

**Creamery Company, Establishment of Sub-Stations for Purchase of Cream. Cream, Purchase of at Sub-Stations of Company. Discrimination, by Cream Purchaser. Transportation, Cost of Defined. Cost of Transportation, Defined.**

A creamery company may lawfully engage in the business of purchasing cream by establishing cream stations in different towns, provided that in so handling its business it does not enhance the price of cream in one locality so that more will be paid there than in any other locality, less the cost of transportation. The price must be the same at every station it operates, less the actual cost of transportation. "Cost of Transportation" defined.

June 9th, 1913.

Hon. A. B. Scholes,  
State Dairy Commissioner,  
Helena, Montana.

Dear Sir:

Replying to your request of the 28th ultimo for an opinion upon a matter submitted to your office by the Henningsen Creamery Company of Great Falls, I beg leave to advise that I have given the matter of their communication careful consideration, and as I understand the situation, it is the desire of this company to enter into an undertaking whereby they will traffic in the business of buying milk, cream or butter fat for manufacturing purposes. The gist of this becomes manifest from the following excerpt quoted from their letter to you:

"In case we or some other creamery should want to start a cream station or several of them with some of the local merchants in the different towns, and the producers would be willing to pay the merchant operating the station one cent per pound butter fat for handling his cream, would this merchant be in position to buy cream in our behalf and pay the producers with our checks, and comply with the law at the same time? In other words, to illustrate, for example, we would select some point where the express would average about one cent per pound into Great Falls, and our paying price at Great Falls would be thirty cents per pound butter fat. Our agent at this particular point would pay twenty-eight cents per pound for butter fat delivered at his station, paying for same at the time the producers delivered it. The difference of two cents per pound represents one cent express and one cent to the agent for his services in handling the cream."

As bearing upon the right of this company to traffic in the cream business, as indicated by the statement of facts contained in the quoted excerpt, Sec. 21 of Chap. 77 of the 1913 Session Laws, page 307, reads in part as follows:

"Any person, firm, copartnership or corporation engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, who shall with the intention of creating a monopoly, or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this state, by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said person, firm, copartnership or corporation in another locality, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination."

It would appear from the provisions of this section that its right to do business in the manner as indicated depends upon the construction to be given the phrase "actual cost of transportation," as contained in the act. The statement of facts indicates that it is the intention of this company to maintain stations at different places within the territory contiguous to Great Falls, to pay a commission to its agents maintaining these stations, which commission purports to be a direct charge against the producer, and the question arises, Is this legal under the act? It is a matter of common knowledge that cream is a perishable article and requires proper handling, storage and care from the time it leaves the producer until it reaches the manufacturer. In my judgment, the phrase, "actual cost of transportation," is comprehensive enough in scope, in so far as the commodity in question is concerned, to include both the cost of handling in the manner indicated and the cost of hauling. And together these two items constitute "cost of transportation," and such an arrangement would not constitute unfair discrimination, provided that in so handling its

business the company does not enhance the price to be paid by it for cream in one locality so that more will be paid in such locality than it pays for the same commodity in any other locality, less the cost of transportation, as that phrase is defined herein. In other words, if this company undertakes to engage in the business as outlined in its statement, the price which it shall pay for commodities purchased by it shall be the same at every station it operates, less the actual cost of transportation to Great Falls, so that the cost to it when the commodity is delivered at Great Falls will be uniform.

With these observations, I am of the opinion that the company may lawfully engage in the business it contemplates in the manner as set forth above.

Yours very truly,

D. M. KELLY,  
Attorney General.