

IN THE MATTER OF
SUN OIL COMPANY

Docket 6641. Order and Opinion, Nov. 16, 1964

Order denying respondent's motion that Commissioner MacIntyre be disqualified from participation in this proceeding.

RESPONSE TO MOTION

By MACINTYRE, *Commissioner*:

This is in response to respondent's motion filed herein November 10, 1964, that I declare myself ineligible to participate in this proceeding.

termination on the basis of the administrative record before me.' " 225 F. 2d at 555 (emphasis added). See also *United States v. Morgan, supra*, where Justice Frankfurter, finding no bias in a letter written by the Secretary of Agriculture, referred to the Secretary's "patently sincere . . . [and] dignified denial of bias." 313 U.S. at 420, 421.

This response is based in part upon the consideration of the following items:

1. I have made no judgment in this matter and I hold no personal bias respecting any party involved in this matter.

2. The things cited by counsel for respondent as reasons why respondent thinks I should withdraw from this proceeding have been carefully reviewed and considered by me.

3. The only incident cited by respondent in its motion as showing any personal act or utterance on my part upon which the motion is based is my action in calling to the attention of responsible Members of Congress the record of a decision by a United States District Court interpreting the law to be applicable to a situation found by the Court to exist in that case. The case in question is that of *Enterprise Industries, Inc.*, plaintiff, v. *The Texas Company*, defendant, Civil Action No. 4076 in the United States District Court for the District of Connecticut, decided September 30, 1955. It is referred to on page 7 of respondent's motion and in that connection respondent in its motion referred to page 449 of hearings held November 3, 1955, in Washington, D.C., before the Select Committee on Small Business, House of Representatives, 84th Congress, pursuant to H. Res. 114, Part I, page 449. There I asked that a report on that case be included in the record of those hearings. Respondent was not a party, and therefore not involved in that case. It is difficult for me to understand why respondent cites that instance and other related instances in support of its motion here. Indeed, I am perplexed about it.

4. I would like to remind respondent that it is and has been my policy to act in such manner as to avoid "even the appearance of impropriety." It is my intention to apply that policy here.

5. I do not consider that if I should fail to accede to the request made by respondent that I withdraw from this case, I would be acting contrary to the policy to which I have just referred.

6. I do consider that the proper discharge of the responsibilities of my office and of my duties and obligations under my oath of office call for me to decline the request of the respondent that I withdraw from this case.

Therefore, I have decided to disagree with the motion of respondent that I withdraw from participation in the decisional function of the Federal Trade Commission in F.T.C. Docket No. 6641, *In the Matter of Sun Oil Company*.

ORDER DENYING MOTION TO DISQUALIFY

Respondent, by motion filed November 10, 1964, has requested that Commissioner MacIntyre withdraw from participation in this pro-

ceeding or, in the alternative, that the Commission determine that he be disqualified from any consideration or participation in this proceeding. On November 12, 1964, Commissioner MacIntyre filed with the Commission a response denying existence of any grounds for his disqualification from participation in this proceeding. As was stated in *American Cyanamid Company, et al.*, F.T.C. Docket No. 7211, Order Denying Motions to Disqualify, December 20, 1961 [59 F.T.C. 1488]:

Under the Commission's practice, disqualification is treated as a matter primarily for determination by the individual member concerned, resting within the exercise of his sound and responsible discretion. The Commission believes this practice to be proper and consistent with the law.

In this case, as in *American Cyanamid*, no basis for departing from the normal practice has been shown. Accordingly,

It is ordered, That the motion to disqualify Commissioner MacIntyre from participation in this proceeding be, and it hereby is, denied.

Commissioners Dixon and MacIntyre not participating.