

Opinion No. 187.**Milk Control—Dairies, One-Cow—
Rules and Regulations— “Sub-
stantial Portion,” What Is.**

HELD: 1. A one-cow dairy, whether a producer or a producer-distributor, is a dealer within the meaning of the Milk Control Act and is subject to the regulations of the Milk Control Board.

2. In determining what is “a substantial portion of the milk in that community” the Board should not permit the same milk to be counted twice.

October 15, 1935.

Mr. J. E. Norris
Commissioner, Montana Milk Control
Board
The Capitol

You have asked (1) whether one-cow dairies come under the jurisdiction of the board; and (2) my interpretation of Section 6, Chapter 189, Laws of 1935, and particularly whether in determining what is a “substantial portion of the milk in that community” the same milk, if it pass from producer to distributor, may be counted twice in determining what is a “substantial portion.”

The answer to your first question lies in the definitions which the Act itself supplies in Section 3:

“‘Producer’ means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

“‘Distributor’ means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk

from a dealer licensed under this Act, for resale over the counter at retail, or for consumption on the premises.

“‘Producer-distributor’ means any person both producing and distributing milk for fluid consumption within the state.

“‘Dealer’ means any producer, distributor or producer - distributor.”

Section 7 (1) authorizes the board (a) to fix minimum prices to be paid by dealers to producers; and (b) the minimum wholesale and retail prices of milk when sold by dealers to consumers, by stores to consumers and by dealers to other dealers. Sections 8 and 9 require the dealers to be licensed and that distributors and/or producer-distributors shall pay a tax on all fluid milk sold.

If a one-cow dairy sells milk at wholesale to a distributor, it is a producer as defined by Section 3 above quoted. If a one-cow dairy retails milk, it is a producer-distributor under the definition above quoted, since selling at wholesale to a distributor is not included in the latter definition. By definition, “dealer” means any producer, distributor or producer-distributor.

It is my opinion, therefore, that a one-cow dairy, whether a producer or a producer-distributor, is a dealer as above defined and subject to the regulations of the board provided for in Sections 7 and 8.

Section 6 of the Act provides. “The board shall not exercise its power in any market except upon written application of an association, organized under regulations satisfactory to the board, and **supplying a substantial portion of the milk in that community.**”

Section 3 defines “association” as follows: “‘Association’ means any organized group of dealers, in a community or marketing area which has been constituted under regulations satisfactory to the board.”

Since the term “dealer,” as defined by the Act, is broad enough to include (1) producers, (2) distributors, (3) producer-distributors, the “association” mentioned in Section 6 may include any person belonging to either of the three classifications. In deter-

mining what is a “substantial portion of the milk in that community,” the board, in my opinion, should not permit the same milk to be counted twice. The board should determine whether a given quantity of milk is a “substantial portion,” regardless of such milk being produced and distributed by different persons. The existence of the substance, milk, and the determination of its bulk or quantity is independent of its relation to producers or distributors or producer-distributors. In other words, the quantity remains fixed, regardless of the number of persons handling it.