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AN ADDRESS BY SENATOR HUBERT H. HUMPHREY

BEFORE A GROUP OF NEW JERSEY GASOLINE DEALERS -- HADDON HEIGHTS, N. J.

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It is certainly a pleasure to be here with you tonight in the famous Cherry Hill Inn, enjoying your hospitality and being warmed by your kind words of friendship. While speaking with many of you individually this evening, it occurred to me that as a group you seem more relaxed and happier than when we last met. Perhaps one reason for this change is because most, if not all, of you are aware of the progress you have made as businessmen in the past year. And that real progress has been made, no one can deny.

Because the past often illuminates the present, please bear with me if I stir some unpleasant memories by saying that I found gasoline retailers during the war to be generally dispirited and quite apprehensive of their future. It seemed as though an atmosphere of "gloom and doom" had pervaded their ranks. And small reason why! I remember dealer witnesses testifying how they had been drawn unwillingly into the horrors of the price conflict and how, once involved, they were powerless to free themselves. I recall their describing how the war was denying them a livelihood, was draining away their savings, and, in too many instances, was costing them their businesses. I remember, too, the moving testimony of dealers' wives, like Mrs. Helen Beehler and Mrs. Marie Hoffman, who told of the hardship and privation that the war had brought to their families.

In looking back to the price war period, I am convinced that it was the unhappiness so prevalent among dealers that most influenced

✓ my determination to search out a solution. I knew that only a situation of near-catastrophic proportions could reduce the usually effervescent small-business man to such a depressed state. All of my life, I have known and associated with small-business men. As you know, my father was a druggist in a small South Dakota town and I worked closely with him for many years. I have learned that the key to the success of the small-business man everywhere is his indomitable will, his hope and confidence in himself, and his rare talent for finding happiness under even the most trying of circumstances. When these qualities cannot be found in small-business men, help is needed in the worst way. And I am the kind of fellow who will see that help is given even if it means investigating a gasoline price war.

While the investigation of the New Jersey gasoline price war was designed primarily to relieve your particular competitive problems, it also had a secondary purpose which must not be overlooked. This was that the principles by which competitive problems were to be resolved in New Jersey should serve, as well, to relieve distress among dealers in other marketing areas. After all, it was argued, only a variance in degree distinguished the severity of problems confronting New Jersey dealers from those experienced by your fellow dealers in other parts of the country. Surely, a study of a market where dealers' problems were most pronounced would produce salutary effects in other areas as well.

*major oil companies*

The extensive public hearings which were held demonstrated to my satisfaction that the major oil companies operating in New Jersey could bring the predatory and ruinous price war to an abrupt halt if they wanted to hard enough. Shortly after the close of the hearings, the price war was ended, seemingly because the major suppliers wanted to hard enough. Whatever the reason, with the advent of fair trade competition, the ruthless and irresponsible price war that had prevailed in the market waned and soon was no more than a dreadful memory for those thousands of dealers who had endured its hardships.

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As you know, my keen interest in the well-being of gasoline dealers in New Jersey has not faded away with the adoption of fair trade competition. It has become my habit, to keep abreast of developments in this market by reading your letters and by occasionally talking with some of you by long-distance telephone. Only a month ago, I sent the Counsel of my Subcommittee up here to conduct an on-the-spot survey of post-price war conditions.

*Mr. J. H. L.*

At the present time, my information is that fair trade competition is working successfully in your state. It appears that dealers are working hard and making modest profits, that unethical practices have largely been eliminated, and that the motoring public is generally pleased with the rare combination which it is receiving of quality products, excellent service, and reasonable prices. Incidentally, gasoline prices in New Jersey are the lowest on the Eastern seaboard.



I have also learned that fair trade is being practiced in a number of other Eastern states. The system is now found in Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Except for one major supplier fair trading in California, the system is not being used in any other part of the United States although in several Midwestern states, another form of resale price maintenance called "suggested pricing" has been adopted. It should be mentioned that "suggested pricing" is not protected by federal legislation and, therefore, involved serious anti-trust problems, including price-fixing. In the spread of fair trade competition and even in the use of "suggested pricing," there is a strong suggestion that at long last the major suppliers are definitely concerned over dealers' problems and are trying to resolve them in their fashion.

Now that fair trade is well-established in New Jersey, it may be that you would like to hear my views on the system. In my judgment, fair trade is a specialized competitive system offering great practical benefits to qualified manufacturers, wholesalers and retailers, and the consuming public alike. The system assures the manufacturer of a stable market for his product. But, it does not give him an unfair advantage or a monopoly because, even with the protection of fair trade legislation, he is obliged to compete successfully with other manufacturers of the same or similar products. Should he fail to maintain the quality of his product or if he sets the price too high, he loses out to competitors, fair trade notwithstanding. However, fair trade does

Review  
of  
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protect his product from possible destruction as a result of loss-leader selling and irresponsible price-cutting.

✓ Fair trade benefits the retailer by placing him on an equal footing with all other retailers of the same branded or trade-marked products, whether such competitors are large or small. Most importantly, his margin of profit is fixed to yield him a fair return and he is protected against destructive competition from others who might be disposed towards the vice of predatory price-cutting.

✓ The benefits of fair trade to wholesalers are remarkably similar to those received by retailers.

The consumer, too, benefits from fair trade in a number of ways. He knows that the fair traded product may be purchased at a standard price wherever he goes to buy it. Fair trade eliminates the necessity for "shopping around." He knows that the price is reasonable. By the very nature of fair trade laws, a price-fixed product cannot survive in the market place unless it competes successfully with similar items produced by other manufacturers. Fair trade also assures a consumer that an outstanding product will remain on the market. It will not be lost to the consumer through destructive price tactics.

That, fair trade competition is basically sound in policy and purpose is evidenced by its 25 years of successful operation in the nation's marketplaces. In this, the Silver Jubilee Anniversary year of fair trade, the system remains strong and vigorous despite the

disquieting setbacks it has received recently in a few state courts. The important fact is that the majority of state courts have consistently upheld the legal basis of fair trade. Moreover, it is heartening to note the record of the Supreme Court and the lower federal courts in generally striking down attempts to destroy fair trade. And certainly not to be disregarded in this connection is the high favor in which fair trade is held in both Houses of Congress. As a matter of fact, so respected is this attitude of Congress that no move has been made to repeal the so-called federal fair trade laws in the year and a half which has elapsed since such action was recommended by the Attorney General's National Committee to Study the Antitrust Laws. Nor do I see any likelihood that Congress would ever take such ill-advised action.

As you may be aware, it has become fashionable in certain circles nowadays to disparage fair trade competition. I do not refer to those opponents of fair trade who are honestly and sincerely motivated by their own estimates of the system. Though disagreeing with such critics, I still respect their opinions and feel that debate with them can be constructive. My targets here are the professional critics of fair trade and those who think fair trade criticism is some sort of parlor game. I am outraged by the actions of the former group and amused by those of the latter.

It is my opinion that the arguments of a person who is paid to hold a certain position are worthless. That person says what he does



because it is financially remunerative for him to do so and not because he has studied the problem and arrived at a judgment on the merits. As a practical matter, such a person probably does more of a disservice to himself than to the cause of fair trade. At any rate, he is a man of slight influence on the future of fair trade, despite his noise and windmilling tactics.

For those who think that ridicule of fair trade is a parlor game, I have a suggestion or two to make. First, they could set up a small business and get first-hand experience of the injurious effects of loss-leader selling and other predatory pricing practices. Another suggestion would be for them to seek out the views of small-business men on the advantages of fair trade competition. I expect that they will find that the small-business men who are in the best position to know the merits of fair trade and the hazards of unrestricted price competition enthusiastically endorse fair trade. But even if the parlor game crowd remains unconvinced after following such suggestions, their voices like those of the professional opponents, will not constitute a threat to the continuation of fair trade.

This is not to suggest, however, that the future of fair trade competition in gasoline marketing will be uneventful. As a matter of fact, there are unmistakable signs that such will not be the case.  
You have heard or read of what is happening to fair trade in the Boston federal courts. There, two antitrust suits are involved, one a criminal

*Boston  
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proceeding by the Department of Justice against Socony-Mobil, the other a suit by Esso Standard seeking injunctive relief against a price-cutting marketer named Secatore's Inc. Both cases raise substantial fair trade questions. Briefly, I will examine what I feel are the significant aspects of each case.

In the Socony-Mobil case, it was alleged by the Department of Justice that the major supplier had fixed the gasoline prices charged by some of its dealers. At first blush, therefore, the case would seem to be a routine action under the Sherman Act. What distinguishes the case, however, is the defense raised by Socony-Mobil to the indictment. On a motion to dismiss, the oil company argued that its price-fixing agreements with dealers were, in effect, fair trade contracts and, therefore, immune from Sherman Act prosecution. Most interesting in this respect is that the Socony-Mobil Company apparently had no written fair trade contract with any of its dealers at the time the alleged offense was committed, nor had it made any public announcement of its adoption of fair trade. Thus, it would appear that Socony-Mobil is advancing a most novel theory -- that a fair trade contract may be oral in character and need not be publicly announced or in fact even made known to the dealers who would be bound by it.

*start* As this case is now pending in court, I feel obliged to limit my remarks on its issues. All I will say is that a fair trading seller



should be proud to have the fact publicized and should be prepared to show documentary evidence of his fair trade program.

② [ Another important feature of this case is that the fair trade argument of Socony-Mobil has afforded the Department of Justice an opportunity to reveal its traditional bias towards fair trade competition in the brief which it filed with the court. Not only has the Department in its brief joined issue with Socony-Mobil on the subject of oral fair trade contracts but it has also availed itself of a chance to argue that gasoline is not a product which can be lawfully fair traded. X ]

Whether or not these fundamental issues concerning fair trade will be fully resolved in the Socony-Mobil case remains to be seen. But since they have been raised, it is to be hoped that Socony-Mobil's defense of fair trade principles will be spirited and vigorous. Regarding the price-fixing charges, however, the oil company is on its own.

The injunctive proceeding by Esso Standard against Secatore's is equally of interest to gasoline dealers. In that case, Secatore's a large Boston gasoline retailer, successfully defended against Esso's enforcement action by arguing that Esso could not lawfully fair trade its products so long as it was competing directly with its dealers. The theory underlying this defense is that the fair trade law of Massachusetts prohibits the use of fair trade contracts between competing sellers. In its decisions, the court held that Esso was competing directly with Secatore's for consumer accounts and, therefore, could not lawfully

make or enforce fair trade contracts in Massachusetts. Accordingly, the court dismissed Esso's application for injunction.

This case should not be especially disturbing to you dealers dependent upon fair trade. After all, the rule in the case merely follows the precedent established by the Supreme Court in the McKesson and Robbins case. There, the court held that, where direct competition exists between two sellers, even though one may also be a customer of the other, it is unlawful for them to enter into a fair trade contract. In other words, the Supreme Court said that you cannot run with the hare and hold with the hounds. Either fair trade properly or abandon it! Surely no one can reasonably disagree with the soundness of such a position.

Henceforth in the case of every fair trading major oil company, there will be an important issue of fact presented: Is or is not the seller competing directly at any marketing level with his dealers? Should it be found that he is, the supplier must then address himself to choosing between fair trade and competition with his dealers. In his answer to that question will be considerable evidence concerning the major supplier's true feeling toward his dealers.

At this point, I feel it appropriate to remind you that the Senate Small Business Committee cautioned in its report on the New Jersey price war that fair trade was not a panacea for all of the competitive problems besetting gasoline dealers. "Fair trade competition in New Jersey

it was emphasized, is ending only the price war; it is not eliminating the competitive conditions which produced it nor the marketing practices which prolonged it. Basic competitive problems stemming from the tremendous disparity in economic power existing between the major suppliers and gasoline retailers remain unresolved and are as threatening now as before the introduction of fair-trade competition."

In the light of these considerations, I strongly urge you to support the resolution which I have introduced in the Senate calling for a comprehensive investigation of competitive conditions in the oil industry. It seems to be that only through such an intensive study will Congress ever gain the information necessary for an informed judgment concerning the desirability of divorcement legislation. You may be assured that I intend to press in the next session of Congress for early action on this resolution. Already, strong backing for the measure has been received from many dealers' associations. To insure success, however, the united support of dealers' organizations throughout the country is needed.

Another legislative matter that warrants speedy action next year is the "Equality of Opportunity" bill. That measure, as you know, is designed to prevent the use of discriminatory pricing practices that tend to create monopoly. Enactment of the bill will be of especial help to gasoline retailers who are so often the victim of serious price discriminations. In view of the opposition which is now being organized against this measure by the major suppliers, your support of it is indeed vital.



Now for a few words of advice in conclusion. Be sure to ask your supplier for a fair trade contract if you have not already signed one. Active participants in and not passive supporters of fair trade are needed to make the system truly effective. Then, become informed and articulate spokesmen for the advantages of fair trade competition. Discuss these benefits with your fellow dealers and with your friends whenever an opportunity is presented. In particular, talk to your labor union friends about how fair trade means quality products at reasonable prices, enabling manufacturer and marketer to pay fair wages. And, do not forget to let your views on fair trade be made known to your elected representatives at local, state, and federal levels.

Remember always that you have great responsibilities under fair trade competition. You must insure that the consumer patronizing your service station receives full value for every dollar spent. Service and courtesy must not be neglected. Most importantly, your business must be operated efficiently and with integrity.

Live up to your responsibilities and fair trade will long serve you well. I can assure you that Congress and the antitrust agencies will not allow the major oil companies to use the system selfishly.



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