

July 16, 1935.

Mr. G. A. Norris
 Commissioner, Montana Milk Control
 Board
 The Capitol

You have submitted the following:

"1. Whether a bidder for the contract to supply Fort Harrison is bound by the prices adopted by the Helena trade area * * * and whether the board has authority to require a bidder on the Fort Harrison contract * * * to bid in accordance with price schedule as adopted by the Helena trade area."

Since the Act operates upon all milk dealers who buy milk from producers, it would apply to such dealers who contracted to supply Fort Harrison, and they would be bound by the prices adopted by the Helena trade area, provided they purchase milk within such trade area. The Act, of course, does not apply to milk purchased in another state as a state may not interfere with or regulate interstate commerce.

"2. Also, will you kindly define more clearly Section 5 of Chapter 189, Montana Laws, Twenty-fourth Legislative Assembly, in which it is stated that the Board has power to supervise, regulate, and control the distribution and sale of milk for consumption within the State. Does this stipulation give the Board power of complete and absolute regulatory action in a community having a city pastuerization law that is not being enforced by the city officials, who are reluctant as to the enforcement of this law?"

Chapter 189, Section 5, provides that "the board shall have power to supervise, regulate and control the distribution and sale of milk for consumption within the state * * *."

The Act does not confer power to regulate the milk industry generally but merely as to prices. Moreover, the board would have no authority to enforce a city ordinance relative to pastuerization.

3. In Section 6 of the law, please advise as to what portion of milk represents a 'substantial portion of milk,' or in other words, what is a

Opinion No. 141.

**Milk Control Board, Power of—Trade
 Areas—Interstate Purchases—
 Pasteurization—Cities and
 Towns—Ordinances.**

HELD: Discussion of the powers of the Milk Control Board in relation to trade areas, interstate purchases, authority to enforce city ordinances relative to pastuerization and the determination of what is a "substantial" portion of the milk in a trade area.

definition for a 'substantial portion of milk'?"

The word "substantial" is defined in Webster's Dictionary as meaning "considerable in amount, value, or the like." This definition is quoted with approval in 60 C. J. 978, Section 4. It probably is not possible to define this word more accurately. The phrase "substantial portion of the milk in that community" must, of course, be considered in connection with the whole portion of the milk in that community. What is a substantial portion of the milk and what is an inconsiderable or trivial portion of the milk in the community, must be determined by the board in its sound judgment and discretion.