee may have remedied such previous defaults.
- (d) Union may, on 30 days written notice, with or without cause, cancel this Lease at any time during the first 12 months of the Lease if this Lease is the first Lease between Union and Lessee covering the Station.

12. SURRENDER OF PREMISES

- (a) Premises:
Lessee shall surrender possession of the Station immediately on cancellation or termination of this Lease. The Station shall be in the same condition as at the commencement of the term of this Lease, except for (i) normal wear and tear, and (ii) damage or destruction not caused by Lessee's negligent or willful acts or omissions. Prior to surrender of possession of the Station, Lessee shall have removed any additions, alterations or improvements he may have made as set forth in Paragraph 5(j).
- (b) Inventory, Tools, Equipment, Supplies:
Neither Union nor any incoming lessee shall be obligated to purchase any of the foregoing items from Lessee; however, Union, at its option, may purchase the equipment and those products in saleable condition which Lessee purchased from Union, for the reasonable value thereof, but not to exceed the cost to Lessee, and may credit the amount thereof against any sums owing Union by Lessee.

13. INSPECTION OF STATION

Union retains the right to enter and inspect the Station at all times with such employees and equipment as it may deem necessary to determine if the obligations assumed by Lessee under this Lease are being fulfilled.

14. CONDEMNATION

In the event of the taking of all or any part of the Station through condemnation, either party may cancel this Lease without liability to the other. Lessee waives any and all rights to damages in event of such condemnation, including Lessee's leasehold interest, and agrees that Union shall be entitled to receive and retain the full amount of any damage award or settlement.

15. DAMAGE OR DESTRUCTION OF STATION

- (a) If the Station is damaged or destroyed so that it is unusable for the purpose for which it is leased, either party may cancel this Lease.
- (b) If the damage or destruction was caused by the negligent or willful acts or omissions of Lessee, Lessee will pay Union the cost of repair or replacement.

16. INDEMNIFICATION BY LESSEE

Union shall not be liable to Lessee or to any other person for any damage to or loss of property, or for injury to or death of persons, arising from Lessee's operation pursuant to this Lease and Lessee agrees to indemnify, protect and save Union harmless from and against any and all losses, claims, liabilities, suits and actions, judgments and costs, which shall arise from or grow out of any injury to or death of persons and for damage or loss of property, directly or indirectly arising out of, or resulting from, or in any way connected with Lessee's operation upon or use of the Station or from the condition thereof or of the adjoining streets, sidewalks or ways, whether sustained by Lessee or his agents or employees, or any other person, firm or corporation which may seek to hold Union liable.

17. SUBORDINATION TO UNDERLYING LEASE

This Lease is subordinate to any underlying lease now, or hereafter, in effect between Union and its lessor. Union is under no obligation to extend or renew such underlying lease. In the event of termination or cancellation thereof, this Lease shall terminate automatically, without liability on Union's part.

18. NOTICES

Any notice required by this Lease shall be in writing. It shall be deemed served when delivered to the other party personally or when mailed via certified or registered mail to the other party at the address indicated on the first page.

19. MODIFICATION OF LEASE

The parties may modify this Lease only by written amendment executed by both parties.

20. ASSIGNMENT

Lessee shall not assign or transfer this Lease, or any interest therein, or sublet the Station in whole or in part. Lessee's interest under this Lease cannot be assigned by operation of law.

21. CREDIT CARD GUIDE

Lessee acknowledges receipt of Union's Credit Card Guide and agrees that, if he elects to make credit sales to customers presenting Union credit cards and other credit cards listed in the Guide, he will comply fully with the instructions and policies stated in the Guide.

22. CANCELLATION OF PREVIOUS AGREEMENTS

This Lease cancels and supersedes any previous lease or agreement between the parties relating to the Station.

EXHIBIT A
LESSEE REPAIR AND MAINTENANCE RESPONSIBILITIES

1. ISLAND DISPENSERS

- (a) Calibrate as required by governmental authority;
- (b) Replace glass;
- (c) Repair or replace (i) hoses and nozzles, and (ii) any other parts damaged through Lessee's negligence.

2. COMPRESSORS

- (a) Replace belts and oil;
- (b) Repair or replace compressor or any parts thereof damaged through Lessee's negligence.

3. HOISTS

- (a) Replace oil;
- (b) Repair or replace hoists or any parts thereof damaged through Lessee's negligence.

4. AIR AND WATER EQUIPMENT

- (a) Repair or replace hoses, nozzles, bibs and gauges.

5. FIRE FIGHTING EQUIPMENT

- (a) Maintain all fire extinguishers fully charged and ready for use at all times.

6. REST ROOMS

- (a) Repair plumbing and toilet fixtures;
- (b) Repair or replace rest room accessories.

7. YARD

- (a) Repair yard asphalt and/or replace landscaping damaged or destroyed through Lessee's negligence;
- (b) Care for and maintain lawn and shrubs.

8. STATION

- (a) Replace broken window glass;
- (b) Replace lock cores and keys for station and cash box;
- (c) Re-key station if required through Lessee's negligence;
- (d) Repair or replace floor safe damaged through Lessee's negligence (including cost of removal of damaged floor safe);
- (e) Repair leaks in station roof caused through Lessee's negligence or Lessee's improper use of roof areas.

9. MISCELLANEOUS

- (a) Pump water from underground tanks if presence of water is caused by Lessee's failure to maintain fill caps in watertight condition at all times;
- (b) Maintain heating and cooling units, including the cost of replacing filters.
- (c) Dispose of drain oil by an approved procedure;
- (d) Replace burned out lamps in station, canopy and yard areas;
- (e) Repair or replace Union's equipment damaged through Lessee's negligence.

EXHIBIT B

DESCRIPTION OF REAL PROPERTY

EXHIBIT C

BUILDINGS, IMPROVEMENTS, FIXTURES & EQUIPMENT

_____ Service Station Building & Facilities _____

Type with _____ Lube Bays and Single Double Island Canopy

_____ Gallon Underground Storage Tank(s)

_____ Gallon Underground Storage Tank(s)

_____ Gallon Underground Storage Tank(s)

_____ Gallon Underground Storage Tank(s)

_____ Gallon Underground Waste Oil Tank

_____ Gauge Stick(s) for Underground Tanks

_____ Turbine Pumps _____ Dispensers Suction Pumps _____ Nozzles

_____ Island Air and Water Reels Air and Water Wells

_____ Island Display and Storage Cabinet(s)

_____ _____ H.P. Air Compressor Vertical Horizontal

_____ Overhead Air and Water Reels

_____ Fire Extinguisher(s)

_____ _____ Foot Work Bench with Utility Cabinet Storage Bin

_____ Utility Locker(s)

_____ Auto Hoist (Rail or Frame Contact) with Accessories

_____ Floor Safe and Keys

_____ Desk with Chair or Stool

_____ Settee

_____ Telephone Counter with Stool

_____ Vanity Stool

_____ Display Counter(s)

_____ Heating Unit(s) Electric Wall—Office Forced Air—Entire Station

_____ Air Conditioning Unit(s)

_____ 276 376 Illuminated "76" Sphere Sign 76 Spheroid Sign

_____ Other Sign _____

_____ Price Sign Poster Board(s)

_____ Certified Services Poster Board

_____ Oil Display Cart(s)

_____ Flood Light Poles _____ Flood Lights _____ Area Lights

_____ Cash Boxes Pedestal Swivel

_____ Credit Card Imprinter(s)

_____ Tire Cabinet(s)

_____ Manuals Service Station Products Manual Yearly Service Guide

TBA Application Manual Credit Card Guide

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EXHIBIT D

HOURS OF OPERATION

For the months of _____

	From		To
Sunday	_____ a.m.		_____ p.m.
Monday	_____ a.m.		_____ p.m.
Tuesday	_____ a.m.		_____ p.m.
Wednesday	_____ a.m.		_____ p.m.
Thursday	_____ a.m.		_____ p.m.
Friday	_____ a.m.		_____ p.m.
Saturday	_____ a.m.		_____ p.m.

For the months of _____

	From		To
Sunday	_____ a.m.		_____ p.m.
Monday	_____ a.m.		_____ p.m.
Tuesday	_____ a.m.		_____ p.m.
Wednesday	_____ a.m.		_____ p.m.
Thursday	_____ a.m.		_____ p.m.
Friday	_____ a.m.		_____ p.m.
Saturday	_____ a.m.		_____ p.m.

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Adopted	<input type="checkbox"/>	Adopted	<input type="checkbox"/>
Lost	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Date:		Date:	
Initial:		Initial:	
Concurred in	<input type="checkbox"/>	Concurred in	<input type="checkbox"/>
Not concurred in	<input type="checkbox"/>	Not concurred in	<input type="checkbox"/>
Date:		Date:	
Initial:		Initial:	

Amendments to ~~Assembly~~ ^{Exhibit X} Senate

Bill / ~~Assembly Resolution~~ No. 474 (BDR 43-1566)

Proposed by Senator Hilbrecht *[Signature]*

1977 Amendment N^o 137



Amend the bill as a whole by adding a new section designated as section 2.5, following section 2, to read:

"Sec. 2.5. "Director" means the director of the department of commerce."

Amend section 27, page 7, delete lines 32 through 44 and insert:

"mercial coaches. The regulations shall allow for the issue of insignia to manufacturers of commercial coaches or recreational vehicles to be affixed by the manufacturers. The regulations shall provide for, without limitation:

- (a) Inspections at the place of manufacture;
- (b) Submission of plans and specifications;
- (c) Remedies to dealers and consumers when commercial coaches or recreational vehicles do not comply with applicable standards; and
- (d) Revocation for cause, upon notice and hearing, of the right of a

manufacturer to sell commercial coaches or recreational vehicles in this state for use in this state.

2. May adopt regulations pertaining to the safety and"

Amend section 27, page 8, delete lines 3 and 4.

Amend section 27, page 8, line 5, delete "(d)" and insert: "(c)".

Amend section 27, page 8, insert between lines 7 and 8:

"(d) The director may develop and administer a program providing for the issuance of a safety certificate of compliance and a safety seal.

(e) An incorporated city or a county which has a building department shall force within its respective city limits or unincorporated areas all regulations adopted under this section, pertaining to the safety and construction

To Bill

standards for the installation, support and tiedown of mobile homes, except that the department shall enforce such regulations in any area where the building department fails to do so within 90 days after the regulations become effective."

Amend section 41, page 12, line 41, insert after "for": "the".