

Opinion No. 182.

**Unfair Practices—Trade Area—
Agricultural Commodities.**

HELD: A trade area is the territory surrounding a marketing center, where similar local conditions cause the cost of production of such commodities to be approximately the same.

December 22, 1939.

Mr. Clyde Hayden
County Attorney
Hamilton, Montana
Dear Sir:

You have asked for a definition of "trade area" as that term is used in Section 5-A of Chapter 80, Laws of 1937.

Chapter 80, Laws of 1937, is commonly known as the Unfair Practice Act and Section 5-A provides for the application of the general principles of that Act to agricultural projects. The Unfair Practice Act is an attempt to curb price discrimination and price cutting as weapons of unfair competition. Its whole spirit is fair wages paid on a product fairly manufactured and sold at a profit based upon actual cost. The essential feature of the Act is prohibition against selling below cost. For ordinary mercantile products cost is easily determined as the invoice price plus overhead or cost of doing business. With agricultural products it is not so easy to arrive at a cost figure below which it is unlawful to sell. That is the reason that the technique of determining the cost of agricultural products as laid down in Section 5-A differs from that used for manufactured or processed goods. But the fundamental principles are the same and applicable to all kinds of products.

Many articles are sold over the entire state and it would be quite proper for them to be sold at a lesser price in one section than another. If this is true of manufactured products it is also true of agricultural products. The Act itself manifests an intent to localize the territory in which fair prices for agricultural products may be established when it declares that 75% of the producers marketing said produce "within any trade area, district, or city" shall determine the fair price.

Then the "trade area" is that territory surrounding a marketing center where similar local conditions such as freight rates, climate, labor cost, etc., give rise to similar costs of production. Such a trade area might be as small as a single city or might be large enough to comprise several counties, depending on the product involved and the varying local conditions. The Montana Trade Commission in administering the Act should adopt a "rule of reason" similar to that used in federal administrative agencies that will carry out

the declared purpose of the Act and benefit the growers of the agricultural commodity concerned.

From the information given in your letter it would seem that Ravalli county would be a reasonable trade area and 75% of the apple growers in Ravalli county could petition the Montana Trade Commission to provide for a fair price as set forth in Section 5-A.