



C O M M E R C I A L B R I B E R Y

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An Address to be Delivered by Hon. Garland S. Ferguson, Jr.,

Chairman of the Federal Trade Commission

At the Conference on Commercial Bribery to be Held Under Auspices

of the Commercial Standards Council and the

Better Business Bureau of New York City, Inc.,

Friday, October 17, at 12:30 p.m., Hotel Pennsylvania,

New York City.

(For Release Immediately Following Delivery, October 17, 1930).

The Federal Trade Commission was created by an Act of Congress in September 1914. This Act declares unlawful, and empowers the Commission to prevent, unfair methods of competition in interstate commerce.

The Supreme Court of the United States in interpreting the words "unfair methods of competition" confined the application to practices "opposed to good morals because characterized by deceit, bad faith, fraud or oppression, or against public policy because of their tendency unduly to hinder competition or create monopoly".

Commercial bribery is the giving by the seller to the agent or employee of the buyer, without the knowledge or consent of the buyer, a commission or gratuity for the purpose of influencing the agent or employee in favor of the goods of the seller.

The bribery of agents and employees, in order to influence sales, has long been regarded as fraudulent and immoral. This is

evidenced by numerous decisions of the courts, and by statutory law in many of the United States and foreign countries.

Sixteen States have laws making commercial bribery a criminal offense. It is prohibited by statute in twenty-three (23) foreign countries, including England, Canada, France, and Germany. The Federal Courts have condemned the practice in no uncertain terms. Mr. Justice Lurton and Chief Justice Taft when on the Circuit Court Bench, used strong and vigorous language in speaking of this evil -

Judge Lurton said:

"Any agreement or understanding between one principal and the agent of another, by which such agent is to receive a reward or commission if he will use his influence with his principal to induce a contract or enter into a contract for his principal is pernicious and corrupt, and cannot be enforced at law. This is founded upon the plainest principles of reason and morality, and has been sanctioned by the Courts in innumerable cases. 'It has its foundation in the very constitution of our nature', says Judge Dillon, 'for it has authoratively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well regulated system of jurisprudence prevails'. ***** The conflict created between duty and interest is utterly vicious, unspeakably pernicious, and an unmixed evil. Justice, morality, and public policy unite in condemning such contracts, and no Court will tolerate any suit for their enforcement."

In a case involving commercial bribery, Judge Taft said:

"It is well settled that a secret contract made by one with an agent of another to pay the agent a commission on transactions with his principal, effected through the agent, is against public policy and void."

It is readily seen that the practice comes within the definition of unfair methods of competition as stated by the Supreme Court. It is characterized by deceit and fraud, is opposed to good morals, and is against public policy.

In addition to the immorality of the practice because of fraud and betrayal of trust, commercial bribery is unfair to competitors and against the interest of the consumer. It eliminates competition based on quality and service, and provides only competition for the good will of the agent or employee who is bribed. This leads inevitably to increase in price or deterioration in quality or both. For this the consumer must suffer.

When bribery attracts trade by the fraud it perpetrates, the trade is diverted from honest and upright competitors. In order to meet this unlawful competition the honest merchant must suffer loss in price, reduce the quality of his goods, or himself become dishonest.

From the time of its creation the Federal Trade Commission has recognized commercial bribery as an unfair method of competition. One of the first cases in which the Commission ordered a respondent to cease and desist from an unfair method of competition was one involving commercial bribery. Up to the present time the Commission has issued orders in one hundred and eighty-eight (188) such cases.

In nearly one hundred Trade Practice Conferences held by the Commission in as many industries, resolutions have been passed condemning commercial bribery. Individual units of these industries, several thousand in number, have agreed to be bound by the resolutions.

The Commission has received loyal support in its efforts to prevent this unfair practice from these industries, and from such organizations as the Chambers of Commerce, the Better Business Bureaus, and the Unfair Competition Bureau of the Paint and Varnish Industry.

The Commission has jurisdiction only when unfair methods of competition are used in or affect interstate commerce. This is true

not only of commercial bribery, but of false and misleading advertising, misbranding, simulation and many other practices. The Commission has hundreds of applications for complaint where only local or intrastate commerce is involved.

I have long thought that each State in the Union should have an Act similar to the Federal Trade Commission Act. Those who inflict only the people of their own City or State with their unfair practices could then be restrained. Such acts should be as nearly as possible in the identical language of the Commission Act in order that the State might have the benefit of the long line of precedents that have been established. There would be no conflict of jurisdiction, as the Federal Trade Commission would act where the practice is used in interstate commerce and the State where only intra-state commerce is involved.

The Federal Trade Commission will not relax its efforts to prevent commercial bribery. It will continue to investigate all cases where it has authentic information. It will issue complaints and prosecute all cases that appear to be based on facts. It will issue orders against those found guilty on trial, and will file petitions for enforcement against those who do not obey its orders.

I do not think it too much to hope, and I confidently expect, that with the support of such organizations as are represented here, the laws against commercial bribery will be enforced and that at no distant time this evil practice will be reduced to a minimum, when it will no longer be a menace to the deserved success of the honest merchant.

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