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THE SFA
BUSINESS REVIEW



Volume Two
Number One

Spring 1976

Review and Outlook

Improving Your Community's Chances of
Attracting New Business and Industry

Seven Keys to Small Business Success

Tax Information for a New Business

Risk Management and Insurance for the
Small Businessman

The Small Business Institute (SBI):
Free Consulting for Your Firm

Legal Regulation of Small Business -
An Outline

Bureau of Business and
Economic Research

School of Business

Stephen F. Austin State University

Nacogdoches, Texas



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Nacogdoches, Texas

School of Business
Dr. Frank J. Lauderdale, Dean

Bureau of Business and Economic Research
Dr. Charles W. Brown, Director

The objective of the School of Business in publishing the SFA Business Review is to provide information that will be of interest to the business and industrial community of the Deep East Texas Area.

REVIEW AND OUTLOOK

Charles W. Brown, Ph.D.
Department of Economics

The American economy, suffering from the fever of recession during much of the past two years, is healthier and more robust than it has been in some time. A discussion of national, state, and local economic conditions follows.

The National Economy

Economic activity across the nation is on the upswing. Unemployment in mid-April stood at 7.5 percent, down considerably from the 9.2 percent peak in May of 1975, and it is expected to move down gradually to the 7.0 percent area by the end of the year.

The rate of inflation has slowed from the hectic pace of the last two years, but an 0.8 percent jump in wholesale prices in April (9.6 percent annual rate) indicates that price stability continues to elude us. The consensus view holds that prices will likely rise at about a 6 percent rate for 1976.

Recent rises in retail sales, production, and employment have created an environment of optimism that should be conducive to increases in capital investment. In addition, profits have moved up substantially since last spring. Therefore, expansionary forces should prevail in the economy for the next several months.

The State Economy

The economy of Texas remains strong, and has led the recovery of the national economy. Unemployment in Texas has been well below the national level and industrial production in the state has been stronger than U.S. industrial production.

Studies by the Bureau of Business Research at the University of Texas at Austin show that manufacturing in Texas was basically immune to the recent recession because demand remained strong for most of the major products such as oil field machinery, chemicals, and petroleum products.

Residential construction during the first quarter of 1976 was running well ahead of the same period a year earlier, and total business activity in Texas was showing a 10 percent increase over last year. The Texas economy should continue to strengthen as the national economy gains momentum.

Local Economic Conditions

The Deep East Texas Area has benefited from the strengthening of the national economy. A survey of important economic indicators of the Deep East Texas Area is presented below.

Banking Activity

Deposits in reporting banks in the Deep East Texas Area were running well ahead of the 1975 levels during the first quarter of 1976. Lending activity was strong except for a slight drop in commercial loans during January of 1976 compared with the previous January. Table 1 presents the picture of banking activity during the first quarter in relation to last year.

TABLE 1. BANKING ACTIVITY

	Change From One Year Ago During:		
	<u>January</u>	<u>February</u>	<u>March</u>
Demand Deposits	+11.7%	+2.4%	+5.3%
Time Deposits	+12.9%	+14.4%	+13.7%
Total Deposits	+12.1%	+9.5%	+9.6%
Loans Outstanding	+10.2%	+9.1%	+10.8%
Installment Loans	+6.8%	+13.8%	+14.5%
Commercial Loans	-1.5%	+5.8%	+6.9%

Construction Activity

Residential construction in the Deep East Texas Area followed the state pattern and surged upward during the January-March period. Non-residential construction fluctuated in comparison with a year ago. Table 2 shows the changes from last year.

TABLE 2. CONSTRUCTION ACTIVITY

	Change From Last Year During:		
	<u>January</u>	<u>February</u>	<u>March</u>
Value of Residential Permits	+44.9%	+60.6%	+2.5%
Value of Non-residential Permits	-18.4%	+30.7%	-43.9%

Electric Power

Commercial and industrial use of electricity rebounded sharply during winter and early spring, and by March stood 9.0 and 27.1 percent respectively above the amount consumed the previous March. The industrial figure is particularly significant, because during most of last year industrial use of electricity was proceeding at a lower level than the 1974 rate. During the past year industrial use has switched from a minus 13 percent to a plus 27 percent, indicative of a sharp rise in industrial activity.

Food Costs

The food cost "market basket", based upon prices of 81 items in national chains operating in the Deep East Texas Area, stood 8.2 percent above the cost of the same items a year earlier in April. Most of the price increase occurred last summer, and prices have held remarkably stable since late fall.

Table 3 presents the trend during the first half and second half of the past year.

TABLE 3. COST OF THE MARKET BASKET

<u>Month</u>	<u>Total Cost of the 81 Items</u>
April 1976	\$68.17
Nov. 1976	\$68.41
April 1975	\$62.98

Food cost data released by the Bureau of Labor Statistics for the month of March showed that prices in Dallas and Houston stood 4.1 percent and 4.4 percent respectively above those of March 1975. The U.S. Department of Agriculture is predicting that food costs will rise about three percent in 1976.

IMPROVING YOUR COMMUNITY'S CHANCES OF ATTRACTING NEW BUSINESS AND INDUSTRY

M. Dudley Stewart, Jr., Ph.D.
Department of Economics

Introduction

Although it is exceedingly difficult in most instances for small communities to attract new business and industry, apparently few set about it in logical, organized fashion that will improve their chances for success. Thus, the purpose of this brief article is to suggest an approach that will tend to enhance their abilities to do so.

Appoint a Community Economic Development Group

The prime leaders of a community should appoint an economic development group composed of, say, five specialized teams: (1) a deliberative team, (2) a research team, (3) an intelligence team, (4) a strategy team, and (5) a negotiating team. These teams should work as a group through and with the local Chamber of Commerce, if one exists. Each should consist of between three and five members, with its members appointed to reasonably long and overlapping terms in order to maintain continuity and experienced membership.

The appointment of such a group, of course, presupposes that a realistic annual budget has been established that is in line with the community's objectives and financial capabilities, however modest the latter may be.

The Deliberative Team

The deliberative team should be given the responsibility for directing and coordinating the activities of the other teams in the group. In addition, it should be charged with formulating a philosophy with respect to the types of business and industry that its community should seek to attract and those that it should seek to avoid, for whatever reasons.

The Research Team

The research team should be held accountable for conducting an initial community audit in order to determine its strengths and weaknesses, and for updating it annually. Just as important, it should be responsible for establishing an accurate, comprehensive information and data bank, keeping it updated as new information and data become available. Another of its functions should be to prepare specific forecasts and projections as needed. Finally, one of this team's major missions should be to assess in a very general way various impacts--economic, sociological, and environmental, for example--that certain businesses and industries might have on the community and its surrounding area.

In compiling its information and data bank, several sources are available to it: (1) the local Chamber of Commerce, if one exists, (2) local banks and savings and loan associations, (3) various municipal and county offices and state agencies, (4) public utility companies servicing the community, (5) various publications of the U.S. Bureau of the Census and other U.S. Government agencies such as the Economic Development Administration, (6) various history books written about the community, county, and the area, (7) The Texas Almanac, (8) the Bureau of Business Research at The University of Texas at Austin, (9) The Federal Reserve Bank of Dallas, (10) the East Texas Chamber of Commerce in Longview, and (11) the Bureau of Business and Economic Research at Stephen F. Austin State University.

In addition to preparing for the usual questions potential investors might ask relative to such factors as markets, labor, raw materials, transportation, local and state taxes, power and fuel, and community facilities, definite information on specific sites for various kinds of businesses and industries should be obtained.

For example, the research team should determine the types of sites that are available, where they are located, their terrain features and subsoil characteristics, a chemical analysis of the water supply, legal facets, land acquisition costs, and construction costs.

The Intelligence Team

The intelligence team should be charged with gathering leads and intelligence by whatever means that it can on individual firms that might be planning to expand by establishing new stores or plant facilities, and on potential first-time investors. This team's task is, perhaps, the most difficult one of all of the teams, in that few firms publicly announce their intentions in advance because they desire to avoid speculation. It should screen its leads carefully in order to avoid wasting the time and financial resources of the overall group.

As a first step in gathering leads, the team should carefully develop a network of informants. For example, a possible source might be salesmen calling on local businesses, professional persons, and industrial firms who casually mention that they have heard that a particular firm is planning to establish a new facility. The department store owner, medical doctor, or plant purchasing agent, say, would then pass the information on to the intelligence team for evaluation and investigation.

Other sources might be from personal contacts with out-of-town businessmen and friends, a local banker in casual conversation with a representative of his correspondent bank, and articles appearing in various trade journals, metropolitan and financial newspapers, and magazines.

Finally, leads also might be obtained from the East Texas Chamber of Commerce in Longview and the Texas Industrial Commission in Austin.

Not to be overlooked are potential investors from abroad. In seeking leads on foreign direct investments, in addition to the above sources, the U.S. Chamber of Commerce in Washington, D.C., foreign embassies and consulates and foreign-American Chambers of Commerce located in the United States, and the Domestic Investment Services Division of the U.S. Department of Commerce in Washington, D.C., may be queried from time to time.

The Strategy Team

The strategy team should be given the task of determining and developing the best promotional mix for general and specific presentations. Surely the first method of presenting its community's message is that of devising a basic descriptive brochure. It should be honest, objective, and to the point. Generalities, overstatements, and the inclusion of too many statistical tables and graphs should be avoided. Finally, it should be composed with both printing and mailing costs in mind.

If the budget allows, it might be advisable to formulate brief supplemental brochures or pamphlets designed to attract specific types of business and industry. And, slide presentations and other visual aids might be developed.

Advertising in trade journals, magazines, and newspapers may, at first thought, appear to be a good method. However, for small communities to do so, it might be alleged that it would most likely turn out to be a waste of financial resources. Such ads are costly and rarely yield inquiries. It might well be better to send out news releases from time to time to selected publications in an attempt to obtain some free publicity, even though their chances of being published are admittedly quite low.

The Negotiating Team

The negotiating team should be vested with the sole and full authority to bring new business and industry to the community. It should be continuously well-up on its homework and be prepared to meet with prospective investors almost anywhere at any time. It should have all of the relevant facts pertaining to the community at hand and be able to present them in effective, straight-forward fashion.

The strategy team's efforts should produce a tailored presentation mix that ought to enable the team to outperform the competition significantly.

When carrying out negotiations, discreetness and confidentiality should be observed at all times, both for competitive reasons and in order not to anger or frighten away the potential investors. Only after an affirmative agreement has been reached should a public announcement be made. And, the form it should take and who should make it should be mutually agreed upon.

Some Concluding Remarks

In small communities, it might be preferable for the five teams and their functions to be combined into as few as two or three. The number of teams in the group is not of overriding importance. It is the preservation of their functions that is important, if any of the teams are combined.

Thus, it is recommended that each community structure its economic development group in such a manner that it will effectively meet and serve its individual needs.

Finally, it would appear that if those communities seeking to attract new business and industry would do so in a manner similar to the one detailed above, their chances of obtaining favorable results may well be substantially improved.

SEVEN KEYS TO SMALL BUSINESS SUCCESS

Dillard B. Tinsley, D.B.A. and John H. Lewis, D.B.A.
Department of General Business

Starting and operating a small business is not an easy task. One estimate is that 92 percent of small businesses eventually fail. Dun and Bradstreet found that 9,915 businesses formally failed in 1974, giving the following reasons for their failures:

<u>Rank</u>	<u>Percentage</u>	<u>Reason</u>
1	40.7%	Incompetence of management
2	22.3%	Unbalanced experience of management
3	15.6%	Lack of experience in the line
4	14.1%	Lack of managerial experience
5	1.9%	Neglect
6	0.9%	Fraud
7	0.9%	Disaster
8	3.6%	Reasons Unknown

Notice that six of the eight listed causes are within the businessman's control. The following keys can help eliminate these significant causes of failure.

Key 1. You--You, the businessman, are a key to success. You have chosen not to work for someone else. You have a special drive and initiative that makes you unique. This is a business asset which cannot be duplicated.

Examine yourself and your business abilities. Determine your strengths and weaknesses. Capitalize on strengths and minimize the effects of weaknesses. This can be accomplished by getting the most from strong points and getting help in weak areas. For example, if you are a retailer who is strong in merchandising but weak in accounting, concentrate your time on merchandising and acquire aid with the accounting.

However, as time permits, you must strengthen yourself in any weak areas. Unbalanced experience is a major cause of business failure. You are responsible for the overall operations of the business, so you must know enough to evaluate how well the various parts of your business are operating. Strength in an area can be built in several ways--by reading Small Business Administration booklets, by attending workshops and executive development programs, by attending college courses in the area, or by using consultants.

Key 2. Define Your Objectives--Decide why you are in business and set goals that relate logically to your objectives. Your objective may be for the business to provide an adequate income for you and your family. This objective of adequate income should be put on a dollar basis so that it can be translated into a sales goal. Then, a strategy can be mapped out on how to achieve the sales goal, and progress toward that goal can be measured.

Key 3. Financial Analysis and Budgeting--Once you have developed a sales goal, you can translate this into a budget. The budget is a plan of action with the cost of each activity recognized and covered. One of the simplest and most useful budgets for the small business is a cash budget. Every businessman should understand the principles involved in the preparation of a cash budget. The cash budget is a valuable aid in making sure that your cash and efforts are used in the most effective manner. Small Business Administration publication number 147, Sound Cash Management and Borrowing, is recommended as a guide to preparing a cash budget.

Financial analysis provides valuable information for measuring your business performance. Ratio analysis compares present performance to (1) past performance, and (2) performance of other firms. Aggregate data is readily available from several sources. For example, the fall issues of Dun's Magazine contain average financial ratios and an explanation of their calculations for 125 lines of business.

Key 4. Develop Your Marketing Strategy--A carefully planned marketing strategy is important for the success of a small business. The first step in the development of a marketing strategy is selecting a target market. A target market is a group of customers whom you are trying to reach. It is a group of customers with similar characteristics, such as income, social class, line of business or place of residence. A few businesses can appeal to almost everyone in a local trading area, but most businesses select a more limited target market.

For example, if you own a lumber and building materials store, your primary target market might be a group of contractors. The store's first priority should be to provide what these contractors need and expect in terms of merchandise, service, prices, and credit. Promotional efforts should be written to appeal to contractors and placed so that contractors will see or hear them. Once the contractors' needs have been satisfied, if time and resources are available, the store can reach out to a secondary target market (perhaps in this case do-it-yourself home owners). The point is to select your primary target market and make sure that this group is satisfied before attempting to diversify into other areas.

The next step in developing your marketing strategy is to identify and use your differential advantage. A differential advantage is some difference between you and your competitors that makes customers want to patronize your business. A differential advantage might be derived from location, credit terms, merchandise, prices, or salespeople. Of course, the best differential advantages are related to customer benefits, such as the right merchandise at a convenient location.

Your differential advantage should be developed in terms of your target market. You must ask what characteristics your target market considers most important in the decision to patronize one business over another.

To obtain the necessary information, every small business should use marketing research. Marketing research does not have to be complicated or expensive to be effective. A

retailer should know the average income, age distribution, and major occupations of the people in his target market. A manufacturer or distributor should know the sales volume, merchandise lines, and business characteristics of his customers. Every businessman should be aware of changes and trends in his markets, and he should know his major competitors' advantages and weaknesses. Information on these points can be obtained from sources such as the local census data, Chamber of Commerce, county and city records, government publications, and personal observations. Because the most important source of information is your customer, Key 5 is vital

Key 5. Know Your Customers--An important advantage of the small businessman is his ability to interact personally with his customers, developing friendships with them. One reason that this is important is that many people like to deal with the top management of a business and they are flattered by personal attention. A differential advantage can result from personal relationships with your customers.

Another advantage of this personal relationship is that it can be an important form of marketing research. You can determine what your customers like and dislike about your business. Clues are given as to what new products or services your customers will desire in the future.

Key 6. Know Your Employees--A small business's employees are a most important resource. Take the time to (1) train them to understand how to perform their jobs, and (2) motivate them to perform the jobs efficiently. One of the primary bases for motivating employees is the manager's personal relationship with them. Employees are often motivated to work effectively and efficiently for someone who shows a real interest and concern for them. However, this concern must be honest and genuine because people can detect insincerity.

You should also periodically evaluate employee performance. Compliment them on effective performance. Spoken or written recognition gives a psychological reward that all employees need. Review areas of needed improvement from a

supportive viewpoint, offering aid in improvement. Make a special effort to identify key individuals, assuring that their rewards and recognition are sufficient--to keep them as employees and to motivate effective performance.

Key 7. Take Time to Plan--A small businessman is always pressed for time, and there is a tendency to concentrate on immediate problems. You must take time to plan. Set aside a few hours each week to plan for future conditions which may well be different from today's. Once plans are made, be flexible enough to change if unforeseen developments occur.

Conclusion

Success does not automatically follow from these keys. Talent, hard work, and ability are necessary. However, these keys do represent a systematic approach to making the most of talent, hard work, and ability.

TAX INFORMATION FOR A NEW BUSINESS

Cecil Dollar, Ph.D., CPA
Department of Accounting

A business that is just getting started has several different types of taxes that it may have to collect and pay. In order to pay these taxes and file tax returns, the owner of a small business must obtain tax numbers from both federal and state agencies. These tax numbers are:

1. Employer Identification Number for:
 - Employee FICA taxes
 - Employer FICA taxes
 - Federal Unemployment taxes
 - State Unemployment taxes
2. Texas Employment Commission Account Number for:
 - State Unemployment taxes
3. Sales Tax Number for:
 - Sales Tax Collections

Employer Identification Number

A business that has one or more employees is required to pay FICA (social security) taxes on a limited amount of wages paid to employees. The employer is also required to withhold FICA taxes and federal income taxes from the employee's wages. These taxes are reported to the Internal Revenue Service on a quarterly basis on Form 941. The employer, in order to complete Form 941 and make proper payment for the taxes, must obtain an Employer Identification Number by filing Form SS-4. This form can be obtained from the local social security office or Internal Revenue Service and must be filed within seven days after the first payment of wages.

In addition to FICA taxes, an employer may also have to pay Federal Unemployment taxes. This tax is imposed on the employer of one or more individuals for some portion of a day in each of twenty weeks in the current or preceeding calendar year or who pay \$1,500 or more of wages in a calendar quarter of a current or preceeding year. The employer Identification Number is used in filing the annual return and in making payments of the tax.

Texas Employment Commission Account Number

A business that is subject to the Federal Unemployment Tax will probably also have to pay State Unemployment Taxes. The employer must file a Status Report on a Texas Employment Commission Form within ten days from the date upon which the employer becomes subject to State Unemployment taxes. The Texas Employment Commission will then establish an account number for the employer and will send him the necessary forms for the quarterly report. The State Unemployment Tax is also required to be paid by the last day of the month following the end of the quarter. The necessary forms and other information may be obtained from the local Texas Employment Commission office.

Sales Tax Number

A person who sells goods in Texas must obtain a Limited Sales Tax permit from the Comptroller of Public Accounts. In order to obtain a permit (sales tax number) a business must complete a Sales Tax Application-Questionnaire which can be obtained from the local State Comptroller's office or from the Controller of Public Accounts in Austin. In addition to the questionnaire, a business must also fill out a Bond/Security Information form to determine the amount of bonding that may be required before a sales tax permit will be granted. The amount of the bond depends upon the sales volume and financial condition of the business and will be

not more than \$50,000 or less than \$25. The business must file quarterly sales tax returns on a form provided by the Controller of Public Accounts. Payment for quarterly sales taxes are due at the end of the month following the quarter. The Sales Tax Permit should be secured before the person sells goods to customers.

Records

A business must keep complete and accurate records of its business activities. These records should contain a detailed record of each employee's gross pay, hours worked, Income taxes withheld, and FICA taxes withheld. The firm should also keep adequate records of gross receipts from sales, rentals and taxable labor including purchase of taxable items for sales tax purposes. All employment and sales tax records are subject to audit by the Internal Revenue Service, Texas Employment Commission, Controller of Public Accounts, and other state and federal agencies. It would be advisable for most small firms to obtain accounting and tax advice from a local Certified Public Accountant.

RISK MANAGEMENT AND INSURANCE FOR
THE SMALL BUSINESSMAN

Weldon L. Smith, Ph.D.

Department of General Business

From the viewpoint of the small businessman, the simple purpose of insurance is to indemnify against loss of an accidental nature in exchange for a reasonable premium outlay. Used correctly, insurance can contribute a great deal to his success by reducing the uncertainties under which he operates. The potential benefits of good insurance management make it well worth study and attention. Many risks will involve loss possibilities so small in amount that they may be conveniently and economically absorbed as an ordinary expense of doing business. Other risks involve the possibility of crippling financial consequences. The decision to insure or not to insure should be based upon the amount of maximum possible loss rather than the probability of the occurrence of the event. Many occurrences are insurable but many are not.

The objective of the insurance program should be (1) to provide adequate insurance against every risk of significant financial consequence; (2) to choose insurance or noninsurance on loss amounts which may be properly insured or retained according to the businessman's preference; (3) to retain risks which involve small potential amounts of loss whether of frequent or infrequent occurrence.

Guidelines are offered to help the businessman decide upon whether to insure, retain the risks of exposures, and a combination of insurance and retention. Insurance should be purchased under the following situations: (1) when insurance is required by law or under a loan agreement, bond issue, construction contract, or other written legal agreement; (2) if the amount of possible loss is too large to be safely or conveniently absorbed; (3) when the

incidence of occurrence of significant financial loss is so irregular that assumption would result in unacceptable annual cost variation; and (4) when the accessory services required, in addition to indemnity, may be more economically provided by an insurance company (such as widespread or skilled claims service or boiler and pressure vessel inspections).

The businessman should retain risks when: (1) the distribution of exposures is sufficiently widespread, the amount of possible loss is so relatively small that it can be conveniently treated as a normal operating expense, and the cost of insurance appears excessive over a period of time when related to losses incurred and services received from purchasing the insurance; (2) the frequency probability is so high that some loss is almost certain to occur, the annual variation of sustained losses is within acceptable range, and no special services are required in loss settlement, inspection, and loss prevention activities, nor is insurance required by law or legal agreement; (3) the probability of occurrence is so remote that the ordinary prudent businessman will not incur any amount of premium expense for insurance (such as flood in arid or elevated regions where no flood has ever been recorded).

A combination of insurance and retention should be utilized through the use of deductibles, franchises, excess plans, or retrospective rating procedures when: (1) the premium saving offers a lower estimated combined net cost to the businessman over a period of time without impairing either the availability of essential advisory services or indemnity against serious loss; (2) customer relationships and business self-interest of the businessman are so interwoven with claim settlements that the businessman's best interest can be served by the control of payment of claims within an acceptable cost range (principally encountered in respect to products liability).

Three general classes of insurance are (1) coverages that are essential for most businesses, (2) coverages that are desirable for many firms but not absolutely necessary, and (3) coverages for employee benefits. Types of insurance that are essential in most instances are fire insurance,

liability insurance, automobile insurance, and workmen's compensation. Some of the insurance coverages that are not absolutely essential but will add greatly to the security of a business are business interruption insurance, crime insurance, glass insurance, and rental insurance. Insurance coverages that can be used to provide employee benefits include group life insurance, group health insurance, disability insurance, and loss caused by the death of a valuable employee or partner.

Good insurance management is not achieved by accident but by organization and planning. Proper insurance management involves four distinct steps: (1) recognize the various ways you can suffer loss; (2) follow the guides for buying insurance economically; (3) organize your insurance management program; and (4) get professional advice. Some of these steps deserve additional attention and will be elaborated upon. The first step toward good protection is to recognize the risks you face and decide whether or not to insure or retain the risks. Before purchasing insurance, investigate the methods by which you can reduce the costs of your coverage. Make decisions on the following points.

1. Decide what perils to insure against and how much loss you might suffer from each.
2. Cover your largest loss exposure first.
3. Use as high a deductible as you can afford.
4. Avoid duplication in insurance.
5. Buy in as large a unit as possible. Many of the "package policies" are very suitable for the types of small businesses they are designed to serve, and often they are the only way a small business can get really adequate protection.
6. Review your insurance program periodically to make sure that your coverage is adequate and your premiums are as low as possible consistent with sound protection.

To manage your insurance program for good coverage at the lowest possible cost, you will need a definite plan that

supports the objectives of your business. The following eight suggestions are necessary for good risk and insurance management:

1. Write down a clear statement of what you expect insurance to do for your firm.
2. Select only one agent to handle your insurance. Having more than one spreads and weakens responsibility.
3. If an employee or partner is going to be responsible for your insurance program be sure he understands his responsibility.
4. Do everything possible to prevent losses and to keep those that do occur as low as possible.
5. Don't withhold from your insurance agent important information about your business and its exposure to loss. Treat your agent as a professional helper.
6. Don't try to save money by underinsuring or by not covering some perils that could cause loss, even though you think the possibility of their occurring is very small. If the probability of loss is really small, the premium will probably also be small.
7. Keep complete records of your insurance policies, premiums paid, losses, and loss recoveries. This information will help you get better coverage at lower costs in the future.
8. Have your property appraised periodically by independent appraisers. This will keep you informed as to just what your exposures are, and you will be better able to prove what your actual losses are if any occur.

Get professional advice about your insurance because insurance is a complex and detailed subject that changes rapidly. A professional qualified agent, broker, or consultant can be worth their fees many times over.

A sound insurance protection plan is just as important to the success of your business as good financing, marketing, personnel management, or any other business function. And like the other functions, good risk and insurance management is not achieved by accident, but by organization and planning. A lifetime of work and dreams can be lost in a few minutes if your insurance program does not include certain elements. By using and following the suggestions outlined in this paper, you should be in a better position to evaluate insurance offerings and decide which risks you want to insure and which risks you want to retain.

THE SMALL BUSINESS INSTITUTE (SBI):
FREE CONSULTING FOR YOUR FIRM

Ed D. Roach, Head, Department
of Management and Director,
Small Business Institute

"This is the most complete survey of this type that I have seen for dealerships of this size. This will be of definite use in sales meetings and future advertisement" This is but one representative comment from the numerous businessmen in the Nacogdoches/Lufkin area who have participated in a highly innovative experiment conducted between the university and business community. Started as a pilot program at Texas Tech University, the Small Business Institute (SBI) has now extended to almost 400 universities across the country. The School of Business at Stephen F. Austin State University has participated in the SBI program since the Fall of 1973. In this interval, some 120 client cases have been given assistance.

The SBI Concept

The SBI program is a cooperative venture between the Small Business Administration (SBA) and selected schools of business throughout the U.S. It was initiated during the Fall, 1972, and has achieved excellent results during its brief four year history. The program evolved out of the mutual interest and concern of the university community and the Small Business Administration. The university community was concerned about providing relevance to students in their collegiate education; the SBA was interested in using students and faculty resources to aid small businessmen throughout the country and hopefully cut down on the alarming failure rate among small businesses.

The problem of small business failure.--The threat of failure is, of course, an ever-present one for small businesses. A major cause of failure, according to one study, is "lack of experience, including incompetence, inadequate managerial training and experience, and unbalanced experience."¹ Phrased in another way, every small businessman faces certain pitfalls, e.g., lack of experience, lack of money, the wrong location, inventory mismanagement, too much capital going into fixed assets, poor credit granting practices, taking too much out for himself, unplanned expansion, and having the wrong attitudes.² Both the university community and the SBA were of the opinion that a combining of efforts would help all parties concerned. Students could be provided a more relevant education by working with "live" business cases; and, the businessmen would be aided significantly in overcoming some of the most common "pitfalls" to failure. The lack of general business management skills has been attributed to causing 9 of 10 failures of small business in the U.S.³

The SBI concept and its advantages.--The Small Business Institute approach relies upon students of schools of business to furnish management assistance to the small business community. Generally speaking, senior and graduate students work as consultants to selected small businesses (clients). Students who participate in the SBI program earn some type of academic credit for the time spent counseling the business.⁴ Each student or team of students works under the supervision of a qualified school of business faculty member.

The involvement of faculty members in community-related affairs provides SFA the opportunity to improve the flow of communications and understanding of the School of Business by the business community. Further, the SBI approach gives the participating faculty the opportunity to associate with members of the local small business community by serving as resource persons for student counseling teams.

Figure 1 represents graphically the relationship between the SBA, the Stephen F. Austin State University School of Business, and small business establishments in the Nacogdoches/Lufkin area.

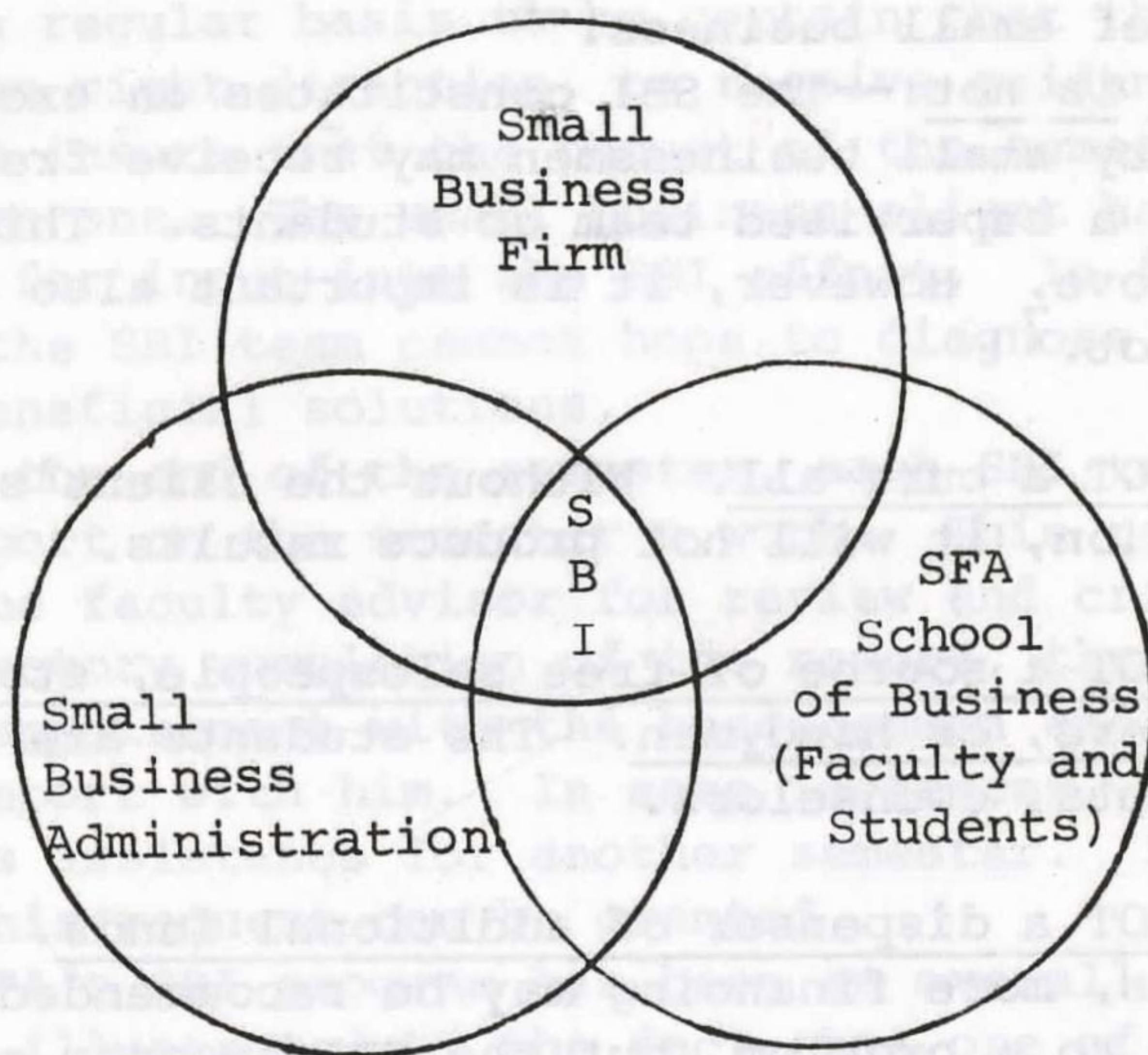


Figure 1. Small Business Institute Concept⁵

The space common to all three circles represents the Small Business Institute (SBI) concept. As a result of this relationship, all parties serve to benefit. Students get first-hand experience coping with problems and opportunities of "real-world" business firms. This experience allows students to apply concepts studied in the classroom to actual problem situations.

The small businessman benefits from the students' sharing their experiences, time, energy, and ideas. The student teams can and do spend dozens of hours sifting alternative solutions to a problem that the harassed businessman because of the demands on his time of day-to-day activities sets aside until it becomes a crisis. And, of course, the owner or manager of the small business may be introduced to new ideas and information through the efforts of the students.

Obviously, the Small Business Administration benefits from this relationship through being better able to provide management assistance to a larger clientele and thus fulfilling its objective to "encourage, assist, and protect the interest of small business."⁶

What SBI is not.--The SBI constitutes an excellent new program whereby small businessmen may receive free counseling services from a supervised team of students. This has been emphasized above. However, it is important also to stress what SBI is not.⁷

SBI is NOT a cure-all. Without the client's complete cooperation, it will not produce results.

SBI is NOT a source of free salespeople, stock clerks, bookkeepers, or handymen. The students are advisors, consultants, counselors.

SBI is NOT a dispenser of additional funds. On rare occasions, more financing may be recommended as a solution to a problem, but the SBI program cannot provide it.

SBI is NOT an informer for the Internal Revenue Service or the SBA. Client confidentiality is carefully observed.

Stephen F. Austin State University's Approach To SBI

The SFA School of Business Administration works with between 15 to 20 small businesses each semester. Typically, student teams are formed so as to provide a variety of backgrounds, e.g., accounting, marketing, finance, management. The teams are matched with businesses that appear to need their particular skills the most. Each team works under the direct supervision of a faculty advisor. During a fourteen week semester, the team will meet with the businessman an average of once every week. However, scheduling of team

visits both as to number and time of day considers the particular needs of the business and convenience of the client.

The SBI teams are required to meet with the faculty advisor on a regular basis to be certain that the team is headed in the right direction, to receive guidance, and generally to insure that the thrust of the semester's effort is a positive one. The small business client has unlimited opportunity for input into the SBI effort. In fact, without this input the SBI team cannot hope to diagnose the problem and offer beneficial solutions.

Toward the end of the semester, each SBI team writes a final report on the semester's work. This report is presented to the faculty advisor for review and critique. Upon satisfactory completion of the report, the SBI team sets up an appointment with the businessman and discusses the final report with him. In some instances, the businessman requests assistance for another semester. In the majority of cases, this request can be granted.

That SFA's SBI program has been an overall successful endeavor is illustrated by the fact that one of the School's cases was selected as the outstanding case in the Marshall District of SBA and as one of three in Texas nominated to receive national recognition. In the three years SFA has worked with the SBI program a success formula has been developed. The success formula amounts to this: a group of highly motivated students working under the supervision of a qualified professor plus an interested businessman who has a genuine problem or opportunity he wants studied equals a successful project.

The cost to the businessman is absolutely nothing in terms of dollar outlay. Yet, there is one very important cost to the businessman which cannot be discounted. That cost is time. There absolutely must be a genuine commitment on the part of the businessman to consider himself a part of the team and to spend the time necessary to accomplish concrete results. This time factor more simply stated is a resolve to give the student team sufficient amounts of his time and data in order that it may get its "teeth" into the problem or opportunity to be explored.

The SBI and You: How to Qualify

The SBI program is primarily designed for small business firms which hold SBA loans. However, quite obviously there are numerous firms in this area which may desire assistance and do not have an SBA loan. The door is not closed to them. Currently, the program allows the university to choose one non-loan holding client for each four loanholders.⁸ Therefore, the small businessman who is interested in the program should request counseling assistance even if his firm is not financially assisted by SBA. The university has been able, in most cases, to honor such requests.

What is a small business?--An often-heard comment is this: "I'd like to participate in a program such as the SBI, but my business is relatively large compared to most businesses in this area. Just what is a small business by your definition?" It is interesting to observe that "small business" now accounts for about one-half of all this country's business activities. About 95 percent of all business enterprises are classified as small. The Small Business Administration defines a small business as "one which is independently owned and operated and not dominant in its field of operation."⁹ The point of all this is simply this: if you need assistance, ask for it. The likelihood is that your firm will qualify as a small business.

What SBI can do for YOU.--Business improvements do not just happen. They must be planned.¹⁰

SBI will take your business problems seriously.

SBI will analyze your operation and recommend beneficial changes when needed.

SBI will assist you in doing such things as:

- . Reorganizing your business
- . Training your employees
- . Improving your bookkeeping
- . Making advertising pay

What YOU can do for SBI.--The point has been stressed throughout this article that the SBI program is a two-way street. At the same time that you are learning how to improve your business, you will be providing the students with valuable practical experience. Your cooperation will help test their college education. And, you will increase their respect for the many small businesses which are the backbone of the U.S. economy.¹¹

How to get in the program.--If you are interested in business improvement and would like some help:

Write or call Dr. Ed D. Roach, Director of the
Small Business Institute, Box 3060 SFA Station
Nacogdoches, Texas 75961
Telephone: 713/569-3102

Conclusion

The SBI program, in operation since 1973 at SFA, serves to provide relevant experience for students while meeting a real need of small businessmen for qualified assistance in their businesses. Directed primarily toward, but not limited to, small businesses holding SBA loans, the program promises to be a continuing avenue through which the university and business community meet and complement each other.

Footnotes

¹Curtis E. Tate, Jr., et. al., Successful Small Business Management, Dallas: Business Publications, Inc., 1975, p. 13.

²W. H. Kuehn, The Pitfalls in Managing a Small Business, New York: Dun and Bradstreet, March 1973.

³"You Can Have the Benefit of Personalized School of Business Administration Management Assistance Counseling on Your Own Premises At No Cost." U.S. Small Business Administration Brochure.

⁴Carl Hicks, "Small Business Management: The Counseling Way." Consultants' Communique, Vol. 4, Number 1. Jan., Feb., Mar., 1976. A Publication of the Managerial Consultation Division--A Professional Division of the Academy of Management

⁵Figure adapted from the one adopted for use by the SBA on a number of its recent SBI related publications.

⁶Carl Hicks, "Small Business Management: The Counseling Way."

⁷"You Can Have the Benefit of Personalized School of Business Administration Management Assistance Counseling on Your Own Premises At No Cost."

⁸Very shortly it is anticipated that the District Offices will be given discretion to relax this regulation so that more businesses may participate.

⁹Small Business Administration Annual Report, Vol. II, 1972, p. 25.

10 "You Can Have the Benefit of Personalized School of Business Administration Management Assistance Counseling on Your Own Premises At No Cost."

11 "You Can Have the Benefit of Personalized School of Business Administration Management Assistance Counseling on Your Own Premises At No Cost."

LEGAL REGULATION OF THE SMALL BUSINESS: AN OUTLINE

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Department of General Business

The Texas small businessman is beset by an ever-growing body of legal obligations and government-imposed regulation. A full description of all of these would fill a fair-sized book. This article presents the major obligations and regulations in outline form. The material is divided into four sections - (1) Organizing the small business; (2) Obligations respecting the product or service provided; (3) Obligations respecting employment and employees; and (4) Terminating the small business.

Organizing the Small Business

The Texas small business may utilize one of four forms of business organization: (1) The sole proprietorship; (2) The general partnership; (3) The limited partnership; (4) The corporation. Two other forms of business organization provided for in Texas law are the joint stock company and the business (or Massachusetts) trust. The latter two are so uncommon that they won't be considered in this outline. An outline of the characteristics of the four common forms of business organization follows:

I. The Sole Proprietorship

- A. Governing statutory law - none.
- B. Formality required to organize - none.
- C. Liability of owner - unlimited. The owner and his business are legally one - business creditors of the owner may collect their claims either out of his business assets or his personal assets. Non-business creditors may collect claims out of either personal assets or business assets.

- D. Federal income tax liability - business net profit is taxable to the owner as ordinary income.
- E. Other considerations - if the name of the business doesn't disclose the name of the proprietor, a statement of doing business under an assumed name must be filed in the public records of the county where the firm does business, as required by Sec. 5924 of the Texas Revised Civil Statutes. Failure to comply is a misdemeanor, subjecting violators to a fine.

II. The General Partnership

- A. Governing statutory law - The Texas Uniform Partnership Act, (TUPS), RCS 6132b.
- B. Formalities required to organize - none. The operation of a business by co-owners for profit creates a general partnership, even in the absence of a formal partnership agreement. NOTE, however, that it's very unwise to operate a business as a general partnership without a formal partnership agreement - the pitfalls encountered are numerous and treacherous.
- C. Liability of owners - unlimited. However, business creditors are limited to collection of claims out of firm assets if available, while non-business creditors of individual partners may not touch firm assets (though they may reach the partner's interest in the firm itself by following proper procedure.)
- D. Federal income tax liability - all net profits are taxable to the owners as ordinary income in the proportion in which such profits are divisible, regardless of whether such profits are actually distributed or not.
- E. Other considerations
 - 1. Advisability of drawing up a formal partnership agreement - in the absence of such an agreement

the Uniform Partnership Act provides that profits and losses will be shared equally; that management authority will be shared equally; that the death of a partner will dissolve the firm and that the heirs of the deceased are entitled to demand payment to them of the deceased's share of the firm's net worth; that a partner may rightfully withdraw from the firm cause dissolution at any time; and so forth. Partners may change these TUPA provisions by making other arrangements in a formal partnership agreement - and would find it most advisable to do so. Needless to say, competent legal advice would be very helpful in the drafting of a partnership agreement.

2. If the firm name doesn't disclose the names of all of the partners, the certificate of doing business under an assumed name should be recorded, as described above.

III. The Limited Partnership

- A. Governing statutory law - the Texas Limited Partnership Act, RCS 6132a.
- B. Formalities required for organization - recording of a partnership agreement in the county records of the county where the firm does business.
- C. Liability of owners - a limited partnership contains two types of partners with differing liability - limited partners and general partners. It must have at least one of each.
 1. The liability of the general partner or partners is essentially that of a general partner in a general partnership.
 2. The liability of the limited partner is limited to his capital contribution to the firm. He's not personally liable to firm creditors, UNLESS:
 - a. The partnership agreement isn't properly recorded, or

- b. The surname of the limited partner appears in the firm name, or
 - c. The limited partner participates in the management of the business, or
 - d. The recorded partnership agreement doesn't identify the limited partner as a limited partner.
- D. Federal income tax liability - essentially the same with respect to both classes of partners as is the liability of the general partner in the general partnership.
- E. Other considerations
1. Obviously, competent legal assistance is needed in drafting the partnership agreement.
 2. A certificate of doing business under an assumed name must be filed.

IV. The Corporation

- A. Governing statutory law - the Texas Business Corporation Act, (TBCA).
- B. Formalities required for organization - Articles of Incorporation must be drafted and submitted to the Texas Secretary of State for approval. If found to be in order a Certificate of Incorporation is issued, which issuance begins the legal life of the corporation. Corporate Articles of Incorporation are very complex documents - skilled legal counsel is essential for proper drafting. It should also be noted that it's possible to incorporate a business intended to operate in Texas under the laws of another state - however, this serves no useful purpose unless a very large operation is anticipated.
- C. Liability of owner(s) - limited to amount of capital contribution. HOWEVER, precautions are necessary in order to preserve this limited liability - courts will impose personal liability upon managing corporate shareholders when:

1. Organizational formalities haven't been complied with, or
2. The corporation was undercapitalized, or
3. Corporate assets are carelessly commingled with shareholder assets (especially a pitfall for the one-man corporation), or
4. Corporate formalities under the chosen form of organization aren't complied with (another one-man corporation pitfall), or
5. The corporate entity is used as a vehicle for avoiding contract obligations, or as a vehicle for fraud.

D. Federal income tax liability

1. Ordinarily the corporation is a tax-paying entity, liable for corporate income tax upon its net profits at the corporate tax rates. The shareholders are liable for personal income tax only upon net profits distributed to them in the form of dividends. NOTE that shareholders may be tempted to avoid personal income tax upon corporate profits by retaining them in the business and not paying them out in dividends - BUT corporations retaining earnings for no good business reason are subject to penalty taxation.
2. Subchapter S - a corporation having 10 or fewer shareholders and meeting other requirements set forth in the Internal Revenue Code may elect to be taxed as a partnership, if all shareholders agree and if proper documentation is filed with IRS and IRS grants permission. In such a case the corporation pays no corporate income tax - all net profits are taxable directly to the shareholders in proportion to their shareholdings, regardless of whether or not the profits are actually distributed.

E. Other tax liabilities

1. Withholding and payroll taxes - the nature of these liabilities will be outlined later in

this article. It should be noted here, however, that when a corporation becomes insolvent owing delinquent withholding taxes, the IRS may assess a 100% PENALTY against the officer, director, or employee who was responsible for the taxes not being paid when due.

2. The Texas franchise tax is a tax payable annually by all corporations incorporated under Texas law, plus all out-of-state corporations registered to do business in Texas. See Texas Taxation Code 12.01 et seq. for particulars with respect to this.

F. Organizational considerations - Texas corporations may now be structured in one of two ways:

1. As a general corporation. This is the traditional mode of organization - shareholders elect directors who appoint officers. The officers run the business - the directors elect and supervise the officers - the shareholders have no authority except the power to elect the directors.
2. As a close corporation. A corporation having 35 or fewer shareholders and meeting numerous other requirements set out in the TBCA may elect close-corporation status, under which it's possible for the shareholders to manage the corporation directly. In general, the fewer the shareholders the more desirable is this type of organization. It would be particularly helpful in the case of the one-man corporation.

G. Other considerations - the law of corporations is very complex. This outline has barely scratched the surface of the legal problems involved in the operation of the incorporated business. Grave problems may arise in the areas of shareholder rights, raising new capital by selling new securities, declaration and payment of dividends, responsibilities of directors and officers to the corporation and to its shareholders, and so forth.

Corporate management needs instant access to competent and trustworthy legal and accounting counsel at all times.

Obligations Respecting Product of the Business

The obligations of the businessman in this area approach the infinite in number. Coverage of all such obligations in detail is beyond the scope of this outline. Therefore the legal considerations will be presented in skeleton form only.

I. Considerations With Respect to Location and Operation

A. Location

1. Zoning - municipalities in Texas have authority to regulate land use by enacting zoning legislation - a business may locate only upon property zoned in such a way that it may be used by that business.
2. Taxation - local governments in Texas have authority to levy and collect real property taxes. The business will be subject to such taxation by all governmental entities having jurisdiction over its location.

B. Operation - any business of a manufacturing nature which will have occasion to emit smoke, dust or similar waste into the air; or will have cause to dump liquid wastes into waterways; will be subject to the following legislation:

1. With respect to air pollution control:
 - Federal Clean Air Act (42 USC 1857 et seq.)
 - Environmental Protection Agency regulations.
 - Texas Clean Air Act (RCS 4477-5)
 - Texas Air Control Board regulations
2. With respect to water pollution control:
 - Federal Water Pollution Control Act (33 USC 1251 et seq.)
 - Environmental Protection Agency regulations

Texas Water Code 21.001 et seq.

Texas Water Quality Control Board regulations.

3. Detailed consideration of the law in this area is beyond the scope of this outline.

II. Licensing Obligations - proprietors of small service businesses which engage in the practice of the professions (law, medicine, dentistry, pharmacy and the like) or in the practice of certain skilled trades (such as barbering) must be aware of the fact that practitioners of these professions or skilled trades must possess an appropriate license. It's of course beyond the scope of this outline to list all such licensed professions and trades.

III. Developing the Product - The Law of Intellectual Property

A. Patents

1. Governing statutory law - The Federal Patent Act of 1952
2. Patentable items include inventions, asexually-reproduced plants, and designs.
3. Patentable inventions may be processes, machines, manufactures, or compositions of matter - so long as they're new, useful and non-obvious.
4. Patents are obtained from the U.S. Patent Office.
5. Once granted, a patent gives the patentholder a monopoly upon the production and use of his inventions for 17 years which is not renewable.
6. The patentholder may of course permit others to manufacture or use the subject-matter of the patent by granting licenses.
7. The courts reserve the right to second-guess the issuance of a patent - the courts can, and sometimes do, declare duly-issued patents to be invalid.

8. The manufacture or use of a patented article without license from the patentholder constitutes patent infringement, which may subject the infringer to severe civil liability.
9. The subject of patent law is far more complex than this outline may indicate - the assistance of a competent patent lawyer is essential in all matters involving this area of the law.

B. Copyrights

1. Governing statutory law - the Federal Copyright Act of 1947, 17 USC 1 et seq.
2. Copyrightable items include books, short stories, plays, musical compositions, maps, games, and the like.
3. Copyrights are obtained from the Copyright Office of the U.S. Library of Congress.
4. Holders of copyrights have rights similar to rights of patentholders - the copyright grant is good for 28 years, and may be renewed once.
5. Copying of a copyrighted work constitutes infringement of copyright, unless the copying is done for "fair use" purposes - book review, educational, and the like.
6. Infringement of copyright will subject the infringer to severe civil liability.

C. Trade Secrets

1. Governing statutory law - none. The law of trade secrets is essentially judge-made law.
2. Codes, processes, formulae, customer lists, pricing methods, bookkeeping methods, and the like have been held to be protectable trade secrets.
3. In order for such items to be entitled to protection, the following are essential:
 - a. The protected item must be known only by the claimant of trade secret protection and those of his agents and employees having a "need to know" about it.

- b. Strong effort must be exerted to make certain that the secret remains secret.
- 4. Aside from institution of strong security measures, trade secrets may be protected by:
 - a. Non-disclosure provisions in contracts with agents and employees having access to the secret.
 - b. License arrangements with independent users of the secret forbidding non-disclosure.
- 5. Means of enforcement of protection
 - a. Suits for injunctions against disclosers, forbidding further disclosures.
 - b. Suits for damages against infringers.

D. Trade Marks

- 1. Governing statutory law
 - a. Federal - Federal Trade Mark Act, 15 USC 1051 et seq.
 - b. Texas - Texas Business & Commerce Code 16.01 et seq.
- 2. A trade mark is an identifying mark - a name, a symbol, or such - applied to a product.
- 3. A trade mark in use may be protected from misuse by others by registration.
 - a. If the mark is used in interstate commerce it's entitled to Federal registration.
 - b. If it's not used in interstate it can't be Federally registered, but it is possible to register it at the state level.
- 4. Federal registration and protection
 - a. Registration is applied for to Trademark Division of the U.S. Patent Office.
 - b. Once registered, the mark is subject to challenge for various reasons - such as infringement upon a prior registered mark - for 5 years.
 - c. User must file affidavit of continued use of the mark after 5 years - if he also files an affidavit of incontestability the mark becomes almost incontestable from

then on. Grounds for contest of an incontestable mark include, mainly:

- (1) Abandonment - non-use by the owner.
- (2) The fact that the mark has become a generic term for the type of product it's used with.

- d. The initial registration of the mark is valid for 20 years, if it's never challenged and declared invalid. It may be re-registered every 20 years, so long as still in use.
- e. Valid Federal registration establishes ownership of the mark throughout the United States - EXCEPT that a state registration made prior to Federal registration will have priority over the Federal registration in the state in question.

5. State registration and protection

- a. Registration is applied for with the Texas Secretary of State.
- b. Texas registration confers essentially the same rights within Texas that Federal registration confers nationally.
- c. Texas registration is valid for 10 years, and may be renewed every 10 years so long as the mark continues in use.

6. Misappropriation or misuse of a registered mark will of course subject an infringer to severe civil liability.

IV. The Product Itself - Safety of the Product

A. Governing statutory law

1. Generality of products sold in interstate commerce
 - a. The Federal Consumer Product Safety Act - 15 USC 2051 et seq.
 - b. Administrative regulations of the Consumer Product Safety Commission.

- B. Special statutes and regulations applicable to specific products
1. Foods, drugs, and cosmetics
 - a. The Federal Food, Drug, and Cosmetic Act, 21 USC 1471 et seq.
 - b. Food and Drug Administration administrative regulations.
 2. Meat, eggs, poultry, and dairy products
 - a. Various Federal inspection and grading acts in USC.
 - b. U.S. Department of Agriculture regulations.
 3. Pesticides
 - a. Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 135 et seq.
 - b. Environmental Protection Agency regulations.
 4. Noise-emitting products
 - a. Federal Noise Control Act, 42 USC 4901 et seq.
 - b. Environmental Protection Agency regulations
 5. Radiation-emitting products (TV sets, microwave ovens, etc.)
 - a. Federal Radiation Control for Health & Safety Act, 42 USC 263b et seq.
 - b. Department of Health, Education, & Welfare regulations.
 6. Flammable fabrics
 - a. Federal Flammable Fabric Act, 15 USC 1191 et seq.
 - b. Consumer Product Safety Commission regulations.
 7. New motor vehicles and their equipment
 - a. Federal Clean Air Act, with respect to exhaust pollutant emissions.
 - b. Environmental Protection Agency regulations.
 - c. National Traffic & Motor Vehicle Safety Act, 15 USC 1381 et seq. with respect to safety equipment.
 - d. Department of Transportation regulations.

8. Boats and their equipment
 - a. Federal Boat Safety Act, 46 USC 1451 et seq.
 - b. U.S. Coast Guard regulations
9. Aircraft and their equipment
 - a. Federal Aviation Act, 49 USC.
 - b. Federal Aviation Administration regulations.
10. Products used by employees in industry and elsewhere
 - a. Federal Occupational Safety & Health Act, 29 USC 651 et seq.
 - b. Department of Labor regulations
11. Poisons and other hazardous substances
 - a. Consumer Product Safety Act - makes possible the banning of hazardous consumer products.
 - b. Federal Hazardous Substances Act, 15 USC 1261 - makes possible the banning of hazardous substances outside the scope and jurisdiction of the Consumer Product Safety Act.
 - c. Consumer Product Safety Commission regulations.

C. A discussion of the contents of all of these statutes and regulations is precluded by lack of space. Suffice it to say that all products subject to one or more of these schemes of regulation must comply with the applicable statutes and regulations - the manufacture or sale of non-complying products in interstate commerce will subject violators to criminal and/or civil liability.

- D. Enforcement mechanisms
1. Criminal prosecution.
 2. Civil penalties and fines.
 3. Suits for damages by parties injured by products violating the applicable laws and regulations.
 4. Injunctions against violators.
 5. Seizure and destruction of offending products.

- E. State regulatory statutes and administrative regulations exist with respect to some of these product areas - but will not be covered in this outline.

V. Packaging and Labelling

A. Governing statutes

1. Most of the statutes mentioned in the above section of this outline contain packaging and labelling provisions.
2. Additional statutes of interest in this area are:
 - a. The Federal Fair Packaging and Labelling Act, 15 USC 1451 et seq. requires fair disclosure of contents of all consumer packaging in ounces or other appropriate measurement; and that packages be filled as near to the top as the nature of the product involved permits.
 - b. The Federal Poison Prevention Packaging Act, 15 USC 1471 et seq., requires that if the CPCS finds that a consumer product is dangerous to children, it may by regulation require child-proof packaging for that product.

- B. Nature of regulation - in general, an improperly labelled product is defined as "misbranded", subjecting those labelling and selling the product to criminal and/or civil liability. Improper packaging will lead to the same liability.

- C. Enforcement mechanisms are essentially the same as those described in the above section.

VI. Pricing

A. Governing statutory law

1. Federal
 - a. The Sherman Anti-Trust Act, 15 USC 1 et seq.
 - b. The Robinson-Patman Act, 15 USC 13
2. Texas - The Texas Business & Commerce Code 17.01 et seq.

- B. Much of the important law in this area is judge-made, in interpretation of the above-listed Federal statutes.
- C. Selling goods below cost is unlawful, unless done to:
 - 1. Liquidate inventory of failed business or branch location.
 - 2. Liquidate perishable inventory before it spoils.
 - 3. Liquidate seasonal inventory at the end of the season.
 - 4. Liquidate obsolete or outdated inventory.
- D. Price discrimination - selling goods to two different buyers for two different prices, is unlawful if it causes injury to:
 - 1. Competitors of the seller.
 - 2. Competitors of the buyer.
 - 3. Competitors of customers of the buyer, UNLESS, it can be justified as the passing-on of cost savings or as meeting the price of a competitor.
- E. Horizontal price-fixing - agreements between sellers as to how much to sell for - is unlawful.
- F. Vertical price-fixing - dictation by a manufacturer to a distributor or retailer as to how much to sell a product for - is normally unlawful, UNLESS:
 - 1. The product is sent to the distributor or retailer on consignment
 - 2. The distributor is a patent licensee.

VII. Distribution Practices

- A. Governing statutory law
 - 1. Federal
 - a. Sherman Act
 - b. Clayton Act - an amendment to the Sherman Act.
 - c. Federal Trade Commission Act, 15 USC 45 et seq.
 - 2. Texas - Texas Business & Commerce Code 17.01 et seq.

- B. Much law in this area is also judge-made statutory interpretation.
- C. Horizontal market division - agreement between competitors not to compete in a market - is unlawful.
- D. Vertical market division - dictation by a manufacturer to his distributors and retailers as to the limits of the market in which they may operate - is normally unlawful, BUT it is permissible when vertical price-fixing is permissible, and also under some additional circumstances. Competent legal advice is essential when problems arise in this area.
- E. Horizontal group boycotts - agreements between competitors not to deal with named suppliers or customers - are unlawful.
- F. Vertical group boycotts - agreements between firms at two levels of the distribution chain not to deal with other firms, whether voluntary or coerced, are unlawful.
- G. Exclusive-dealing, output, or requirement contracts tying up 6% or more of a relevant market are unlawful.
- H. Tying arrangements - requiring a customer to buy Product B if he desires to buy Product A - are unlawful unless the seller has a legitimate reason to require the purchase of B along with A (such as, that A won't operate properly without B.)
- I. Unilateral refusals to deal - a decision by one firm not to deal with another - are perfectly lawful UNLESS the refusing firm has a monopoly position in its market.

VIII. Advertising

- A. Governing statutory law.
 1. The Federal Trade Commission Act.
 2. The Federal Food, Drug, and Cosmetic Act, with respect to advertising of foods, drugs, and cosmetics.
 3. The Federal Consumer Credit Protection Act, 15 USC 1601 et seq., with respect to advertising of credit terms.

4. Federal Trade Commission regulations, in general and with respect to credit terms.
 5. Food and Drug Administration regulations, with respect to foods, drugs, and cosmetics.
- B. Governing Texas statutory law - the Texas Deceptive Practices Act, Texas Business & Commerce Code 17.41 et seq.
- C. Forbidden types of advertising are:
1. Passing off goods as those of another.
 2. Using deceptive representations as to geographic origin or goods.
 3. Representing goods as new if they are used, reclaimed, or the like.
 4. Baiting - advertising goods for sale with no intent to sell them.
 5. Advertising goods with intent not to supply a reasonable public demand - unless the ad discloses that supply is limited.
 6. Making false or misleading statements of reasons for price reductions.
 7. Advertising that one is going out of business when one really is not doing so.
 8. Advertising goods as "free" when they're not truly free.
 9. Using false testimonials and the like.
 10. Using TV commercials which mislead.
 11. Using misleading pricing advertising.
 12. In general, any other type of advertising which would tend to mislead or deceive the buyer of average intelligence.
- D. Remedies for false and deceptive advertising:
1. Federal
 - a. Administrative action by the Federal Trade Commission for a cease-and-desist order.
 - b. A suit by the FTC for an injunction against the advertiser.
 2. State
 - a. Criminal prosecution.

- b. Suit by Consumer Protection Division of the office of the Texas Attorney-General against the violator, seeking an injunction.
- c. Suit by injured consumer for injunction.
- d. Suit by consumer for triple damages, if he can prove that the false advertising caused him to suffer damages.
- e. If a group of consumers has been damaged by false advertising, they may join together in a class action against the violating advertiser.
- f. Should a consumer or class of consumers obtain a judgment which is unsatisfied after 3 months, the court handing down said judgment may appoint a receiver for the defendant.

IX. Deceptive Sales Practices Under Texas Law

- A. Any false statement made by a salesman in face-to-face dealings with a customer which would be false advertising if contained in an ad is a deceptive trade practice.
- B. In addition, the following are deceptive trade practices:
 - 1. Misrepresentation of the contents of a sales contract.
 - 2. Making false or misleading statements with respect to the need for parts, replacement, or repair service.
 - 3. Misrepresenting the authority of a salesman or agent to negotiate the final terms of a sales contract.
 - 4. Disconnecting, turning back, or resetting the odometer of a motor vehicle.
 - 5. Using a chain-referral sales scheme - that is, telling the buyer he may obtain a reduction in the price of what he bought by finding other buyers for the seller's product.

- C. Enforcement is by same remedies as in above section.
- X. Contracts solicited by door-to-door salesmen at the purchaser's residence may be rescinded by the consumer any time before midnight of the third business day after the completion of the transaction, so long as the amount involved in the transaction exceeds \$25.00. Details concerning the rights of the parties to such transactions are contained in Texas Consumer Credit Code 13.01 et seq.

XI. Guaranties and Warranties

A. Express warranties

1. Governing statutory law
 - a. Magnuson-Moss Act - 15 USC 2301 et seq.
 - b. Texas Business & Commerce Code 2-313.
2. Promises made with respect to goods in advertising, or statements of verifiable fact made with respect to goods in advertising, are express warranties.
3. Written promises, or statements or verifiable fact in written contracts for the sale of goods, are express warranties.
4. A written guarantee of a product costing over \$10.00 which doesn't amount to a full guarantee must be conspicuously labelled "Limited Warranty".
5. A complete guarantee may be labelled "Full Warranty".
6. Oral promises or statements of verifiable fact made by a salesman in the course of his sales pitch may constitute express warranties.
7. Express warranties may be disclaimed by the seller, subject to the following limitations:
 - a. Warranties made in advertisements may not be disclaimed.
 - b. No warranty labelled "Full Warranty" may contain such disclaimers.

- c. Any attempted disclaimer of oral warranties will be ineffective if the injured buyer can show that he relied upon the effectiveness of the oral warranty as part of the "basis of the bargain" between himself and the seller.
- B. Implied warranties imposed upon sellers by the Texas Business & Commerce Code, 2-314 and 2-315.
1. Warranty of title - buyer is getting clear title to what he's buying.
 2. Warranty of merchantability - what buyer is buying is fit for normal use.
 3. Warranty of fitness for buyer's purpose - if buyer is buying for a special purpose - and if seller knows what that purpose is - the goods are fit for that purpose.
 4. All of these warranties may be disclaimed by sellers - however, a sales contract containing a "Full Warranty" may not disclaim the warranty of merchantability.
- C. Recourse of the consumer damaged by an inferior product.
1. Suit for damages on breach of warranty theory - seller may protect against this by proper warranty disclaimers.
 2. Suit for damages on ground that seller was negligent in the production or handling of the product - buyer must prove negligence here, which is difficult.
 3. Suit for damages under absolute tort liability theory - if buyer can prove he bought a defective product, and that he was injured by it, he can win sizeable damages.
 4. Suit for damages on theory that the product violated a CPSC safety standard - proof by buyer that the product violated that standard and that buyer was injured thereby will be sufficient for recovery of damages.

XIII. Credit Sales

- A. Governing statutory law.
 - 1. Federal Consumer Credit Protection Act.
 - 2. Texas Consumer Credit Code.
- B. A full statement of credit terms, credit charges, and the like must be furnished by the credit seller to the credit buyer.
- C. Interest charges must not exceed the maximum set for the type transaction in question.
- D. No person may be denied credit upon grounds of sex.
- E. When a consumer complains of errors in his bills, a procedure is provided whereby the dispute may be adjusted - the seller may not continue to bill the consumer without paying any attention to his complaint.
- F. The Consumer Credit Protection Act contains lengthy provisions concerning the rights and obligations of issuers and users of credit cards. Care is called for in both the issuing and the honoring of these.
- G. Remedies for violations of the above.
 - 1. For improper disclosure of credit terms - consumer may sue for damages - though his purchase contract remains in effect even if he wins.
 - 2. For charging excessive interest.
 - a. If double or more than double the maximum charges - the contract is void.
 - b. If less than double the maximum charged - seller may enforce the contract only to the extent of the principal LESS the charged interest.
 - 3. The victim of sex discrimination in the grant of credit may recover damages.
 - 4. Failure to follow proper procedure in adjusting consumer billing complaints will lead to recovery of damages by the consumer.

5. Improper procedure in the issuing and honoring of credit cards will subject issuers and honoring merchants to losses when cards are honored when in the possession of finders, thieves, and the like. When a credit card is lost or stolen, the most its owner can be held responsible for with respect to unauthorized charges is \$50.00 - in case of negligence in issue or honor, the owner may not be liable at all.

XIII. Repossession and Resale of Merchandise Sold on Credit

- A. There's no right to repossess merchandise sold on credit unless the buyer has signed a written security agreement permitting repossession in case of missed payments and the like.
- B. Liens on motor vehicles must be noted upon the Certificate of Title thereof.
- C. Self-help repossession of automobiles and the like is lawful if it can be accomplished without breach of the peace without unauthorized entry into a building and such. (TB&CC 9-503)
- D. The creditor desiring to repossess merchandise inside the debtor's residence or whatever must either get the debtor to agree to allow repossession, or he must go to court and obtain a Writ of Sequestration permitting the repossession. The creditor may not now be able to obtain this writ before the debtor is given a chance to contest the lawfulness of it in open court.
- E. The repossessing creditor may sell the repossessed goods in a commercially reasonable manner according to the procedure set out in TB&CC 9-504, bidding in the goods himself if he pays a commercially reasonable price. The proceeds are allocated:
1. First, to expenses of repossession and resale.
 2. Second, to debtor's account with creditor.
 3. Third, excess must be refunded to debtor. Debtor is liable for any unpaid deficiency in his account remaining.

C. The repossessing creditor may also choose to keep the repossessed property and call the debtor's account even, unless the property is consumer goods over 60 percent paid for. (TB&CC 9-505)

XIV. Sellers of goods on credit who on occasion assign the resulting accounts receivable or promissory notes to financial institutions should be aware that the buying financial institution will no longer be able to obtain the account or note free and clear of claims by the buyer against the seller, in consumer transactions.

XV. Fair Credit Reporting - credit bureaus in particular, and any business passing information to other businesses about customers and former employees in general, must take pains to insure that the information provided about these individuals is accurate - the provision of inaccurate information, whether through negligence or by design, may subject the businessman to civil liability under the Federal Fair Credit Reporting Act.

XVI. Collection of Accounts Receivable

A. It is less costly to induce a debtor to pay his debt without court action than it is to sue him - however, there are limits upon the persuasion procedures which may be used.

1. One must not threaten to assign an account to a collection agency if that isn't one's intent.
2. One must not say an account hasn't been assigned to a collection agency when in fact it has.
3. Deceptive skip-tracing procedures are unlawful.
4. Threats of criminal prosecution are unlawful.
5. Undue harassment of the debtor - like phoning him at midnight to ask when he's going to pay - is unlawful.

6. The use of deceptive collection practices is an unfair trade practice in violation of the Federal Trade Commission Act - and many of them are commonlaw torts, commission of which will subject the creditor to suit by the debtor.
- B. The last resort in the collection process is of course the ordinary civil lawsuit.
- C. Even when a judgment is obtained against a delinquent debtor, collection of the judgment may be difficult. The following property of the ordinary Texas debtor is exempt from claims of creditors - even judgment-holding creditors: (VACS 3836
 - a. The debtor's paycheck.
 - b. His automobile.
 - c. His household furniture.
 - d. His clothing.
 - e. Tools of his trade or profession.
 - f. His homestead.

NOTE that if the debtor is married and has over \$30,000.00 in assets, or if he's single and has over \$15,000.00 in assets, some of his property otherwise exempt may be reached (except his homestead and his paycheck).

- D. The debtor may still be able to escape paying off the judgment by filing voluntary bankruptcy - if he behaves honestly and if he has no assets subject to creditor claims, he escapes the liability.

XVII. Sales Tax - the obligation to collect and pay over the Texas State Sales Tax. (Texas Taxation Code 20.01 et seq.)

- A. Most products sold by small businesses are subject to this tax - the main exemption being food products sold for home preparation and consumption.
- B. A permit to sell such products must be obtained from the Texas State Comptroller - failure to obtain such a permit is a misdemeanor.
- C. Collected tax must be paid over to the state quarterly or more frequently; returns must be filed quarterly; and adequate records of sales and tax collections must be maintained.

Obligations Respecting Employees and Employment

I. The Duty to Avoid Discrimination in Employment.

A. Title VII of Civil Rights Act of 1964, as amended by Equal Employment Opportunity Act of 1972 - 42 USC 2000e et seq.

1. Any employer having 15 or more employees is subject to provisions of this legislation, which forbids discrimination in employment based upon:

- a. Race
- b. Color
- c. National origin
- d. Religion
- e. Sex

2. Such discrimination is unlawful when used as criterion for:

- a. Hiring
- b. Discharge or lay-off
- c. Promotion
- d. Seniority
- e. Pay
- f. Job assignment

3. Employers must be careful about using such screening devices in hiring as:

- a. Verbal ability tests and other intelligence type tests - except for jobs requiring verbal ability.
- b. Educational requirements - unless the level of education required is essential for proper job performance.
- c. Arrest records - except for jobs with some fiduciary responsibility.
- d. Credit ratings and garnishments - except for jobs with fiduciary responsibility.
- e. Marital status - unless relevant to ability to do job.

- f. Number or age of children.
 - g. Citizenship - unless security clearance considerations involved.
 - h. Ability to read, write, or speak English - unless ability along these lines required for job.
4. Enforcement.
- a. The enforcing agency is the Equal Employment Opportunity Commission (EEOC).
 - b. The EEOC requires employers subject to its jurisdiction to keep records showing compliance with this legislation and with administrative regulations issued under it.
 - c. The EEOC may inspect these records essentially upon demand during business hours.
 - d. Either the EEOC or individual victims of forbidden discrimination may sue in Federal courts for remedies for violations.
- B. Civil Rights Acts of 1866 and 1871 - 42 USC 1981, 1983, and 1985
- 1. These statutes essentially forbid the denial of equal protection of the laws by some individuals to other individuals - and have been held by the courts to apply to the employer-employee relationship.
 - 2. They are enforceable in Federal court through individual action by injured plaintiffs.
- C. Age Discrimination in Employment Act of 1967 (29 USC 621 et seq.)
- 1. This legislation forbids discrimination with respect to hiring, discharge, pay, promotion, and the like because of age with respect to persons between the ages of 40 and 65. Thus, it's not a violation to engage in age discrimination with respect to persons under 40 or over 65.
 - 2. The legislation is NOT enforceable by the EEOC - it is instead enforced by the U.S. Department of Labor.

3. Record-keeping and inspection provisions similar to those of the Equal Employment Opportunity Act exist.
 4. Enforcement is by either Department of Labor action or by suit by injured individual.
- D. Equal Pay Act of 1963 - 29 USC 206d.
1. Applies to all employers subject to the Fair Labor Standards Act (see FLSA portion of article for coverage).
 2. Forbids payment of unequal wages for equal work because of the sex of the workers.
 3. Pay differentials between persons of both sexes doing equal work are permissible if based upon:
 - a. Seniority.
 - b. Merit.
 - c. Piecework.
 - d. Any other reasonable criterion.
 4. This legislation is enforced by the Wage and Hour Division of the U.S. Department of Labor.
 5. Usual record-keeping and inspection provisions are provided.
 6. Enforcement is either by court action by Wages and Hours Division, or by suit by injured party.
- E. Executive Order #11246.
1. Forbids letting of government contracts to employers engaging in discrimination on basis of race, color, national origin, religion, or sex.
 2. Does not apply to contracts not exceeding \$10,000.00.
 3. Enforcement is by the Office of Federal Contract Compliance of the U.S. Department of Labor.
 4. Obligations of the contractor will vary according to the size of the contractor and the size of the contract.
 5. Ultimate penalties for non-compliance with OFCC desires can be:

- a. Cancellation of the government contract.
- b. Blacklisting - which will prevent consideration for award of future contracts.

II. Wages and Hours Regulation.

A. The Fair Labor Standards Act - 29 USC 201 et seq.

1. Coverage of importance to the small businessman.

- a. Retail establishments with gross sales of over \$250,000 annually.
- b. Service establishments with gross annual sales of over \$225,000, performing 50 per cent or more of their services interstate.
- c. Laundries, dry-cleaning establishments, and the like - regardless of volume of gross annual sales.
- d. Hospitals, nursing homes, and the like - regardless of gross income.
- e. Firms engaging in interstate commerce, producing goods for distribution in interstate commerce, or having employees handling, selling, or otherwise working on goods that have been in interstate commerce, which are not retailers grossing under \$250,000 annually or service establishments grossing under \$225,000 annually.

2. Obligation of covered employers.

- a. Payment of minimum wage to covered employees this being \$2.30 per hour for most employees \$2.20 per hour for certain others. The minimum wage for all covered employees will be \$2.30 per hour as of January 1, 1977. The main - but not the only - classes of non-covered employees are executives, administrators, professionals, and outside salesmen.
- b. Payment of time-and-a-half for work of over 40 hours per week. NOTE that payment

of time-and-a-half for work of over 8 hours per day isn't required, so long as the work week doesn't exceed 40 hours. Executives, professionals, administrators, outside salesmen, and certain other classes of employees aren't entitled to time-and-a-half at all. NOTE also that the normal work week for some types of employees - such as bus and taxi drivers, motel and hotel maids and janitors, food service employees of retail and service establishments, bowling alley employees, is 48 hours - these must be paid time-and-a-half for work of over 48 hours per week.

c. Recordkeeping and inspection requirements exist which are similar to those under other employee protection legislation.

3. Enforcement.

a. Enforcement agency is the Wages and Hours Division of the U.S. Department of Labor.

b. Remedies are suits by the Department of Labor for injunctions to stop violations and for payment of back pay to employees not paid in accordance with law; and private suits by injured parties for same redress.

B. The Texas Minimum Wage Act (VACS 5159d)

1. Coverage.

a. Employers - essentially most non-agricultural employers not covered by the Fair Labor Standards Act.

b. Employees - all employees of covered employer are covered except executives, professionals, administrators, outside salesmen paid on commission basis, students under 20 years of age, and other employees under 18 years of age, and certain lesser groups of employees.

2. Texas minimum wage is \$1.40 per hour.
 3. The Texas act contains no overtime pay provisions.
 4. The Texas act requires all employers - even those not subject to the minimum wage portion of the act - to furnish each employee on payday a statement disclosing:
 - a. Name of the employee.
 - b. Rate of pay.
 - c. Gross earnings.
 - d. Itemized deductions from gross earnings.
 - e. Net earnings.
 - f. Total amount of work performed.
 5. Enforcement.
 - a. Deliberate furnishing of false earnings statement to employee is a misdemeanor.
 - b. Minimum wage portion of act enforceable by civil action for unpaid wages by injured employees.
- C. Other Texas wage legislation.
1. Paydays (RCS 5155)
 - a. Virtually all private employers in Texas must pay their employees at least twice a month.
 - b. Wages must be paid up to a date not more than 16 days prior to payday.
 2. Any employee leaving a job must be paid off in full within six days after demand for such by the employee.
 3. Enforcement - violation of above is a misdemeanor - enforcement is by criminal prosecution.
- D. Texas hours legislation - Texas has no hours legislation applicable to male employees of importance. There are several pieces of legislation regulating working hours for women - however, such legislation is very likely invalid as discriminatory against women. Federal courts have so held with respect to such legislation from other states.

E. Child labor legislation.

1. Federal - The Fair Labor Standards Act

- a. No child under 16 may be employed by a covered employer.
- b. No children aged 16 or 17 may be employed in dangerous workplaces - mines, factories, or the like.
- c. Exemptions - children working for parents or persons in the place of parents in non-dangerous employment; entertainers; newspaper delivery to consumers.
- d. Enforcement - by Wages and Hours Division of the U.S. Department of Labor.
 1. Criminal prosecution.
 2. Injunction against violation.

2. Texas (RCS 5181a et seq.)

- a. Since Texas standards are more lenient than Federal standards, they apply only to employers not covered by the Fair Labor Standards Act.
- b. No child under 15 may be employed in or about a factory, mill, laundry, or workshop.
- c. No child under 17 may be employed in a mine, quarry, or other place where explosives are used.
- d. No child under 15 may work more than 8 hours per day, or 48 hours per week, or between 10 p.m. and 5 a.m.
- e. No child between the ages of 15 and 17 may work full time unless his earnings are needed to support his family; and he's finished the 7th grade; and he has a work permit from the County Judge of the county of his residence; and he's not working in a factory, mine, mill, or other dangerous place.
- f. Children of any age may work anywhere other than in dangerous places between June 1 and September 1.
- g. Violations of these provisions are misdemeanors.

III. Payroll Tax Obligations of Employers

- A. Withholdings - the Texas employer must withhold two taxes from the wages of most employees:
 - 1. Federal income tax.
 - 2. Employee's contribution to Social Security.
- B. Employer taxes - the employer must pay three payroll taxes:
 - 1. The employer's contribution to his employees' Social Security.
 - 2. The Federal unemployment tax.
 - 3. The Texas unemployment tax.
- C. Returns and payment.
 - 1. Form 941 - used as the return for Federal income tax and Social Security obligations.
 - a. Must be filed quarterly with IRS.
 - b. Withholdings must be deposited earlier if they amount to, essentially, more than \$200.00 per month - IRS should be consulted with respect to deposit requirements.
 - 2. Form 940 - the Federal unemployment tax return.
 - a. Must be filed with IRS annually.
 - b. Deposits of accrued tax must be made quarterly if accrual amounts to over \$100.00 per quarter.
 - c. Consult IRS for rates and computation of tax.
 - 3. The Texas unemployment tax return.
 - a. Must be filed with Texas Employment Commission in accordance with TEC regulations.
 - b. Rate is computed by TEC based upon, in large part, the number of unemployment compensation claims filed with TEC by ex-employees of the taxpayer.
 - c. Tax payment is due with return.

IV. The W-2 Form Obligation of Employers

- A. The W-2 form must be furnished each employee having income tax or Social Security withheld from his pay:

1. By January 31 of each year for continuing employees (for the past year's earnings and withholdings), or
2. Within 15 days of payment of last paycheck to employee who quit, was laid off, or was fired, or
3. Within 30 days of payment of last paycheck to employees of an employer who has gone out of business.

B. Penalties for non-compliance.

1. Criminal prosecution.
2. Suit to collect civil penalty by IRS.

V. Employee Pension Plan Regulation - Employee Retirement Income Security Act of 1974 (29 USC 1001 et seq.)

A. No employer is required to provide a pension plan for his employees.

B. Any employer providing such a plan is subject to the provisions of ERISA, which regulated the following:

1. Coverage - any employee who has one year of service with the employer and who is at least 25 years of age must be covered.
2. Vesting of employee rights in plan.
 - a. Employee contributions must be vested when made.
 - b. Employer contributions must become vested as provided by law.
3. Married employees must have the right to a joint-and-survivorship benefit if they desire it.
4. Following are to be regulated by law and administrative regulation:
 - a. Funding of the plan.
 - b. Management and investment of plan assets.
 - c. Payment of benefits under the plan.
5. Plans are to be insured by the Pension Benefit Guaranty Corporation, to which all plans must contribute.

- C. Enforcement and record-keeping.
 - 1. The Department of Labor and the Internal Revenue Service share authority here.
 - 2. Employer contributions to non-complying plans don't qualify as corporate income tax deductions.
 - 3. Pension Benefit Guaranty Corporation may terminate a non-complying plan for said non-compliance.
- D. Naturally, any small business maintaining a private pension plan needs competent legal and accounting and actuarial advice with respect to its operation.

VI. Workmen's Compensation (RCS 8306)

- A. All employers of one or more employees in non-agricultural and non-domestic employment are subject to coverage by the Workmen's Compensation law.
- B. Employees of covered employers who are injured on the job are entitled to recover benefits under the law unless:
 - 1. An act of God caused the injury.
 - 2. The employee was fighting on the job.
 - 3. The employee was intoxicated on the job.
 - 4. The injury was self-inflicted.
- C. The law contains a schedule of benefits payable for various types of permanent disability caused by on-the-job injury.
- D. Medical expenses caused by the injury are payable by the employer.
- E. Temporary disability benefits of up to \$63.00 per week are payable by the employer.
- F. The next-of-kin of an employee killed on the job are entitled to a death benefit payable by the employer.
- G. Covered employers may obtain Workmen's Compensation coverage from private insurance companies for an appropriate premium.

- H. Covered employers not carrying the insurance are liable for appropriate benefits whether insurance is carried or not.

VII. Working Conditions Regulation - The Occupational Safety and Health Act of 1970. (29 USC 651 et seq.)

- A. All employers engaged in interstate commerce, or in business activity affecting interstate commerce, are covered.
- B. The U.S. Department of Labor has authority to set safety standards for the workplace by administrative action.
- C. These standards, published in the Federal Register and in the Code of Federal Regulations, must be obeyed by covered employers.
- D. Enforcement is done through periodic inspection of the workplace by Labor Department inspectors, who may issue a citation to an employer for any violation of a safety standard discovered.
- E. The usual citation will contain three items:
 - 1. A description of the violation.
 - 2. A proposed monetary penalty to be assessed because of the violation.
 - 3. A length of time for the employer to abate the violation.
- F. The employer who feels any part of the citation to be unjust must appeal to the Occupational Safety and Health Review Commission within 15 days of the issuance of the citation - failure to appeal within 15 working days causes the penalty to become uncontestable.
- G. The act contains many record-keeping and reporting requirements.
- H. The act also contains procedures for establishment of standards, and procedures for seeking variances from these standards, and various emergency procedures - all of which are beyond the scope of this outline.

Termination of the Small Business

I. Terminating the Solvent Business

- A. The sole proprietorship - the proprietor merely pays off all liabilities.
- B. The general or limited partnership - the partners pay off all liabilities and then divide the remaining assets among themselves according to their respective interests in the firm.
- C. The corporation.
 1. The procedure for voluntary dissolution of a corporation set out in the Texas Business Corporation Act (TBCA 6.04) should be followed, which is:
 - a. Send notice of intent to dissolve to all corporate creditors.
 - b. Pay off all liabilities.
 - c. Divide remaining assets among shareholders - but do not do this until certain that all liabilities are paid - directors and shareholders will be held personally liable for all corporate liabilities left unpaid when assets were divided among shareholders.
 - d. File Articles of Dissolution with the Secretary of State.
 - e. Obtain Certificate of Dissolution from Secretary of State - which formally terminates the corporation's life.
 2. Reason for dissolution is that the existing corporation continues to incur Texas franchise tax liability even after the corporation ceases to do business - dissolution is the only way to terminate this liability. (Texas Franchise Tax - Taxation Code 12.01 et seq.)

II. Voluntary Termination of the Insolvent Business

- A. The composition of creditors.

1. Claims of creditors of the business are either paid off in full or compromised with individual creditors or with groups of creditors.
2. If settlement of all creditor claims can be accomplished through such contracts, this is the cheapest and simplest way to liquidate - but if agreement can't be reached with all creditors this won't work.

B. The assignment for benefit of creditors.

1. The assets of the business are turned over to an assignee - notice of the assignment being given to all creditors.
2. The assignee liquidates all assets and divides them among the creditors according to priorities set by state and federal law.
3. The creditors agree when they receive their share of the assets that they accept what they get in full settlement of their claims against the business.
4. Advantage - it's cheap and relatively simple.
5. Disadvantages.
 - a. Creditors don't have to participate if they don't want to - thus, the non-participating creditor still has an enforceable claim against the owner of the business after the assignment is terminated.
 - b. The making of an assignment for benefit of creditors is an act of bankruptcy under the Federal Bankruptcy Act - thus, creditor unhappy with the assignment may throw the debtor business into bankruptcy court by filing involuntary bankruptcy against it and its owner.

C. Voluntary bankruptcy (11 USC 1 et seq.)

1. The debtor essentially asks the Federal bankruptcy court to liquidate his business and to divide the assets among the creditors according to law.

2. In the case of the sole proprietorship, the proprietor must file personal bankruptcy along with business bankruptcy, since the proprietor and his business are one.
3. In the case of the partnerships, bankruptcy of a true limited partnership would relieve the limited partners of all liability for firm obligations - but general partners would have to file personal bankruptcy along with the firm to be certain of discharge from firm obligations.
4. In the case of the corporation, bankruptcy of the corporation alone will discharge the corporate obligations - so long as the corporation has been properly managed.

III. Voluntary Methods of Attempted Rehabilitation of the Ailing Small Business - the Chapter XI Proceeding.

A. How commenced.

1. The proprietor or management of the ailing small business may initiate Chapter XI proceedings.
2. The proprietor or management may respond to receivership proceedings or involuntary bankruptcy proceedings by requesting Chapter XI.
3. Since this is a Federal bankruptcy proceeding, it is held of course in Federal court.

B. Characteristics of the proceeding.

1. The debtor normally continues to manage his business during the proceeding - under court supervision, of course.
2. Creditors may not interfere with business operations during the proceeding.
3. The debtor devises a plan for partial payment and/or delayed payment of unsecured creditors - which becomes binding upon these creditors if approved by a majority in number and dollar amount of the outstanding unsecured creditors.

4. If the debtor gets a plan adopted - and if he carries it out - the proceeding ends and the debtor regains control of his business.
5. If no plan acceptable to creditors can be devised - or if the debtor is unable to carry out the terms of his plan - the proceeding is converted into a liquidating bankruptcy and the business is terminated.
6. The proceeding cannot effect the secured creditors of the business - if adjustment of claims of secured creditors is necessary, Chapter XI won't solve the problem.

IV. Corporate Reorganization - The Chapter X Proceeding

A. How commenced.

1. Corporate management may initiate a Chapter X proceeding.
2. Any three corporate creditors with claims totalling \$5,000.00 may initiate it.
3. Management may respond to a receivership proceeding or to an involuntary bankruptcy petition by initiating it.

B. Characteristics of the proceeding.

1. The corporate management may continue to run the corporation during the proceeding, or a trustee may be appointed by the court to run it.
2. A plan is devised for the restructuring of the capital structure of the corporation which will in general settle claims of all classes of creditors, secured and unsecured, by either paying them off in part or by making them hold of debt securities and/or shares in the corporation.
3. The plan must be approved by the court and by a majority in number and dollar amount of all classes of creditors and shareholders who will have equities in the reorganized corporation.

4. If the reorganized corporation is insolvent, existing shareholders may well be denied all interest in the reorganized corporation - justifiably so, since their capital investment has been lost.
5. If a plan can't be devised which is acceptable to the court and to the majority in number and dollar amount of all interests involved, the proceeding may well become a liquidating bankruptcy.

V. Involuntary Rehabilitation of the Ailing Corporation -
The Receivership.

A. How commenced.

1. Corporate shareholders may petition a Texas District Court for appointment of a receiver when:
 - a. The corporation is insolvent, or
 - b. Management or the shareholders are deadlocked and can make no decisions, or
 - c. The corporation is essentially being mismanaged.
2. Corporate creditors may seek a state court receivership when:
 - a. A creditor has an uncollectable judgment against the corporation, or
 - b. Corporate management has admitted to the creditor in writing that its claim is due and owing.

B. Nature of the proceeding.

1. The court appoints a receiver to run the business under the supervision of the appointing judge.
2. Incumbent management usually continues to operate the business, under the supervision of the receiver.
3. If the receiver succeeds in restoring the business to health, the proceeding ends.

4. If the receiver's efforts have borne no fruit after 12 months, the appointing court may order the dissolution of the corporation under its supervision.
5. The receivership of an insolvent corporation is an act of bankruptcy under Federal law - thus, creditors unhappy with a state court receivership may terminate it by filing for involuntary bankruptcy or a Chapter X reorganization in Federal court.

VI. Involuntary Termination of the Ailing Corporation

- A. Involuntary dissolution in state court.
 1. Attorney-General of Texas may seek this due to various types of corporate misconduct - though such proceedings are very uncommon.
 2. Creditors may seek this if they can show that immediate liquidation is necessary to save unsecured creditors from irreparable damage.
- B. The Secretary of State of Texas may administrative revoke the certificate of incorporation for failure to pay the Texas franchise tax. The certificate may then be reinstated if the delinquent tax, plus penalties and interest, is paid.
- C. Involuntary bankruptcy.
 1. May be filed against a corporation in Federal court by any three creditors having claims totalling \$500.00, IF the corporation has committed an act of bankruptcy within 4 months of the filing of the petition.
 2. Acts of bankruptcy are:
 - a. Making a fraudulent conveyance of assets while insolvent.
 - b. Making a preference while insolvent - in general paying off a creditor in full when all creditors can't be paid in full.
 - c. While insolvent, allowing a creditor to obtain a lien on firm assets, and not getting the lien released within 30 days of the time the creditor obtained it.

- d. Making an assignment for benefit of creditors.
 - e. While insolvent permitting the appointment of a receiver.
 - f. Admitting in writing that the corporation or other business is insolvent, and that one is willing to be adjudicated a bankrupt.
3. As previously mentioned, the debtor may respond to this petition by requesting that the proceeding be converted to a rehabilitation proceeding - Chapter XI or Chapter X.
 4. Debtor may get the petition dismissed by proving that he committed no act of bankruptcy.
 5. Procedure results in the appointment of a trustee to supervise the liquidation of the business assets of the debtor and the division of the proceeds of said liquidation among the creditors as provided by law.

VII. Warning - The legal aspects of all of these rehabilitation and liquidation procedures are far more complex than this outline may lead one to believe. Upon involvement in these procedures competent legal assistance is absolutely essential.

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