

COMMENTS BY: ROBERT MORGAN, ATTORNEY GENERAL
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ON THE ATTORNEY GENERAL APPEARING BEFORE
REGULATORY AGENCIES ON BEHALF OF THE USING
AND CONSUMING PUBLIC

In 1969, I requested that the General Assembly of North Carolina enact legislation authorizing and directing my office to appear for and on behalf of the using and consuming public before the various state and federal regulatory agencies when regulated industries appeared before them asking permission to increase rates charged to the general public or reduce the quality of service to be rendered to the public. This legislation received bipartisan support and passed with little or no opposition.

Such representation is essential in my state today because the State of North Carolina continues to be governed by fundamental laws expressed in both state and federal constitutions. A basic provision of these constitutions is that owners of private property shall not be deprived of the use of that property by governmental authority except by due process of law and with just compensation for that property.

We must keep this fact in mind in a time when public service industries such as electric power companies, telephone companies, motor freight carriers, insurance companies, the milk industry and the banking industry and industries are considered so vital to the public interest that much of the conduct of these business enterprises is regulated by the state and administered by regulatory bodies such as the Utilities Commission, the Milk Commission, the Insurance Commission, the Board of Water and Air Resources, and the Banking Commission.

We often tend to forget that these regulated industries for the most part are still within the realm of private property and all of the constitutional guarantees made to the owners of private property apply to these industries with the same force and effect as the constitutional guarantees apply to any other private citizen engaged in the conduct of a non-regulated enterprise.

Basically, while we regulate these industries, we require them to come before a public agency and prove to the satisfaction of persons sitting in a quasi-judicial capacity that it is in the public's interest that rates be increased or that a given type of service be eliminated or the quality thereof changed or decreased.

The regulatory agencies are without authority to deny such relief when it is requested by these private property owners except upon proper findings of fact based upon competent evidence introduced at the hearing.

If a regulatory agency attempts to deny the relief requested by an industry without proper evidence and findings of fact that the rate increases are not justified, or that the change in services required by the industry are not in the public interest, then the regulatory agency is in fact denying the industry the use of its property without due process of law. Due process requires that the industry be given an opportunity for full, fair, impartial, and complete hearing on the evidence it presents to justify its request for additional rates.

It is equally clear that when the industry makes application to the agency for additional rates or decreases in services in light of self-interest, our system of jurisprudence requires only that the industry applying for relief marshal its evidence in a manner most favorable to itself to justify its petition for additional revenue or reduction of services.

I know of few persons who would change the fundamental principles of American government that no man is required to prepare and present a case against himself. Needless to say, this principle applies to regulated industries as well as private individuals.

I hope this principle will remain as one of the cornerstones of American Government because I believe it is an essential of individual liberty.

Understanding the constitutional requirements which I believe should be adhered to and the fundamental principles of liberty which I think should be preserved, I feel that for the regulatory processes to work for both the industries' benefit and for the public's benefit, the interest of the public in evidence and argument must be presented in juxtaposition to the industries' position. The only point in the administrative and legal processes in which the public's interest and evidence and argument can be voiced effectively is at the hearing stage of the proceedings.

It is becoming increasingly obvious, I think, that the general public, especially the college age youth of North Carolina, look with suspicion on our larger industries and especially those which enjoy state-granted privileges.

In many other countries, I think it is important for us to note that the course of 20th Century history reveals that when the public becomes convinced that private industry is not meeting its needs or serving its interest, the basic national industries have become socialized. In part, socialization of industries must be blamed many times on legislators who fail to realize that problems in an industry should be solved on a case by case method rather than by restrictive legislation. Problems existing between a major industry and the public interest can best be resolved upon competent, substantial and material evidence, showing both sides of the coin.

This is an essential of "fair play" and I stand for the principle of fair play, both for industry and business and for the general public.

I believe that with sincere and active representation of the general public's interest in proceedings initiated by a major industry we can accomplish the following things:

(a) To better enable the regulatory agencies to reach balanced conclusions regarding both rates and

services rendered by regulated industries, the balance must be achieved for both the industry and the public. Without a public advocate, it is almost impossible for the regulatory agency to achieve that balance because of the constitutional and evidentiary rules of law.

(b) Remove an aura of suspicion on behalf of the public that its interests are not being adequately protected by the regulatory agency and/or the industry.

(c) By placing stringent requirements of proof on the regulated industry, officials through active and competent representation of the public's interest as an advocate at the hearings, I believe there will be a tendency for the industries to re-evaluate their positions and request only the bare minimum increases and changes which are vital to its continuing to render vital services.