

Working Memorandum Number 1

July 1968

COMMERCE AND CONSUMER PROTECTION

GOVERNMENT OF MINNESOTA

Prepared for the
Governor's Council on Executive Reorganization

by
Public Administration Service

Introduction

Regulation of the conduct of specified trades, businesses, and professions is a common exercise of the police power of a state. In Minnesota, as in most states, the exercise of this power has led to the creation of many statutory, and sometimes constitutional, agencies, each concerned with setting standards, enforcing laws and rules, issuing licenses or franchises, and otherwise supervising and reviewing the conduct of designated activities whose regulation is considered to be in the public interest. The common purposes of these regulatory agencies is to safeguard the interests of the public as consumers, investors, and depositors and, at the same time, to protect the interests of legitimate occupations, professions, and purveyors of services.

It was perhaps inevitable, historically, that regulatory activities in state government were characterized by a proliferation of agencies. Many such agencies exercise considerable independence and are insulated from the mainstream of state administration. Minnesota has avoided proliferation somewhat by placing the bulk of regulatory functions in the Department of Agriculture, the Department of Public Service, and a loosely organized Department of Commerce.

All of these agencies, however, have significant responsibilities other than commercial regulation and consumer protection. In addition, there are many other agencies, major and minor, that perform regulatory activities. They include the Department of Health, the Department of Liquor Control, the Secretary of State, the Attorney General's Department, the Department of Economic Development, the Livestock Sanitary Board, the Board of Pharmacy,

the Board of Barber Examiners, the Board of Hairdressing and Beauty Culture Examiners, the Board of Electricity, and fifteen other professional and occupational licensing boards. /

Studies of regulatory agencies in a number of states have produced the following generalizations that seem generally applicable to many similar units in Minnesota.

1. Many agencies are typically concerned with a rather carefully defined and restricted segment of business or professional activity.
2. Many agencies have their own governing bodies, staffs, and, more often than not, earmarked financing.
3. A close and congenial working relationship usually prevails between the regulatory agency and those to whom regulations apply.
4. Modern management methods and economical operations usually are not diligently sought, since typically their "own" funds are being spent; indeed, many are such small organizations they cannot take advantage of data processing and other administrative advances.
5. The operation of many agencies does not come under close public scrutiny.

The above listing suggests opportunities for more effective and economical operations but the militant insistence of each interested group on maintaining the status quo of "its" agency encourages inaction.

Source of economies

It is apparent that great opportunities exist for economies in operations, for better staff utilization, for increased convenience to the public, and for improving performance and service. These opportunities, along with the simplification of relationships of the regulating agencies to the public and the regulated establishments and persons, would best be achieved by a substantial realignment of functions and reorganization of the agencies. The reorganization should be conducted on two different levels and should accom-

plish two separate but related sets of objectives.

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First, there is the need to bring the several specialized regulatory agencies together within a single major department of state government. Such action would provide a basis for achieving the general oversight of the several programs, for identifying inadequately met or unmet needs, for administrative coordination of related programs, and for analyzing trends and developments. Programs and activities would be made more subject to public scrutiny and responsive to public policies. Moreover, increased economy and efficiency in operations could be achieved by permitting the establishment of staff, administrative, and supportive services to serve all programs and providing for shared use of personnel, facilities, and equipment.

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Second, there is the need to group together into divisions within the major department those functions, programs, or activities which are related in purpose, work methods, and staffing requirements, and to transfer to other major departments those programs, functions, or activities unrelated to commercial regulation and consumer protection. These actions would improve administrative direction and coordination, increase efficiency of performance, reduce costs of operations; and, equally important if not more so, provide a basis for more effective and meaningful legislative and executive review of accomplishments and needs.

The proposed plan of organization would transfer the existing agencies, or units thereof, dealing with commercial regulation, occupational and professional licensing and regulation and consumer protection to a Department of Commerce and Consumer Protection. Single services, functions, or programs

in directly related fields would also be transferred to the proposed department.

The proposed department and its organization should recognize the separateness of some activities in relation to special clienteles served and special personnel qualifications required to serve them; however, it also should recognize the need for review and supervision of the several programs within the mainstream of state administration. Such programs should become more directly accountable to the Governor and the Legislature.

The proposed department would also facilitate the state's relations with both local and federal governments in the area of commercial regulation and consumer protection. It would enable the state to assist, guide, and direct more effectively related local government programs for a more coordinated state effort and it would enable the state to speak with one integrated, coordinated voice with the many federal government agencies having responsibilities in this important field. Minnesota's views, needs, and desires would undoubtedly carry more weight if one agency spoke for the entire commercial regulation and consumer protection area.

Proposed Organization

It is recommended that a Department of Commerce and Consumer Protection be established with broad responsibilities for commercial regulation; occupational and professional examining, licensing and regulation; and consumer protection. The accompanying chart outlines the suggested structure of the department. Proposed major units and their responsibilities would be as stated below.

The Commissioner

The Commissioner would be appointed by the Governor and would be responsible for the administration and direction of the entire department.

Administrative and Staff Services

This unit would provide personnel, budgeting, accounting, program and management planning, data processing, public information, and general services functions for the entire department.

Deputy Commissioner for Commerce

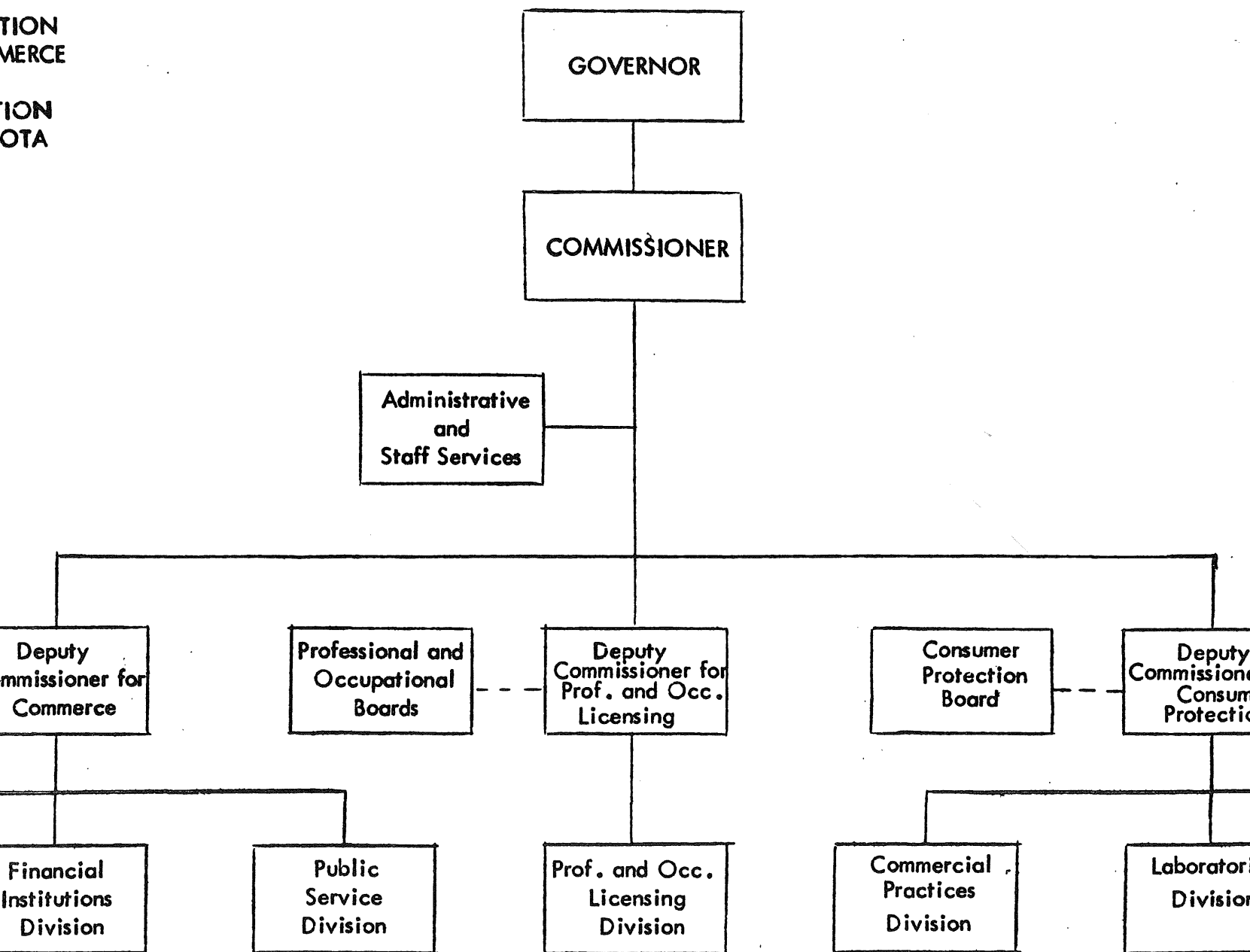
This deputy would be appointed by the Commissioner and would direct, administer, and coordinate the activities of the Insurance and Securities Division, the Financial Institutions Division, and the Public Service Division.

The Commerce and Public Service Commission

This commission would serve as a quasi-legislative, quasi-judicial body issuing regulations and conducting hearings on insurance, securities, financial institutions, rail, bus, truck, telephone, and public warehouse matters. The commission nor its members would have any administrative

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authority or responsibility. Secretarial and staff services would be provided by the Public Service Division.

Insurance and Securities Division

This division would regulate the insurance and securities businesses in the state. It would also perform staff work on matters in its area for the Commerce and Public Service Commission. The licensing of real estate brokers and agents, presently a part of the Securities Division of the Department of Commerce, would be transferred to the Professional and Occupational Licensing Division of this new department. The Fire Marshall section of the Insurance Division is discussed in another memorandum.

Financial Institutions Division

This division would regulate financial establishments such as banks, trust companies, savings and loan associations, small loan companies, and automobile sales finance companies. It would also do necessary staff work for the Commerce and Public Service Commission in this area.

Public Service Division

This division would provide secretarial services for the Commerce and Public Service Commission and would perform staff work in its area for the Commerce and Public Service Commission. It would be the regulating and enforcing agency for matters of railroads, buses and trucks, telephone companies, and public warehouses. The livestock buyers, livestock weighers, public warehousing, and weights and measures functions of the present Public Service Department would be transferred to the Commercial Practices and Inspection Division of this new department.

Deputy Commissioner for Occupational and Professional Licensing

This deputy would be appointed by the Commissioner and have adminis-

trative responsibility over the preparation and administering of examinations, the conduct of investigations, and the issuing of licenses. He would sit as an ex-officio member of all occupational and professional licensing boards attached to this division.

Professional and Occupational Boards

All such boards, enumerated in the section which follows on Proposed Functions and Their Derivations, would continue to serve as the quasi-legislative, quasi-judicial boards in their respective fields. They would assist in the preparation of and approve any written examinations. The respective boards would conduct practical or performance examinations when they deemed them necessary. All inspection functions of the boards would be transferred to the Inspection Division.

Professional and Occupational Licensing Division

This unit would prepare, administer, and score examinations; arrange for practical or performance examinations deemed necessary by the respective boards; conduct background investigations when and if required; and issue licenses and collect fees.

Deputy Commissioner for Consumer Protection

This deputy would be appointed by the Commissioner and have administrative responsibility for the broad and comprehensive area of consumer protection.

Consumer Protection Board

This board would serve as the quasi-legislative, quasi-judicial board with authority to issue rules and regulations and conduct hearings as authorized by law, but not on matters of occupational or professional licensing.

The size and composition of the board would, of course, be a legislative determination, but it is strongly urged that the general public be represented on the board in addition to representatives from the fields of agriculture, public health, pharmacy, food, milk, or meat processing.

Consumer Practices Division

This unit would administer and enforce programs in consumer fraud, unfair trade practices, incorporating of businesses, and registration of charitable organizations. It would issue licenses and permits and collect fees on all types of concerns under the authority of the Deputy Commission for Consumer Protection. It would also enforce laws and regulations applicable to labeling, packaging, and advertising through visual examination.

Laboratories Division

This division would perform bacterial, chemical and other examinations and analyses of food, meat, milk, feed, fertilizer, pesticides, economic poisons, hazardous substances, drugs, and other substances as required.

Inspection Division

This division would supervise, regulate, and inspect producers, manufacturers, distributors, storage, wholesalers, and retailers of foods, meats, milk, beverages, drugs, feeds, fertilizers, economic poisons, seeds, and hazardous substances. It would sample products as necessary. It would also inspect and regulate weighing and measuring devices.

Proposed Functions and Their Derivations

The administrative level units and the proposed boards have been described in sufficient detail above. This section will be devoted to an enumeration of the specific functions of the major operating divisions and their sources or derivations from existing units of government.

Insurance and Securities Division

This division would:

1. License and regulate insurance companies and agents operating in the state.
2. Approve rates for casualty, accident, and health policies.
3. Approve all policies issued to state residents.
4. Count securities and audit records of domestic companies, and participate in examinations of foreign companies.
5. Assess and collect insurance gross premium taxes.
6. Register securities of all establishments operating in the state.
7. Review reports of companies issuing securities and broker-dealers.
8. License securities broker-dealers, investment advisors, and agents.

Items 1 through 5 would derive from the Insurance Division of the Department of Commerce; items 6 through 8 would be transferred from the Securities Division of the Department of Commerce.

Financial Institutions Division

This division would:

1. Regulate and charter or license banks, trust companies, savings banks, face amount investment companies, savings and loan associations, industrial loan and thrift companies, safe deposit companies, small loan companies, credit unions, and automobile sales finance companies.
2. Examine financial institutions annually.

3. Review and appraise bond portfolios of financial institutions with the exception of automobile sales finance companies.

All functions enumerated above are presently performed by the Banking Division of the Department of Commerce.

Public Service Division

This division would:

1. Provide secretarial and recorder services for the Commerce and Public Service Commission.
2. Enforce laws, rules, and regulations applying to railroads, common carrier bus and truck firms, and telephone companies.
3. Provide staff and investigative services to the Commerce and Public Service Commission on matters relating to railroads, bus and truck lines, and telephone companies.
4. Collect and analyze data, conduct investigations and make recommendations on rates, routes, and services.

All of these functions are now performed by the Public Service Department.

Professional and Occupational Licensing Division

This division would:

1. Prepare examinations with the advice and assistance of the appropriate boards.
2. Schedule, administer, and score examinations.
3. Administer practical or performance examinations or arrange for the appropriate board to administer them.
4. Conduct background investigations on applicants as required.
5. Issue and renew licenses or permits and collect fees.
6. Provide staff and administrative services to the respective boards.

All the above functions are presently performed by the respective boards except as hereafter noted. Boards that would be attached to this division are as follows:

Minnesota State Board of Pharmacy
 Minnesota Abstractors Board of Examiners
 State Board of Accountancy
 State Board of Registration for Architects, Engineers and Land
 Surveyors
 State Athletic Commission
 Board of Barber Examiners
 State Board of Examiners in the Basic Sciences
 State Board of Chiropractic Examiners
 State Board of Dental Examiners
 State Board of Electricity
 State Board of Hairdressing and Beauty Culture Examiners
 State Board of Law Examiners
 State Board of Medical Examiners
 Minnesota Board of Nursing
 State Board of Optometry
 State Examining Committee for Physical Therapists
 State Board of Podiatry Examiners and Registration
 State Board of Examiners of Psychologists
 State Veterinary Examining Board
 Minnesota Board of Examiners in Watchmaking

Licensing of morticians, funeral directors, and mortuary science students, and the registration of hospital administrators is presently performed by the Administrative Services Division of the Department of Health. Plumbers are presently licensed by the Environmental Health Division of the Health Department. Real estate brokers and salesmen are presently licensed by the Securities Division of the Department of Commerce. It is recommended that boards be established for these professional or occupational area.

Commercial Practices Division

This division would perform the following functions:

1. Issue certificates of incorporation and maintain custody of incorporation papers.
2. Register charitable organizations.
3. License and certify bonding of collection agencies.
4. Register legal newspapers.
5. Register trade names, marks, and insignia.

6. Maintain duplicate files of auctioneers' licenses issued by County Auditors.
7. File financing statements evidencing indebtedness secured by personal property mortgage or lien under the Uniform Commercial Code.
8. License automobile and mobile home dealers.
9. Administer the Unfair Cigarette Sales Act.
10. Administer the minimum consumer liquor retail sales law.
11. Issue all licenses, identification cards and permits for liquor, beer, wine, alcohol, and "non-intoxicating" beverages.
12. Approve labels and advertising for items listed in #10.
13. License and certify bonds for livestock buyers.
14. License public grain and storage warehouses.
15. Administer the consumer fraud law.
16. Issue permits for the manufacture of animal remedies and biologics.
17. Register and license pharmacies, wholesalers, and manufacturers of drugs and medicines.
18. License and issue permits to food, milk, meat, beverage, poultry, eggs, fish, feed, fertilizer, economic poisons, seeds, and hazardous substances producers, manufacturers, processors, distributors, wholesalers, and retailers, including food and beverage service establishments, vending operations, cold storage warehouses, ice manufacturers, and salvage operations.
19. Visually inspect and approve labels, packaging, and advertising of all products covered in item 18.
20. Administer the dairy industry unfair trade practices act.
21. License and certify bonds of agricultural produce wholesale dealers.
22. License hotels, motels, and other short term lodging places, but not to include tourist camps, mobile home parks, children's camps, or migrant labor camps.

Items 1 through 7 are presently performed by the Corporations Division and item 8 by the Motor Vehicle Division of the Secretary of State. Item 9

is presently performed by the Cigarette Tax Unit of the Department of Economic Development. Item 10 is presently performed by the Minimum Consumer Resale Price Section, item 11 by the Licenses and Regulation and the Special Permits Sections, and item 12 by the Labels and Imports Section of the Department of Liquor Control. Item 13 is presently performed by the Livestock Buyers Section and item 14 by the Grain and Warehouse Inspection Section and the Public Storage Warehouse Section of the Public Service Department. Item 15 is presently performed by the Attorney General's Department. Item 16 is presently performed by the Livestock Sanitary Board. Item 17 is presently performed by the Board of Pharmacy. Items 18 through 21 are presently performed by the Food Inspection, Agronomy Services, Meat Inspection, Poultry Industries, and Economic Practices Units of the Department of Agriculture. There is presently duplication in the licensing of food and beverage serving establishments by the Department of Agriculture and the Department of Health. Item 22 is presently performed by the Environmental Health Division of the Department of Health.

Laboratories Division

This division would perform bacterial, chemical, and other analyses on food, milk, meat, beverages, poultry, fish, eggs, feed, fertilizer, pesticides, economic poisons, drugs, medicines, hazardous substances, and other materials as required, and report its findings to appropriate divisions.

These functions are presently performed by the Laboratory Services Unit and the Agronomy Services Units of the Department of Agriculture. Some work in this field, particularly in food and beverage service testing, is performed by the Division of Medical Laboratories of the Health Department.

Inspection Division

This division would:

1. Supervise and inspect food, milk, meat, beverage, bakery, cereals and cereal products, canneries, poultry, egg and egg products, fish, feed, fertilizer, economic poisons, drugs, medicines, and hazardous substances producers, manufacturers, processors, distributors, wholesalers, and retailers including food and beverage service establishments, vending operations, ice manufacturers, cold storage warehouses, and salvage operations; take samples of products and ingredients.
2. Regulate and inspect spraying and dusting operators.
3. Inspect hotels, motels, and short term lodging places.
4. Supervise and inspect all weighing and measuring devices.
5. Supervise and inspect public grain warehouses and public storage warehouses.
6. Inspect and supervise manufacturers, distributors, and retailers of animal remedies and biologics.
7. Inspect rendering plants.
8. Conduct inspections of electrical wirings in construction and remodeling of facilities.
9. Inspect retail outlets for alcoholic beverages and "non-intoxicating" beverages, and conduct special investigations on purported violations.
10. Operate state livestock weighing facilities.

Item 1 is presently performed by the Food Inspection, Agronomy Services, Meat Inspection, Poultry Industries, and Economic Practices Units of the Department of Agriculture with the exception of food service establishments and drugs and medicines inspections which are now performed respectively by the Environmental Health Division of the Department of Health and the Board of Pharmacy. Item 2 is now performed by the Department of Aeronautics and the Agronomy Services Unit of the Department of Agriculture. Item 3 is presently performed by the Environmental Health Division of the Department of

Health. Item 4 is presently performed by the Weights and Measures Unit, item 5 by the Grain Inspection and Weighing and the Public Storage Warehouse Units, and item 10 by the Livestock Weighing Unit of the Public Service Department. Items 6 and 7 are the present responsibility of the Livestock Sanitary Board. Item 8 is performed by the Board of Electricity. Item 9 is presently performed by the Enforcement and Inspection Unit of the Department of Liquor Control.

Staffing

If existing staffing patterns for the activities enumerated above were maintained, the staff complement of the proposed Department of Commerce and Consumer Protection would total about 425 employees. For the several organizational elements of the proposed department, personnel would be drawn through transfer from the following existing sources:

Administrative and Staff Services

From Administrative Services of the Public Service Department	2
From Administrative Services of the Department of Agriculture	4
Sub-total	<u>6</u>

Insurance and Securities Division

From the Insurance Division of the Department of Commerce	49
From the Securities Division of the Department of Commerce	12
Sub-total	<u>61</u>

Financial Institutions Division

From the Banking Division of the Department of Commerce	65
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Public Service Division

From the Public Service Commission Staff	9
From the Bus and Truck Section of the Public Service Department	22
From the Engineering Section of the Public Service Department	12
From the Rates and Statistics Sections of the Public Service Department	9
From the Telephone Section of the Public Service Department	3
Sub-total	<u>55</u>

Professional and Occupational Licensing Division

From the Real Estate Section of the Securities Division of the Department of Commerce	15
From Administrative Services Division of the Department of Health	1
From the Environmental Health Division of the Department of Health	1
Sub-total	<u>17</u>

Commercial Practices Division

From Corporation Division of Secretary of State	15
From Environmental Health Division of the Department of Health	2
From the Cigarette Tax Unit of the Department of Economic Development	2
From the Weights and Measures Unit of the Public Service Department	2
From the Livestock Buyers Unit of the Public Service Department	3
From the Food Inspection Unit of the Department of Agriculture	6
From the Labels and Imports, Licenses and Regulation, and Special Permits Units of the Department of Liquor Control	6
Sub-total	<u>36</u>

Laboratories Division

From the Laboratories Services Division of the Department of Agriculture	22
From Medical Laboratories Division of the Department of Health	2
Sub-total	<u>24</u>

Inspection Division

From Administrative Services Division of the Department of Health	4
From the Environmental Health Division of the Department of Health	15
From the Livestock Sanitary Board	1
From the Weights and Measures Unit of the Public Service Department	37
From the Public Storage Warehouse Unit of the Public Service Department	1
From the Grain Warehouse Unit of the Public Service Department	5
From the Food Inspection Unit of the Department of Agriculture	44
From the Meat Inspection Unit of the Department of Agriculture	14
From the Agronomy Services Unit of the Department of Agriculture	28
From the Enforcement and Inspection Unit of the Department of Liquor Control	12
Sub-total	<u>161</u>

Approximate Grand Total . 425

ADDENDUM

Working Memorandum Number 1

COMMERCE AND CONSUMER PROTECTION

(Steering Committee Meeting, July 2, 1968)

There was extensive discussion of this memorandum and of its underlying philosophy that commercial regulation and consumer protection services logically should be grouped within one agency. The consensus appeared to be overwhelmingly in support of such an approach even though it is innovative and perhaps unique in state governments.

It was agreed that a better title than that proposed for this agency would be "Department of Commerce and Consumer Services". Thus, wherever the title of the proposed agency is referred to in the narrative or the chart it should be termed the Department of Commerce and Consumer Services. Likewise the title of the Deputy Commissioner for Consumer Protection and the Consumer Protection Board should read "Consumer Services".

Other general and specific changes or points of discussion are stated below:

Page 2, last paragraph, 1st line -- "economies of operation" should not be understood to mean immediate dollar savings but long-range economies in staff, facilities, and services.

Page 5 -- the proposed Commerce and Public Service Commission would constitute a combination of the present Commerce Commission and the Public Service Commission, both of which predecessor commissions should be abolished.

Pages 5 & 6 and the organization chart viz., the aspects relating to Insurance, Securities and Financial Institutions (Banking) -- one

opinion was strongly stated that "banking and insurance" are more closely allied functionally and should be included in one division rather than "insurance and securities"; or that perhaps "insurance, banking, and securities" all should be in one division with a common executive. There was little discussion of or support for this expressed view.

Page 6, Deputy Commissioner for Occupational and Professional Licensing. It was agreed that the present practice of earmarking funds from licenses, permits, and inspections to support boards' activities should be discontinued, and that similar earmarking practices connected with duties to be transferred to the Commercial Practices and Inspection Divisions should also be discontinued.

Page 7, Professional and Occupational Boards. Additional language should clarify that all quasi-legislative and quasi-judicial functions not directly concerned with occupational or professional licensing would be transferred to the Consumer Services Board.

Page 7. Deputy Commissioner for Consumer Protection. (title change already noted) The Deputy Commissioner should develop close liaison and information exchange with the Department of Health and Social Services on all matters that have an immediate and acute bearing upon public health.

Page 7. Consumer Protection Board. (title change already noted) The functions to be performed by this Board are presently performed in part by the Board and Department of Health, the Agriculture Department, the Livestock Sanitary Board, the Public Service Commission, and various occupational and professional licensing boards.

Page 7. Laboratories Division and Inspection Division. Add "petroleum" to the list of products to be inspected, sampled, and analyzed.

Page 11. In paragraph beginning "Licensing" delete the last sentence and substitute the following; "Private employment counselors and agency managers are currently examined and licensed by the Fee Employment Agency Division and steamfitters by the Steamfitting Standards Division of the Department of Labor and Industry. The examining and licensing of all these occupations or professions without boards should be performed directly by the Professional and Occupational Licensing Division.

Page 12. Add items:

23. License petroleum dealers and distributors and issue permits to retail service stations.
24. License private or fee employment agencies.

Page 13. Add after last sentence of paragraph ending "Department of Health" the following: "Item 23 is presently the responsibility of the License Section of the Petroleum Division of the Department of Taxation. Item 24 is currently performed by the Fee Employment Agency Division of the Department of Labor and Industry."

Page 14. Add item 11, "Inspect and sample petroleum products of petroleum distributors, dealers, and retail service stations."

Page 15. Add after the paragraph on this page: "Item 11 is the responsibility of the Inspection Section of the Petroleum Tax Division of the Department of Taxation."