

**ALCOHOLIC BEVERAGES**

**REPORT OF THE**  
**COMMITTEE TO STUDY**  
**THE SALE OF ALCOHOLIC BEVERAGES**  
**AT MILITARY INSTALLATION FACILITIES**  
**to**  
**THE GOVERNOR**  
**and**  
**THE GENERAL ASSEMBLY OF VIRGINIA**



SO 12, 1966

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
RICHMOND  
1966



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TO  
THE GOVERNOR AND THE  
GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, January 11, 1966

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

At the 1964 session of the General Assembly of Virginia, two bills were passed relating to the price of beer charged by wholesalers to retail outlets. The bills were prompted by a growing apprehension on the part of the members of the legislature that a substantial quantity of tax-exempt beer sold to military outlets was finding its way into the hands of civilian consumers who were not entitled to purchase such beer. Beer distributors also expressed concern at certain procurement policies followed by the military authorities in the purchase of such beverage.

Following the adjournment of the General Assembly, the Governor concluded that this legislation was not in the best interest of the State, or of the parties concerned, and accordingly vetoed the bills. The Governor was convinced that through a fair and impartial inquiry the facts could be determined, and the condition which prompted the bills could be alleviated, possibly by administrative action on the part of the State and the federal agencies involved.

Accordingly, the Governor appointed a "Committee to make inquiry, and recommendations, if indicated, looking to the correction of any practices that might now exist concerning the procurement and sale of alcoholic beverages to those instrumentalities of government entitled to tax exemption".

The Honorable William Earle White, attorney and President of the Virginia State Bar, was appointed Chairman of the Committee to study and report on the matters contained in the Governor's directive. Selected to serve with Mr. White were the following: Herbert E. Bickel, Secretary, Virginia Malt Beverage Association, Incorporated, Richmond; Colonel Joseph H. Botts, Assistant Chief of Staff, G-1, Fort Eustis; W. C. (Dan) Daniel, member of the House of Delegates, Danville; Thomas C. Gordon, Jr., attorney and President of the Virginia State Bar Association, Richmond; John W. Hardy, senior member of the Alcoholic Beverage Control Board, Richmond; Colonel George H. Kneen, Jr., Commanding Officer, Langley Air Force Base, Langley Field; C. H. Morrissett, Tax Commissioner of Virginia, Richmond; and Rear Admiral E. B. Taylor, Commandant, Fifth Naval District, Norfolk.

Subsequent to the commencement of the study, Honorable Thomas C. Gordon was appointed as a Justice of the Supreme Court of Appeals of Virginia. Mr. Gordon accordingly resigned from the Committee. Also, Colonel George H. Kneen, Jr., withdrew from the Committee and was replaced by Colonel Harry R. Burrell, Commanding Officer, Langley Air Force Base, Langley Field, Virginia.

John B. Boatwright, Jr., Director, Division of Statutory Research and Drafting, and Robert L. Masden, staff attorney in the Division, served as Secretary and Recording Secretary, respectively, to the Committee.

To gain full appreciation of the problems involved in the matters under study, comments and suggestions were invited from all interested groups, organizations and individuals. After due publicity, the Committee held a public hearing in Richmond on May 25, 1965, which was well attended.

The Committee also invited, through the Virginia Malt Beverage Association, beer wholesalers and distributors who testified as to their activities with the military generally. Representatives of various military installation facilities selling beer, wine and distilled spirits also appeared before the Committee giving information on the operation of their facilities. Many hundreds of pages of testimony were taken by the Committee at several executive sessions held by it.

The Committee secured information from the Armed Forces through the office of the Secretary of Defense concerning the number of military personnel, their dependents and others stationed or living in Virginia who are authorized to purchase tax free beer, wine and distilled spirits. In addition, with the cooperation of the military services, a subcommittee was appointed to conduct a survey of all military installation facilities throughout the State selling tax free beer, wine and distilled spirits. The Committee was assisted in its survey by personnel of the Alcoholic Beverage Control Board.

The Committee carefully considered the large quantity of information and material gathered and the comments and suggestions presented to it and now makes its Report.

### RECOMMENDATIONS

1. That transportation limitations presently imposed by law on alcoholic beverages should apply to "3.2 beverages", containing one-half of one per centum or more of alcohol by volume and not more than three and two-tenths per centum of alcohol by weight. (See proposed bill attached.)

2. That beer wholesalers should be prohibited by law from making gifts of any sort and for any purpose, or selling at reduced prices any alcoholic or 3.2 beverages as an inducement or remuneration for other purchases of such beverages, to instrumentalities of government, selling alcoholic beverages at retail, or any employee thereof. (See proposed bill attached.)

### REASONS FOR RECOMMENDATIONS AND CONCLUSIONS

#### *Background*

The General Assembly of Virginia, at its 1964 Regular Session, passed House Bills number 558 and 677 which amended Virginia Code §§ 4-79 and 4-115, respectively.

The amendment to these sections provided that no person licensed by the Alcoholic Beverage Control Board to sell beer at wholesale shall sell

beverages to other persons for resale only, at a price, exclusive of any State excise taxes, which is higher than the lowest price charged by such wholesaler on any sale of the same beverages for resale anywhere within the exterior boundaries of Virginia.

After carefully considering the possible effect of these measures, the Honorable Albertis S. Harrison, Jr., Governor of Virginia, vetoed them and appointed this Committee to study and report on all aspects of the problems involved. On April 3, 1964 the Governor made the following statement concerning the bills:

#### STATEMENT BY GOVERNOR HARRISON

Re: Veto of House Bills 558 and 677

April 3, 1964

The Honorable W. C. Daniel of Danville and others who sponsored and supported these measures have rendered a service to Virginia, for their actions have spotlighted a situation which may be costing the taxpayers of the Commonwealth large sums of money each year.

The bills under consideration amend the Alcoholic Beverage Control law of Virginia so as to prohibit any wholesaler, licensed by the ABC Board, from selling beer to a purchaser at a price which is higher than the lowest price charged by the wholesaler to any other purchaser.

Thus, the bills have the effect of "fixing the price" of beer to be charged by a wholesaler, or distributor.

While the publicity surrounding a consideration of these bills has concerned their effect on purchases by the Armed Forces, the thrust of the bills would have the identical impact on all purchasers of beer from wholesalers or distributors.

Apparently, the bills were not introduced or supported because of this price-fixing feature. The bills commanded the overwhelming support of the General Assembly because of a desire on the part of the membership to alleviate and correct a condition which suggested to its members that the Commonwealth was losing substantial amounts of revenue to which it was entitled from the tax on beer.

It is a matter of common knowledge that no tax is collected by Virginia on beer sold by wholesalers to agencies of the United States serving the Armed Forces. This means that any member of the Armed Forces is entitled to purchase at a military post a case of 12 oz. beer for 60 cents a case less than the amount paid by civilians purchasing through normal retail outlets. This is one of the fringe benefits accorded those serving in the Armed Forces and meets with the approval of the people of the State. No one questions this practice, or suggests that it be discontinued.

However, substantial information was developed, and made available to the General Assembly, which did suggest that possibly tax-exempt beer was being purchased by, or in some manner finding its way into the hands of, persons who were not entitled to this tax concession accorded the members of the Armed Forces. To the extent that this is occurring, if at all, it amounts to a raid on the Treasury of Virginia, and places an additional burden on the taxpayers of this State.

Statistics, made a part of this statement, on military population in Virginia and the sale of beer and whiskey provide some striking contrasts on the volumes handled through civilian and military outlets in the past several years.

Notwithstanding the fact that the population of Virginia has increased substantially during the past four years, and notwithstanding the great expansion of the tourist industry, civilian sales of beer have dropped and were less in 1963 than in 1960 (see table attached).

I do not believe that any person can consider the available statistics and not question the reason for the astronomical increase in beer sales to instrumentalities of the government entitled to tax exemption as contrasted to the actual decrease in civilian sales.

When we examine the liquor sales, we would like to feel that this comparison shows a growth in temperance and moderation on the part of the civilian population in Virginia, but I fear that this credit might not be entirely earned. It would hardly be fair to assume that the drinking habits of the members of the Armed Forces stationed in Virginia are so dissimilar to that of our civilian population. At least the members of the Legislature feared that a portion of the tremendous increase in sales of beer and ardent spirits to the Armed Forces might properly be credited to the civilian population.

Some of the publicity has portrayed the bills as directed at the Navy in Norfolk. While this statement is wholly without foundation, and completely false, the fact remains that the relationship between all elements of the Armed Forces and the Commonwealth of Virginia and her political subdivisions has, over a period of years, been one marked by mutual respect and cooperation. Neither the Governor, nor any member of the General Assembly, would wish to take any action which would disturb that relationship.

The above is the background of the passage of the "beer bills". During the course of the hearings, it was also argued that because of certain purchasing practices, beer was often sold to agencies of the Armed Forces for little or no profit to the distributors, and sometimes at a loss. It has been urged, and not without merit, that this practice affects adversely the control system which is administered by the State ABC Board, and also encourages refunds, or "sidepayments", by the distributors to their civilian outlets, such being necessary in order for civilian retailers of beer to meet the competition of the military bases.

If it can be determined that procurement policies of the Armed Forces in their purchase of beer from Virginia distributors are frustrating or interfering with the controls of the ABC Board over this industry,—or are otherwise disruptive—then such policies should be examined and corrected.

Here we should be concerned not with price-fixing, or eliminating competition, but rather with procurement policies or practice which adversely affects the State's control of the alcoholic beverage traffic.

The bills in question were not prompted or introduced by the ABC Board.

The fact remains that there is at least a 60 cent tax differential between every case of beer sold on and off a military base. Any amount added to the 60 cents makes it more attractive to purchase beer from a military outlet, and makes the temptation for an individual, who is not



entitled to the privileges of a military base, to purchase beer that comes from such a base.

I am now convinced that the two bills will not accomplish the purposes for which they were designed, and for that reason I shall veto the bills.

Some question has been raised as to the legality of the bills. This would have to be litigated, and, irrespective of the outcome of the litigation, the bills, as a practical matter, could not be enforced during the course of the litigation, which could be protracted.

Finally, and more important, I am convinced that the only possible way in which the problem which confronts us can be solved, and the purpose which the General Assembly sought to accomplish, can be attained, is by a fair and impartial investigation, participated in by those agencies of the federal and state government that are involved, one or more members of the General Assembly, and by the industry which is engaged in the distribution and sale of be

I have been assured by the Under Secretary of the Navy, the Under Secretary of the Air Force, and the Under Secretary of the Army, that I would have the complete cooperation of their respective departments in "identifying and remedying any practices that might have precipitated the introduction of the bills in question." I have also been assured by the Congressman from the Second District, The Honorable Porter Hardy, Jr., that the Defense Department does not "want any abuse of privileges with respect to exemptions from Virginia taxes, or to price advantages which have resulted from competition and from quantity procurement, and that if there have been any violations, they want to correct them."

I am certain that these statements have been made in complete good faith, and the action that I am taking is on that assumption.

I shall appoint an investigative committee in the very near future. This committee will investigate and inquire into practices that now exist in the procurement and sale of alcoholic beverages to and by those instrumentalities of government entitled to tax exemption.

It is my considered judgment that the problem can be solved by administrative action on the part of the agencies of the federal government and the Commonwealth of Virginia that are concerned. In event the report of the committee shows that such action is not possible, or will not be taken, and that state legislation is the only recourse, such legislation will be recommended by me to the next session, special or regular, of the General Assembly.

A. S. HARRISON, JR.

Fiscal Year	Beer Sales in Virginia by Case Lots (Figures from ABC Board)		Military Personnel in Virginia as of June 30 (Figures from Dept. of Defense) (Excludes Coast Guard Personnel)	Total Personnel Authorized to Purchase Tax-Free Beer in Virginia (Active and Drill) (Figures from Bureau of Naval Personnel)	Can and Bottle Beer Tax Refunds in Virginia (Figures from State Dept. of Taxation)	Sale of Liquor by Case Lots to Armed Forces in Virginia (Figures from ABC Board)	Percentage Change in Case Lot Liquor Sales in Virginia (Figures from ABC Board)	
	(1) Civilian	(2) Military	* (3)	* (4)	(5)	(6)	(7) Civilian	(8) Military
1960	15,538,597	889,607	82,372		\$ 593,709.29	88,862		
1961	14,818,888	1,197,710	86,934	145,216	\$ 798,473.25	112,965	-12.71	26.11
1962	15,384,740	1,465,009	93,387	151,819	976,673.34	127,568	2.31	13.83
1963	15,437,585	1,596,127	88,059	146,329	1,063,974.95	141,355	4.07	10.80
	Percentage of change in these four years:		83,435			(Jan. 1963	(Civilian sales in	
	Civilian 0.65 Decrease		(Dec. 31, 1963)			7,943	1963 were 7.59%	
	Military 79.4 Increase					Jan. 1964	less than in 1960;	
						11,824)	Military sales	
							were 59.07% more	
							than in 1960)	

\* Differences between columns (3) and (4) assumed to be accounted for by the inclusion by the Bureau of Naval Personnel of Naval (mobile) personnel and the Air and Army National Guard.

## A. B. C. REPORT

### *Military Procurement Policies*

The function of the military exchange services today is to provide authorized merchandise and services of necessity and convenience not furnished by the Government, to authorized patrons at the lowest possible prices, consistent with reasonable profits. This mission is essentially the same as the original mission prescribed by the War Department in 1895.

The House Armed Services Committee, in its 1949 report on exchanges, noted the right of service personnel "... to enjoy ... an attractive exchange where items of necessity, comfort, and convenience and reasonable gift items may be readily obtained."

Collateral to its primary responsibilities of providing retail services to military personnel, the exchanges have the secondary, but most important, mission of providing the major portion of funds for morale, welfare and recreation programs. Exchange revenues go into the welfare funds where they are made available to commanders to support their welfare and recreational activities, such as libraries, hobby shops, chapels, day rooms, post newspapers and athletic programs.

Exchange procurement is conducted on the basis of full and free competition to the maximum extent practicable and consistent with the immunity of exchanges from State regulation and control. Award is made to the responsible contractor whose offer is most advantageous to the exchange, price and other factors considered. As a matter of policy, exchanges in the continental United States purchase beer from the local wholesaler and deviations are permitted only as authorized by the Chief of the exchange service.

Branded merchandise purchased from secondary sources ordinarily requires multiple quotations to insure a competitive price. However, in the case of beer there are only two sources. The primary source which is the brewer and the secondary source which is the franchised dealer. Since the exchange buys from the wholesaler it gets only one quotation for the brand. However, the exchange determines the competitiveness of the quotation for one brand by comparison with the quotations for other brands within the area.

The number of brands that an exchange may carry for resale is determined by the basic stock structure prepared by the chief of the exchange service. An exchange will normally carry six brands and may carry up to ten. Brands of course will vary with the area. Normally exchanges give consideration to the purely local brands as well as the widely distributed premium and popular priced beers. Decision as to the brands to be carried is reserved to the individual exchange. Customer preference and demands consistent with the basic stock structure and the price dictate the choice.

The purchase price determines the selling price. The chief of the exchange service publishes a markup schedule which exchanges are obligated to follow. The exchange service is expected to produce a certain amount of money each year to supplement appropriated funds for the support of morale, welfare and recreation programs. The amount of money needed to support these programs is determined by the respective Armed Services. Based on their requirements a specified profit goal is established. This annual requirement, the cost of goods sold, and the total operating expenses, are the basic factors that determine the pricing policies.

The exchange services use a graduated markup on items offered for sale. Under this system, the items in most general demand and other commonly used merchandise receive the lower markup. The markups range from 5% to 25%. Certain items have a fixed selling price. Beer is priced at 15% of the selling price for off-premise consumption and at approximately 20% for on-premise consumption within a bracket system.

The merchandise that the exchange may sell and the persons who may purchase in the exchange is limited by a Defense Department directive which is the result of an agreement reached with the House Armed Services Committee in 1949 and as modified in 1953 and 1957.

In addition to the facilities provided by the exchange services for the distribution of tax-free beer, which includes service stations, there are various other facilities which provide military personnel and other authorized purchasers with access to such beverages. Such facilities include officers' clubs and non-commissioned officers' clubs. The proceeds from the sale of merchandise including tax-free beer in such clubs is used for the support of the club's activities.

To a large degree the price advantage which is secured by these facilities is passed on to the military personnel and other authorized purchasers. The markup which is added to the cost price after providing for appropriate operating costs is generally returned to the military personnel and their dependents by way of other programs and services provided by the facilities.

While the procurement policies and programs of the armed forces, directed as they are at providing these necessary supplemental services to its personnel and other authorized consumers, are salutary, in and of themselves—particularly from the standpoint of the military. However, there are inherent disadvantages to the beer wholesalers.

The wholesaler must operate as an individual in a competitive setting in which he is limited in his activities by the anti-trust laws and is required to compete with other wholesalers in dealing with a purchaser who purchases for and controls the consumption propensity of a large and important segment of his market. The very size of the individual wholesaler as against the size of the military alone suggests a disproportionate advantage in favor of the military. This condition furnishes an incentive for improper practices.

Under our present laws a brewer cannot sell directly to a retailer licensed by the Virginia Alcoholic Beverage Control Board. Of course, military installation facilities which sell tax-free beer, wine and distilled spirits are not under the supervision of the Alcoholic Beverage Control Board. Military facilities are treated by the State in all respects as though they were located in a foreign state. However, in keeping with the State policy on the control of the sale and distribution of alcoholic beverages, the military has seen fit to purchase its beer from the local wholesalers licensed by the Board.

As may be expected, the brewer views the military market, which is made up primarily of young male individuals having the greatest propensity for consumption, as very important indeed. The wholesaler, likewise, is interested in keeping his product before this important segment of the market while its potential is developing and preferences are being formulated. This is simply good marketing management in keeping with exigencies of a free enterprise system.

Our investigation has indicated that the price paid for beer by the exchange services and the various clubs is uniform by area throughout the State. In addition to this fact, the price paid by the military facilities for beer over the past several years has been rather static. The uniformity of price among the various military installations would indicate a coordination of effort among the various facilities in order to secure the greatest price advantage possible. The static price to the military, which does not even reflect normal increases to offset labor and operating costs to the brewer and wholesaler, would indicate the effectiveness of this competitive advantage.

We believe these factors are at least symptomatic of the competitive advantage which the military enjoys in dealing with the respective wholesalers. In effect, the military determines the lowest price that it can purchase beer from any particular wholesaler. Once this price is established it is very difficult for any individual wholesaler to amend his price to the military without losing the privilege of keeping his product before the market.

As we have indicated, the military exchanges do not attempt to stock all brands of beer but simply will stock only a few, probably not more than five or six brands in most instances. However, some exchanges and most officers' and non-commissioned officers' clubs carry a larger representation of brands; in some instances up to as many as twenty or twenty-one brands. Stocking only a limited number of brands based primarily upon the cost price does not, in our opinion, allow the consumer to determine on a quality basis what he is willing to pay for any particular brand. Under this method of operation only those brands which are sold the cheapest ever get before the military population for their decision on quality or other important factors. This factor of limiting stocks, which is a legitimate management control, can bring great pressure to bear among the wholesalers as they compete with each other for "shelf space".

It should be obvious that when such competition is carried to extreme abuses of the State's system of control are bound to occur. These abuses within the military have taken the form of gifts from wholesalers to club managers and exchange employees, etc., and of gifts of alcoholic beverages as an inducement or remuneration for purchasing other such beverages.

A great deal of information has been procured from the beer wholesalers throughout the State indicating that these practices are widespread. These practices are in violation of Department of Defense regulations which forbid exchange employees or club employees from accepting anything from any wholesaler other than merchandise at the best price. Department of Defense regulations and State laws of course, permit the servicing of exchange and club accounts. A beer wholesaler is permitted to periodically check the stock to insure proper rotation and thus avoid stale beer. The wholesaler's offers of additional merchandise, for example, a baker's dozen, is likewise permissible under Department of Defense regulations.

In order to gain a competitive advantage, the wholesaler is encouraged by the brewers to grant sizeable discounts. To offset the cost effect of such discounts to the wholesaler, in many cases the brewer will rebate to the wholesaler a substantial part of the discount extended to the military. However, this is not true in all cases. Usually only a portion of the discount is rebated by the brewer. Where the brewer does not rebate this discount the burden is borne by the wholesaler who can ill afford such additional costs. Once such practices are accepted by those involved, the indi-

vidual wholesaler cannot extricate himself without the probable loss of this large potential market.

Most of the wholesalers who appeared before the Committee indicated that their sales to the military are actually unprofitable sales when considered by themselves. Why then do the wholesalers continue to sell to the military? As we have indicated before, this military market has great potential to the brewer and the wholesaler. If one or even several of the wholesalers withdrew from the military market this would mean a complete loss of that market to the brewer and the wholesaler and a complete gain to the remaining competitors. It would also mean that his product would not be available to this segment of the market while brand preferences are being developed. Under present competitive conditions such loss may never be recouped. Thus, the wholesaler is required to remain in the market even though selling at a loss for competitive purposes.

The following table illustrates the losses which were reported by a typical wholesaler:

Exhibit A

NORTHERN VIRGINIA MARKET AREA—TYPICAL BEER WHOLESALER

	Laid In Cost	Brewery Mili. Disc.	Oper. Cost	Total Cost	S/P Military	Loss	One Month's Operation	
							Cases	\$ Loss
12 oz. export .....	\$2.33	\$	\$.68	\$3.01	\$2.71	\$.30	20	\$ 6.00
12 oz. N. R. ....	2.57	(.15)	.68	3.10	2.87	.23	495	113.85
32 oz. N. R. ....	2.92	(.10)	.68	3.50	3.30	.20	21	4.20
12 oz. L. T. Cans .....	2.78	(.20)	.68	3.26	2.97	.29	156	45.24
12 oz. L. T. Flats .....	2.78	(.20)	.68	3.26	2.97	.29	1200	348.00
24/12 oz. Cans .....	2.63	(.20)	.68	3.11	2.87	.24	858	205.92
24/16 oz. Cans Pac .....	3.64	(.30)	.68	4.02	3.72	.30	400	120.00
24/16 oz. Cans Reg. ....	3.49	(.20)	.68	3.97	3.72	.25	373	93.25
Military Pac .....	3.21	(.35)	.68	3.54	3.38	.16	1706	272.96
								<u>\$1,209.42</u>

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## Exhibit B

## NORTHERN VIRGINIA MARKET AREA—TYPICAL BEER WHOLESALER

Premium Beer	Laid In	Oper.	Total	Street	Tax	Street	Mil.	Brew. Lic.	vs. Mil.
	Cost Inc. Tax *					Price Excl. Tax *			
12 oz. Ret. Bottles .....	3.5334	.68	4.21	4.45	.60	3.85	3.85	....	....
32 oz. Ret. Bottles .....	4.2504	.68	4.93	5.20	.80	4.40	....	....	....
12 oz. N.R. 12/12 .....	3.8463	.68	4.53	4.60	.60	4.00	4.00	....	....
12 oz. N.R. Pac .....	3.8760	.68	4.56	4.60	.60	4.00	4.00	....	....
12 oz. N.R. ....	3.8217	.68	4.50	4.60	.60	4.00	4.00	....	....
32 oz. N.R. ....	4.4986	.68	5.18	5.45	.80	4.65	4.65	....	....
12/12 oz. Cans (24) .....	3.8123	.68	4.49	4.60	.60	4.00	3.38	.35	.27
24/12 oz. Cans .....	3.7945	.68	4.47	4.60	.60	4.00	4.00	....	....
24/12 oz. 6 Pac .....	3.8455	.68	4.53	4.60	.60	4.00	4.00	....	....
24/12 oz. E.O. 6 Pac .....	3.9455	.68	4.63	4.67	.60	4.07	4.07	....	....
16 oz. Cans .....	4.8161	.68	5.50	5.75	.80	4.95	4.95	....	....
½ Kegs .....	13.7986	.68	14.48	17.50	2.00	15.50	15.50	....	....
Local Beer									
12 oz. Ret. Bottles .....	2.9303	.68	3.61	3.85	.60	3.25	2.71	....	.54
12 oz. N.R. ....	2.5697	.68	3.25	3.80	.60	3.20	2.87	.15	.18
32 oz. N.R. ....	3.7197	.68	4.40	4.60	.80	3.80	3.30	.10	.40
L.T. 6 Pac Cans .....	3.3800	.68	4.06	4.10	.60	3.50	2.97	.20	.33
L.T. Flats .....	3.3800	.68	4.06	4.10	.60	3.50	2.97	.20	.33
24/12 oz. Cans .....	3.2300	.68	3.91	4.00	.60	3.40	2.87	.20	.33
24/16 oz. Cans Pac .....	4.4400	.68	5.12	5.15	.80	4.35	3.72	.30	.33
24/16 oz. Cans .....	4.2900	.68	4.97	5.15	.80	4.35	3.72	.20	.43
½ Kegs .....	12.8900	.68	13.57	15.20	2.00	13.20	13.20	....	....

\* Per Unit



It is not our intent to assess the entire blame upon the military for the situation as it exists at the present time. However, we believe that the military with its competitive advantage has, as a homogeny as opposed to the many small individual wholesalers with which it deals, the greatest singular opportunity for improving this situation. As a State, we cannot, nor do we wish to, interfere with the activities of the military and its personnel on the military reservations. For this reason we are not interested in the amount of alcoholic beverages which are sold to military personnel and consumed on the reservations. However, as a State, we are vitally interested in the amount of alcoholic beverages which are transported off post, particularly to the extent such alcoholic beverage finds their way into the hands of unauthorized persons.

We are sure that no one objects to this tax-exempt status of the military installation facilities since it is a fringe benefit for persons in the armed forces. The State allows the facilities to purchase these items tax-free on the assumption that they will, in good faith, set up the necessary customer controls to prevent the abuse of these privileges.

We believe that the procurement policies of the armed forces should be carried on in such a manner as to avoid abuses. Insofar as possible, its procurement policies should be consistent with the policies of the State of Virginia in encouraging temperance through reasonable control of the sale and consumption of alcoholic beverages. This cost advantage, when coupled with the tax advantage which is accorded to the military by the State on such alcoholic beverages, creates a price disparity which we believe is the basic cause of any diversion which may be taking place.

We have carefully analyzed all possible courses of action open to the State in helping to control any diversion of tax-free beer into the hands of unauthorized consumers. We believe, in keeping with present policies of the State with regard to the control of the sale and distribution of alcoholic beverages, that the only additional course open to the State is to proscribe the activities of brewers and wholesalers relating to gifts of money and property to instrumentalities of government selling alcoholic and 3.2 beverages at retail, or employees of such instrumentalities or selling at reduced prices any alcoholic beverages as an inducement or remuneration for other purchases of such beverages.

#### *Authorized Purchasers*

Patronage at military installation facilities is limited to uniformed personnel and their dependents, military personnel of foreign nations on duty with the United States Armed Forces, retired personnel and their dependents, unremarried widows of members of the uniformed services, who died while on extended active duty, contract surgeons during the period of their contract, paid uniformed personnel of the Red Cross assigned to duty within an activity of the Armed Forces, official organizations or activities of the Armed Forces which are composed of personnel on active duty, and Government departments or agencies outside the Defense Department under certain circumstances. These persons and organizations are entitled to unlimited privileges. Honorably discharged veterans, when hospitalized, or where totally disabled while undergoing medical care and treatment, exchange employees, and civilian employees of the Government residing on an installation if authorized by the Secretary of the Department concerned are entitled to limited privileges.

There are certain other instances where very limited privileges are authorized. For example, civilian employees of the Government and vis-

itors are entitled to the privilege of the soda fountain, snack bar and restaurant when determined by the installation commander that these facilities are not conveniently available from other sources.

One other group is composed of members of the reserve components during their periodic inactive training duty. These military personnel have limited privileges. While on extended active duty and active duty for training, they are entitled to unlimited privileges.

While persons with unlimited exchange privileges are entitled to purchase State tax-free beer for consumption on or off premises, exchange employees, members of the reserve components during inactive duty training, and others are not permitted to purchase State tax-free beer in bulk for off premise consumption.

#### *Diversion of Tax-free Beverages*

When this Committee was appointed, there was a general feeling from figures available at that time that the per capita consumption of alcoholic beverages by military personnel was grossly disproportionate to their number in our population. It was assumed, therefore, that a large amount of the beverages purchased tax-free by military personnel was being diverted into the hands of unauthorized consumers. To determine the accuracy of available figures and the assumptions drawn therefrom, the Committee requested the Department of Defense to indicate the number of individuals living or based in Virginia who are authorized to purchase tax-free beer, wine and distilled spirits.

In response to our request, the Department of Defense presented the following information:

**Table No. 1**  
**MILITARY PERSONNEL**

<b>30 June 1960</b>	
Army .....	39,665
Navy .....	19,024
Navy (Mobile) .....	38,139
Air Force .....	12,806
Marines .....	10,877
Coast Guard .....	1,700*
U.S. Coast & Geodetic Survey .....	144
Public Health Service .....	95**
Total .....	122,450
 <b>30 June 1961</b>	
Army .....	40,863
Navy .....	20,469
Navy (Mobile) .....	48,001
Air Force .....	13,718
Marines .....	11,884
Coast Guard .....	1,771
U.S. Coast & Geodetic Survey .....	144
Public Health Service .....	95*
Total .....	136,945

30 June 1962	
Army .....	45,518
Navy .....	22,599
Navy (Mobile) .....	47,977
Air Force .....	13,942
Marines .....	11,328
Coast Guard .....	1,754
U.S. Coast & Geodetic Survey .....	144
Public Health Service .....	95*
Total .....	143,357
30 June 1963	
Army .....	40,668
Navy .....	21,465
Navy (Mobile) .....	48,192
Air Force .....	14,419
Marines .....	11,507
Coast Guard .....	1,726
U.S. Coast & Geodetic Survey .....	153
Public Health Service .....	95*
Total .....	138,225
31 December 1963	
Army .....	38,268
Navy .....	18,027
Navy (Mobile) .....	63,778
Air Force .....	15,193
Marines .....	11,947
Coast Guard .....	1,700*
U.S. Coast & Geodetic Survey .....	143
Public Health Service .....	95*
Total .....	149,151

\* Estimated figure.

\*\* Public Health numbers are correct for 31 December 1963 and projected for other dates.

Notes: 1. Figures are not available for 30 June 1964; soonest availability of these

2. In 1962 the Army mobilized 14,039 personnel and the Navy 1,922 for the Berlin Crisis. These troops were located in Virginia as their staging area.

3. These figures for the most part are very accurate. What few estimates or projections that were made were done so on good authority.

4. "Navy (Mobile)". This figure is sometimes misunderstood. To describe adequately the three (3) major categories of Navy figures are defined as follows:

(1) "Navy"—personnel, (excluding civilians and dependents), who permanently reside in Virginia during their tour of duty.

(2) "Navy homeported"—personnel (excluding "Navy" above, civilians and dependents) who are attached to ships, aircraft squadrons, or any unit that may move about, but are assigned a "home port" as a place to stay while stateside. The units will remain at this home port while in the States and dependents usually reside at the same port or station.

(3) "Navy (Mobile)"—personnel (excluding dependents, civilians and "Navy" above) who are present in Virginia when census was taken. A large portion of this category could be included in the "Navy" homeported

category above. The remainder of the category that is not included in the homeported group comes from ships, units, squadrons, who have homeports in other states or countries and are visiting Virginia ports or stations.

(4) Example of (1), (2), and (3) above:

*Navy*—5000—will remain ashore for entire year.

*Navy (Mobile)* 10,000 (8,000 have homeport in Virginia; 2000 homeport somewhere else).

*Navy homeported*—20,000 (8,000 of this figure has been included in the *Navy (Mobile)* figure above. 12,000 of this figure can be assumed to be at sea or other stations. The dependents of all 20,000 can be assumed to be located in Virginia.

(5) Figures include active duty personnel only.

#### DEPENDENTS OF MILITARY PERSONNEL

30 June 1960	Dependent Wives
Army .....	19,793
Navy .....	8,142
Navy (Mobile) .....	16,704
Air Force .....	8,324
Marines .....	4,057
Coast Guard .....	829
S. Coast & Geodetic Survey .....	70
Public Health Service .....	46
Total .....	57,965
30 June 1961	Dependent Wives
Army .....	18,266
Navy .....	8,679
Navy (Mobile) .....	20,352
Air Force .....	8,629
Marines .....	4,397
Coast Guard .....	838
U.S. Coast & Geodetic Survey .....	67
Public Health Service .....	44
Total .....	61,262
30 June 1962	Dependent Wives
Army .....	20,665
Navy .....	9,514
Navy (Mobile) .....	20,198
Air Force .....	8,811
Marines .....	4,214
Coast Guard .....	824
U.S. Coast & Geodetic Survey .....	68
Public Health Service .....	45
Total .....	64,339

30 June 1963	Dependent Wives
Army .....	20,700
Navy .....	9,187
Navy (Mobile) .....	20,626
Air Force .....	8,709
Marines .....	4,442
Coast Guard .....	832
U.S. Coast & Geodetic Survey .....	74
Public Health Service .....	46
Total .....	64,616

31 December 1963	Dependent Wives
Army .....	17,986
Navy .....	7,824
Navy (Mobile) .....	27,680
Air Force .....	9,587
Marines .....	4,432
Coast Guard .....	810
U.S. Coast & Geodetic Survey .....	68
Public Health Service .....	45
Total .....	68,432

- Notes: 1. Figures are not available for 30 June 1964; soonest availability of these figures is 15 August 1964.  
2. Dependent wives figures computed on service-wide percentages of wives by given service. Children and other dependents not included.

30 June 1960			
Army	49.9%	Marines	37.3%
Navy	42.8%	Air Force	65.0%
30 June 1961			
Army	44.7%	Marines	37.0%
Navy	42.4%	Air Force	62.9%
30 June 1962			
Army	45.4%	Marines	37.2%
Navy	42.1%	Air Force	63.2%
30 June 1963			
Army	50.9%	Marines	38.6%
Navy	42.8%	Air Force	60.4%
31 December 1963			
Army	47.0%	Marines	37.1%
Navy	43.4%	Air Force	63.1%

3. Coast Guard, U.S. Coast & Geodetic Survey, and Public Health Service dependent wives were computed on an average of the major service percentages for dates in question:

30 June 1960	48.75%	30 June 1963	48.18%
30 June 1961	46.75%	31 Dec. 1963	47.65%
30 June 1962	46.98%		

(1) These figures were derived from service-wide percentages applicable to the given service. The percentages used for the Coast Guard, U. S. Coast & Geodetic Survey, and Public Health Service were arrived at by averaging the major service percentages.

(2) Active duty figures in Table 1 were used as a basis for computation.

(3) Wives only are included in this figure—assumption is that their children are too young to drink beer.

**Table 3**  
**RETIRED PERSONNEL & DEPENDENTS**

	Retired	Dependents
<b>30 June 1960</b>		
Army, Navy, A/F, Marines .....	19,000*	44,650
US C. & G.S./Public Health .....	47	110
Coast Guard .....	550**	1,293
<b>Totals .....</b>	<b>19,597</b>	<b>46,053</b>
<b>30 June 1961</b>		
Army, Navy, A/F, Marines .....	19,000*	44,650
US C. & G.S./Public Health .....	47	110
Coast Guard .....	550**	1,293
<b>Totals .....</b>	<b>19,597</b>	<b>46,053</b>
<b>30 June 1962</b>		
Army, Navy, A/F, Marines .....	19,000*	44,650
US C. & G.S./Public Health .....	47	110
Coast Guard .....	550**	1,293
<b>Totals .....</b>	<b>19,597</b>	<b>46,053</b>
<b>30 June 1963</b>		
Army, Navy, A/F, Marines .....	19,000*	44,650
US C. & G.S./Public Health .....	47	110
Coast Guard .....	577	1,356
<b>Totals .....</b>	<b>19,624</b>	<b>46,116</b>
<b>31 December 1963</b>		
Army, Navy, A/F, Marines .....	19,394	45,576
US C. & G.S./Public Health .....	47	110
Coast Guard .....	577	1,356
<b>Totals .....</b>	<b>20,018</b>	<b>47,042</b>

\* Projected figures using as a basis "OSD Study Sample Survey", dated 1 June 1964. December 31, 1964 figures are accurate figures from indicated report; others projected.

\*\* Estimated figures.

- Notes:
1. Data does not include retired members that have waived retired pay for various reasons.
  2. U.S. Coast & Geodetic Survey/Public Health figures are constant  $\pm$  10% for years indicated. (30 for US C. & G.S. and 17 for Public Health.)
  3. These figures are very accurate for 31 December, 1963 and are estimated to have a + or - 5% error in projecting the figures back to 30 June, 1960.
  4. All dependents were included in these figures assuming dependents of retired personnel to be old enough to drink beer.
  5. The figure of 2.35 dependents per retiree was used in the computation of this data. The figure was derived from a recent Office of the Secretary of Defense study on medical facilities.

**Table No. 4**  
**NUMBER OF CIVILIAN EMPLOYEES**

30 June 1960		
Army/AF .....	Accurate figures not available	
Navy .....		310
Marines .....		55
Coast Guard .....	Accurate figures not available	
Total .....		<u>365</u>
30 June 1961		
Army/AF .....	Accurate figures not available	
Navy .....		310
Marines .....		55
Coast Guard .....	Accurate figures not available	
Total .....		<u>365</u>
30 June 1962		
Army/AF .....	Accurate figures not available	
Navy .....		310
Marines .....		55
Coast Guard .....	Accurate figures not available	
Total .....		<u>365</u>
30 June 1963		
Army/AF .....	Accurate figures not available	
Navy .....		310
Marines .....		55
Coast Guard .....	Accurate figures not available	
Total .....		<u>365</u>
31 December 1963		
Army/AF .....	Accurate figures not available	
Navy .....		310
Marines .....		55
Coast Guard .....	Accurate figures not available	
Total .....		<u>365</u>

- Notes: 1. Naval figures include civilians living on bases at such remote stations as Yorktown and Dahlgren.
2. Army/AF figures cannot readily be obtained; an estimate from qualified sources indicates that the total figure is under 50.
3. All figures on this report are estimated from known cases. Other categories of civilian personnel who may purchase from military stores cannot be determined without an extensive survey.
4. Generally these figures are not accurate or are missing. The civilian personnel allowed to purchase from military establishments are relatively few and are handled on an individual basis.

Table No. 5

RESERVE COMPONENT ON ACTIVE & INACTIVE DUTY

30 June 1960	
Army .....	25,254
Navy .....	9,500*
AF .....	1,248
Marines .....	800*
Coast Guard .....	315
National Guard Air .....	501
National Guard Army .....	7,902
Total .....	45,520
30 June 1961	
Army .....	24,728
Navy .....	9,500*
AF .....	783
Marines .....	800*
Coast Guard .....	335
National Guard Air .....	507
National Guard Army .....	8,003
Total .....	44,656
30 June 1962	
Army .....	17,989
Navy .....	10,005
AF .....	620
Marines .....	800*
Coast Guard .....	342
National Guard Air .....	500
National Guard Army .....	8,201
Total .....	38,457
30 June 1963	
Army .....	14,415
Navy .....	8,479
AF .....	708
Marines .....	800*
Coast Guard .....	447
National Guard Air .....	542
National Guard Army .....	7,810
Total .....	33,201



31 December 1963

Army .....	15,819
Navy .....	9,092
AF .....	710
Marines .....	799
Coast Guard .....	463
National Guard Air .....	571
National Guard Army .....	7,600
Total .....	<u>35,054</u>

\* Estimated figures.

- Notes: 1. These data indicate State of Virginia ready reserve units. There are additional personnel from out of state that are not included in the Army figures as these personnel vary their training periods at Virginia camps.
2. Dependents are not included in the reserve figures.
3. These personnel have purchasing privileges only while in an active status.
4. Terminology is awkward in this category. Reserves on "Active Duty" are included in the first table. The data supplied in this category indicate State of Virginia ready reserve units.
5. Other states send troops to Virginia for training exercises but their number is difficult to determine, thus they were not included in this report.
6. Dependents were not included in this category.
7. These personnel may purchase beer only while on active duty—the period of active duty for these personnel ranges from 15 days to 45 days per year.

Table No. 6

# HOSPITALIZED AND DISABLED VETERANS

30 June 1960	Hospitalized	Disabled
Veterans Administration .....	3,304	33,271
30 June 1961	Hospitalized	Disabled
Veterans Administration .....	3,330	32,543
30 June 1962	Hospitalized	Disabled
Veterans Administration .....	3,224	33,569
30 June 1963	Hospitalized	Disabled
Veterans Administration .....	3,261	34,784
31 December 1963		
Veterans Administration .....	3,200*	35,000*

\* Projected estimates.

- Notes: 1. Personnel hospitalized in service hospitals are included in the active duty count and are not included in above data.
2. These figures are not very significant when computing personnel figures who may purchase beer. Only about 2% of the disabled veterans may have the necessary requirements to have clubs and package store privileges.
3. Disabled figures were obtained by listing the number of pension checks sent out during dates in question.
4. Some of the "hospitalized" figures are included in the "disabled" figures as a member drawing a disability check may also be hospitalized.
5. "Hospitalized" personnel cannot drink beer in VA hospitals.
6. Dependents of this category were not included.

Table No. 7

OTHERS NOT LISTED ABOVE

30 June 1960	Personnel	Dependents
*Navy Homeported .....	74,000**	31,672
30 June 1961	Personnel	Dependents
*Navy Homeported .....	75,000**	31,800
30 June 1962	Personnel	Dependents
*Navy Homeported .....	76,821	32,342
30 June 1963	Personnel	Dependents
*Navy Homeported .....	78,246	33,489
31 December 1963	Personnel	Dependents
*Navy Homeported .....	80,200	34,807

\* This figure includes most of the "Navy (Mobile)" figure found in "Active duty personnel". Many of these people were at sea during the date of census, but their dependents were ashore in Virginia.

\*\* Projected figures.

Notes: 1. Dependents computed on service-wide percentage of wives per Naval personnel:

30 June 1960	42.8% wives per man
30 June 1961	42.4% wives per man
30 June 1962	42.1% wives per man
30 June 1963	42.8% wives per man
31 Dec. 1963	43.4% wives per man

Children and other dependents are not included in these figures.

2. This category was described by table one explanation above. The percentage figure used to determine dependents was the same figure used for "NAVY" in computing Table 2 category. Wives only are included herein for the same rationale as used for Table 2 computations.

(2) Dependents living in the State of Virginia while the Service member is serving an unaccompanied tour at some overseas base is almost impossible to determine. This category of dependent was not included in this report.

#### Examples of Military Population Totals

Example #1 This example is designed to demonstrate, to some degree, the variance in possible extremes in military population for a given date.

Date 30 June 1963

Active Duty data (TAB 1) .....	138,225
Dependent wives (TAB 2) .....	64,616
Retired personnel (TAB 3) .....	20,018
Retired dependents (TAB 3) .....	47,042
Civilian purchasers (TAB 4) .....	unknown
*** Reserves purchasing (TAB 5) .....	35,054
** Hospitalized & Disabled (TAB 6) .....	700
# Dependents of Homeported .....	12,965
	<hr/>
	318,620

\* Unknown number of retirees may purchase beer who live in Virginia but are not included in these figures because they have waived retirement. (retirement pay checks was one method of determining retirees in Virginia)

\*\*If all are on active duty 30 June 1963

\*\*\* This figure is approximately 2% of the figure listed in TAB. 6. This is a high figure as some of this 2% are included in other figures.

# Assumes "Navy (Mobile)" are all homeported in Virginia.

This figure was then determined by subtracting "Navy (Mobile)" figure for this date, (47,977) from "Homeported" figure, (78,246), and determining number of dependents not listed before (12,965). The remaining Homeported personnel, (30,269) could be assumed to be at sea or at some other port on this date. This figure is underestimated as there are usually several ships and/or aircraft homeported out-of-state, visiting Virginia ports/stations, at any given time.

*Example #2* Example 1 attempted to give maximum possible figures for date 30 June 1963. This example will attempt to give minimum figures for the same date.

*Date 30 June 1963*

Active duty	138,225
Dependents	64,616
Retired	19,624
Retired dependents	46,116
Civilians	unknown
* Reserve purchasing	none
** Hospitalized and disabled	none
# Homeported dependents	6,000
Total	274,581

\* Assuming none of the units are on active duty on this date and no out-of-state units are training in Virginia.

\*\* Assuming no person on disabled list has privilege of purchasing from military establishments.

# Assuming half ( $\frac{1}{2}$ ) of dependents computed in example #1 left the State to live at home of record while their servicemen was overseas. Further, assuming no dependents from other states are temporarily residing in Virginia.

*Civilian personnel and their dependents attached to Military commands in Virginia authorized to purchase tax-free beer.*

1 August 1964

Army .....	1,147
Navy .....	604
Air Force .....	514
Marine Corps .....	55
Coast Guard .....	0
Total .....	1,807

NOTES:

- (1) These data were obtained in the large part, by inquiring directly with the Commands involved.
- (2) *Army* civilian purchase is restricted on-post consumption only. These personnel are derived from authorized open mess members and Post Exchange employees who may utilize the exchange facilities for lunch and by and large their purchases of beer are of the 3.2% variety.
- (3) *Navy* figures are largely confined to the Naval Weapons Laboratory at Dahlgren where large numbers of civilians are required to live on board the base because of the lack of civilian housing in the area. Dahlgren alone has 556 authorized purchasers of the Navy total of 604.
- (4) *Air Force* civilian purchasers are comprised of authorized members of Open Messes who are required to consume their purchases in the Mess. No package store privileges are authorized these personnel.

RETIRED MILITARY PERSONNEL AND THEIR DEPENDENTS  
RESIDING IN VIRGINIA

June 30, 1960	Retired	Dependents
Army .....	4,202	9,875
Navy .....	5,590	13,137
Air Force .....	1,079	2,536
Marine Corps .....	907	2,131
Coast Guard .....	407	956
U.S. Coast & Geodetic Survey .....	22	52
Public Health Service .....	12	28
Total .....	<u>12,219</u>	<u>28,715</u>

June 30, 1961	Retired	Dependents
Army .....	4,773	11,217
Navy .....	6,550	15,393
Air Force .....	1,357	3,189
Marine Corps .....	992	2,331
Coast Guard .....	457	1,074
U. S. Coast & Geodetic Survey .....	24	56
Public Health Service .....	13	31
Total .....	<u>14,166</u>	<u>33,291</u>

June 30, 1962	Retired	Dependents
Army .....	5,422	12,742
Navy .....	7,500	17,625
Air Force .....	1,625	3,819
Marine Corps .....	1,195	2,808
Coast Guard .....	514	1,208
U. S. Coast & Geodetic Survey .....	27	63
Public Health Service .....	15	35
Total .....	<u>16,298</u>	<u>38,300</u>

June 30, 1963	Retired	Dependents
Army .....	6,640	15,604
Navy .....	8,500	19,975
Air Force .....	2,083	4,895
Marine Corps .....	1,192	2,801
Coast Guard .....	577	1,356
U. S. Coast & Geodetic Survey .....	30	71
Public Health Service .....	17	40
Total .....	<u>19,039</u>	<u>44,742</u>

June 30, 1964	Retired	Dependents
Army .....	7,260	17,061
Navy .....	9,479	22,276
Air Force .....	2,590	6,087
Marine Corps .....	1,297	3,048
Coast Guard .....	640	1,504
U. S. Coast & Geodetic Survey .....	33	78
Public Health Service .....	19	45
<b>Total .....</b>	<b>21,318</b>	<b>50,099</b>

NOTES:

(1) In all Services it was necessary to project some data because of the unavailability of records. In each projection there was careful cross referencing and checking to determine the validity of the data accumulated. As an example the data projected for the Navy were derived from the following figures:

Date (as of)	Retired Personnel In Virginia
31 October 1961 .....	6,873
30 April 1963 .....	8,374
30 October 1963 .....	8,805
30 June 1964 .....	9,479
28 July 1964 .....	9,626

The above figures were all that were available in this area. These figures were plotted on a graph and projected through 30 June for each requested year. Using this method, a straight line extension came extremely close to bisecting all points used.

(2) Similar methods were used by the other services to obtain their data.

(3) Considering the apparent trend indicated by the graphic projection above, these figures are probably about 95% accurate.

(4) All dependent figures were derived from the world-wide percentage of 2.35 dependent per retiree.

Subsequently, the Committee requested the Department of Defense to update the information presented in the previous tables. Based upon information provided by the Director, Directorate for Statistical Services, OASD(C), the increase in eligible military purchasers to 1 May 1965 has been estimated as follows:

Additional purchasers including dependents:

(a) All alcoholic beverages (age 21 or over) .....	2,000
(b) 3.2 beer only (age 18 or over) .....	150

To supplement the above information, and to provide an appropriate base for comparison, the Committee requested the Department of Taxation to present the following tax information:

TAX INFORMATION

A. All Virginia tax computations are based on a 12 month period ending on 30 June.

B. There are two separate tax rates on beer sold in the State of Virginia. The first consists of a tax rate imposed on "Crowns and Lids". This term is used to signify bottle and cans. The second tax rate is that which is imposed on bulk beer or barrel containers. It will be noted that the tax rate imposed on bulk beer is roughly one-half that which is leveled on cans and bottle beer. (The tax will be raised on bulk beer from \$4.00 a barrel to \$6.00 a barrel on 1 July 1964. The can and bottle tax rate will remain the same).

C. The following commonly used container size are taxed on the "Crown and Lid", (can and bottle), rate—

Size	Virginia Tax
7 Oz. container	17/8¢ per unit
12 Oz. container	21/2¢ per unit
16 Oz. container	31/8¢ per unit
24 Oz. container	5 ¢ per unit
25.6 Oz. container	51/3¢ per unit
32 Oz. container	62/3¢ per unit

D. The following commonly used barrel sizes are taxed on the bulk rate.

Size	Virginia Tax
1/4 barrel .....	\$1.00
1/2 barrel (15.5 gal.) .....	2.00
Full barrel (31 gal.) .....	4.00

E. The State of Virginia allows certain agencies and organizations tax relief on the purchase of beer in their State. The vast majority of this relief is granted to the U. S. Military Forces. A minimal amount is extended to—1. Foreign Merchant Ships

2. Wholesalers who have beer go bad while beer is still in their possession.

There was no way of determining the exact percentage of tax relief to other than military organizations. An estimate received from the Commissioner of Revenue indicates that considerably less than ten (10) per cent can be attributed to organizations other than military.

F. Tax rebates issued by the State of Virginia for the Fiscal Year in question are listed below. These figures include *all* rebates issued.

1. Tax rebates on "Crowns & Lids (Cans & Bottles).

FY	AMOUNT
1961 .....	\$ 798,473.25
1962 .....	976,673.34
1963 .....	1,063,974.95

2. Tax rebates on bulk (barrel) beer.

FY	AMOUNT
1961 .....	\$ 10,976.04
1962 .....	8,525.64
1963 .....	15,334.03

3. Total tax rebates on all beer purchased (Totals of 1 & 2 above).

FY	AMOUNT
1961 .....	\$ 809,449.29
1962 .....	985,198.98
1963 .....	1,079,308.98

NOTE: The bulk beer tax refund almost doubled from FY 1962 to FY 1963 which may indicate a migration to the service clubs. This would then indicate a longer sale of can and bottle beer, in clubs, during the same period.

# VIRGINIA TAXES

(as computed from military purchases)

## FY 1961—Taxes

	Bottles/Cans	Bulk	Total
Navy .....	\$286,269	\$27,681	\$313,950
USMC .....	75,611	10,000	85,611
USCG .....	4,097	286	4,383
USAF Messes .....	8,539	3,368	11,907
A/AF Exch. ....	160,158	9,293	169,451
Army Messes .....	112,036	21,359	133,395

\$646,710

## FY 1962—Taxes

Navy .....	\$359,761	\$31,255	\$391,016
USMC .....	81,562	11,473	93,035
USCG .....	5,851	446	6,297
USAF Messes .....	12,530	3,460	15,990
A/AF Exch. ....	223,869	12,988	236,857
Army Messes .....	136,235	22,881	159,116

\$819,808

\$82,503

\$902,311

## FY 1963—Taxes

Navy .....	\$395,667	\$33,005	\$428,672
USMC .....	100,394	12,725	113,119
USCG .....	6,787	322	7,109
USAF Messes .....	18,217	4,324	22,541
A/AF Exch. ....	231,400	13,449	244,849
Army Messes .....	141,520	27,460	168,980

\$893,985

\$91,285

\$985,270

## COMPARISON OF TAX FIGURES BY FY 1961-1962-1963

TOTAL COMPUTED FROM MILITARY PURCHASES	TOTAL TAX REBATE SUPPLIED BY VIRGINIA	PER CENT OF MILITARY COMPUTED FIGURES TO THOSE SUPPLIED BY VA.
1961 \$718,697	\$ 809,449	88%
1962 \$902,311	985,199	90%
1963 \$985,270	1,079,309	91%



BEER PURCHASES  
BY MILITARY INSTALLATIONS IN VIRGINIA

FY 1961

	Bottles/Cans	Bulk	Total
Navy .....	\$1,490,912.00	\$193,771.50	\$1,684,683.50
USMC .....	362,480.03	69,456.20	431,936.23
USCG .....	21,442.27	2,379.96	23,822.23
USAF Messes.....	45,513.00	29,520.00	75,033.00
A/AF Exch. ....	792,947.98	60,102.65	853,050.63
Army Messes .....	579,095.65	162,826.86	741,922.51
	<u>\$3,292,390.93</u>	<u>\$518,057.17</u>	<u>\$3,810,448.10</u>

FY 1962

Navy .....	\$1,849,207.27	\$224,572.32	\$2,073,779.59
USMC .....	461,686.77	78,708.00	540,394.77
USCG .....	30,369.03	3,564.31	33,933.34
USAF Messes .....	71,021.00	30,663.00	101,684.00
A/AF Exch. ....	1,108,003.74	84,110.94	1,192,114.68
Army Messes .....	685,223.94	172,535.42	857,759.36
	<u>\$4,205,511.75</u>	<u>\$594,153.99</u>	<u>\$4,799,665.74</u>

FY 1963

Navy .....	\$2,011,702.88	\$235,830.55	\$2,247,533.43
USMC .....	531,996.40	88,171.00	620,167.40
USCG .....	32,973.51	2,424.71	35,398.22
USAF Messes.....	113,453.00	37,877.00	151,330.00
A/AF Exch. ....	1,147,065.41	86,976.53	1,234,041.94
Army Messes .....	736,955.11	206,269.87	943,224.98
	<u>\$4,574,146.31</u>	<u>\$657,549.66</u>	<u>\$5,231,695.97</u>

Total tax value of malt beverage crowns, lids and stamps released by the Department of Taxation during the fiscal year ending June 30, 1965 as compared with the fiscal year ending June 30, 1964.

Fiscal Year Ending:	Total Tax Value	Percentage of Increase
June 30, 1964	\$13,283,239.75	
June 30, 1965	\$14,398,709.35	8.40%

Tax value of refund credit certificates *issued* by the Department of Taxation on account of the military during the same periods.

Fiscal Year Ending:	Tax Value	Percentage of Increase
June 30, 1964	\$ 1,113,067.99	
June 30, 1965	\$ 1,215,211.79	9.18%

Tax value of refund credit certificates *issued* by the Department of Taxation on account of the military as a percentage of total tax value of malt beverage crowns, lids and stamps released by the Department of Taxation during the same periods.

Fiscal Year Ending:	Tax Value of Refund Certificates	Total Tax Value	Percentage of Total
June 30, 1964	\$1,113,067.99	\$13,283,239.75	8.38%
June 30, 1965	\$1,215,211.79	\$14,398,709.35	8.44%

Through the course of the study we have attempted to determine from all available sources whether or not there is a substantial amount of diversion of tax-free beer into the hands of unauthorized consumers. While isolated instances have been brought to our attention, we have been unable to determine from any competent evidence that there is a substantial amount of tax-free beer being so diverted.

We have also carefully considered the information presented by the Department of Defense concerning the number of authorized purchasers living or stationed in Virginia and the information from our State Department of Taxation concerning tax rebates on account of sales to the military, to determine whether an analysis of these figures might substantiate the allegation that large quantities of tax-free beer is being diverted into the hands of unauthorized consumers, to the detriment of the State's revenues. However, after careful analysis we are unable to substantiate such allegations.

It is true that the per capita consumption among the civilian population in Virginia has tended to decline somewhat over the past several years. At the same time the per capita consumption in the military has tended to increase. We feel that there are many factors which must be considered when attempting to determine the cause of such increased consumption on the part of the military. First of all, the military has in the past few years greatly increased both the quantity and the quality of the recreational facilities available to military personnel and other authorized purchasers for their enjoyment and convenience at which tax-free beverages are available. Second, the military population is generally younger than that of the civilian population and their propensity to consume alcoholic beverages incident to their recreational activities is, we believe, probably higher than that of the civilian population, generally. Third, when all authorized purchasers of tax-free beer are considered as a whole, their total number in relation to that of the adult civilian population in Virginia is not strikingly disproportionate.

However, that there is some diversion taking place, we have no doubt; we are convinced that such diversion does not come about solely for the sheer convenience of the unauthorized consumer, but for economic reasons due to the price disparity presently obtaining (i.e., approximately \$1.20 per case of 12 ounce cans of beer—one-half of which is due to its tax-free character). We believe that if this disparity between the price of the beer available on the military reservations and that available at off-post retailers were narrowed, the incentive to divert tax-free beer would be substantially lessened. We believe this would lessen the problems of supervision and control for the military as well as the State. While narrowing this margin somewhat will reduce to that extent, the benefits presently enjoyed in this area by individuals in the military services, contributions to the military welfare services will be increased substantially.

Various alternative solutions were suggested for controlling diversion of tax-free beverages. Each alternative had its advantages and disadvantages which were carefully analyzed by the Committee. It was suggested that the punishment for the possession of tax-free beer by unauthorized consumers be made a felony with severe penalties. This suggestion was carefully considered by the Committee. Conviction under such a statute would be very difficult to obtain. Since our primary concern lies in the control of the sale of alcoholic beverages and in the prevention of any loss of tax revenues, we believe this problem might be approached in a different manner more effectively. Also, the punishment which would be appropriate to a felony may be disproportionate to such offense.

It was also suggested that the Committee recommend to the military that they establish a central procurement agency for alcoholic beverages. Such agency would place orders directly with the respective brewers, who in turn would designate wholesalers within the area of the military installation who would service the respective facilities.

While this procedure would relieve the wholesalers, at least in part, of their present dilemma, we believe that its disadvantage to the military would outweigh the advantage to the wholesalers. Under present operations, inventory control and rotation of stock are services provided principally by the wholesaler to the military. Under a central procurement operation the problems of transportation, warehousing, inventory control and rotation would be shifted to the military who are not presently equipped to handle such services without incurring substantial additional costs. In addition, there are some disadvantages in this procedure to the wholesaler and brewer. Their interest or concern in such a procedure would lie primarily in the proper rotation of the beer. The character of present containers generally requires that the beer be turned over approximately every sixty days to avoid deterioration of the inner lining of the container which in turn produces what is known as stale or tainted beer. Their fear is that the military people handling the stock rotation may not realize the importance of proper rotation and allow their beer to reach the market as stale beer adversely affecting the acceptance of their product in the military market.

Another alternative suggestion was that the State require that tax-exempt beer containers be distinctly labeled "For Military Use Only". This would provide a strong psychological deterrent to diverting such beer into the hands of unauthorized consumers. However, there would be a substantial consequent disadvantage to the wholesaler. He would be required to carry a separate inventory of beer for military use only. Not only would this limit his ability to deal competitively with the military on a cost-price basis, but it would increase his operating costs by requiring separate inventory and rotation services.

Suggestions were made and considered for altering our present tax procedures relating to the sale of beer, wine and distilled spirits to military installation facilities. Procedures in other states, especially those contiguous to Virginia, were considered. A careful comparison of Virginia's procedure with that of other states convinces us that our system is as near perfect as any such system can be and involves the least inconvenience to all concerned. It is replete with safeguards which insures the State a maximum return of revenues. A summary of Virginia's procedures follows:

Procedure followed by Department of Taxation in issuing a  
tax refund certificate on account of beer shipped to  
a U. S. military or naval reservation within the  
geographical confines of Virginia *for resale*  
on the military or naval reservation

1. The Virginia excise tax is paid to the Department of Taxation by the brewery and the brewery evidences such payment by affixing official Virginia tax paid crowns, lids or stamps, as the case may be, in proper denominations, to the containers.
2. A wholesaler who sells tax exempt beer to post and naval exchanges, officers' clubs, etc., located on military or naval reservations in Virginia obtains an affidavit (Form 1014) made by a representative of the military or naval organization concerned, specifying the quantity, type of container, alcoholic content and

brand of each shipment of tax exempt beer received from such wholesaler and the date.

3. Wholesaler makes his own affidavit (Form 1015) covering the sale and delivery of tax exempt beer to the military or naval organizations during a calendar month. This affidavit gives date of shipment, name and address of purchaser, and quantity shipped broken down by sizes of containers.
4. Wholesaler submits his claim for a tax refund certificate to the Department of Taxation by forwarding to the Department his affidavit (Form 1015) supported by affidavit (Form 1014) previously made by the representative of the military or naval organization concerned.
5. Each claim for a tax refund certificate is given an office audit to determine that the quantity of beer shown on the wholesaler's affidavit agrees with the quantity of beer shown on the affidavits made by the representative of the military or naval organization concerned.
6. If the claim for the tax refund certificate is properly prepared, a tax refund certificate is issued on the basis of it to the wholesaler by the Department of Taxation. The wholesaler subsequently (for value received) assigns this certificate to a brewery. (Space is provided at the bottom of the form of the certificate for such an assignment.)
7. The brewery uses the tax refund certificate so assigned to it by the wholesaler as part payment of the excise tax due when the brewery applies to the Department of Taxation for the release of a new supply of Virginia tax paid crowns or lids or for the purchase of stamps.
8. Finally, an auditor of the Department of Taxation periodically makes a field audit of each wholesaler's claim for refund. The audit is made at the wholesaler's place of business and includes an examination of all invoices, the accounts receivable ledger, and other pertinent records of the wholesaler. From time to time, when necessary to satisfy himself as to the facts, the auditor visits the military or naval organization concerned for needed information. Errors disclosed by a field audit are corrected.

The Committee, with the approval of the Department of Defense, conducted a survey of each military installation facility located in Virginia. In every instance, the Committee representatives were treated with dignity and respect. A great deal of information was secured relating to the methods of operation at each facility, types of security used to safeguard the abuse of privileges, regulations in effect at each installation governing the sale and transportation of alcoholic beverages, etc.

Information gathered during our survey of military installation facilities indicated that there is almost a complete lack of security efforts on the part of the military authorities to prevent the unauthorized transportation of alcoholic beverages in violation of Virginia's transportation laws, off the military reservations into the civilian communities. In certain facilities information was posted regarding Virginia's laws relating to the transportation of alcoholic beverages, while in others no such notice was given.

Opening of many new facilities on military installations in Virginia during the past several years has tended to increase the difficulty of providing security against such unauthorized transportation. Strict controls which would be effective against such unauthorized transportation would require close coordination between all facilities. Otherwise purchasers could go from facility to facility acquiring the maximum authorized at each facility.

In addition, most military installations in Virginia are open installations; that is, anyone has free access to the post. Employees posted at the entrances and exists to the installation are there primarily to provide information services rather than security. Traffic surges at peak hours make it a practical impossibility for the military to mount an exhaustive check of vehicles to prevent the unauthorized transportation into the civilian community surrounding the installation.

At present, there are infrequent periodic checks of vehicles made at the military installations to determine whether or not there is any unauthorized transportation of alcoholic beverages, but such checks are not the most practical answer to the problem under present conditions of traffic. Ninety per cent of the post traffic moves through the gates at peak hours, and any attempt to make spot checks at that time is a practical impossibility if traffic is to be kept moving at a reasonable pace.

To enable Virginia authorities, as well as the military authorities, to prevent diversion of tax-free beverages into the hands of unauthorized consumers, we have recommended that Virginia's laws relating to the transportation of 3.2 beverages be amended to impose the same limitations on such beverages as is imposed upon the transportation of alcoholic beverages into or through this State in quantities in excess of one gallon unless purchased from an authorized licensee of the Virginia Alcoholic Beverages Control Board.

The Committee carefully analyzed the Department of Defense and subordinate services regulations governing the sale of tax-free alcoholic beverages at military installation facilities. There is no doubt that these regulations are salutary and are intended to provide effective control of the sale and consumption of such alcoholic beverages in the best interest of the military and of the State of Virginia. However, our survey of the individual facilities indicates that there is a distinct lack of uniformity between the Air Force, Navy and Army facilities concerning the sale and consumption of such beverages. In addition, official policies and actual facility practices sometimes differed greatly. If the State is to continue to extend these tax privileges to the military, it would appear that continuing command attention to every detail and policy of the facilities is an absolute necessity.

In addition to the restrictions imposed by regulations, installation commanders are responsible for taking all necessary measures under the Department of Defense regulations to control the sale of tax-free beverages, including, when advisable, reasonable restrictions on the quantities to be sold to each individual. This includes appropriate disciplinary action as well as removal of appropriate privileges from individuals abusing these privileges.

#### *Survey of Military Facilities*

The following is a summary of the conclusions which the Committee has drawn from the information secured in its survey of military installation facilities selling tax-free beer, wine and distilled spirits.

## CONCLUSIONS

1. Enjoyment of tax exemptions by members of the armed forces imposes an obligation on the military to exert every reasonable effort to see to it that this privilege is not abused to the detriment of the State's revenues or in contravention of the transportation provisions of the Virginia Alcoholic Beverage Control Act.

2. That the higher echelons of the armed forces are in general sympathy with this view, we have no doubt; but the evidence is such that it indicates a need for adequate supervision of the personnel who are authorized to buy and sell tax-exempt alcoholic beverages at the installations, and the purchasers at retail who transport alcoholic beverages off the installations. While there has been significant improvement during the past two years, the situation is likely to vary with changes in command and personnel. Thus, constant command attention is indicated.

3. At some installations there are limitations on the quantity of alcoholic beverages that may be purchased by one person per day; at others, there are no such limitations or the limitations apply only to particular classes of persons. All facilities require the purchasers to sign sales slips as a means of following up on the abuse of privileges; however, additional supervision and control may be required.

4. Some installations limit the quantity of alcoholic beverages that may be taken off the particular installation. Some installations post notices of Virginia's laws relative to the transportation of alcoholic beverages or information thereon is otherwise given. However, some installations seem to have made little or no effort to limit the quantity of such beverages which may be transported off the reservation. Inspection of vehicles leaving an installation for the purpose of ascertaining the quantity of alcoholic beverages such a vehicle may contain seems to be quite non-existent. Inspections when made are usually made for other purposes, as for example, to see if the vehicles contain any Government property.

However, we recognize that most military installations in Virginia are open to all and that the heavy volume of traffic prevents an exhaustive check.

5. The evidence contained in the report of the representatives of the Committee is fully convincing on the point that alcoholic beverages and 3.2 beer in large quantities are being transported off various installations, but the extent to which beverages are falling into the hands of unauthorized persons has not been ascertained.

6. Beer purchased at retail on the installations carry materially lower prices than the prices available off the installations. Wine and distilled spirits are generally within 10% of the off-post retail price. These lower prices are attributable to some extent to the State tax exemption as a matter of course, but in the case of malt beverages, to a far greater extent to the lower basic prices charged purchasers at retail on the installations. Thus, temptation to purchase such beverages in excess of one's legitimate needs and to dispose of the excess improperly is provided persons so inclined. We are pleased to note the efforts taken within the past two years by the Department of Defense to enforce limitations on individual purchases.

7. The evidence is convincing on the point that various beer wholesalers have received numerous requests from club managers, exchange managers, and purchasing agents for free beer as well as for gifts or some

other articles of merchandise or things of value, such as tickets to games, and that such requests are generally granted. Participation by wholesalers in promotional or other parties is frequent; sometimes by request and sometimes on their own initiative. Department of Defense Regulations prohibit such gifts, and we have recommended that Virginia's laws be amended to prohibit any such gifts by wholesalers.

#### ACKNOWLEDGEMENTS

We wish to express our sincere appreciation to those who have assisted the Committee in this study.

Bills to carry out the recommendations of the Committee are attached hereto.

Respectfully submitted,

WILLIAM EARLE WHITE, *Chairman*

\* HERBERT E. BICKEL

\*\* COLONEL JOSEPH H. BOTTS

\*\* COLONEL HARRY R. BURRELL

W. C. (DAN) DANIEL

\* JOHN W. HARDY

C. H. MORRISSETT

\*\* REAR ADMIRAL E. B. TAYLOR

#### SUPPLEMENT REPORT OF HERBERT E. BICKEL

The undersigned member of the Committee, while approving the main report in general, including the proposed legislation, takes exception to the conclusion that there is little if any "diversion of the tax free beer into the hands of unauthorized customers." I approved the original draft of the report which has been substantially changed and weakened, largely at the insistence, I understand, of the Defense Department representatives on the Committee.

I am convinced that the State of Virginia loses a large amount of taxes by reason of the sale of beer on defense establishments, directly or indirectly, to unauthorized civilian personnel. The disproportionate increase in the sale of beer on defense establishments as compared with the sale to civilians who do not reside on defense establishments, (67.2% in five years on defense establishments as compared to 27.46% to civilians off of defense establishments based on the figures from Tax Commissioner Morrisett's office) cannot be explained away by the statement that young servicemen consume more beer per person than do non-service youth and civilians. I feel the tax leak can be and should be lessened by reducing the differential in price for beer on and off defense establishments through appropriate administrative and legislative action.

Neither the report nor the proposed legislation, in my opinion, accomplish the objective Governor Harrison had in mind when he appointed the Committee—stoppage of the tax leak—as recently expressed to me by the Governor and relayed by me to the Committee at its last meeting.

\* See statement attached

\*\* Supplemental statements to be submitted later

I have been recently advised that defense establishments now require beer distributors to sign a certificate (copy attached) stating that the prices and terms "are at least as favorable as those offered or given to any other retail customer."

I am convinced that defense establishments do not negotiate prices with beer distributors. Their policies and buying power are used to force distributors to sell beer to retailers on defense establishments at prices which mean a loss to distributors.

If the Armed Services demand and receive such certificates from beer distributors as the condition on which their beer is bought, we see no valid reason why the State, in order to protect its tax revenues, should not enact a similar requirement as the General Assembly did in the two acts which Governor Harrison vetoed. The Attorney General had ruled that the acts were constitutional and enforceable—opinion attached.

Furthermore, the report is not in harmony with the evidence contained in the report made by the subcommittee. (ABC inspectors' survey of defense establishments.)

I do not feel that the proposed amendments to Section 4-79 and 4-115 of the Code will stop the tax leak and propose as a substitute that subsection (a) of Section 4-79 of the A.B.C. Act and the comparable section 4-115 of the 3.2 Act be amended as follows:

Section 4-79 (a) *Prohibited matters*. If any manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in this State or not, or any officer or director or any such manufacturer, bottler or wholesaler, shall have any financial interest, direct or indirect, in the business for which any retail license is issued, under the provisions of this chapter, or in the premises where the business of any person to whom such retail license has been issued is conducted, or either directly or indirectly shall sell, rent, lend, buy for, or give to any retailer within the geographical outer boundaries of the State of Virginia or to the owner of the premises on which the business of any retailer is conducted, any money, discounts, alcoholic beverages, equipment, furniture, fixtures, or gifts, with which the business of such retailer is or may be conducted, he shall be guilty of a misdemeanor.

Respectfully submitted,

H. E. BICKEL

January 10, 1966



DIRECT DELIVERY  
Purchase Order  
Army & Air Force Exchange Service

P.O. 713202  
Date: Oct. 26, 1965  
Acctg. Period No. 031  
Dept. Ltr. 2

Send Merchandise

TO: Fort Belvoir Exchange  
Bldg. S706  
Fort Belvoir, Va. 22060

Shipping Date Nov. Dec. Jan.

Ship Via XM Vendors Routing

F.O.B. Dest. Ship Prepaid

Terms K Net

(NOTE: From Date Merchandise Received)  
IMPORTANT: The following in such quantities as called for during 26, Oct.—25 Jan. 66. Approximate quantities more or less to be purchased during cited period. Any unused quantities are automatically cancelled.

Vendor is to furnish EXCHANGE with each shipment, delivery tickets in duplicate, showing complete details as to items, quantities, prices, container charges and credits, etc.

Notice: Items Not Shipped By 25 Jan. Are Automatically Cancelled. Do Not Order Back.

SELLER WARRANTS ON THE ACCEPTANCE OF THIS PURCHASE ORDER THAT THE PRICES AND TERMS SET FORTH HEREIN ARE AT LEAST AS FAVORABLE AS THOSE OFFERED OR GIVEN TO ANY OTHER RETAIL CUSTOMER OF ANY TYPE OR CATEGORY WITHOUT REGARD TO ALCOHOLIC CONTENT, EXCLUDING ANY STATE TAX.

7 BY ACCEPTANCE OF THIS ORDER/CONTRACT VENDOR WARRANTS ON THAT THE ALCOHOLIC CONTENT WILL NOT EXCEED 3.2% BY WEIGHT.

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INSTRUCTIONS TO VENDORS

1. The regional office will NOT be liable for the payment of any bills for merchandise or other property unless covered by a purchase order signed by the exchange officer.
2. ITEMIZED PACKING LIST MUST ACCOMPANY EACH SHIPMENT.
3. Separate invoices must be rendered for each order.
4. SUBJECT TO CONDITIONS ON REVERSE HEREOF.

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Exchange Officer  
VENDORS COPY

COMMONWEALTH OF VIRGINIA

Office of the Attorney General

March 25, 1964

Honorable Henry E. Howell, Jr.  
808 Maritime Tower  
Norfolk, Virginia

My dear Mr. Howell:

This will acknowledge receipt of and answer your letter of March 13, 1964, in which you inquire as to the constitutionality of House Bills 558 and 677, passed at the recent session of the General Assembly. In your letter, you mention the case of *Paul v. United States* (1963) 371 U.S. 245, 83 S.Ct. 426.

As you know, House Bill 558, as passed, purports to amend § 4-115 of the Code by adding thereto a subparagraph as follows:

“(h) No person licensed by the Board pursuant to subsections (c), (d) and (e) of § 4-25 of the Code of Virginia and pursuant to subsections (a), (b) and (c) of § 4-102 shall sell beverages to other persons for resale only at a price, exclusive of any State excise taxes, which is higher than the lowest price charged by such wholesaler on any sale of the same beverages for resale anywhere within the exterior boundaries of Virginia.”

House Bill 677, as passed, purports to amend § 4-79 of the Code by adding thereto a subparagraph as follows:

*No person licensed by the Board pursuant to subsections*

“(h) No person licensed by the Board pursuant to subsections (c), (d) and (e) of § 4-25 to sell beer at wholesale shall sell beer to any retailer at a price, exclusive of any State excise taxes, which is higher than the lowest price charged by such wholesaler on any sale of the same beer for resale anywhere within the exterior boundaries of Virginia.”

These bills are so drafted that they apply to all sales of beer and “beverages” to retailers by wholesale licensees throughout the State. They are directed at all sales of beer and “beverages” by *all* licensed wholesalers to retailers “anywhere within the exterior boundaries of Virginia.” It has long been recognized that under Amendment XXI of the United States Constitution a state has the power to standardize prices of alcoholic beverages. *United States v. Frankfort Distilleries, Inc.* 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951. It appears that in these bills the control is directed at the licensed wholesaler and not at the retailer. Consequently, in my opinion, these bills are fundamentally constitutional and valid.

However, you raise the question of the *Paul* case and inquire about its effect on the application of these bills to sales to and purchases by various retail outlets for beer and “beverages” on naval and military installations of the federal government in Virginia.

I note that the *Paul* case was concerned with milk purchased from appropriate funds by installations over which the federal government had exclusive jurisdiction. The House Bills above which you inquired are concerned with alcoholic beverages.

Amendment XXI of the United States Constitution gives the state unique prohibitive, regulatory and control powers over alcoholic beverages, which is not true of milk or other everyday food stuffs. Further, as I understand the facts, post and navy exchanges and officers' clubs and similar so called "recreation" or "sideline" activities of the naval and military establishments are operated on and make purchases from non-appropriated funds, and these exchanges and clubs purchase the great bulk of beer and "beverages" which are consumed on military installations. The *Paul* case simply does not resolve any question relative to purchases from non-appropriated fund. It leaves that issue in doubt. Neither does it deal with alcoholic beverages, over which, as mentioned, the state has the power to exercise unusual control and regulation.

There is the additional problem of the type of jurisdiction possessed by the federal government relative to the property on which might be located the various non-appropriated fund activities of the naval and military establishment which purchase beer and "beverages." This will obviously be an important factor in determining the effect of these bills on purchases by the federal military and naval facilities.

Considering all these factors, there is serious doubt, in my opinion, that the *Paul* case has any specific effect on the general application of these bills to naval and military installations in Virginia.

With kind regards,

Yours very truly,

ROBERT Y. BUTTON,

Attorney General

#### STATEMENT OF JOHN W. HARDY

While signing the report of the Committee as a whole, I feel supplementary comment is in order. Since the last meeting of the Committee, the following matters have come to my attention:

1. The Exchange Officer of some Military Installations appear to be inserting on the face of purchase orders issued to wholesalers the wording—"Seller warrants on the acceptance of this purchase order that the prices and terms set forth herein are at least as favorable as those offered or given to any other retail customer of any type or category without regard to alcoholic content, excluding any state tax."

If the Military expects such assurance from wholesalers, it would seem to follow the licensed retailers would expect the same warranty by the wholesalers. (Copy of purchase order is attached hereto.)

2. Copy of letter written under date of March 25, 1964 by the Honorable Robert Y. Button, Attorney General, relative to the constitutionality of House Bills 558 and 677 of the 1964 session of the General Assembly. (Copy of said letter attached hereto.)

It appears unless the Military is willing to abide by State Statutes and, on its own initiative, pursue equitable procurement policies and maintains sufficient controls of off premises sale of alcoholic and 3.2 beverages, legislation by the Congress may be the only effective remedy.

JOHN W. HARDY

*A BILL to amend the Code of Virginia by adding a section numbered 4-118.2, relating to the transportation of certain beverages.*

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding a section numbered 4-118.2, as follows :

§ 4-118.2. The transportation of beverages defined in § 4-99, other than beverages purchased from persons licensed to sell the same in this State, and those beverages which may be manufactured and sold without any license under the provisions of this chapter, within, into or through this State in quantities in excess of one gallon is prohibited except in accordance with regulations adopted by the Board pursuant to this section.

The Board may adopt such regulations governing the transportation of beverages defined in § 4-99, other than beverages purchased from persons licensed to sell the same in this State and those beverages which may be manufactured and sold without any license under the provisions of this chapter, within, into or through this State in quantities in excess of one gallon, that it may deem necessary to confine such transportation to legitimate purposes; and the Board may issue transportation permits in accordance with such regulations.

Any person who shall transport such beverages, other than those purchased from persons licensed to sell the same in this State and those beverages which may be manufactured and sold without any license under the provisions of this chapter, in excess of one gallon, in violation of such regulations shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars or confinement in jail for not exceeding twelve months, or both, in the discretion of the jury or of the court trying the case without a jury.

*A BILL to amend and reenact §§ 4-79 and 4-115, as amended of the Code of Virginia relating to manufacturers and wholesalers not to be interested in retail sales, and cleaning and servicing certain equipment.*  
Be it enacted by the General Assembly of Virginia:

1. That §§ 4-79 and 4-115, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 4-79. (a) Prohibited matters.—If any manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in this State or not, or any officer or director of any such manufacturer, bottler or wholesaler, shall have any financial interest, direct or indirect, in the business for which any retail license is issued, under the provisions of this chapter, or in the premises where the business of any person to whom such retail license has been issued is conducted, or either directly or indirectly shall sell, rent, lend, buy for, or give to any person who holds any retail license issued under the provisions of this chapter, or to the owner of the premises on which the business of any such person so licensed is conducted, *or to any governmental instrumentality, or employee thereof, selling alcoholic beverages at retail*, any money, equipment, furniture, fixtures or property, with which the business of such retailer is or may be conducted, *or for any other purpose, including a gift or sale of alcoholic beverages, at a reduced price, as an inducement or remuneration for other purchases of such beverages*, he shall be guilty of a misdemeanor.

(b) Licensee consenting to violation.—If any person licensed hereunder to sell at retail any alcoholic beverages shall consent to any violation of this section, he shall be guilty of a misdemeanor.

(c) Cleaning and servicing equipment.—The provisions of this section shall not, however, prevent any manufacturer, bottler or wholesaler of alcoholic beverages from cleaning and servicing, either free or for compensation, beer coils and other like equipment used in dispensing wine and beer.

(d) Sale of carbonic acid gas.—Nothing in this section shall be construed so as to prevent the sale of carbonic acid gas in containers by manufacturers, bottlers and wholesalers of alcoholic beverages to persons holding licenses to sell alcoholic beverages at retail in Virginia, provided that there is charged for such carbonic acid gas the reasonable open market price therefor in the locality where sold.

(e) Sale of ice.—Nothing in this section shall be construed so as to prevent any person, who is engaged or interested in the manufacture or sale, or both, of ice and who is also a director or officer of a manufacturer, bottler or wholesaler of alcoholic beverages licensed in this State, from selling ice to persons to whom retail licenses have been issued under the provisions of this chapter; provided that such ice is manufactured on premises separate and apart from the premises of such manufacturer, bottler or wholesaler of alcoholic beverages.

(f) Draft beer knobs and tapping equipment; bottle or can openers.—This section shall not apply to the sale, renting, lending, buying for or giving to any retailer by a manufacturer, bottler or wholesaler of alcoholic beverages draft beer knobs or tapping equipment upon which any advertising matter regarding alcoholic beverages may appear; provided, that draft beer knobs shall not exceed in value the sum of five dollars in any one year, and the tapping equipment shall not exceed in value the sum of ten dollars in any one year; provided, further, that a manufacturer, bottler or wholesaler, may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equip-

ment may be necessary for the purchaser to extract such draft beer from its container; provided, further, that a manufacturer, bottler or wholesaler may sell to any retailer any beer bottle opener or can opener upon which advertising matter regarding alcoholic beverages may appear if such opener does not exceed in value the sum of five cents and a price of not less than two cents is paid therefor.

(g) Rotation of brands of beverages.—This section shall not apply to the rotation, in the premises of retail licensees in accordance with regulations of the Board, by wholesale licensees of the Board of stocks of the brand or brands of alcoholic beverages sold by such wholesale licensees, provided such rotation is performed with the express consent in writing of such retail licensees.

§ 4-115. (a) Prohibited interest in retail business; furnishing money, equipment, etc.—No manufacturer, bottler or wholesaler of beverages, whether licensed in this State or not, nor any officer or director of any such manufacturer, bottler or wholesaler shall have any financial interest direct or indirect, in the business for which any retailer's license under this chapter is issued, or in the premises where the business of any person to whom a retailer's license has been issued hereunder is conducted; nor shall any manufacturer, bottler or wholesaler of beverages, whether licensed in this State or not, or any officer or director of any such manufacturer, bottler or wholesaler, rent, lend or give to any person licensed hereunder as a retailer, or to the owner of the premises on which the business of any such retailer is conducted, *or to any governmental instrumentality or employee thereof, selling beverages as defined in § 4-99 at retail*, any money, equipment, furniture, fixtures or property with which the business of such retailer is or may be conducted, *or for any other purpose, including a gift or sale of such beverages, at a reduced price, as an inducement or remuneration for other purchases of such beverages*. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

(b) Retail seller consenting to violation.—Any retailer consenting to any violation of this section shall likewise be guilty of a misdemeanor and upon conviction shall be punished accordingly.

(c) Cleaning and servicing equipment.—The provisions of this section shall not, however, prevent any manufacturer, bottler or wholesaler of beverages from cleaning and servicing, either free or for compensation, beer coils and other like equipment used in dispensing beverages.

(d) Sale of carbonic acid gas.—Nothing in this section shall be construed so as to prevent the sale of carbonic acid gas in containers by manufacturers, bottlers and wholesalers of beverages to persons holding licenses to sell beverages at retail in Virginia, provided that there is charged for such carbonic acid gas the reasonable open market price therefor in the locality where sold.

(e) Sale of ice.—Nothing in this section shall be construed so as to prevent any person, who is engaged or interested in the manufacture or sale, or both, of ice and who is also a director or officer of a manufacturer, bottler or wholesaler of beverages licensed in this State, from selling ice to persons to whom retail licenses have been issued under the provisions of this chapter; provided that such ice is manufactured on premises separate and apart from the premises of such manufacturer, bottler or wholesaler of beverages.

(f) Draft beer knobs and tapping equipment; bottle or can openers.—This section shall not apply to the sale, renting, lending, buying for

or giving to any retailer by a manufacturer, bottler or wholesaler of beverages of draft beer knobs or tapping equipment upon which any advertising matter regarding beverages may appear; provided, that the draft beer knobs shall not exceed in value the sum of five dollars in any one year, and the tapping equipment shall not exceed in value the sum of ten dollars in any one year; provided, further, that a manufacturer, bottler or wholesaler, may sell, rent or lend to any retailer, for use only by a purchaser of draft beverages in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beverage from its container; provided, further that a manufacturer, bottler or wholesale may sell to any retailer any beer bottle opener or can opener upon which advertising matter regarding beverages may appear if such opener does not exceed in value the sum of five cents and a price of not less than two cents is paid therefor.

(g) Rotation of brands of beverages.—This section shall not apply to the rotation, in the premises of retail licensees in accordance with regulations of the Board, by wholesale licensees of the Board of stocks of the brand or brands of alcoholic beverages sold by such wholesale licensees, provided such rotation is performed with the express consent in writing of such retail licensees.

