

Unfair Competition, Discrimination. Discrimination in Trade. Trade, Discrimination and Unfair Competition.

A manufacturer may dispose of his entire product to a single jobber or distribute his output to a number of jobbers of his own choice, so long as he does not discriminate between them.

The fact that a retailer is required to purchase from a jobber, and is denied the privilege of purchasing from the manufacturer is not an act of unfair discrimination.

April 15, 1914.

Mr. F. M. Wall,
President F. M. Wall Company,
Roundup, Montana.

Dear Sir:

In reply to your letter of the 6th instant, will say that owing to my absence from the state during the past week, your communication has not received early attention:

You set forth that you are engaged in wholesale and retail grocery business at Roundup, Montana, and have heretofore purchased sugar from the Billings Sugar Company in car lots, but it appears that of late the sugar company has entered into an agreement with about twelve concerns, by which it agrees not to sell any sugar except to them, who in turn supply the demand for sugar, after adding a profit for themselves, and that in addition to this profit, the grocers throughout the state are compelled to pay the regular broker's commission. You set forth that you are now in a position to purchase sugar in car lots; that you offered to buy sugar from the company for cash in car lots and upon the same terms, and at the same prices at which they are selling to the twelve jobbers, but that the company

has declined to sell you any sugar in any quantity at any price or at all, and you inquire as to whether such conduct upon the part of the sugar company is a violation of an act of the 13th Legislative Assembly, entitled:

- "An Act to prohibit unfair competition and discrimination, and providing a penalty for the infraction of the provisions thereof."

In my opinion these facts do not constitute unfair discrimination under the law referred to, for there is nothing to indicate the sugar company is

"intentionally, for the purpose of destroying the competition of any regularly established dealer in such commodity or to prevent the competition of any person, firm or corporation who in good faith intends and attempts to become such dealer, shall discriminate between different sections, communities or parts of this state, by selling such commodity at a lower rate or price in one section, city or community, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city, after equalizing the distance from the point of production, manufacture of distribution and freight rates therefrom."

In my judgment, this company has the right to dispose of its entire output to a single jobber, or to distribute its output to a number of jobbers of its own choice, so long as it does not discriminate between them, contrary to the provisions of the act; and the fact that you are required to purchase your supply of sugar from a middleman cannot be urged by you as an act of unfair discrimination upon the part of the sugar company.

Yours very truly,

D. M. KELLY,
Attorney General.