



CAMBRIDGE CONSUMERS' COUNCIL

831 Massachusetts Ave. Cambridge, MA 02139

Tel. (617) 349-6150

349-6153

City Of Cambridge

Paul J. Schlaver
Executive Director

serving the
residents of:

Cambridge
Boston

TO: Robert Healy, City Manager
FROM: Paul Schlaver 
DATE: February 12, 1997

RE: Council Order #044, dated Nov. 25, 1996 Report on Scanning Errors at
Lechmere and Osco Drugs

Please excuse the delay with this report. The CONSUMER ADVISORY COMMISSION has been regularly discussing issues of item pricing in supermarkets and also scanning problems that may be occurring in such stores as Lechmere's and Osco's. The Commission was able to discuss these topics in depth at our January 8th meeting since the Sealer for Cambridge, Francis Tobin, was able to be present.

The following is the summary of that discussion as recorded in the minutes (that will be presented for approval at tonight's monthly meeting of the Commission):

Fran Tobin gave an overview of Weights & Measures. As a one person office, Fran is responsible for sealing taxi medallions, checking scales, gas station pumps, and the unit pricing in the City of Cambridge. He actually goes shopping in stores to spot check. Fran didn't think there were really any ongoing problems in Cambridge retail stores. He didn't think the local businesses were abusing their responsibility to accurately weigh and price goods.

I explained to Fran Tobin and the Advisory Commission that I turned the Lechmere's complaint over to the State Division of Standards and not his office because the Cambridge Lechmere's is just one of several of their stores in Massachusetts and the corporate offices are out of state. I believed that if the claimed repeated scanning errors, as stated by the Cambridge consumer in her complaint, really did occur, it was a corporate problem meriting an investigation beyond the powers of the Cambridge Sealer and his persuasive powers with the Cambridge store manager.

I agree that neither Fran's office nor mine has any reason to believe that Cambridge consumers are being repeatedly victimized by scanning errors in our retail stores. But I believe that the extensive spot checking that the State Division of Standards did at five Lechmere's and that the City of Boston's Weights and Measures Department did at the various Osco's located in the City of Boston is very telling. These investigations indicate to me that a company with a distant corporate headquarters that controls the data input of prices and sale price changes in the computers at all their locations needs monitoring on a state level. Neither investigation found that the local individual store manager has the access or ability to override the computer when it discovered errors. Also, apparently, there was no incentive or regular mechanism to foster self-inspection in the local store and inform the corporate office of errors found.

I attended and testified in my capacity as chairman of the Massachusetts Consumers Coalition at the five hour state house hearing before Senator Cheryl Jacques's Post Audit and Oversight Committee. I spoke about the Lechmere situation as well as my belief that there must be adequate state and local inspections and enforcement mechanisms so businesses have enough incentive to do more self-policing of their systems for errors and also face fines for repeated failures. I also spoke on behalf of the retention of individual item pricing in supermarkets even if the industry adds electronic shelf tags.

The Jacques committee issued a report that may trigger some legislative and regulatory changes that could impact Cambridge. Currently, the City must pursue weights and measures violations in criminal court rather than being able to issue "tickets" and administrative civil fines. The local inspectors should have the authority to check for violation of the item pricing of individual grocery items as required by law and issue on the spot fines for violation. Currently the local inspectors can only enforce the unit pricing law, in other words, the shelf tags with price per pound/ unit, etc. information. I have attached the executive summary of the Jacques Report that called for more local authority.

As you and the City Council knows, my office has been part of a surveying effort to determine the opinion of consumers about the proposal of the grocery industry to add electronic shelf tags in supermarkets so that the electronic shelf price is directly tied to computer at the cash register (which is controlled as indicated above by the corporate headquarters data entry system). The industry will only spend the money to add this "consistency guarantee" if it can obtain an exemption from state item pricing law. In other words, no individual price tags on grocery items would remain.

The "Supermarket Survey" is on the Consumers' Council Home Page and has been highlighted on the index of the Cambridge Home Page. Translations into Haitian-Creole and Spanish are now in certain locales of the city to gather more opinions. Others have been sent out with complaint forms. The preliminary results indicate a high preference for the retention of individual price stickers whether electronic shelf tags are added or not. Final totals should be ready for announcement in early March.

I wish to report that I have spoken directly with Director Michael Duffy, the new head of the State Office of Consumer Affairs and Business Regulation, the oversight agency of the Division of Standards. I am confident at this point that he will consider implemented some needed reforms in the weights and measures area. I also believe he is willing to listen to public opinion on the item pricing/electronic shelf tag debate.

In conclusion I would said that this is an issue of utmost priority for me as Director of the Consumers' Council and Chairman of the state-wide Consumers Coalition. Also the Consumer Advisory Commission feels strongly that every effort should be made to ensure that pricing information and accuracy is the order of the day. The Commission is still considering holding a public hearing on the matter if it appears that the legislature or state agencies might choose to go backwards instead of forwards with this goal. I would expect that the Commission will, at least, issue a statement suitable to be conveyed to the City Council, State Legislature or other relevant officials when the survey is completed.

attachment

cc. Consumer Advisory Commission members

Executive Summary

When you purchase a pound of apples, buy a gallon of gasoline, order a cord of firewood, ride downtown in a taxi, or have 100 gallons of heating oil delivered to your home, you are relying on the accuracy of a weighing or measuring device to ensure that you get what you pay for. When you pick up a loaf of bread and a gallon of milk at your local supermarket, you are often relying on the accuracy of a checkout scanner to ensure that you are not overcharged. In any of these situations, you are relying on the proper enforcement of Weights and Measures laws to provide an honest marketplace.

Merchants also depend on Weights and Measures laws to provide a level playing field for commerce. Retailers should be able to trust that the laws and procedures their stores must follow are enforced uniformly across the state, and that enforcement is not lopsided, benefiting one company above others.

However, recent research shows that Massachusetts cannot take for granted Weights and Measure enforcement for consumers or uniformity of regulation for merchants.

- Massachusetts ranked last among the seven states that participated in a recent survey of scanner accuracy for the Federal Trade Commission. Over 7.5 percent of the items rung up at a checkout counter in Massachusetts were wrong. This error rate underlines the fact that Massachusetts does not require scanners to be tested regularly for accuracy.
- Unlike some other states, consumers in Massachusetts lack a viable mechanism to seek immediate remedies when they are overcharged by a checkout scanner.
- Weights and Measures enforcement in Massachusetts is a patchwork of state and local programs which generally lack the resources and the trained personnel to effectively carry out enforcement efforts. Some cities and towns invest in Weights and Measures efforts, and reap a reward of savings for consumers, but most, unfortunately, fill part-time positions with individuals who are not provided the training or the equipment to do the job right.
- Weights and Measures inspectors are not required to be licensed in Massachusetts, and there is no requirement for continuing education to keep updated in the field.
- Under current law, local inspectors must pursue violations of Weights and Measures laws through the criminal courts. Due to court overcrowding with more serious crimes, and the cost of pursuing criminal charges, few enforcement actions are initiated. As a result, violators often face no consequences for their actions. While the Division of Standards, the state agency responsible for Weights and Measures

enforcement primarily in towns with less than 5,000 people, makes some use of administrative fines, local jurisdictions must use the cumbersome and overburdened court system.

- Equipment necessary to conduct modern Weights and Measures enforcement is unavailable to almost all inspectors.
- Because local inspectors charge an accuracy certification (sealing) fee and state inspectors do not, some merchants must pay an annual sealing fee while others, inspected by the Division of Standards, pay nothing.
- Local inspectors are not authorized to check for violations in the state item pricing law, which requires most items in a food store to be individually marked for price.
- The current record-keeping format is woefully outdated. In addition, one-third of Massachusetts cities and towns failed to submit an annual report on their Weights and Measures programs last year, as required by law.
- Finally, resources have been drained from the state Weights and Measures program at the Division of Standards: the Division's budget has dropped from \$726,000 in Fiscal Year 1987 to \$462,000 in Fiscal Year 1996, and there are now only five inspectors available to conduct inspections in 123 towns in Massachusetts.

Who's minding the store?

Massachusetts does not have to accept this patchwork of often ineffective Weights and Measures programs. Some towns within Massachusetts and other states have decided to invest the effort and resources necessary to develop model Weights and Measures enforcement programs. The record shows that enforcement works.

The town of Barnstable aggressively enforces Weights and Measures laws, and the impact has been dramatic. In 1995, because of local enforcement, consumers in Barnstable saved more than \$360,000 that would have been lost due to inaccurate scales, gasoline pumps, fuel truck meters and net weight of store-packaged products.

On the opposite coast, the city of Seattle, Washington began an enhanced Weights and Measures enforcement program in 1994 that included periodic tests of checkout scanners at all retail outlets. Within two years, error rates on retail scanners plunged by 75 percent.

Massachusetts must show the same willingness to lead. The Senate Committee on Post Audit and Oversight believes that there is a reasonable program of action that can effectively reform Weights and Measures laws and enforcement in Massachusetts. Recommendations are grouped into three categories: consumer protection initiatives, uniform enforcement and streamlined operations, and resources.

Consumer Protection Initiatives

- An annual scanner accuracy test should be required in addition to maintaining the annual testing requirements for all other Weights and Measures devices, such as supermarket scales and gasoline pumps.
- A Consumer Bounty program should be established that provides an immediate remedy to consumers who are overcharged by inaccurate scanners. Consumers should be entitled to ten times the difference in price, with a minimum recovery of \$1.00 per item and a maximum recovery of \$5.00 per item. If the seller refuses to pay the bounty, the consumer should be empowered to go to court to recover damages up to \$250.00 per violation plus attorney's fees. Bounties will effectively deputize Massachusetts citizens as inspectors to ensure an honest marketplace.
- The Division of Standards should compile and publish an annual list of the state's twenty worst performers for scanner accuracy.
- Retail stores should make a concerted effort to provide information to consumers on whom to contact if they have been subject to Weights and Measures violations.
- The retail industry should take the initiative to improve its scanner accuracy rates through the adoption of a self-monitoring price verification program.

Uniform Enforcement and Streamlined Operations

- Communities with populations between 5,000 and 20,000 should retain the option of keeping their current Weights and Measures program. Alternately, these communities should be able to contract with the Division of Standards to provide Weights and Measures enforcement within their jurisdictions.
- All Weights and Measures inspectors should be required to pass a licensing test administered by the Division of Standards and complete annual continuing education requirements.
- Administrative civil fines, commonly known as "parking ticket" fines, should replace use of the criminal courts for Weights and Measures violations.
- The Division of Standards should develop a model plan for regionalism that would pool the resources of local Weights and Measures programs, allowing them to purchase or lease modern enforcement equipment on a more cost-effective basis.
- The law should be changed to directly grant local inspectors the authority to conduct item pricing inspections and issue administrative fines, and the unit pricing law

should be changed to allow for administrative fines by both state and local inspectors.

- The Division of Standards should revise annual reporting requirements to better reflect modern Weights and Measures enforcement standards.

Resources

- Massachusetts should increase the resources available for Weights and Measures enforcement through the establishment of a Consumer and Merchant Protection Trust Fund.
- Revenue sources for the Consumer and Merchant Protection Trust Fund should include sealing fees, item and unit pricing fines, fines for improper use of devices, and funds generated from contracted services purchased from the Division of Standards.
- Resources raised through the Consumer and Merchant Protection Trust Fund should be expended for enhancement of Weights and Measures Enforcement on a state-wide level, including equipment purchases, grants to local communities, and training of state and local inspectors.



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307



EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

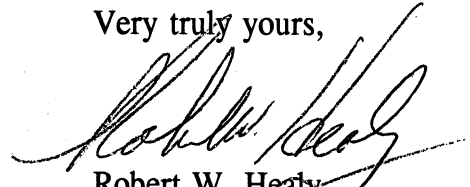
RICHARD C. ROSSI
Deputy City Manager

February 24, 1997

To The Honorable, The City Council:

In response to Awaiting Report Item Number 9, regarding reports of scanning errors at Lechmere and Osco Drug, please find attached a status report submitted by Paul Schlaver, Executive Director of The Consumer Council. I will continue to the City Council updated on this situation

Very truly yours,



Robert W. Healy
City Manager

RWH/dls

Consent Agenda #3

S-85

Relative to Awaiting Report Item
Number nine, regarding the report of
scanning errors at Lechmere and Osco Drug.

In City Council February 24, 1997

PLACED ON FILE