

Consumer Protection, Information and Education: A County's View

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On March 15, 1962, in a special message to the Congress on protection of consumers, John F. Kennedy urged additional legislative and administrative action if government was to meet its proper responsibility to consumers.

The late President declared that consumers had certain definite rights:

THE RIGHT TO SAFETY—to be protected against the marketing of goods which are hazardous to health or life.

THE RIGHT TO BE INFORMED—to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices, and to be given the facts he needs to make an informed choice.

THE RIGHT TO CHOOSE—to be assured, wherever possible, access to a variety of products and services at competitive prices and in those industries in which competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices.

THE RIGHT TO BE HEARD—to be assured that the consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.¹

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1. H. Doc. No. 364, 87th Cong., 2d Sess. 4167, 4168 (1962).

Congress responded. In the years since that message, consumer legislation that had been dormant for years finally made the legislative "Hit Parade." Thus, we saw the passage, *inter alia*, of a Fair Labeling and Packaging Act (Truth-in-Packaging);² Consumer Credit Protection Act (Truth-in-Lending);³ Wholesome Meat Act;⁴ Wholesome Poultry Products Inspection Act;⁵ Fire Research and Safety Act;⁶ establishment of a National Commission on Product Safety.⁷ At the Presidential level, a Consumer Advisory Council was established and the office of Special Assistant to the President on Consumer Affairs was created.

Nassau County, New York, also reacted to the growing awareness of consumer problems and needs by creating on June 9, 1967, the Office of Commissioner of Consumer Affairs to assist our one and a half million residents.⁸ It was the first county office of its kind in the nation, gauged to help taxpayers solely in their roles as consumers.

In addition to continuing the consumer protection functions performed under weights and measures statutes, the County Commissioner of Consumer Affairs was given the power and duty:

1. To receive and investigate complaints and initiate his own investigation of frauds or unfair dealings against consumers; to hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith require the production of any evidence relating to any matter under investigation or in question before the Commissioner. At any hearing before the Commissioner, a witness shall have the right to be advised by counsel present during such hearings;

2. Act of Nov. 3, 1966, Pub. L. No. 89-755 (codified at 15 U.S.C. §§ 1451-61 (Supp. IV, 1969)).

3. Act of May 29, 1968, Pub. L. No. 90-321 (codified at 15 U.S.C. §§ 1601-77 (Supp. IV, 1969)).

4. Act of Dec. 15, 1967, Pub. L. No. 90-201 (codified at 21 U.S.C. §§ 601-91 (Supp. IV, 1969)).

5. Act of Aug. 18, 1968, Pub. L. No. 90-492 (codified at 21 U.S.C. §§ 451-70 (Supp. IV, 1969)).

6. Act of Mar. 1, 1968, Pub. L. No. 90-259 (codified at 15 U.S.C. § 278f (Supp. IV, 1969)).

7. Act of Nov. 20, 1967, Pub. L. No. 90-146, 81 Stat. 466.

8. Nassau County, N.Y., County Gov. Law § 2102 (1967).

2. To represent the interest of consumers before administrative and regulatory agencies and legislative groups;
3. To assist, advise and cooperate with local, state and federal agencies and officials to protect and promote the interests of the Nassau County consumer public;
4. To conduct investigations, research, studies and analyses of matters affecting the interests of Nassau County consumers;
5. To study the operation of state and local laws for consumer protection and to recommend amendments of such laws for the protection of consumers;
6. To report to the appropriate law enforcement officers information concerning reported or discovered violations of consumer protection laws;
7. To assist, develop and conduct programs of consumer education and consumer information through publications and other informational and educational material prepared for dissemination to the consumer public of Nassau County in order to increase the competence of consumers and to raise the general standard of living;
8. To undertake activities to encourage local business and industry to maintain high standards of honesty, fair business practices and public responsibility in the production, promotion and sale of consumer goods and services;
9. To cooperate with other agencies, public and private, in the development of standards and quality grades for consumer goods and services;
10. To exercise and perform such other functions, powers and duties as may be deemed necessary or appropriate to protect and promote the welfare of Nassau County consumers.

The law also established a Board on Consumer Affairs which is composed of 15 members from consumer and business interests to assist and advise the Commissioner in his duties and functions.

As can be seen, the original enabling act of the Office of Consumer Affairs gave to the Commissioner of Consumer Affairs wide investigatory powers and duties, in addition to the responsibility for the development and implementation of programs of consumer education and information. This legislation did not contain any punitive measures nor was the Office empowered to levy fines or assess penalties as is the case with many other administrative agencies.

Pursuant to this original authority the Nassau County Office of

Consumer Affairs received 6,945 complaints from consumers in the two and one half years ending December 31, 1969. The complaints include the ever-troubling fields of home improvement, repair-service industries, misleading advertising, and high pressure and misleading sales tactics. Review and investigation of these complaints has led to many settlements between vendor and consumer. In the same period of time, the Office has achieved \$117,163.33 in refunds and adjustments on behalf of consumers. Many refunds involve the return of deposits where little or no work or services were performed.

Investigations have often revealed definite fraud. In these cases, we have developed the basis of prosecution used by the District Attorney. Matters have also been referred to the New York State Attorney General, U.S. Attorney, Postal Inspector, Food and Drug Administration, Department of Agriculture and Markets, Federal Trade Commission and various other state and federal agencies.

To accomplish mutual goals, we have worked together with industry to protect the consumer and the ethical businessman. With the cooperation of the petroleum industry and the gasoline retailers, we developed a gasoline-mixture inspection program to insure that the consumer paying for premium (high-test) gasoline does, in fact, receive it. Under this program the Office has filed complaints in court, through the District Attorney, alleging that certain retail service stations were engaged in unlawful acts relating to the mixing or adulteration of gasoline in violation of New York State Law.⁹ Several of these cases have been successfully concluded. They represent the first convictions in our county under a forty year old consumer protection statute.

With the cooperation of the fuel oil industry we have developed and enacted local laws regulating deliveries of fuel oil and the temperatures at which they are to be delivered and sold.¹⁰ This is important to the consumer. In winter, some depots preheat their oil prior to delivery which causes the fuel oil to expand and thereby artificially inflates the total number of gallons delivered and sold to the homeowner.

9. N.Y. GENERAL BUSINESS LAW § 391(a) (McKinney 1954), formerly N.Y. PENAL LAW § 445.

10. Nassau County, N.Y., Ordinance 219-1967.

Inspectors of the Office are in the marketplace every day and are constantly alert to matters which would deceive or mislead the untrained consumer. As a result, food stores have ceased using such deceptive meat packaging procedures as a "bolster package" and "red striped" cellophane wrapping, which mislead the consumer as to the quantity and quality of the meat he buys.

Rules issued pursuant to the Agriculture and Markets Law of the State of New York regulate the percentage of fat permitted in chopped beef.¹¹ By making fat percentage tests of chopped beef packages, we attempt to assure the consumer that the chopped beef he purchases is meat and not mostly fat.

In addition to inspections and investigations, one of the most important mandates imposed upon the Office by its local law, is to represent and act as the "consumer's advocate" before legislative, administrative and regulatory groups. As a result, the Office has submitted testimony or statements to various congressional and legislative committees, administrative agencies and regulatory departments which set rates for utility services used by consumers. The topics of such representation included the establishment of federal and state departments of Consumer Affairs; the recommendation for the enactment of legislation regulating automobile warranties; recommendations for the establishment of a state operated motor vehicle inspection program; recommendations for the licensing of automobile repair mechanics; recommendations for legislation to prevent unwarranted invasion of the consumer's privacy by credit reporting agencies; support of regulations gauged to require the posting of research octane ratings on gasoline pumps; support of legislation governing the mailing of unsolicited credit cards; support of statewide licensing of home improvement contractors and the limitation by legislation of the holder-in-due-course doctrine in retail consumer credit transactions involving goods and services.

Pursuant to its authority to conduct investigations, research, studies and analyses of matters affecting the consumer, the Office of Consumer Affairs has conducted major surveys in the areas involving a) sales tax overcharges on gasoline sold at retail service stations; b) octane ratings of premium gasoline sold in the county; c) the availability and price marking of advertised specials in the supermarkets; and d) the packaging and labeling practices of supermarkets in the sale of retail cuts of meat. The results of the last mentioned report were forwarded to the New York State Attorney General for his action. Soon thereafter, the Attorney General is-

11. N.Y. MEAT INSPECTION LAW § 96-s (McKinney 1954, Supp. 1970-71).

sued complaints against more than thirty supermarkets charging them with misleading practices in the labeling of these meats. At the time of this writing, eight of the supermarkets involved have paid fines and executed consents and stipulations agreeing to conduct proper labeling practices.

As stated previously in this article, the original enabling legislation did not give the Office of Consumer Affairs any authority to conduct its own administrative procedures for penalties. Therefore, the Office was limited to referring matters to various prosecutive agencies in the hopes that they would take appropriate action. As a result of the survey and report regarding the labeling practices of supermarkets in regard to the retail cuts of meat, new county legislation was proposed and enacted which gave to the Office of Consumer Affairs enforcement and injunctive powers through the use of the civil courts of the county.

This new legislation, commonly referred to as the "Consumer Protection and Unfair Trade Practices Act",¹² provides in part that:

No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental or loan of any consumer goods or services, in the extension of consumer credit, or in the collection of consumer debts.

The law defines a deceptive trade practice as:

Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind, which has the capacity, tendency or effect of deceiving or misleading consumers and is made in connection with the sale, lease, rental or loan of consumer goods or services; the offering for sale, lease, rental or loan of consumer goods or services; the extension of consumer credit; or the collection of consumer debts¹³

Some of the deceptive trade practices which the law specifically defines and prohibits are:

- (1) representation that:
 - (a) goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
 - (b) the merchant has a sponsorship, approval, status, affiliation, or connection that he does not have;
 - (c) goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, or second-hand;
 - (d) goods or services are of particular standard, quality, grade, style, or model, if they are of another.

12. Nassau County, N.Y., Admin. Code Title D. § 21-10.2.

13. *Id.*

- (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact;
- (3) failure to state a material fact if such use or failure deceives or tends to deceive;
- (4) disparaging the goods, services, or business of another by false or misleading representations of material facts;
- (5) offering goods or services without intent to sell them;
- (6) offering goods or services without intent to supply reasonably expectable public demand, unless the offer discloses the limitation;
- (7) making false or misleading representations of fact concerning: the reason for, existence of, or amounts of price reductions; or the price in comparison to prices of competitors or one's own price at a past or future time;
- (8) falsely stating that a consumer transaction involves consumer rights, remedies or obligations;
- (9) falsely stating that services, replacements or repairs are needed; and
- (10) falsely stating the reasons for offering or supplying goods or services at sale or discount prices.¹⁴

The law also prohibits unconscionable trade practices and defines same as:

Any act or practice is unconscionable if it takes unfair advantage of the lack of knowledge, ability, experience or capacity of a consumer which results in a gross disparity in the rights of a consumer as against the merchant or results in a gross disparity between the value received by a consumer and the price paid by the consumer.¹⁵

The Commissioner of Consumer Affairs may adopt rules and regulations necessary to effectuate the purposes of this new legislation after notice and the holding of a public hearing. The Act also gives the Commissioner the authority to seek a civil penalty of \$500.00 for each violation and/or injunctive relief. Such actions will be brought by the County Attorney upon the request of the Commissioner of Consumer Affairs. This legislation also authorizes the Commissioner of Consumer Affairs to settle pending actions and to include in any such settlement restitution for consumers. This local law took effect on March 1, 1970, and at the present time it is too early to assess its effects.

To inform and educate the consumer, the County Office has initiated a countywide program of direct meetings and educational presentations through civic and business organizations, the extension service, anti-poverty groups and high schools. A library of sound films, visual aids and brochures on various topics of consumer interest has been created and is made available to interested groups.

We have prepared a guide to the consumer services and laws of

14. *Id.*

15. *Id.*

the various departments of the county government and of the local villages, towns and cities in Nassau County. The guide also lists private agencies devoted to consumer affairs and federal and state agencies with consumer-protection functions.

I am convinced that the county is the best level of government for effective consumer protection, education and information. A county level office must of necessity deal with individual consumer problems and seek specific solutions. Although consumers are obviously the largest interest group in the country, their voice is still relatively weak at all levels of government. We need greater attention to the problems of consumers by federal, state and local government. This need is urgent, especially in the case of the low-income consumer. The problems of the disadvantaged consumer in Nassau County are similar to his counterpart throughout the nation. The Report of the President's National Commission on Civil Disorders (Kerner Commission) concluded that greater protection for the consumer is a must. Consumer grievances ignored year after year have often expressed themselves in violence.

One of the most important features of our County Office of Consumer Affairs, and a reason why similar local offices should be established elsewhere, is our ability, through proximity to individual problems, to effect a continuing dialogue by direct handling and resolution of consumer grievances. By reconciliation of the disadvantaged consumer and the businessman this Office has managed to reduce, if not eliminate, any existent hostility.

Monies expended in the area of the disadvantaged consumer will result eventually not only in a social return for the community but a financial return as well. If we can assist a low-income consumer in avoiding bad buying and borrowing practices which may lead to garnishment and subsequent loss of a job, we have benefited the whole community, county, state and nation, because we have saved another soul from welfare.

In order to meet the challenge to protect, educate and inform our poor, this Office has launched a mobile field unit called the "consumermobile" to bring the Office's services into those areas of the county wherein reside concentrations of low-income consumers. Manned by a staff of four, some of whom are indigenous to the low-income community, the unit receives complaints from consumers and is equipped with brochures gauged to the problems of the low-

income community. A constantly running film on consumer problems in the area of housing, food purchasing, car purchasing and credit use is shown.

The local citizens of Nassau County have not only responded favorably to the work of the Office of Consumer Affairs but have also offered their services in assistance to the Office. As a result, many work as unpaid volunteers assisting the regular staff in its functions. The most notable example of this volunteer service was the granting of sabbatical leave by a local school district to a consumer education and social studies high school teacher to permit him to work in the Office as a full time volunteer for one school year.

However, we have only begun to scratch the surface. We need additional laws not only in Nassau County, but throughout the nation to prevent exploitation of the consumer and to continue a healthy economic environment for the ethical businessman. We also need more liberal interpretation by the courts of consumer protection laws already in existence and we need local, state and federal offices gauged solely to serve the citizen-consumer.

As stated earlier in this article, Congress reacted to the call for legislation to protect and inform the consumer in the 60's. There is presently pending in the 91st Congress a major list of consumer protection legislation including bills to establish an independent Office of Consumer Protection,¹⁶ and to permit consumers to initiate class action lawsuits.¹⁷ It will be interesting to learn by following the course of these and other bills whether Congress's reaction in the 60's was a remedy for what it considered a temporary ailment or a continuing prescription aimed at a permanent cure for the consumer's economic state of health.

16. H.R. 18214, 91st Cong., 2d Sess. (1970).

17. S. 3982, 91st Cong., 2d Sess. (1970).