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Speech by: Robert Morgan
North Carolina Dairy Products Association
(Taken from tape)

I thank you very much for the opportunity of coming down and meeting with you this morning. I am sure that there are some among you who probably would have preferred that the invitation had been extended to someone else. I told one of my friends that I had understood that there was a movement under way to rescind the invitation, and that perhaps you might have done well to have followed that advice, but, nevertheless, I do think that it is recognized by all of us that there have been differences between us and what we think has been for the best interest of the public of North Carolina.

But, I think most of us would concede that on all sides that those differences have been honest and in good faith. Perhaps our respective positions have not always been understood, and I am sure that is quite true when you depend to a large degree upon newspaper coverage.

While I am sure this morning that I am not going to persuade or convert any of you, and certainly not all of you, to my point of view, but at least maybe if we have a mutual understanding of each other's position, we will

be better able to work together.

I say these things not because there is any feeling of animosity between the Dairy Products Association and the Attorney General's Office, but because there has been a general feeling by the public that there might have been.

Now, ladies and gentlemen, it would have been much more pleasant for me to come here this morning, and talk with you about some of the things we are doing that have been very pleasant, but I don't think that any useful purpose would have been served by it.

So, what I would like to do in the few minutes that are allotted to me is to try to relate to you some of the positions that we have taken which we think are in the best interest not only of the consuming public, but in the interest of the dairy farmer as well as in the interest of the dairy processors.

It is a known fact that the dairy industry, and the regulatory agency, the North Carolina Milk Commission, has been surrounded by controversy since its creation in 1953. Notwithstanding what some people may think,

the Milk Commission and the milk industry is not entirely new to me. I served in that session of the Senate in 1959 when Senator Ralph Scott and I were among about ten or twelve that usually voted in the minority on just about everything that came up.

I also served with Senator Scott on the Conferee Committee that ironed out the difficulties between the House and the Senate Bill in 1955 which amended the North Carolina Milk Commission Act. And, therefore, it is not entirely new to me.

Although I do admit that the processing and marketing of milk is a complicated area, but it is not one that is beyond the comprehension and understanding of all of us who are not in the milk business. I think, one of the things, as you well know, that when the Milk Commission was created in 1953, there were approximately 78 processors existing in North Carolina. Today, there are only approximately 25 milk processors. Now, this, of course, is not altogether unexpected or unusual because I suspect that you will find that a similar statistic would be true with regard to almost any industry.

About 35 of those processors that were in existence

when the Milk Commission was established in 1953 were merged or swallowed up by other and larger processors. Some of these processors went out of business or folded because of poor management practices or because of other real and legitimate economic factors in the marketplace. I am inclined to believe that some of those that did merge, merged or sold out, quite frankly, because of what I have come to believe were some unfair trade practices which existed in the marketing and processing of milk.

But, regardless of why the number of processors in North Carolina have decreased, the fact is that they have and, therefore, competition in this area has been substantially reduced.

And, you all know that in a free society where the economy is based on the free enterprise system, that competition is the self-regulating influence in the marketplace.

We also know that at the time the Milk Commission was created in 1953, there were substantially more dairy farmers than there are in North Carolina today. On the other hand, we know that the production of milk in

North Carolina today is greater than it was then, and the same thing would be true in almost any other area of farming. Certainly, in the area that I am familiar with because I grew up on a tobacco farm and the number of tobacco farmers has decreased substantially in the last 20 years while the number of larger farmers has increased.

Because, we find that there has been a change in the normal competition that exists in the marketplace, I recognize now, and I recognized almost 20 years ago, that there is need for regulation of the milk industry for many reasons. I need not relate them to you because you know most of them far better than I.

But to indicate to you that my opinions are on some sound basis - of course, I realize that milk is perishable, that it cannot be retained but so long; I realize that the demands in the milk market vary from time to time as school season opens and closes and many other factors, and so we know then that some type of regulation is necessary. But, let me base or premise my remarks by saying to you that I have a very strong feeling, and I am sure all of you do because you are involved

in the free enterprise system, that the one thing that has made America great is its firm belief in the free enterprise system.

If you will recall your history, you will remember, of course, that many of our forefathers came to America in search of religious freedom, but if you will recall a little further, as I have for years, you will remember that one of the very real reasons that many of our forefathers came to this country, leaving their native shores in Europe for an unknown and strange world, was seeking the right to enjoy the benefits of their own labor - to participate, if you will, in a real free enterprise system.

Remember that in England, as well as all over Europe, at the time the pilgrims left their native shores that the trade guilds or trade unions, merchants guilds or merchants unions were so strong and powerful that a young man or young woman wanting to enter into the business world could not become a full-fledged partner until they had spent a lifetime as an apprentice working through the trades and through the various occupations - so, that is one of the things that drove Europeans to our native shores.

And you know in a very short span of some two to three hundred years, we, in this new country, became the greatest economic power on the face of the earth. The reason we became so great was because the economies of Europe were so bogged down by the monopolies and the cartels that existed then that there was very little competition in the marketplace. It was not until those monopolistic companies and cartels were broken up at the end of World War II that Europe begin to be a real competitor for the American economic system.

I believe very strongly in it because I grew up on a farm in Harnett County where my father was able to participate in the free enterprise system - in a very limited way, of course. But, because of his right to go out into the marketplace and earn the fruits of his own labor, he was able to provide food and shelter for his children and to provide some education for us.

But, you know, I feel that today gradually and slowly, we are seeing our great system eroded away and destroyed, and I am afraid, while we are inclined to blame the actions of the government, and especially the federal government, for the destruction of our free enterprise system, I think that we must recognize that the greatest

damage that has come to us has come from those who are involved in it.

I am digressing for a moment to talk about this because I think it is basic of my beliefs in your particular instance.

Throughout the years, various occupations and professions have gone before the legislative bodies of this country and have sought legislation in the name of protecting the public which, in effect, has limited the competition in the marketplace for themselves.

We saw the first regulation of the free enterprise system in America in the 1890s when Senator Sherman from Ohio and others recognized that unless something was done to impede the monopolistic practices of the giant corporations - Standard Oil and others that competition would be eliminated, and we begin having our first anti-trust laws which constituted the first real governmental regulation of business in this country.

And, I might say to you that North Carolinians were not far behind in recognizing the dangers from these

monopolistic practices. We have in North Carolina, on our books today, anti-trust laws which were adopted in 1913, which precede the Clayton Anti-Trust Act which was passed by the Congress. I am sorry to say to you that those laws, though they were placed on the books, have not been used through all the years until recent years. But, nevertheless, we begin to see that some type of regulation was necessary.

Let us see what else has happened. Various trades and occupations, as I have mentioned earlier, have gone before the Legislature and said that because our occupation or because our trade is one in which it is easy to deceive the public, or because it is one that demands some type of regulation in order to protect the public's interest, we ought to have some type of regulatory board or agency. Through the years, you may be surprised to learn, we have done this continuously until today, there are somewhere between 65 and 75 occupations and professions that your son and daughter cannot enter into without submitting themselves to examinations administered by those that are already in the occupation or profession, and then, submitting themselves to regulations by those already in it once they enter into the occupation or profession.

And, I have seen time and time again, as I am sure

you have, that these regulatory boards and agencies do not always tend to protect the public's interest nearly so much as they tend to protect the industry that is sought to be regulated.

For instance, in 1955, when I first served with Senator Scott in the Senate, there was a group of people that came to the Legislature - all of them refrigeration contractors. I don't ever recall a member of the general public coming to me and saying, we think you ought to restrict those persons entering into the field of refrigeration contractors because the public's interest demands it. These people came to us and said that because our occupation is one which is particularly dangerous to the public and warrants regulation, we think you ought to create a regulatory board, and we did - although I voted against it as I voted against almost every regulatory board in the 16 years that I was in the Legislature. Though I can see that perhaps there was some merit to that because, after all, there are poisonous gases used in refrigeration.

But, lo and behold, another group came back next session who were in the air-conditioning contracting business and said we think you ought to create another

board - we think you ought to regulate those who are involved in the air-conditioning business. So, we did!

So, it turned out, that a man could be licensed as a refrigeration contractor, build the air-conditioning unit but he couldn't come and bring it here and couple it in this building without passing another board examination because of the public's interest. When you and I know, of course, that if your air-conditioner doesn't work, it is no worse than if you didn't have any, and if it got too cold all you would have to do would be to turn it off.

But, to show you the ridiculous extremes we have gone. We have really gone so far now as to say that a watchrepairman must pass an examination and be regulated by those who are already in the profession. We have gone so far as to say that those who sell hearing aids must pass an examination and be regulated by those already in the profession.

What I am saying to you is that if these arguments are warranted and are meritorious, then surely the television repairman ought to have to pass an examination and be regulated.

And surely if the man who sells hearings aids, if it is easy for him to practice fraud on the public, the man who sells you a television, or a radio, or an automobile ought to have to pass an examination.

Or how about the man in the supermarket who sells more than 6,000 different items - surely, he could practice fraud on the public.

Maybe I am being a little absurd, but what I am trying to say to you that unless we are careful in the industries that are regulated to make sure that we regulate for the purpose of promoting the public's good that we can eventually destroy our free enterprise system that we cherish and think so highly of in this county.

Now, of course, the public's good does demand that we have regulation in the milk industry. We recognized that a long time ago, but what is it about the North Carolina regulatory system that has brought it into disrepute with the public?

Whether rightfully or wrongfully, and I am not arguing the merits of the things I am saying or the demerits, because I know that there are substantial arguments on both sides, but I simply want to relate to you some of the

complaints that we hear constantly in the Attorney General's Office when we have sought to protect the public's interest. To represent the public has been historically the responsibility of the Attorney General.

The general public cannot understand, for instance, why here in North Carolina our milk prices are on the average of 13% higher than the national average. I am sure you have reasons for it, but does the public understand these reasons? It is difficult for the average person to understand why the average cost of milk in North Carolina is about 16% higher than it is in New York City or about 6% higher than it is in Richmond or 18% higher than it is in Nashville and so on.

There are many variables that I know that could be argued, but have these variables been communicated to the public so that there could be an understanding of the reason for it?

One of the things that I was concerned about and of which I have been criticized, and many times by those in your industry, is the very strong feeling that there should be competitive bidding for milk to the public institutions and public schools. Not only have we been concerned about this

in dealing with your commodity, but we have been concerned generally about all commodities.

For instance, we found that we lacked competitive bidding in highway construction and the materials that go into highway construction in many areas. Oh yes, they went through the bidding process, but we found, in many cases where highway projects were being let in a given area, that there was a mutual understanding on the part of those who were bidding that when we are bidding in your area we bid high and you bid low, and when we are bidding in my area you bid high and I'll bid low.

Of course, you and I know this was unfair; we know that it is a violation of the anti-trust law; we know that it contributes to the erosion of the free enterprise system, and that it costs taxpayers a substantial amount of money.

We know that in many areas because of the posting regulations of the Milk Commission that the public schools were not getting competitive prices for milk. Of course, here again there is substantial argument both ways, but when a military base such as Seymour-Johnson gets competitive prices and the public school across the way did not, you can see

that there was substantial reason for complaint among the general public.

After receiving many, many complaints from the public school area, we did begin to make inquiries. We found that in many cases and in almost all cases that identical bids were being accepted or being offered and then, a portion of the market was divided up among the processors in that area which, of course, I grant you is desirable in many ways but is not legal.

For instance, in one county they divided it up according to the amount of property taxes that particular processor paid to the county.

Now, you and I know that this was not fair - it was not fair to the small processor who may not have paid as much taxes. We know also that it was not fair to the taxpayers who should not subsidize any particular industry.

Another place divided it up according to the number of pounds of milk that were purchased from the producers in a given area, which, in many ways is desirable because we

all like to see the farmers in our area prosper and grow, but, nevertheless, this was not a legal practice.

We ruled that schools must have real competitive bidding and this is the way I understand the law to be, and no one yet has shown me anything to the contrary.

As a result, it may have discouraged, in some ways, the marketing situation of milk, but, on the other hand, it has resulted in substantial savings to the public schools of North Carolina. I have many of these facts and figures here before me if there are questions.

One of the practices that has contributed in North Carolina to the misunderstanding of the Milk Commission and its regulatory processes has been the rebate process. - the rebates that have been secret - or so-called secret - rebates and discounts which were known and yet nothing was done about it. Many times greater rebates were given to one store than another, and it is being done in North Carolina today.

One operator of a supermarket said, "Of course, I am getting illegal rebates, but so is my competitor, and as

long as he is getting them, I'm going to get them."

In the past, there have been practices whereby rebates were made out of the State. For instance, a national processor would deal with a national food store in Chicago or Jacksonville, and our Milk Commission has felt that was out of their control, and there was nothing they could do about it. And, of course, you know what this has done - this has resulted in an inequity to the milk processors who tried to adhere to the letter and spirit of the regulations, and even to those who did not necessarily want to adhere, but because of economic factors had to adhere.

One case that I know of - a particular processor did not want to lose the account of a particular hotel, so he rented a room on a year-round basis from the hotel - an illegal rebate, and, of course, the room was never used and was constantly rented by the hotel to other people.

What I am saying to you is that there have been illegal practices which have been prevalent and known to many of you and nothing has been done about it! And, ladies and gentlemen, if you expect the milk regulatory processes to function properly, the regulations adopted by the Milk

Commission must be uniformly and fairly enforced, and they must be enforced!

I say to you that the anti-trust laws of North Carolina are still on the books, and we stand ready in our office to render aid and assistance to your Commission and to their counsel to enforce these laws when you feel that the violations are outside your jurisdiction. If these illegal combinations are being made outside of North Carolina and the Milk Commission and its counsel feel like they cannot reach them, then we can. And we stand ready and willing and able to help enforce your regulations - the regulations that the Milk Commission adopts.

Being candidly and perfectly frank with you this morning, as I think you have probably noticed that I have already been, I do not believe that you have proper records in your Milk Commission to determine the necessary factors that are necessary for the control of the milk industry. Can you determine, for instance, or could you determine, for instance, what effect a price war would have on a given area. Surely, you could tell what the sales of Class 1 milk were and Class 2 milk in a broad region, but could you really tell what the

effect of a price war in Durham was having on the Durham market and not on the whole area?

I was surprised to learn after 17 or 18 years of setting the price that we had been paying to the dairy farmer in North Carolina without really knowing the cost of processing milk. I am glad that a study was made, but I think such records ought to be kept. I believe that the Milk Commission ought to be the most knowledgeable agency in State Government in the area that it seeks to regulate.

I believe this very strongly, and I have said this to my friend, Grady Cooper, that you need to increase the staff of the Milk Commission with special investigators to the end that you can enforce the laws.

Another situation that we all acknowledged existed where price cutting is going on - not, for the purpose, I believe, as loss leaders - but the processors were selling milk in a given area at prices less than they were selling it in their own market areas and, I thought, for illegal purposes. The Milk Commission knew this was being done, but yet did nothing about it. Of course, I can understand one reason is because they lack the personnel.

I said to Grady and to Chairman Bolton, and I say it to you, that if you do not have the necessary investigators to enforce your regulations, then you ought to get them and if you need my help, I will do what I can. If you can't get them, I'll make mine available to you.

We are not there as the enemy of the milk industry. We are there to render assistance to the industry just as much as we are to the public as a whole. I believe that these things ought to be looked into and ought to be properly and thoroughly enforced.

Now, you have got a new Milk Commission coming up. I think it is good. As Ralph Scott reminded me at breakfast, when he introduced this bill, he had told me about it, and I told him then that I was not going to oppose the bill because that is not really my job.

I only appeared before the General Assembly this time on one or two bills which I thought were of paramount importance - one of them was the Buyer's Protection Act, which I thought had to be passed in some form, although I did not agree with the way it was initially introduced, but I thought it had to be passed in some form if the Consumer

Protection Division was to be able to function properly and to ward off federal intervention in this area.

But, I told Ralph that I was not too happy - to use his words, "I didn't think much of it, but I was not going to oppose it." I do think some good things have come from it.

I think that you can say that no matter how conscientious industry members on the Board may be, you cannot remove all of the suspicion in the public's mind when those who regulate the industry are those directly involved. You are going to have a new Milk Commission with seven members. One member, if I recall correctly will represent the milk farmers and the other will represent the milk processors; the other five will represent the general public.

I think that the selection of these members is one of the most important factors to be considered in the milk industry today. I think these members must be men or women who are willing and able to give of their time to understand the milk marketing process. I think this is one of the difficulties in many areas of government today, including higher education, is that so many of our board members are not willing to give

the time to fully comprehend and understand the duties and the facts surrounding their duties so that they can make intelligent decisions. So, I hope that the members that are selected are members who will be willing to do whatever is necessary.

I think it is up to you - to the milk farmers of North Carolina, and to the Attorney General's Office - all to work together to try to make this new Milk Commission work - to make it work for the interest of the consuming public, as well as for the milk farmers and the milk processors. I want to pledge to you the wholehearted cooperation of our department and our office in trying to make it work. I think it should be geared to the needs of the market. Again, I say, I think the regulations should be thoroughly and impartially enforced.

And let me say this, this is where you are going to find me as an adversary - not only in this area but in public utilities and all other areas - you are going to find me as an adversary in all hearings. Here again, not as an enemy of the industry, but solely for the purpose of trying to make sure that whenever the Commission adopts a regulation or enters an order or imposes a penalty, that it be based upon

all of the facts and all of the evidence that can be mustered. It is not fair, it is not fair to ask these Commissioners to work on speculation alone or what they think the facts would be or ought to be. They must be based on substantial evidence. We expect to be there.

Ladies and gentlemen, you may think I am wrong, but let me digress a moment to talk about the rate regulations in the public utilities. I know I am talking long, but I think this is important for you to understand the concept of what we are trying to do.

Whenever a public utilities commission is designed to regulate those industries much in the same way that your Milk Commission is, you as an individual user of electrical services, have no alternative whenever a power company says to you that we are going to increase the charges that we make to you for services. You cannot change companies because we have seen to that - we have granted your company a monopoly in that area. And yet, you as an individual user cannot be there as an attorney to cross-examine the evidence that the companies offer. When they come in before the Commission, they come in with the very best legal talents that can be found to present their cause in the light most favorable to their clients - the power companies.

And, this is in the American tradition. This is in the tradition of the Anglo-Saxon system of laws jurisprudence. No man has ever been required to make a case against himself, and the same applies to an industry as well as an individual. What we have been is on the other side of the table simply to cross-examine their experts and to offer any conflicting evidence - to make sure that all of the facts are available.

To give you an illustration I think that illustrates it simply. The first case we intervened in was Southern Bell. Southern Bell asked for a substantial rate increase in the Mecklenburg-Charlotte area. We appeared on the other side. They appeared in court and put their witnesses on the stand, and they testified that they needed a certain increase which I believe in this case came to about five million dollars a year from consumers.

Well, this sounded good as they got through making their case before the Commission, and if they had stopped right there, I am sure that the Commission would have had to grant their rate increase, but we begin to cross-examine them.

We said, why do you have to have this rate increase?

Well, they said, we were going to improve the type of services that are available to our customers.

Well, this is good. What type of improvements are you going to make, we asked?

We are going to reduce the number of telephones on party lines.

How much reduction are you going to make?

We don't know yet; we really haven't made an indepth study.

Well, if you haven't made the study, how do you know how much to increase the rates?

Well, this is an estimate.

When will these services be available, we asked?

We don't know yet; it will depend upon delivery of equipment.

Well, when will the rates become effective?

Immediately.

So you see, all these facts we brought out on cross-examination changed the whole complexion of the matter, and the rate increase was denied. The company went back and they did their homework and came back with facts and figures the Commission could act justly on.

Now, sometime ago, the Vice-President of that company came to me and he told me, "I want you to know that we agree with the adversary role that you are playing - not only because it is making us do our homework, it is making us do a better job, but second, because we would rather you do it on the State level because your door is always open to us. If you go off on a tangent or if you go off half-cocked, at least we can come to you and say what do you think you are doing. You'd better reconsider this. We may not be able to convince you, but at least, we can talk to you. "But do you know," he said, and I know this to be true, "there is a bill pending in the Congress of the United States today, introduced by Senator Metcalf of Montana, which would provide 2,000 attorneys on the federal payroll, and the appropriation calls for an annual salary of \$20,000 a year in expenses for the sole purpose of appearing before State and Federal Regulatory agencies on behalf of the consuming public - just as we are doing in North Carolina.

Now, would you rather we do it here in North Carolina or would you rather a corp of federal attorneys out of Washington do it for us. And as I said to John Ryan, "you know you had no trouble seeing me, but if you wait for them to do it in Washington, you won't even be able to find the person to go to see, let alone have an opportunity to sit down and talk with him."

So, here again, I think what we are doing in the Attorney General's Office is the proper exercise of state responsibility. For too long in this country, and especially in the South, we have talked about states rights, but we haven't done enough about them. I wonder often if the attorneys General of the various states, through the years, had been a little bit more attuned to the needs of the people in their states, if we would have had so much federal intervention in all areas of our life and especially in our schools and civil rights.

When I talk with my counterparts in adjoining states, we send a complaint down, I won't say which state, that one of our consumers has been defrauded by a concern there, we get a very nice letter back saying, we appreciate hearing from you, but we have no agency in our state that we can talk with about this.

Yet, I am satisfied that whenever the federal government moves in with their class actions and their "storefront" lawyers that he is going to cry the loudest.

Let me conclude by saying that it does give me concern, the part in the bill [Milk Commission] which sets the minimum retail prices. This gives me a great deal of concern, but the Legislature has passed it and it is now my duty to live with it, and try to make it work, just as I think you must try to make it work or else we well see punitive legislation.

But, the thing that concerns me about this is, with the rebates that we give to our large purchasers - your supermarkets - it is possible for supermarkets to get a rebate under the present regulations of as much as 13.3% and possibly 21%, but let's just say 13.3% to be perfectly fair. This means that he can sell at his cost at a substantially less price than the small independent groceryman who is having a heck of a time right now surviving and who isn't going to get a rebate.

I buy my groceries from a corner grocery store that has been there 25 years, but it doesn't buy milk in

large enough quantities to get a substantial rebate. He is going to be bound to sell it at his cost. Whereas, the supermarket that he is trying to compete with - and having a time surviving right now - will be able to sell their milk at much less than what my groceryman can sell his for and still make a substantial profit.

This is the part that worries me. I don't know what you can do about it, except that I do feel that we ought to watch it and try to make it work as best we can.

Ladies and gentlemen, I have rambled a great deal. I didn't come here with a prepared speech because I wanted to tell you as best I could how I felt.

I will be glad to try to answer any questions or to confer with any of you. And, I will be glad to try to work with you to make the milk industry in North Carolina continue to grow and prosper, not only for the farm and the processor, but also to benefit the consumer in this State.

Thank you very much.