

## ON CONSUMER PROTECTION AND STATES' RIGHTS

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You know, I believe very strongly that if government is to have the support of the people, the people must know what those in government are trying to do and approve of it. After all, government exists for the people. As William Henry Harrison said, "A decent and manly examination of the acts of government should be not only tolerated, but encouraged."

Some however have been critical of what we in the Attorney General's office have been doing, especially in the area of consumer protection. I think it is important that you understand what we are trying to do, for if you understand it, I am sure you will approve and give us the support that we so desperately need if we are going to be successful.

I have always been a strong believer in states' rights. I believe, as Governor Aycock did seventy years ago, that the best government is that government which is closest to the people. Government that is responsive and subject to the wishes of the people - if I may use the vernacular of Governor Aycock, - is so close to the people

that when the shoe pinches, their cry can be heard. But this idea of states' rights implies state responsibilities, for although government must have the consent of the governed, it must also exist in the the sake of the governed. As Thomas Jefferson said, "The care of human life and happiness ... is the first and only legitimate object of good government."

With this thought in mind, our office has been active in several fields. For instance, we have been active in seeking to represent the public's interest in the regulated industries. Now, we in the Attorney General's office believe very strongly in America and in the free enterprise system. We believe that generally a man ought to have the right to enter into any business that he chooses and to operate it in an open and competitive market. But we also recognize that there are certain areas where this would not enhance the common good, for which all just government is instituted.

It wouldn't do, for example, to have Southern Bell building a telephone line down one side of the street and Carolina Tel and Tel building a telephone line down another side of the same street. Neither company would be able to survive, and the public would be deprived of an enormous benefit.

Since it is not wise to have a system of absolutely free enterprise, we in this country have granted monopolies to some companies and created regulatory agencies to protect the public interest.

In essence, we have said to companies involved in certain industries - we are going to give you a monopoly within a certain territory - you won't have to worry about any competitors, but, we are going to subject you to regulations set by certain regulatory bodies in order to protect the public interest. The Utilities Commission is a good example.

Now, what does this body do? It sits as a quasi-judicial body and tries to see that the industries it controls provides the public with adequate levels of a certain worthwhile service and makes a fair return on their investments. I believe very strongly that this procedure is the proper one. As a matter of fact, the few stocks that I own are all in regulated industries, and I believe that these industries are entitled to a fair return on their investments. But, by the same token, I believe that every individual should have someone to present his side of every issue so that whenever a regulatory agency must decide upon the quality of service the public receives or

the rates the public must pay, all of the relevant facts will be available.

Under our system of jurisprudence, we do not expect an industry or an individual to go before a court and make a case against himself. For instance, it would be ridiculous for Carolina Power and Light, when it feels the need to increase rates, to come before the Utilities Commission and present all of the arguments against such an increase. No one would expect any industry to do that. Now since the regulatory agency - for example - the public utilities commission - sits as a judicial body, and since the industry presents only its own side of any issue, some other agency must present the public's side. This is what we in the Attorney General's office have been trying to do. What we are doing in the Attorney General's office is simply trying to make sure that all points of view are represented before these agencies - we are not seeking to prevent any company from receiving a fair return on its investment, nor are we seeking to perform the regulatory agencies' judicial function.

But what are the alternatives to what we are doing?

One alternative is that a federal agency can be established to represent the consuming public before any

federal or state regulatory agency which is considering matters which effect the public interest. In fact, Senator Metcalf of Montana has already made such a proposal.

The other alternative is nationalization of those industries to which we now grant monopolies. In Great Britian, since 1945, public corporations have been created in several major fields of activity. The government runs the port facilities, the railroads, the air lines, the coal mining industry, the gas and electric generating and distributing industries, the communications industry. You will find the same nationalization in France, Italy, and other European countries. We here in America do not believe in nationalization; we still believe in free enterprise. And if Senator Metcalf's proposal were enacted, it would mean that federal officials would appear before the North Carolina Utilities Commission, the Insurance Commissioner, and even the Milk Commission in order to represent the public's interest.

Now, I do not have to tell you what this does to the concept of states' rights. I believe that we in the Attorney General's office - we who are directly responsible to the voters of this state, voters who have the right to remove us from public office whenever our actions displease them - are in a much better position to represent the public's interest

in this state than any federal agency which is completely removed from the will of the people of North Carolina. And, I believe that regulated industry would much prefer that we do this here on a state level rather than have anyone from Washington do it. In promoting this aspect of our office, we are upholding the concept of states' rights.

So, as some of you may know, for the first time in the history of North Carolina, we have intervened before the Insurance Commissioner in a rate hearing. What are we trying to accomplish? We are trying to put the Insurance Commissioner in a position from which he can act impartially. We are trying to remove from his shoulders the burden of being both judge and prosecutor. You may rest assured that the insurance industry is going to present all of the arguments that are favorable to its side of the question. In the past, the Insurance Commissioner has had to listen to industry's arguments, has had to try to present the other side, and has had to adjudicate the issue. We contend that the Commissioner cannot do all of this adequately. The Commissioner cannot be both judge and prosecutor. So we are trying to make sure that the five million North Carolinians know that someone is presenting their arguments to the Commissioner.

If any of you think that the threat of federal intervention is an illusion, I ask you to go back and look at the

February 7th issue of Business Week, in which you will find an article entitled "Insurers Brace for Federal Action" which indicates that Congress is considering legislation that would extend the federal arm into this area--an area which has previously been state-regulated. Business Week states that most of the industry, as well as most state insurance commissioners, strongly oppose this legislation as an unwarranted intervention in another area of states' rights.

What brought on this bill in Congress? Why, why is the federal government now seeking to intervene in this area which has been historically and primarily left to the states?

Consumer complaints have forced the issue. Business Week says that consumers are angered by the rising cost of automobile and other insurance, by the anguished haggling over flood damage claims in the wake of hurricane Camille; by the cancellation of policies seemingly without provocation; by the inability to obtain coverage in certain high risk areas. I could go on.

Now, it may very well be that these activities on the part of the insurance industry are completely justified, but I believe that the consuming public will never be convinced of this unless it knows that somebody is appearing before the Insurance Commissioner and presenting the public's

case. And that is exactly what we are seeking to do.

This same issue of Business Week quoting an insurance executive, said that if the states would fulfill their responsibilities, if the states would do what they are entitled to do - should do - then this bill would never be passed by the Congress, but I am afraid that unless we begin throughout the states to exercise our responsibilities, we are going to find more and more federalism creeping into our state government.

Yet this creeping federalism can be avoided. Last year the North Carolina General Assembly passed what was perhaps the first and most aggressive unfair and deceptive trade practice act in America. Commissioner McIntyre of the Federal Trade Commission spoke here in Raleigh last year, and he made the statement that if other states in the Union were to follow the lead of the North Carolina Legislature, there would be little or no need for the Federal Trade Commission to involve itself on the local level with regard to unfair and deceptive trade practices.

Some of my friends who have known me for years and have felt that I have always been a conservative and a believer in free enterprise have become somewhat concerned



about our recent actions. Some of them have even been to see me. I will tell you what I told them. In the Consumer Protection Division, we are trying to protect the rights of the man on the street, see that he is protected from misrepresentation and deception in the marketplace. We are seeking to meet the demands of the businessman that he be protected from the unscrupulous and fly-by-night operator who moves into his community and who through deception and misrepresentation deprives the housewife and the wage earner of their savings and earnings and deprives the legitimate businessman of the profits that he is rightfully entitled to make.

You know, the right to engage in free enterprise has never included the concept or the right to deceive someone through misleading or false representation. Yet some businesses seem to be founded on just this misconception.

I would like to mention a number of cases which I think illustrate this.

Some of you may be familiar with the pyramid selling gimmick, especially as it has been used by some in the cosmetic industry. This chain referral technique deprived many persons in this state of their earnings and savings

because the selling scheme was deceptive and misleading. Cosmetics were not being sold; franchises were.

Another company moved into Charlotte and indicated to the people there that a gigantic department store would be built and that the company wanted to cut people in on the ground floor. Those representing this company said, "Now, we want to make you a partner in this operation. If you will buy a foundership for \$750, we will give you one of these television sets or a similar appliance which we estimate costs about \$100 or \$150." In addition, this company offered to these people a plan whereby they could receive fifty cards on which their identification number was to be printed and which were to be passed out to their friends when the store opened. Every time one of these friends made a purchase, the individuals involved were to get four percent of the gross sale price.

And this wasn't all. The people were told that they could get their \$750 back by selling founderships to three more people.

When we in the Attorney General's office were called in, our investigators found that nowhere in America had this company actually built and operated a store. The only thing

we found was a cement block warehouse in Birmingham where a few appliances were stored. When we got the contracts and read them carefully, we found nothing in them to indicate any commitment that this company would ever build a store. By the time we went into court and got a court order against this company, the Chamber of Commerce, the Better Business Bureau, and our investigators, estimated that this company had walked out of Charlotte with three quarters of a million dollars - three quarters of a million dollars in sales that the legitimate businessmen in Charlotte were entitled to make. At the time we got this court order, there were salesmen from this company in Raleigh ready to begin operation.

So you see, we think we are protecting not only the customer, the consumer, but the legitimate businessman as well.

Many companies move into an area and before their deception can be discovered, they have already departed the jurisdiction of the local sheriff or police - perhaps crossed county lines - and the person is left unprotected. To be sure, the Attorney General's office cannot represent each individual. Trying to represent five million North Carolinians individually would require that we employ almost every attorney in the state. So, our purpose was not to recover the money lost

in Charlotte or anywhere else; our purpose was and is to prevent others from being fleeced. The individual's case is, of course, a matter between him and his own attorney.

Yet there are types of deceptive advertising which the individual cannot very well protect himself against, and in relation to these, the Attorney General's office can be most useful.

Before Christmas, a well-known store in North Carolina which operates in Durham, Greensboro, Charlotte and other places, ran a full-page advertisement advertising a so-called loss leader appliance at a ridiculously low price. After some complaints, we sent investigators to the store. One half hour after the store opened, the store claimed that the appliance was already sold out. We checked, and our investigation revealed that there probably never was an appliance of the sort advertised sold at a single store anywhere in North Carolina even though it was advertised repeatedly in full-page advertisements. This is a good example of the bait and switch technique used to get people into a store so that high-priced items can be sold. But what is the result? The gimmick deprives a legitimate merchant from business profits he is entitled to make.

Of course, we will never be able to rid the marketplace of all deception and fraud, but we do feel that because we are making an effort, because there is now a place where people can complain, because there is now somebody who will listen, somebody who will investigate, a good effect is being made and much of the marketplace's deception is being eliminated.

Since the North Carolina Legislature passed this unfair and deceptive trade practice act, the President has submitted to Congress a bill with identical features except that federal officials would administer it. So, by making this federal law unnecessary in North Carolina I believe that what we are doing really promotes states' rights, and I was pleased recently when I was asked to be on a panel of the Mid-Year Attorneys' General meeting in Washington. There we presented our program and proposals with the hope that the Attorneys General from the other fifty states would begin to institute them also and, thereby, eliminate the need for federal intervention.

This knowledge of what we are attempting should help you understand our actions better, and this understanding should enable you to give us the support we need. We ask for your help and if you need ours, call on us.