

Speech By:  
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## PROFESSIONAL LICENSING

IT IS MY UNDERSTANDING THAT THE NORTH CAROLINA MEMBERSHIP OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS HAS BEEN ENGAGED IN A LEGISLATIVE EFFORT TO PROVIDE FOR THE EXAMINATION AND LICENSING OF SOCIAL WORKERS. THIS COLLECTIVE ENDEAVOR TO PROTECT THE PUBLIC AND TO PROMOTE HIGH STANDARDS OF PROFESSIONAL PERFORMANCE OF THOSE ENGAGED IN THE PROFESSION OF SOCIAL WORK IS INDEED COMMENDABLE, AND I ACCORDINGLY APPLAUD YOUR INITIATIVE AND YOUR IDEALS.

SINCE YOUR PROPOSED LEGISLATION WILL NO DOUBT BE SUBMITTED TO THE UPCOMING SESSION OF THE GENERAL ASSEMBLY, I THINK IT WOULD BE APPROPRIATE FOR ME TO DISCUSS WITH YOU SOME OF THE POTENTIAL PITFALLS ANY LEGISLATIVE ENDEAVOR IN THE AREA OF OCCUPATIONAL LICENSING IS LIKELY TO ENCOUNTER.

IN ANY CONSIDERATION OF A PROSPECTIVE LICENSING STATUTE, ONE BEGINS WITH THE FUNDAMENTAL CONCEPT THAT THE PUBLIC IS BEST SERVED BY THE FREE COMPETITION OF FREE MEN IN A FREE MARKET.

IN TERMS OF THE BENEFICIAL IMPACT OF LICENSING LEGISLATION, IT MUST BE RECOGNIZED THAT LICENSING STATUTES CAN FURTHER NO PUBLIC INTEREST COMPARABLE IN IMPORTANCE WITH THE PUBLIC INTEREST IN THE FREE OPPORTUNITY FOR INDIVIDUALS TO ENGAGE IN THE OCCUPATIONS OF THEIR CHOICE. THEREFORE, IF THE SOLE PURPOSE OF A PARTICULAR LICENSING STATUTE IS THE TIGHT CONTROL OF A PROFESSION IN PERPETUITY, WITHOUT A REASONABLE RELATION TO PUBLIC HEALTH, SAFETY, MORALS OR WELFARE, THEN THERE IS LITTLE DOUBT BUT THAT THE STATUTE WILL SIMPLY NOT SUSTAIN A CONSTITUTIONAL CHALLENGE (EITHER UNDER THE UNITED STATES CONSTITUTION OR THE NORTH CAROLINA CONSTITUTION). IT IS NOT DIFFICULT TO BELIEVE THAT IN MANY PROFESSIONS SUCH AS DENTISTRY, MEDICINE OR LAW, WHICH ARE CONCERNED WITH SUCH VITAL MATTERS AS THE HEALTH OF THE PEOPLE AND THEIR ACCESS TO JUSTICE, LEGISLATORS, IN PASSING SUCH LICENSING LAWS, ARE GIVING FORM TO THEIR OWN CONVICTIONS AND TO THOSE OF THEIR CONSTITUENTS AS TO DESIRABLE SOCIAL POLICY. HOWEVER, THE DANGER ARISES WHEN THESE LICENSING LAWS ARE PROCURED BY MEN ALREADY IN THE OCCUPATION OR PROFESSION IN ORDER TO KEEP OTHERS OUT.

THE LEGAL MAXIM, STATED AS SUCCINCTLY AS POSSIBLE, IS THAT A STATE MAY CURTAIL THE RIGHT OF ANY PERSON TO ENGAGE IN ANY OCCUPATION OR PROFESSION AS A VALID EXERCISE OF THE POLICE POWER ONLY IF IT IS REASONABLY NECESSARY TO PROMOTE PUBLIC HEALTH, MORALS, ORDER, SAFETY, OR GENERAL WELFARE.

THESE PUBLIC INTERESTS ARE ABSOLUTE REQUISITES FOR A STATE TO JUSTIFY INJECTING ITSELF INTO THE FREE COURSE OF MEN'S LIVES. THE SUPREME COURT OF THE UNITED STATES HAS SAID:

"TO JUSTIFY THE STATE IN INTERPOSING ITS AUTHORITY IN BEHALF OF THE PUBLIC, IT MUST APPEAR THAT THE INTERESTS OF THE PUBLIC GENERALLY AS DISTINGUISHED FROM THOSE OF A PARTICULAR CLASS REQUIRE SUCH INTERFERENCE; AND THAT THE MEANS ARE REASONABLY NECESSARY FOR ACCOMPLISHMENT OF THE PURPOSE AND NOT UNDULY OPPRESSIVE UPON INDIVIDUALS."

LAWTON V. STEELE, 152 U.S. 133 (1894)

QUOTED IN RE. HOSPITAL, 282 N.C. 542, (1973)

A STATE LEGISLATURE MAY NOT UNDER THE GUISE OF PROTECTING THE PUBLIC INTEREST, ARBITRARILY INTERFERE WITH PRIVATE BUSINESS, OR IMPOSE UNUSUAL AND UNNECESSARY RESTRICTIONS UPON LAWFUL OCCUPATIONS AND PROFESSIONS. CONTROL OR REGULATION OF AN OCCUPATION MUST BE BASED ON SOME DISTINGUISHING FEATURE OF THAT OCCUPATION OR THE MANNER IN WHICH IT IS ORDINARILY CONDUCTED OR PRACTICED, A NATURAL CONSEQUENCE OF WHICH, IF UNREGULATED AND UNCONTROLLED, IS TO PRODUCE SUBSTANTIAL INJURY TO THE PUBLIC PEACE, HEALTH, OR WELFARE. STATE INTERFERENCE WITH A TRADE, WHATEVER THE UNDERLYING BENEVOLENT MOTIVES, IS NOT TO BE, AND SHOULD NOT BE, LIGHTLY UNDERTAKEN.

WHERE A PUBLIC PURPOSE IS INVOKED IN A LICENSING STATUTE, IT SHOULD BE RECOGNIZED THAT ALMOST ALL OCCUPATIONS AFFECT THE PUBLIC HEALTH AND WELFARE TO SOME EXTENT. FOR EXAMPLE, EVEN SNOW SHOVELERS COULD BE LICENSED, FOR POOR SNOW SHOVELING MAY LEAVE BEHIND SLIPPERY SPOTS OF CONSIDERABLE DANGER TO PASSING PEDESTRIANS. HOWEVER, A SURVEY OF JUDICIAL DECISIONS INDICATES THAT A TENUOUS CONNECTION WITH THE PUBLIC HEALTH, SAFETY, WELFARE WILL NOT PASS CONSTITUTIONAL MUSTER. IT WAS ONLY A FEW YEARS AGO THAT THE SUPREME COURT OF NORTH CAROLINA (ROLLER V. ALLEN, 1957) DECLARED UNCONSTITUTIONAL A LICENSING STATUTE FOR TILE CONTRACTORS. THIS DECISION WAS FAR REACHING BECAUSE IT WAS MADE DESPITE THE FACT THAT THE TILE CONTRACTOR INVOLVED HAD FAILED TO PASS THE TILE INSTALLING EXAMINATION, AND THERE WAS EVIDENCE OF HIS INCOMPETENCY AS A TILE CONTRACTOR AND FURTHER EVIDENCE THAT TILE CONTRACTING REQUIRED SPECIAL SKILLS. THE CONNECTION WITH THE PUBLIC WELFARE, SAID THE COURT, WAS SIMPLY TOO REMOTE TO JUSTIFY THE EXERCISE OF POLICE POWER IN THIS AREA OF COMMERCE.

THERE IS LITTLE DEBATE OVER THE FACT THAT SIMILAR TYPES OF REGULATORY ACTS WILL RESULT IN A COLLISION WITH THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND/OR CORRESPONDING CLAUSES OF STATE CONSTITUTIONS. WHETHER A LICENSING STATUTE CAN SURVIVE A CONSTITUTIONAL CHALLENGE WILL DEPEND IN LARGE MEASURE ON THE FEELING OF THE PUBLIC IN GENERAL ABOUT THE OCCUPATION OR PROFESSION SOUGHT TO BE REGULATED.

IF THE PEOPLE EXPRESS A CLEAR DESIRE TO BE PROTECTED IN ESSENTIAL AREAS OF THEIR LIVES, AND THIS DESIRE IS NOT SIMPLY A MANIFESTATION OF CONVENIENCE, A LICENSING STATUTE WILL PROBABLY BE FOUND TO HAVE A RATIONAL BASIS. HOWEVER, AS MR. JUSTICE HOLMES ONCE REMARKED, "GENERAL WELFARE DOES NOT COVER MERE SMALL ADVANTAGES TO THE PUBLIC, IT INCLUDES RATHER THE VITAL INTERESTS OF THE PUBLIC."

IF, ON THE OTHER HAND, THE PURPOSE BEHIND THE LICENSING ACT IS PERCEIVED TO BE SOLELY COSMETIC, THAT IS, MERELY AN ATTEMPT TO ENHANCE THE IMAGE OF AN OCCUPATION OR PROFESSION BY MAKING IT EXCLUSIVE OR (AND I HESITATE TO USE THIS WORD) ELITEST, THEN IT WILL NOT TAKE LONG FOR THE PUBLIC TO DETERMINE THE APPROPRIATE COURSE OF ACTION TO HAVE SUCH ENACTMENT ANNULLED.

PERHAPS YOU MAY BE INTERESTED IN LEARNING THAT THE NORTH CAROLINA SUPREME COURT HAS RECOGNIZED THE FOLLOWING AS PROFESSIONS AND OCCUPATIONS SO AFFECTED WITH THE PUBLIC INTEREST AS TO WARRANT THEIR REGULATION FOR THE PUBLIC GOOD:

PHYSICIANS AND SURGEONS  
PILOTS  
ATTORNEYS  
BARBERS  
PLUMBING AND HEATING CONTRACTORS  
DENTISTS  
REAL ESTATE BROKERS  
PHARMACISTS  
TAXI CAB OPERATORS  
AMBULANCE SERVICE PROVIDERS

THE COURT HAS HELD UNCONSTITUTIONAL THE MANDATORY LICENSING OF DRY CLEANERS AND PRESSERS, PHOTOGRAPHERS AND CERAMIC TILE CONTRACTORS.

I DON'T BELIEVE ANYONE WOULD DOUBT FOR A MINUTE THAT IT WOULD BE A TERRIBLY TRAGIC CONSEQUENCE OF YOUR PROPOSED LICENSING LEGISLATION IF BRIGHT, IDEALISTIC YOUNG PEOPLE WERE DETERRED FROM SEEKING OUT THE PROFESSION OF SOCIAL WORK. JUST RECENTLY I READ AN ARTICLE WHICH BROUGHT HOME THE REAL CONTRIBUTION SOCIAL WORKERS MAKE TO OUR SOCIETY UNDER THE MOST ADVERSE CIRCUMSTANCES. THIS ARTICLE POINTED OUT THE ALL TOO FAMILIAR AND UNFAIR ACCUSATIONS LEVELED AT SOCIAL WORKERS AND THE PROFESSION OF SOCIAL WORK: "THEY'RE CALLED HONKIES IF THEY'RE WHITE, UNCLE TOMS IF THEY'RE BLACK AND DO-GOODERS EITHER WAY. THEIR PROGRAMS ARE RIDICULED AS WASTEFUL AND UNWORKABLE." YET DESPITE ALL THE FRUSTRATING SETBACKS AND CUTBACKS, APPARENTLY YOUNG PEOPLE ARE STILL TURNING IN GREAT NUMBERS TO THE MUCH MALIGNED FIELD OF SOCIAL WORK. THIS IS A GREAT THING FOR THE STATE OF NORTH CAROLINA AND FOR THE ENTIRE NATION. I CANNOT BELIEVE THAT SUCH ENTHUSIASTIC IDEALISM SHOULD BE DISCOURAGED OR CURTAILED IN THESE DIFFICULT DAYS FILLED WITH CONFUSION AND MISTRUST.

CONTRARY TO THE BELIEFS OF MANY OF YOUR CRITICS, THE POOR PEOPLE OF THIS STATE, AND OF ALL OTHER STATES FOR THAT MATTER, ARE NOT FOND OF THEIR LOT. THEY NEED THE ASSISTANCE AND INTEREST OF MANY PEOPLE BUT PERHAPS NONE MORE THAN THE QUALIFIED SOCIAL WORKERS. YOU ARE OUR FRONT LINE TROOPS IN THE

WAR AGAINST POVERTY. AND SO WHILE I RECOGNIZE THE CRITICAL NEED FOR ADEQUATELY TRAINED AND QUALIFIED SOCIAL WORKERS TO GO OUT AMONG OUR LESS FORTUNATE CITIZENS, I WOULD URGE YOU NOT TO FALL INTO THE TRAP OF LICENSING SOLELY FOR THE SAKE OF LICENSING. IMPROVE YOUR PROFESSION BY ALL MEANS BUT DO SO FOR THE SAKE OF THE PUBLIC AND ABOVE ALL FOR THE SAKE OF YOUR CLIENTS.

IN CONCLUSION, I HOPE THAT I HAVE ADEQUATELY EXPOSED FOR YOU THE GENERAL CONSIDERATIONS AND ISSUES INVOLVED IN ANY ATTEMPT TO REGULATE A PROFESSION OR OCCUPATION THROUGH THE LEGISLATIVE PROCESS. ONCE AGAIN, I COMMEND YOUR DEDICATION TO THE PUBLIC AND TO YOUR CHOSEN PROFESSION AND I WISH YOU WELL IN THE 1974 GENERAL ASSEMBLY.