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MANAGER'S REPORT NO.	83
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On 1978 August 28, Council passed the following motion:

"THAT Council take no action to amend "Burnaby Shops Closing By-Law, 1958" to provide for Wednesday evening shopping at this time."

This latter action was taken in response to a request from Mr. A.F.C. Hean who requested, on behalf of the Burnaby Chamber of Commerce's Retail Committee, that the Shops Closing By-law be amended to permit Wednesday evening shopping in Burnaby.

C. Lord's Day Act of 1907

With respect to the Lord's Day Act, this federal legislation governs the operation of businesses on Sunday. Municipalities have no authority to make exceptions to this Act which is administered by the Attorney-General's Office. Anyone wishing to register a complaint against any business that pursues commercial activities on Sunday must do so in accordance with the procedure that is outlined in the attached letter to our Solicitor from Mr. H. N. Yacowar, Legal Officer in Victoria. Although this letter is dated 1975 March 17, the procedure as outlined has not been changed and is, to the best of our knowledge, still to be followed at this time.

By way of further clarification, Section 859 of the Act does not require that shops be closed on Sunday. A police or municipal inspector cannot therefore swear an Information for contravention of the Lord's Day Act without the consent of the Attorney-General.

Council on 1976 March 01 supported a submission from the B. C. Retail Furniture Dealers to seek enforcement of laws governing closure of business on Sundays, and on that occasion, passed the following motion:

"THAT we support the brief submitted on Sunday Shop Closing as it relates to bringing forward an amendment to Section 859 of the Municipal Act so as to add a sub-section to provide for the closing of shops on Sundays."

The Attorney-General was so advised.

The Attorney-General, on a number of occasions, has advised the Municipality in writing that his Ministry is actively reviewing the subject of Sunday closing, and will hopefully develop a policy on this issue in the near future. Correspondence received from the Attorney-General last July and August conveyed the impression that this review could be completed before year-end, but it now looks as though this target may not be met.

D. Involvement of Council Relative to Closing Hours on Sunday

On 1978 November 14, Council requested from staff a report explaining "what authority Council has to require various individuals who are in contravention of the Lord's Day Act to appear before Council to show just cause as to why their business license should not be suspended." Following are comments from the Municipal Solicitor on this matter:

"Pursuant to section 458(1) of the Municipal Act, Council has delegated to the Chief Licence Inspector the power to suspend a business license. He may suspend a business license if the holder is:

- (a) convicted of an offence indictable in Canada,
- (b) convicted of any offences under any municipal by-law or statute of the province in respect of the business for which he is licensed,
- (c) has been guilty of gross misconduct in respect of the business,
- (d) has ceased to meet the lawful requirements to carry on the business, or

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(e) has conducted the business in a manner harmful or dangerous to the health or safety of any person under the age of sixteen years.

It is apparent that the holder of a license who carries on business on a Sunday has not been convicted of an offence punishable by indictment or convicted of an offence under a municipal by-law or statute of a province. Violation of the Lord's Day Act is a summary conviction offence and the Lord's Day Act is a federal statute and not a municipal by-law or a provincial statute.

Section 458(3) of the Municipal Act provides that Council may revoke a license for reasonable cause after giving notice to the licensee and after giving the licensee an opportunity to be heard. Reasonable cause is not defined and perhaps violating the Lord's Day Act would amount to reasonable cause. However, revocation is a more serious punishment than suspension and if the Chief License Inspector cannot suspend the license of one who carries on business on Sunday, it would be strange if Council could revoke the license for the same reason.

If Council is concerned about the carrying on of business on Sunday, it should, in my opinion, instruct the Chief Licence Inspector to obtain evidence to support a charge and warrant a conviction. This evidence should then be presented to the Attorney-General whose leave is required for a prosecution under the Lord's Day Act. If he refuses to act, and so far he has refused to act, there is little, in my opinion, that Council can do."

E. Stores that Are Open on Sundays

Attached is a partial list of stores that are open on Sunday in Burnaby, and which as a result of the carrying on of business on this day may be in contravention of The Lord's Day Act. A complete list of store openings will be prepared in the future if such information would in anyway be useful in the pursual of this matter.

F. Summary

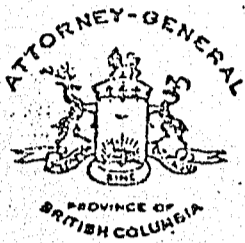
We have been advised that the Attorney-General's Department is reviewing the Lord's Day Act with specific reference to the opening of stores on Sunday. Although we do not know exactly when this review will be completed, we anticipate that it will be in the near future.

The Lord's Day Act is the overriding legislation which takes precedence over any other type of enforcement action that might be contemplated or desired by a municipality. Moreover, it would not be permissible for a municipality to revoke or suspend the license of an operator who transacts business on Sundays. The only known acceptable course of action is compliance with the procedure as outlined in the attached letter from Mr. Yacowar which requires the referral of a complaint directly to the Attorney-General's Office for decision as to whether or not prosecution can be undertaken.

Under the circumstances, it is the Manager's opinion that our action at this time should be confined to a referral of this report to the Attorney-General, and that he be asked to advise as to when his review of the Lord's Day Act will be completed. Because the letter from Mr. Yacowar was written in 1975, it would also be appropriate for the referral to include a request for comments on whether the procedure as noted in this letter should be followed at this time.

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L390-2

March 17th, 1975

W.L. Stirling, Esq.,
Municipal Solicitor,
The Corporation of the District of Burnaby,
Municipal Hall,
4949 Canada Way,
Burnaby, British Columbia V5G 1M2

Dear Sir:

RE: LORD'S DAY ACT PROSECUTIONS

This will acknowledge receipt of your letter dated March 3rd, 1975, relating to the Sunday operation of Lumberland.

As you know, the Lord's Day Act provides that the Attorney-General's consent must be obtained before a proprietor can be prosecuted for carrying on business on a Sunday.

As a matter of policy, for a complaint to proceed, the complainant has to be a private individual who is sincerely offended by the carrying on of the particular operation on the Lord's Day. As a matter of policy the complainant cannot be a business competitor of the person or business against which the complaint is being registered nor could the complainant be someone who appears to be complaining in order to advance some personal interest in the overall enforcement of the Act.

By way of information, the following establishments are exempt from prosecution by way of the Attorney-General exercising his discretion:

- (1) Independent grocery stores
- (2) Drug stores, regardless of the fact that they might be selling merchandise other than medicaments.
- (3) Service stations and enterprises providing amenities of a minor nature, to the travelling public.

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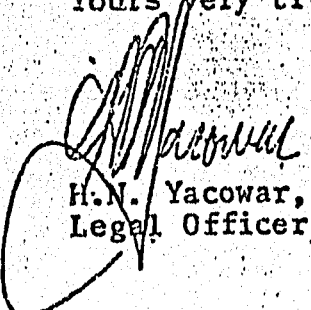
W.L. Stirling, Esq.,
Burnaby, British Columbia V5G 1M2

(4) Eating establishments

When a complaint is received in the Department of an alleged violation, a letter is sent to the offending party informing him of the complaint and warning him that should further violations against the Lord's Day Act occur he, and his business, are liable to prosecution. Should the offending party continue to operate in violation of the warning and the Lord's Day Act, the police are then instructed to obtain evidence for a prosecution and advise the Department. On receipt of the Police report a Consent to Prosecute will go forth from the Attorney-General to Crown Counsel and the information is then sworn and the prosecution proceeds in normal fashion.

If you are aware of such complaints being registered against Lumberland, please advise the complainant to go to the Police or write us directly in Victoria setting out the circumstances of his complaint. It would be necessary for the complainant to act as the Informant in the swearing of the Information.

Yours very truly,



H.N. Yacowar,
Legal Officer

HNY:HDD

<u>NAME</u>	<u>ADDRESS</u>
Beaver Lumber Company Limited	5335 Kingsway
Lumberland Building Materials Ltd.	5650 Lougheed Highway
Windsor Plywoods	1490 Boundary Road
Hometown Stores	9850 Austin Road
Adanac Lumber Ltd.	7880 - 18th Avenue <u>and</u> 7439 - 6th Street
Thunderbird Electric & Plumbing Supplies	2152 Douglas Road
Lifeway Foods Ltd.	3797 Canada Way
IGA Store	7610 Joffre Street
Super Valu	6850 E. Hastings Street
Produce Town	7498 Edmonds Street
Trafalgar Market	4398 Imperial Street
Shop Easy Foods #9	5901 E. Broadway
Sook's Disco Art Mart	#10 - 4429 Kingsway
Armitage Lumber Ltd.	3841 Canada Way
F C Medic Mattress Sales Ltd.	5242 Kingsway <u>and</u> 6786 Jubilee Avenue