Broader Power In Regulation of Trade Is Urged

Avoidance of Annoyance to Law-Abiding Declared Aim of Federal Trade Commission.

Inadequate Authority Is Termed Weakness

Progress Made in Three Years Is Outlined by Mr. Hunt to Wholesale Grocers Association.

Revision of the Federal Trade Commission Act to give the Commission authority to pass on certain trade practices in an advisory way, was recommended by the Chairman of the Commission, C. W. Hunt, in the course of an address in Louisville May 18 before the national convention of the American Wholesale Grocers Association.

"The Commission should have power," said Mr. Hunt, "to pass on certain classes of practices in an advisory way to the end that the legality may be determined without first subjecting earnest, law-abiding citizens to a charge of law violation. The weakness of the Commission is not that it possesses or exerts too much authority but in many respects its authority is inadequate."

Under the terms of the Act Mr. Hunt explained, the functions of the Commission were designed to be remedial and not punitive, aimed rather to protect the public than to punish offenders. Congress, he said, never intended the Federal Trade Commission to be a persecutor of business.

Full Text of Address.

The full text of the address follows:

I accepted the invitation of your President to speak to this gathering with the thought that I might bring to you my idea of the proper relation of the Federal Trade Commission toward business. Most men want to deal fairly with the public and would not knowingly violate the law. Someone has said that "a corporation has no soul," but since all corporations are directed by mind and matter through the combined effort of civilized man, I do not see why the influence behind corporations should not be directed toward the best interest of all mankind.

Admitting that violations of written and unwritten law have been indulged in since Satan caused Eve to partake of the forbidden fruit, it has been found necessary to lay down laws and provide courts and judicial officers to administer such laws. Additional legislation has been enacted as public demand indicated the necessity therefor. In fact, in former years such expressions as "the public be damned" and "the devil take the hindmost" were quite common. The sharp trader made capital by using misbranding, false advertising, misrepresentation and disparagement of competitive products with immunity because there was no law to protect the innocent public thus deceived and misled by the many unfair methods of competition which

Section 5 of the Federal Trade Commission Act made unlawful.

If we are to assert that no practice or act that heretofore has not been declared by some court to be unlawful, is not and cannot become unlawful, we have declared our unalterable opposition to that Section. During the debate of this bill before Congress, Senator Cummins said:

"If these acts are unlawful now, why do we pass the section at all? Why endeavor to furnish to the people of this country a further remedy if they already have a remedy for unfair competition which is ample and adequate?"

For many years prior to the passage of this act there was a widespread demand on the part of the public to create an administrative agency of quasi judicial character to investigate, determine and administer a rule of business conduct so as to prevent unfair methods of competition in the channels of interstate trade.

review by the United States Circuit Court of Appeals. The act further provides that both the respondent and the Commission are entitled to a further review by the Supreme Court of the United States.

Notwithstanding the limited appropriation allowed by Congress, the Commission from the date of its organization to the end of the past fiscal year (June 30, 1926) has considered 11,790 applications for complaint. Of this number 7,063 were dismissed after a preliminary investigationn and 4,413 were docketed for a thorough and careful investigation. After such investigations were completed, the Commission docketed up to and including June 30, 1926, 1,388 complaints for trial in accordance with its procedure.

Persecution of Business Not Intent of Congress

Congress never intended the Trade Commission should be a persecutor of business. It never intended the Commission should depend only upon ex-

With the increase of human activities many situations were arising with such complications that the courts could not give such relief as would guard the public interest. The inflexibility of the law had been illustrated in many important decisions rendered by the Supreme Court and the inferior courts of the United States subsequent to the passage of the Federal Trade Commission Act in 1914.

The decisions of the courts prior to the enactment of the law under which the Commission functions had established a precedent to the effect that a dealer who manufactured a product and truthfully advertised and sold the same could not invoke the equitable jurisdiction of the courts to enjoin all competitors whose goods were sold so as to deceive the purchasing public. This tendency of the courts was clearly expressed in the decision of the United States Circuit Court of Appeals for the Sixth Circuit, then composed of Judges Taft, Lurton and Day, when disposing of a bill of equity asking for an injunction held that certain facts alleged in a particular case did not entitle the complainant to relief, since it was not shown that the purchasers bought defendant's products in the belief that they were made by complainant. In the course of the opinion the court said:

"Can it be that a dealer who would make such articles only for pure wool could invoke the equitable jurisdiction of the courts to suppress the trade and business of persons whose goods may deceive the public? We find no such authority in the books and are clear in the opinion that if the doctrine is to be thus extended, and all persons compelled to deal solely in goods which are exactly what they are represented to be, the remedy must come from the Legislature and not from the courts."

The above illustrates the reason which led Congress to enact the statute creating the Federal Trade Commission and make unfair methods of competition unlawful and empowering the Commission to put an end to them. The identical situation which the court, in the above case, said was beyond its power to suppress has been brought within the jurisdiction of the Commission.

Scope and Application Of Law Were Broadened

Before the passage of the Federal Trade Commission Act by Congress the law of unfair competition concerned only litigation between individuals. The Federal Trade Commission Act broadened the scope of the law and made it applicable to all competitors using unfair methods in the sale of their products in interstate commerce. The act provides that whenever the Commission shall have reason to believe that any person, partnership or corporation has been and is using unfair methods of competition in commerce and it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall proceed to correct such practices.

The Commission Act is not aimed at persons but at methods. Its function is not remedial not punitive as no authority is vested in the Commission to impose penalties. Its purpose in respect to restraint of trade is preventive of diseased conditions. Its object is to protect the public, not to punish the offender.

The Commission is given discretion within certain limitations in determining what is or is not an unfair method of competition having in view the practices, usages and customs that are peculiar to any particular industry or business. The act further provides that the findings of the Commission as to facts, if supported by testimony, shall be conclusive but such decisions of the Commission, as set forth in its findings and orders, are subject to

statements gathered by Commission investigators as sufficient evidence to issue a complaint and publish to the world that the respondent—John Jones & Company—is charged with violation of the law.

In reading the debate during the consideration of this legislation, one gets the fact that Congress sought to protect the public interest and aid business to observe trade practices which would protect free and fair competition. The Commission has been severely criticized, and the hope that it would be abolished has been expressed. Speaking for myself, I welcome constructive criticism. Dave Harum said "Fleas are good for adog in that they make it forget that it is a dog." Appropriating the converse of that statement, constructive criticism is good for the Commission, for by such criticism it is reminded that care and common sense should be used in acting on complaints. Because the Commission has been subjected to attacks by critics is no reason it should be abolished. We often hear criticism of the courts and the police department, but no law-abiding citizen will agree that these institutions should be done away with. Until the coming of the millineum, we shall need the restraining hand of those agencies created to enforce the law and to protect the public interest.

One weakness of the Commission is not that it possesses or exerts too much authority, but that in many respects its authority is inadequate. Our hope is that the Commission may so merit confidence that additional powers, to be exerted in the interest of legitimate business, may be granted to it. The Commission ought to have the power to pass upon certain classes of transactions, business customs and practices in an advisory way to the end that the legality thereof might be determined without first subjecting earnest, law-abiding citizens to a charge of law violation.

With slightly increased powers the Commission could work out many of these problems with industry, possibly acting through existing organizations, in a way that would insure nation-wide conformity with a high code of business ethics, beneficial alike to all members of the community.

Investigation of Trade Associations Is Cited

A matter now under consideration which must be of interest to you is the Commission's investigation of trade asciation under the so-called McKellar resolution. The Commission, without resort to compulsory process, is making excellent progress in this invetsigation, aided by the splendid cooperation of the associations and association executives. This has been made posible by convincing the trade association executives that the Commission has no axe to grind in its economic investigations. Its ambition is to do a thorough and scientific job of fact-finding and to report the facts fully and without prejudgment or prejudice.

An individual has a right to do what he pleases with that which he has. What he has in his pocket is his, even if it is nothing but holes, but no association, organization or group of individuals have the right to enter into conspiracy, combination or agreement—expressed or implied—which will have the effect of restraining competition or causing injury to the public. Of course, there are two sides to every controversy, but if a person, partnership, or corporation has violated the law, then they must pay the penalty, which, in a case brought before the Federal Trade Commission, means they must stop the practice. However, it is the duty of the Commission to consider both sides of the controversy before issuing complaint.

On the 16th of June, this year, I will have been a membe rof the Commission for three years. I had not been long on the job before I was convinced something was wrong. Complaints were piling up and the docket was several years behind. I observed the Commission was taking notice of and spending time and money on cases brought to it which were nothing more than a private quarrel between two individuals, in which the public had little or no interest. It was further apparent that complaints were being issued without giving sufficient attention to respondent's side of the story with the result that in many cases, after subjecting the respondent to damaging publicity and unnecessary expense, the case were dismissed for lack of proof. To correct this situation a rule was passed giving respondent a hearing before the Board of Review. Stenographic notes of these hearings are made a part of the record and given due consideration in deciding whether or not a complaint should issue—thus taking away the criticism that complaints were being issued on ex parte evidence.

To be continued in the issue of May 20.