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of the United States

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**THE COMMITTEE ON GOVERNMENT SERVICES, CONSUMER & VETERAN'S AFFAIRS**

**WEDNESDAY, APRIL 12, 2016**

**TESTIMONY OF**

**DEVIN CARRINGTON, COMMISSIONER**

**DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS**

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GOOD MORNING THE HONORABLE JUSTIN HARRIGAN, CHAIRMAN OF THE VIRGIN ISLANDS LEGISLATURE'S COMMITTEE ON GOVERNMENT SERVICES, CONSUMER & VETERAN'S AFFAIRS AND TO THE HONORABLE MEMBERS OF THIS COMMITTEE AS WELL AS ALL OTHER DISTINGUISHED MEMBERS OF THE LEGISLATURE PRESENT HERE TODAY. THANKS FOR GIVING ME THIS OPPORTUNITY TO TESTIFY ON THE ISSUES BEFORE THIS BODY, NAMELY, THE HIGH COST OF FUEL AND FOOD IN THE TERRITORY AND ISSUES PERTAINING TO VENDORS' PLAZA.

THE DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS, AMONG OTHER THINGS, IS TASKED WITH THE RESPONSIBILITY OF REGULATING BUSINESSES THAT ENGAGE IN THE SALE OF GOODS AND SERVICES IN THE TERRITORY. TITLE 12A OF THE VI CODE AUTHORIZES THE DLCA TO MONITOR, REGULATE, AND CARRY OUT INSPECTIONS OF ALL BUSINESS ENTITIES TO ENSURE THAT THEY ARE PROVIDING CONSUMERS WITH THE REQUISITE LEVEL OF SERVICE AND QUALITY OF GOODS. FOOD ITEMS ARE REGULARLY CHECKED FOR ADHERENCE TO SELL BY DATES, PRICING, PACKAGING AND, FRESHNESS, IN THE CASE OF PERISHABLE COMMODITIES. THE VIRGIN ISLANDS DEPARTMENT OF HEALTH CHECKS FOR QUALITY OF FOOD PRODUCE.

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THE DLCA ALSO INSPECTS BUSINESSES TO ENSURE COMPLIANCE OF BUSINESS ESTABLISHMENTS REGARDING CURRENT BUSINESS LICENSES, OPERATION WITHIN THE SCOPE OF BUSINESS LICENSES, CALIBRATED SCALES AND PUMPS AND THE PRESENCE OF AIR HOSES AT GAS STATIONS. WE NOW POSSESS STATE OF THE ART EQUIPMENT TO MEASURE THE OCTANE LEVEL OF GASOLINE WHICH WE CONDUCT PERIODICALLY.

WHILE THE DLCA MONITORS SERVICE STATIONS AND FOOD STORES TO ENSURE THAT ITEMS ARE DULY PRICED AND STORES DO NOT ENGAGE IN PRICE GOUGING, THERE IS NO FORM OF PRICE CONTROL MECHANISM THAT HAS BEEN IMPLEMENTED. ACT NO. 6864 AUTHORIZES THE DLCA TO IMPLEMENT PRICE CONTROL MEASURES, HOWEVER, THERE HAS NOT BEEN ANY SUCH MEASURE TAKEN BY THE DEPARTMENT IN THE LAST TEN YEARS. AS YOU MAY BE AWARE, PRICE CONTROL IS AN EXTREME MEASURE IN A CAPITALISTIC ECONOMY AND IS NOT GENERALLY PRACTICED IN THE UNITED STATES OR ITS TERRITORIES EXCEPT FOR IN PUBLIC EMERGENCY SITUATIONS. IN FACT, WHILE THE STATE OF HAWAII AND THE COMMONWEALTH OF PUERTO RICO HAVE IMPLEMENTED PRICE CONTROL MEASURES AND WERE CHALLENGED ALL THE WAY TO THE SUPREME COURT AND WON, THOSE JURISDICTIONS HAVE REFRAINED FROM ACTIVELY UTILIZING SUCH MEASURES.

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THE DLCA MONITORS THE PRICES OF GASOLINE AND FOOD IN THE TERRITORY AND STILL CONDUCTS AND RELEASES A MONTHLY FOOD BASKET AND BI-WEEKLY FUEL SURVEYS TO THE PUBLIC. WITH THE PRICE OF OIL FALLING ON THE WORLD MARKET AND BEING REFLECTED AT THE PUMPS IN THE USA, WE ARE VERY CONCERNED THAT SUCH TREND IS NOT BEING FOLLOWED IN THE VIRGIN ISLANDS. THE DLCA CONTINUES TO ISSUE PRESS RELEASES AND ENCOURAGE THE GASOLINE SERVICE STATIONS TO PASS ON DESERVED SAVINGS TO THE CONSUMERS. AND WHILE WE HAVE SEEN REDUCTIONS IN PRICES AT THE PUMP SPECIFICALLY IN THE ST. CROIX DISTRICT, ALBEIT NOT COMMENSURATE WITH THE NATIONAL DECLINE, THE RESPONSES BY THE GAS STATIONS HAVE NOT BEEN ENCOURAGING.

AS A RESULT, THERE IS AN INITIATIVE BY THE DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS IN CONJUNCTION WITH THE VIRGIN ISLANDS DEPARTMENT OF JUSTICE TO CONDUCT A STUDY OF PRICES OF CONSUMER GOODS IN THE TERRITORY AND TO MAKE A SCIENTIFIC DETERMINATION AS TO WHETHER OR NOT THE CONSUMERS OF THE VIRGIN ISLANDS ARE BEING TREATED FAIRLY FOR THE HARD EARNED MONEY THEY SPEND. THE ATTORNEY GENERAL'S OFFICE HAS BEEN ENLISTED AND IS WORKING COLLABORATIVELY WITH THE DLCA IN THIS EFFORT AS SUCH AN INVESTIGATION COULD POSSIBLY IMPLICATE CRIMINAL AS WELL AS CONSUMER ISSUES IF PRICE/MARKET MANIPULATION

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THROUGH COLLUSION IS FOUND. I HAVE CONCLUDED THAT AVAILING OURSELVES OF OUR STATUTORY POWERS TO ENACT PRICE CONTROLS IS THE SUREST WAY CONSUMERS OF THIS TERRITORY CAN BE RELIEVED OF THE BURDEN OF HIGH PRICED CONSUMER COMMODITIES.

THE AIM OF THE STUDY FROM THE PERSPECTIVE OF THE DLCA IS TO DETERMINE A REASONABLE PROFIT MARGIN PURSUANT TO 11 VIC SECTION 1101. THIS PROVISION ALLOWS THE DLCA TO DETERMINE THE PRICES AND QUANTITIES AT WHICH PETROLEUM DERIVATIVES, INCLUDING GASOLINE, ANY ARTICLE OF FOOD AND GENERAL SUPPLIES THAT MAY BE SOLD BY WHOLESALERS, RETAILERS, PRODUCERS OR MANUFACTURERS.

AS I SAID IN MY INTRODUCTORY REMARKS DURING MY CONFIRMATION HEARING, THE FICTION OF CORPORATE PERSONHOOD PROVIDES THAT CORPORATIONS BE TREATED AS VIRTUAL PERSONS UNDER THE LAW. AND BECAUSE THE ACTUAL PERSONS BEHIND THE CORPORATIONS ARE GRANTED LIMITED LIABILITY RESPECTING THEIR PERSONAL ASSETS, SOME INDIVIDUALS USE THE PROTECTIONS OF LIMITED LIABILITY TO ACT UNSCRUPULOUSLY OR EVEN ILLEGALLY IN THEIR BUSINESS DEALINGS WITH CONSUMERS IN THE NAME OF PROFIT. WE MUST INSIST THAT THESE BUSINESSES ACT IN A CONSUMER SENSITIVE/CONSUMER FRIENDLY MANNER JUST AS IT IS INSISTED

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THAT THE GOVERNMENT BE BUSINESS FRIENDLY. THE SELFISH AND EXCESSIVE BEHAVIOR OF THESE INDIVIDUALS IS EXACTLY WHAT CONSUMER PROTECTION LAWS HAVE BEEN ENACTED TO PROTECT THE CONSUMER FROM.

IT MUST BE CLEARLY UNDERSTOOD THAT THE POWERS TO SET REASONABLE PROFIT MARGINS ON CONSUMER COMMODITIES CANNOT AND WILL NOT BE DONE IN A MANNER THAT CANNOT BE SUBSTANTIATED BY CONCRETE SCIENTIFIC EVIDENCE OF THE KIND THE STUDY MAY PROVIDE. CONCRETE EVIDENCE OF PRICE/MARKET MANIPULATION IS AN IMPERATIVE BECAUSE I HAVE NO DOUBT THAT, AS IN THE PAST, SUCH ACTION ON THE PART OF THIS DEPARTMENT WILL BE CHALLENGED. NONETHELESS, IF PRICE CONTROLS ARE WARRANTED AS A RESULT OF THE STUDY, THEY SHALL BE IMPLEMENTED.

WE ARE ACUTELY AWARE OF THE INTRICACIES AND CHALLENGES INVOLVED IN THE IMPLEMENTATION OF PRICE CONTROL MEASURES. A STUDY OF THE GASOLINE INDUSTRY IN THE VIRGIN ISLANDS WAS UNDERTAKEN BY THE DLCA IN 2004 AND 2011 WITH A VIEW TO IMPLEMENTING PRICE CONTROLS. THE PRICE CONTROL MEASURE IMPLEMENTED IN 2004 WAS AGGRESSIVELY CHALLENGED IN COURTS BY TEXACO AND ESSO WHO THEN OPERATED IN THE VIRGIN ISLANDS MARKET. THE MEASURE WAS EVENTUALLY WITHDRAWN BY THIS DEPARTMENT REPORTEDLY DUE TO ISSUES CONCERNING THE INTEGRITY OF

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THE STUDY. THEREFORE, ANY PRICE CONTROL MEASURES TAKEN BY THE GOVERNMENT MUST BE DONE AFTER A COMPREHENSIVE, SOUND AND IN DEPTH STUDY OF THE INDUSTRY. THIS WILL NO DOUBT REQUIRE FUNDING, THE HIRING OF EXPERTS IN THE FUEL INDUSTRY AND THE COOPERATION OF ALL STAKEHOLDERS. SUCH A PROCESS HAS BEEN INITIATED AND I ASK THE PUBLIC FOR ITS PATIENCE WHILE THE PROCESS IS UNDERTAKEN.

11 VIC SECTION 1101 ALSO INCLUDES LANGAUGE THAT ALLOWS FOR ANY OTHER MEASURE NECESSARY TO ACCOMPLISH THE PURPOSES AND OBJECTIVES OF THE DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS. CONSEQUENTLY, THERE ARE OTHER METHODS BY WHICH POSSIBLE PRICE/MARKET MANIPULATION CAN BE COUNTERED. THERE IS AN ECONOMIC/LEGAL TERM KNOWN AS CONSCIOUS PARALLELISM. CONSCIOUS PARALLELISM CAN BE BEST DESCRIBED AS THE ACTIONS OF POTENTIAL BUSINESS RIVALS THAT ARE BASED ON THE TENDENCY TO COORDINATE PRICES SPONTANEOUSLY, AND AS NOT PART OF AN AGREEMENT. CONSCIOUS PARALLELISM IS LEGAL, ABSENT EVIDENCE OF ACTUAL CONSENSUS OR AGREEMENT ON THE PART OF THE BUSINESSES INVOLVED TO MANIPULATE PRICES. A RECENT LEGAL ARTICLE THAT I HAVE READ SUGGESTS THAT THERE IS EVIDENCE OF CONSCIOUS PARALLELISM, SUCH BEHAVIOR CAN BE MET BY GOVERNMENT SUPPORT OF ONE OF THE BUSINESSES OPERATING IN SUCH AN ENVIRONMENT. THIS

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GOVERNMENT SUPPORT WOULD BE CONDITIONED ON THE BUSINESS SETTING AND MAINTAINING COMPETITIVE PRICE LEVELS THAT OTHER COMPETITORS IN THE MARKET WOULD BE FORCED TO MEET AT THE RISK OF MARKET SHARE LOSS. THE PRICES SET BY THE SUPPORTED BUSINESS ENTITY WOULD THEORETICALLY ACCRUE TO THE BENEFIT OF THE CONSUMER. SUCH A MODEL SHOULD BE STUDIED AND CONSIDERED BY THE GOVERNMENT OF THE VIRGIN ISLANDS.

**VENDORS' PLAZA**

THE DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS HAS JURISDICTION OVER THE VENDORS' PLAZA AND HAS ASSIGNED SPOTS TO VENDORS OPERATING THEREIN SINCE ITS INCEPTION IN 1992. AS PER DULY PROMULGATED RULES AND REGULATIONS, AN ANNUAL DRAWING IS HELD TO ROTATE VENDORS' LOCATION AT THE PLAZA AND THIS YEAR'S DRAWING TOOK PLACE ON FEBRUARY 4, 2015. ALL VENDORS ARE REQUIRED TO DRAW FOR SPOTS, EXCEPT THE FOUR FOOD VENDORS WHOSE SPOTS ARE FIXED AND PERMANENT.

IN 2010, THE RULES AND REGULATIONS GOVERNING ALL VENDORS IN THE VIRGIN ISLANDS, INCLUDING THOSE AT VENDORS' PLAZA WAS REVISED. ONE OF THE AMENDMENTS TO THE RULES AND REGULATION MANDATES THAT A VENDOR MUST BE PRESENT AT THE PLAZA AT LEAST SEVENTY-FIVE PERCENT OF THE YEAR, FAILING WHICH, GIVES RISE TO AN ACTION FOR REVOCATION OF

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THE INDIVIDUAL'S BUSINESS LICENSE. THE DLCA, HOWEVER, STILL TAKES INTO CONSIDERATION EXTENUATING CIRCUMSTANCES SUCH AS MILITARY DUTY, ILLNESS AND OTHER EMERGENCIES. THIS AMENDMENT WAS PROMULGATED GIVEN CONCERN ABOUT ABSENTEE VENDORS.

THE GENERAL APPEARANCE OF VENDORS' PLAZA CONTINUES TO BE OF SERIOUS CONCERN TO THE DEPARTMENT. IT IS NO SECRET THAT THE PLAZA IS NOT THE MOST AESTHETICALLY PLEASING SIGHT IN THE DOWNTOWN AREA. IN FACT, IN MY OPINION, THE SITE IS A SHAMEFUL EXHIBITION WITH RESPECT TO THE TOURISM INDUSTRY WE PROFESS IS "ALL AH WE". ALTHOUGH THE DEPARTMENT ALONG WITH THE TOURISM DEPARTMENT HAVE PARTNERED AND BOUGHT AND MADE TENTS AVAILABLE TO THE VENDORS FOR THE SAKE OF UNIFORMITY, THE PLAZA STILL PRESENTS AN EYE SORE TO BOTH LOCALS AND VISITORS ALIKE. NOT ONLY IS THE SITE AN EYESORE, IT IS A POOR TESTAMENT TO HOW WE VIEW AND TREAT OUR LOCAL GRASS ROOT ENTREPRENEURS. GIVEN THE CURRENT ARRANGEMENT, MANY IF NOT ALL OF THESE INDIVIDUALS ARE FORCED TO COME INTO THE PLAZA ON A DAILY BASIS SOMETIMES THREE OR FOUR IN THE MORNING TO SET UP THEIR TENT AND GOODS. THESE SAME INDIVIDUALS AFTER ALL DAY IN THE HEAT MUST THEN STAY IN THE PLAZA UNTIL SEVEN OR EIGHT IN THE EVENING TO PACK UP THEIR WARE.

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ADDITIONALLY, THE CONDITIONS UNDER WHICH THEY WORK ARE AT BEST DIFFICULT. THIS IS UNFAIR TO THESE VENDORS.

IT IS MY INTENTION TO CHANGE THIS SET OF CIRCUMSTANCES. TOWARD THAT END, I HAVE SPOKEN TO A HANDFUL OF SENATORS AND HAVE ALSO CONSULTED WITH THE COMMISSIONER GUSTAVE JAMES OF THE DEPARTMENT OF PUBLIC WORKS. WE HAVE DONE A WALK THROUGH OF THE SITE AND HE SHALL PROVIDE TO ME A PLAN FOR IMPROVEMENT OF THE SITE BASED ON MY CONCEPTION.

THE DLCA ADMINISTERS THE STATUTORILY CREATED VENDORS' PLAZA FUND WHICH CAN BE USED TO CONTRIBUTE TO THE COST OF IMPROVEMENTS AT THE PLAZA. TO MAKE SUCH IMPROVEMENTS, HOWEVER, THE DLCA WILL NEED ADDITIONAL FUNDING AND THE APPROVAL OF THE VIRGIN ISLANDS HISTORIC PRESERVATION COMMITTEE WHICH HAS PRESENTED OBSTACLES TO IMPROVEMENTS IN THE PAST AND HAS REBUFFED ANY AND ALL ATTEMPTS TO RENOVATE THE PLAZA. WE MUST NOT CONTINUE TO ALLOW PROGRESS TO BE SACRIFICED FOR HISTORIC PRESERVATION. IN FACT, BOTH ARE NOT MUTUALLY EXCLUSIVE. THE VENDORS' PLAZA IS THE DOOR TO MAIN STREET. IT IS AMONG THE FIRST SITES CREW SHIP PASSENGERS SEE AS THEY ENTER THE HARBOR. IT SHOULD APPEAR AS A PLACE THAT VISITORS WANT TO VISIT ONCE OFF THE

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SHIP. IT CURRENTLY APPEARS AS A TENT CITY. IT SHOULD BE A PLACE THAT ACCOMMODATES BOTH VISITORS, RESIDENTS AND MOST OF ALL VENDORS AS COMFORTABLY AS POSSIBLE. OUR TOURISM REVENUES MUST BE UTILIZED FOR THE BENEFIT OF ALL.

IF VENDORS' PLAZA IS TO REMAIN AT ITS PRESENT LOCATION, THERE IS NO DOUBT THAT SOMETHING HAS TO BE DONE TO IMPROVE ITS AESTHETIC VALUE. TO THIS END, I RESPECTFULLY RECOMMEND, PURSUANT TO MY STATUTORY AUTHORITY, THAT THIS ESTEEMED BODY PROPOSE AND PASS LEGISLATION THAT REMOVES VENDORS' PLAZA FROM UNDER THE AUSPICES OF THE VIRGIN ISLANDS HISTORIC PRESERVATION COMMITTEE AND PLACE IT UNDER THE JURISDICTION OF THE DEPARTMENT OF SPORTS PARKS & RECREATION. IT IS ALSO REQUESTED THAT THIS BODY PROVIDE WHATEVER FUNDS MAY BE NEEDED TO EFFECTUATE THE IMPROVEMENTS THAT WILL SHORTLY BE PROPOSED. SUCH LEGISLATION WILL ENABLE THIS DEPARTMENT TO COLLABORATE WITH OTHER GOVERNMENTAL DEPARTMENTS TO TRANSFORM VENDORS' PLAZA INTO A MODERN, AESTHETICALLY PLEASING AND CULTURALLY CONFORMING SHOPPING VENUE.

THANKS AGAIN FOR THE OPPORTUNITY TO TESTIFY ON THE ISSUES AT HAND. I STAND READY TO ANSWER ANY QUESTION THIS BODY MAY HAVE.