

Opinion No. 186.

Unfair Practices—Agricultural Products—Butter.

HELD: That butter is not an agricultural product as used in Section 5 (a) of the Unfair Practice Act.

November 1, 1937.

Mr. B. F. Thraillkill
Chief of Dairy Division
The Capitol

Dear Sir:

You have asked if butter is an agricultural product, so that the method in determining a fair price would be as set forth in Section 5 (a), Chapter 80, Laws of 1937, or if it is a manufactured product so that the method used to determine fair price should be as set forth in the balance of said Chapter 80.

An agricultural product is defined in 3 Corpus Juris Secundum, p. 361, as "That which is a direct result of husbandry and the cultivation of the soil. The product in its natural unmanufactured condition."

Quoting from the case of Getty v. Milling Co., 40 Kan. 281; 19 Pac. 617. In that case the question was whether flour was included within the meaning of the term agricultural products, and the court further said:

"In one sense it may be said that flour is a product of agriculture, but in the common application of the term we think this is not true. As

cotton is a product of agriculture, yet cotton cloth, or other fabrics made from cotton, could hardly be termed 'agricultural products.' If the products resulting from the manufacturer of agricultural products are not to be determined by the common acceptance of the term 'agricultural products,' then this charter would embrace an innumerable variety of manufactures and their products. Flour, being the product of manufacture, is not strictly within the purview of this charter."

Montana has held that the term agriculture includes the raising and care of livestock and means the art of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, planting of the seed, raising and harvesting the crops, and rearing, feeding, and managing the livestock. *De Fontenay v. Childs*, 19 Pac. 2nd, 651. Then in Montana a product of agriculture would include the natural products, of the rearing, feeding, and management of livestock. It has been held that dairy and poultry products are agricultural products and result from the labor of those engaged in agricultural pursuits.

In *District of Columbia v. Oyster*, 15 D. C. 285; 54 Am. R. 275, the question was whether milk, cream, and eggs were agricultural products and the court said: "The product of the dairy, or the product of the poultry yard, while it does not come directly out of the soil, is necessarily connected with the soil and those who are engaged in the culture of the soil."

Apparently, the answer to the question turns on the matter of the intervention of a processing between the natural product of the soil and the final product for the consumer. If there is no processing, as in milk, cream, eggs, wheat, cotton, the product is an agricultural product. If it is necessary to manufacture it or treat it in some way, as grinding the wheat into flour, spinning the cotton, or churning the butter, then it passes from the category of an agricultural product to a manufactured product.

Therefore, it is my opinion that butter is not included within the definition of agricultural product as used by Section 5 (a) of said Chapter 80, and the fair trade price would be set for butter as for other manufactured products.