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ADDRESS OF

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SOME OBSERVATIONS OF THE GROCERY TRADE
PRACTICE CONFERENCE.

In my address before the American Grocery Specialties Association at Chicago, October 22, 1928, I defined a Trade Practice Conference as an offer on the part of the Commission to cooperate with the members of an industry who find themselves in the predicament where they are using unfair trade practices to such an extent that each unit in the trade finds itself unable to successfully abandon the practices unless a large percent agree to do so by adopting rules declaring such practices unfair and call upon the Commission to provide the time and place when and where rules may be adopted condemning the practices complained of, said rules to be made a part of the Commission's trade practice conference file after having been approved by the Commission, or received by it as an expression of the trade.

Most unfair business methods in any industry gain momentum and become quite general because some dealer or manufacturer seeks to, and does, acquire advantage over competitors by such practice. Thus, in self defense, other members of the trade adopt the same policy and their business goes from bad to worse until destructive competition becomes imminent unless, by agreement, the trade abandons the unfair practices.

The Federal Trade Commission has provided through the creation of its trade practice conference division a method whereby many industries have voluntarily quit the use of these unfair and uneconomic trade practices. Up to June 30, 1928, the record, as disclosed in the Commission's Annual Report, shows that in some forty trade practice conferences held, more than 300 rules have been adopted and that the power of the Federal Trade Commission has not been invoked with reference to more than a dozen cases.

These figures clearly demonstrate the restraining influence of the Commission's action in receiving and approving the resolutions. The policing power of the Commission has made it in a large measure unnecessary to cite the individual member for violation of conference rules for the reason that he knows the Federal Trade Commission is standing by ready to bring about observance of the rules. Thus trade action in agreeing not to violate the rules approved has resulted in a negligible number of instances of non-compliance.

With the present status of our anti-trust laws there is need for caution when an industry enters into an agreement even under the auspices of the Federal Trade Commission, because an agreement to fix prices is illegal and the Commission's sanction to fix prices **by agreement** would not make the action legal; so the Commission must carefully analyze all resolutions adopted by the trade, whether in Group One or Group Two, and discard any rule that may open the way for price fixing agreements.

The Commission is specifically directed at all times, to protect the public from unfair methods of competition and such authority is vested in it in the consideration of any and all problems brought to its attention. In spite of the fact that the courts have ruled that it is for the courts and not the Commission ultimately to decide, as a matter of law, what unfair methods include, the Commission must in the first instance decide the question from the standpoint of the public interest involved. Therefore, in passing on trade conference rules the Commission is confronted with the problem of determining the effect of the rules adopted, not alone upon members of the particular industry, but also the effect on the public interest. The anti-trust laws, including the Federal Trade Commission Act, were created by Congress primarily for the purpose of giving unhampered play to fair competition.

The above statement being true, is it unreasonable for the Commission to say that the Act is sufficiently elastic to permit of all necessary cooperative action for the elimination of unfair, destructive and wasteful competition?

The Trade Practice Conference procedure has gained popularity by leaps and bounds, and has made it possible for the Commission to be of unlimited service in correcting **bad** business practices, thus clearing trade atmosphere of destructive cut-throat competition to the everlasting advantage of the trade and in the best interest of the public. Trade associations, Chambers of Commerce, and business organizations from the Atlantic to the Pacific, from the Gulf to the Canadian Line are clamoring for opportunity to bring about fair competition through agreement under the auspices of the Federal Trade Commission.

The experiment, if indeed we may give it that name, has been tried and has demonstrated its workability. It may truthfully be said that it is working to the entire satisfaction of our people. In fact, something of this sort, looking toward the cooperative elimination of unfair and uneconomic trade practices was in the mind of our lamented Senator Cummings at the time Section 5 of the Federal Trade Commission Act was being considered by the United States Senate. In a speech before the Senate on September 7, 1914, that venerable law maker made the following statement:

"I predict that in the days to come the Federal Trade Commission and its enforcement of the section with regard to unfair competition will be found an anchor for honest business. I believe it will introduce a stability in business that heretofore has been unknown. I believe it will restore confidence among those who are conducting their affairs honestly and uprightly. I believe it will be found to be the most efficient protection to the people of the United States that Congress has ever given the people by way of regulation of commerce and that it will rank in future years with the Anti-trust law; and I was about to say that it would be found still more efficient in the creation of a code of business ethics and the establishment of the proper sentiments with regard to business morals."

The Act was approved on September 26, 1914, but it was not until about four years ago that rules of procedure adopted by the Commission made it practical to realize the prediction visioned by the Senator.

The rules settling complaints by stipulation and curing unfair and uneconomic trade practices by cooperation in trade practice conferences are largely responsible for the good-will and appreciation now shown the Commission. Yet, if we are to follow the literal wording of the statute, it may be that the charge recently made that the Commission is creating a new law merchant has some foundation in fact. Not being a lawyer, it seems that I am unqualified to interpret the statute. But I am willing to follow the dictates of common sense, especially when the results are so gratifying to a large majority of our people interested in and affected by it.

The grocery trade has come to the Commission in good faith asking for help to eliminate unfair competition from one of the largest industries in the country which, through hundreds of thousands of individual units distribute the necessities of life to every home in the United States. In your appeal you recognize the need for help to lift your industry out of the throes of unfair business practices when by yourselves alone you are powerless to smooth the troubled waters. You come to the Commission because you have noted the success that has cleared the atmosphere in other channels of interstate trade, and I have faith that you are in earnest and mean to stand by the eighteen resolutions adopted. It was no easy task to check an acquired course of business conduct by securing the voluntary abandonment of deep rooted practices. The separation of such of these practices as savor of illegality from those recognized as bad business methods, and those which are regarded by one branch as advantageous and regarded by another as disadvantageous with the paramount public interest overshadowing all in both its legal and economic aspect.

The difficult problem was early recognized by the leaders in the trade and by the Commission so that months preceding the date of the conference a committee, representing each branch of the grocery trade, was at work sifting out through a give-and-take method, such practices as savored of illegality from those recognized as bad business, and all the while a representative of the Commission stood by to guard against harm to the public interest.

The time and study given by the best posted minds of the industry and the spirit of cooperation ever present at the preliminary conferences resulted in a well drafted set of resolutions which were unanimously adopted by the trade, except the resolution against discriminatory legislation and it was adopted by an overwhelming majority. By that action the grocery industry paved the way for better business methods and a fair show for the prosperity of all deserving units in the distribution of grocery products.

The many inquiries from members of the trade for official copies of the conference report gives evidence of their interest in the result of final action by the Commission. Its consideration of the grocery resolutions was thorough and while some changes and substitutions were made, in effect the resolutions were approved as adopted by the industry.

It is almost one year since representatives of this association came to the Commission asking for a grocery trade practice conference. All this time some members of the trade, or its attorneys, and Director Flannery have been working to create the substantial set of resolutions that are now yours to put into practice in your daily transactions.

I appreciate the fact that you are all concerned about the ultimate success of the administration and observance of the resolutions in future conduct of your business. The contact I have had with your people leads me to believe that there is little need for concern. I can not imagine, after noting the good spirit and evident determination to rid your industry of these unfair business methods, that any of you are going to violate the rules adopted. The grouch is always looking for, and by his daily attitude invites trouble, but in my opinion there are very few grouchies in your membership. My contact with members of the grocery industry has been most pleasant. You remind me of one who always has a good time because he has acquired the habit of taking it with him, whether in every day business or on a pleasure trip.

In keeping with the new spirit of progress in the grocery conference it advanced a step in trade practice conference procedure calculated to make more secure the enforcement of its rules by adopting the resolution providing for a continuing committee to act for the progressive elimination of unfair and uneconomic practices from the grocery trade in pursuance and realization of the resolutions adopted. The carrying out of this resolution will mean that the executive committee created will be in touch with the grocery trade ready to advise the trade practice division of the Commission and to report promptly any violations of the trade practice agreements.

Past experience in trade practice work will justify the prediction that there will be few violations to report. After noting the fine cooperative spirit displayed by the grocery people, I do not hesitate to offer such a prediction.

There was disappointment that the grocery chain stores, which participated in the committee meetings, at the last minute withdrew from the conference and took no part in the final action. However, since the date of the conference the Trade Practice Conference Division has received a letter from one of the large chain store systems signifying its approval and support of

the resolutions adopted. These rules which have now been acted upon by the Commission are, in my opinion, eminently fair, and should be acceptable to every concern in the industry, whether engaged in manufacturing, wholesaling, jobbing, retailing, or in the operation of chain stores; and I predict that the chain stores, when they have had an opportunity to examine each rule, will agree that there is nothing in the rules to deprive a chain store operator, or any one else, of the use of a practice which should not be abandoned for the good of the industry, the individual and the public. In any event, upon release of the Commission's official statement, the chain stores will be given an opportunity to study the rules and accept or reject them.

The Commission has before it for investigation three Senate Resolutions, viz: Open Price Associations, Power and Gas Utility Companies, and Chain Stores, together with the consideration of five other resolutions undertaken on the Commission's own initiative.

Owing to the pressure of work on the Power investigation it has been possible to spare but a limited number of people for Chain Stores. This inquiry, which was authorized last spring, is therefore just getting under way.

Chain Stores is a subject in which I feel sure there is a lively interest among the members of this association. It is my hope that this interest will be sufficient to induce all of you to spend the time and thought necessary to fill out comprehensive and accurate wholesale schedules in this inquiry. We are asking for a good deal of information and I do not doubt that some of you will at first feel that it is an unreasonable amount. The Senate Resolution, however, requires us to report practically all the important and essential facts regarding chain store and independent methods of distribution. No accurate and scientific presentation of such a matter can be made without complete and accurate reports, not only from wholesale organizations but also from chain stores and independent retailers. A great amount of time and thought has been spent in the preparation of these various schedules and there have been consultations with individual companies, and in some cases with trade association officials. We have tried to make your schedule, as well as those for other types of dealers, as brief as possible considering the comprehensiveness of the Senate Resolution. If you will read that resolution carefully, I believe all of you will come to the conclusion that we could hardly ask for much less and make the report called for. Being of this opinion, I appeal to each and all of you to cooperate with us in furnishing the data requested promptly, accurately and completely.