

Speech by

ROBERT MORGAN  
Attorney General of North Carolina  
High Point Rotary Club  
Top of the Mart  
September 25, 1969

NORTH CAROLINA'S HISTORIC ROLE IN PROTECTING THE CONSUMER

I hope all of you have read and heard a great deal about the work which our office is doing in the area of "Consumer Protection". Let me say to begin with that anything our office does to protect the consumer also protects the honest businessman and makes for a healthier economic system in our State. Business is better when the public has confidence in the persons they deal with in the marketplace. Business is better when people believe they will receive a dollar's value for a dollar spent. Business is better when the seller is not the object of suspicion and mistrust.

It would appear at first blush that the establishment of a consumer protection division in the office of the Attorney General is an innovation - that suddenly a new function has been added to an office which is older than this State itself. This is hardly the case, however, for even the most cursory study of the history of the office reveals that protecting the consuming and using public is one of its historic functions.

At common law, it was the responsibility of the Attorney General to protect the public interest. Though the term "people's

attorney" has only recently been used to describe the office of the Attorney General in North Carolina, we find that as early as 1826 the Attorney General - the people's attorney - was instituting actions to protect the public health, safety, morals and welfare.

And the idea of Consumer Protection is not new to either the General Assembly of this State or to its business community. The General Assembly, throughout the history of this State, has been in the forefront of States in enacting progressive legislation for the protection of the consumer and the business community.

In 1913 the General Assembly went on record as favoring a free marketplace when it enacted legislation which is still considered among the best in the Nation prohibiting combinations in restraint of trade. There are many states which envy us our very simple, but effective, statute which provides that "Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal."

There are many states where a businessman who is illegally driven from the marketplace must take his cause to a federal regulatory agency or the United States Justice Department if he is to find relief. Frankly, that goes against my grain.

I believe in States' rights but I also recognize the fact that States' rights are for responsible states. I am proud that

in the area of anti-trust and anti-monopoly, North Carolina moved early and moved boldly to promote a free market and to eliminate the necessity for excessive federal intervention in yet another phase of the life of our States.

I am proud of the responsive and responsible State Government in North Carolina, for I believe that government should be close to the people, responsive to the people, and subject to the wishes of the people. For government to be otherwise, is for it to fail to meet the very purposes for its being.

During the few months I have served as your Attorney General, I have tried to make my actions and my office conform to this Jeffersonian concept, for I believe that as long as those of us who hold the public trust adhere to this philosophy, the people have little to fear from government.

I have mentioned the action of the 1913 General Assembly, but let's look for a moment at the action taken by a more recent session, the 1969 General Assembly. I have been surprised to discover that many state legislatures have turned down completely laws prohibiting unfair and deceptive trade practices - laws protecting both businessmen and the consuming public - laws which sailed through the 1969 session of the North Carolina General Assembly with the enthusiastic support of both political parties and almost without opposition from any quarter.

Thank goodness for such a forward-looking group of legislators. I can't begin to tell you how much the enactment of this legislation pleased me for it speaks of local responsibility and the preservation of State's rights and local prerogatives. It stands as a repudiation of the philosophy of "Let Uncle Sam do it", a philosophy which already chipped away at the very foundation of federalism and speeded the centralization in Washington of functions which should be carried out by the States.

I have often said that the idea of big government doesn't scare me half as much as does the trend North of the Potomac to vest more and more authority in the hands of administrative agencies. The people who man these ever-increasing agencies for the most part are not responsive to the people. Because they are not subject to the ballot box, they remain shielded from the voting populace by a bureaucratic web behind which they remain apart from the people and often go about their duties with amazing detachment from the needs, wishes, or best interests of the taxpayers of this Nation. The action of the FTC and the FCC in the current controversy surrounding the tobacco industry is a glowing example, I think.

We have said that our legislators have been responsive and have moved effectively to promote free trade and commerce and to protect the consuming public and the honest businessman. But what of the business community itself? What has it done in this area?

The business community in North Carolina has been active also. For many years, it has voluntarily assessed itself to establish Better Business Bureaus, Chambers of Commerce, and Merchants Associations, to receive complaints, to stop unethical practices, and to maintain high ethical standards within the business community. I think we should note that before the office of the Attorney General began to involve itself more actively in this area, these business-supported organizations were carrying the entire burden. During the last years and months, for example, the Better Business Bureau in several North Carolina cities took on singlehandedly fly-by-night operators who were preying upon buyers in this State and carrying millions of dollars out of North Carolina - millions of dollars which would ordinarily have gone into the cash registers of honest businessmen - millions of dollars which consumers would have ordinarily exchanged for valuable goods but instead traded for worthless schemes and shabby merchandise. They took these unscrupulous operators on singlehandedly and they managed to at least create a holding action until the legislature could provide the tools for our office to move against these shady dealers.

We are proud that the business community in this State long ago moved to maintain its own ethical standards and that we have received the support of the business community as we have acted in their behalf and in the behalf of the using and consuming public.

Consumer protection, then, is not a new thing in North Carolina. What is new is the philosophy that the Attorney General - the people's attorney - should move to enforce the laws and policies of this State and the business community which are designed:

1. to protect the using and consuming public from fraud and deception;
2. to represent the using and consuming public's interests before agencies which regulate industries which directly affect the health and well-being of all our citizens; and
3. to maintain and open a competitive marketplace where businessmen can determine for themselves
  - (a) what products and services they want to sell;
  - (b) the quality thereof;
  - (c) the prices thereof;
  - (d) the warranties they wish to attach thereto; and
  - (e) the services the businessman wishes to render to the public regarding either his product or his services.

Let us consider for a moment how we intent to accomplish these objectives.

1. We shall appear for and on behalf of the using and consuming public before Federal and State regulatory agencies in judicial-type proceedings when a regulated industry appears

before an agency to either decrease its services or increase its charges for services rendered.

But why should someone appear on behalf of the public? Why not just let the regulatory agency hear the evidence of the petitioner and then determine whether what he requests is also in the best interests of the people?

Our legal system in this Nation is basically an adversary system. We have always believed that a fair trial, a fair hearing, requires that each side of a controversy be heard and considered and given its full weight and value. We believe that before a judge, or a commissioner, can gauge the full force of an argument, it must be presented to him with partisan zeal. A judge in a courtroom, or a commissioner in a hearing room, in my opinion, cannot know how strong an argument is until he has heard it from the lips of one who has dedicated all the powers of his mind to its formulation.

Simply stated, the adversary system insures that all the facts are before the persons who will ultimately make the decision, and that all the facts are presented with equal zeal and with equal persuasiveness.

In a statement released by a Committee of the American Bar Association, it was pointed out how "in the absence of an adversary presentation, there is a strong tendency by a deciding official

to reach a conclusion at an early stage and to adhere to that conclusion in the face of conflicting considerations later developed. In the language of the Committee:

"What generally occurs in practice is that at some early point a familiar pattern will seem to emerge from the evidence; an accustomed label is waiting for the case and, without waiting further proofs, this label is promptly assigned to it ... (W)hat starts as a preliminary diagnosis designed to direct the inquiry tends, quickly and imperceptibly, to become a fixed conclusion, as all that confirms the diagnosis makes a strong imprint on the mind, while all that runs counter to it is received with diverted attention."

In the words of the Bar Committee, "An adversary presentation seems the only effective means for combating this natural human tendency to judge too swiftly in the terms of the familiar that which is not yet fully known. The arguments of the counsel hold the case, as it were, in suspension between two opposing interpretations of it. While the proper classification of the case is thus kept unresolved, there is time to explore all its peculiarities and nuances."

2. We shall investigate and, where warranted by the evidence, institute actions in the Federal or State courts where:

- A. competitors agree between themselves to:
  - i. artificially fix the price of goods sold;



- (ii) drive another competitor out of business;
- (iii) arrange with their suppliers to practice price discriminations against other competitors for the purpose of injuring the competition at the retail or wholesale level; and
- (iv) where manufacturers or wholesalers occupying a dominant place in the market require a retail merchant to take unwanted merchandise as a condition of a manufacturer or wholesaler acquiring wanted merchandise (this is called tying arrangements and full line forcing); and

3. We shall investigate and, where warranted by the evidence, institute actions in the Federal or State courts where fraud and deception is practiced in the conduct of business. Though fraud and deception is practiced by relatively few merchants, wholesalers, and manufacturers, still when practiced, they bring the entire business community into disrepute. The effects are far reaching and damaging to the confidence of the buying public in our economic system, and this confidence is vital if our capitalistic, free enterprise economic system is to flourish and survive.

Let me point out emphatically that neither the creation of the Consumer and Business Protection Division in our office or the passage of consumer-oriented legislation was done out of a desire to regulate. FTC Commissioner Everett McIntyre made this clear

when he visited our State recently to address a consumer protection training seminar.

Action such as we have taken in North Carolina, said McIntyre, eliminates the need for regulation by holding unfair and deceptive trade practices to a minimum thus preventing the unscrupulous few from bringing the system into such disrepute that the public demands regulation from government - penalizing the honest businessman, imposing an additional tax burden on the citizen and further entangling the bureaucratic web.

I believe this is the approach, the philosophy, the people would have us follow, for in my opinion it will create the best possible climate for the business community, a climate in which the businessman can operate with a minimum of restriction and bureaucratic burden, a climate in which the buyer receives a dollar's value for a dollar spent and businessmen reap deserved profits.