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# THE FOOD COMMISSION REPORT

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*U.S. House of Representatives*

Two years ago news media began to pay special attention to the problem of price spreads on food. In Texas, news stories told of feed lot operators going bankrupt from low cattle prices, while the price of steak in the supermarket continued to increase. The stories told about an increase of 31 percent in consumer food costs, although farm prices had fallen 15 percent since World War II. And the situation seemed to be getting worse. Charges and counter-charges were being leveled alternately at the farmers, the processors, and the supermarkets. The Congress decided that a study of this problem was needed, and the National Commission on Food Marketing was created to make such a study.

The Commission was not asked to develop any grandiose schemes for solving the problems facing the food industry. Instead, it was to conduct the most thorough and objective study of the food marketing system ever undertaken. We were to present a picture of the food industry, its profit structure, and our marketing system to the Congress so that it might determine if any new laws were needed, if any old laws should be discarded, or if the problems required totally new concepts.

For the first eighteen months of the study, things could not have gone better. Almost without exception producers, processors, and retailers cooperated in every way possible to provide our staff with all the information it needed. Information which never before had been available was willingly given to us. Information on operating costs, profit and loss, and pricing systems was freely provided so that our study might be complete and objective. In part, we found that the industry was as interested in our results as we were.

All went well until the time arrived for the writing of our report. Unfortunately, things did not go so well for the Commission from that point on, as we divided on what action we should take.

In the report which accompanied the bill creating the Commission, the House Committee on Agriculture had made it clear that our job was to *make an objective study* of the food industry. It specifically instructed us to study the subject and draw conclusions from our findings "rather than to recommend a course of action for either government or private industry." It went on to say that the Com-

mission "should concentrate on the single broad subject to which it has been assigned, rather than being required also to relate its findings in this field to all of the other aspects of our national and economic life and translate these findings into specific recommendations for action." Our purpose was clear. We were to make a detailed study of the food industry and summarize our findings to the Congress and the President. We were to evaluate our findings so the Congress might have a thorough understanding of our marketing system.

I understand that Dr. George Brandow, who acted as the Executive Director of the Commission, recently told a group of economists that most members of Congress are "ideologically and politically committed in ways that make a fresh, independent approach to the subject next to impossible." Perhaps this was the problem. At any rate, a majority of the members of the Commission, for their own reasons, decided to ignore the law which created the Commission and the instructions given us by the Committee on Agriculture, which sponsored the bill.

One of the best examples of the departure from the instructions given by the Congress was the decision to recommend the creation of an agency for consumer affairs. In the first place, Congress had specifically asked that no recommendations at all be made. Even if recommendations had been requested by the Congress, however, this recommendation could hardly have been called the result of an objective study. We never once discussed this possibility in a Commission meeting until the meeting at which a vote was taken. No indication was ever given by the Commission that we were interested in a consumer agency. No hearings were held on the question, and no testimony was taken either for or against the idea. I felt that the Commission's decision to recommend a consumer agency was just like a judge deciding a case before the evidence is presented. In addition, our instructions were to confine our studies and our report to the food industry alone. It is hard to conceive that an agency for consumer affairs would be serving or affecting only the food industry.

There are many other recommendations in the final chapter of the report, which, though some may have merit, could not be supported by the evidence which was collected and studied by the Commission.

There are other shortcomings in the report. For example, I believe one of the greatest marketing problems facing the food industry today did not receive sufficient attention in the Commission

report. I speak of the problems connected with vertical integration. There is, for example, legislation in the Congress receiving serious consideration which would prevent packers from feeding their own cattle. The point is, if this happens, should feed lot operators be prevented from engaging in packing operations? The 1921 Consent Decree prevents packers from retailing their meat products. Some supermarkets have now entered the packing business. Should this decree be lifted from the packers, or should the supermarkets be prevented from entering the packing business?

I could go on and on, raising more questions of this kind, but these make my point. It seems to me that it is time for the Congress to make a general policy decision on whether or not the government should step in and stop integration, or permit the marketing system to make these decisions. But whatever the policy, it should apply fairly to all segments. And the National Commission on Food Marketing could have made a significant contribution to the Congress on this problem.

As Harold Breimyer pointed out in his recent book, *Individual Freedom and the Economic Organization of Agriculture*:

As integration, once begun, tends to be self-sustaining, any public policy decision to arrest it should be made early in the process. When integration has already gone far, it is difficult even to influence it, let alone to achieve a rollback.

Furthermore, I believe the Commission missed an opportunity to evaluate and comment on the place of our marketing system in trying to feed the millions of hungry people in the world. Hunger is a problem which was virtually ignored in our study of the marketing system. Yet, today, there are more human beings in the world who are underfed and undernourished than the population of the entire world in 1900. This is a crisis to which our marketing system must be able to respond.

The problem is growing and becoming more serious every day. The total world-wide food production in 1965 was about the same as it was in 1964. But, in 1965, there were 63 million more mouths to feed than in the year before. Before World War II, the less developed regions of the world exported an average of 11 million tons of grain per year to the more developed countries. Since then the situation has been reversed, and these less developed regions, which are also now the areas of highest population growth, have to import more than 20 million tons annually from the developed regions.

The United States has both the ability and the responsibility to

respond to the needs of hungry people. Hunger is a problem of such importance to the food industry and to our entire nation, that it is inconceivable that we could presume to consider problems within our food industry without taking world food problems into account. Domestic marketing practices are becoming so tied to international trade problems that the challenge of trying to feed the world should have been given more attention.

My objections to the Commission report also included my concern about the tendency of the majority to create a "federal government solution" to any problem present in the industry. Too often a solution involving more laws, rules, and regulations appears to be the easy answer and is quickly embraced by those who prefer that the federal government solve all of our problems.

For example, the majority approved a recommendation calling for compulsory labeling and grading of nearly all food products. All canned, processed, or packaged foods would be required to carry a grade identification in the form of A, B, C, D, etc. In my separate views, I point out that seven years ago the Food and Drug Administration issued its first regulation purporting to set an arbitrary, minimum standard for peanut butter. Since that time several alternatives have been offered, but no minimum standard has yet been agreed upon. Hearings on proposed regulations were held again earlier this year. Bear in mind that this seven year long effort is just to establish a *minimum standard* for what peanut butter is, not an attempt to grade it A, B, C, or D.

In the area of concentration and competition, I objected to the decision of the majority to impose more laws and regulations on the food industry where they were not needed. My view was that there are already adequate laws on the books which, if properly enforced, would take care of any threats to effective competition in the food industry.

Just as the report was being printed, two actions of the U.S. Supreme Court reinforced my contention that our laws covering mergers and acquisitions in the food industry are adequate. The now famous Von's Grocery Company case found the Supreme Court invalidating the merger of two relatively small local grocery chains in southern California. Specifically, the case involved the purchase of 36 stores by Von's Supermarkets giving them a total of 66 stores in the Los Angeles market. These stores accounted for 7.5 percent of the market. While I am not passing judgment on the merits of the case, the Court's decision, in my opinion, is ample evidence that

the federal government already has all the antitrust laws it needs against acquisitions and mergers in the food industry.

In another case, known as the Dean Foods case, the Supreme Court ruled that the Federal Trade Commission may apply to a Federal Court of Appeals for a preliminary injunction for the purpose of stopping proposed acquisition in the food industry. The Food Commission report recommends a law permitting the Federal Trade Commission to issue its own temporary cease and desist orders, thereby giving the agency the powers of investigator, prosecutor, and judge of its own case. I do not believe it is inconsistent with American justice to expect an agency of the federal government to go to court to get an injunction, rather than issue its own injunctions against private citizens and businesses.

These two decisions only strengthened my belief that the challenge before us is not to get more laws against acquisition and merger in the food industry, but always to apply with fairness those that are now on the books.

My third objection concerned the emphasis given certain problems in the report. The key chapter was the final chapter of the report, which contained the recommendations of the Commission. I felt that too many of the real abuses which we uncovered were not adequately emphasized in the summary chapter. Many of these abuses were identified in my separate views and in my recommended version of the final chapter. For example, I pointed out that "in connection with enforcement by the Packers and Stockyards Division of the Department of Agriculture, we find that this agency has not been properly supported by the Department with either adequate funds or sufficient skilled personnel to enable it to exercise its regulatory responsibilities efficiently and to provide effective enforcement of the statute." It is my view that our studies justify moving the Packers and Stockyards Division from under its administrative chain of command, and placing it directly under the Secretary of Agriculture. This would strengthen the Packers and Stockyards Division and would permit it to make its budgetary requests directly to the Secretary.

I also believe that strong terminal markets are an important factor in keeping cattle prices strong, helping both the small producer who uses the market and the large producer who may prefer to negotiate his own contract with the buyers. For example, I say:

Likewise the Commission received evidence charging that the large livestock packers and chain owned packing operators often contract with producers on the basis of the price at a particular mar-

ket on a particular day and then, by refraining from purchasing in that market, are able unfairly to depress the price in that market on the given day. This alleged ability to depress prices may be enhanced by the development by packers of their own feeding operations which enable them to stay out of the particular market for a longer period of time.

We found discrimination by the federal government in the regulation of various types of livestock markets. The terminal market, the packer buying station, and the auction market each operate under different conditions and regulations. The opportunity for flexibility and innovation is particularly restricted for the terminal market. Agent buying for processors in many areas has sharply cut into the practice of competitive bidding in terminal markets.

In this connection, we find that terminal markets for livestock are still focal points of livestock trading in many areas, play an important role in all pricing, and are especially important sales outlets for smaller producers. In order that these markets have every opportunity to serve the changing needs of the livestock industry and in view of increased competition from other marketing methods, we conclude that the Packers and Stockyards Act should be administered to give stockyard owners and marketing agencies the greatest flexibility and control over their operations consistent with protecting the interests of buyers and sellers.

Several of the recommendations made by the Commission had been introduced in the Congress by members of the Commission long before the report was issued. Many of the other recommendations will be offered by other members at the start of the next Congress. At this time it is too early to tell what impact the Commission's recommendations will have on the legislation considered by the Congress. Certainly it is evident that the report was far from unanimous. In fact, ten of the fifteen members of the Commission signed separate views of one kind or another. There were others of the majority who did not approve of many of the recommendations which received a majority vote.

I do not want to conclude my remarks here today having left the impression that the work of the Commission was a complete loss, for this is not the case. The technical studies prepared by the specialists on the staff are an outstanding contribution to our understanding of the food industry. Information which had never before been available is summarized in these studies and will be a benchmark from which future studies of food distribution will be based. I believe also that the first ten chapters of the Commission report itself, although incomplete in some areas, reflect our findings and will also be a contribution to our understanding of the food industry.

I would like to conclude my prepared comments today by quoting from the conclusion of my separate views in the Commission report:

By recommending new legislation upon "conclusions" which go far beyond the food industry, the final report has exceeded our statutory authorization. By ignoring the limitations imposed on the Commission by Congress, and by adopting "conclusions" before all of the background information was available to the members of the Commission, the report now bears a taint of unfairness which can only impair the ultimate value of the Commission's work.

Throughout, the Commission's report underestimates the significance of the future development of the food industry, by an undue emphasis on old solutions conceived in the past. In my view, the final report also fails to give adequate consideration to instances of inequality found to exist in the food industry.

Fundamentally, the final report fails to cope with one of the great challenges of our time: how the American food industry can continue to improve America's bountiful standard of living for all Americans, while helping to fulfill America's commitment to assist hungry peoples of other nations, as a moral obligation and as a vital component of our national security. Instead, the report is preoccupied with extreme and controversial legislative proposals which are not even responsive to the actual problems and abuses found in the Commission's studies.

A golden opportunity has been missed to help a great, economically healthy industry assess and meet the critical challenges of the future.

The Report of the National Commission on Food Marketing could have been a blueprint for a constructive and forward-looking Government policy toward the food industry in the coming decades.

It is regrettable that the report did not fulfill those high expectations.