

F I N A L R E P O R T

FRANCHISE AGREEMENTS JOINT SUBCOMMITTEE OF THE SENATE AND HOUSE COMMITTEES ON COMMERCE

January, 1981

The Franchise Agreements Joint Subcommittee, composed of Senator Edgar H. Holden, permanent Chairperson, and Senators Richard Comito, Julia Gentleman, Berl E. Priebe and Bob Rush, and Representatives Laverne W. Schroeder, Ned F. Chiodo, Robert M. L. Johnson, Lawrence Pope and Stephen J. Rapp, was created by the Legislative Council pursuant to Senate Concurrent Resolution 124. The Subcommittee was charged with the task of determining the advisability of legislation to grant rights of successorship under a franchise to the spouse or decedents of the person to whom the franchise was issued. The Subcommittee was directed to consider the provisions of Senate File 2322, introduced during the 1980 legislative session, as potential legislation to affect all franchise agreements.

The Subcommittee met on August 21, 1980. The purpose of the meeting was to obtain from persons involved in franchise business operations comments about the necessity of statutory regulation of rights of successorship in franchise agreements. The Subcommittee sent notice of its investigation to more than 50 business firms and business organizations believed to be interested in or affected by this type of legislation. The notice contained an invitation to address the Subcommittee at the August 21 meeting.

The invitation of the Subcommittee was accepted by a rather limited number of persons. At its meeting, the Subcommittee received comments from a representative of the International Franchise Association, a business association whose members are engaged in the business of selling franchises; a member of the legal staff of McDonalds Corporation, which franchises fast-food restaurants; an owner-operator of three Burger-King fast food restaurants in the city of Des Moines; a representative of the Iowa Gasoline Dealers Association; a representative of the Iowa Automobile Dealers Association; a representative of Deere and Company; and representatives of the Iowa Petroleum Council and three of its member companies, Getty Oil Company, Ashland Petroleum Company and Amoco. Representatives of other firms and associations monitored the proceedings, but did not participate.

The information received by the Subcommittee at the August 21 meeting and the apparent lack of interest in the investigations of the Subcommittee tended to indicate to the Subcommittee that, with the exception of motor fuel dealership agreements, legislation to establish rights of successorship would not respond to any ascertainable need. With respect to motor fuel dealership

franchises, the commentary received by the Subcommittee suggested the existence of a problem which may need statutory resolution.

Generally speaking, the Subcommittee did not discover any common problem involving successorship to business franchises. The Subcommittee learned that a Federal Trade Commission rule requires a franchisor to make certain disclosures to a prospective franchisee prior to the sale of a franchise, among which is a disclosure of any rights of successorship upon the death of the franchisor. The Federal Trade Commission rule does not, however, apply to motor fuel dealership agreements. The comments received by the Subcommittee indicated that at least with respect to fast-food restaurant franchises both franchisors and franchisees believe that franchise agreements are most appropriately negotiated by the parties themselves, and that legislation is neither desired nor warranted. The Subcommittee also was told that Indiana is the only state that has enacted law to generally govern successorship in franchises.

Information received by the Subcommittee about motor fuel dealership franchises indicated disagreement with respect to the following points: Whether or not problems exist with respect to successorship to franchises; whether or not sufficient efforts have been made by the parties themselves to resolve perceived problems; and whether or not legislation to regulate successorship is warranted.

The Subcommittee learned that the Federal Trade Commission rule does not apply to motor fuel dealer franchises because the rule only applies if a franchisee is required to pay a fee to obtain the franchise. Motor fuel dealers are not required to pay a fee, and thus the agreements are not covered by the rule.

The representative of the gasoline dealers stated that a problem of successorship does exist, that it cannot be resolved by the parties themselves, and that legislation such as Senate File 2322 is necessary to protect the interests of motor fuel dealers and the general public. The Subcommittee was given copies of some commonly used motor fuel franchise agreements which either did not permit a spouse or heir to succeed on the death of the dealer or which appeared to give the franchisor the discretion to permit successorship if it chose to do so. The Subcommittee was told that in one instance a wife who had assisted her husband in the operation of a dealership was allegedly forced out of business because the franchisor had contracted to sell the dealership prior to the date of death of her husband. The Subcommittee also was told that oil companies have a policy against allowing both a husband and wife to be co-franchisees; and that motor fuel dealers do not have sufficient bargaining power to obtain successorship rights through negotiation, and that a dealer has a substantial investment in a motor fuel dealership that warrants statutory protection.

The representatives of the oil companies and their trade organization indicated that successorship is not a problem, that the dealers have not indicated a desire to change the franchise agreements, and that legislation is not warranted, particularly if it applies only to motor fuel dealership franchises rather than to franchises in general. The commentary suggested that the policies of oil companies in relation to successorship are necessary to protect their investments in retail outlets and to assure quality of service to the public. It also was stated that an organization of the dealers of one company had gone on record as being opposed to legislation of the type contained in Senate File 2322.

Based upon the information received, the Subcommittee generally agreed to the following principles:

1. Problems of succession and transfer of assets appear to be confined to gasoline dealership franchises.

2. Gasoline dealers have an investment in their dealerships, and qualified members of the immediate family ought to have some opportunity to take over a dealership in the event of death of the franchisee.

3. If a dealer's business assets are to be sold at the time of the dealer's death, some protection should exist to assure that a fair value is received for those assets.

4. If legislation were to be enacted it should provide only minimum guidelines and should not mandate specific contract language.

5. Legislation should not be enacted unless the oil companies and their dealers are unable to negotiate contract terms which protect potential successors and the value of the business.

The Subcommittee deferred any further action until it could be determined if the motor fuel dealers and the oil companies could modify their franchise agreements to accomplish principles 2 and 3 through voluntary action. The Subcommittee asked that the oil companies and oil jobbers who franchise retail outlets report to the Subcommittee not later than November 1, 1980, with their proposals for new contract language to accomplish the Subcommittee's goals.

A response was received from the Iowa Independent Oil Jobbers Association, suggesting that legislation was not needed with respect to jobber/dealer franchises. No other responses were submitted.

The Subcommittee did not hold additional meetings.