

Opinion No. 214.

**Milk Control Board—Public Hearing—
Establishment Market Area—Fixing
Prices—Who May Conduct—
Chapter 204, Laws
of 1939.**

HELD: The Milk Control Board is not required to hold a public hearing before the establishment of a new market area or the disestablishment of an existing market area.

The public hearing to be held prior to the fixing of prices must be held in the market area where the prices are to be fixed.

Public hearings held prior to the fixing of prices in a market area may be held by a duly designated agent of the board.

March 14, 1940.

Hon. G. A. Norris
Secretary, Montana Milk Control
Board
The Capitol

Dear Mr. Norris:

You have submitted the following:

“Will you kindly advise with regard to the establishment of markets as is outlined in article B, section 6, chapter 204, session laws of 1939?”

“Is the Montana Milk Control Board required to hold a public hearing before the establishment of a new market, or the disestablishment of an existing market?”

Under section 7 of the above statute, is it incumbent upon the board in the matter of public hearings to hold such public hearings within the confines of the market area in question, or is it permissible for the board to hold all such public hearings at the office of the board located at Helena, Montana?

“May a representative of the Board conduct such hearings?”

The requirements for the establishment or disestablishment of a market area are set forth in paragraph (b), Section 6, Chapter 204, Laws of 1939. A public hearing is not one of them. In the absence of any such requirement in the statute, it is my opinion that a public hearing is not necessary. Moreover, we do not see how a public hearing would enable the board to make a determination of the facts required.

Section 7 Id., expressly provides that the board shall hold a public hearing and admit evidence prior to the fixing of prices in any market area but does not expressly state that such hearing shall be held within the confines of a market area. Inasmuch as the questions of fact to be determined by the board at such hearing could not be determined at a public meeting held at Helena or outside of the market area without almost prohibitive expense we think that it is an administrative necessity that such meeting be held within the market area where the prices are to be fixed. To have a meeting elsewhere would not give the public in the area an opportunity to be heard or to hear the testimony of witnesses. We doubt if a public meeting held elsewhere could be considered a public hearing as intended by the legislature.

It is my opinion therefore that such meeting should be held within the market area in question. Section 5, dealing with the general powers of the Milk Control Board, provides:

“* * * Any duly designated agent of the board may administer oath to witnesses and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, * * *.”

In the absence of anything in the act making an exception in the case of the hearing provided for in Section 7, any duly designated agent of the board may conduct such hearing, being authorized by the above quoted section.