

REPORT FROM MASSACHUSETTS

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The Current Status of the Consumer Council in Massachusetts.

For this year's Legislature a bill was filed establishing a Consumer Council in the Attorney General's office, the Council to consist of ten unpaid members, with the authority to hire paid and permanent personnel. The bill was heard on March 15th before the State Administration Committee.

A fairly long list of witnesses appeared in its favor, including the Attorney General himself, several representatives and individuals representing groups such as Senior Citizens, Massachusetts Credit Union Movement, Massachusetts Federation of Teachers, Greater Boston Housewives League and the Catholic Labor Guild. In addition, we received very good support from labor unions, labor guilds and labor councils. In all eleven different representatives of labor groups appeared to support the bill.

However, a long list of formidable opponents also put in an appearance. This list included a representative of the New England Telephone and Telegraph Company, two different representatives from insurance groups, men from the Massachusetts Federation of Taxpayers, Greater Boston Chamber of Commerce, the Associated Industries of Massachusetts and the Retail Trade Board.

The longest, most revealing brief in opposition to the Council came from the representative of the Retail Trade Board. This statement was prepared by Mr. Dean C. Cushing, the Managing Director of the Massachusetts Council of Retail Merchants. He titled his statement: "The Growth and Implications of the Consumer Counsel Movement". He said:

"Whatever the terms used, business should be alert to and interested in the creation of, or the proposed creation of, an official agency or office for Consumers at any level of government."

"As an indication of what to expect in the future, a review of past developments is in order."

He then proceeded to review developments in the various states beginning with New York. When he came to California, he wrote:

"The stage now shifts to California. In 1959 a then new Governor of California heard about the political advantages of setting up a Consumer Counsel like the one Governor Harriman had established in New York. The woman who had held the office in New York was then out of a job. She was invited to come to California to make a study and recommendations."

I don't need to point out to this audience that that statement is not only full of errors but also a gratuitous insult to a dear friend of us all. I can assure this audience that a member of our Consumer Council who heard this testimony leaped to his feet at its conclusion and publicly exposed its falsity, even though the Chairman kept telling him he was totally out of order according to committee procedure.

Continuing, Mr. Cushing came to Massachusetts and said:

"Massachusetts has made a start. That start has generated interest in going further and continuing pressure for fairly far-reaching legislation, which would cut across present departmental functions disrupting procedures and possibly short-circuiting some of the protections already available to the public and that is why you have this bill before you."

Finally the Retail Trade document comes to a section on "Implications" where he said:

"Consumer Counsel (Council) developments in the various states and nationally have been reviewed. There has been a start in a few places, but nothing has gotten out of hand. There is, however, a growing pressure for legislation to set up consumer agencies with very broad powers."

He then warned his audience:

"Clearly something is in the wind... It seems evident that retailers, who are so interested in and so close to consumers, have a rather big stake in the Consumer Council Movement. For that matter, all business is involved. It is against sin. We should and have always supported reasonable, needed consumer safeguards. This does not mean that retailers will sit idly by while legislation is proposed which would give opponents of business or opponents of bigness a hunting license for harassment purposes."

He went on to tell the Committee:

"It appears to me that this is a gang of busybodies wanting to interfere in the delicate market place of our American free enterprise system."

He ended by implying we were state planners who would exploit the consumer to accomplish the real goal of controlling business.

As of the present moment I cannot tell whether this formidable opposition will be successful or not in defeating the statutory establishment of a Consumer Council this year. At any rate the present Consumer Council, through the Attorney General, filed five bills with the Legislature this year to do the following things:

1. Repeal the Fair Trade Law;
2. Establishment of the Consumer Council by statute;
3. A "baby" Sherman Act to outlaw monopolies and restraints of trade within the state;
4. A bill modeled on the Douglas Bill for the full disclosure of interest charges; and finally
5. A bill making a holder of installment credit liable for any defenses that buyers may have against fraudulent sellers.

Consumer Council and the Press

It is worthwhile to mention that there seems to be an organized effort on the part of the daily press to hide the activities, and even the existence, of the Consumer Council. Practically no mention is made of its bills, and its public statements are generally ignored. One newspaper in Boston is known to be an editorial enemy of the Consumer Council Movement. This same newspaper, though it has excellent reporters, allows its editorial bias to control its news columns, and this means that the Consumer Council gets a very bad press or none at all. For instance, I happen to know that a reporter from this paper covered the hearing on March 15th completely and thoroughly, but practically nothing from him got into print. It almost looks as if the Retail Trade Board had successfully scared off newspapers from mention of consumer activity.

Conclusions

However, to end on a consoling note, we have sponsored three very successful Consumer Conferences, and out of these is evolving a network of consumer oriented groups who have come to know each other and work with each other in close harmony. This, I think, will insure the existence of a vigorous Consumer Movement in Massachusetts regardless of what the Legislature does with the Consumer Council Bill.

On the positive side also, we have successfully forestalled constant attempts at the introduction of governmental price fixing in milk, and our intervention in several insurance matters has resulted in increased attention to the rights of consumers. We have particularly challenged the arbitrary cancellation of fire insurance policies in the poorer sections of the city, and we have questioned the justice of the existing system of automobile insurance rates. We have also inspired a thorough review and coordination of state legislation in the fields of consumer credit and anti-trust law.

On balance, therefore, I suggest that our unofficial Consumer Council has made a significant contribution--both to the welfare of Massachusetts consumers and to the progress of the Consumer Movement in general.

POSTSCRIPT

Consumer Council and Anti-Trust Cases

The Consumers Council Movement actually can claim a very intimate part in the Justice Department's new approach to anti-trust cases manifested in the famous electrical manufacturers decision. To a large extent, it started back in the office of Massachusetts Attorney General Edward J. McCormack, Jr., during a Consumer Council meeting. Here are the facts in this little-known incident.

In the fall of 1959 the Department of Justice, in the District Court of Massachusetts, was prosecuting a price-fixing conspiracy case against asphalt manufacturers. At a meeting of the Consumer Council, the Attorney General discussed this case and its implication for Massachusetts cities and towns which had been large buyers of asphalt from the companies involved.

The Judge in the case was about to accept a nolo contendere plea in the criminal case. As you all know, this is not an admission of guilt which could be used by any third party in a subsequent suit to recover damages. The Attorney General took the bold step of issuing a press release opposing the granting of a nolo plea on the grounds that the rights of the cities and towns would not be sufficiently protected. The presiding Judge fumed, threatened contempt of court action against the Attorney General and finally disqualified himself from the case.

Another Judge then accepted the nolo plea but expressly referred to the fact that there was a civil case pending against the same companies and that the rights of the cities and towns could be protected in the disposition of this civil action. Then, however, when the civil case did come up, Attorney General McCormack was informed that the Justice Department was ready to agree to a consent decree in this civil case. A consent decree in these circumstances would also have precluded recovery of damages by cities and towns in the Commonwealth.

Again by coincidence, this matter came up at the same time as a regularly scheduled Consumers Council meeting. After some discussion with the Council, the Attorney General phoned Washington, spoke to Mr. Bicks and begged him not to do anything definite in the case--at least until they had a chance to talk it over.

On February 13, 1960 Mr. McCormack wrote to Attorney General Rogers and Assistant Attorney General Bicks as follows:

"As a result of my telephone conversation with Mr. Bicks on Friday I am forwarding certain pertinent information relating to the anti-trust cases referred to above."

He proceeded in the next two pages of his letter to detail his argument and ended up by saying:

"But to accept a nolo plea in the criminal case and then a consent decree in the civil action completely destroys for all intents and purposes the rights of the treble damage litigant which in this case happens to be sister-governments, i.e., the State of Massachusetts and the cities and towns therein.

"Certainly any action which would make Section 5 of the Clayton Act unavailable to prospective treble damage litigants would appear to be contrary to the announced intent of Congress and acceptance of a consent decree by your department in this case would, in my judgement, cause irreparable damage to the Commonwealth of Massachusetts.

"It is my fervent hope that you will hold in abeyance any further action in this matter until I have an opportunity to personally present my views at our forthcoming anti-trust meeting in Washington, now scheduled for March 10, 1960."

This Mr. Bicks agreed to do. Mr. McCormack then went to Washington and talked to Messrs. Rogers and Bicks. He forcefully advanced the argument that acceptance of nolo pleas or consent decrees would effectively prohibit members of state and local governments from recovering damages suffered through price-fixing conspiracies. Mr. McCormack left with the Justice Department a legal memorandum on his position, and Mr. Bicks agreed to study it. At this conference Mr. Bicks said that whatever applied to the asphalt case would also apply to the electrical case in Philadelphia in which Massachusetts agencies were also involved.

After study Mr. Bicks then announced his new policy on consent decrees. The rule, in brief, is that whenever government subdivisions or agencies are involved, the Justice Department would not agree to nolo pleas or consent decrees unless they included a clause giving prima facie cases against the defendants to the governmental bodies that had been the victims of the price-fixing conspiracy. This clause is now referred to in the literature as the "asphalt clause", and I thought it worthwhile to give you these little-known facts about the prominent part played behind the scenes by the Consumer Council Movement.

By so doing, I have no intention of attempting to minimize the important, intelligent and courageous action taken by Mr. Robert Bicks in all these cases. I am quite ready to concede that he has set a record for protection of the public interest through anti-trust prosecution that will challenge many of his successors.