

State of Minnesota  
LIQUOR STUDY COMMISSION

Final Report

1973

JUN 14 1983



LEW W. LARSON  
SENATOR 1ST DISTRICT  
MABEL, MINNESOTA 55954  
  
CHAIRMAN  
REGULATED INDUSTRIES COMMITTEE



State of Minnesota  
SENATE

COMMITTEES  
AGRICULTURE  
COMMITTEE ON COMMITTEES  
LOCAL GOVERNMENT  
NATURAL RESOURCES AND  
ENVIRONMENT  
PUBLIC HIGHWAYS  
RULES AND ADMINISTRATION  
TAXES AND TAX LAWS

Hon. Wendell Anderson  
Governor

Hon. Alec Olson  
President of the Senate

Hon. Martin O. Sabo  
Speaker of the House

Gentlemen:

I have the honor to transmit herewith the final report of the Liquor Study Commission, pursuant to Laws 1971, Chapter 31, Article XIV.

The Liquor Study Commission held a total of ten public hearings, during which testimony was taken from a variety of public agencies and private groups. Following this series of hearings, the Commission broke down into subcommittees dealing with the issues of liquor retailing, liquor wholesaling and liquor licensing and taxation. Tentative drafts were written after the meetings of these subcommittees and the full Commission then held two drafting sessions to prepare the final draft.

I believe the report is self-explanatory and will not attempt here to expound upon it further. I will only say that it is the result of many hours of debate and discussion and is an honest attempt to set forth not merely a set of recommendations, but rather outline a total approach to liquor control in Minnesota.

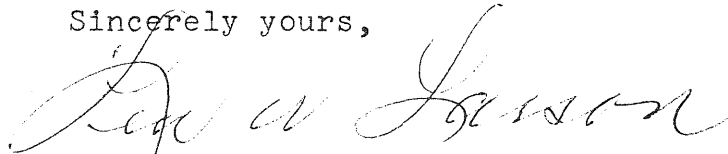
I want to express my thanks to the members of the Commission for the diligent manner in which they approached the very large task assigned to them. The Commission expresses its gratitude to the many persons





who testified before it; we particularly wish to recognize Joseph Novak, Commissioner of Liquor Control; John Muer, Assistant Commissioner and the entire staff of the Liquor Control Department for their unfailing cooperation and assistance.

Sincerely yours,

A handwritten signature in cursive script, reading "Lew W. Larson". The signature is written in dark ink and is positioned above the typed name.

Lew W. Larson  
Chairman  
Liquor Study Commission

LWL/bh



## LIQUOR STUDY COMMISSION

Chairman  
Vice Chairman  
Secretary-Treasurer

Lew W. Larson  
David Roe  
W. Casper Fischer

### MEMBERS FROM THE SENATE

Jerome V. Blatz  
Bloomington

C. R. (Baldy) Hansen  
Rose Creek

Lew W. Larson  
Mabel

Bill McCutcheon  
St. Paul

Edward G. Novak  
St. Paul

### MEMBERS FROM THE HOUSE

Sam R. Barr  
Ortonville

W. Casper Fischer  
Marshall

Stanley J. Fudro  
Minneapolis

Thomas W. Newcome  
White Bear Lake

Raymond O. Wolcott  
Minneapolis

### MEMBERS APPOINTED BY THE GOVERNOR

Rev. Francis Fleming  
Minneapolis

Sydney W. Goff  
St. Paul

C. Bernard Jacobs  
Minneapolis

Terence J. McCloskey  
Arden Hills

David Roe  
St. Paul

Carolyn J. Eickhoff, Commission Secretary  
John M. Williams, Staff Assistant



## TABLE OF CONTENTS

Laws 1971, Chapter 31, Article XIV

I. Liquor Taxation	1
II. Liquor Retailing	4
III. Liquor Wholesaling	13
IV. Liquor Control Department	28
V. Conclusion	29

Appendix

Minority Reports and Individual Opinions





ARTICLE XIV

Section 1. Subdivision 1. PURPOSE. A liquor study commission to examine Minnesota's total liquor trade structure, is hereby created. The commission shall be known as the "Liquor Study Commission." It shall focus major attention on, but not be limited to:

(a) Revenue effects of the trade as presently organized and as organized under any proposed arrangements;

(b) Monopolistic practices in the trade;

(c) Possible alternative arrangements of the trade;

(d) Practices in other states.

Subd. 2. MEMBERSHIP. The commission shall consist of no more than 15 members: five members of the house of representatives appointed by the speaker; five members of the senate appointed by the senate committee on committees; and five members shall be chosen by the governor from within or without the state. Any vacancy shall be filled by the appointing authority.

Subd. 3. REPORT OF COMMISSION. The commission shall report its findings and a definite comprehensive plan for legislative and administrative action to the governor and legislature no later than January 15, 1973.

Subd. 4. MEETINGS, POWERS, OFFICERS. The commission may hold meetings and hearings at such times and places as it may designate to accomplish the purposes set forth in this section, and may subpoena witnesses and records. It shall select a chairman, a vice chairman, and such other officers from its membership as it deems necessary.

Subd. 5. EXPENSES, EMPLOYEES. Members of the commission shall be compensated and shall be allowed and paid their actual traveling and other expenses necessarily incurred in the performance of their duties. The commission may hire employees, rent office space, purchase supplies, contract with consultants, and do all things necessary and convenient in carrying out the purposes of this section. The commission shall use the available facilities and personnel of the legislature and the revisor of statutes unless the commission by resolution determines a special need exists for the use of other facilities or personnel. Reimburse-

ment for expense incurred shall be made pursuant to the rules governing state employees.

Subd. 6. ACCEPTANCE OF GIFTS AND GRANTS. The commission may, in the name and on behalf of the state of Minnesota, accept and dispose of gifts, grants, or loans of money or other property from the United States or any other source for the purpose of conducting investigations prescribed under subdivision 1.

Subd. 7. APPROPRIATION. There is hereby appropriated from the general fund the sum of \$50,000, or so much as may be necessary, to pay the expenses incurred by the commission.



## I. LIQUOR TAXATION

The taxation of liquor has been regarded ever since the repeal of prohibition as a prime example of a "luxury tax" or even as a "sin tax." Since liquor is obviously not a necessity item its purchase, and the payment of the tax thereon, is purely voluntary. For this reason, the tax on liquor has always been considered relatively painless.

This concept has clearly been embraced in Minnesota, to the point where Minnesota now has the highest tax on distilled spirits of any private license state (states where package liquor is sold by private retailers rather than through state-owned stores) in the country (see Table I). The \$4.53 tax per gallon imposed by the 1971 Legislature is significantly higher than the next highest rate (\$4 per gallon in Oklahoma and Tennessee). No less significant is the fact that it is well in excess of the rates in the states surrounding Minnesota.

The 1971 tax increase had the effect of increasing overall distilled spirits revenue, but partial figures indicate that the increase may be less than the \$13,150,000 for the biennium originally projected when the 1971 tax compromise bill was being prepared (see Table II). In large measure this is due to the fact that the apparent consumption of distilled spirits has declined since the \$4.53 tax rate became effective in November 1971 (as Table II shows, consumption for the first 9 months of 1972 is down almost 6% compared to the same period in 1971). Since a decrease in actual consumption by Minnesotans would run counter to every national trend, it must be concluded that purchase of liquor by Minnesotans in other states

accounts for a sizeable part of the reduction in apparent consumption.

The decline in consumption and possible shortfall in tax revenue has given rise to speculation as to whether tax revenue could be increased by a reduction in tax rates. The purpose of such a reduction would be not to increase the total amount of liquor consumed by Minnesotans (a figure which is influenced by a great many other factors than price) but rather to increase the total share of Minnesota liquor which is actually purchased in Minnesota.

The Commission is of the opinion that the Legislature should begin giving serious consideration to reversing the long-time trend of liquor, wine and beer taxation in Minnesota. The time has come to question seriously whether the consistently disappointing yield from higher and higher taxes on these products really outweighs their contribution to making retail liquor in Minnesota noncompetitive with other states. Faced with a situation wherein Minnesota has reached the end of the line for its policy of high taxation of alcoholic beverages, the Commission urges that study begin immediately on a tax program by which the consumer interest might be better served while state tax revenues are not seriously reduced. In light of the previously cited evidence to the effect that present taxes are driving the consumer dollar out of the state, it seems clear that such a program would involve a reduction in tax rates on alcoholic beverages.

It is impossible for the Commission to make a more specific recommendation at this time, since any adjustment in tax rates

will depend upon more complete information on the overall state financial picture than is currently available. We can, however, recommend that when the elusive subject of tax reform is taken up in the 1973 session, the reform of beer and liquor taxes be given a high priority.

#### Liquor Tax Distribution

Among the proposals made by the Attorney General was that an unspecified percentage of liquor tax revenues should be dedicated to a fund to assist counties in the establishment of detoxification centers.

The Commission fully endorses the detoxification center program and urges that it be adequately funded. However, it must be noted that there is a growing feeling in the Legislature that dedicated funds are an outmoded and overly restrictive form of governmental financing. Because of this feeling the Commission is reluctant to recommend any further dedication of tax revenues.

## II. LIQUOR RETAILING

The State of Minnesota has an extensive body of laws dealing with the general problems of retailing, but it has also enacted much legislation specifically aimed at the retailing of liquor, in recognition of some of the special problems in this area. This legislation has since the repeal of prohibition, attempted to strike a balance among the occasionally conflicting interests of the liquor industry, the liquor consumer and the general public. It has always been recognized that liquor is a special commodity and that the state is justified in taking extraordinary measures to control its sale and consumption.

It is because the needs of these three elements are constantly changing that the Commission recommends a searching review of Minnesota's liquor retailing statutes. The Commission wishes to stress that at no time has it lost sight of the essential role of the state in taking steps against the anti-social and dangerous use of alcoholic beverages.

### Resale Price Maintenance

For many years the major piece of legislation used to control the retailing of liquor was the resale price maintenance law, also known as the "Fair Trade Law". Under this law, brand owners or authorized wholesalers filed a list of retail prices for their products and off-sale retailers were required to sell these products for not less than the filed price.



The purpose of this Statute was explained in its first paragraph:

340.97 DECLARATION OF POLICY. It is the declared policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of distilled liquor and wine for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to the law. In order to eliminate price wars which unduly stimulate the sale and consumption of distilled liquor and wine, disrupt the orderly sale and distribution thereof, and tend to destroy the statutory plan for location of off-premises liquor stores in neighborhood communities which most effectively serves public convenience and advantage, it is hereby declared as the policy of the state that the sale of distilled liquor and wine should be subjected to certain restrictions, prohibitions and regulations. The necessity for the enactment of the provisions of this section is, therefore, declared as a matter of legislative determination.

In actual practice the statute had altogether different results. By attempting to keep liquor prices artificially high, the statute appeared to protect the interests of existing retail licensees and keep vigorous competition to a minimum. It also gave the distilling and wholesaling levels of the liquor industry near-total authority to administer prices, backed up by the power of the state. It created, in effect, virtually all the characteristics of a monopoly operated for private benefit.

The public benefits which this monopoly was supposed to provide were, and still are, illusory. The goal of promoting respect for and obedience to the law was made virtually impossible by the fact that enforcement was left up to county attorneys. In effect, there were 87 different versions of

the law, and in some areas no enforcement at all. Former Commissioner of Liquor Control, Gale Lindsay, told a legislative subcommittee in 1970 that every off-sale dealer in the state violated the statute at one time or another.

The law's other goal of "promoting temperance" was effectively disposed of by Alcohol Problems Commission Associate Director, Doyle Kirby:

The Commission on Alcohol Problems could find no evidence to indicate that price of alcoholic beverages constituted any significant deterrent to consumption. This is especially true in the population suffering from alcoholism. For the alcoholic, the need, the desirability of alcohol far exceeds any impact of the price of alcohol on consumption. For the alcoholic, high price of alcoholic beverages means not a reduced consumption of alcoholic beverages, but rather reduced economic resources for the support of the family. For the dependent or the addicted, price is largely a nuisance and not a determining factor. It is altogether conceivable that the real sufferers of the high price of alcoholic beverages are the families and the significant other people around the alcoholic.

In 1969, the Legislature voted to suspend enforcement of the resale price maintenance law for two years, and the 1971 Legislature continued this moratorium for another two years. The Commission believes that the time has come to repeal the statute altogether. The increased competition and lower consumer prices which have occurred since the law was suspended have not been accompanied by any notably anti-social side-effects, and the Commission feels that there is no demonstrable need for its resuscitation.

The available alternative with respect to the Resale Price Maintenance Law would be to revive the law with enforcement vested in the Liquor Control Commissioner, and with such

enforcement power made adequate to deal with violations. The Commission feels that the consuming public, having experienced the increased competition and lower prices following the 1969 moratorium, would never accept a return to resale price maintenance. Such a situation would bring about a recurring clash of wills between the Commissioner and the public for the benefit of a concept which the Commission considers highly dubious.

#### Suggested Resale Prices

One remnant of the resale price maintenance era is the suggested resale price for liquor products provided by the wholesaler or brandowner to the retailer. This form of "voluntary fair trade" no longer is clothed in the mantle of the law, but it can be used to perpetuate the price maintenance tradition and provide a shelter from competition. Suggested resale prices can be used as a substitute for competitively-established prices just as effectively as mandatory resale prices by a retailer so inclined.

Because the Commission feels that privately administered prices, whatever their form, represent a concept of liquor control from which the state should be moving away, it recommends the enactment of legislation prohibiting wholesalers or registered brandowners from circulating or publishing lists of suggested resale prices, or otherwise promulgating suggested resale prices to retailers. The Commission specifically recommends that the second paragraph of Minnesota Statutes 1971, section 340.985, be rewritten as follows:

"No wholesaler or registered brandowner shall advertise, circulate, distribute or otherwise promulgate to the

public or to any licensed intoxicating liquor retailer  
in this state the price or a suggested price at which  
any intoxicating liquor or wine will be sold at retail".

#### Mandatory Markup Law

It has been the intent of this and other sections of this report to provide for greater competition on all levels of the liquor industry. It is not the intent of the Commission, however, to see this increased competition result in greater concentration of market in any level. It has been the traditional policy of this state that a certain amount of decentralization and deconcentration in the liquor industry is valuable in maintaining orderly liquor control, and in assuring that no individual operator or segment of the industry is so powerful as to have the power to impede enforcement of liquor laws and regulations.

For this reason the Commission feels that some safeguards are necessary to prevent wholesalers and retailers from using a strong market position to drive competitors out of business through excessive cut-rate pricing policies. The Commission does not want to see the liquor industry in Minnesota dominated by a few giant operators so large and powerful that their very existence acts as a barrier to new entrants into the industry.

The proposal which the Commission recommends is one whereby minimum wholesale and retail markups are prescribed by law pursuant to a recommendation by the Commissioner of Liquor Control, which would be formulated after public hearings involving all interested parties. Since the public deserves protection against overpricing

as well as underpricing, the legislation should encompass maximum as well as minimum markups.

The Commission does not intend that this proposal be used to drive liquor prices up to artificially high levels or to discourage competition at either the wholesale or retail level. The minimum markup at both levels should be set well below the average markup at both levels, so that its only effect would be to guard against forms of predatory pricing. The maximum markup should take into consideration the differing costs of doing business associated with different types of establishments; it is expected that it would serve primarily as a guarantee to consumers that they would not be providing dealers at any level with exorbitant profits.

Table V shows mandatory markup laws in other states. For the most part these laws are designed to stifle price competition in liquor as much as possible, a philosophy to which this Commission does not subscribe. It is hoped that the overall result of the enactment of the body of recommendations made in this would result in greater price competition and lower retail liquor prices.

The Commission urges the Department of Liquor Control to begin drawing up a proposal for submission to the 1973 Legislature to implement this recommendation.

#### Retail Price Advertising

The issue of price advertising goes to the heart of liquor control law, since it deals with a crucial competitive weapon. It seems clear that price advertising would bring about many

changes in the liquor retailing picture, and that many of these results are not in the best interests of the people of Minnesota.

Should retail price advertising be legalized, those stores with large-volume small-margin policies would become the largest price advertisers and use their size to consolidate and expand their marketing position. Those stores unable to gather enough capital to adopt a similar pricing policy, and at the same time finance a full advertising program, would be faced with a real danger of being forced out of business. The problems of market concentration referred to earlier in this report would very soon begin to materialize with more and more stores finding themselves unable to compete in the new kind of market which price advertising would create.

The situation of municipal stores in suburban areas is worthy of special mention. These stores have never been geared to operate in a highly competitive market, and would undoubtedly suffer if they were abruptly forced to do so. This would in turn have a serious impact on municipal financing in many communities.

The Commission cannot at the present time recommend the legalization of retail price advertising in Minnesota. Such a move would serve no real public need, and could very well lead to serious liquor control problems.

#### Liquor Licensing

The majority of the most heated controversies relating to liquor laws are concerned with the retail licensing of liquor. Minnesota has been attempting to resolve those controversies

ever since the return of legalized liquor sales in 1934, and the Commission believes that by and large the state has been relatively successful in this effort. There is not now and never has been an ideal number of liquor licenses in any municipality, or an ideal fee for the issuance of these licenses. These decisions can only be made by trial and error, compromise and the accumulated weight of tradition and successful experience. Because no compelling reasons have been brought forward for significant changes in the retail licensing laws, the Commission recommends that the 1973 Legislature make no amendments to these laws except as may be made necessary by local conditions.

The only exception to this recommendation which the Commission endorses is legislation to amend Minnesota Statutes 340.11, Subdivision 4, which presently provides that off-sale licenses issued by a municipality must be approved by the Commission of Liquor Control. This provision was originally put into the statutes to provide a state-level counterbalance to the licensing authority of municipalities, an authority which can in some instances be affected by local political considerations having nothing to do with sound liquor control. The Commission sees no reason why the state-approval provision should not apply to on-sale as well as off-sale licenses, and recommends the passage of legislation achieving that end.

#### Days and Hours of Sale

The Commission recommends two changes in Minnesota Statutes 340.14, governing hours of sale for licensed on-sale establishments:



1. The statewide closing hour should be extended from 1 a.m. to 2 a.m.

2. The statewide opening hour for the sale of liquor on Sunday should be moved up from noon to 11 a.m.

It is not expected that these two changes will have a massive effect on the on-sale industry in Minnesota, since it is unlikely that more than a relative handful of establishments will take advantage of them. A few downtown establishments, especially those catering to the tourist and convention trade, would adopt the 2 a.m. closing hour, but the great majority of on-sale retailers will probably continue to observe the previous closing time. The Sunday 11 a.m. hour would mainly benefit those establishments in the South suburban part of Hennepin County which draw substantial business on those Sundays when the Minnesota Vikings or Twins are playing at Metropolitan Stadium in Bloomington.

The Commission also recommends that the Legislature follow up its 1971 enactment repealing the prohibition against liquor sales on the days of local elections by further repealing the ban against sales on statewide election days. There seems little reason to continue to make this distinction, particularly when the entire concept is a leftover from the nineteenth century and seems to have little relevance to present-day conditions.

### III. LIQUOR WHOLESALING

The entire topic of liquor wholesaling in Minnesota has long been the subject of considerable controversy. The relatively few number of wholesalers and the heavy market concentration in the industry has brought about charges of monopolistic practices and price-fixing, while the wholesalers' spokesmen have responded that the industry is a relatively efficient one which ultimately serves the interests of the consumer.

There is some question as to whether the number of liquor wholesalers in Minnesota is or is not unusually low. In his study of the liquor wholesaling industry prepared for the Minnesota Wine and Spirits Institute, Professor Orville C. Walker of the University of Minnesota observed:

Another major factor underlying the relatively small number of wholesalers [10] is the fact that reasonably large wholesalers can operate more efficiently than smaller wholesalers. A national sample of independent liquor wholesalers [St. Louis University School of Commerce and Finance, Annual Operations Survey of Wine and Spirits Wholesalers, 1971] has found that the average total operating expenses as a percentage of sales are lowest for wholesalers who make between \$12 million and \$15 million of sales per year.

The economic theory of pure competition suggests that the number of firms in an industry should be such that there are just enough firms to supply market demand while each firm operates at the volume which minimizes its total operating costs. Given that the wholesale sales volume of liquor in Minnesota in 1971 was approximately \$165-170 million, and assuming that the wholesaler would be maximally efficient with a sales volume of about \$15 million per year, one would expect to find about 10 or 12 liquor wholesalers in the state.

It requires a look at the level of market concentration to

put this point into perspective. Dr. Walker's figures show that the top four wholesalers in the state controlled in 1971, about 65% of the total wholesale sales volume. He noted that this percentage has been declining about one percent each year since 1968. However, as assistant attorney general Walter Rockenstein told the Commission, gallonage figures from the Department of Liquor Control show that in fiscal year 1972, the percentage of total gallonage of liquor controlled by the top four was 68.7%, indicating that the downward trend has been reversed. Further, it was pointed out that of the top four wholesalers in the state - Ed Phillips and Sons, Griggs Cooper and Company, Johnson Brothers and Famous Brands, Inc. - one (Griggs Cooper) is owned by the same people who own Distillers Distributing Company; when this last firm is added to the top four the concentration percentage rises to 77.5.

In the face of such concentration the "ideal" number of wholesalers is of limited relevance. If four firms control 77.5% of the market they are obviously earning more in gross sales than the "ideal" figure of \$12-15 million.

The existence of market concentration does not, of course, demonstrate the existence of monopolistic practices or of injury to the consumer. The most frequently alleged monopolistic practice in the industry is the exclusive brand distribution system which has prevailed in Minnesota for many years. Under this system almost all the brands of liquor and wine in Minnesota are available at wholesale from only one distributor, who has a statewide monopoly over that brand.

The attorney general's office has characterized the exclusive distribution system as "anti-competitive:"

Since there is only one wholesaler for almost all the 960 brands sold in the state . . . only one wholesaler sells that brand. Nobody else competes with him on that brand. What anti-competitive effect does this potentially have? First of all, it gives the private wholesaler a potential monopoly power over the price of that brand, and secondly it gives the private wholesaler leverage against a retailer which can be used in a number of ways. It can be used to set terms of credit. It can be used to set terms of sale. It can be used to set freight charges, and it can be used in tying agreements. If you want ten cases of Johnny Walker Scotch (the good stuff), you have got to take fifteen cases of old "rotgut" or I won't sell you the Johnny Walker. I am not saying that these practices exist, or that we have widespread knowledge that they exist. What I am saying is the current structure of the market has this potential in it to exercise these abuses.

The wholesalers' response to this argument was expressed by Lawrence Hall, Counsel for the Minnesota Wine and Spirits Institute:

Nor does the nature of the existing wholesale structure, in which wholesalers represent certain brands exclusively, create or maintain a monopoly. Here again, any allegation of monopolistic practice or effect is not sustained by the facts, nor by the history of the distributive business.

In those instances in which a manufacturer or distiller uses only one wholesaler in Minnesota, the arrangement is one that is familiar in many fields of distribution; it is voluntary; it is based upon its demonstrated contribution to efficiency and the ability to meet competition rather than to exclude it. . .

I think it is self-evident in virtually all business that wholesalers who have exclusive brands do not have exclusive markets. In any industry like the liquor industry where there are many equivalent brands of the same merchandise, brand-loyalties among consumers are highly susceptible to shifting and are maintained only through very vigorous and continuous merchandising, mutually shared by producer and wholesaler.

Robert Coyne, President of the Distilled Spirits Institute, told the Commission that from the distillers' point of view the exclusive-distribution system is necessary to insure that distillers' products are given strong representation in each market. He told the Commission that a "loyal wholesaler . . . is a prerequisite to proper representation in a given market," and that non-exclusive distribution would lead to a fragmentation of wholesaler loyalty and selling effort. He further suggested that non-exclusivity would lead to higher transportation costs, and thus to higher prices, by forcing distillers to divide up their shipments into Minnesota among several wholesalers. He also noted that exclusivity is characteristic of a majority of private-license states.

It is clear that exclusivity of brand distribution prevents competition between wholesalers for the market for a particular brand. It does not, however, prohibit competition between wholesalers for the market for a particular type of liquor. To this extent, therefore, the wholesaling industry is less than completely competitive.

The most important test for an industry in terms of its impact on the consumer is the efficiency with which it operates. If that efficiency is such that the prices charged are competitive, it suggests that the public interest is being served.

Dr. Walker devoted a major share of his study to the question of whether Minnesota liquor wholesalers are in fact operating efficiently. His figures, as shown in table VII, indicate that the gross profit (difference between net sales and cost of goods

sold) was 9.7% in 1970 and 10.9% in 1971 (based on information from five Minnesota wholesalers in 1970 and eight Minnesota wholesalers in 1971). Table VII also shows that in both years these figures were below the national averages for liquor wholesalers, while table VIII shows that the gross and net profit for Minnesota liquor wholesalers was in 1970 below the national average for wholesalers for 11 out of 13 other industries.

The validity of these comparisons is dependent upon the accuracy of the information provided by the wholesalers, and the Commission sees a need for some independent verification of these figures. For this reason the Commission is particularly interested in the results of a survey done by the Department of Liquor Control as directed by the legislation suspending enforcement of the retail price maintenance law. This survey covers five off-sale stores - including a high-margin store, a low margin store, a municipal store and two others selected at random - in each of the fourteen departmental districts of the state, and is taken on the top-selling brands of each liquor wholesaler in the state. The findings of this survey, reproduced in table VI, show that in 1971 the average wholesaler gross markup was 9.13%; for the first nine months of 1972 this figure had risen slightly, to 9.43%. It must be noted that the departmental survey covers the top-selling brands of each wholesaler, while the Walker study deals with fewer wholesalers but includes the total sales of each. When these factors are taken into consideration the closeness of the gross profit shown in Dr. Walker's study and the gross markup shown in the departmental



survey becomes significant.

These figures strongly suggest that the wholesale liquor industry is performing efficiently and not earning exorbitant profits. No evidence has been brought before the Commission as to any specific instances where Minnesota wholesalers have acted to the detriment of consumers.

Nonetheless, the picture of market concentration and economic power which has appeared does tend to bear out the Attorney General's contention that the potential for anti-competitive abuses exists within the structure of the industry. It is because the Commission feels that liquor control law should encompass possible as well as actual situations that we make the following recommendations.

#### Price Affirmation

Some eight states presently have laws requiring liquor brandowners to affirm that the prices at which they sell their brands to state wholesalers are as low as, or lower than, the prices charged in any other state (see table IX). Such a law has been proposed for Minnesota by the Attorney General's office.

Significantly, no instances have been brought forward, by the Attorney General or anyone else, to demonstrate that distillers' prices to Minnesota wholesalers are higher than those in other states. In fact, surveys by the Liquor Control Department have consistently shown that distillers' prices in Minnesota are at least as low as those of other states. The fact that wholesalers, who would be the segment of the industry most adversely affected by discriminatory prices, have not asked for such a law indicates



that they have experienced few if any problems in this area.

Nonetheless, the possibility exists that abuses in the manufacturer-wholesaler relationship could eventually develop. Accordingly, the Commission recommends enactment of legislation authorizing the Commissioner of Liquor Control to adopt, at his option, a price-affirmation regulation. Such a regulation would be adopted at any time when the Commissioner feels that price discrimination exists or is threatening to exist.

One possible wording of such a law, adapted from the Maryland Code 2B, Sec. 109 (c-1), is as follows:

The Commissioner may require, by regulation, that suppliers of wholesalers of distilled spirits affirm that the net price of each item offered for sale, exclusive of routine transportation costs, is no higher than the lowest price at which such item is being offered for sale elsewhere in the United States, including the District of Columbia.

#### Exclusive Franchise Law

A second proposal made by the Attorney General's office would require all distillers with brands registered in Minnesota to sell their products to all licensed Minnesota wholesalers without discrimination.

Such a law would presumably end the exclusive distribution system which, as noted before, is deeply entrenched in the Minnesota liquor industry. Distillers would no longer be able to distribute their products in Minnesota through a single wholesaler, and would be required to offer the same quantity discounts to all wholesalers; in effect, the distiller-wholesaler

relationship would be made to resemble to a greater extent the wholesaler-retailer relationship.

Two states - Kansas and Oklahoma - presently have laws along these lines. They require manufacturers selling to state wholesalers to affirm by sworn statement that they will sell their products to any licensed wholesaler, and that product quantities will be available on an equal basis to all wholesalers.

It is important to remember the background from which both these laws emerged. Kansas did not repeal prohibition until 1949, while Oklahoma was dry until 1960. Both states prohibit price advertising for liquor (Oklahoma forbids all advertising for liquor retailers). Kansas law provides for the establishment of high minimum markups for liquor at both the wholesale and retail level. Oklahoma has no minimum markups but prohibits any volume discounts by wholesalers.

The Kansas situation is based on a concept of total state control over the pricing of liquor. Competition on price by Kansas liquor wholesalers is severely restricted, so whatever competition exists is on the basis of service. For this reason the law attempts to make such competition feasible by allowing all wholesalers equal access to all available brands.

The Commission feels that, in order to justify a recommendation for legislation along these lines, it is necessary to observe evidence of specific instances in which the exclusive-brand distribution system has worked to the detriment of the public in terms of artificially high prices or unnecessary unavailability of brands. To date such evidence has not been

forthcoming. The argument that legislation is required to forestall potential abuses of the system is insufficient to justify the kind of legislation which would make the liquor wholesaling industry subject to a kind of regulation which is far more restrictive than that applied to any other wholesaling industry in the state.

The Commission does not feel that the present exclusive distribution system represents the best possible arrangement for the Minnesota liquor industry, nor does it suggest that the Legislature should now consider the issue closed. The level of market concentration referred to earlier in this report requires continuous monitoring by the Legislature to insure that the public interest is being protected. At the present time, however, the Commission feels that a clear need for legislation to end the exclusive distribution system has not been demonstrated.

#### Residency Requirement for Wholesalers

In order to insure competition at the wholesale level it is necessary to make sure there are no artificial barriers to entry into the market. The Attorney General's presentation cited one such barrier to the issuance of wholesale licenses in the residency requirement of Minnesota Statutes 340.11, subd. 2:

Subd. 2. WHOLESALERS' AND MANUFACTURERS' LICENSES. Manufacturers' and wholesalers' licenses shall be issued by the liquor control commissioner.

A manufacturer's or wholesaler's license shall include the right to import. The business of manufacturer and wholesaler may be combined and carried on under one license issued therefor. No wholesaler's license shall be granted

to any person or partnership unless the person or each member of a partnership applying for such license shall have been a resident of the state for a period of five years continuously immediately prior to such application for a license, and that such person shall have voted at least twice during said period of five years at a general state election if two general state elections have been had since such person reached his majority. No wholesaler's license shall be granted to any corporation unless all of the officers, directors, and stockholders, who own or control more than 75 percent of the stock by value and 75 percent of the voting rights of the stock, of such corporation applying for a license shall have been residents of the state for a period of five years continuously immediately prior to such application for a license and any and all such persons shall have voted at least twice during said period of five years at a general state election if two general state elections have been had since such person reached his majority. A person, partnership, or corporation lawfully licensed as a wholesaler in the state of Minnesota March 27, 1945, shall not be subject to any residence or voting requirements to renew his wholesaler's license, nor shall his successor or assigns who acquire substantially all of the property of such licensee. A person who served in the Armed Forces of the United States of America during any time since July 1, 1942, shall be given credit as having voted at any general election held during the time he served in the Armed Forces of the United States of America.

It was made clear that the "grandfather clause" which exempts persons licensed as wholesalers before March 27, 1945, from residency requirements, makes those requirements ineffective, and that because of this clause the statute has failed to keep ownership of wholesale licenses in the hands of Minnesotans. As the Attorney General pointed out, three of the larger wholesalers in the state are owned by conglomerates and two more are owned by out-of-state families.

It is obvious that this statute, as presently worded, serves little purpose except to keep potential new licensees out of the market. Since control of most of the leading wholesale houses has passed out of the state there seems no reason to make a distinction between those houses licensed before and after 1945.

Simply removing the grandfather clause would be an inadequate solution, since by making several present licensees ineligible it would probably serve only to bring about further market concentration.

The Commission recommends that the entire residency requirement in 340.11(2) be repealed. By doing so the Legislature would be opening up the wholesale industry to entry by out of state firms and increase the level of competition in the industry. It is felt that this increased competition will ultimately be of benefit to the consumer. To this extent the Commission agrees with the Attorney General, but it also sees a need to go beyond that office's presentation.

The Attorney General's spokesmen conceded that a simple repeal of the residency requirement would probably open the market to wholesaling houses owned and operated by distillers, but made no objection to this kind of vertical integration. The Commission cannot view this possibility with such equanimity. Wholesaling firms which are inherently tied to the products of one distiller would not provide the kind of competition the Commission seeks, and would further speed the process toward greater market concentration. To protect against this concentration the Commission recommends enactment of legislation along the following lines:

No person shall hold any wholesalers license issued pursuant to section 340.11, subd. 2, who holds any ownership or interest, as defined in section 340.13, subd. 3, directly or indirectly, in excess of 5%, in any distiller or winer licensed to import intoxicating liquor into this state. The Commissioner shall by regulation establish a date by which persons licensed as wholesalers prior to the effective date of this act shall be required to be in conformity with this enactment.

It must be recognized that no matter what changes are made in licensing requirements, entry into the liquor wholesaling market will continue to be a difficult proposition. The business requires a substantial amount of capital, both to build up and maintain the necessary inventories and to absorb the inevitable gap between the time that state taxes are paid on liquor coming into the state and the time those taxes are collected as part of the sale price. A new competitor must be prepared to compete with firms possessing a well-established distribution network, the ability to sell statewide with reasonable efficiency, and a number of other assets. It must be accepted that liquor wholesaling has, generally speaking, little place for the small businessman and will continue to be engaged in predominantly by large firms.

#### State Wholesale Monopoly

One attitude toward the problems of liquor wholesaling in Minnesota has been that monopolistic tendencies in the industry are too deeply ingrained to be eliminated through remedial legislation, and that the private wholesalers have abused the privileges of their licenses to an extent that those licenses can no longer be justified. The solution to this alleged dilemma would be for the state to take over the liquor wholesaling industry and operate it as a state monopoly.

Such a proposal is not wholly unprecedented, since the states of Mississippi and Wyoming already operate similar systems. Under this plan the state would own or lease warehouse facilities, be

the sole purchaser of liquor imported in the state for resale, and be the sole seller to all retail liquor outlets. The state's price would include whatever tax is imposed by the Legislature and whatever markup is determined by the administering authority.

The revenue which would be generated by such an operation is, of course, an important factor in any discussion of it. The Walker study showed sales for the wholesale liquor industry in 1971 were approximately \$170 million, and that the cost of goods sold for the same year was 90.3 percent of sales, or \$153.5 million, leaving a gross profit of about \$16.5 million per year. How much of this figure would accrue to the state is problematical, since a part of it would have to go for warehousing, security, personnel, etc. In Mississippi and Wyoming administrative costs as a percentage of sales are 1.46 percent and 2.32 percent respectively, but these two states represent relatively small and uncomplicated markets. Dr. Walker's figures show a net profit (before taxes) for existing wholesalers of only \$1.87 million, but this figure is derived after allocating costs which the state would not incur (such as sales personnel, duplicate warehouse maintenance, etc.)

The Commission's visit to Washington to observe that state's liquor monopoly at off-sale clearly showed that it is possible to operate a state warehousing facility efficiently and with a minimum of security problems. Nonetheless, the Commission has several reservations about this proposal:

1. The Washington experience showed that it is difficult



to establish a clear policy to control the purchase of liquor by the state. In the absence of competition purchasing is purely an administrative decision, and the large amounts of money involved raise the spectre of undue influence being applied.

2. At a time when Minnesota is making extensive efforts to attract new industry to the state, it seems inconsistent deliberately to annihilate a thriving \$170 million per year business. Any gain in revenue would have to be set off against the resulting loss of jobs and income tax revenues.

3. There is an ominous quality to the argument that the state is justified in seizing a private industry on the grounds of either monopolistic practices or revenue needs.

The state is certainly not without tools to deal with monopolistic tendencies in any industry, and there are presently court cases pending on this point. It is notable that in the more than a half-century of anti-trust laws in the United States no industry has been nationalized because of an unalterably monopolistic structure. The cure in this case seems far more drastic than the alleged disease.

In the case of revenue needs the precedent is unsettling. If the state is justified in taking over the liquor wholesaling business for additional revenue why would it not be equally justified in taking over the liquor retailing industry (which does in fact already enjoy some statutory protection against competition)? Whatever the state's financial picture at the end of the current biennium it is unlikely that its need for

new revenue will be so great as to justify this kind of confiscation.

4. A cautionary note concerning potential revenues from state liquor wholesaling is sounded by table X, which shows total revenues from alcoholic beverages in each state for 1971. This table indicates that Minnesota's private-license system produced significantly more revenue per capita than either of the two wholesale monopoly states of Mississippi and Wyoming.

For these reasons the Commission cannot recommend at this time the adoption of a state wholesale monopoly system.

#### IV. LIQUOR CONTROL DEPARTMENT

The cooperation and assistance of the Commissioner and Assistant Commissioner of Liquor Control and the staff of the Department of Liquor Control was invaluable to the Commission in its work. It is a clear indication of the Commission's regard for this department and its staff that it has recommended legislation granting the Commissioner new authority over the marketing of liquor.

The Commission wishes to stress, however, that any additional powers and duties granted to the Commissioner be accompanied by a recognition that he may be unable to carry out these functions with present resources and authority. Specifically, this results in two recommendations:

1. The Commissioner must be given all necessary authority, including subpoena power if needed, to require the production of all documents, records, invoices and other material needed to enforce liquor laws and regulations.

2. Adequate funding and staff must be provided to the Department to carry out any new responsibilities provided to it by law.

It would be preferable to make no changes in present liquor control law rather than to grant the Commissioner new functions which he has neither the authority nor the resources to carry out. The Commission urges the Legislature to keep this consideration firmly in mind when considering any of the recommendations in this report.

## V. CONCLUSION

It is the hope of this Commission that its recommendations will not be looked upon as a patchwork revision of present liquor laws, but rather as an expression of an overall approach to liquor control in Minnesota.

As has been pointed out before in this report, it is the belief of the Commission that liquor is an extraordinary commodity requiring extraordinary controls on its marketing, sale, possession and consumption. These controls are constitutionally sound and socially necessary. Liquor distributors and retailers must have limits placed on their operations to prevent them from becoming so large as to threaten competition or to defeat the ends of legislation, but within those limits competition should be encouraged. Laws governing possession and consumption should be aimed at restricting anti-social behavior and not, in the words of Doyle Kirby of the Commission on Alcohol Problems, at making drinking inconvenient. All liquor taxes should be examined in terms of their effects on consumption, particularly those which might cause a flight of the consumer dollar to other states.

The Commission is under no illusions that all or even most of its recommendations will be enacted in 1973. A principal purpose of this report is not only to stimulate discussion but hopefully to channel it in broader directions. For too long public discussion of Minnesota liquor laws has been focussed on narrow issues, particularly prices in Minnesota compared to those in other states. The Commission would like to see this

discussion oriented more toward the overall liquor policy of the state with prices being considered as only one aspect of that policy.

The principal purpose of liquor control is to safeguard the public interest. If this report can succeed in productively stimulating discussion as to what policies can best achieve that goal, the Commission's efforts will have been rewarded.

## APPENDIX



TABLE I

DISTILLED SPIRITS TAX RATES

(Per gallon except where otherwise indicated)

ALABAMA*	35% of retail price	KANSAS	\$1.50 plus 4% enforcement tax
ALASKA	\$4.00	KENTUCKY	\$1.92
ARIZONA	\$2.00	LOUISIANA	\$2.50
ARKANSAS	\$2.50 plus 3% retail tax	MAINE*	80% state markup on FOB cost
CALIFORNIA	\$2.00	MARYLAND	\$1.50
COLORADO	\$1.80	MASSACHUSETTS	\$3.363
CONNECTICUT	\$2.50	MICHIGAN*	9% retail price
DELAWARE	\$2.25	MINNESOTA	\$4.53
DIST. COL.	\$2.00	MISSISSIPPI	\$2.50
FLORIDA	\$3.75 (\$7.52 for products with more than 48% alcohol)	MISSOURI	\$2.00
GEORGIA	\$3.75 Import. \$1.875 Geor- gia-grown products	MONTANA*	16% retail price
HAWAII	20% of whole- sale price	NEBRASKA	\$2.00
IDAHO*	10% based on state-store price	NEVADA	\$1.90
ILLINOIS	\$2.00	NEW HAMPSHIRE*	State markup
INDIANA	\$2.00 plus 8¢ enforce- ment tax	NEW JERSEY	\$2.80
IOWA*	15% retail price on liquor sold for resale	NEW MEXICO	\$1.50
		NEW YORK	\$3.25
		NORTH CAROLINA *	12% retail price plus 5¢ per 1 1/3 ounce
		NORTH DAKOTA	\$2.50
		OHIO*	\$2.25
		OKLAHOMA	\$4.00



TABLE I

(cont.)

OREGON*	State markup
PENNSYLVANIA*	\$1.00 plus 18% retail sales tax
RHODE ISLAND	\$2.50
SOUTH CAROLINA	\$4.48 per case plus 17¢ per 8 ounces
SOUTH DAKOTA	\$3.05
TENNESSEE	\$4.00 plus whole- sale tax of 15¢ per case
TEXAS	\$2.00
UTAH*	8% retail price
VERMONT*	\$5.60
VIRGINIA*	14% retail price
WASHINGTON*	15% retail price
WEST VIRGINIA*	State markup
WISCONSIN	\$2.60
WYOMING	10¢ per pint

\* -- State monopoly at retail

Source: Tax Council of the Alcoholic Beverage Industries  
Commerce Clearing House

TABLE II

Month	<u>Distilled Spirits Tax Revenue</u>		<u>Distilled Spirits Apparent Consumption</u>	
	Revenue, 1972	Revenue, 1971	Consumption, 1972 (in gallons)	Consumption, 1971
January	\$2,230,740.31	\$1,919,356.34	491,668	529,068
February	2,447,208.90	2,061,346.08	546,262	568,291
March	2,854,722.14	2,446,863.18	629,763	672,608
April	2,593,763.04	2,549,621.71	573,823	708,551
May	3,476,452.92	3,124,199.07	766,961	861,470
June	2,838,033.10	2,050,954.27	626,157	565,571
July	2,539,653.46	1,991,378.14	560,193	549,122
August	2,969,746.20	2,121,270.43	655,125	585,156
September	<u>2,744,981.43</u>	<u>2,685,284.43</u>	<u>605,512</u>	<u>740,453</u>
	24,695,301.50	20,950,273.65	5,455,464	5,780,290

Projected monthly increase for liquor tax  
(\$3,150,000 divided by 20 months)

\$657,500

Actual monthly increase for liquor tax

-416,114.21

Monthly difference

241,385.79

Source: Department of Liquor Control

TABLE III

STATE TAXES ON SPARKLING WINE

(License states only)

(Taxes are per gallon except where otherwise noted)

ALASKA	60¢	MARYLAND	40¢
ARIZONA	Up to 24% alcohol, 5.25¢ per 16 oz.; Over 24%, 12.5¢ per 16 oz.	MASSACHUSETTS	50¢
ARKANSAS	75¢ plus 3% retail price	MINNESOTA	\$3.08
CALIFORNIA	30¢	MISSISSIPPI	\$1.00
COLORADO	Up to 14%, 20¢; Over 14%, 30¢	MISSOURI	30¢
CONNECTICUT	Up to 21%, 25¢; Over 21%, 62.5¢	NEBRASKA	Up to 14%, 20¢ Over 14%, 55¢
DELAWARE	40¢	NEVADA	Up to 14%, 30¢ 14-22%, 50¢ Over 22%, \$1.90
DIST. COL.	45¢	NEW JERSEY	40¢
FLORIDA	\$2.30	NEW MEXICO	40¢
GEORGIA	\$1.00 (\$2.50 if made from products from other states)	NEW YORK	53 1/3¢
HAWAII	20% wholesale price	NORTH DAKOTA	\$1.00
ILLINOIS	Up to 14%, 23¢; Over 14%, 60¢	OKLAHOMA	\$1.50
INDIANA	Up to 21%, 38¢ Over 21%, \$2.00 2¢ enforcement tax	RHODE ISLAND	50¢
KANSAS	Up to 14%, 20¢ Over 14%, 50¢ 4¢ enforcement tax	SOUTH CAROLINA	90¢ maximum plus 18¢ additional
KENTUCKY	50¢	SOUTH DAKOTA	Up to 14%, 30¢ 14-20%, 95¢ 21-24%, \$1.40
LOUISIANA	Up to 14%, 11¢ 14-24%, 21¢ Over 24%, \$1.58	TENNESSEE	\$1.10
		TEXAS	43¢
		WISCONSIN	Up to 14%, 19.5¢ 14-21%, 39¢
		WYOMING	3¢ per pint

(Source: See Table I)

TABLE IV

Receipts 1971-72	Receipts 1970-71	Change
\$ 133,704.00	\$ 98,828.11	\$ 34,875.59
\$ 678,411.67	\$ 485,971.56	\$ 192,440.11
\$ 812,115.67	\$ 584,799.97	\$ 227,315.70

Barrels 1971-72	Barrels 1970-71	Change
66,854	61,767	5,087
169,628	151,863	17,765
236,482	213,630	22,852

Receipts 1971-72	Receipts 1970-71	Change
\$ 3,476,452.92	\$ 3,124,199.07	\$ 352,253.85
\$ 47,991.17	\$ 47,066.04	\$ 925.13
\$ 75,324.08	\$ 79,787.13	\$ (4,463.35)
\$ 46,512.93	\$ 34,304.48	\$ 12,208.45
\$ 3,646,281.10	\$ 3,285,357.02	\$ 360,924.08

Gallons 1971-72	Gallons 1970-71	Change
766,961	861,470	(94,509)
15,410	15,267	143
95,346	101,168	(5,822)
171,424	126,926	44,498
1,049,141	1,104,831	(55,690)

Receipts 1971-72	Receipts 1970-71	Change
\$ 1,176,985.80	\$ 1,100,372.66	\$ 76,613.14
\$ 5,994,064.37	\$ 5,119,393.95	\$ 874,670.42
\$ 7,171,050.17	\$ 6,219,766.61	\$ 951,283.56

Barrels 1971-72	Barrels 1970-71	Change
651,224	687,711	(36,487)
1,654,761	1,595,708	59,053
2,305,985	2,283,119	22,866

Receipts 1971-72	Receipts 1970-71	Change
\$ 31,782,994.42	\$ 28,647,451.34	\$ 3,135,543.08
\$ 689,684.82	\$ 568,071.87	\$ 121,612.95
\$ 898,860.49	\$ 965,383.86	\$ (66,523.37)
\$ 644,888.07	\$ 438,547.30	\$ 206,340.77
\$ 34,016,427.80	\$ 30,619,454.37	\$ 3,396,973.43

Gallons 1971-72	Gallons 1970-71	Change
7,722,357	7,896,213	(173,856)
222,633	184,835	37,798
1,137,681	1,222,269	(84,588)
2,385,807	1,619,487	766,320
11,468,478	10,922,804	545,674

Annual Accumulation to Date—

12 MONTHS - FISCAL YEAR

>

Distilled Spirits  
Champagne  
Wines 14-21%  
Wines Under 14%

Beer - 3.2%  
Beer - Over 3.2%

Distilled Spirits  
Champagne  
Wines 14-21%  
Wines Under 14%  
Monthly Total

Beer - 3.2%  
Beer - Over 3.2%  
Monthly Total

TABLE V

MANDATORY MARK-UP PROVISIONS  
IN LICENSE STATES

<u>STATES</u>	<u>MARK-UP LEVEL</u>		<u>SPECIFIED MARK-UP ON DISTILLED SPIRITS</u>	
	<u>WHOLESALE</u>	<u>RETAIL</u>	<u>WHOLESALE</u>	<u>RETAIL</u>
CONNECTICUT	YES	YES	11% MINIMUM (1)	21½% MINIMUM (2) (3)
INDIANA	NO	NO	13% MINIMUM (4)	30% MINIMUM
KANSAS	YES	YES	13% MINIMUM (5)	28% MINIMUM (2) (5)
KENTUCKY	YES	YES	15% MINIMUM (6) (7)	33½% MINIMUM (6) (8)
NEW YORK	NO	YES	-	12% MINIMUM (10)
RHODE ISLAND	YES	NO	13% MINIMUM (1)	-
TENNESSEE	YES	YES	11½% (9)	27½% (9) (8)

(1) ON TOTAL COST INCLUDING STATE, AND FEDERAL TAX.

(2) 10% DISCOUNT ON CASE LOTS.

(3) ON RETAILER'S SELLING PRICE.

(4) WHILE NO PROVISION OF THE LAW OR REGULATIONS REQUIRES MINIMUM MARK-UPS, OFFICIAL PRICE FILING FORMS REQUIRE FILED PRICES TO ALLOW 13% MINIMUM MARK-UP TO WHOLESALER AND 30% TO RETAILER.

(5) ABC BOARD OF REVIEW ESTABLISHES MINIMUM WHOLESALE AND RETAIL PRICES USING MARK-UP FORMULAS APPROXIMATING 13% AT WHOLESALE AND 28% AT RETAIL.

(6) ON DELIVERED COST INCLUDING STATE TAX AND \$4.00 OF FEDERAL TAX.

(7) UNDER KENTUCKY "FLOOR PRICE REGULATIONS", A MINIMUM CASE VALUE IS ESTABLISHED ON WHICH WHOLESALER MARK-UP MUST BE BASED.

(8) 10% MARK-UP ON CASE LOTS.

(9) ON DELIVERED COST INCLUDING FEDERAL TAX, \$2.50 OF \$4.00 STATE TAX AND 15% CASE STATE FAIR TRADE ENFORCEMENT TAX.

(10) BASED ON COST TO RETAILERS BEFORE ANY DISCOUNTS.

SOURCES: LIQUOR LAW REPORTER, COMMERCE CLEARING HOUSE, INC.  
DISTILLED SPIRITS INSTITUTE

TABLE VI

## MINNESOTA

## Wholesale &amp; Retail Markups

<u>CATEGORY</u>	1971 (12 mos.)		1972 (9 mos.)	
	Ave. Whsl. Markup (%)	Ave. Retl. Markup (%)	Ave. Whsl. Markup (%)	Ave. Retl. Markup (%)
Blends	8.9	34.0	9.19	34.34
Bourbon	10.2	33.0	10.16	29.0
Canadian	8.3	32.0	9.05	32.26
Scotch	11.7	36.0	12.01	36.50
Brandy	7.5	42.0	8.56	39.90
Gin	7.4	36.0	8.47	34.50
Vodka	10.0	41.0	8.55	40.40
All brands	9.13	36.14	9.43	35.27

Source: Department of Liquor Control

TABLE VII

Income Statement Comparison of Minnesota Liquor  
Distributors with National Averages (Expressed as  
percentages of Total Net Sales) - 1970 & 71<sup>a</sup>

Income Statement Item	Minnesota Ave. 1970 <sup>b</sup>	National Ave. 1970	Minnesota Ave. 1971 <sup>c</sup>	National Ave. 1971
Net Sales	100.0	100.0	100.0	100.0
Cost of Goods Sold	90.3	87.9	89.1	87.5
Gross Profit	9.7	12.1	10.9	12.5
Total Operating Expenses	8.6	10.3	8.9	10.8
Net Profit (before taxes)	1.1	1.8	2.0	1.7

a) Source: St. Louis University School of Commerce and Finance, Annual Operations Survey of Wine and Spirits Wholesalers, (St. Louis, Mo.: Wine and Spirits Wholesalers of America, Inc., 1970 & 1971).

b) Based on data obtained from a sample of 5 Minnesota Wholesalers.

c) Based on data obtained from a sample of 8 Minnesota Wholesalers.

TABLE VIII

Comparison of Income Statement Items for Minnesota's Liquor Wholesalers and  
the National Averages for Wholesalers in Thirteen Selected Industries - 1970<sup>a</sup>

Income Statement Items (expressed as % of Net Sales)	Automotive Equipment	Drugs	Electrical Supplies	Radios & Appliance	General Groceries	Tobacco Products	Furniture	Hardware & Paint	Plumbing & Heating Equipment	Jewelry	Agricultural Equipment	Fuel Oil	Women's & Children's Apparel	Minnesota Liquor Wholesalers
Net Sales	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Cost of Goods Sold	74.8	82.0	81.6	83.0	89.9	92.2	73.6	78.8	80.1	73.1	76.3	83.5	71.4	87.9
Gross Profit	25.2	18.0	18.4	17.0	10.1	7.8	26.4	21.2	19.9	26.9	23.7	16.5	28.6	12.1
Total Operating Expenses	21.2	14.5	15.8	14.71	8.9	6.8	24.3	18.9	17.2	21.4	20.6	14.0	23.1	10.3
Net Profit- Before Taxes	4.1	3.5	2.6	2.3	1.2	1.0	2.1	2.3	2.7	5.6	3.1	2.5	5.5	1.8

a) Source: Robert Morris and Associates, Annual Statement Studies, (Philadelphia, Pennsylvania: Robert Morris and Associates, 1971).



TABLE IX

AFFIRMATION LAWS IN OTHER STATES

Enacted by Statute

Kansas  
New York  
Massachusetts  
New Mexico  
South Carolina

Adopted by Regulation

Oklahoma  
New Jersey  
Georgia

Authorized by Law

Maryland

Source: Distilled Spirits Institute

TABLE X  
PUBLIC REVENUES from ALCOHOLIC BEVERAGES  
1971

STATE PER CAPITA REVENUE FROM ALCOHOLIC BEVERAGES — 1971

	State	Estimated Population In Thousands <sup>a</sup>	State and Local Revenue	Per Capita Revenue	
1	Alabama	3,487	\$ 60,638,213	\$ 17.39	1
2	Alaska	313	5,570,502	17.80	2
3	Arizona	1,862	22,784,234	12.24	3
4	Arkansas	1,951	15,782,868	8.09	4
5	California	20,286	253,290,046	12.49	5
6	Colorado	2,277	18,582,896	8.16	6
7	Connecticut	3,068	52,296,841	17.05	7
8	Delaware	559	3,743,891	6.70	8
9	District of Columbia	753	24,621,653	32.70	9
10	Florida	7,025	155,007,203	22.07	10
11	Georgia	4,664	93,759,883	20.10	11
12	Hawaii	790	12,706,043	16.08	12
13	Idaho	737	14,418,517	19.56	13
14	Illinois	11,182	143,260,199	12.81	14
15	Indiana	5,244	40,506,017	7.72	15
16	Iowa	2,860	37,742,164	13.20	16
17	Kansas	2,257	14,520,935	6.43	17
18	Kentucky	3,276	35,521,722	10.84	18
19	Louisiana	3,693	55,953,444	15.15	19
20	Maine	1,012	21,844,475	21.59	20
21	Maryland	4,007	40,547,878	10.12	21
22	Massachusetts	5,762	61,432,300	10.66	22
23	Michigan	8,996	166,777,504	18.54	23
24	Minnesota	3,860	65,957,450	17.09	24
25	Mississippi	2,250	33,150,260	14.73	25
26	Missouri	4,717	38,558,823	8.17	26
27	Montana	710	13,369,417	18.83	27
28	Nebraska	1,508	12,714,396	8.43	28
29	Nevada	510	15,552,464	30.50	29
30	New Hampshire	758	23,596,804	31.13	30
31	New Jersey	7,305	67,395,267	9.23	31
32	New Mexico	1,045	10,647,218	10.19	32
33	New York	18,349	312,268,377	17.02	33
34	North Carolina	5,158	92,464,728	17.93	34
35	North Dakota	628	8,720,351	13.89	35
36	Ohio	10,739	195,194,234	18.18	36
37	Oklahoma	2,600	22,452,189	8.64	37
38	Oregon	2,139	37,320,007	17.45	38
39	Pennsylvania	11,901	179,187,392	15.06	39
40	Rhode Island	959	16,358,782	17.06	40
41	South Carolina	2,633	53,335,052	20.26	41
42	South Dakota	674	6,424,451	9.53	42
43	Tennessee	3,994	55,700,657	13.95	43
44	Texas	11,428	88,331,143	7.73	44
45	Utah	1,095	12,330,987	11.26	45
46	Vermont	454	11,560,870	25.46	46
47	Virginia	4,720	83,587,793	17.71	47
48	Washington	3,442	93,203,748	27.08	48
49	West Virginia	1,768	27,427,588	15.51	49
50	Wisconsin	4,473	50,583,931	11.31	50
51	Wyoming	339	3,943,482	11.63	51
Total License States		143,652	\$1,874,889,106	\$ 13.05	
Total Control States		62,565	1,107,758,183	17.71	
GRAND TOTAL		206,218	\$2,982,647,289	\$ 14.46	

<sup>a</sup>Estimated Population as of July 1, 1971 — Series P-25, No. 488 September 1972  
Due to rounding, detail may not add to total.



Minority Reports  
and  
Individual Opinions



Senator Lew W. Larson

Representative Raymond O. Wolcott

Liquor Wholesaling

As supporters of the report's chapter on liquor wholesaling, we feel a need to spell out the philosophy which led to the conclusions arrived at in that chapter. We are firmly convinced that this amplification represents the thinking of a majority of the members of the Commission.

We affirm our support of and belief in the American system of free enterprise. State ownership and operation of private business enterprises, even of public utilities, has never met with favor in this state. Such action should not even be considered unless and until there is a clear, unbiased and non-political showing that the free enterprise system has been guilty of abuses that cannot be remedied in a less drastic manner than by government confiscation.

Neither this Commission, the office of the Attorney General of Minnesota, the Liquor Control Commissioner, the County Attorneys of the 87 counties of Minnesota, the Retail Liquor Dealers Association, smaller wholesalers, the press or the public presented any factual evidence of an increase in crime, decrease in tax revenues or artificially high liquor prices which could be attributed to the wholesale industry. This industry has been

lawfully established in accordance with our laws and has operated for many years without objection except from the small, but vocal, minority of people who presumably purchase liquor in sufficient quantity to make the price per bottle a significant factor in their cost of living. The existence of a brand monopoly in the Commission's opinion, is not, in and of itself, a violation of Minnesota law, nor do we think it should be.

If the brand monopoly, which must be distinguished from a total monopoly, results in abuses of the public's interest, for example, if it has been the cause of increased crime in the state or if it has engaged in practices which have resulted in artificially high prices which have deprived our citizens of reasonable prices for alcoholic beverages and the state of tax revenue, remedial steps should be taken. The Commission has not found such to be the case, but it has, nevertheless, recommended changes in our laws which are designed to provide further protection to the public.

We believe that when a wholesaler has expended money, time and effort to make a particular brand of liquor popular with the public, he should be allowed to enjoy a reasonable return on his investment by way of an exclusive right to distribute that brand

within the state. We reject the concept that the state should aid a competitor to enjoy the fruits of another person's labor.

We wish to stress the fact that a monopoly does not exist in alcoholic beverages as such. The monopoly exists only in brand names. Competition in the liquor industry does exist. If the wholesaler who has an exclusive right to brand "A" maintains the price for that brand at too high a level, the customer will switch to a lower priced brand. Inasmuch as there are approximately 960 brands sold in this state, the customer has a wide choice of brands. Thus competition does exist and serves to keep prices of all brands competitive.

Brand popularity is extremely transient. The leading brands in New York state are not necessarily the sales leaders in California. In our state it is unusual for one brand to remain "head and shoulders" above all others for very long. At one time Haig & Haig "pinch bottle" was "the brand" in Minnesota. Teachers Highland Cream, Black and White, Johnny Walker-both "red" and "black" have gone up and down in public favor over the years. The real "old timers" will tell you that "Green River" was the "top seller" in an earlier day. And how quickly the "soft" Canadian whiskeys have recently gained popularity. American whiskies, such as Jim Beam and Jack Daniels, have increased in



consumer acceptance over the popularity they enjoyed in Minnesota just a few years ago. There are many good brands that are not widely sold in Minnesota.

It seems to us that so long as the commodity in which the brand monopoly exists is not one in scarce supply, and where no serious abuses have been shown to exist, the state is not justified in breaking up the business practice either by giving a windfall to its less resourceful, imaginative or industrious competitors or by establishing the dangerous precedent of appropriating a profitable private business unto itself on the sole basis that it is profitable.

It has been amply demonstrated that a brand can be popularized by advertising and by a well selected and trained sales force; and that there are enough brands and distillers to make competition with the currently popular brands feasible. We recognize that to do so is expensive, but financing is available for persons who have the ability to inspire confidence in the private bankers or public investors. We submit that the threat of such competition and of action by the state if the public interest is abused, have been effective in preventing monopolistic abuses in the industry.

Absent more evidence of a compelling public need than this Commission has found, we have an insufficient basis for a recommendation that private property should be confiscated either through a requirement that distillers be compelled to sell their products to any licensed Minnesota wholesaler making a request or by the state taking over the wholesaling end of the business and operating it as a monopoly in fact.

Exclusive Franchising

The evidence presented to the Commission dealing with levels of market concentration in the liquor wholesaling industry consists of more than just economic statistics. It is a clear indication that legislative action is required to protect the public interest. An industry where a handful of distributors control over three-fourths of the market, and where they are immune to competition in the products they sell, is per se monopolistic and in need of controls. This is particularly true in the area of liquor, where special care must be taken that no person, firm or group becomes so powerful as to be beyond effective law enforcement.

It is not necessary to wait until some specific evidence of "injury to the consumer" to be produced for the state to act. "Injury" presumably means non-competitive prices; yet it has been demonstrated throughout the Commission's hearings that reliable comparative prices are extremely hard to come by. Even when such prices can be obtained they are affected by so many varying factors that it is nearly impossible to determine what percentage of any price is attributable to a specific wholesaling practice.

It is long-established public policy that unregulated monopolies are a threat to free competition. When such unregulated monopolies are found, legislation to control them in the public interest is justified. In the case of liquor wholesaling, the proposals of the Attorney General are a necessary first step in that direction, since they

would require distillers to sell their products to all licensed wholesalers without discrimination. Further efforts are required, however, to prevent voluntary exclusive franchising of brands, where wholesalers agree among themselves not to compete for supplies of major brands. To prevent such a situation from occurring, the Commissioner of Liquor Control should be given the authority to set minimum and maximum inventories of each major brand for each wholesaler.

Such legislation might take the following form:

1. Any person licensed to import intoxicating liquor into Minnesota under Minnesota Statutes 1971, section 340.113, shall file, as a condition of obtaining or renewing such license, a sworn statement affirming his willingness to sell his products to every licensed wholesaler who wishes to purchase them, on the same price basis and without discrimination. Each such licensee shall be required to file with the Commissioner a current list of prices, including all quantity discounts, for all products sold to licensed wholesalers as often as the Commissioner shall require.
2. In the event a person licensed under section 340.113 shall have insufficient stocks of his products available to satisfy the demands of all licensed wholesalers, he shall apportion whatever stocks are available among the wholesalers in accordance with a plan filed with and approved by the Commissioner.
3. Violation of these provisions shall be grounds for the suspension or revocation, as the Commissioner shall decide, of any license issued pursuant to section 340.113.
4. It is the intention of the Legislature that minimum and maximum inventories of each major brand of intoxicating liquor shall be maintained by each licensed wholesaler in this state. It is further intended that such minimum and maximum inventories shall be for the purpose of fostering competition and to prevent any licensed wholesaler from maintaining an exclusive franchise for the distribution of any brand of intoxicating liquor in this state, or from dominating the supply of any brand of intoxicating liquor to such an extent that competition is seriously impaired. The

Commissioner shall have the authority to establish rules and regulations to require each wholesaler to maintain minimum and maximum inventories of such brands of intoxicating liquor as he shall from time to time designate, for the purposes of effectuating the legislative intent of this enactment. Violation of such regulations shall be grounds for such action against the license of the violator as the Commissioner shall prescribe, provided that no license suspension under this enactment shall exceed 60 days.

Such an enactment would significantly change the distiller-wholesaler relationship in this state, but would not destroy it. In all probability each distiller would continue to consider one wholesaler as his prime dealer, and would continue to focus his marketing policies on that dealer. This legislation would provide that competition would exist among wholesalers in each major brand, and that retailers would be given a choice of wholesalers in each major brand.

Liquor Taxation

The issues relating to liquor taxation discussed in our report are by no means unprecedented. Several of them were discussed by the late Governor Floyd B. Olson in an address he gave on September 28, 1933, to a group of citizens appointed by him to draft a liquor control program following the repeal of Prohibition. I am having a part of that speech reprinted because I feel that his comments on liquor taxes, and particularly the possible effects of excessive taxation, are still very timely.

"In the interest of law enforcement and the promotion of temperance, it is necessary that the liquor traffic be brought under as strict regulation as possible.

"It was not my intention in calling together this committee to create a debating forum for so-called wets and drys. I made the committee large in order that all groups within the State of Minnesota might be represented. I cannot agree with those wets and drys who contend that the committee should be made up entirely of wets. Everyone has a duty as a citizen to promote temperance in all things, whether he or she be a wet or a dry.

"In my opinion prohibition, as expressed by the Eighteenth Amendment, is not a relevant issue before this committee. The people of Minnesota have already conclusively expressed their convictions on that subject, and that issue has therefore been adjudicated so far as I am concerned. Nor do I request you to pass upon the advisability of or the necessity for calling a special session of the Legislature in the near future to consider the question of liquor control. That is my duty and my responsibility and I have no desire to place the burden of decision upon you.

"I do ask you to calmly and carefully consider such plans for liquor control as already have been proposed and such other plans as may occur to you. Certainly, we can all agree as a premise that there shall be no return of the saloon, either openly or in disguise. There can therefore be no consumption of liquor permitted on the premises where it be sold by the state, if the state has legal authority to sell it, or if its sale be entrusted to private persons or corporations. If the latter, the indirect return of the saloon can be prevented by forbidding the carrying on of any other business upon the premises wherein liquor be sold.

"The right of local option should be respected, and communities desiring to prohibit such sale should be protected by the state. In communities where sales are permitted, applications for permits to operate

so-called liquor stores should have the approval of the local governing body, but in my opinion, should be ultimately passed upon by an agency of the state government.

"The possibility of revenue from the sale of liquor is entirely secondary to the considerations of temperance. There is, however, an opportunity for large revenue. Large license fees can be charged upon the basis of the population of the community in which the license is issued. These license fees should remain in the community.

"The proceeds of a gallonage tax upon liquor sold should be paid to the state and should be used to reduce or take the place of a tax now levied by the state upon real estate for the operation of the state government. In determining the amount of the tax, regard must be had for taxes that will be imposed in contiguous states so that bootlegging will not be encouraged in Minnesota through the imposition of a large tax in Minnesota as compared with a much smaller tax in these other states.

"These suggestions are in no sense binding upon you, nor meant to be. They are merely offered for whatever merit you may attach to them.

"I again thank you for the public service which you are rendering, and am confident that the result of your deliberations will be of great benefit to the state of Minnesota.

Days and Hours of Sale

The laws setting forth the permissible days and hours of sale have evolved over the years in an attempt to control the consumption of intoxicating liquor in a reasonable manner. Each year brings forth new proposals to change these laws; the Commission has been presented with proposals to extend the on-sale closing hour from 1:00 a.m. to 2:00 a.m., and to move forward the opening hour for the sale of liquor on Sunday from 12:00 noon to 11:00 a.m.

I do not see where any useful public benefit would be achieved by adopting either of these proposals. In practice they would serve only to increase the total amount of liquor being consumed at a time immediately prior to driving, which can hardly be characterized as being in the public interest.

In the matter of days and hours of sale for liquor, the state should be guided by the maxim that "where it is not necessary to change, it is necessary not to change." These laws represent a balance which has been arrived at over the years, and there seems little reason to change them in the absence of a clear need to do so. The proposed changes would benefit relatively few people, and in no case has a clear need been established.



Sydney W. Goff

Liquor Wholesaling

In my opinion, the liquor wholesaling industry in Minnesota has been and still is a monopoly. By failing to take appropriate action the Legislature would be continuing this monopoly. There should be absolutely no exclusivity in brand distribution among liquor wholesalers. I am in favor of legislation requiring brandowners to sell their products to any Minnesota wholesaler who wishes to buy them.

I also am in favor of legislation to end the practice of wholesalers giving quantity discounts on liquor. Quantity discounts inevitably favor the largest retail operators and give them a substantial competitive advantage over their smaller counterparts. Because this competitive advantage can only serve to increase market concentration in the industry, I believe that remedial legislation is called for.

Liquor Retailing

The Commission broke down into subcommittees fairly late in the year, and as a result it seems to me that there may have been incomplete communication among the subcommittees and between the subcommittees and the full Commission. This is the major reason why I believe that the report's section on liquor retailing is somewhat inconsistent.