

Opinion No. 206.**Unfair Practices—Fair Price—Agricultural Products.**

HELD: 1. That fair price as used in Section 5-A of Chapter 80, Laws of 1937, is synonymous with cost as used in the remainder of the act.

2. When agricultural products are sold by the original producer they become articles of commerce and are then treated as provided by Section 3 of the Unfair Practice Act.

December 8, 1937.

Board of Railroad Commissioners
The Capitol

Gentlemen:

You have asked for construction of Section 5-A, Chapter 80, Laws of 1937, and wish to know whether this particular section is to be construed to conform with the remainder of Chapter 80, or if it is to be construed as permitting a profit for the parties enumerated in said section.

Chapter 80, known and designated as the "Unfair Practice Act," (sec. 15) prohibits price discrimination with intent to destroy competition (sec. 1), and makes it unlawful "to sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof." (Sec. 3.)

This act is not a price fixing statute. Its purpose is declared in Section 14:

"The legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be literally construed that its beneficial purposes may be subserved."

The legislature has followed the economic theory that wholesale cutting of prices, or cut-throat competition, is as disastrous to the general welfare of the consuming public as any other practice, and the legislature, by enacting this chapter, has declared it to be the policy of the State of Montana that the method of bringing about monopoly control by unfair competition and discriminatory prices shall be interdicted in the same manner as combinations and price fixing contracts. Then this act does not conflict with Article XV, Section 20 of the Montana Constitution, or Section 10901, R. C. M. 1935, but is supplementary thereto.

Section 5-A, to which you refer, was inserted into Senate Bill 19 as an amendment in the Committee of the Whole Senate, and the history of this section shows it had a stormy and turbulent career in both houses and was debated and considered by the committees and the members of both the Senate and the House of Representatives. The fact that it was inserted as an amendment may account for the difference in the language of this section from that of the rest of the act. But in arriving at the legislative intent with respect to this section it is necessary that the whole act be read together and a construction given the section that will make it harmonize with the title and avowed purpose as set forth in Section 14. We must look not only to the language of the statute but to the subject matter of the act, the object to be accomplished and the purpose to be subserved, and an interpretation must be given it that will sustain its constitutionality and validity.

Section 5-A reads as follows:

"The following method shall be used in determining fair prices for

agricultural products sold on local markets, in any trade area, district or city in which the major portion of any agricultural commodity or product is produced within or adjacent to said trade area, city or district.

"Whenever 75% of producers of any agricultural product or commodity marketing said products or commodities within any trade area, district or city shall determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be deemed the fair price for such product or commodity under the terms of this act.

"Such producers through their regular constituted agents shall file with the Montana trade commission such fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers and consumers of said agricultural products or commodities. Any organization representing consumers shall not being denied representation at such a meeting.

"After the establishment of such a schedule of fair prices for said agricultural products or commodities, it shall be a violation of this act for any producer, jobber, wholesaler or retailer to sell or buy any agricultural commodity or product below such price as established by the Montana trade commission and such action shall be deemed a violation of this act and punishable under the terms provided in this act."

And applying the general rules of statutory interpretation to this section, it is evident that it was not the legislative intent to fix prices for agricultural products any more than for the other products covered by the act. Section 5-A speaks of the determination of fair price, and Section 3 talks of the cost, but it is implicit in the law that a fair price is the cost, and sales that are below cost or are discriminatory, are, by definition, unfair prices and unfair practices. In Section 3 the term "cost" is defined, as applied to production, to include the cost of raw materials, labor and overhead expenses of the producer. This method of ascertaining the production costs of a manufacturer is workable and efficient, but the legislature recognized that the variety and nature of the farm producer made it difficult and well nigh impos-

sible to determine the cost or fair price of agricultural products in this same manner. Section 5-A provides the method of determination of fair price for this class of product. Once ascertained this fair price is to be the price at which the farmer sells to jobbers, wholesalers, retailers and consumers alike, and selling below this price makes the violator liable to the same penalties as producers under Section 3.

Once agricultural products have been disposed of by the original producer they become articles of commerce and are treated in the same way that other such articles are treated. The cost will then be the invoice price, in this case, the price established by the hearing before the Montana Trade Commission, plus the cost of doing business as defined by Section 3. Section 5-A provides the machinery by which the farmer may take advantage of the Unfair Practice Act. After the goods leave the hands of the farmer, the original producer, there is no longer any need for this section, and the ordinary rules under the remainder of the act are then applicable.