Written by **Steve Byas** on October 10, 2013

The Price of Price-gouging Laws

Mohammed Mannan faced up to a year in prison for his "crime." He very well may have thought that, in America, a man's property is his to offer for sale at whatever price he wishes. But, when Mannan offered gasoline for sale at his Tulsa, Oklahoma, gas station for $3.29, he landed in Tulsa County District Court. Mannan had raised the price from $2.69, an increase of 60 cents, following a December 2008 ice storm.

Then-Attorney General Drew Edmondson explained how Mannan had run afoul of the Oklahoma statute against price gouging. "Under Oklahoma law, once an emergency has been declared, business owners cannot artificially raise the price of necessary goods and services more than 10 percent above the pre-emergency price. Based on the pre-emergency price of $2.69, the maximum increase allowed by law once the declaration was issued was 26 cents." Those extra 34 cents by which Mannan dared to raise the price of *his* gasoline now threatened him with time behind bars, and a $1,000 fine for *each count.*

Fortunately for the owner of the M & F Mart in Tulsa, he escaped the slammer for the three misdemeanor counts. Instead, Mannan was ordered to serve a six-month deferred sentence, give refunds to consumers who paid "the artificially inflated price," and pay a $1,500 fine plus court costs. Additionally, the attorney general's office encouraged persons who paid the illegal price to produce proof of payment, so they, too, could get a refund. Mannan agreed to the deal in a no contest plea.

The Proliferation of Price-gouging Laws

Oklahoma enacted the price-gouging statute following the May 3, 1999 tornadoes that struck the state, causing particularly heavy loss of life and extensive property damage in the Oklahoma towns of Moore, Bridge Creek, Del City, and Stroud. Oklahoma's statute prohibits an increase of more than 10 percent on the price of most goods and services when a state of emergency has been declared. The law reads, "No person for the duration of a declaration of emergency by the Governor of this state or by the President of the United States and for thirty (30) days thereafter shall sell, rent, or lease, or offer to sell, rent, or lease, for delivery in the emergency area, any goods, services, dwelling units, or storage space in the emergency area at a rate or price which is more than ten percent (10%) above the rate or price charged by the person for the same or similar goods, services, dwelling units, or storage spaces immediately prior to the declaration of emergency unless the increase in the rate or price is attributable only to factors unrelated to the emergency and does not include any increase in profit to the seller or owner."

Mannan was not the only Oklahoma business to face the wrath of the state government for "price-gouging" during the 2008 ice storm. Edmondson also settled a price-gouging case against La Quinta Inns. "We discovered La Quinta overcharged consumers, on average, between $10-$20 per night," Edmondson said. For these violations, the hotel chain agreed to pay the state $50,000, to be used for "consumer protection enforcement activities," and provide a free night's lodging to eligible consumers who stayed one to three nights. Those who stayed four to six nights would receive two free nights, and consumers who stayed seven or more nights received three free nights.

Then-Governor Brad Henry declared, “It is unconscionable to wring profits from misfortune and tragedy.”

Both Henry and Edmondson are Democrats, and such demagoguery can be expected. The Oklahoma Legislature has since flipped to a solid majority of Republicans, but the price-gouging statute, with its heavy-handed restrictions on the free market, remains in place. The rhetoric coming from the attorney general’s office under Democrat Edmondson has changed only slightly under Republican Scott Pruit.

Edmondson lamented in 2010, “Unfortunately, there are a few people who look to profit from someone else’s tragedy.” If one eliminated all occupations that “profit” from another person’s tragedy, then physicians, funeral home owners, ambulance drivers, trial lawyers, and politicians such as Edmondson would have to look for a different line of work.

Sadly, Oklahoma is not alone in this demagogic attack upon the free market. In the aftermath of Hurricane Sandy, more than 500 “possible” cases of price gouging of gasoline and other essentials, “including a $10 box of matches,” were reported in New York State, according to *First Coast News*. New York Attorney General Eric Schneiderman encouraged New Yorkers to report price gouging to his office.

State law in New York prohibits an “unconscionably excessive price” that unfairly takes advantage of consumers following a disaster. The previous summer, Schneiderman sued some gas stations for price gouging following Tropical Storm Irene. For example, a Yonkers gas station increased its price from $3.89 before Irene hit to $4.79 only two days later. According to *First Coast News*, the company settled the suit for $7,500.

Following the attacks of September 11, 2001, California Attorney General Bill Lockyer said, “Prices today appear to be the same as they were before the terrorist attack on the East Coast,” but he threatened, “should this situation change, we will investigate and take action for illegal profiteering.”

Texas Attorney General Greg Abbott promised in 2010, “We are prepared to act quickly if gas prices in a Governor declared disaster area spike beyond what the normal market forces set.”

Many more examples could be given. But, it is instructive to make a closer examination of the Texas attorney general’s comment as part of a larger evaluation of these demagogic laws we see across the country in the several states. Sadly, demagoguery and/or ignorance of basic economics seems to be a shared vice of both Democrat and Republican politicians.

Economic Lucidity

Abbott’s phrase, “normal market forces” is actually quite descriptive of what happens in a disaster such as a hurricane, tornado, or even a terrorist attack. Prices are the language of the marketplace. They communicate to sellers and buyers alike that a *new normal* has arrived. Following a disaster, the supply of a product has typically declined, and the demand has typically increased. This means that the price should rise. When the price is not allowed to rise, by popular but wrong-headed government laws, an acute shortage is quickly transformed into a chronic shortage.

Price controls are a lie, whether it is controlling the price *below* the market price, or *above* the market price. They are a form of theft. What right does one person have to tell another person at what price he should offer his goods or services? Is it really a man’s property if he cannot offer it for sale at whatever price he desires?

When government, gangsters, or some other force interferes with the natural workings of the free market, a false message is generated to both buyers and sellers, with predictably bad results.

If sellers are told to sell *below* the market, they will produce less of the product, and may even exit the market completely. In contrast, buyers will demand *more* at the lower price. It should not take a genius to then realize what happens next: a shortage exists. The solution? Many might suggest rationing, which allows some government bureaucrat to determine who gets what. This does produce anger from those who get less than they want, but it does not produce any more goods and services. U.S. government-imposed price controls and rationing on gasoline and other commodities during World War II provide multiple historical examples of chronic shortages due to government interference with the price system.

The solution? Allow the price to rise to its natural market level. When this happens, more suppliers will enter the market, increasing the supply of the good or service. Some buyers will then drop out of the market, and the shortage disappears. When demand drops, the price will also drop. In 1981, in one of his first actions as president, Ronald Reagan decontrolled the price of oil. This led to a short spike in gasoline prices, but the decontrol generated increased drilling activity, and Americans soon enjoyed lower prices at the pump.

This is basic economics, yet we have demagogues of both major political parties who insist that the market has produced the wrong price. They want to tell a lie and say the price is lower than what it actually is. The lie is repeated by politicians who want votes, by media who use anger against some storeowner to generate higher ratings, and by those who simply want a product or service for a lower price than the true market price.

Some will concede that the above analysis is true, but then argue for “special situations” in which charging “too much” is price gouging. They contend that it is “taking advantage” of people to charge higher prices (usually anything more than a 10-percent increase in most of these state’s laws) after a natural disaster. Selling one’s product or service above this 10-percent level after a tornado, hurricane, earthquake, or some other disaster is considered somehow morally wrong.

But, when the market price has gone up, say 18 percent, and the “benevolent” government steps in and says a person cannot offer his own property for anything higher than 10 percent, what happens? A shortage, of course. Let us say that a tornado has knocked out power, so you rush to the store to buy a generator. The demand for generators is much higher than it was before the tornado, but the stores have only enough generators to meet half the demand. So, what happens to the market price of generators? The price will naturally rise.

Vote-seeking politicians will say this is price gouging. Under laws designed to prevent so-called price gouging, the price is not allowed to rise, and the store runs out of generators before you get there. After all, in the reasoning of the demagogues, it is better to not have a generator than to have to pay a higher price for one.

Proper Payment Is the Solution

The solution? If the price is allowed to rise, then there will be an influx of generators into the area to meet the increased demand, and the shortage will vanish.

Some complain about the price of gasoline going up during these times of disaster. The argument goes, “He is charging more for gasoline he has already purchased.” Of course, but now the market has shifted. Interestingly, many will complain about the retailer offering gasoline for more, even though the retailer’s cost has not risen (yet). But what happens to those complainers when the price of their home goes up over the years, say, from $100,000 to $175,000? Does this person say, "Well, I only paid $100,000 for this house, so I shouldn't gouge that young couple just starting out in life?" Are you kidding?

What about these hotels who raise prices after a disaster? Let's say a family of four ordinarily would rent *two* rooms, but now only rent *one*, because the price has doubled. This allows one more room to be rented to another family. If the price is held to its normal rate, the family will rent two rooms, and the next family will be left out. This is an example of what the 19th-century French philosopher Frederic Bastiat called *what is seen and what is not seen*. What is *seen* is the lower price that benefits the first family. What is *not seen* with the higher price is it allows the second family to take shelter from the cold night.

In 2007, the Bush administration published a "White Paper on the Economic Consequences of Gasoline 'Price Gouging' Legislation." While President George W. Bush failed to follow the concepts of the free enterprise system in so many other cases, such as the infamous 2008 bailouts, the economists who prepared this paper provided excellent analysis. "Price increases," the paper argued, "induce domestic refineries outside the affected region and foreign suppliers to rapidly ship additional gasoline to affected areas…. With gasoline prices kept below market levels, there would be shortages. Consumers would be forced to line up at gas stations, but gasoline would run out before satisfying demand and many would be forced to do without."

The paper pointed to the contrast of the experiences of the 1970s, when price controls were in effect, and today. Then, "Oil price [limited by price controls] increases were accompanied by long lines at the pump." In more recent years, without gasoline price controls, the country has not suffered such shortages of fuel.

While these laws against price gouging are promoted by vote-seeking politicians and accepted by a general public largely uninformed as to their actual effects, the time and location of these disaster price controls are fortunately limited. What is so dangerous about these laws is they leave the impression that government can, by decree, alter the natural workings of the free market in such a way as to benefit the public. Sadly, many will conclude that since the free market does not work well during a disaster, why should we have a free market in normal times?

Having accepted the ability of government to control prices, which is a lie, should we be surprised when so many politicians lie their way to power?

— Photo: AP Images