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Delivered on his behalf by
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TO: North Carolina Dairy Herd Improvement
Association Incorporated at
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I sincerely regret the fact that I cannot be with you today and deliver this speech myself. I have very strong feelings concerning your industry and the North Carolina Milk Commission, which seeks to regulate it.

Most of you know this. However, I am afraid that many of you do not understand the positions I have taken in the past and perhaps more important, the positions which my office will take in the future in regard to the regulatory functions of the North Carolina Milk Commission. Certainly I am aware of the fact that many in your industry regard our intervention in the various Commission hearings with apprehension, fearing that our efforts will be to the detriment of the milk industry.

The posture of my office in relation to State regulatory agencies is certainly a departure from that of the past and consequently it is not surprising that you who are vitally affected by the actions of the Milk Commission would view our activity before that Commission with the same scepticism that the power companies, the telephone companies, the insurance

companies and the transportation industry have looked upon us as we appeared as advocates of the consuming public before the Commissions which regulate their activities. But as those industries I just mentioned are now recognizing that our efforts are not only in the best interest of the public but in their best interest also, I believe you will come to feel this way too.

Some have said that the members of my staff and I simply do not understand the complexities of the milk industry, that we never will be able to, and that we should therefore not seek to intervene on behalf of the consuming public. I shall be quite frank and say that those who are proclaiming this loudest are doing so because, in my opinion, they fear that we know too much about the way this industry is being regulated - that we know too much about the trends which are being established, which I believe with all my heart are going to be extremely damaging to you and your industry if they continue.

Let me tell you first of all that I feel very strongly that there is the need for some government regulation in the milk industry. The General Assembly of North Carolina recognized this in 1953 when it enacted legislation intended to insure that all the citizens of this State would have available to them at all times an adequate supply of milk and that the producers of this milk would have a stable market within which to operate.

In a statement prepared for presentation before the State Milk Commission several months ago I said that I agreed with the Commission's efforts to stabilize the market for dairy farmers as a legitimate goal of the legislation passed by the General Assembly.

I went on to explain why I agreed and I would like to read to you a few paragraphs from that earlier statement because they still are an accurate expression of my feelings on this point:

"I agree because I recognize that the dairy farmer produces the most perishable food commodity on the market today. I also recognize that the dairy farmer must make a continuing and a fairly more substantial investment in his farm, his herd and his milking equipment than is required of his neighbors engaged in other farm activities. The dairy farmer, daily, must meet standards of sanitation in his farming operation substantially higher than any of his other neighbors engaged in farming.

"I further recognize that the nature of the milk producing animal requires constant year-round attention to insure a producing unit and this requires greater continuing outlays of capital to pay for labor on a year-round basis.

"The combination of all these factors has made the milk producer more susceptible to unfair and damaging trade practices in the production and marketing of his product than any other single industry I know of.

"Certainly the monopolist covets no industry more than the milk industry, because of its vital role as a food necessity and because it is the industry most susceptible to predatory trade practices."

You here today know what I'm talking about. You have seen how some of the giants in the dairy industry moved in and began to gobble up independent dairies and processing plants. The Federal Trade Commission stepped in and prevented a continuation of this practice because they knew that to allow these giants to continue to do so would be to give them such firm control on this industry of yours that they could effectively control the market and systematically eliminate all their competition.

Some of these same companies are now clammering for the North Carolina State Milk Commission to fix the retail prices which the consumer must pay for "nature's most perfect food", action which in my opinion flagrantly violates every principle of free enterprise by eliminating competition between retailers of milk, thereby maintaining artificially high prices.

At the same time they declare that we must set the retail price of milk in order to protect the producer. To support their argument they point to the fact that the number of producers has decreased during the past years.

Yes, the number of producers has decreased but strangely enough, the amount of milk produced has not. As a matter of fact, the amount of milk produced during the last ten years has increased by 40%. What accounts for this phenomenon? Where did those producers go? Were they destroyed by excessive competition in the marketplace?

In my opinion, the answer is "No." Some of the decrease in numbers of producers is attributable to normal attrition such as death or retirement, or lack of continued interest in the industry. If any producer sold out against his will, they did so because of merger efforts which serve to eliminate competition rather than create excessive competition. They went into the craw of financial giants in the industry who swallowed them one by one in action which could only lead to less competition, bigger profits and greater dividends at the expense of the consuming public and the producer.

On two recent occasions we have seen some of these major companies panic when competition appeared in the retail milk market. On two occasions the Milk Commission has

convened on the basis of petitions that "chaotic conditions" existed in the marketplace which were apt to destroy the entire dairy industry, including the producer. On two occasions, the Commission has seriously considered fixing the retail price. The verdict is still not in from their last hearing.

I have contended, and continue to contend, that where there is competition in the retail sale of milk, you, as producers, benefit and that your profits increase. The North Carolina Supreme Court confirmed this conclusion in its decision in MILK COMMISSION v NATIONAL FOOD STORES.

I think it is significant to point out that in South Carolina, where the retail price of milk is lower than it is in North Carolina, the blend price is higher because more Class I milk is being consumed.

There are those who say that to allow competition in the retail sale of milk is to permit the self-destruction of the dairy industry. They say that prices will be driven lower and lower until they reach the price they must pay you the producer, that then their profit margin will be gone, that they will have to go out of business forcing you out of business also, or else your blend price must be reduced eliminating your profit margin and driving you out of business..

I do not agree with this argument. Anyone who does must also agree that the free enterprise system itself is inherently self-destructive and will not work. History, fortunately, has proved that it will and does work and that sellers in the normal course of business will not slash prices until they commit financial suicide.

It is a common practice in all lines of retail trade to use loss leaders to attract customers. Products used as loss leaders often vary from time to time and from community to community. The retailer has to decide for himself what product sold at a reduced profit is most likely to attract additional customers to his store and promote his particular business. We have argued, and still contend, that it is as legitimate for him to use milk as a loss leader as it is for him to use eggs, chickens, butter or any other product he stocks on his shelves.

But what about the unscrupulous businessman who will deliberately sell milk at a loss for the sole purpose of forcing his competitor out of business? Should this be allowed? Certainly it should not.

To this date, there has been no evidence produced before any State body that I know of which indicates that any retailer is so using milk to destroy his retail competition.

In fact, all of the evidence produced at both hearings held by the Milk Commission showed unequivocally that retailers are continuing to pay the dairy processors regular wholesale prices for milk and that the dairy processors have continued to pay the blend prices established by the Milk Commission's Milk Market Order No. 2.

The evidence further shows that with a decrease in the price of milk, milk consumption goes up and the overall effect, as I said before, is to increase the blend price to the producer and his profit,

Some retailers have told me that when the price of milk is reduced, consumption increases greatly and the sale of soft drinks and artificial juices go down. So based upon these people's reports, the public prefers to drink milk when it can afford to do so in preference to artificial drinks which have less nutritional value.

One retailer who had been selling milk for 99¢ a gallon testified that based upon his own marketing experience, selling milk at this price increased the customer traffic in his store more than giving S & H Green stamps. Therefore, for this reason he insisted upon selling his milk which he had paid for and which he owned at a price and in a manner most beneficial to him and was willing to sacrifice his profit.

It should be noted that this retailer paid \$1.02 per gallon of milk to his supplier of milk and that that processor paid his producers the blend price established by the North Carolina Milk Commission, to which my office has never objected and in fact supports.

Therefore, I think you can see why we have opposed efforts by the State Milk Commission to set the retail price of milk when there is no evidence to show that selling milk as a loss leader has effected the price either paid to the processor or producers or that it is apt to.

The statutes of this State relating to the Milk Commission specifically state that it is the goal of these laws to prevent the development of monopolies in the marketing of milk in this State, or stated another way, to prevent the elimination of competition in the marketing of milk in this State. This statute has been before our North Carolina Supreme Court for interpretation on two occasions and our Supreme Court has stated both times this same goal.

So, I am in agreement with the goals set by this Commission to protect the public from this kind of monopolistic power, and to eliminate unfair trade practices which tend to stifle competition and force competitors from marketing milk in North Carolina. These are the same goals we are seeking in all lines of trade and commerce in this State.

This is the goal I was seeking to achieve in the action we took recently against a number of publishers of children's books who conspired together to eliminate discounts for library editions, who conspired to prevent competition and inflate the cost which the consuming public - you and I - had to pay for their products. These companies admitted that they were trying to destroy competition and the State of North Carolina recovered more than \$50,000 in damages.

This is the goal I am seeking in the case which is now pending against several major manufacturers of life saving antibiotics who conspired to fix the price of drugs which mean the difference between life and death for you and your families. These companies effectively eliminated competition to the detriment of the consuming public.

I can assure you that my office has the same interest in protecting the members of your industry, whether producers or processors, from the practices of the unscrupulous few who might be tempted to employ unfair methods of competition in order to destroy their competitors and create true "chaos" in the production and marketing of milk.

I am confident that we can provide you with this kind of protection without the necessity for the State Milk

Commission to fix the price of all milk sold at the retail level. If we could not, then I think that not only you but the producer of every product found in the marketplaces of this State would have cause for alarm.

North Carolina has on its books some of the strongest laws in the United States prohibiting unfair competition, monopolies, and acts in restraint of trade. North Carolina has in Deputy Attorney General Jean Benoy and his associates the most competent attorneys and watchdogs of the free enterprise system in this Nation.

The North Carolina Milk Commission can come to me or Mr. Benoy any time they feel that unlawful competition is creating havoc in the market. We will respond and, I promise you, quickly and effectively. It is not necessary in my opinion for the Commission to ban all competition in order to eliminate unlawful competition which might appear.

Justice I. Beverly Lake pointed out in his decision in the case of MILK COMMISSION v NATIONAL FOOD STORES, that "The Commission was established as a State Agency to protect the interest of the [consuming public] in a regularly flowing supply of wholesome milk ..." and that "it is the destruction of the competition in the handling of milk which [the law] was designed to prevent."

I believe the Commission should consider this statement carefully for it says to me in the clearest sort of way that the objective of the law enacted by the 1953 General Assembly was to prevent the destruction of competition in the handling of milk - not to prevent all competition in the handling of milk.

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