

Manufacturing Chemists' Association, Inc.

(FOUNDED 1872)

1825 Connecticut Avenue, N. W.
WASHINGTON 9, D. C.

MINUTES OF MEETING LEGAL ADVISORY COMMITTEE WASHINGTON, D. C. September 25, 1962

PRESENT

Lloyd Symington, Chairman
James R. Carnes
John H. Cleary, Jr.
W. C. Gordon
Rodney Harris
General John E. Hull
Iver MacDougall
P. B. Raue
J. F. King, Secretary

Fowler, Leva, Hawes & Symington
Manufacturing Chemists' Assn., Inc.
Mobil Chemical Company
Hercules Powder Company, Inc.
Monsanto Chemical Company
Manufacturing Chemists' Assn., Inc.
Stauffer Chemical Company
Mobil Chemical Company
Manufacturing Chemists' Assn., Inc.

FTC Proceeding

Mr. Symington opened the meeting by outlining the background of the FTC proceeding on TSP, his several conferences with the FTC personnel and the various considerations bearing upon the decision of MCA's Executive Committee and Board of Directors to sign the Consent Order to Cease and Desist, as modified, despite MCA's firm belief in its innocence.

Mr. Symington and General Hull then summarized the reasons why the initial rough draft of proposed compliance report (as circulated) had been prepared in considerably longer form than would normally be required. The reasons for the "long form" of report included the following:

(1) To place on record a general description of the Association's current activities and procedures -- especially those of the Packaging and Traffic Committees -- which MCA counsel had discussed with the FTC staff attorneys, and which they had assured him informally need not be modified for purposes of compliance with the Order. In other words, this form of compliance report would be a device to confirm in a general way these informal

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conversations as to the legality of MCA's current operations -- particularly in view of the broad allegations in the TSP complaint suggesting that many of MCA's current activities were open to question.

(2) To prevent, if possible, any future involvement of MCA in an FTC proceeding which might be based upon misapprehension as to MCA's policies and activities. It seemed quite possible that the Commission would not have included MCA in the TSP proceeding had it been fully informed about how MCA operated.

(3) To confirm that MCA had no reluctance to conduct itself on a "goldfish bowl" basis as far as its relations with FTC were concerned. This factor was felt to be of significance to MCA, as a trade association, whereas individual companies might well feel differently as to their own situation.

(4) To serve as the basis for a periodic "reminder" to MCA's staff, committees, and other interested personnel as to MCA's policies and procedures to avoid antitrust problems -- but at the same time without committing MCA to any particular activities or procedures for the future.

In line with this last point, Mr. Symington and General Hull advised the Committee that the final Sections 2 and 3 in the suggested draft (starting on page 10) would be omitted so as not to restrict MCA's flexibility for the future. Instead, it was planned to incorporate this sort of material into an internal MCA document in the nature of "Standard Operating Procedures" which would be approved by the Board and furnished periodically to all MCA committee members. In this form the policies and procedures could be changed as circumstances warranted without having to worry about FTC approval. The Committee concurred with this change.

Mr. Symington noted that several members of the Committee had been unable to attend, and that they and counsel for certain members of MCA's Executive Committee had written in their comments on the rough draft as circulated. Although some of them agreed generally with the "long form" approach, others had expressed preference for the shortest possible form of compliance report.

Several of the Committee members present expressed support for the latter point of view favoring the short form. They pointed out that, even with Sections 2 and 3 omitted, the introductory description of MCA's activities and procedures would in their

opinion tend to freeze such activities for the future; that MCA should not volunteer such exposure of its over-all activities to the FTC but should confine the report strictly to TSP; and that the proposed objective of "educating" the FTC might be outweighed by the risks involved, such as inviting further investigations of MCA by FTC, and possible use of this material against MCA in the future.

There was no disagreement with the validity of these points insofar as they might be applicable to individual companies. General Hull, however, noted the different status of MCA as an association, and the desirability of confirming FTC's concurrence with MCA's present activities and, at the same time, trying to preclude in the future the FTC misconceptions about MCA's operations which seemingly existed in the TSP proceeding.

Mr. Coleman also expressed himself strongly in favor of the longer form of compliance report, under the circumstances, as a proper attempt to confirm on the record MCA's reasons as to why it should not have been included in the proceeding. He agreed that the special considerations bearing upon the Association's position in this proceeding were quite different from those normally applicable to an individual company, and that, from MCA's standpoint, there were public relations and educative problems as well as those of a strictly legal nature.

After full discussion, it was the consensus of the Committee that the Association should submit (a) a relatively brief compliance report, and (b) a covering letter to the Commission including the material, with certain revisions, set forth in pages 1 through 6 of the initial rough draft. Mr. Symington said he would redraft the material on this basis and circulate the redraft to committee members for their written comment. It was hoped that thereby the necessity for a further meeting of the Committee might be avoided.

Legislative Matters

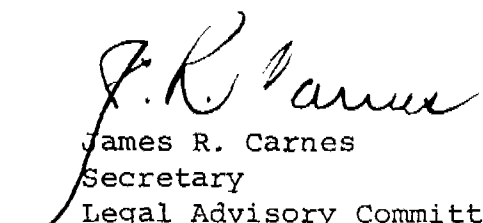
Mr. Symington referred to the recommendations of the Committee at its January meeting that MCA should participate more actively in Federal legislative matters. He noted that MCA had taken vigorous positions on several legislative matters during the past session, and said that the Committee's January recommendation

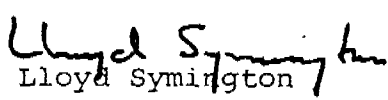
had been favorably received by the Board and by the recently-formed Policy Study Committee.

Miscellaneous

Several members indicated that the Committee might be more useful and its meetings better attended if it should meet on a regular basis, such as twice a year or even more frequently. Mr. Symington pointed out that the role and procedures of the Legal Advisory Committee, along with those of all other MCA committees, would undoubtedly be considered by the Policy Study Committee.

Mr. McDougall raised the question as to whether the recent Federal District court decision in Chicago denying the lawyer-client privilege in the case of corporate clients should be circulated by MCA to its membership. It was felt that most members were probably already aware of this decision, and that, for the moment at least, no action by MCA was indicated.


James R. Carnes
Secretary
Legal Advisory Committee

APPROVED: 
Lloyd Symington
Chairman

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